Articles Quoting Michael S. Barr
January 20, 2009 – October 31, 2010

Jim Puzzanghera, *Foreclosure probe reveals no 'systemic' threat, official says*, The Los Angeles Times, October 21, 2010.

A government review of botched foreclosure paperwork so far has found that the problems do not pose a "systemic" threat to the financial system, a top Obama administration official said Wednesday.

But Housing and Urban Development Secretary Shaun Donovan said a comprehensive review of mortgage foreclosure procedures would not be completed until the end of the year. He said the administration was "very, very focused" on addressing the issue, promising to hold banks accountable if problems are uncovered.

"This is getting the highest attention from the president and the White House," Donovan told reporters after a meeting he and Treasury Secretary Timothy F. Geithner had with officials from the Justice Department and other agencies.

The Justice Department is leading an investigation of possible crimes involving mortgage fraud. Federal officials are working with the attorneys general of all 50 states, who last week announced a joint investigation into how lenders have verified foreclosure documents.

The Obama administration has strongly resisted calls from many lawmakers and housing advocates for a nationwide moratorium on foreclosures while the paperwork problems are investigated.

Donovan said the administration was moving as quickly as possible to finish its review. But ultimately resolving the problems is not the government's responsibility, said Michael Barr, assistant Treasury secretary for financial institutions.

"Fundamentally, this is up to the banks and the servicers to fix," he said. "They can fix it as fast as they feel like."

Donovan said that banks should not wait for the government to finish its review.

"We will not tolerate business as usual in the mortgage market," he said. "Where there have been mistakes made or errors, we will hold those entities, those institutions, accountable to stop those processes, review them and fix them as quickly as possible."

Along with its broad investigation of the foreclosure process, HUD has been reviewing since May the top five banks that service loans insured by the Federal Housing Administration to determine whether they are following agency guidelines to try to keep borrowers in their homes.

Donovan said that review has found "significant differences in the performance of servicers." He would not name the servicers but said they could face fines or other penalties.

This week, Bank of America Corp., the nation's largest mortgage servicer, ended a self-imposed moratorium on foreclosures in 23 states but said it was still reviewing its actions in California and 26 other states to make sure they complied with states' laws.

Another major servicer, Ally Financial Inc., formerly GMAC Inc., also has resumed some foreclosures after its own moratorium.

Donovan said the administration did not have a problem with those servicers resuming foreclosures, saying it was "their business decision."

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Exra Klein, *The administration's foreclosure policy – for now*, The Washington Post, October 20, 2010.

Earlier today, HUD Secretary Shaun Donovan joined Treasury's Michael Barr to brief reporters on the administration's response to the foreclosure mess. And the answer, basically, was that "it's under review." A variety of agencies overseeing a variety of sectors related to the housing market are participating in a "comprehensive" review of the matter that should finish up in nine weeks. That gives the administration time to let this mess sort itself out and, if it doesn't, time to figure out how to insert themselves more directly.

But they'd clearly prefer not to. "The moratorium, which is still in place for Bank of America in a majority of states, is their decision, their business decision, and it is a decision every servicer is making independently. What we need to be clear about is that we work with state attorney generals to make sure those processes are done correctly." In other words, the administration's policy, as of now, is that the continuation of the foreclosures is up to the banks. The administration's role is to make sure those foreclosures are going by the book. It is not, as some hoped, to halt all foreclosures, or use the uncertainty to reform the underlying process.

"We require our servicers, early on in the process, to contact borrowers who are delinquent, offer them a specific set of options -- like a modification or a payment plan -- that would allow them to stay in their home and minimize losses to the taxpayer," said Donovan. And he came back to that again and again. Some servicers, he argued, simply aren't holding up their end of the bargain, and that's when the government has to get involved.

But whether the servicers are doing their due diligence in offering homeowners facing foreclosure help is a bit different than whether the contracts on which those foreclosures are based have legal authority, or whether investors will be able to force banks to buy back so many of them that the system's solvency will once again come under threat. And on those issues, Donovan largely reserved judgment. "It's under review," he said.

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Binyamin Appelbaum, *HUD Chief Vows Vigilance on Foreclosures*, The New York Times, October 20, 2010.

Several federal agencies are scrutinizing the foreclosure process, but the work remains at an early stage and the government has yet to find evidence of widespread problems, Shaun Donovan, secretary of Housing and Urban Development, said Wednesday.

At a news conference at the White House, Mr. Donovan said the government was looking into widespread reports that mortgage companies violated legal requirements in seizing homes, for example by forging signatures on legal documents. Mr. Donovan said the government hoped to complete its review by the end of the year.

So far, he said, "we have not found any evidence at this point of systemic issues in the underlying legal documents."

Michael Barr, a Treasury Department official, interrupted Mr. Donovan to say that the term "systemic issues" meant that there might be problems, but that there was no evidence that those problems threatened the health of the financial system.

Separately, Mr. Donovan said the government had found that some mortgage companies were not offering borrowers a fair chance at loan modifications that might allow them to remain in their homes.

The companies are required to offer modifications because the loans in question are guaranteed by the Federal Housing Administration. Mr. Donovan said the government would act shortly to enforce compliance.

The two administration officials spoke after a meeting with regulators from 11 agencies, convened to review and coordinate the plethora of investigations that have begun in recent weeks.

Mr. Donovan said he wanted to deliver two messages — first, that the administration is determined to protect American homeowners, and second, that the administration is much more concerned about improving the loan modification process than about any problems that may happen in the final stages of the foreclosure process.

"We are focused on the process early, to keep people in their homes, rather than focusing late when it is much less likely that people will be able to stay in their homes," he said.

Mr. Donovan repeated the administration's constant refrain in recent weeks, that mortgage companies must follow the law. And he said the government was moving quickly to make sure they did so.

"Banks expects homeowners to meet their obligations," he said. "American homeowners should have the same expectation that banks and mortgage servicers meet all of their obligations."

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Diana Olick, *Housing's Worst Case*, CNBC.com, October 22, 2010 1:14 PM EDT.

Yesterday the regulator for Fannie Mae and Freddie Mac **put out a forecast** of how much the two mortgage giants would cost taxpayers through 2013.

It drew three different scenarios based on home prices staying as they are, improving and deteriorating.

After the news hit, there was much consternation at the Treasury Department because many news outlets went with that big worst case scenario headline of the big bailout costing $363 billion. That number does not take into account 10 percent dividends that Fannie and Freddie are required to pay back to the government as part of the deal.

	Treasury Draw	Dividends Back to Treasury	Net Cost	% of Total
Draws/Dividends to	$148B	$13B	$135B	88%

Date				
Baseline Scenerio	$90B	$71B	$19B	12%
Cumulative	$238B	$84B	$154B	100%

"Those dividends are specifically designed to compensate taxpayers and make sure taxpayers are paid back," Asst. Treasury Secretary for Financial Institutions Michael Barr told me. They will also keep Fannie and Freddie from ever turning a profit. Barr wanted to make sure I knew that under the "baseline" or current stay-the-same scenario, nearly 90 percent of the losses have already happened. We're only looking at about $19 billion more if the housing crisis ends quickly.

Then there's the bad scenario, where house prices would fall further and taxpayers could have to cough up $124 billion more. I asked Barr which he thought was most likely, and he politely informed me that he doesn't do prognostications or projections or whatever you want to call them. When I tried to change the subject to that nasty mortgage securitization issue, since I did have him on the phone, he continued to toe the Administration's line that, "based on evidence thus far there are no structural flaws in the system of mortgage securitization," an issue that could cost the big banks billions of dollars or at the very least a wildly hefty litigation bill.

"I don't put a lot of credence in any of the numbers," Barr added with respect to recent screaming headlines of multi-billion dollar bank losses from loan "put-backs." [That's where investors (including Fannie and Freddie) force the banks to buy back bad loans that may have been misrepresented during securitization.]

While Mr. Barr doesn't want to predict the future of home prices, a firm called Clear Capital today put out an "Alert." They usually do a monthly home price report which mirrors very closely the results of the more widely-followed S&P/Case-Shiller Home Price Index. Today's report runs the numbers through October 12th, about half the month, and finds a precipitous recent drop, leading to a 5.9 percent drop in home prices over the past two months. Granted, it's mostly the tax credit hangover, but far worse than was expected.

"The reason this is so scary is that we have a very severe price decline in two months, added on top of the robosigning issue that has a lot of people scared, and going into the winter months, which is classically the slow time for real estate, and prices are generally stressed," says Clear Capital's Kevin Marshall. "Put those three things together for Q4 2010 and Q1 2011, and we are in for a rough ride."

As I have said over and over on this blog, and everywhere else anyone will listen, the housing market today is all about confidence, or lack thereof. Uncertainty is ruling the roost, and none of the usual indicators are worthy predictors anymore. Sure, affordability is at an all-time high, sure mortgage rates are at record lows, and of course there are plenty of homes to choose from, but none of those are really juicing sales or prices.

Why? Patrick Newport of IHS Global Insight makes a really important point: "According to the Census Bureau, between March 2009 and March 2010, households rose by 357,000, the smallest increase since 1947. The previous year, households increased by only 398,000, the third smallest increase on record. These are steep drops from the 2002–07 period, when household increases averaged 1.3 million a year. Household formation is down because the jobs recession has reduced immigration and led to "doubling up".

And I haven't even talked about the foreclosure crisis yet.

"What the scandal does on top of the price declines is it gives people an incredible lack of confidence in the housing market," notes Marshall. "Folks that might have said now is the time to hop in, because prices are low, they are going to be hesitant. So not only do we have a financial problem but a consumer perception problem."

Come Monday, **Bank of America [BAC 11.16 ▼ -0.28 (-2.45%)]** and **GMAC** say **they are starting up the foreclosure business as usual again** (well perhaps, hopefully, not as usual), and we already know there were a record number of bank repossessions in September (102,000). So here come a whole new slew of homes onto an already bloated market where prices are falling, uncertainty is rising and confidence is non-existent. Do you want to talk about those Fannie Freddie scenarios again?

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Shahien Nasiripour and Arthur Delaney, *Obama Team On Furor Over Foreclosures: 'Problem For The Banks and Servicers To Fix'*, Huffington Post, October 20, 2010.

U.S. Housing and Urban Development Secretary Shaun Donovan said Wednesday that the Obama administration will attempt to protect homeowners and police the kind of paperwork fraud that led the nation's largest banks to temporarily halt foreclosures this month, but added that the administration had yet to find anything fundamentally flawed in how large banks securitized home loans or how they foreclosed on them.

"Where any homeowner has been defrauded or denied the basic protections or rights they have under law, we will take actions to make sure the banks make them whole, and their rights will be protected and defended," Donovan said at a Washington press briefing. "First and foremost, we are committed to accountability, so that everyone in the mortgage process -- banks, mortgage servicers and other institutions -- is following the law. If they have not followed the law, it's our responsibility to make sure they're held accountable."

The HUD secretary said, however, that the administration is focused on ensuring future compliance, rather than on looking back to make sure homeowners and investors weren't harmed during the reckless boom years. The administration is "committed to forcing institutions to change the way that they conduct business," Obama's top housing official said, "to make sure these problems don't happen again."

Donovan said HUD began a review earlier this year of the five largest mortgage companies it deals with on government-backed mortgages through the Federal Housing Agency. The review focuses on how the companies attempt to keep delinquent borrowers in their homes and how they transition homeowners who have been foreclosed on out of their homes.

"We are very focused on making sure ... steps are being taken early in the process is to keep people in their homes," Donovan said.

Within the foreclosure process, the probe examines how mortgage servicers -- firms that collect payments from homeowners with a mortgage -- handled the various affidavits employees were supposed to carefully review, sign and notarize in order to carry out a foreclosure in states that require a court's approval, and how the firms performed the final stages of a foreclosure.

Donovan said the administration had yet to complete its review, which began in May. Thus far, though, it had found "significant difference in the performance of servicers, and in particular, information that shows us there is not compliance with FHA rules and regulations around loss mitigation." Donovan said the findings were limited to firms that deal with FHA loans. He declined to single out servicers. Other HUD officials likewise declined, despite repeated requests.

When it came to the larger issue of what some legal experts describe as a fundamentally-flawed and fraud-ridden mortgage market -- fraudulently-underwritten loans that passed through a maze of institutions that failed to properly maintain basic paperwork or follow legal procedures in bundling, securitizing and ultimately selling those mortgages to investors -- Donovan said that, thus far, all is well.

"The primary issue that's been the focus of the moratoria is, is the foreclosure process being followed correctly? Are affidavits being filed correctly, and are notarizations and other things being done correctly? That is one set of issues," he said. "A second set of issues -- and we think this is very important -- that we look more broadly at, 'Are servicers taking steps to help keep people in their homes?'"

The lesser, third issue that has been raised, Donovan said, is whether the process underlying the securitization of mortgages is "in question."

"So that's the point that I'm trying to make, is that the issues that we are finding ... that we're focused on are, 'Are there particular servicers that are not following these processes?'"

Donovan added that "we have not found any evidence at this point of systemic issues in the underlying legal or other documents that have been reviewed."

That review, however, is fairly new. Experts in mortgage processes, housing law and bankruptcy say the practices employed by the big mortgage originators, securitizers and servicers is largely flawed, and that in some cases the basic process of how a loan came to be securitized and sold can be legitimately questioned. It's unclear how hard the administration looked into the matter prior to Donovan's diagnosis.

Meanwhile, several state officials have called for a foreclosure moratorium. All 50 state attorneys general -- Republicans and Democrats alike -- are investigating servicer behavior. Many have vowed to get to the bottom of the mortgage mess, and at least one has already launched a lawsuit. The state attorneys general say the large mortgage companies may be engaging in "deceptive" practices, a legally loaded term. Some large servicers voluntarily halted foreclosure sales.

Michael Barr, an assistant secretary at the Treasury Department and one of Timothy Geithner's top lieutenants, offered a clarification at the press briefing. "When the word 'systematic' or 'systemic' is used in this context, I think Secretary Donovan was referring to the safety and soundness of the financial system, not saying that there couldn't be significant real problems that affect real people in a very, very real way," Barr said. "We are seeing that, and that is why we are stepping up to the plate and making sure that those problems get corrected."

The officials announced that on Oct. 6 the Treasury Department sent a letter to all mortgage servicers participating in the Obama administration's Home Affordable Modification Program, reminding them that they must certify that all pre-foreclosure options, such as a modification or a short sale, have been exhausted before a servicer repossesses a home. Homeowner advocates have said that HAMP, under which more borrowers have been booted from their homes than have received permanent relief from their servicers, has shown that the companies rush to foreclose without first exhausting other options -- an act directly contravening the administration's promise to voters.

"Treasury did have a robust and does have a robust compliance system in place," Barr said of HAMP, which was the administration's main effort to help three to four million strapped borrowers stay in their homes. "When we have found problems we have ordered them to be corrected and they have been corrected."

A government audit this year found that servicers routinely made mistakes, and that those mistakes may have improperly booted thousands of homeowners from the program.

The Treasury Department now conducts quarterly "Second Look" reviews of HAMP servicers. The most recent review found that "fewer than 5% of loans sampled from large servicers were evaluated incorrectly by the servicer," documents show. "Where applicable, servicers are required to forestall foreclosure sales and reevaluate these homeowners under HAMP guidelines."

Treasury has no procedures in place for sanctioning servicers under the program. To date, not a single fine has been levied.

When pressed how much longer the government's review would take, Donovan estimated another nine weeks, placing its completion the week before Christmas. Barr had a less committal answer.

"This is not a problem for Secretary Donovan to fix," Barr said. "This is a problem for the banks and servicers to fix. They can fix it as fast as they feel like it."

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Sheiresa Ngo, *What Financial Reform Means for You*, Black Enterprise, October 2010.

IN RESPONSE TO THE FINANCIAL MELTDOWN THAT BEGAN IN THE UNITED STATES MORE THAN TWO years ago, the Dodd-Frank Wall Street Reform and Consumer Protection Act, also known as the Financial Reform Bill, was recently signed into law by President Obama. After more than 8 million jobs were lost and hundreds of banks were closed, financial reforms have finally been put in place. But what's in the bill and how will it affect you?

Here's a rundown of changes that will have the greatest effect on consumers.

Consumer Protection Bureau: An independent Bureau of Consumer Financial Protection has been created. Its role is to protect consumer rights and ensure that appropriate financial regulations are in place. The Consumer Protection Bureau will oversee everything from credit cards to mortgages, student loans, and bank accounts. The bureau will analyze and enforce the rules for banks and credit unions with assets of more than $10 billion. Furthermore, the bureau has the authority to create new consumer protection rules that govern any financial institution that provides financial services or products to consumers. "The Consumer Protection Bureau, this federal watchdog, is going to be focused completely on protecting families from abusive financial practices. The bureau has the authority to write rules for consumer financial products and services and to examine and supervise the most critical bank and nonbank financial services providers, creating a level playing field across the marketplace for the first time," said Michael Barr, assistant secretary of the Treasury for financial institutions, at a White House briefing in July.

Consumer Education: The federal government will create an Office of Financial Literacy. Its role will be to educate consumers and increase the public's general understanding of financial products and the basics of personal finance. This change aims to encourage wiser financial decision making.

Consumer Complaint Hotline: A national consumer complaint hotline will be put in place so that consumers can report problems. The aim is to help consumers quickly resolve issues involving inadequate or fraudulent financial products and services.

Oversight of the Lending Industry: The Consumer Financial Protection Bureau will oversee the lending industry by protecting borrowers from deceptive mortgage lending practices and ensuring that mortgage application forms are written in language that is easy to understand. This is meant to help prevent homebuyers from taking on burdensome loans they can't maintain. The bureau will monitor rules and regulations for all mortgage-related businesses such as lenders, servicers, and mortgage brokers. In addition, the new bureau will keep tabs on payday lenders, student loan issuers, debt collectors, and credit reporting agencies.

Furthermore, auto financing will come under additional scrutiny. The Consumer Financial Protection Bureau has authority over banks and companies that finance lending by auto dealers in addition to dealers whose specialty is subprime auto loans. The Federal Trade Commission will receive new authority to write rules that rein in deceptive practices by auto dealers.

Mortgage Assistance: The new legislation sets aside $1 billion for bridge loans to jobless qualified homeowners. The funds offer help with mortgage payments until homeowners find employment.

Deposit Insurance: There will be a permanent increase in deposit insurance for banks, credit unions, and thrifts to $250,000. Originally, the insurance amount was scheduled to go back to $100,000 (except for certain retirement accounts, which were set to stay at $250,000) on Jan. 1, 2014. Now, consumers will be able to recover more money if their bank fails.

Credit Reporting Agencies: The new consumer protection bureau will have the authority to regularly examine the major credit bureaus to ensure their compliance with federal law. In addition, the bureau is required to conduct a study on the differences in credit scores between those sold to lenders and consumers and those provided to creditors by the three major credit reporting bureaus to find out if variances between credit reports have a negative impact on consumers. This might reduce the chance of a creditworthy consumer being turned down for financial services.

Credit Scores: Consumers will be able to receive their credit scores free of charge if they are refused credit or charged a higher price for credit than most consumers because of their score.

Credit Cards: The bureau will enforce existing laws governing consumer credit, including the Credit Card Accountability, Responsibility, and Disclosure Act of 2009, which will be enforced by the Consumer Financial Protection Bureau and Fair Credit Reporting Act. Terms of credit card agreements, such as interest rates, will be clearly disclosed.

Debit Card Swipe Fees: The new bill limits debit card swipe fees. Now, credit card issuers can no longer charge businesses so-called debit card swipe fees that surpass the cost of completing the transaction. These charges were often passed on to consumers by store owners.

Insurance: The new bill will create, for the first time, an office focused on insurance called Federal Insurance Office. The purpose will be to monitor the insurance industry.

Overdraft Fees: Now, you'll be asked whether or not you want to opt in or out of banking overdraft fees. So if you don't opt in for overdraft coverage and a purchase pushes you over your limit, your purchase will be declined. If you do opt in for overdraft protection, you'll be charged a fee if you go over your limit.

Fast Facts

The new law will...

* Create an independent Bureau of Consumer Financial Protection.

* Mandate free credit reports for those denied credit or charged a fee significantly higher than other customers because of their score.

* Allow you to choose whether or not you want overdraft protection of a bank account.

* Permanently protect consumer bank deposits up to $250,000 by way of the Federal Deposit Insurance Corp.

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Teresa Dixon Murray, *Mending broken home finance Experts offer ideas to reform house buying*, The Plain Dealer, September 28, 2010

When someone buys his first home, maybe he should be required to buy insurance to cover annual inspections and major repairs.

That was one of the ideas tossed out Monday as local and regional housing and banking experts peppered federal officials with ideas for reforming the world of housing finance.

A mandatory repair insurance policy would save new homeowners from crises like a new furnace or plumbing problems, which can destroy a person's finances, said Shanna Smith, president and chief executive officer of the National Fair Housing Alliance in Washington, D.C.

Among those at the half-day session, held at the Federal Reserve Bank in Cleveland, were two people who will be part of the decision-making process: Michael Barr, assistant secretary for financial institutions at the U.S. Department of Treasury, and Raphael Bostic, assistant secretary for policy development and research at the U.S. Department of Housing and Urban Development.

As the nation continues to recover from the banking and mortgage meltdown that started in 2007, the federal government hopes to have reform proposals for Congress to consider in January. One other regional conference like Monday's is planned; it's in Charlotte next month.

Barr suggested that officials plan to overhaul the Freddie Mac/Fannie Mae model and the dominance they had over the mortgage market under the guise of the government's blessing. Freddie and Fannie buy mortgages from banks, but their risky practices led the government to take them over to save them from collapse in September 2008. The panelists on Monday seemed to agree that it's not OK for quasi-governmental entities to control 90 percent of the mortgage market, when you add together Fannie's and Freddie's underwriting with Federal Housing Administration and Veterans Affairs loans.

"It's not tenable to leave in place the system we have today," Barr said.

Ivy Zelman, chief executive officer of Zelman & Associates and a nationally regarded housing expert, said society may have to rethink the American Dream mindset that everyone should own a home. In reality, maybe homeownership isn't right for some people until their finances are in order, she said.

New York University professor Lawrence White said any mortgage reform should do away with the need for a person to read and understand 50 or more pages of loan documents filled with legalese. "It's a horror. Nobody knows what's in there," he said.

A one- or two-page binding summary of the mortgage should be mandated, White said.

The whole home finance model was faulty because companies and loan officers benefited from bumping borrowers' interest rates and fees, said Gary Acosta, co-founder of the National Association of Hispanic Real Estate Professionals.

R. David Kelly, partner with Carleton Residential Properties of Texas and a trustee of the Teacher's Retirement System of Texas, said one question that needs to be asked is whether homeowners should be able to deduct mortgage interest on their income taxes. That makes homeownership enticing.

Vicki Cox Golder, president of the National Association of Realtors, who is from Arizona, said this is the worst time to consider changing interest deductibility because the economy is so fragile right now.

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Donna Borak, *Treasury Vows GSE Plan, But GOP Wants It Now*, Bank Loan Report, Pg. 21 Vol. 34 No. 50 September 20, 2010.

WASHINGTON - A top Obama administration official reiterated a pledge to unveil a plan next year to revamp the housing finance system, but was hammered by Republicans who said it should already have one on the table.

In testimony before a House subcommittee, Michael Barr, the Treasury Department's assistant secretary for financial institutions, said the administration is "hard at work on reform" and pledged that its plan "will call for fundamental change."

Although Barr said the administration's plan would be out in January, he provided no new details about a possible future for Fannie Mae and Freddie Mac. The lack of a concrete plan continued to nettle Republicans.

"In all respect, y'all have really done nothing but plan to do things," said Rep. Spencer Bachus, the lead Republican on the House Financial Services Committee. "There are no proposals on the table. You've done nothing. You seem to be content, the administration, with doing nothing except for having progress hearings."

"It's time that we quit the slow walking and we started doing things. This should be a legislative hearing, not another planning session," he said.

Fannie and Freddie were put into conservatorship two years ago when the Federal Housing Finance Agency seized both companies on the brink of failure. Barr insisted a plan was on its way, and said the status quo would have to be overturned. "It is not tenable to leave in place the system that we have today," Barr said.

Roughly 95% of the mortgages originated in the U.S. are currently financed by the two GSEs, along with the Federal Housing Administration, Ginnie Mae and others.

As it crafts its plan, Barr said the administration has to be careful not to disrupt a jittery housing market.

"This situation is neither sustainable nor desirable, but if the GSEs were to suddenly exit the market, the stability of the housing market would be undermined," Barr said. "The transition to a new system must occur in an orderly fashion that is minimally disruptive to the market."

The administration has taken some steps toward GSE reform, including releasing a series of questions for comment in April and hosting a conference with the Department of Housing and Urban Development on the future of the housing finance system.

But that did not satisfy GOP members of the House subcommittee on oversight of the GSEs.

"Unfortunately I believe the focus is happening much later than it really should be," said Rep. Scott Garrett, R-N.J.

"It really should have been happening...about two years ago, since Fannie and Freddie were put into conservatorship. Finally, now we're getting to formally and seriously look at the way to reshape that market."

Others agreed.

"Put simply, where's the plan? When will this administration or Congress wind down and put an end to these, what we could call Frankenstein-like mortgage giants, Fannie and Freddie?" said Rep. Judy Biggert, R-Ill.

But the hearing also spotlighted some other issues.

The Federal Housing Finance Agency's acting director, Edward DeMarco, criticized some of the largest financial institutions for not repurchasing bad mortgages that were sold to Fannie and Freddie.

As of the second quarter of 2010, both enterprises combined had $11 billion in outstanding repurchase requests, some of which has been met by some resistance.

"The delays by lenders in repurchasing these loans are a significant concern to FHFA," DeMarco said in prepared testimony. "There are ongoing discussions between the enterprises and lenders to reach a workable solution."

He warned, however, that the FHFA may take action soon if the discussions are not fruitful.

"If these discussions do not yield reasonable outcomes soon, FHFA may look to its supervisory and conservatorship authorities provided under the statute to resolve the situation," DeMarco said.

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***Lawmakers wrestle with Fannie and Freddie*, International Business Times News, September 17, 2010.**

Fannie Mae and Freddie Mac, that pair of quasi-governmental mortgage companies often blamed for the housing crisis and subsequent financial meltdown, are prime targets for reform by the Obama administration. But what form will reform take?

Just as importantly, how will the administration and Congress rid the troubled mortgage giants of the enormous debt they have incurred -- that is, short of lowering it on the backs of American taxpayers?

"Fixing our nation's housing finance system is critically important to our economy and to our country's future," said Michael Barr, assistant secretary for Financial Institutions at the U.S. Treasury Department.

"A new system must be designed to ensure that our housing finance system is more stable, consumers are protected, sustainable credit is widely accessible and important housing policies, such as affordable housing for low- and moderate-income families, are administered effectively and efficiently," he said.

Barr made his remarks at a hearing Wednesday of the House Financial Services Committee. It was not the first Congressional hearing on the fate of Fannie and Freddie, and will not be the last.

The Federal National Mortgage Association (OTCBB:FNMA) , or Fannie Mae, was created by Congress in 1938, as a publicly traded yet government-sponsored corporation with a Congressional directive to increase the availability and affordability of homeownership for low-, moderate- and middle-income Americans.

The Federal Home Loan Mortgage Corporation (OTCBB:FMCC) , or Freddie Mac, another stockholder-owned, government-sponsored corporation, was chartered by Congress in 1970 and directed to supply money to mortgage lenders who serve middle-income Americans. Freddie Mac guaranteed and purchased mortgages, which it then formed into mortgage-backed securities and issued for sale.

These government-sponsored enterprises, or GSEs, had privileges other mortgage corporations did not. They could borrow money at rates lower than other institutions and Uncle Sam, or so it appeared, had their back.

"The GSEs were allowed to operate under an unacceptable 'heads I win, tails you lose'" system," Barr told the committee. "They enjoyed the benefits of the perception of government support. They had inadequate oversight and inadequate capital, and the market did not instill appropriate discipline at Fannie Mae and Freddie Mac because the market assumed that they had a government backstop."

These defects did not become widely apparent until the booming housing market of the 1990's and early 2000's sputtered and went into a nosedive.

"As the private, unregulated mortgage market grew, and market players began to loosen credit standards to pursue ever-riskier business in a booming market, the GSEs, which initially stuck to their core business of guaranteeing well-underwritten loans, saw their market shares fall precipitously," Barr explained.

"Driven by profit motives and an effort to regain market share, the GSEs sought, and were permitted, to guarantee and to purchase riskier mortgages without holding adequate capital or employing appropriate risk management techniques. These moves left Fannie Mae and Freddie Mac dangerously exposed when the housing bubble began to burst," Barr said.

The housing bubble burst in 2007, leaving Fannie and Freddie with a mountain of defaulting mortgages and on the brink of bankruptcy. In Sept. 2008, the Bush administration, in an attempt to stave off financial Armageddon, took the two mortgage corporations into conservatorship. The U.S. Treasury - which is to say, the U.S. taxpayer - began buying up portions of the companies.

"To stabilize the U.S. housing markets, the Treasury Department has to date purchased or announced plans to buy just under $150 billion in the senior preferred stock of the enterprises combined," said U.S. Rep. Paul Kanjorski, D-PA, who conducted the hearing.

Both Kanjorski and Barr noted that the GSEs have done well in shoring up the housing market and the economy since going into conservatorship.

"By facilitating the flow of credit for responsibly underwritten mortgages, the GSEs have served as a source of stability for the housing market and enabled millions of Americans to continue to have the ability to take out a new mortgage or refinance," Barr said.

He added, however, that "the country is unfortunately stuck with the consequences of the poor credit choices the GSEs made prior to conservatorship. No one can undo those decisions."

Kanjorski noted that Fannie and Freddie have begun forcing underwriters of delinquent mortgages purchased or guaranteed by the GSEs "to buy back the faulty loans if the loans violated the representations and warranties provided at the time of sale."

The four largest commercial banks have already incurred losses of $9.8 billion on the loans they have repurchased or expect to repurchase from Fannie Mae and Freddie Mac, Kanjorski said.

Although a staggering sum, $9.8 billion is not $150 billion and, as Mark Calabria, director of Financial Regulation Studies at the Cato (NYSE:CATO) Institute, points out, the sum is greater than $150 billion because much of the debt the GSEs contracted in the years before conservatorship has not yet surfaced.

The Congressional Budget Office expects that greater sum to be about $400 billion.

Calabria said the way to take the burden of the GSEs' debt off the taxpayer is to hit Fannie and Freddie's investors up for the money.

"The way to do that is to move the corporations from conservatorship into receivership," he said.

When a corporation goes into receivership, or bankruptcy, there are clear legal priorities regarding who gets paid first. The taxpayers would then get their money back and the investors in Fannie and Freddie would be left to deal with the debt.

"Although there was a perception that Fannie and Freddie are guaranteed by the U.S. government, the statute governing the GSEs clearly states that the government does not stand behind the corporations," Calabria said. "Fannie and Freddie's investors would be liable."

Calabria said that, at the time of the financial crisis, it was prudent for the federal government to step in and rescue Fannie and Freddie with the public's money. If the big GSEs were allowed to fail at that time, it could have triggered a panic and increased the crisis.

"Now that some stability has returned and the big investors are doing better, they can afford the hit," Calabria said.

He admitted that there could be practical problems in making all the investors pay up, especially foreign investors.

Calabria said that, going forward, it may be wise to phase out Fannie and Freddie altogether - that is, once the debt has been cleared - and do away entirely with government assistance in housing finance.

"People enter into contracts to finance new cars all the time, without any government assistance," he said. "The same sort of thing could work in buying a house."

Members of the Obama administration and Democrats in Congress, although many appear willing to can Fannie and Freddie, are not likely to agree with such a market-based strategy that would put no government mechanism in their place.

"My goals in these debates are to limit taxpayer risk and establish a more stable, long-term funding source to help hardworking, responsible middle class American families to buy a home with an affordable mortgage," Kanjorski said.

U.S. Rep. Barney Frank, D-MA, and co-author of the Dodd-Frank Financial Reform Act, has also said Fannie and Freddie can go, as long as some other agency to help make homeownership affordable to millions of Americans is created to replace them.

Barr said the administration wants the new housing finance system to include support mechanisms for affordable and sustainable homeownership options.

"A well-functioning housing market should provide affordable housing options, both ownership and rental, for low- and moderate-income households," Barr said. "The government has a role in promoting the development and occupancy of affordable single and multifamily residences for these families."

Pat Norton, an economist with the American Institute for Economic Research, said that if the government is intent on subsidizing housing for poorer people, it must move away from the Fannie and Freddie model.

"The people who ran Fannie and Freddie for years sold everyone concerned a bill of goods," Norton said. "Members of Congress, foreign investors, the public at large - Fannie and Freddie represented to them all that everything they did was noble and good because they were providing affordable housing for poor people."

But that was not what they were doing, not primarily and almost not at all, Norton said.

"Fannie and Freddie lowered housing costs very little on average," he said. "Their main interest was trying to maximize profits for their shareholders. They were very clever. They had an advantage because of the perception of government backing and they worked that advantage. It was a sham. Now we're stuck with the bill."

###

Donna Borak, *Treasury Official Pledges GSE Plan Soon, But GOP Want It Now*, American Banker, September 16, 2010.

WASHINGTON — A top Obama administration official reiterated a pledge Wednesday to unveil a plan next year to revamp the housing finance system, but was hammered by Republicans who said it should already have one on the table.

In testimony before a House subcommittee, Michael Barr, the Treasury Department's assistant secretary for financial institutions, said the administration is "hard at work on reform" and pledged that its plan "will call for fundamental change."

Although Barr said the administration's plan would be out in January, he provided no new details about a possible future for Fannie Mae and Freddie Mac. The lack of a concrete plan continued to nettle Republicans.

"In all respect, y'all have really done nothing but plan to do things," said Rep. Spencer Bachus, the lead Republican on the House Financial Services Committee. "There [are] no proposals on the table. You've done nothing. You seem to be content, the administration, with doing nothing except for having progress hearings."

"It's time that we quit the slow walking and we started doing things. This should be a legislative hearing, not another planning session," he said.

Fannie and Freddie were put into conservatorship two years ago when the Federal Housing Finance Agency seized both companies on the brink of failure. Barr insisted a plan was on its way, and said the status quo would have to be overturned. "It is not tenable to leave in place the system that we have today," Barr said.

Roughly 95% of the mortgages originated in the U.S. are currently financed by the two GSEs, along with the Federal Housing Administration, Ginnie Mae and others.

As it crafts its plan, Barr said the administration has to be careful not to disrupt a jittery housing market.

"This situation is neither sustainable nor desirable, but if the GSEs were to suddenly exit the market, the stability of the housing market would be undermined," Barr said. "The transition to a new system must occur in an orderly fashion that is minimally disruptive to the market."

The administration has taken some steps toward GSE reform, including releasing a series of questions for comment in April and hosting a conference with the Department of Housing and Urban Development on the future of the housing finance system.

But that did not satisfy GOP members of the House subcommittee on oversight of the GSEs.

"Unfortunately I believe the focus is happening much later than it really should be," said Rep. Scott Garrett, R-N.J.

"It really should have been happening … about two years ago, since Fannie and Freddie were put into conservatorship. Finally, now we're getting to formally and seriously look at the way to reshape that market."

Others agreed.

"Put simply, where's the plan? When will this administration or Congress wind down and put an end to these, what we could call Frankenstein-like mortgage giants, Fannie and Freddie?" said Rep. Judy Biggert, R-Ill.

But the hearing also spotlighted some other issues.

The Federal Housing Finance Agency's acting director, Edward DeMarco, criticized some of the largest financial institutions for not repurchasing bad mortgages that were sold to Fannie and Freddie.

As of the second quarter of 2010, both enterprises combined had $11 billion in outstanding repurchase requests, some of which has been met by some resistance.

"The delays by lenders in repurchasing these loans are a significant concern to FHFA," DeMarco said in prepared testimony. "There are ongoing discussions between the enterprises and lenders to reach a workable solution."

He warned, however, that the FHFA may take action soon if the discussions are not fruitful.

"If these discussions do not yield reasonable outcomes soon, FHFA may look to its supervisory and conservatorship authorities provided under the statute to resolve the situation," DeMarco said.

###

Billy McConnell, *Administration lays out GSE overhaul goals*, The Daily Deal, September 15, 2010.

A top Treasury official told Congress Wednesday that taxpayers should reap some financial return for the risks incurred if the government continues to guarantee mortgage loans.

Before the House Capital Markets Subcommittee, Assistant Treasury Secretary Michael Barr outlined the Obama administration's hopes for restructuring mortgage securitization giants Fannie Mae and Freddie Mac, which the government took over more than two years ago.

In addition to future reform, Democratic lawmakers and federal officials at the hearing said the government should force the country's largest banks to cover loan losses absorbed by Fannie and Freddie in cases where the lenders did not adhere to underwriting standards. By demanding such restitution, the government could be hitting the institutions with billions more in additional costs.

Barr said the system should be structured so that lenders will have no incentive to pass the risks of poor underwriting on to taxpayers.

"After reform, the GSEs will not exist in the same form as they did in the past," Barr said. "Private gains will no longer by subsidized by public losses. Capital and underwriting standards will be appropriate, consumer protection will be strengthened and excessive risk-taking will be restrained."

The Obama administration has a formal plan to restructure the government-sponsored entities with the goal of reducing risk to taxpayers while still providing a program for keeping mortgages affordable. Details are expected to be released next year.

Among the principles Barr said should be included in reform is an "appropriate" return for taxpayers. "If there is government support provided, such as a guarantee, it should earn an appropriate return for taxpayers and ensure that private sector gains and profits do not come at the expense of public losses."

Barr said regulation should be strengthened to include higher capital requirements "throughout the mortgage finance chain," stricter enforcement of underwriting standards and better protection for borrowers from predatory practices that greatly increase the chance of default.

Barr continued to push for standardization of mortgage products to improve transparency and efficiency while still leaving enough flexibility to develop new products.

While he said the new government plan should continue to support both single and multifamily housing, he signaled that support for multifamily housing may increase. "Government support for multifamily housing is important and should continue in a future housing finance system to ensure that consumers have access to affordable rental options," he said.

Critics of the current system have argued that too much emphasis has been put on helping individuals own their own homes with little consideration of whether their income or employment history makes that an appropriate goal.

Lenders and securitizers should also tap a "diversified investor base and sources of funding," Barr said. The downfall of Lehman Brothers Holdings Inc. and Bear Stearns Cos. in the recent crisis was due largely to their reliance on short-term funding to finance their long-term investments. When those sources were cut off, the firms went under.

Edward DeMarco, acting director of the Federal Housing Finance Agency, the government-sponsored enterprises' regulator, added that policymakers should consider limiting the government guarantee to a few groups deemed appropriate for assistance, such as veterans. "It is reasonable to question whether all conventional mortgages warrant a government guarantee," he said.

DeMarco also questioned the wisdom of calls by others for some form of explicit federal insurance in the housing finance system. "Replacing the [GSEs'] implicit guarantee with an explicit one does not resolve all the shortcomings and inherent conflicts in that model, and it may produce its own problems."

In the two years since the government's takeover of the failing GSEs, the Treasury Department has purchased or announced plans to buy just under $150 billion in their senior preferred stock. Together, the Treasury Department and the Federal Reserve also have purchased $1.36 trillion in the GSEs' mortgage-backed securities.

To recoup some of the losses, DeMarco said the GSEs have also begun forcing underwriters of delinquent mortgages purchased or guaranteed by the enterprises to buy back faulty loans if it can be determined that the loans violated the securities' representations and warranties. FHFA has issued 64 subpoenas seeking documents related to private-label securities in which the two enterprises invested to determine if issuers of these securities are liable for any associated losses.

So far, $9.8 billion has been recovered from loans the four largest commercial banks have repurchased or are expected to repurchase from Fannie and Freddie.

Reform of the GSEs is expected to be a bitter partisan fight, as Democrats want to preserve a major role for the government in facilitating housing finance. Republicans want to greatly shrink that role, if not eliminate it altogether, arguing that the GSEs provided much of the fuel for the housing bubble and subsequent collapse.

Rep. Paul Kanjorski, D-Pa., and chairman of the subcommittee, however, complained that Republican demands for GSE reform are too late.

"People who live in glass houses should not cast stones," Kanjorski said. "Under the leadership of former [Republican] Chairman Mike Oxley, we tried for several years to enact bipartisan legislation to improve the regulation and activities of Fannie Mae and Freddie Mac. Unfortunately, many Republicans in Congress and officials in the Bush administration blocked these efforts. Their delays allowed the housing crisis to fester into an ulcer."

###

Bill Swindell, *Official Suggests Market Role for GSE Overhaul*, National Journal's Congress Daily, September 15, 2010.

If Congress chooses to break Fannie Mae and Freddie Mac into smaller entities, it should allow the markets to decide how many firms should be able to buy and sell secondary mortgages rather than establish a limit on participation, the acting head of the Federal Housing Finance Agency said today.

Edward DeMarco, the acting director of the FHFA, cautioned lawmakers in testimony against setting a certain number of private-sector entities that could participate in the secondary market. The idea has been kicked around by policymakers as they seek to overhaul Fannie and Freddie, which have been in federal conservatorship since 2008 as a result of poorly performing loans that they owned or guaranteed. The federal government has pumped in almost $150 billion in equity to keep them afloat.

"In terms of how many firms there might be in the future ... I would think it's the market that should determine that, not a regulator or the government generally. I would look for a market model where there are licensing of firms to do certain things if they met certain requirements," said DeMarco during a hearing of the House Financial Services Capital Markets Subcommittee.

Looking for more? Check out our issue page detailing the debate on overhauling the nation's financial regulatory structure. For the latest stories, related documents and other coverage click here.

House Financial Services Capital Markets Subcommittee ChairmanPaul Kanjorski, D-Pa., raised the issue of licensing about 10 or 15 firms to play a role in the secondary market to prevent any one firm from becoming `too big to fail.' That is what occurred with Fannie and Freddie, which dominated the secondary market because of their private-public structure as government-sponsored enterprises.

"I'm trying to get the issue of `too big to fail.' If someone does have license and did make mistakes, they could be taken out by bankruptcy. I don't want to go back to a construct of gigantic institutions that make the government back them," Kanjorski said after the hearing.

Assistant Treasury Secretary Michael Barr said setting a parameter on the number of firms in the secondary market could not be reached until policymakers outlined the shape of the new system, such as whether the federal government will provide backstop guarantees and how to ensure financial stability and credit availability.

"I think those broader and deeper ... questions come into play, in a sense, first," Barr said.

He noted one major question would be whether more firms participating would actually decrease risk in the system.

The Obama administration is slated to present its plan by January after hearing from stakeholders. Many of them, such as homebuilders and bankers, want a government backing for the market to ensure it has enough liquidity. Treasury Secretary Geithner has hinted the administration's proposal may contain a government backstop of some form.

In contrast, House Republicans have suggested winding down the GSEs' operations over four years, reducing the portfolio holdings by 25 percent annually and phasing out conforming loan limits that reach nearly $730,000 in some high-cost areas. But House Republicans would be under pressure from the housing industry against such a strict free-market approach if they took control of the lower chamber next year.

"Long term, I would like to see us get away from a situation where there is so much political pull replacing market discipline, where the biggest lobby on the Hill [is] the GSEs," said Rep.Ed Royce, R-Calif.

###

Jody Shenn, *Fannie Mae Began Buying $1,000-Down Mortgages Without Approval*, Bloomberg News, September 15, 2010 5:15 PM ET.

Fannie Mae agreed to finance loans to homebuyers putting as little as $1,000 down without getting the approval of the U.S. agency in charge of minimizing the costs of the mortgage company's bailout.

While "any significant actions" taken by the Washington- based company and rival Freddie Mac must be "reviewed and approved" by their overseer, the Federal Housing Finance Agency, Fannie Mae began buying the so-called Affordable Advantage mortgages from state housing finance authorities without taking that step, Edward J. DeMarco, the FHFA's acting director, said today.

"This one got away from us," DeMarco told lawmakers at a House Financial Services subcommittee hearing in Washington.

Republican Representatives Spencer Bachus of Alabama and Judy Biggert of Illinois cited the loans in criticizing the government's oversight of Fannie Mae and Freddie Mac during the hearing, which focused on the U.S.'s need to rework its mortgage-finance system and limit the costs of supporting the companies in the interim.

The companies have been sustained by almost $150 billion in government aid since they were placed under U.S. conservatorship in September 2008. The U.S. is seeking to limit taxpayers' expenses by tightening the companies' loan standards and supporting their efforts to force lenders and securities sellers to buy back bad debt, DeMarco said.

Fannie Mae is buying the Affordable Advantage loans from housing finance authorities in Massachusetts, Minnesota, Wisconsin and Idaho, Janis Smith, a spokeswoman, said today in a telephone interview. She declined to comment further.

First-Time Buyers

The state housing authorities last year created the loan product aimed at first-time buyers, the New York Times reported Sept. 5. The mortgages come with 30-year fixed rates, require homeownership counseling, and are available to people with credit scores of at least 680 or 720, the paper said.

FHFA wouldn't have approved Fannie Mae's plan to buy the loans, DeMarco said.

"I found that the terms of this program did not fit with what we're trying to accomplish here in conservatorship, and that's why you won't be hearing about additional programs such as this," he said.

Still, the company has signed contracts to buy the loans through March, and won't be forced to break them, DeMarco said. Fannie Mae, which along with Freddie Mac owns or guarantees about half of the $11 trillion in U.S. residential mortgage debt, has purchased only about $10 million of the low down payment loans so far, he said.

Underwriting

The risks posed by the homebuyers' limited stakes in properties under the Affordable Advantage loans are offset to a degree by the company's "recourse" to return the loans to the housing authorities if they default, DeMarco said. In addition, the loans are subject to a "great deal of underwriting," he said.

Homebuyers typically need to put at least 20 percent down to obtain Fannie and Freddie Mac loans unless they agree to buy private mortgage insurance, which is usually limited to borrowers with 5 percent down payments. The Federal Housing Administration insures loans to borrowers putting down as little as 3.5 percent.

Bachus said that the loans, which he discussed today on CNBC after news reports about them, were among signs that "we're laying the seeds for the next bubble" in housing, and inflating the costs of supporting Fannie Mae and Freddie Mac by not moving more quickly to decide their futures.

Assistant Treasury Secretary Michael Barr told lawmakers it "is simply not true" that taking time to create a plan to deal with the companies is increasing taxpayers' costs, citing the lower defaults on the mortgages they've financed since 2008.

###

Dawn Kopecki and Lorraine Woellert, *Congress Seeks Fannie, Freddie Exit as Banks Eat Soured Loans*, September 15, 2010 1:44 PM ET.

The regulator overseeing Fannie Mae and Freddie Mac said his agency's review of subpoenaed records doesn't mean it is "pursuing anybody" for selling bad loans to the U.S.-backed mortgage giants before the credit crisis.

The Federal Housing Finance Agency's review of documents sought by 64 subpoenas in July is simply looking for errors or omissions that could compel lenders to bear losses, Edward J. DeMarco, the regulator's acting director, told a House Financial Services subcommittee at a Washington hearing today.

"The losses are extraordinary and we owe it to the American taxpayer to find out where these losses are coming from," said DeMarco, whose agency has overseen Fannie Mae and Freddie Mac since they were seized in September 2008 amid a financial crisis that pushed them to the brink of collapse.

Regulators are under pressure from lawmakers to stem losses for taxpayers and recoup money from banks that sold faulty loans to Fannie Mae and Freddie Mac without hindering the housing market's recovery. DeMarco and Michael Barr, the Treasury Department's assistant secretary for financial institutions, were called to testify today about the progress they've made since the companies came under government control.

Congress and the Obama administration are weighing the future of the two companies as part of an overhaul of the U.S. housing finance system. Fannie Mae, based in Washington, and Freddie Mac, based in McLean, Virginia, lost $166 billion on guarantees of single-family mortgages from the end of 2007 through the second quarter, according to the FHFA. Treasury Secretary Timothy F. Geithner has promised a comprehensive proposal by January.

'Biggest Problem'

"The biggest problem in the economy is that we have 3 or 4 million too many homes," said Chris Kotowski, a banking analyst at Oppenheimer & Co. The solution "will take another two or three years to work," he said.

The clean-up effort includes seeking refunds from lenders who sold loans based on false or misleading information, and the two government-backed firms aren't the only ones demanding buybacks. The Federal Reserve, private mortgage investors and mortgage insurers are combing through loan documents for faulty appraisals, inflated borrower incomes and missing documentation that would support a refund request.

As of the end of the second quarter 2010, Fannie Mae had $4.7 billion in outstanding repurchase requests, and Freddie Mac had $6.4 billion in outstanding repurchase requests. DeMarco said that outstanding repurchase requests continue to be "of concern."

Misrepresentations

The FHFA in July issued 64 subpoenas to firms that sold mortgage-backed securities to Fannie Mae and Freddie Mac, trying to determine whether misrepresentations or omissions might require issuers to repurchase the loans. Lawsuits tied to faulty mortgages were filed against lenders or underwriters by bond insurers such as MBIA Inc. and by at least three Federal Home Loan Banks, according to analysts.

Lenders are resisting some buyback demands, with Bank of America Corp., the biggest U.S. lender and largest servicer of Fannie Mae's loans, calling negotiations a battle that it's fighting "loan-by-loan." Among those lodging claims, Chief Executive Officer Dominic Frederico at

Assured Guaranty Ltd. said last month that the talks are "like Chinese water torture. They're very painful, have taken a long time."

Assured, based in Hamilton, Bermuda, has asked federal and state banking and insurance regulators to intervene in the disputes, Frederico told analysts during a conference call.

Barney Frank

Representative Barney Frank, the Massachusetts Democrat who leads the Financial Services Committee, has urged the Obama administration to ensure FHFA uses its full legal authority to recover money from banks. Frank endorsed a letter signed by lawmakers including Paul Kanjorski, the Pennsylvania Democrat who led today's subcommittee hearing.

Bankers have faced more queries from analysts during this month's round of investor presentations, and some companies have begun breaking out data. Repurchase demands are running at about $1 billion a quarter at JPMorgan Chase & Co., Chief Executive Jamie Dimon, 54, said yesterday at a Barclays Capital investor conference in New York.

"It's expensive," said Dimon, whose New York-based bank ranks second by assets after Bank of America. "I think that will continue the rest of this year, next year and maybe a little bit longer."

Repurchases have cost the four biggest U.S. lenders $9.8 billion, according to Credit Suisse Group AG. The total could exceed $179 billion for 11 of the largest lenders, according to Chris Gamaitoni, an ex-senior financial analyst at Fannie Mae who now works at Compass Point Research and Trading LLC, a Washington-based investment bank.

The Association of Financial Guaranty Insurers, a trade group for companies that provide private insurance for defaulted mortgages, said Bank of America may owe its members $10 billion to $20 billion alone for breaches of representations and warranties, as the buyback guarantees are called.

Limited Damage

The Federal Reserve Bank of New York, which wouldn't say how much it was seeking in buybacks, has $69.1 billion in mortgage and other assets it took on when it helped rescue American International Group Inc. and Bear Stearns Cos. in 2008.

Bank of America has paid $3.86 billion related to buybacks since the third quarter of 2008, according to an investor presentation in New York yesterday. The Charlotte, North Carolina-based company still faces $11 billion in unresolved requests and insurers have sought files on $9.8 billion more, according to regulatory filings.

The bank has reserves of $3.9 billion to cover mortgage buybacks and has called the losses manageable, according to yesterday's presentation by CEO Brian T. Moynihan, 50.

Requests Denied

Bankers say that not all requests become claims, and not all claims translate into actual buybacks. About half the requests don't survive scrutiny, according to Credit Suisse, and as for valid claims, losses are typically less than the stated amount of the loans. That's because loans are typically backed by collateral and covered by reserves, according to bankers. Loss estimates from analysts range from 35 percent to 60 percent.

Kotowski at Oppenheimer estimates $7.4 billion of losses over the next year for six of the biggest U.S. banks, including Bank of America and New York-based Citigroup Inc. and JPMorgan. That's one of the lower forecasts among Wall Street analysts.

"Just because people are bringing suits doesn't mean they have merit, doesn't mean they're going to get everything they want," Kotowski said.

###

Michelle Singletary , Uncle Sam wants you to learn from your financial mistakes, The Washington Post, September 9, 2010.

As we continue to assign blame for the nation's economic mess, perhaps it would do us well to look in the mirror.

Then ask yourself whether you helped push this country into the recession.

This exercise isn't intended to have you flog yourself for not understanding the difference between a need or a want, or for splurging when you should have been saving, or for going too deeply into debt on your home or for investing in things you didn't understand.

No, there really is no use in beating yourself up. Instead, use this experience to accept personal responsibility. Once you have, you might ask, what next?

Learn to do better.

The federal government hopes to help by creating a national financial literacy campaign. At any other time, such an action could be seen as just more busywork for our public officials. But this is a serious matter. What people don't know about personal finance is costing them and the government a lot of money.

The Treasury Department has been accepting public comment on a number of initiatives aimed at increasing people's knowledge of personal finance. For instance, you have until Sunday to comment on a proposed set of five core financial concepts. So what do you think people should know about earning, spending, saving, borrowing and risk-taking?

The comment requests are part of a larger mission of the Financial Literacy and Education Commission, which is chaired by Treasury Secretary Timothy F. Geithner and made up of the heads of almost two dozen federal agencies. It was established under the Fair and Accurate Credit Transactions Act of 2003 and was charged with coming up with a national financial education Web site, which it has at Mymoney.gov.

The commission created a toll-free hotline (888-MYMONEY), which you can use to order a packet of information with various financial tips. From 8 a.m. to 8 p.m. (EDT), you get a live person to take your order. However, you can't get answers to specific questions or concerns.

The commission is also working on pulling together a baseline of information that will be disseminated by government, nonprofit and private organizations involved with personal-finance education. Treasury wants to know your thoughts on its draft plan, which you can find at www.treasury.gov/financialeducation. The comment window for the national strategy closes Sept. 19.

"This is about making sure we are leveraging all of our resources in the most effective way possible to help families make more-informed financial decisions," Assistant Secretary Michael Barr said in an interview.

Barr said the government is putting a new spin on the old three-legged stool concept, which in the past described the common sources of retirement income - savings, a pension and Social Security. To borrow the language, the legs of the stool that Barr described were things needed to protect consumers in the wake of the recent financial crisis.

"People need basic protections so they are not taken advantage of," Barr said. "There needs to be improvement in access so people can get connected to financial services, and there needs to be improvement in financial education so people can empower themselves."

Without personal responsibility, the stool can't stand.

We can't blame the big banks for everything that has gone wrong with the economy, although they had a huge role in it. We can't put all the blame on President Obama or the previous administration. We can't even blame everything on a Congress that for years resisted checks and balances that could have prevented such a severe recession.

Some of the blame also belongs to individuals who overspent, saved too little or borrowed too much.

I teach financial literacy to church groups, community groups, highly educated professionals, low-income workers, prison inmates, seniors and young adults. It's amazing how much people don't know.

Written comments on the five core competency concepts and the national financial literacy strategy can be sent by e-mail to flecstrategy@do.treas.gov or by mail to the Department of the Treasury, Office of Financial Education and Financial Access, 1500 Pennsylvania Ave. NW, Washington, D.C. 20220.

"With no agreed-upon core set of standards for what Americans should know about personal finance, financial education is hit or miss across the country," said Kevin R. Keller, chief executive of the Certified Financial Planner Board of Standards, a Washington-based nonprofit organization that grants the certified financial planner certification.

I hope you take the time to review what the commission is working on and, as a result, improve your financial knowledge. If people don't learn from their mistakes, they will repeat them when the economy picks up.

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Pamela Yip, *Treasury lists five concepts key for understanding finances,* The Dallas Morning News, September 6, 2010.

The need for improving the financial literacy of Americans is more important than ever.

We have become our own money managers as 401(k) plans have become the primary retirement savings vehicles for workers - making it vital that we know the basics of personal finance.

Consumers not grounded in the basics are not likely to be successful stewards of their money. For example, how can you detect an attempt to scam you out of your money if you don't know enough to know when something smells fishy?

The Treasury Department hopes to fix that.

The agency is seeking public comments on five proposed personal finance concepts - or "financial education core competencies" - that it says "every American should have command of."

"These core competencies will be used as a resource for the thousands of financial education programs across the country," said Michael Barr, assistant Treasury secretary for financial institutions.

The five core concepts are:

Earning: Understanding the difference between gross pay and net pay (net pay is your after-tax income), employee benefits and taxes, and the importance of education.

Spending : The difference between needs and wants, learning how to develop a spending plan, tracking your spending and living within your means.

Saving : Learning how saved money grows, how to meet long-term goals and grow your wealth, learning about bank accounts and knowing about financial assets, such as savings accounts and investments.

Borrowing : Knowing the cost of borrowing and the role of credit scores.

Protecting : Learning how to protect your assets, choosing the right insurance coverage and knowing how to guard against identity theft.

"The financial education field lacks a common understanding of what we collectively are trying to achieve, and there is no agreement on the appropriate basic content for financial literacy and education," the Treasury Department said.

Ted Beck, president and chief executive of the National Endowment for Financial Education, who helped develop the core competencies, agreed. In schools, "there's a wide variance in different kinds of programs, the quality of programs," he said.

"The idea of having a very straightforward checklist about the basics is something we think is very important," said Beck, whose nonprofit foundation has developed a high school financial planning program that's used in almost 7,000 classrooms nationwide, including Texas.

The inconsistencies in personal finance education means "there's potential for gaps," he said.

"If you understand credit cards and mortgages, that's great, but if you don't know the difference between gross and net in your paycheck, or how to protect your assets with different forms of insurance, that's a gap," Beck said.

One Texas education official said more needs to be done to better prepare students.

The core competencies are a "good start for adult financial literacy behaviors and where we want students to be as adults," said Laura Ewing, president of the Texas Council on Economic Education.

But the list is incomplete in terms of what students need to learn, she said. For example, Ewing said, students should be taught the pros and cons of credit cards, mortgages, payday loans and other forms of borrowing.

"There is work to be done for those of us who work with students to take these incomplete competencies ... so that their understanding will reach this level of competency," Ewing said.

The Treasury is accepting comments on or before Sunday.

###

Cheyene Hopkins, *Treasury to Launch Tax Refund Deposit Program for the Underbanked*, American Banker, September 3, 2010.

The Treasury Department announced Thursday that it will launch a pilot program to let consumers have their income tax refund deposited into a low-cost bank account.

The program is a way to use the tax refund season to serve the unbanked or underbanked. It will offer debit card access to low- and moderate-income individuals during tax season so that they could receive their refunds through direct deposit.

The Treasury also will test using the bank accounts for year-round service.

"Far too often, unbanked and underbanked Americans are forced to turn to high-cost alternative financial products — such as check-cashing and other services — that take a big bite out of the savings of those who can least afford it," said Michael Barr, Treasury assistant secretary for financial institutions.

"For many individuals," Barr continued, "a tax refund is the single largest payment that they will receive each year. That's why tax season is a great opportunity to deliver safe, low-cost financial products to the unbanked and underbanked that will help those Americans build stronger foundations for their financial futures."

According to the Federal Deposit Insurance Corp., an estimated 9 million households do not have bank accounts and 21 million households are underbanked.

The Treasury program will begin during next year's tax return season. It said it will begin soliciting eligible taxpayers in early 2011, using direct mail and partnerships with the private sector to include offers with paychecks and pay stubs.

###

Peter Schroeder, *Treasury Announces NIBP Changes for HFAs*, The Bond Buyer, September 2, 2010.

The Treasury Department announced several changes Wednesday to its new issue bond purchase program for housing finance agencies, most notably that it is extending by one year through 2011 its deadline for converting short-term taxable bonds to long-term, tax-exempt bonds.

In addition, the amount of times an HFA is permitted to draw funds from escrow has been increased to six from three, according to a letter sent to participating agencies by the Treasury assistant secretary for financial institutions Michael Barr.

However, HFAs will still be limited to only one draw in any 30-day period while they still have funds in escrow.

"We didn't get everything we asked for, but we got a lot," said John Murphy, executive director of the National Association of Local Housing Finance Agencies. "This will certainly help."

HFAs have to opt into these changes by Sept. 13 by submitting a notice to State Street Global Advisors, which is administering the program for the Treasury.

Under the NIBP, which was announced last October, the Treasury agreed to purchase $15.3 billion of bonds through Fannie Mae and Freddie Mac from over 90 state and local HFAs in an attempt to boost housing bond issuance.

Issuers had to sell the bonds by the end of 2009 and place the proceeds in escrow. The original rules stated that the bonds, typically sold as short-term taxable debt, had to be converted to longer-term tax-exempt bonds by the end of this year.

The proceeds would then be used to originate new mortgage loans. Any proceeds left by the end of 2010 would have to be used to redeem the outstanding bonds, according to the program's requirements.

However, several local HFAs warned the Treasury that they would have difficulty meeting that conversion deadline, in part because of the fact that record low interest rates for private mortgages made it difficult for HFAs to compete.

HFAs participating in the single-family NIBP that wish to take advantage of the changes must pay a participation fee of one basis point per year on their total outstanding single-family NIBP balance. The fee is designed to offset the cost to the federal government in making the changes, Barr said, and agencies are expected to bear the costs of making the necessary changes to their own documentation.

###

Cheyenne Hopkins , *Mortgage Disclosure Quagmire Awaits CFPB*, American Banker, August 25, 2010.

WASHINGTON - Though the regulatory reform law took a crucial step toward simplifying mortgage disclosures by ordering a new consumer protection regulator to harmonize two conflicting statutes, the road ahead will be long and difficult.

Several past attempts to reconcile requirements of the Truth in Lending Act with those in the Real Estate Settlement Procedures Act have failed due to regulatory turf fights and a lack of direction from Congress.

But the Dodd-Frank Act gave sole oversight of both laws to the Consumer Financial Protection Bureau, stripping TILA authority from the Federal Reserve Board and Respa oversight from the Department of Housing and Urban Development.

This alone may make a big difference on moving forward after decades of struggle to reconcile the two laws. "It's the mortgage industry's Vietnam," said Brian Chappelle, a partner in Potomac Partners, referring to melding the two sets of disclosure requirements. "Once you bring it under one roof, you remove the turf battle between the Fed and HUD."

Though the new agency was given only one year to complete the task, Obama administration officials said they are confident this can be done.

"I think the fact that the agency can look across the marketplace" will help, said Michael Barr, Treasury assistant secretary for financial institutions.

CFPB "has authority over Respa and TILA ...; the combination of those authorities will make it easier to unify the legal approach. The central challenge is finding an approach that reduces the regulatory burden on the industry and improves the ability of consumers to understand the disclosures."

Many hurdles remain, including differences in the laws themselves.

TILA, enacted in 1968, requires lenders to disclose the lending terms, including finance charges and the annual percentage rate, for mortgages.

Respa, enacted in 1974, focuses more on closing and settlement costs, including requiring a good faith estimate. The laws differ in content, coverage, timing and liability provisions.

"I think the biggest impediment is, the laws themselves impose specific disclosure and timing requirements that are inconsistent," said Steve Kaplan, a partner at K&L Gates.

The CFPB will have to decide what it wants consumers to focus on, he said.

"We've had this dance several times with hearings, and it always ends the same way, with no movement," Kaplan said. "Do people just want to know the interest rate and the total fees with some specificity, or is the model a cost-of-credit model, which is more TILA and the annual percentage rate?"

Though Respa focuses on bundling of services, TILA itemizes the charges to be used in determining the annual percentage rate.

Some industry representatives warned that the new agency must not lose sight of the goal of both laws: creating a simple, understandable mortgage disclosure for consumers.

"It's important for the disclosures to be clear, digestible and in a form consumers are going to notice," said Nessa Feddis, regulatory counsel for the American Bankers Association. "It's not possible to put everything relevant in a disclosure and still make it digestible."

But the vastly different desires of the various stakeholders, including originators, brokers, appraisers and consumer groups, have made the simplification process difficult. Consumer groups, for example, generally favor more disclosure over less, but the industry contends that too much information could just confuse borrowers.

"The consumer groups want lots of disclosure and private rights of action," said Stephen Ornstein, a partner at Sonnenschein Nath & Rosenthal LLP. "I think the industry would like a simpler disclosure and far less exposure to civil liabilities for the secondary market."

Liability issues could prove crucial to lenders. Under TILA, lenders can face civil liability if their disclosures are inaccurate, an issue not addressed by Respa.

David Berenbaum, the chief program officer for the National Community Reinvestment Coalition, said consumer groups want to ensure that a final interpretation has tough liability standards.

"Most important is to ensure standards that hold lenders accountable at origination and make sure a consumer understands a loan," he said. "Right now, the process is so complex [that] a bad actor can manipulate it."

The disclosure laws also differ on when information must be delivered to borrowers. Though both laws say people must get disclosures three days after a loan application, TILA requires another disclosure at closing. "The timing - while more consistent than it used to be - still does not mesh together," Kaplan said.

How to treat yield-spread premiums was also an issue until passage of regulatory reform. Though Respa severely restricted them, the reform law effectively banned them altogether, making the issue mostly moot, experts said.

"The mortgage broker fee has always been a real sticking point," said Ken Markison, an associate vice president and regulatory counsel for the Mortgage Bankers Association. "I think, now that there are changes around yield-spread premiums, maybe that will help because it will make it less of a problem. You won't spend as much energy on broker compensation based on rate because you can't do it anymore."

But industry representatives are worried that the new disclosures will come so soon after recent TILA and Respa changes. The Fed made changes in TILA rules this month, and HUD completed a six-year effort to revamp Respa just two years ago, releasing a four-page model disclosure form. Lenders complain that they spend significant resources each time a required disclosure is changed.

"I think, when people worry about merging TILA and Respa together, they worry about the implementation and technology costs associated with implementation," Chappelle said. "For the industry to make the changes in Respa last fall, that was very expensive."

John Kromer, a partner in BuckleySandler LLP, said the industry is still recovering from the Respa changes.

"A lot of people in the industry, while we would welcome greater simplification and uniformity in the various disclosures, are very much concerned about the implementation process and the challenges that will present," he said. "Given the experience of Respa where the new 'good-faith estimate' took effect this year, there continue to be a number of operational challenges. ... There needs to be recognition that these kinds of disclosure changes can have enormous challenges for lenders."

Steve Ziesel, a vice president and senior counsel for the Consumer Bankers Association, also said this is coming too soon.

"People have made a lot of changes to comply with Respa, and there are a lot of mortgage proposals coming down the pike from the Federal Reserve Board before the CFPB gets involved, so it's, 'Make new changes and then make new changes,' " he said.

But the Treasury's Barr dismissed complaints about the compliance burden of another rulemaking proposal.

"There are going to be significant changes in mortgage regulation and other regulations because of Dodd-Frank," he said. "This piece is not likely to be a large change in relation to those others but is fundamental for families to understand the mortgage they are considering."

Past attempts to harmonize the laws fell flat. In 1995, lawmakers considered adding a provision to a regulatory relief bill that would have given the Fed oversight of Respa so that mortgage disclosures were under the jurisdiction of a single regulator, but ultimately the measure was dropped from the final bill.

Instead, in 1996, Congress ordered the Fed and HUD to create a single TILA-Respa disclosure form. By the next year, the agencies had concluded that meaningful change could come only through legislation. In 1998, they submitted a 152-page report on ways to harmonize disclosures. Congress responded with hearings but took no action until the Dodd-Frank bill, which ordered the CFPB to address the issue.

"They did try it, but when you dig to the nitty-gritty, they found the disclosures cover different things and come out at different times," said Joe Gabai, a partner in Morrison & Foerster LLP. "It is going to be difficult to combine the two."

Most observers said they expect the CFPB to succeed but that the process may prove difficult.

"Now they actually do have a dictate that they do it," Gabai said. "I think they will need to be awfully creative and have to go about this in a more pragmatic way, identify disclosures susceptible to combination and those that are not feasible."

Consumer groups say they hope the CFPB will approach the issue differently.

"Previously, the consumer organizations had to fight to be at the table with the regulators," said Berenbaum of the National Community Reinvestment Coalition. "I do believe this new bureau will approach this with consumers and industry as a whole. ... I think grabbing hold of the entire issue to develop a working model for Respa and TILA together is going to be a daunting project but putting it in the hands of a capable regulator like the CFPB is helpful."

The MBA's Markison, too, said this time is likely to be different.

"The effort to simplify and combine Respa and TILA disclosures has confounded people for years," Markison commented. "I think part of the problem has been that Respa and TILA have been assigned to different agencies, and part of it is that it is much easier said than done. If we can land people on the moon, though, we can certainly do this."

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Cheyenne Hopkins, *Will CFPB Find Its Way Out of the Mortgage Disclosure Quagmire?*, American Banker, August 25, 2010.

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###

***Charles Schwab Foundation Taps Winners of National Financial Capability Challenge Scholarship Awards*, Manufacturing Close Up, August 21, 2010.**

Charles Schwab Foundation will award $1,000 college scholarships to 20 students in recognition of their achievement on the 2010 National Financial Capability Challenge, a national award program administered by the U.S. Department of Education and the U.S. Department of the Treasury.

According to a release, the Foundation will award a $1,000 grant to each of the winning students' schools in recognition of the contributing role played by the students' teachers. The U.S. Department of the Treasury and the U.S. Department of Education have also awarded certificates of recognition to students scoring in the top 20 percent of the 76,000 total students who took the Challenge in the spring.

"We are really pleased to be funding these scholarship awards again," said Carrie Schwab-Pomerantz, president of Charles Schwab Foundation. "We feel very strongly about the power of financial education in changing lives, and the Challenge is a way to recognize teachers and students for their achievement in teaching and learning the fundamentals of personal finance."

"The recent financial crisis taught us an enduring lesson about the importance of financial education," said Michael Barr, assistant Treasury secretary for financial institutions. "The Obama Administration is committed to working with our nation's educators to provide students with the knowledge and tools they need to make smart financial decisions. On behalf of the Treasury Department, I'd like to congratulate these scholarship recipients, as well as all of the students and teachers who participated in the National Financial Capability Challenge, for taking a positive step forward in empowering their financial futures."

Winning students, their school and teachers include:

Paul Choiniere from Velva Public School in Velva, N.D., Alice Westby

Jason Floyd from Northhampton High School in Eastville, Va., Elizabeth Pase

Chelsea Franklin from Virginia Randolph Community High Glen Allen, Va. Veronica Gibson

Shekelia Harlan from Selma High School in Selma, Ala., Katrina Smith

Andrea Jackson from Sidney Lanier High School in Montgomery, Ala., Kercilda McClarin

Jamal James West from Philadelphia High School in Philadelphia, Jacquelyn Massey

Pranathi Kaki from Nashua High School in South Nashua, N.H., Kathryn Tremblay

Brittany MacPherson from Newfound Regional High School in Bristol, N.H., Sheila Miller

Erick Morrell from Positive Outcomes Charter School in Camden, Del., John Dunick

Matthew Morris from Pilgrim High School in Warwick, R.I., Anne Baynes

Nicholas Morrison from Cavalier Public School in Cavalier, N.D., Barb Puppe

Ashley Olson from Coventry High School in Coventry, R.I., Valerie Rush

Emily Palmer from Concord High School in Wilmington, Del., Jennifer O'Neill

De-Anna Real from William Penn Senior High in York, Pa., Laura Meerbach

Braelie Rector from TRIO Upward Bound in Sioux City, Iowa, Anthony Thomas

Zachary Rosenow from Bowler High School in Bowler, Wisc., William Hahn

Emmanuel Salazar from Proctor R. Hug High School in Reno, Nev., Kathy Aikin

Reedel Tilleth from Clark High School in Las Vegas, Amanda Ahlstrom

Robert Yanders from Perry High School in Perry, Iowa, Megan Fiscus

Khue Yang from South Division High School in Milwaukee, Wisc., Michael Kania

Students were eligible for this scholarship if they scored in the top twenty percent nationally on the National Financial Capability Challenge and reside in one of the states with the top ten highest participation rates in the Challenge. Twenty winners were selected by lottery from among this pool of eligible students - two from each of the ten states with the highest rates of participation in the National Financial Capability Challenge. Half of the selected students attend schools with at least 50 percent eligibility for free and reduced-price lunch.

Charles Schwab Foundation is a private, nonprofit organization funded by The Charles Schwab Corporation.

The National Financial Capability Challenge is an awards program designed to increase the financial knowledge and capability of high school aged youth across the United States so they can take control over their financial futures.

###

John Lounsbury, *An Afternoon at the Treasury*, Credit Writedowns, August 17, 2010 6:00PM ET.

I was privileged to attend a meeting at the Treasury Department in Washington on Monday afternoon, August 16. The two hour plus meeting was hosted by Senior Treasury Officials. There were three discussion leaders:
Michael Barr, Assistant Secretary for Financial Institutions, led the first 45 minutes; Matthew Kabaker, Deputy Assistant Secretary for Capital Markets, next 45 minutes; Secretary Timothy Geithner led the final 45 minutes of discussion, which actually went overtime from the scheduled 30 minutes.

Other senior officials present:
Mary John Miller, Assistant Secretary for Financial Markets; Jake Siewart, Counselor to the Secretary; Lewis Alexander, Counselor to the Secretary.
There were seven guests. In addition to yours truly, they were (alphabetical order):
Tyler Cowen, Holbert C. Harris Professor of Economics at George Mason Univ. (Vita) and a contributor to The New York Times and Slate, as well as co-author of Marginal Revolution blog. Philip Davis, a top ranked Seeking Alpha contributor and publisher of Phils Stock World. Michael Konczal, Roosevelt Institute Fellow, Rortybomb blog author and Seeking Alpha contributor. Yves Smith, who publishes the widely followed Naked Capitalism blog. Alex Tabarrok, Bartley J. Madden Professor of Economics at George Mason Univ. (Vita) and co-author of Marginal Revolution blog. Steve Waldman, Interfluidity blog author and Seeking Alpha contributor.

The Treasury Department has established a program inviting various financial bloggers to have open discussion meetings with senior Treasury officials 4-6 times a year. Meetings are designed to be small, informal, unscripted and open to all relevant (even peripheral) thoughts, ideas and questions from the invited guests. The meeting I attended was held in the Treasury Secretarys conference room with seating around a table that could hold a maximum of 22-24 participants.

My comments are based on very cryptic notes I took during the meeting and will be subject to revision or expansion by what other attendees have to say. Links to posts by other attendees will be appended at the end of this article. If other posts occur after this article is submitted I will provide links in a later Instablog at Seeking Alpha.

It was agreed that no attributed quotes were to be disseminated without obtaining specific review and clearance from the Treasury Department. This resulted in an exchange which was far different from a typical interview or press conference session. It was more like a brainstorming session and ideas were flying around the room in a very stimulating way.

A number of guests raised confrontational topics and some defensiveness by Treasury officials did occur, but my impression was that defensiveness was limited and open exchange occurred when questions that would have been deflected in a press conference setting received much more consideration in this forum.

FinReg

Treasury seems to be very enthusiastic about the new FinReg (Dodd-Frank Financial Reform Bill) recently passed into law. It is clear that they see the GSEs (government sponsored enterprises) as the next reform effort required. Officials defended the proposition that progress had been made to avoid a similar course of events experienced in the 2008 financial crisis because the Treasury now has the legal authority to unwind an insolvent super bank in a manner somewhat similar to the FDIC process for smaller banks.

What remains in question with this analyst is: After the authority, where is the process?

Too Big To Fail

When I suggested a problem for the administration is that they have not addressed the problem that TBTF (too big to fail) institutions still exist. I said there was no confidence that there was a plan to end the problem. I was referred to a speech by Michael Barr in Chicago on August 10. From that speech:

We will"once and for all"fully end the markets perception of "too-big-to-fail" firms, when we build a system that is capable of absorbing the failure of the next AIG (NYSE:AIG) or Lehman Brothers; a system that constrains risk-taking by major financial firms, strengthens the basic shock absorbers and transparency in the financial system, and provides the government with credible tools to manage effectively the failure of major financial firms while at the same time safeguarding the broader economy.

To fully end "too-big-to-fail" we need to make our financial system safer for failure. We cannot rely on the hope of perfect foresight"whether by regulators, or by managers of firms, private sector gatekeepers, or other market participants. Financial activity involves risk, and no one will be able to identify all risks or prevent all future crises.

However, robust capital, leverage, and liquidity requirements can prevent the build-up of risk, ex ante, and insulate the system from unexpected shock events, ex post. Imposing higher prudential standards on the largest, most interconnected firms will require them to internalize the risks they impose on the system by virtue of their size and complexity. The largest and most interconnected firms cause more damage to the system when they fail, so they need to hold more capital against risk. That is based on a principle of fairness and also of economic efficiency. It internalizes their costs of failure and provides incentives for firms to limit their size and reduce their leverage.

In reading this speech I found that some of the comments in discussion by Treasury officials on the 16supthsup were very similar in wording to the text of the speech on the 10supthsup. So I guess the discussion was not entirely unscripted. I make that as a simple observation and not to be snide.

The intent appears to make capital requirements and regulation for oesuper-sized banks more demanding than for smaller banks in order to make size a detriment to flexibility of operation and profitability. I believe it was Yves Smith who pointed out that multiple studies have found that efficiency and profitability of banks declines beyond a size much smaller than our largest banks and that has not stopped them from becoming behemoths.

Phil Davis raised the question of bogus bank accounting standards and the general sense of the response was that FinReg will enable the enforcement of higher capital standards. This led to Prof. Tabarrok asking just how would oeAAA be determined. If there was a clear answer I missed it. (I told you my notes were sketchy.)

The sense I took away from this part of the discussion was that much depends on (potentially hundreds of) studies authorized by FinReg. The Treasury is charged with forming an Office of Financial Research to conduct research to guide future regulation implementation. This really translates to me that we are still in the process of conducting a Grand Experiment.

Compensation

There was some discussion of how compensation plans can distort corporate actions. I threw out the idea that the problem was that our systems, especially in finance and health care, are too heavily focused on pay for transactions rather than pay for outcomes. I didnt have the presence of mind to bring instant gratification into the discussion, but that would have certainly made my thought process clearer.

This topic brought a comment from Yves Smith that the highly profitable trading activities that create large, quick rewards would be difficult to wind down for the banks that have become addicted to the oefast buck (my terminology, not Yves). The sense I got from Treasury was that they feel trading activities would be wound down over time.

Late in the session I threw a question on the table about how tax policy could influence compensation. If taxation of capital was decreased and on income or consumption was increased could the ratio between production and consumption components of GDP brought more in balance? That hot potato pretty much stayed on the table without significant discussion.

Solvency and Profitability for Banks

In one brief exchange an interesting thought emerged. The fact that bank stocks are trading at or below book value seems to be in conflict with the fact that banks are having little trouble in selling bonds. The thought was expressed that the bond market is looking at solvency and the stock market is looking at future profitability. Markets now are telling us that investors are not worried about insolvency but do have questions about profits in coming years.

I have thought about this after the meeting and wish I had asked the question if there is still some backstop mentality in the bond market " the government will not let these banks fail. That thought relates back to an earlier point in the session where criticism was raised of the protection of bond holders at the expense of stock holders in the financial crisis.

GSEs

Perhaps the term GSE (government sponsored enterprises) should be changed to GOEs (oeowned substituted for oesponsored), but that was not mentioned in the meeting. Treasury officials gave the impression that, although this is the next big financial reform effort, studies are needed to start defining the end game. This gets us back to the Office of Financial Research. I got the impression that the process to be started might be termed oesearch and discovery.

Other factors related to this oeend game for Fannie and Freddie include how much government footprint should remain in the mortgage market, how will external factors (such as the new Basil agreements) effect resolution, and how will regulation of banking and non-banking mortgage markets, as well as consumer protection, be coordinated.

I was too busy enjoying the discussions to take better notes. I hope that other attendees will cover many aspects of the discussion that I missed and clarify things that I may have reported improperly or incompletely. This was a very worthwhile experience for me. I went to the meeting not really knowing what to expect. The quality and openness of the discussion was far beyond anything that I had imagined going in.

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***No quick fix for Fannie, Freddie seen from meeting*, Financial Mirror, August 17, 2010.**

The Obama administration will pick the brains of housing finance leaders on how to fix Fannie Mae and Freddie Mac, but made one thing clear on Tuesday: there is no going back to their pre-crisis structure.

Treasury Secretary Timothy Geithner, in excerpts of remarks to be delivered at a Treasury conference on restructuring the two government-controlled mortgage finance giants, called that task one of the most "consequential and complicated" problems facing the United States.

"We will not support returning Fannie and Freddie to the role they played before conservatorship, where they took market share from private competitors while enjoying the perception of government support," Geithner said. "We will not support a return to the system where private gains are subsidized by taxpayer losses."

The conference, to feature some of the mortgage sector's top lenders and investors, is billed as a "listening session" as the administration gathers ideas to develop an overhaul plan by January. No major changes are expected before 2011.

Fannie Mae and Freddie Mac have received nearly $150 bln in taxpayer bailout money since they were seized by the Bush administration in 2008 to save them from collapse. Their problems and costs were not addressed in the Wall Street reform law passed in July.

The problems won't be solved anytime soon, analysts say, with Congress focused on elections in November, federal spending coffers largely depleted and nerves on edge about making changes that could trigger another housing market crash.

Bank and mortgage-backed securities investors are watching warily as the administration weighs options, ranging from full nationalization at one extreme to privatization with no government support at the other, and a wide range of alternatives in between.

Geithner has said there is a "good case" for the government to stay involved in housing finance. But he and other officials have been careful not to say much more than that,

"If we decide we want to subsidize the housing sector, we are going to need to decide to do that explicitly, and people are going to have to pay for it ... That would be a fundamental change," Michael Barr, the Treasury Department's assistant secretary for financial institutions, said last week.

Geithner said the government needed to more clearly delineate its housing policy goals, separating efforts to provide affordable mortgages to most Americans from efforts to provide affordable housing for low-income Americans.

Fannie and Freddie both jumped into subprime mortgages during the housing boom in the early 2000s in an attempt to broaden home ownership -- with disastrous results.

Participants will include executives from Wells Fargo and Bank of America, as well as Bill Gross, the co-founder of bond-trading firm Pacific Investment Management Co,, and Lewis Ranieri, who helped develop the model for the private mortgage-backed securities market that was central to the housing bubble that burst in 2007-2008.

The conference occurs a day after U.S. homebuilder sentiment unexpectedly fell for a third straight month in August to its lowest level in nearly 1-1/2 years, according to a survey that added to evidence of slowing economic recovery.

###

Judy Kennedy, *Viewpoint: Sallie Mae Points Way for GSEs' Overhaul,* American Banker, August 17, 2010.

As policymakers debate what to do with Fannie Mae and Freddie Mac, they may feel as though they have been rear-ended by reality.

It might be helpful to consult a road map in existing law that shows a path for restructuring a government-sponsored enterprise that was dominant in its market, then sunsetting its federal charter. The path begins in 1996 when the Student Loan Marketing Association (Sallie Mae) proposed to the Clinton administration and Congress that the company's life cycle as a government-sponsored enterprise had come full circle. With its "mission accomplished," Sallie Mae worked with the government and other stakeholders to reinvent itself. Fourteen years later, the reinvention has been a success story.

Though many obvious differences exist between the current GSE conservatorships and Sallie Mae's situation, similarities exist, too. Like the mortgage GSEs, Sallie Mae had successfully pioneered a national secondary market. All developed standards for underwriting, financing and servicing models that supplied a business template for a developing marketplace of competitors, and they all grew by raising capital through stock sales to the public.

With keen competition for market share from both state agencies and other financiers, Sallie Mae confronted its own harsh reality in the early 1990s. Its narrow federal charter and undiversified source of income left its stock trading at liquidation value. Sallie Mae did not respond with activities that distorted the student loan marketplace but voluntarily pursued an "exit strategy" from government sponsorship.

Both HUD Secretary Shaun Donovan and Treasury Assistant Secretary Michael Barr have now publicly rebutted the urban myth that the GSEs lost money because of pressure to meet affordable-housing goals, despite the self-serving efforts of some to rewrite history.

Unfortunately, the reality is that Fannie and Freddie still have not brought to low- and moderate-income homebuyers the benefits of a government-sponsored secondary market for affordable rental housing and responsible mortgages.

Having helped to develop innovations that transformed the plain-vanilla student loan into a credit program enriched with borrower benefits, Sallie Mae got help from visionary leaders in the administration and bipartisan leadership in the House and Senate. Together, they charted a careful course away from government sponsorship of Sallie Mae that safeguarded the student loan market, reduced the risk to taxpayers and the federal government and protected their bondholders.

As enacted, the law restructuring Sallie Mae also benefited the District of Columbia through Sallie Mae's payment of an "exit fee" intended as partial compensation for its GSE exemption from payment of local taxes. The law provided for creation of a Delaware-chartered holding company to wind up the GSE, transfer its employees to the holding company, and spin off company assets as long as this did not impair the GSE's condition. Here are some of the "great road truths" from the journey.

e_SBlt The sky won't fall - if the feds don't lower the boom too soon.

The transition period to financing without the advantage of a government-sponsored cost of funds has to be both limited and realistic. Sallie Mae requested an orderly transition period of at least 10 years before its GSE charter expired; the law permitted nine years, and the company was able to terminate its GSE charter even sooner.

Spinning off GSE assets (for example, Fannie's businesses of automated underwriting, issuing mortgage-backed securities and college housing finance) can help reduce the cost to the taxpayers of the conservatorships and restructuring. The focus during the transition should be on unmet credit needs, such as liquidity for loans on affordable rental housing.

e_SBlt A "lender of last resort" is an important insurance policy for market stability after the sunset.

Nobody would have predicted the market turmoil of the past two years, but all stakeholders in 1996 were conscious of the need to protect access to student loans, and the overhaul law specified a lender of last resort. This greatly facilitated the federal government's initiative in 2009 to correct for market failures by investing directly in securities of panicked financial markets.

e_SBlt The government should share in any upside from restructuring Fannie and Freddie and sunsetting the GSE charters.

During its transition Sallie Mae's road map included strict restrictions on activities, including limits on the continued use of GSE borrowing.

Sallie Mae also gave the District of Columbia stock warrants worth 1% of the company's share value on the day before the law's enactment, plus a payment to the Treasury for use of the "Sallie Mae" name. Given the costs of the Fannie and Freddie conservatorships, reimbursing the Treasury will undoubtedly be the priority.

Nonetheless, after decades of not paying taxes to the District of Columbia, the GSEs' restructuring should contemplate what a beautiful high school the Fannie Mae campus on upper Wisconsin Avenue would make!

Judy Kennedy is the president and CEO of the National Association of Affordable Housing Lenders. She formerly headed government relations at both Freddie Mac and Sallie Mae.

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Chicago Tribune Editorial Board, M*ove it, Washington*, The Chicago Tribune, August 16, 2010.

Looking closely at your 401(k) has been painful lately, and it's going to get even worse.

New rules drafted by the U.S. Labor Department promise to expose hidden fees that can drastically undermine your investment returns -- no matter where the stock market goes.

These rules have been a long time coming. Financial-services companies that profit from 401(k)s have resisted for obvious reasons, and regulators have moved at a glacial pace. Barring a further delay, new fee and conflict-of-interest disclosures will take effect July 16, 2011.

Typical.

The decade-long process to flag those insidious fees gives a fair idea of what's coming as the Dodd-Frank financial reform moves from legislation into practice. This won't be quick.

The massive bill signed into law last month sets the stage for drawn-out studies, rulemaking and comment periods. It creates three new regulatory authorities that must be integrated with the existing hodgepodge of financial regulators. Anyone who's seen how Washington deals with mammoth-size bills like this -- health reform, for instance -- rightly anticipates a long, messy period of sausage-making.

For the fizzling economic recovery, the timing hardly could be worse. Coupled with doubts about federal tax policy and weakening public finances at the state and local level, the new legislation puts a drag on spending, hiring and investment.

Uncertainty is up, confidence down.

What can be done to help?

For starters, the administration should drop the state of denial about its role in this summer's economic malaise.

In a recent meeting with the Tribune editorial board, Treasury official Michael Barr denied any "drag of uncertainty" from financial reform. Compared to the trepidation in the markets during their meltdown two years ago, "The kind of uncertainty people are talking about today is small," said Barr, the assistant secretary for financial institutions.

Guess those indicators showing consumer and business confidence on shaky ground must be missing something.

Echoing previous remarks by his boss, Treasury Secretary Timothy Geithner, Barr said the agency is "moving very quickly" to implement the legislation. He urged business leaders to proceed with changes before the new rules are in place: "They know the basic contours."

To some extent, that's happening, but it's hardly good policy.

Why would a business remake itself only to find out later that it has to remake itself again based on whatever rules finally take effect?

Barr should know better, especially given his status as a leading candidate to head the newly created Consumer Financial Protection Bureau -- the biggest wild card to come out of the Beltway in years.

There's no question the uncertainty spawned in Washington has led employers to hunker down and hold back. It's one reason, though not the only one, why hiring has become so sluggish even with corporate earnings on the rise.

Instead of denying the impact of this year's sweeping legislation, the Obama administration should recognize the ongoing risks for the economy and address them by getting its act together -- pronto. America can't afford for the massive re-regulation now under way on Capitol Hill to turn into 401(k)-fees revisited.

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Mary Ellen Podmolik , ***Consumer agency plots course without captain; Potential director says new bureau not waiting for chief's appointment*****, The Chicago Tribune, August 11, 2010.**

The Consumer Financial Protection Bureau has no director, but infrastructure for the agency that will regulate mortgages, credit cards and other consumer products already is being developed, said one of the Washington insiders under consideration to head the bureau.

"Treasury isn't sitting and waiting for the confirmation process," Michael Barr, assistant U.S. Treasury secretary, said during a wide-ranging conversation Tuesday with the Tribune's editorial board.

Barr, a candidate for the director's job, identified three early initiatives of the bureau, namely to reconcile the different statements used in the home purchase closing process, to supervise the registration of non-bank mortgage lenders and, for the first time, to supervise the activities of consumer credit bureaus.

"It will take time," he said of the initiatives. "These are things that are going to have to get staged."

Still, Barr said, there is less uncertainty about the economy now that the financial reform bill was passed and signed into law last month. Barr was in Chicago to address the Chicago Club as part of the Obama administration's roadshow for its financial reform initiative. "The kind of uncertainty people are talking about now is small (compared) to the uncertainty we had in the buildup to the financial crisis," he said. "We are more certain today than we were three weeks ago."

Harvard law professor Elizabeth Warren, chairwoman of a watchdog panel supervising the Troubled Asset Relief Program, also is a candidate for the job.

Barr said the administration plans to have an outline to Congress by January for the overhaul of Fannie Mae and Freddie Mac.

"We're not going to have a system where you can have privatized gains and socialized losses," Barr said. "The idea of an implicit guarantee is a thing of the past."

That, he said, is likely to put further downward pressure on homeownership rates, which last year declined for the fifth consecutive year, according to the Census Bureau.

Barr defended the Treasury Department's proposal to do away with paper checks and distribute federal Social Security and Supplemental Security Income benefits electronically, saying it's a cost-saving move.

In comments filed with the Treasury, Consumers Union said consumers should be able to pick the option that fits their needs.

"If the government is going to require benefit recipients to use prepaid debit cards or direct deposit into their bank account, it should do more to limit the fees charged for using them and make them easier to use," the nonprofit group that publishes Consumer Reports wrote in its testimony.

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Michael Bathon, *State Aid, Credit Ratings, Google: Compliance (Update 1)*, Bloomberg News, August 11, 2010 8:19 ET.

Aug. 11 (Bloomberg) -- President Barack Obama signed into law legislation providing $26 billion in aid to cash-strapped state governments amid fears the U.S. economy is stalling just months before this year’s midterm elections.

The House, taking a one-day break from the campaign trail, returned to Washington yesterday to approve the measure 247-161 before lawmakers adjourned once again for their August recess.

The bill, designed to prevent thousands of layoffs of teachers and other public service employees, cleared the Senate last week after a pair of Republicans joined Democrats in breaking a filibuster.

"We can't stand by and do nothing while pink slips are given to the men and women who educate our children or keep our communities safe," Obama said early yesterday in a White House Rose Garden appeal for passage. Obama stressed the measure won't add to the deficit.

Representative Mike Castle of Delaware, who is running for the Senate, and Joseph Cao of New Orleans were the only Republicans to support the bill. Three Democrats opposed the plan. Twenty-five lawmakers didn't vote.

The bill is designed to help fill state budget gaps totaling $84 billion, according to the National Conference of State Legislatures, triggered primarily by weak sales and declining income tax revenue.

State and local governments shed 48,000 jobs last month, bringing this year's losses to about 170,000, according to the Labor Department. The bill would provide $16 billion to help cover states' Medicaid bills plus $10 billion for teachers.

Compliance Policy

FDIC Seeks Alternatives to Credit Ratings in Rules

The Federal Deposit Insurance Corp., moving to implement the Wall Street rules overhaul enacted last month, will seek comment on alternatives to using credit ratings in banks' capital guidelines.

The FDIC board voted yesterday to allow 60 days of public input on ways to measure credit-worthiness, including risk weighting by category, as possible substitutes for credit ratings.

"Finding an alternative is going to be very, very difficult," FDIC Chairman Sheila Bair said at a meeting in Washington. "I hope the comment process will enlighten us." The agency is seeking comment jointly with the Federal Reserve, the Office of the Comptroller of the Currency and the Office of Thrift Supervision.

Credit ratings by companies such as Standard & Poor's and Moody's Investors Service came under regulatory scrutiny after subprime mortgage securities with top grades helped fuel the worst financial crisis since the Great Depression. The rules overhaul President Barack Obama signed into law on July 21 requires regulators to establish "standards of credit- worthiness" to replace statutory references to credit ratings.

Barr Says U.S. Must Prove End of Too-Big-To-Fail

The U.S. needs to prove that it has ended a regulatory system in which some financial companies are considered "too big to fail," Treasury Department official Michael Barr said.

In a speech yesterday in Chicago, Barr said government efforts to fight the financial crisis of 2008 and 2009 could have "magnified" market perceptions that the government would support banks and other big firms during a crisis. He said regulators now can reshape those assumptions with new powers granted by financial legislation co-sponsored by Senator Christopher Dodd of Connecticut and Representative Barney Frank of Massachusetts.

The law, signed last month by President Barack Obama, establishes a Treasury-led council of regulators to guard against risk across the financial system. It also creates a consumer protection bureau at the Federal Reserve and gives the central bank oversight over all financial companies whose collapse could threaten global markets.

Barr said U.S. regulators will "engage in a searching review of the bank and nonbank subsidiaries of our major financial firms," to make sure that these units can't jeopardize their parent organizations.

Chile's Larrain Plans Tax Rule Change for Derivatives

Chile's government plans to clarify taxes on derivatives to boost trading volume and economic growth, Finance Minister Felipe Larrain said.

President Sebastian Pinera's government will send a bill to Congress in the coming days that includes treating options the same as underlying assets, Larrain said yesterday at a conference in Santiago. The government also plans changes to insurance market rules and financial oversight, he said.

The government plans to introduce a raft of bills to increase trading in swaps and bonds, including making the fixed- income market more attractive to foreign investors.

Current derivatives tax rules are contained in a series of, not always coherent, rulings from the tax authority, Pablo Correa, the ministry's coordinator of capital markets, said at the same conference. Greater certainty will help exporters protect themselves against currency swings, he said.

India Expresses Concern on 'Discriminatory' U.S. Bill

India called a proposed U.S. bill that may double visa costs "highly discriminatory" and said such a measure will erode the competitiveness of the nation's software-services companies.

In a letter to U.S. Trade Representative Ron Kirk, India's Trade Minister Anand Sharma said the legislation will hurt primarily companies of Indian origin, according to a statement yesterday on the government's website. If it becomes law, the bill that was passed unanimously by the U.S. Senate on Aug. 5 is likely to add $2,000 to fees for companies with more than half their employees on work visas.

The Senate fee increases are aimed at helping to finance a $600 million effort to boost security at the U.S.-Mexican border, including the addition of 1,500 guards and other officials. Senator Charles Schumer of New York, who sponsored the bill, said the technology-services companies add to unemployment in the U.S. by outsourcing jobs to foreign workers.

U.A.E. Majority Thinks Regulator Will Ban BlackBerry Services

Two-thirds of United Arab Emirates residents think the country's regulators will follow through with a plan to ban Research In Motion Ltd.'s BlackBerry service in October, according to a recent survey.

Of the respondents, 66 percent said a service cutoff is "likely," while 41 percent support a government proposal to shut off BlackBerry data service Oct. 11, according to a survey by YouGov Siraj, a unit of London-based polling firm YouGov Plc. The survey, conducted Aug. 3 to Aug. 8, included responses from 750 residents.

The results underscore the challenges the Canadian handset maker faces in convincing the public in some countries, as well as government authorities, that its services don't pose a threat. The United Arab Emirates, India and Indonesia have expressed concern that mobile communications could be used to facilitate illegal activities or violate national mores.

Saudi Arabia said yesterday it would allow BlackBerry messaging services to continue in the country while asking RIM to put in place a system that will let the kingdom monitor user data.

Google Gets Privacy Rebuke Over Street View Plans in Germany

Google Inc. was criticized by Germany data privacy officials over plans to give German property owners a four-week deadline to stop their buildings showing up on the company's Street View mapping service.

Google, owner of the world's largest search engine, yesterday said it would introduce Street View in the 20 biggest German cities, including Berlin, Bonn and Munich, "by the end of the year." Property owners in the cities have a month, starting next week, to register to use an online tool making their buildings unrecognizable, Google said.

The "quick introduction of the objection tool and the decision to start it during the summer holidays" as well as Google's refusal to have a complaints telephone hotline "create doubts about Google's interests in a simple and user-friendly implementation," Johannes Caspar, Hamburg's data protection regulator, said in a statement yesterday.

"Objections should be possible at all times," Germany's Federal Commissioner of Data Protection Peter Schaar said on his blog yesterday. "It should also be ensured that all complaints received are dealt with before" Street View services in Germany begin.

China May Allow Foreign Banks to Underwrite More Debt

Foreign banks may be allowed to underwrite a wider range of debt on China's interbank bond market as the nation seeks to develop its financial system.

The National Association of Financial Market Institutional Investors said it's working on a mechanism to assess performance of underwriters and that "local banks and foreign banks will be treated equally." Nafmii didn't give a timeframe for the review or say how many foreign banks will be able to underwrite bonds of non-financial institutions, in an e-mailed statement today.

Nafmii said the move to open bond markets was part of China's pledge to the World Trade Organization when it joined in 2001, treating foreign companies like national Chinese companies.

Compliance Action

Google Raided by Korea Police in Probe of Street View

South Korean police raided Google Inc.'s Seoul office as part of an investigation into possible breaches of privacy laws resulting from the company's collection of data for its Street View mapping service.

Law-enforcement officials confiscated materials from Google in yesterday's raid and will ask the company to surrender all data that may have been collected illegally from late last year until

May, the Korean National Police Agency said in a statement. Google said it will cooperate with the investigation.

The South Korean authorities' move follows investigations in Europe and the U.S. over Google's data collection. The probes began after the company said in May that it had mistakenly gathered wireless Internet data while photographing residential streets worldwide.

Google, whose Street View service allow users to click on maps to see 360-degree views of roads, is entangled in regulatory disputes in several countries related to online searches, advertising and maps. The South Korean police said it began investigating Google after it learned that Google saved private data collected over wireless networks.

Zipcar Acquisition of Streetcar Will Get U.K. Antitrust Probe

Zipcar Inc., the U.S. car-sharing company that rents vehicles by the hour, is being investigated by a U.K. antitrust regulator over concerns its acquisition of London-based Streetcar Ltd. may hurt competition.

The process could involve blocking the companies, which merged in April, from integrating too closely until the investigation is complete, Competition Commission spokesman Rory Taylor said in an interview yesterday in London.

"Some sort of order will be put in place to ensure that the companies are run separately and don't integrate irreversibly," Taylor said. "That way, if it turns out to be necessary, we can unwind the merger."

The investigation comes two months after Zipcar, based in Cambridge, Massachusetts, said it would seek to raise as much as $75 million through an initial public offering. The company, which entered the U.K. in 2007, was the second-biggest car- sharing company in London when it bought its larger rival.

Zipcar spokesman John Williams didn't immediately return a call for comment.

Israel Won't Allow UN Panel to Question Soldiers

Israeli Prime Minister Benjamin Netanyahu said Israel wouldn't cooperate with a United Nations probe into its May 31 naval raid on a Gaza aid flotilla if the UN tries to question soldiers who took part in the operation.

Israel agreed to cooperate with the UN probe only after "it was clarified from the start that Israeli soldiers or any of the military wouldn't be investigated or questioned by anybody outside of the army," Netanyahu's press spokesman Nir Hefez told Israel's Army Radio yesterday.

UN Secretary-General Ban Ki-moon said earlier that he hadn't agreed with Israel to prevent the inquiry from questioning military personnel. Israeli soldiers killed nine people aboard the Turkish ship Mavi Marmara when it tried to breach an Israeli sea blockade of the Gaza Strip.

Netanyahu announced Aug. 3 that Israel would cooperate with the UN panel, reversing its earlier refusal.

Lonmin Didn't Lose Metals Rights, South Africa Says

Lonmin Plc, which said last week that South Africa withdrew its rights to sell non-platinum group metals, didn't lose any such license because it never held it in the first place, the government said.

South Africa's 2002 mining law requires companies to apply for the inclusion of "associated minerals" in their mining rights, the Department of Mineral Resources said yesterday in an e-mailed statement. While Lonmin had long sold such metals, it applied only last year, which prompted the order to halt sales, the department said, adding that a decision on the request is "imminent."

Lonmin, the world's third-largest platinum mining company, produces metals such as nickel, copper and chrome as by-products of the mineral. Lonmin said Aug. 5 it received a letter from the department ordering it to stop selling such metals and insisted it would "contest this matter vigorously."

" Lonmin is in ongoing talks with the department," spokesman James Milton said yesterday from London, declining to comment further.

ArcelorMittal South Africa to Buy Imperial to Get Sishen

ArcelorMittal South Africa Ltd., a unit of the world's largest steelmaker, plans to buy Imperial Crown Trading for 800 million rand ($111 million) to regain iron-ore rights it lost at Kumba Iron Ore Ltd.'s Sishen mine.

ArcelorMittal South Africa will cancel the plan if Imperial loses its rights at Sishen, Nonkululeko Nyembezi-Heita, the steelmaker's chief executive officer, told reporters in Johannesburg yesterday. Imperial's only asset is a 21.4 percent prospecting license at the mine, which provides most of the steelmaker's iron-ore needs.

The government awarded the Sishen rights to Imperial in March after ArcelorMittal South Africa didn't apply for its portion of the license to be renewed by a May 2009 deadline. The rights had previously given the steelmaker a competitive advantage by allowing it access to iron ore at below-market prices. Kumba, owned by Anglo American Plc, has maintained that the award to Imperial was unlawful.

China Said to Order Banks to Book Trust Company Loans

China's banking regulator ordered banks to transfer off- balance-sheet loans onto their books and make provisions for those that may default, three people with knowledge of the situation said.

The assets linked to wealth management products provided by trust companies must be shifted onto banks' balance sheets by the end of 2011, the people said, declining to be identified as the matter isn't public. Lenders should prepare provisions equal to 150 percent of potential losses, they said.

China's move may increase pressure for capital-raising at the country's banks, which Fitch Ratings last month said had more than 2.3 trillion yuan ($339 billion) of off-balance sheet assets. It also underscores concerns about the health of the banking industry after a person with knowledge of the matter said regulators last month ordered lenders to conduct stress tests to gauge the impact of a 60 percent drop in home prices.

For more, click here.

Norilsk Independent Directors Back Efforts to Probe Board Vote

OAO GMK Norilsk Nickel independent directors Gerard Holden and Brad Mills supported a request from shareholder United Co. Rusal for an external investigation into a board election in June.

The two directors also called for a reconfiguration of the board, indicating that it should include three representatives of shareholder Interros Holding Co. rather than four, giving it the same number of seats as Rusal, and at least four independent non-executive directors instead of three.

Rusal claims the June 28 board vote was manipulated and yesterday filed a request for arbitration to resolve the dispute. Rusal's billionaire owner Oleg Deripaska has voiced concern that Interros has enough influence to pass a share buyback, which he says wouldn't favor all shareholders, after the board approved dividends of $1.33 billion.

Maria Uvarova, a spokeswoman for Norilsk in Moscow, couldn't immediately comment when contacted by Bloomberg News.

Courts

Bank of America, 44 Banks Deny Aiding Adelphia Fraud

Bank of America Corp., Credit Suisse Group AG and 43 other banks urged a judge to dismiss a lawsuit claiming they aided a fraud at Adelphia Communications Corp.

The Adelphia Recovery Trust, formed to pursue claims against lenders and others, failed in seven years of litigation to prove that banks knew of the fraud, Credit Suisse lawyer Philip D. Anker argued yesterday in federal court in New York.

"There is not a single shred of evidence that any bank knew there was a breach of fiduciary duty, knew there was a fraud," Anker said at a hearing on whether U.S. District Judge Lawrence McKenna should dismiss the case before a trial set for Oct. 25.

Adelphia, once the fifth-biggest cable company, collapsed in 2002 after disclosing that founder John Rigas and his family owed $2.3 billion in off-balance-sheet debt on bank loans taken jointly with the company. Rigas is serving 12 years in prison, and his son Timothy is serving 15 years.

The case is Adelphia Recovery Trust v. Bank of America, 05- cv-9050, U.S. District Court, Southern District of New York (Manhattan).

SpongeBob Bath Toymaker's Officers Plead Not Guilty

Two top officers of the company that makes the SpongeBob SquarePants soap-filled bath sponges for children pleaded not guilty to securities fraud and other charges.

Michael Metter, chief executive officer of New York-based SpongeTech Delivery Systems Inc., and Steven Moskowitz, its finance chief, pleaded not guilty to a six-count indictment handed up Aug. 4.

They were arrested on May 5 and charged by the U.S. Attorney's Office in Brooklyn. They and the company were sued by the U.S. Securities and Exchange Commission the same day. SpongeTech filed for bankruptcy on July 9.

Metter and Moskowitz are accused of reporting that SpongeTech got purchase orders from or made sales to five customers that didn't exist.

For the nine months ended in February 2009, the five nonexistent customers constituted about 99 percent of SpongeTech's revenue, prosecutors said.

SpongeTech, Metter and Moskowitz, after pumping up the stock by releasing false information, dumped about 2.5 billion shares in unregistered transactions, according to the SEC complaint.

The criminal case is U.S. v. Metter, 10-cr-600, and the civil case is SEC v. SpongeTech Delivery Systems Inc., 10-cv- 2031, U.S. District Court, Eastern District of New York (Brooklyn).

Interviews

Zuckerman Doesn't See Much Fed Ammunition on Economy

Mortimer Zuckerman, chairman of Boston Properties Inc., talks about the outlook for the U.S. economy and Federal Reserve monetary policy.

Zuckerman also discusses the need for U.S. investment in new infrastructure projects, federal aid to cash-strapped states and tax policy, and the commercial real estate market. He talks with Margaret Brennan, Jon Erlichman and Julianna Goldman on Bloomberg Television's "InBusiness." Watch the video here.

Collier Sees Rise in 'Buy & Bail' Home-Buying Tactic

Harvey Collier, a mortgage broker in Fort Lauderdale, Florida, talks about a practice real estate professionals call "buy and bail," where a prospective home buyer will secure financing for a house and then allow the mortgage on the residence they occupy to default.

The practice, which constitutes fraud if borrowers lie on loan applications, is continuing even after Fannie Mae and Freddie Mac, the biggest U.S. mortgage-finance companies, beefed up standards to prevent it, according to brokers such as Collier and federal officials. Watch the video here.

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Sarah Borchersen-Keto, *Treasury Pledges Speed, Transparency in Implementing Ref* Reforms, CCH Financial Crisis News Center, August 10,2010.

Agencies involved in implementing financial reform are already in the process of establishing timelines for moving forward on studies, regulations and other actions required under the act, Barr said. In some critical areas, he added, agencies are already drafting proposed rules for public comment.

Barr noted that when the Financial Stability Oversight Council, the 10-member body tasked with overseeing systemic risk, first meets in September it will establish an integrated road map for the first stages of reform. This information will be put in the public domain, he said.

Meanwhile, the Treasury will move quickly to shape reforms of the derivatives market, working with the Federal Reserve Board, Securities and Exchange Commission and Commodities Futures Trading Commission to develop specific quantitative targets for moving the standardized part of the over-the-counter derivatives business onto central clearing houses.

Barr added that we must accelerate the international effort to put in place common global standards for transparency, oversight and the prevention of manipulation and abuse of these critically important markets.

In addition, the Treasury plans to work quickly to get the Consumer Financial Protection Bureau (CFPB) up and running so that rule-making, supervision, and enforcement responsibilities can be consolidated. The White House said a day earlier that Harvard Law School Professor Elizabeth Warren would be confirmable as head of the CFPB, although President Obama has yet to announce his intended choice for the new position.

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Richard Sansom, *Official: Agencies should unite for swift, transparent implementation of financial reform*, SNL Energy Gas Utility Week, August 9, 2010.

HIGHLIGHT: The regulation of over-the-counter derivatives markets must come about quickly, provide both transparency and the freedom to innovate, and work within a global framework, according to the Department of the Treasury's assistant secretary for financial institutions.

The regulation of over-the-counter derivatives markets must come about quickly, provide both transparency and the freedom to innovate, and work within a global framework, according to the U.S. Department of the Treasury's assistant secretary for financial institutions.

Speaking before the Charlotte (N.C.) Chamber of Commerce, Michael Barr called on the agencies involved in turning the Dodd-Frank Act, H.R 4173, into regulations to work together rather than against one another.

The U.S. Commodity Futures Trading Commission has already begun the task of forming regulations that will cover commodity derivatives trading and has already outlined 30 areas of rulemaking to implement over the course of the next year.

Barr said the reforms will need to tread the line between regulation and allowing room for markets to function, but the rulemaking process would not automatically be a bad thing for markets.

"As we go about the task of implementing these reforms, we will be criticized by some for going too far and by some for not going far enough. This distinction is stuck in a debate that presumes that regulation - and efficient and innovative markets - are at odds. In fact, the opposite is true. Markets rely on faith and trust. Markets require clear rules of the road," he said.

"This crisis has clearly demonstrated that risks to the system can emerge from all corners of the financial markets and from any of our financial institutions. Our approach is to bring these institutions and markets into a comprehensive system, where risks are disclosed and can be monitored by regulators as necessary. That's why the act brings all over-the-counter derivatives markets into a comprehensive regulatory framework, and provides regulatory authority for clearing, payment and settlement systems," he added.

Highlighting the principles that will be applied during the regulatory process, Barr said the regulations must be developed quickly with a high level of transparency and consultation and must not kill innovation and efficiency.

He said government agencies now need to work together and take account of the global nature of markets to prevent a "race to the bottom" from taking place outside the U.S., an issue already brought into focus by CFTC Commissioner Michael Dunn.

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Christina Rexrode, *What's Brian Moynihan have on Tim Geithner? Read on*, The Charlotte Observer, August 5, 2010.

Michael Barr, an assistant secretary of the U.S. Treasury, talked with the Observer after a speech at the Charlotte Chamber on Wednesday. Excerpts have been edited for clarity and length.

Q. What makes you think that the government can run the banking system better than business can?

Oh, I don't have that view at all, so nothing makes me think that. The whole set of our reforms is designed around the idea that people are fallible, institutions are fallible, there is risk in the system. So we need higher capital standards, we have more prudential activities restrictions, we have the requirement that the financial firms write their own living wills so they can be unwound in the event of a financial crisis. And all of those measures are precisely because we are humble about the ability of regulators to see into the future and we're humble about the ability of managers of firms to avoid making mistakes.

Q. You've met (Bank of America CEO) Brian Moynihan?

I've met Brian Moynihan, he's a delightful guy. He's one of the only people I have ever met who talks faster than Tim Geithner.

Q. He's got this reputation as President Obama's favorite banker. Any truth to that?

I have no idea if the president has a favorite banker or who he might be. (Laughs.) I would say that Moynihan stepped up to the table and was very involved in trying to make progress on financial reform. We didn't always agree, but he was quite thoughtful and engaged.

Q. If the Obama administration had been in power in 2008, would the problems at Bank of America and Wachovia have been handled differently?

There was a set of problems that happened outside the traditional bank sector, and a set of problems that migrated to within the traditional bank sector. And part of the reason that happened is, there wasn't a level playing field. So if you were a bank competing with a nonbank mortgage lender, you're looking at the nonbank mortgage lender and they're making lousy loans but they're making a lot of money, and so it puts enormous pressure on financial institutions to do activities that are short-term beneficial but long-term harmful. So one of the things we're doing in this new system is building a level playing field, so banks and nonbanks compete on the same terms. We're going to have a new system of regulation so that corporate form doesn't matter.

Q. Some bankers are concerned that the new regulations will force the big banks to break up, and they won't be able to compete on an international level.

So there was a point at which amendments were being introduced that would have dismembered existing firms on a kind of arbitrary basis, and that was not included in the final legislation. What is included in the final legislation, related to size: First is that if you have a firm that has 10 percent of the debt in the financial system, it can't acquire or merge with other firms, and that's a protection against excessive concentration risk in the system. And second is, if a regulator sees a major firm engaged in harmful business activities, it can require that firm to divest those activities or to cease them. That's an important safety and soundness tool, but it's not one that's available on an arbitrary, numerical basis. It is a tool of supervision, so I think it's appropriate.

###

Christina Rexrode, *Treasury brings regulatory road show to Charlotte*, The Charlotte Observer, August 5, 2010.

The U.S. Treasury brought its financial-regulation sales pitch to Charlotte on Wednesday, as one of the agency's top officials sang the praises of the measure that President Obama signed into law two weeks ago.

The 2,000-plus-page missive, which will create new rules on everything from capital requirements to credit reports, has skeptics on both sides. Some consumer groups say it doesn't go far enough and gives too much freedom to the financial industry. The banks say it goes too far, and that some of the rules will end up hurting, rather than helping, the economy.

Michael Barr, the Treasury's assistant secretary for financial institutions, told a crowd at the Charlotte Chamber that the bill strikes the right balance, allowing finance firms room for innovation while giving the government the tools to prevent another economic crisis. He emphasized that the regulations aren't at odds with the markets.

"In fact, the opposite is true," Barr said, in a speech to about 70 bankers and other professionals at the Charlotte Chamber. "Markets rely on faith and trust. Markets require clear rules of the road. Consumers rely on the trust and fair dealing of financial institutions."

The old system, Barr said, can't remain because it has already failed. Bankers didn't always bother to understand the risks they were taking and the new products they were creating, and regulators didn't always have the tools to rein them in. And the cost has been high, measured in lost savings, lost jobs and struggling businesses brought about by the recession.

"Lots of people were hurt really horribly by the system we had in the past," he said.

Barr encouraged banks to take the lead on obeying the spirit of the law, even if the rules haven't been written yet. Gone are the days, he said, when banks could shop around for the most passive regulator, or when nontraditional finance companies like payday lenders and check cashers could avoid scrutiny.

Barr's appearance in Charlotte is part of a new campaign by the Treasury to raise support for the financial reform bill, which has been signed into law but is waiting for regulators to write the rules that will implement it. Charlotte is the second stop in the Treasury's roadshow, after Treasury Secretary Tim Geithner kicked things off in New York on Monday. It was a distinction not lost on Mayor Anthony Foxx, who helped introduce Barr.

"We got in before Boston and Philadelphia and Chicago," Foxx told the crowd, "in case you were wondering where we were in the pecking order."

Barr also met with leaders from Bank of America, LendingTree and the N.C. Bankers Association during his day-long visit to Charlotte. After his speech at the Chamber, UNC Charlotte professor Deborah Bosley introduced herself as a "plain-language expert," and Barr replied, "We need your help!" When investor Shawn Dorsch praised Rep. Mel Watt for his work on the reform bill, Barr called the Charlotte Democrat an "unsung hero" who has fought for the interests of Main Street.

Barr, 44, joined the Treasury last year as an Obama appointee. He'd also worked for the agency during the Clinton Administration, including a stint as then-Secretary Robert Rubin's special assistant. He played a key role in crafting - and persuading lawmakers to pass - the financial regulation bill that he touted.

Back in Washington, Barr is knee-deep in hammering out how the financial bill will be implemented. Like the rest of the Treasury, he's working on creating new organizations within the Treasury, including the Consumer Financial Protection Bureau, an Office of Financial Research, and a new insurance office. One of Geithner's top priorities, Barr said, is to raise capital requirements for financial institutions across the board. The Treasury also is focused on new rules for mortgage lenders and the agencies that issue credit reports, he said.

Bank of America spokesman Jim Mahoney said the bank supports transparency and fairness in the finance system, and will write comment letters to help shape how the new rules will be made. He said the bank is pleased that it will be allowed to continue to offer key products and services that customers want, like interest rate swaps and foreign-exchange products. Some earlier proposals would have limited the bank's ability to offer those products.

Mahoney did raise questions about potential new rules on how much capital a bank has to hold. High standards can help stabilize the system, he said, but standards that are too high will prevent banks from lending. "It's critical to keep in mind the tradeoff between increased stability and increased lending," Mahoney said. "That's where capital standards have to be thought through very carefully."

Barr's name is being tossed around for two key government jobs: running the Consumer Financial Protection Bureau and running the Office of the Comptroller of the Currency, which regulates national banks such as Bank of America and Wells Fargo.

Barr declined comment on whether he'd take either job, noting that the decision is up to President Obama. He said that Elizabeth Warren, the TARP watchdog who is perhaps the front-runner for the consumer job, is "extremely talented" and "a thought leader on these issues."

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Christina Rexrode, *'I have no idea if the president has a favorite banker'*, The Charlotte Observer, August 4, 2010.

Michael Barr, assistant secretary of the U.S. Treasury, talked with the Observer after a speech at the Charlotte Chamber today. Excerpts have been edited for clarity and length.

Q. What makes you think that the government can run the banking system better than business can?

Oh I don't have that view at all, so nothing makes me think that. The whole set of our reforms is designed around the idea that people are fallible, institutions are fallible, there is risk in the system. So we need higher capital standards, we have more prudential activities restrictions, we have the requirement that the financial firms write their own living wills so they can be unwound in the event of a financial crisis. And all of those measures are precisely because we are humble about the ability of regulators to see into the future and we're humble about the ability of managers of firms to avoid making mistakes.

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Q. If the Obama administration had been in power in 2008, would the problems at Bank of America and Wachovia have been handled differently?

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Q. We hear bankers complain or worry that the banks are going to get broken up and they're not going to be able to compete on an international level.

So there was a point at which amendments were being introduced that would have dismembered existing firms on a kind of arbitrary basis, and that was not included in the final legislation. What is included in the final legislation, related to size: First is that if you have a firm that has 10 percent of the debt in the financial system, it can't acquire or merge with other firms, and that's a protection against excessive concentration risk in the system. And second is, if a regulator sees a major firm engaged in harmful business activities, it can require that firm to divest those activities or to cease them. That's an important safety and soundness tool but it's not one that's available on an arbitrary, numerical basis. It is a tool of supervision, so I think it's appropriate.

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Damian Paletta, *Consumer-Czar Candidate Waits in Wings*, The Wall Street Journal, August 3, 2010.

Many Democrats and liberal interest groups have launched an all-out campaign to have Elizabeth Warren nominated as the first consumer financial-affairs regulator. Many bankers and Republicans are hell bent on stopping her.

Few are paying attention to who is waiting in the wings.

The White House's other top candidate, Treasury Department Assistant Secretary Michael Barr, has, like Ms. Warren, spent years calling for stricter curbs on the banking industry. While little known to the public, he has left behind a more-detailed paper trail than Ms. Warren, offering clues to how he might run the agency.

Mr. Barr has called for rules that would force banks to offer "plain vanilla" financial products to consumers. He has pushed for the creation of a public trust to provide "financial education and assistance to troubled borrowers," funded by the penalty fees banks charge to their customers. He has said regulators should take into account the psychology of borrowers when setting rules.

In short, he has called for dramatic changes to how banks interact with consumers, often in a way that would make it harder for companies to lean on consumer financial products for profits.

"We have to totally transform the financial-services system for low-income people," Mr. Barr said in 2006 while serving on a panel arranged by former Democratic presidential candidate John Edwards, according to published reports. Mr. Barr declined to comment for this article.

President Barack Obama last month signed into law an overhaul of financial regulations that creates a consumer regulator to police products such as mortgages and credit cards. Democrats and liberal groups are struggling to coalesce around a nominee. For some, the primary focus is on pushing for a person who won't be swayed by bankers. Others are concerned that an outspoken nominee, such as Ms. Warren, a Harvard Law School professor who helped birth the concept, might not get confirmed.

Edward Yingling, chief executive of the trade group American Bankers Association, said many bankers had concerns about Mr. Barr's approach. He added that Mr. Barr is a "very quick study, he's very articulate, and he knows how Washington works."

Ms. Warren and Mr. Barr remain the top two candidates, people familiar with the process say, although others remain under consideration. Mr. Barr's presence on the short list is an acknowledgment of the close ties he has established within the Obama administration, particularly Treasury Secretary Timothy Geithner.

One of Mr. Barr's most controversial proposals came in 2008 when he co-authored a paper saying banks should be required to offer consumers simplified, or "plain vanilla" financial products. Borrowers would be able to get complex loans only if they opt out of the standard product through a process designed to be difficult.

"A plain vanilla set of default mortgages would be easier to compare across mortgage offers," Mr. Barr, then a law professor at the University of Michigan, wrote in 2008 with co-authors at Harvard and Princeton universities.

The Obama administration tried to include such a provision in its financial overhaul bill, but it was stripped out by Democrats. Business groups felt it allowed the government to intrude too much in private markets. Republicans chided the concept as evidence of a "nanny state."

In some ways, Mr. Barr's approach to financial regulation can appear as complex as banking itself. He has written that financial regulation should be informed by the "psychology" of the borrower, borrowing from a theory known as behavioral economics. This goes beyond regulating products lenders can offer and looks into borrowers' behavior., asking such questions as: Why do they default? Why do they read certain disclosures but not others?

His proposals have erred on the side of regulation. Even though he held a key role in the Clinton administration's economic team, Mr. Barr has criticized the Clinton White House's approach to financial regulation as too lax.

Still, he has stopped short of calling for bans on products and has warned against the dangers of overregulation. "Product regulation may stifle beneficial innovation and there is always the possibility that government may simply get it wrong," according to the 2008 paper he co-wrote.

Mr. Barr, 44 years old, joined the administration from the University of Michigan. He has also been a senior fellow at the Center for American Progress, a liberal think tank with close ties to the White House. He won plaudits within the administration for helping push the financial overhaul through Congress, but rankled Republicans who saw him as inflexible.

Like Ms. Warren, Mr. Barr has promoted the idea that financial disclosures need to be simplified. The 2008 paper said lenders should be required to provide consumers with a menu of loan options and how they would qualify for each.

The paper also proposed requiring credit-card borrowers to make monthly payments "to pay off their existing balance over a relatively short period of time unless the customer affirmatively opted-out of such a payment plan."

Under existing law, borrowers have wide discretion to determine whether to make a minimum payment each month on their credit-card balance.

"Credit card companies have fine-tuned product offerings and disclosures in a manner that appears to be systemically designed to prey on common psychological biases—biases that limit consumer ability to make rational choices regarding credit card borrowing," the paper said.

###

Darrell A. Hughes, *Bank of America Commits $10M in Small-Business Grants*, The Wall Street Journal, July 29, 2010 1:25 PM ET.

Bank of America Corp. on Thursday will commit $10 million in grants to nonprofit organizations that lend to small and rural businesses.

A host of nonprofit lenders, such as Community Development Financial Institutions, or CDFIs, have been struggling to make loans throughout U.S. communities. Those entities typically receive their lending funds from federal agencies, but recession-driven funding restraints have limited the ability of these organizations to lend.

Bank of America's Global Commercial Banking President David Darnell will announce the funding at a National Urban League conference Thursday.

"Even the smallest grant enables a CDFI to leverage as much as ten times that amount to lend to small businesses, which helps initiate a ripple effect," Mr. Darnell said in a statement reviewed by Dow Jones Newswires.

According to Bank of America, the grants could lead to as much as $100 million in low-cost, long-term capital for small business microloans.

Mr. Darnell said that "could translate into significant investment over the next five years."

The banking giant's grant commitment comes after Federal Reserve Chairman Ben Bernanke expressed concern earlier this month that large financial firms aren't doing enough to help small businesses.

Other companies are also promising action. Wells Fargo & Co. Executive Vice President Marc Bernstein's said his bank, in addition to providing funds for community lending entities, has undertaken a new "second look" program geared toward finding credible ways to approve small business loan applications that have been rejected.

J.P. Morgan Chase & Co. has also rolled out in-house initiatives such as offering business customers reduced interest rates for hiring workers.

Both Chase and Bank of America have second-look programs as well.

Despite efforts to increase lending, many small businesses are still considered serious lending risks as indicators such as consumer spending remain subdued.

Treasury's Assistant Secretary for Financial Institutions Michael Barr, in an interview, applauded the small business lending initiatives but said cooperative efforts between the public and private sectors are likely to be more effective.

According to Mr. Barr, a pending small business bill would "help banks reach deeper into the small business pool to find borrowers that they might not otherwise lend to."

The legislation provides some "downside protection" for banks, Mr. Barr said, stressing that a mixture of new and existing tools could lead to more readily, available credit.

Mr. Darnell said the financial crisis has left small business in a tougher position than in previous downturns. "We're seeing something unique in this cycle," Mr. Darnell said, noting that many entrepreneurs have typically accessed home equity to fund start-ups but declines in personal wealth have limited that as an option.

###

Brady Dennis, *Obama ushers in new financial era; Landmark law is signed President says work still lies ahead for regulators,* The Washington Post, July 22, 2010.

As much as it felt like an ending, President Obama launched a new era in the relationship between Washington and the financial world when he placed his signature Wednesday on a massive bill to rewrite the nation's financial rules.

Inside a building named after a Republican president who championed deregulation and praised the "magic of the marketplace," the Democratic president signed into law the most ambitious overhaul of financial regulation in generations, saying he was acting to protect ordinary consumers and to "rein in the abuse and excess" on Wall Street that pushed the U.S. economy to the brink of collapse.

The landmark legislation, which came after more than a year of legislative wrangling and intense lobbying, grants broad new powers to federal watchdogs -- and places great faith in them to prevent another crisis.

"For years, our financial sector was governed by antiquated and poorly enforced rules that allowed some to game the system and take risks that endangered the entire economy," Obama said before 400 supporters at the Ronald Reagan Building and International Trade Center. "Soon after taking office, I proposed a set of reforms to empower consumers and investors, to bring the shadowy deals that caused this crisis into the light of day, and to put a stop to taxpayer bailouts once and for all. Today, those reforms will become the law of the land."

But the president acknowledged that the far-reaching regulations in the bill will prove only as good as the people who implement them.

"For these new rules to be effective, regulators will have to be vigilant," he said. "We also may need to make adjustments along the way as our financial system adapts to these changes. And no law can force anybody to be responsible; it is still incumbent on those on Wall Street to heed the lessons of this crisis in how they conduct business."

The moment marked a second major legislative victory for Obama this year, coming after the health-care bill that passed in March.

Obama paid tribute in his remarks to the two lawmakers who shepherded the bill through Congress and for whom the Dodd-Frank Wall Street Reform and Consumer Protection Act is named: Sen. Christopher J. Dodd (D-Conn.) and Rep. Barney Frank (D-Mass.). A supportive crowd -- composed of administration officials, consumer advocates, top regulators, state attorneys general, congressional aides and lawmakers who backed the legislation -- gave the pair a standing ovation, one of six during the brief event.

The law closely resembles the blueprint unveiled by the administration in June 2009. It establishes an independent consumer bureau within the Federal Reserve to protect borrowers against abuses in mortgage, credit-card and some other types of lending. It grants the government new authority to seize and wind down large, troubled financial firms -- such as the failed investment bank Lehman Brothers -- and sets up a council of federal regulators to monitor threats to the financial system. It mandates oversight of the vast market for derivatives -- complex financial instruments that helped fuel the crisis -- and gives shareholders more say on how corporate executives are paid.

With few exceptions, the legislation does not attempt to alter the fundamental shape of Wall Street, disappointing some liberals and consumer groups. It stops short of breaking up the nation's megabanks, it leaves out a ban on trading certain derivatives, and it doesn't set firm limits on executive pay. Nor does it significantly streamline the alphabet soup of financial regulators in Washington.

Away from the celebratory scene downtown, Republicans on Capitol Hill and business and financial industry executives expressed disappointment and disdain, arguing that the bill will spawn a more intrusive and expansive federal bureaucracy. They said that the law fails to eliminate the possibility of future taxpayers bailouts, that it could undermine the competitiveness of U.S. companies, stifle financial innovation, crimp credit and exacerbate unemployment.

"When you cut through all the talking points about what financial regulation will do, the practical, real-world effect of this bill in the near term will be job loss," Minority Leader Mitch McConnell (R-Ky.) said on the Senate floor. "The White House will declare this bill a victory. But for millions of Americans struggling to find work, for millions of small-business owners bracing themselves for all the new regulations they'll have to deal with, for ordinary Americans who just wanted to see an end to the bailouts, this bill is no victory."

Thomas J. Donohue, president of the U.S. Chamber of Commerce, which staunchly opposed the bill, called it "nothing more than a financial regulatory boondoggle" in a statement. "It won't strengthen our capital markets, it won't jumpstart the economy, and it won't help create any new jobs except in government," he said.

Such criticism did little to hinder the festive atmosphere Wednesday inside the Reagan Building. Aides and administration allies shared hugs and handshakes. Lawmakers donned their favorite ties to pose beside Obama. Harvard law professor Elizabeth Warren, a key proponent of the new consumer watchdog, pulled a camera from her purse and got a picture of herself with former Fed chairman Paul Volcker, who had pushed to limit risky trading at banks. They both sat front and center, smiling.

"It's a wonderful thing," Assistant Treasury Secretary Michael Barr, who brought his wife along for the occasion, said to one well-wisher.

After his speech, Obama sat at a wooden desk and signed the bill with 11 different pens. "It's done," he said, rising to leave.

But really, it's only beginning.

###

Paul Tharp and Mark DeCambre, *Treasury Tempest – Geithner's Support for Warren Called Into Question*, The New York Post, July 17, 2010.

On his first day under the new rules of Wall Street, Treasury Secretary Timothy Geithner had to fight fires in his own office.

Geithner tried to throw cold water on rumors yesterday that he was maneuvering to block rival brainiac Elizabeth Warren from leading a new consumer watchdog agency.

But it didn't seem to douse talk of their strained relationship. Warren has grilled Geithner four times in special congressional hearings she chaired as part of a federal panel probing the bank bailout program.

Warren is widely viewed as the front-runner to head the Consumer Financial Protection Bureau created by the financial reform bill that cleared Congress on Thursday.

She already has the apparent blessing of President Obama due to her role in helping shepherd the agency's concept through a near fatal gauntlet of Capitol Hill critics.

The new consumer protection bureau will be housed inside Ben Bernanke's Federal Reserve. Its director will be appointed by the president and serve a five-year term.

Warren, a Harvard law professor, is praised by her fans as a witty academic and champion of ordinary folks over rich Wall Streeters.

On the other side, her detractors call her a loose cannon, given to self-promotion for unfairly claiming credit as the original architect of the agency.

One Wall Street source familiar with the Treasury's key players over the past decade said the consumer agency wasn't her brainchild at all.

"The agency was born in the blueprint put out by [former Treasury Secretary Hank] Paulson right after the Lehman crisis," the source said, referring to the collapse of Lehman Brothers that sparked the global credit crisis.

Warren has told audiences that she first proposed such an agency in a professional journal in 2007, which inspired lawmakers to enact it into law.

Geithner's office jumped to her defense, as online accounts based on a report in Huffington Post about Geithner's alleged efforts to block Warren bounced around the Internet.

By lunchtime, his lead deputy, Michael Barr, the Assistant Treasury Secretary for Financial Institutions, went on the record to shoot down the feud talk while praising Warren as "exceptionally well qualified for the job."

"I think Elizabeth is absolutely terrific," Barr told reporters on a conference call.

"She's been working closely with me and Secretary Geithner for a year and a half to push for this consumer protection bureau," he said. "I believe and Secretary Geithner believes that she's exceptionally well qualified to run it."

###

Jennifer Liberto, *Wall Street reform: On to Obama*, CNNMoney.com, July 15, 2010 5:42 PM ET.

The Senate on Thursday afternoon passed the most sweeping set of changes to the financial regulatory system since the 1930s, sending the Wall Street reform bill to President Obama.

The Senate voted 60 to 39 to pass the reforms, ending more than a year-long effort to pass legislation in response to the 2008 financial crisis. Obama is expected to sign the bill into law next week.

The bill aims to strengthen consumer protection, rein in complex financial products and head off more bank bailouts.

To secure enough votes, Senate Democrats made lots of deals, which watered down the bill. For example, Wall Street banks will get wiggle room to make limited risky bets, which is tougher than the current law, but weaker than earlier drafts.

How did we get here? Congress first started discussing an overhaul of the financial regulatory system in spring 2009.

After the House and Senate passed different versions of reforms, top negotiators from both chambers spent two weeks finding common ground.

The effort has been a bonanza for financial industry lobbyists. The sector spent nearly $600 million on lobbying since January 2009, according to the Center for Responsive Politics. Some 1,000 lobbyists were hired at some point since 2009 to influence the debate, according to Public Citizen, another watchdog group.

What reform means: The legislation would establish a Consumer Financial Protection Bureau inside the Federal Reserve that could write new rules to protect consumers from unfair or abusive practices in mortgages and credit cards.

The bill creates a new council of regulators, lead by Treasury, that would set new standards for how much cash banks must keep on hand to prevent them from ever triggering a financial crisis. It would also establish new procedures for shutting down giant financial firms that are collapsing.

The measure would put new limits on Wall Street banks' speculative bets for their own accounts and their ability to own hedge funds, while leaving the door open for some investment activities.

The bill aims to shine a brighter light on some complex financial products, called derivatives, that are blamed for exacerbating the collapse of financial companies such as American International Group and Lehman Brothers.

It would force most derivatives onto clearinghouses and exchanges, to better pinpoint the value of the trades. And it would insert a middleman between trades, so that financial firms are less interconnected, to prevent the domino effect of financial firm failures in 2008.

"We made a promise in the fall of '08 that we'd do everything in our power to see to it we'd never again put the American public in the position we were in September and early October 2008," said Sen. Christopher Dodd, D-Conn. "And we have fulfilled that promise with this legislation."

Republicans objected to some of the bill's major provisions, particularly parts that establish the consumer agency and create new rules for the derivatives. While they generally favored more consumer protection and more regulation of derivatives, they argued that the legislation is too heavy-handed in these areas.

They also object to the fact that the bill virtually ignores the increasingly insolvent government-owned mortgage giants Fannie Mae and Freddie Mac, beyond studying their problems.

"[This bill] is widely expected to stifle growth and kill jobs," said Senate Minority Leader Mitch McConnell, R-Ky.

In fact, House Minority Leader John Boehner, R-Ohio, called for the repeal of the reform bill hours before the Senate even passed it.

Yet Republican Maine Sens. Olympia Snowe and Susan Collins, as well as Massachusetts Sen. Scott Brown voted for the bill, joining 57 Democrats to limit debate and move forward. One Democrat, Sen. Russ Feingold of Wisconsin opposes the bill, saying it isn't aggressive enough against Wall Street.

What's next: After it's passed, the bill is expected to be signed into law as early as Friday. Then regulators take over.

The bill leaves many tough decisions in the hands of federal regulators, ranging from the size of bank capital cushions to how much collateral firms must post to make a derivative trade.

Obama is expected to move quickly to appoint the Consumer Financial Protection Bureau's first chief, who will get broad authority in figuring out the agency's agenda.

Assistant Treasury Secretary Michael Barr said Wednesday that the consumer agency has a couple of mandates it needs to take care of first, such as coming up with a standard simplified application that mortgage originators can choose use.

"Congress has given pretty clear direction on what they'd like to see the agency start with," said Barr, who is widely considered a top candidate to run that agency. Barr wouldn't respond to a question about whether he was interested in the job.

###

Jennifer Liberto, *Lobbyists swarm as Wall Street bill talks start*, CNNMoney.com, June 10, 2010.

As lawmakers began the final push Thursday on a comprehensive Wall Street reform bill, lobbyists also made their final push -- in congressional hallways, on BlackBerrys and cell phones, and at restaurants and bars near Capitol Hill.

On Thursday, some 40 lawmakers gathered in a House committee room to give speeches and kick off a marathon, two-to-three week session of deal-making on key differences buried in the bills.

Wall Street reform bills, passed by the Senate in May and the House last December, aim to curb risk taking, protect consumers and prevent financial firms from getting too big to fail. But the chambers take different roads toward achieving those goals.

Next Tuesday, lawmakers will start hashing out specific policy differences in meetings that are open to the public and being broadcast on C-SPAN and on the House Financial Services Committee Website.

"This is going to be a very open process," said Rep. Barney Frank, D-Mass., who was elected to run the joint committee encompassing negotiators. "Nothing will be put into this final bill that is not advanced, openly debated, subject to amendment by the conference process and voted on."

Yet, the conversations that go on outside the committee room spotlights are where much of the actual wrangling and arm-twisting goes on, lobbyists and congressional experts say.

Sen. Richard Shelby, R-Ala., complained Thursday that Republicans have already been shut out of some decisions made behind closed doors, such as the shaping of first raw draft to be considered. That draft mostly reflects the Senate bill with some "House additions," according to Sen. Christopher Dodd, D-Conn., who runs the Senate Banking panel.

"I believe if we continue to proceed in this matter, however, any further assertions of openness and transparency will be a fiction, and meetings like this one will only serve as political theater," said Shelby, the ranking Republican on the Senate Banking Committee.

Here are examples of the kind of lobbying that happens outside the committee room:

In late May, JPMorgan Chase chief executive Jamie Dimon made calls to a couple of lawmakers expected to be named to the conference panel negotiating differences, according to aides. Dimon was concerned, among other things, about a provision that would force banks to spin off their swaps desks. (JPMorgan Chase did not return requests for comment.)

More than 1,000 credit union officials from 30 states hit the Hill's hallways on Wednesday and Thursday. They're asking lawmakers to kill a provision that would make banks and credit unions more responsible for the swipe fees on debit cards that retailers now pay.

Lobbyists for some financial firms are expected to be among those paying $1,000 a ticket to attend a fundraiser Thursday night featuring access to congressional staffers of top Democratic leaders, as part of a Democratic Congressional Campaign Committee fundraiser taking place at a downtown Washington hotel bar. Republicans have held similar events in the past.

Lobbying

"The lobbying community is not done with its work. And they are very, very focused on the conference process, and we'll be fighting any attempt to weaken the bills," said Assistant Treasury Secretary Michael Barr in a briefing with reporters two weeks ago. "There's still plenty of fight left in the process."

Since January 2009, financial service firms have spent $591 million lobbying Congress, which includes money spent on the health care reform bill as well as the Wall Street reform bills, according to the Center for Responsive Politics, a watchdog group.

Nearly every major Wall Street bank has shelled out money for lobbying, including Goldman Sachs, which has spent $3.9 million, and Bank of America, which spent $4.6 million. Smaller banks have also lobbied through banking groups. The American Bankers Association has spent $11.3 million since January 2009 and the Independent Community Bankers Association has spent $5.8 million.

Many of the lobbyists have connections to those they're lobbying. More than 1,400 of the financial service sector lobbyists working on Wall Street reform worked for lawmakers and federal agencies they're now lobbying, according to a joint analysis of federal disclosure records and other data released by the watchdog groups Public Citizen and the Center for Responsive Politics.

Campaign finance

Another way that industries can flex their muscle is by making campaign contributions to lawmakers. Summer is the high season for fundraising, especially in an congressional election year.

Since 1989, financial, real estate and insurance firms have contributed more than $112 million to the Democrats and Republicans named to the conference committee, according to the Center for Responsive Politics.

Sen. Charles Schumer, D-N.Y., tops the list with $17.5 million, followed by Dodd at $15.1 million and Shelby at more than $7.5 million, the center reports.

"Campaign contributions may not prove to be an ultimate, deciding factor in how these lawmakers operate. But money buys access," said Dave Levinthal, spokesman for the Center for Responsive Politics. "It's awfully difficult as a member of Congress to say 'No' to a longtime Wall Street campaign contributor who wants to bend your ear or twist your arm at this critical juncture."

And more money will roll in while negotiations are going on. Lawmakers on the conference committee with scheduled fundraisers include Rep. Carolyn Maloney, D-N.Y., Rep. Spencer Bachus, R-Ala., Rep. Frank Lucas, R-Ohio, and Rep. Jeb Hensarling, R-Texas, according to a database of invitations compiled by the watchdog group Sunlight Foundation.

Frank was also scheduled to have one Thursday morning, but it was postponed.

The next meeting of the committee is scheduled for 11 a.m. ETon Tuesday.

###

Cheyenne Hopkins, *Challenges for the Next Comptroller,* American Banker, June 8, 2010.

WASHINGTON - With the next comptroller of the currency expected to be named within weeks, speculation is heating up over who President Obama will nominate.

Rumored candidates are wellknown to the banking industry, including Federal Reserve Board Gov. Dan Tarullo, New York Banking Commissioner Richard Neiman, North Carolina Banking Commissioner Joe Smith, Treasury Assistant Secretary Michael Barr and Federal Deposit Insurance Corp. Vice Chairman Marty Gruenberg.

The selection is even more significant than usual because the regulatory reform legislation on the verge of enactment will provide a series of new challenges for the next comptroller including updating preemption standards, absorbing the Office of Thrift Supervision and implementing a litany of new regulations.

"They will be looking for somebody who has a very strong regulatory background with good executive skills because it's going to require management to combine two different agencies," said Pat Doyle, a lawyer at Arnold & Porter. "They will have a lot on their plate with implementing the new regulatory reform bill."

The administration is expected to make its choice soon, with some predicting a possible recess appointment during the Fourth of July congressional break.

The reform bill is expected to be signed by then, and the House version would remove the current comptroller, John Dugan, as soon as it becomes law and direct the president to appoint an acting head. Dugan's five-year term expires on Aug. 4.

Of the potential successors, much of the current buzz surrounds Neiman, who has a broad mix of regulatory and banking experience. He previously worked at the Office of the Comptroller of the Currency as a special assistant to the chief counsel and spent 10 years working at Citigroup in various roles before eventually becoming the president and chief executive of TD Bank USA. In 2007, then-Gov. Eliot Spitzer appointed Neiman as the superintendent of New York's banking department.

In that role, he has been a vocal advocate for the dual banking system, and was a key player in helping to convince the Senate to back off a plan to slash the Fed's bank supervisory powers. He has also served as a member of the Troubled Asset Relief Program's Congressional Oversight Panel, providing a more moderate voice to Chairman Elizabeth Warren.

"His background just immensely suits him for the position," said Ernest Patrikis, a lawyer at White & Case LLP. "He worked for the comptroller of the currency's office. He worked for a private banking organization. He has experience as a bank supervisor. He has handled himself exceptionally well on Elizabeth Warren's commission. There may be people as good as him, but I don't think there are people better than him."

Although Neiman would likely take a tough line on preempting state consumer protection laws, the banking industry does not view him as a threat because of his banking experience and prior stint at the OCC.

"It would seem Neiman may be strongest of that group," said Oliver Ireland, a partner at Morrison & Foerster LLP.

Bob Serino, a partner at Buckley Sandler and former deputy chief counsel for the OCC, said Neiman would likely take a balanced view on preemption.

"He would come with a measured view, having done some on the state side and national side," Serino said. "Whomever takes the position of a national bank regulator is going to realize that preemption is needed and is not a bad thing. I think he is going to realize when he is in that seat that there are ways of evaluating state laws."

Neiman's state experience also could serve him well as state attorneys general are likely to get more power under the reform bill.

Both the House and Senate legislation would give state AGs more flexibility to enforce statutes against national banks, although the two differ on exactly how much. The legislation is expected to still allow the OCC to preempt laws on a case-by-case basis, but it will likely face a higher threshold for invoking preemption.

Smith of North Carolina would also bring a state regulatory background to the comptroller's office, but may take a tougher stance on preemption issues. Currently the chairman of the Conference of State Bank Supervisors, Smith previously was a lawyer at Thacher Proffitt & Wood in Washington. He also has banking experience, including nearly nine years as the general counsel of Centura Banks Inc. and Centura Bank in Rocky Mount, N.C.

Smith has been an outspoken opponent of preemption and a proponent of tougher consumer protections.

A February speech to the Exchequer Club provides some clues to Smith's views on banking supervision. In it, he advocated for forbearance to allow banks time to work through various issues, and called for Tarp funds to be more accessible to community banks. He also criticized the Federal Deposit Insurance Corp.'s rules on private-equity investment in banks as too strict, saying they were an important source of capital.

Bob Clarke, a former comptroller who is now a senior partner at Bracewell & Giuliani LLP, praised Smith's record.

"I have a lot of admiration for Joe Smith," Clarke said. "My experience dealing with him is he has what it takes. He's a very thoughtful, measured kind of guy. He understands what bank supervision is about."

Cathy Ghiglieri, the president of Ghiglieri & Co. and a former OCC staffer, also supported Smith as comptroller.

"It would be nice to have a banking commissioner become the comptroller because from the preemption side it's a healthy balance of understanding both sides of the fence so that would be an interesting choice," she said.

Another leading candidate is Tarullo, whose name was among the first to surface months ago.

A Fed governor since January 2009, he was previously a Georgetown University law professor and campaign adviser to President Obama. He held several positions during the Clinton administration, including assistant secretary of state for economic business affairs from 1993 to 1998 and stints on the National Economic Council.

In 2008, Tarullo wrote a book, "Banking on Basel," an issue that is likely to be central to the new comptroller as the international capital standards are revamped.

While observers view Tarullo as highly qualified, it's unclear if he wants the job. His Fed term runs to 2022, and the central bank is all but certain to take on huge new responsibilities once the reform bill is enacted.

While as comptroller Tarullo would get to head his own agency, the OCC stands to lose jurisdiction to the Fed under the reform bill. Under both versions, the Fed is expected to take a more hands-on approach to supervision of systemically important companies, which would include most of the top national banks, such as Bank of America and Citigroup.

"I don't know why Tarullo would want to go to the OCC," said Cornelius Hurley, a banking and financial law professor at the Boston University School of Law. "He would be leaving an agency that is gaining power to an agency that is losing power."

But Obama also could opt for Gruenberg or Barr, both of whom are considered more pro-consumer.

"I don't think they are very sympathetic to the banking industry," said Bert Ely, a bank consultant.

Barr has been one of the Treasury's main salesmen of its regulatory reform proposal, focusing much of his efforts on the creation of a consumer protection agency. During that push, he has been extremely critical of large banks, most of which are overseen by the OCC.

"I don't think it's a surprise that big banks and institutions that benefited from the status quo want to keep it that way," Barr told American Banker last year after unveiling the administration's blueprint for reform. "It's unacceptable to us. It's a very hard argument for a big bank to make that the status quo on consumer protection was enough, that consumers were protected enough during the financial crisis. I think that's a horrible position for them to be in."

Barr also advocated for eliminating preemption altogether. Prior to working at the Treasury, Barr taught at the University of Michigan Law School, where he advocated for stronger housing loan modification policies. He also was a Treasury deputy assistant secretary during the Clinton administration.

"From the banker's point of view, they wouldn't want someone inclined for states to override preemption," said Bill Longbrake, an executive in residence at the University of Maryland's Robert H. Smith School of Business and a former vice chairman of Washington Mutual Inc. "That will be enormous, because the next round after the financial reform is implementation."

Barr's background does fit with past comptrollers, but his previous position as a professor is consistent with other Obama picks.

"There are lots of instances the administration has looked at academia and that would go in Barr's direction," Hurley said. "Does he have the management capabilities to merge two agencies? Probably not. That would be something he'd have to overcome."

But given his background, Barr is also seen as a candidate to head the new consumer agency, which is expected to be created by the reform bill.

Gruenberg has an even longer history with the banking industry. From 1993 to 2005, he served as senior counsel to then Sen. Paul Sarbanes, D-Md., who at one point chaired the Banking Committee and was actively involved in industry issues. Since 2005, Gruenberg has been FDIC vice chairman. Although he has not been controversial in that role, he is seen as a fierce consumer advocate and a strong opponent of preemption.

"Marty has been an unabashed consumer advocate for a very long time and that goes back very far to when he was in the Senate," Longbrake said.

While the industry has concerns about his possible appointment as comptroller, Gruenberg's contacts on Capitol Hill could help his nomination. "The pro is he is wellreceived on the Hill," said Larry Kaplan, a lawyer at Paul, Hastings, Janofsky & Walker LLP. "The con is he is coming from the FDIC and not the most bank-favored background. I don't think anyone will criticize him as too close to the industry so in some ways he may be the perfect regulator."

Yet, some sources said Gruenberg is more likely to stay at the FDIC to succeed Chairman Sheila Bair, whose term ends in June 2011.

In addition to blending in the OTS and the new preemption rules, the comptroller will be heavily involved in setting new capital and liquidity standards, among other requirements laid out in the reform legislation.

"We are entering a new world and it's very hard to see how that plays out, but it's going to be a very dynamic time the next several years," Ireland said. "It's going to present a lot of opportunities for the next comptroller."

Diane Casey-Landry, senior executive vice president of the American Bankers Association, agreed. "It's going to be a very tough job."It has a lot of management challenges, particularly with the integration of OTS," she said. "Whoever gets the job has to be a very good manager."

Tom Vartanian, a partner at Fried Frank Harris Shriver & Jacobson, said implementing the regulatory reform bill will dominate most of the new comptroller's time. "The new comptroller will be a part of the reconstruction of the financial landscape so it's going to be an extremely important period of time and an extremely important position," he said. "Given the massive changes going to be made in the regulatory structure having someone deep in regulatory issues will be very important."

###

Damian Paletta, *The Leading Men of Regulation*, The Wall Street Journal, June 8, 2010.

Three men burnished and tarnished by the financial crisis are expected to wield disproportionate influence over Congress's final push to write a new law for financial regulations.

Treasury Secretary Timothy Geithner, House Financial Services Committee Chairman Barney Frank and Senate Banking Committee Chairman Christopher Dodd bring to the negotiations experience from the government's rapid and often ad hoc response to the financial crisis, including the controversial decision to risk taxpayer money to bail out the financial sector.

The three have said that the experience from the financial crisis should serve as the foundation for what new regulations should look like.

As a result, people who know them say, they are likely to show willingness to negotiate on parts of the bill they don't view as core, while being intractable on pieces they view as elemental.

That could mean easing provisions with strict limits on derivatives trading, proposed restrictions on fees banks charge retailers and even agreeing to allow auto dealers to be exempt from new lending rules.

They are expected to be inflexible on other parts, such as tight regulation over large financial companies and the creation of government powers to break up failing firms.

The House and Senate have passed separate financial-regulation bills and now a "conference" committee of close to 30 lawmakers will be charged with reconciling the differences. It could begin work as soon as Thursday.

In the background, Messrs. Geithner, Dodd and Frank will play leading roles, even though Mr. Geithner won't technically be on the conference committee.

"There will be 'a' conference committee, and then there will be 'the' conference committee," said Rep. Jeb Hensarling (R., Texas), a critic of the Democrats' financial-overhaul effort.

Even though the three have been central figures in the yearlong effort by Democrats to rewrite financial rules, they have met privately only twice to discuss the bill, their offices say. The first time was in Mr. Dodd's office Sept. 22 when talks appeared to be falling apart. The second time was an Oval Office meeting on May 21, just 14 hours after the Senate bill passed.

Their positions have also sometimes been at odds. Mr. Frank (D., Mass.) once referred to a consumer-regulation plan mulled by Mr. Dodd (D., Conn.) as a "joke." Mr. Dodd proposed consolidating all bank regulation within one agency, something Messrs. Frank and Geithner thought was politically impossible.

Still, all three have shown a propensity to cut deals as long as they achieve what they believe to be central.

"What we're focused on is making sure that in the conference process the president's core objectives are met, and there are going to be other things that are done in that process along the way that are not part of those core sets of objectives, and we think we can work those out," said Assistant Treasury Secretary Michael Barr, a close aide to Mr. Geithner.

During the 2008 crisis, the two lawmakers and Mr. Geithner, then president of the Federal Reserve Bank of New York, helped lead the government's response and the taxpayer-funded rescue of multiple large institutions. They have continued to face hostile questions about their roles before and after the conflagration.

Mr. Geithner has faced multiple calls for his resignation, amid allegations that the New York Fed and now the Treasury Department didn't do enough to prevent reckless banking or protect consumers.

Mr. Dodd saw his popularity enter free fall last year amid allegations about a mortgage he received from Countrywide Financial Corp., helping to derail his plans to run for re-election in November.

Mr. Frank remains a lightning rod for Republicans who allege he and other Democrats didn't do enough to regulate Fannie Mae and Freddie Mac before the crisis.

"To some extent, some of the people who did the most to help precipitate the crisis are now in charge of writing the legislation to make sure theoretically it doesn't happen again," Mr. Hensarling said.

Messrs. Geithner, Dodd and Frank each vigorously defend their reputations, often with fervor and equally barbed words for their critics.

Politically, the three move very differently. They also answer to different political constituencies, which could challenge their ability to deliver a completed package by an unofficial July 4 deadline.

Mr. Geithner was a political novice before joining the Obama administration. Mr. Dodd is a classic Senate deal maker. Mr. Frank benefits from a broad Democratic majority but has been known to catch lawmakers off guard.

On May 21, coming out of the White House meeting after the Senate vote, Mr. Frank had the endgame in sight.

"It's hard to even think that this is going to take us a month," he said.

###

Stacy Kaper, *In Fight on CFPA, Less May Be Prove to be More*, American Banker, June 2, 2010.

WASHINGTON — As lawmakers begin hashing out differences between the House and Senate regulatory reform bills next week, a big question is how hard proponents will fight for a stand-alone consumer protection agency.

Even supporters of the House bill, which would create an independent agency, see value in the Senate's approach, which would form an autonomous unit inside the central bank and use the Fed to fund it.

"The advantage obviously is that the Senate has a mechanism for collecting fees to fund the agency," said Rep. Mel Watt, D-N.C., one of the probable House conferees. Under the Senate bill, "we wouldn't have to deal with the budget issues related to independent funding."

The House bill would fund the new agency from multiple sources. It would allocate 10% of the Federal Reserve System's operating costs to the new agency, allow it to charge assessments on large institutions, and appropriate $200 million annually from Congress.

The Senate's approach is simpler, relying solely on funding from the central bank, starting out at 10% of the Fed's operating expenses — roughly $500 million — and growing to 12% in fiscal 2013. (By comparison, the Federal Trade Commission's budget for this fiscal year is $290 million).

Consumer groups, the chief proponents of a stand-alone agency, view the Senate's funding approach as better. They fear that because the House bill also includes an appropriations process, it could be used to hamstring the agency by adding conditions on how its money is used. The Office of Federal Housing Enterprise Oversight, the last safety and soundness regulator that relied on appropriations for funding, was repeatedly caught up in battles over its budget.

"Anything that relies heavily on appropriations is definitely going to be a problem," said Janis Bowdler, the deputy director of the Wealth-Building Policy Project at the National Council of La Raza.

There are also concerns over the House's proposed governance for the agency. Under the Senate bill, the consumer bureau is part of the Fed but headed by an independent director appointed by the president and confirmed by the Senate. The House bill provides for a presidentially appointed director for the first two years, then a transition to a commission structure — something consumer groups said could dilute the agency's power.

"'Independent' would mean that the director is appointed by the president and confirmed by the Senate, that there is not some veto power by a council or a group of regulators who might want to undermine those rulings and that there is guaranteed funding for it. We think that all of those factors are there in the Senate version," said Heather Booth, the executive director of Americans for Financial Reform, a coalition of more than 300 consumer advocacy and civil rights organizations.

But proponents also worry that putting the consumer regulator under the Fed — even if it is fully independent of the central bank — could harm its reputation among consumers.

"Part of this is, how will the agency be regarded? What stature will it have? Will there be future attempts to infringe on its authority?" said Mike Calhoun, the president of the Center for Responsible Lending. "As a freestanding agency, there is a more of a barrier to attempts in the future to rein it in. Everybody may now think of it as in the Fed but largely independent of the Fed, but years from now, maybe people will say, 'Well, it's in the Fed, so maybe we should give the Fed more control over it.' "

Industry observers agreed the consumer agency could eventually fall under the Fed's sway.

"If it sits at the Fed, even if the Fed doesn't have control over its decision process, people who are in the entity may have better access to bank supervisory people and economists to help inform their decision-making process sort of by osmosis," said Oliver Ireland, a former Fed lawyer and a partner in the Morrison & Foerster law firm. "Those effects could be significant over time."

The banking industry has largely moved on from this fight, focusing more of its efforts on other provisions in the Senate bill they want to ensure are not included in the final version, including those governing interchange rates and derivatives regulation.

The Obama administration has also moved on. In a conference call with reporters last week, Michael Barr, the assistant Treasury secretary of financial institutions, said it did not matter. "One sort of rents space from the Fed, and the other doesn't, but they are both paths to real, meaningful independence, … so those paths are two different ways of achieving the president's objective," he said.

It remained unclear how hard House lawmakers may fight for their version. In an interview, Watt said he still favors an independent agency, though he indicated it is not his top concern.

"We obviously would like for it to be housed independently, but to some extent we recognize that the address is less important than the powers and the independence that it has," said Watt, who is the chairman of the House Financial Services Committee's domestic monetary policy subcommittee. "There is still ongoing discussions about all of those things, and I don't know where they will ultimately end up. … We want what we had in the House bill, but … obviously this is a give-and-take process. We understand that we are not the only people who are at this dance."

Other Democrats likely to serve on the conference committee, however, are clearly intent on fighting for the agency's stand-alone status.

"We need to redouble our efforts and make sure that, as we walk into the room as conferees, we get the strongest, most independent consumer protection agency, much as we passed it in the House," said Rep. Luis Gutierrez, the House Financial Services Committee's financial institutions subcommittee chairman.

In an interview, the Illinois Democrat said he does not trust the independence of a bureau housed inside the Fed. "The Fed failed miserably," he said. "Let's not go down the same path again. We need an independent agency."

At least two Senate conferees, Sens. Charles Schumer and Jack Reed, also plan to push for a separate agency.

"Sen. Schumer continues to strongly believe in an independent consumer protection agency, as he has throughout the debate on financial reform. He believes an independent agency is the best way to ensure that consumers' interests are not overlooked or given low priority by regulators, as has happened in the past," said Brian Fallon, a spokesman for the New York Democrat.

A spokesman for Reed said he wants to take the best elements of both bills to ensure the strongest consumer protection possible.

"The Senate bill includes a strong new consumer watchdog, and Sen. Reed believes that the more independent it is the more effective it will be," said Chip Unruh, a spokesman for the Rhode Island Democrat.

A key unknown is how hard House Financial Services Committee Chairman Barney Frank will fight on the issue. Though a spokesman declined to comment, the Massachusetts Democrat has repeatedly appeared dismissive of the consumer agency's Senate version.

"The Fed feels it's like, you know, having your ex-wife's brother living in the house after you got a divorce," Frank said two weeks ago, according to Politico.

###

David Lightman and Kevin G. Hall, *A done deal? House, Senate measures on finance reform need little tweaking*, McClatchy Newspapers, June 1, 2010.

WASHINGTON - The fate of the biggest overhaul of the nation's financial regulatory system in generations now rests with a small group of Capitol Hill lawmakers with reputations as deal makers.

In early June, negotiators from the Senate and the House of Representatives are expected to begin work on merging two competing but similar visions for revamping the way the government regulates banks and financial markets.

The Senate passed its version of the legislation on May 20; the House approved its bill last December.

"This is one of the rare occasions when the two bills are really very close to each other. There's not a great deal of difference," said Senate Banking Committee Chairman Christopher Dodd, D-Conn.

Even if they're in the ballpark on the big issues, the two bills have some big differences.

For example, while both chambers favor the creation of an equivalent of the Consumer Product Safety Commission for consumer credit products such as mortgages, student loans and credit cards, they'd go about it differently.

The House would create a new, standalone agency called the Consumer Financial Protection Agency; the Senate envisions a Bureau of Consumer Financial Protection within the Federal Reserve.

The U.S. Chamber of Commerce hopes to weaken the bill during the negotiations, arguing that the new consumer panel's leader would have powers beyond those of other government agency heads.

"I don't know that I'm going to persuade people that my approach to consumer protection is the right way, but we should have a debate about having this much power concentrated in one individual," said David Hirschmann, senior vice president at the chamber.

Assistant Treasury Secretary Michael Barr, an intellectual author of the consumer panel, countered that there are numerous checks built into the creation of the new independent agency. It'll have public rulemaking, must conduct cost-benefit analyses on measures it proposes, and the agency head would serve at the pleasure of the president and require Senate confirmation.

"We're in fundamental disagreement with the Chamber on this point," Barr said.

Also contentious is whether auto dealers should be subjected to the consumer panel's rules. Consumer advocates argue that some auto dealers make more money from lending than from selling cars.

"The whole point of this agency is to make sure that lenders have to play by better rules and be fairer," said Travis Plunkett, legislative director for the Consumer Federation of America.

Pointing to support from the Pentagon, which thinks that auto lenders have preyed on servicemen and women, Plunkett added that resolving the dealer exemption "is going to be all about raw political power."

House and Senate lawmakers agree with the auto dealers, who argue that they didn't cause the financial crisis and aren't financial institutions. The House bill exempted car dealers; the Senate bill didn't, but a majority of senators have voiced support for the exemption.

Another battle will be over complex financial instruments called derivatives, which helped cause the meltdown of financial markets in 2008. The Senate bill would force banks to spin off their derivatives businesses, but the Obama administration and House lawmakers think that goes too far and could prove disruptive.

Congressional leaders, with the help of the White House, have chosen a bipartisan team of negotiators, called conferees, who're likely to agree on these issues quickly.

"It sounds obvious, but you look at everything and try to find the best approach," said Sen. Jack Reed, D-R.I., part of the negotiating team.

While conferee Sen. Judd Gregg, R-N.H., said, "there are a lot of places where we can make progress," he wasn't overly optimistic that his or other Republican views would be heard.

"If the same party controls the House, Senate and presidency, they don't need anybody in that room except the two chairmen and administration officials ... to make all the decisions," he said. "This is very much a vehicle of the majority."

The conferees are expected to write the final bill in coming weeks, with final votes in each house likely by late June.

"I understand the urgency for the financial stability of the country ... it's hard for me to think it's going to take us much more than a month," said Rep. Barney Frank, D-Mass., the chairman of the House Financial Services Committee and Dodd's negotiating counterpart.

###

***Banks' US derivative fears revealed*, International Finance Law Review, June 2010.**

Note: The push-out provision for spinning derivative portfolios and difficulties in managing new and old transactions are among US banks' biggest worries

Derivatives regulation remains the biggest point of debate from the Senate bill on financial reform.

The push-out provision for spinning derivative portfolios and the difficulties in managing new and old transactions are among US banks' biggest worries.

On Tuesday, House Financial Services Committee Chairman Barney Frank was reported to have said that the derivatives rules weren't crucial to the overhaul of regulation and that the Senate bill "goes too far".

A day later a key figure from the Treasury Department echoed this sentiment by questioning the importance of forcing banks to spin off their derivatives work.

"If it would result in a banking organisation not being able to engage in swap transactions, the provision could have very significant consequences," said Treasury Department assistant secretary Michael Barr.

"If it has a narrower set of interpretations, those consequences would be smaller, and the language in the provision is somewhat unclear on that point."

The spinning of derivatives portfolios is covered by section 716 of the Senate bill and it is this that causes the most concern.

"The push-out provision is controversial," said a structured finance lawyer in New York.

"AIG is an example of how a regulated entity within a corporate structure can still be affected by an affiliate that is engaging in swaps. It makes you wonder how effective section 716 would be."

Most accept that the requirement for derivatives trades to be conducted through a clearing house will pass in some form.

In the longer term, some are concerned that this will concentrate risk in the clearing houses. If a market move is well outside what models anticipate, then the clearing houses themselves could be in serious trouble.

There will also be confusion between how new and old transactions are managed:

Matthew Magidson, counsel at Lowenstein Sandler believes banks will have a cleared book and an uncleared book. "Things are going to be messy. Without a huge increase of resources at banks, deadlines for complying are not going to be met."

Section 716 also creates a fiduciary duty for swap dealers trading with municipal parties and pension funds. Lawyers believe that applying such a measure in practice doesn't make much sense.

"How do you market a product to someone you have fiduciary duty to? I expect business would die in the US, but I think this aspect may be watered down," said Magidson.

The conference process is still predicted to be over in time for President Obama to sign the merged bill into law by July 4. Until then speculation will continue, but clients are already considering their options.

"People are really starting to think about how deals will have to be structured. There will probably be a reduction in highly customised trades," said another structured finance lawyer.

"The push seems to be for more regulation. Especially after the Goldman Sachs case, which solidified a lot of resistance," he added.

###

Neil J. Morse, *Life, Liberty and a Loan Modification*, Mortgage Banking, June 2010.

At the Mortgage Bankers Association's (MBA's) National Fraud Issues Conference in Chicago at the end of April, one word repeated by speakers was "ripe"-as in: "This is an area ripe for fraud in today's environment." Robert Maddox. a partner with Birmingham, Alabama-based law firm Bradley Arant Boult Cummings LLP, used that word when he spoke about loss mitigation and loan modifications during one well-attended panel session.

Maddox argued thai the industry is "trying to modify a lot ot different loans under government and public pressure [at a| fairly breakneck pace, which is allowing for a lot of fraud to enter in; it's becoming a very ripe area," he remarked. Maddox later quipped: In America today, "it's no longer 'life, liberty and the pursuit of happiness,' but rather, 'life, liberty and a loan modification.'"

"The environment is ripe for fraud in mods today," added Alex Santos, president of Digital Risk LLC, Maitland, Florida, who joined Maddox lor the MBA Fraud Issues panel. "The question is, how much do we want to spend on catching this fraud?," Santos asked.

"We can do mods and have hand for housing; is that good for the economy:' It does tend to reduce losses I rom foreclosures," said Santos. "There are 800,000 trial mods [under the Home Affordable Modification Program (HAMP)] that are not current today - 300,000 are about to fail out of the program" because borrowers can't provide the necessary paperwork.

A speaker at the New York-based American Securitization Forum's (ASF's) ASF 2010 conference held in National Harbor, Maryland, in February, Michael Barr, assistant secretary for financial institutions, Department of the Treasury, took the secondary market to task in his remarks. "The securitizing process did not perform well. In many cases, securitized loans were not properly underwritten. The loosening of underwriting standards was due in part to the originate-to-distribute models that incentivized high volumes and imprudent lending," he said.

These incentives were exacerbated by a complex structured finance machine that churned out supposedly high-grade assets from low-quality underlying loans." Barr added, "Quantitative techniques gave the illusion of safety while concealing correlated risks, and risk managers failed to exercise proper judgment. It became evident that many investors had outsourced credit analysis to the ratings agencies, and these ratings agencies were in turn subject to conflicts of interest and often didn't fully understand the products they were rating."

Joining in the finger pointing was James Lockhart, vice chairman of WL Ross & Co. LLC, New York, and former director of the Federai Housing Finance Agency (FHFA). Lockhart rhetorically asked attendees at the ASF 2010 conference, "What went wrong?" He answered, "Pretty much everything. The housing bubble was fed by everybody."

Turning io possible solutions, Lockhart warned against too much government intervention. "If we let Congress create new mortgage markets, we're in for a very rough ride," he said. He then brought up one often heard phrase: "All of a sudden systemic ifailure)' is a buzz term. Two or three years ago, we almost got kicked out of congressional hearings using that terminology," Lockhart recalled.

In a clearly challenged, even concessionary, tone on the lough objectives faced by default servicing professionals, Rebecca Mairone. default servicing executive with Bank of America Home Loans, Calabasas, California, gave the keynote address at New York-based SourceMedia's 4th Annual Mort gage Servicing Conference in Dallas, in April. "We're not doing enough and not quick enough," Mairone said, adding: "Time is not our friend."

Her group manages 225,000 calls a da v. said Mairone, who described that volume as "intense - to say the least. We're still learning best practices for different customer segments, ibut it is) extremely challenging," she admitted. "The phone, even as a primary iborrower contact| tool, is not working well."

Mairone noted that her bank and the servicing sector are "at a pivot point, where we know we won't be able to help every customer stay in their homes, so we're turning our efforts to short-sale, deed-in-lieu and foreclosure [options]. But the short sale is noi easy," she acknowledged. "It's complicai ed, and when you layer on a second lien and MI imortgage insurance] and other components, it becomes excessively complex."

Turning a tinge philosophical, Mairone said, "It is important to get the customer service right culturally to change the dynamic of how we do servicing, [which means) putting the customer at Iront and center. It's going to be a significant problem in our country as we work through the next two years of delinquencies, foreclosures, modifications and bankruptcy." She added, "On the other side, we'll have a very different consumer-based credit situation." The Bank of America executive concluded by tacking on a rhetorical question: "How do we earn trust back?"

A shift in recent years from the front end to the back end of the mortgage process "has meant more attention on mortgage servicers," said Steve Kravitz. vice president of default administration for Cenlar FSB, Ewing, New Jersey. As a result, he explained, "The inbound call volume now is unprecedented, and for a lot of the servicers, one of the biggest complaints on the blogs out there is, I'm on hold for 20 minutes, 30 minutes, two hours, etc., looking for information on the status of my loan.' Having the appropriate number of people to handle this is a challenge for many servicers."

Several lively question-and-answer segments occurred during SourceMedia's servicing conference in Dallas, as real estate agents and Realtors* peppered panelists with inquiries. Richard Pridemore, director of investor/client relations for In-House Realty LLC, Livonia, Michigan, asked a question evidently on the minds of many listeners, when he inquired about short-sale solutions. In response, John Dunnery. director of service management for Fannie Mae, said of the recently rolled-out Home Affordable Foreclosure Alternatives (HAFA) program: "I don't see [it] being a high-touch, highvolume solution. I think it sets an initial framework and a discussion of how we build that isolution, but] if we want to use short sales going forward as a methodology, I do not think it's going to be [effective for] a large segment of the population."

Another questioner, Monica Nelson, a housing counselor with NID Housing Counseling Agency, Austin, Texas, asked about a "disconnect between servicers and the workout person and foreclosure attorneys." Kevin Beck, foreclosure and REO manager for Fremont Bank, Hayward, California, answered: "Hopefully we're not at a point where approved sales are getting beaten to the closing table by a foreclosure action. I would hate to think that's the case."

Offering a word to the wise, Rockwell Clancy, executive director of financial services for J. D. Power and Associates, based in the Evanston, Illinois, office of Westlake Village, California-based J. D. Power and Associates, told attendees at SourceMedia's servicing conference that many of today's troubled borrowers "are prime customers running into a bit of |a bad] patch, and how you treat them now will be important later."

Summing up sentiment at the conference, Gagan Sharma. president and chief executive officer of BSI Financial Services Inc., Irving, Texas, observed, "Somewhere along the line, we became the bad guys. Mortgage bankers and lenders are out there trying to solve the problems and work very hard, and [they] get very little credit for that."

###

Jessica Marron, *OTC derivatives language a target as Senate finance bill goes to conference with House*, Electric Utility Week, May 31, 2010.

The potential impacts on energy markets from the sweeping financial reform bill passed by the US Senate remain difficult to gauge as stakeholders are still seeking multiple changes to its over-the-counter derivatives language and provisions that could restrict energy trading by banks.

The Restoring American Financial Stability Act (S. 3217) passed the Senate by a vote of 59-39 May 20 and will now go to a committee to reconcile its language with that of the House of Representatives' bill, the Wall Street Reform and Consumer Protection Act (H.R. 4173), which passed the chamber in December.

Last week, the two lawmakers who led their chambers' respective bills, Senator Christopher Dodd, a Connecticut Democrat, and Representative Barney Frank, a Democrat from Massachusetts, told reporters they expected the president would sign the new rules into law by July.

The Senate named 12 members to the conference committee, including eight members of the Committee on Banking, Housing and Urban Affairs and four members of the Committee on Agriculture, Nutrition and Forestry. Frank will head the conference committee but the House is not expected to name its other conferees until after the Memorial Day holiday.

Each bill contains a title to give the Commodity Futures Trading Commission and Securities and Exchange Commission the authority to regulate the over-the-counter derivatives markets. They differ, however, in how they carve out exemptions for physical hedgers such as energy producers and distributors.

In the House bill, any trade entered into with one of these so-called end-users as a counterparty would be exempt from mandatory clearing. The Senate version is much more narrowly crafted and would allow only commercial hedgers to claim an exemption.

The bills also differ in how they would delineate jurisdiction between the CFTC and the Federal Energy Regulatory Commission, which currently oversees certain transactions such as financial transmission rights, used by power generators as a means of hedging. The House bill gives the CFTC the final say in exempting transactions such as FTRs from its oversight, while the Senate version adds a clause to prevent the CFTC from interfering with FERC's authority to maintain just and reasonable rates.

Other key provisions that conferees will need to work out include a requirement that banks separate their derivatives trading desks from their depository divisions, and a mandate that regulators study the effects of banning banks from proprietary trading, also known as the Volcker rule. Both measures are included in the Senate bill but not in the House version.

And both are controversial, particularly in the financial community. "Provisions like the so-called Volcker rule would impose sweeping new restrictions on size and activities that were not a cause of the financial crisis," Securities Industry and Financial Markets Association's President and CEO Tim Ryan said in a statement.

"A number of the provisions in the derivatives section of the bill also remain problematic," Ryan added. "Requiring banks to push out their derivatives businesses and limiting their ability to hedge their own risk exposures would not only deplete institutions of much-needed capital, it will ultimately hurt consumers through higher mortgage and credit costs."

The bank spinoff provision has also come under fire from congressional Democrats, such as Frank, who said in a speech Tuesday that it goes "too far."

Michael Barr, assistant secretary of the Treasury Department, said the language is ambiguously worded, and its ultimate impact on financial entities is uncertain. He stopped short, however, of saying whether the Obama administration supports this provision.

"It's a little bit hard to tell with certainty today how the provision would operate," Barr said at a press briefing in Washington Wednesday. "If it would result in a banking organization not being able to engage in swap transactions, the provision could have very significant consequences. If it has a narrower set of interpretation, those consequences would be smaller, and the language of the provision is somewhat unclear on that."

Many large banks host proprietary trading desks in energy commodities.

Energy producers and consumers, though, would prefer Congress to address the definition of what would constitute a major financial player, which would not be eligible for a clearing exemption under the Senate's language.

"While the Senate bill has an end-user exemption, the concern is that the definitions of major swap participant and swap dealer are drafted broadly enough ... that even if you qualify for the end-user exemption, you may still be considered a swap dealer or major swap participant," Misty McGowen, American Petroleum Institute's director of federal relations, said.

While McGowen and other energy groups addressed primarily the Senate version, both bills in fact define a swap dealer as a person who meets at least one of four criteria: any person who holds himself out as a dealer in swaps, makes a market in swaps, regularly engages in the purchase and sale of swaps in the ordinary course of business, or engages in any activity causing the person to be commonly known in the trade as a dealer or market maker in swaps.

API and other energy groups -- the Edison Electric Institute, Electric Power Supply Association and others -- in April and May letters to Senate leadership instead urged lawmakers modify the language to make clear that swap dealer would encompass all of those criteria.

"The way it's structured ... the swap dealer [definition] is so broad that it actually sweeps in commercial end-users that don't pose a systemic risk," said Jenny Fordham, the Natural Gas Supply Association's director of energy markets and public affairs. She added that a fix to this language is as simple as swapping an "or" out for an "and" or by "clarifying that commercial end-users are not swap dealers."

The American Public Gas Association, meanwhile, was more concerned over a provision that would require swap dealers to perform a fiduciary duty when entering into deals with state governments or municipalities.

"That more or less negates the end-user exemption," said David Schryver, APGA's legislative executive vice president. "If we can't find partners to trade with us, the exemption doesn't really matter."

SIFMA's Ryan also spoke out against this provision, saying it is "legally unworkable and would limit these clients' ability to access ... vital risk management tools."

On behalf of some futures industry participants, Christine Cochran, president of the Commodity Markets Council, said her group's members are seeking clarity on how the CFTC will draft its rules on aggregate position limits for OTC trades, as the bill mandates.

"We're not opposed to the concept of aggregating position limits," Cochran said. However, she added that her members want assurance that it is done fairly and does not inadvertently drive business overseas.

She also said CMC is concerned over the inclusion of an amendment designed to strengthen CFTC's ability to prosecute cases of fraud and manipulation -- a measure hailed by Democrats and other administration officials.

This amendment would give the CFTC the authority to chase such cases based on "reckless" behavior. Currently, the CFTC must prove a player had a "specific intent" to manipulate the market.

Cochran said CMC does not condone market manipulation. However, "we're concerned that it lowers the burden of proof and weakens the definition of 'intent' so that innocent mistakes may become prosecutable events," she said.

###

David Lightman and Kevin G. Hall, *Congress begins the final push on financial regulation*, McClatchy Newspapers, May 31, 2010.

WASHINGTON -- The fate of the biggest overhaul of the nation's financial regulatory system in generations now rests with a small group of Capitol Hill lawmakers who are known for their ability to compromise.

Early this month, Senate and the House of Representatives negotiators are expected to begin work on merging two competing but similar visions for revamping the way the government regulates banks and financial markets.

The Senate passed its version of the legislation on May 20; the House approved its bill last December.

"This is one of the rare occasions when the two bills are really very close to each other. There's not a great deal of difference," said Senate Banking Committee Chairman Christopher Dodd, D-Conn.

Even if they're in the ballpark on the big issues, the two bills have some significant differences.

For example, while both chambers favor the creation of an equivalent of the Consumer Product Safety Commission for consumer credit products such as mortgages, student loans and credit cards, they'd go about it differently.

The House would create a new, standalone agency called the Consumer Financial Protection Agency; the Senate envisions a Bureau of Consumer Financial Protection within the Federal Reserve.

The U.S. Chamber of Commerce hopes to weaken the bill during the negotiations, arguing that the new consumer panel's leader would have powers beyond those of other government agency heads.

"I don't know that I'm going to persuade people that my approach to consumer protection is the right way, but we should have a debate about having this much power concentrated in one individual," said David Hirschmann, senior vice president at the Chamber.

Assistant Treasury Secretary Michael Barr, an intellectual author of the consumer panel, countered that there are numerous checks built into the creation of the new independent agency. It'll have public rulemaking, must conduct cost-benefit analyses on measures it proposes, and the agency head would serve at the pleasure of the president and require Senate confirmation.

"We're in fundamental disagreement with the Chamber on this point," Barr said.

Also contentious is whether auto dealers should be subjected to the consumer panel's rules. Consumer advocates argue that some auto dealers make more money from lending than they do from selling cars.

"The whole point of this agency is to make sure that lenders have to play by better rules and be fairer," said Travis Plunkett, legislative director for the Consumer Federation of America.

Pointing to support from the Pentagon, which thinks that auto lenders have preyed on servicemen and servicewomen, Plunkett added that resolving the dealer exemption "is going to be all about raw political power."

House and Senate lawmakers agree with the auto dealers, who argue that they didn't cause the financial crisis and aren't financial institutions. The House bill exempted car dealers; the Senate bill didn't, but a majority of senators have voiced support for the exemption.

Another battle will be over complex financial instruments called derivatives, which helped cause the near meltdown of financial markets in 2008. The Senate bill would force banks to spin off their derivatives businesses, but the Obama administration and House lawmakers think that goes too far and could prove disruptive.

The Senate language came out of the Agriculture Committee, where Arkansas Democrat Blanche Lincoln, the chairman, faced a primary challenge and wanted to show voters she was tough on Wall Street. Lincoln now faces a June 8 runoff, a day after the Senate returns from its Memorial Day recess -- freeing her, and Democrats, from having to keep up the appeal to Arkansas liberals.

Congressional leaders, with the help of the White House, have chosen a bipartisan team of negotiators, called conferees, who're likely to find common ground on these issues quickly.

"It sounds obvious, but you look at everything and try to find the best approach," said Sen. Jack Reed, D-R.I., part of the Democrats' negotiating team.

While conferee Sen. Judd Gregg, R-N.H., said, "there are a lot of places where we can make progress," but he wasn't overly optimistic that his or other Republican views would be heard.

"If the same party controls the House, Senate and presidency, they don't need anybody in that room except the two chairmen and administration officials . . . to make all the decisions," he said. "This is very much a vehicle of the majority."

The conferees are expected to write the final bill in coming weeks, with final votes in each house likely by late June.

"I understand the urgency for the financial stability of the country . . . it's hard for me to think it's going to make us much more than a month," Rep. Barney Frank, D-Mass., the chairman of the House Financial Services Committee and Dodd's negotiating counterpart, told reporters on May 21.

The White House isn't expecting a bumpy road.

"Any single provision I think is crazy to discuss as a veto threat," Farrell of the National Economics Council told reporters on May 26, adding that there's nothing on the horizon that would warrant a veto threat.

Among the reasons for the unusually conciliatory mood surrounding the talks:

_ Politics: "If I were a Republican, I'd be hard pressed to vote against financial regulation," said Burdett Loomis, professor of political science at the University of Kansas, especially less than six months before congressional elections. Politicians must show they can get tough with Wall Street, erasing voters' memories of the unpopular 2008 bailouts of troubled financial firms.

_ Bipartisanship: Dodd and Sen. Richard Shelby of Alabama, the top committee Republican, made sure during this month's debate that the two parties alternated offering amendments. As a result, some major GOP changes were accepted, such as Florida Sen. George LeMieux's plan to instruct government agencies to stop relying solely on credit ratings when measuring creditworthiness.

_ The Players: Dodd and Frank will lead the committee, and both have a long history of working with Republicans on major legislation. Sen. Bob Corker, R-Tenn., will participate, even though it's unusual for a junior member of the Senate to be included in such talks. Corker was involved earlier this year in compromise efforts, complaining later that his views were largely ignored.

###

Alex Daniels, *Lincoln clause not a White House priority*, Arkansas Democrat-Gazette, May 27, 2010.

WASHINGTON - Obama administration officials vowed Wednesday to fight attempts to weaken broad legislation intended to prevent a financial collapse like the one that brought the market to its knees in 2008.

But they said that perhaps the toughest part of a plan to crack down on the derivatives market - a section of the pending bill that was written by Arkansas' Sen. Blanche Lincoln, a Democrat - was not among the administration's "core objectives." "There's still plenty of fight left in the process," said Michael Barr, assistant secretary of the Treasury for financial Institutions, who predicted intense action by lobbyists at the Capitol.

"We expect them to be crawling all over the Hill," added Diana Farrell, deputy director of the National Economic Council.

The two made the remarks at a news conference to highlight the administration's strategy as House and Senate members prepare to sort out differences in each chamber's financial-overhaul legislation. Lincoln, who as chairman of the Senate Agriculture Committee, led the effort to craft the derivatives section of the Senate bill, will be on the House-Senate conference committee when it meets, most likely soon after Congress comes back from its Memorial Day recess on June 7th.

On June 8th, Lincoln faces Lt. Gov. Bill Halter in a Democratic runoff election.Committee members have announced their intention to get a bill to Obama by the July 4 recess.

Derivatives are financial trades that are based on changes in value on an underlying asset, such as a stock index, foreign currency or commodity. Traders will enter into a contract to lock into a future price of a commodity and hedge their financial risk.

But over the past decade, speculators flooded the derivatives market, making a large number of trades "over the counter" instead of through regulated exchanges. Risky derivatives trades are blamed by some for the most spectacular financial blowouts of 2008, including failures at Bear Stearns, Lehman Brothers and the near-collapse of American International Group.

Lincoln's language would require derivatives to be traded on an open exchange where prices are reported in real time. Most trades would have to go through a clearinghouse that would charge fees and assume part of the risk. Traders would also have to post collateral on trades.

Perhaps the proposal most bitterly opposed by the financial community - which has also attracted criticism from within the Obama administration - is a requirement for banks to separate trading in derivatives known as "swaps" from their regular, federally insured banking operations.

Lincoln defended the so called push-out provision, saying it was a "very important" part of the bill because if derivatives trades "don't pan out, it's the depositors or the Treasury left holding the bag." Lincoln said that she'll deal with other members of the conference committee with an open mind.

"I'm open to hearing if they have a better idea about how to protect consumers, depositors and taxpayers," Lincoln said.

Barr said that the administration's "core principles" on derivatives were that the financial trades be "transparent" - meaning that they are traded on an exchange - that trades go through a clearinghouse and that the government be given power to punish violators.

All are part of Lincoln's plan.

Not included in the administration's list of priorities is Lincoln's push-out plan.

The push-out plan and other items in the broad bill "are not part of that core set of questions and I think those will get worked through committee," he said.

Asked if that meant the administration opposed the Lincoln measure, Barr responded: "I think I've laid out pretty clearly what the president's core objectives are." Bill Kopsky, executive director of the Arkansas Public Policy Panel, a liberal community organizing group supports Lincoln's language.

He said it attempts to block banks from "gambling on derivatives while taxpayers stand behind them guaranteeing their losses." And other aspects of the bill, such as the creation of a Consumer Financial Protection Agency, protects people who have been especially "vulnerable to exploitation" by the financial services industry over the past 30 years as banking regulations have softened.

Members of the banking industry take a different view.

Arvest Bank in Bentonville uses interest rate swaps to hedge on long term loans it provides customers.

Scott Grigsby, the banks regional manager, said separating its swaps desk would be "very expensive," and result in less money being available to make loans.

Among other things, smaller banks take issue with proposed requirements for how much capital a bank must have on hand and the creation of the consumer protection agency.

"We don't like the bill at all," said Ken Hammonds, president of the Arkansas Bankers Association. "The majority of things that are in the bill were not the problem of community banks that serve people in Arkansas."

###

Cheyenne Hopkins, *Treasury Official Ducks Key Issues in Reform Bill*, American Banker, May 27, 2010.

WASHINGTON — Obama administration officials outlined their priorities Wednesday for regulatory reform as the bill is negotiated between the House and Senate, but the briefing was notable as much for what issues they ignored as those they tackled.

Michael Barr, Treasury assistant secretary of financial institutions, said the administration did not care whether a proposed consumer financial protection division was a separate agency or a bureau inside the Fed. While the battle over where the consumer regulator is housed is expected to be a key issue during the conference committee, Barr said the administration was fine with either approach.

"One sort of rents space from the Fed and the other doesn't, but they are both paths to real meaningful independence … so those paths are two different ways of achieving the president's objective," Barr said.

He also repeatedly dodged taking a position on a provision that would force banks to spin off their derivatives operations. Banks have complained that the measure by Senate Agriculture Committee Chairman Blanche Lincoln goes too far and are hoping to have it removed during conference.

They have received help from several regulators, including Fed Chairman Ben Bernanke, Federal Deposit Insurance Corp. Chairman Sheila Bair and former Fed Chairman Paul Volcker, who warned the bank would actually increase risks to the system.

While Treasury Secretary Tim Geithner has hinted he, too, opposes the amendment, the administration has refused to clearly state a position. During the briefing, Barr acknowledged that some of the language in the amendment was vague.

"There are different ways of interpreting the language of the provision and exactly how it would work and the regulations that would come out of it, so it's hard to tell today on how the provision would operate," he said. "If it would result in banking organizations not being able to engage in swap transactions, the provision could have very significant consequences. If it has a narrower set of interpretations, those consequences would be smaller, and the language of the provision is somewhat unclear on that point."

He also said that the goal of the Lincoln provision — to protect banks from risky practices — may be better dealt with through the Volcker Rule, which would ban proprietary trading and limit investments in hedge funds and private-equity firms.

"We do think the Volcker Rule addresses a core concern we had with proprietary trading by banking entities, and that provision is in the Senate bill," Barr said. "We obviously want to see it in the final product, and it addresses proprietary trading of all kinds of financial instruments, including derivatives instruments."

Barr also declined to take a position on a provision by Sen. Richard Durbin, D-Ill., that would require the Fed to ensure interchange fees on debit cards were reasonable and allow merchants to offer discounts for particular forms of payment. Such a measure is not part of the House bill.

Administration officials did say they preferred the Senate version of an amendment to audit the activities of the Fed. Under the House bill, the Government Accountability Office would conduct an audit on all of the Fed's activities, including monetary policy.

But the Senate adopted a measure by Sen. Bernard Sanders, I-Vt., that would require the central bank to disclose names of institutions it lent money to during the financial crisis. "We think the current Sanders amendment which is actually in the [Senate] bill is a good way of balancing the demands of transparency and openness with the need for monetary independence," said Diana Farrell, deputy director of the National Economic Council, the economic arm of the White House.

She also called for ensuring that the FDIC has the flexibility in a resolution process to provide guarantees to solvent firms to minimize the damage of a failure.

Overall, they said the two bills are strong measures encompassing their core objectives and downplayed the differences. But they acknowledged the lobbying fight is not over.

"We expect a lot more of the same [industry lobbying] but now very targeted," Farrell said. "I think it will be hard to imagine that can wage an even stronger lobbying battle, but they probably will."

###

Donna Borak, *In Feud Over Capital, FDIC Besting Fed*, American Banker, May 27, 2010.

WASHINGTON - The battle over an amendment to establish minimum capital requirements in the regulatory reform bill is the result of a long-standing feud between the Federal Deposit Insurance Corp. and the Federal Reserve Board.

The FDIC, which has argued for years that trust-preferred securities are a form of debt, not equity, successfully convinced Sen. Susan Collins, R-Maine, to add a provision to the Senate reform bill that would ban banks from counting trust-preferreds as Tier 1 capital - a move that would erase billions of capital from the system.

"We don't believe it absorbs losses," said Jason Cave, deputy to the FDIC chairman for supervision issues, of trust-preferred securities. Citing last year's stress tests, he said TRUPS did not provide "meaningful capital support for large banks."

But the Fed argues the amendment goes too far and would undermine its ability to negotiate with international regulators on the proposed Basel III capital accord. The central bank has long defined what counts as core capital for bank holding companies, and ruled in 1996 that trust-preferreds can account for up to 25% of Tier 1 capital.

"The Fed was the one that allowed it years ago and they don't admit to any mistakes," said Paul Miller, an analyst with Friedman, Billings, Ramsey Group Inc. "The FDIC doesn't have the regulatory power to eliminate it. The FDIC by themselves can't shut it down."

The Collins amendment would set minimum capital ratios for holding companies in part by referring to a 1991 law detailing prompt corrective action standards, which do not include trust-preferred securities in the ratio of Tier 1 capital to total assets.

The Fed opposes the amendment, which passed with little debate by voice vote, and has joined bankers in trying to remove or alter it when House and Senate lawmakers meet to hash out differences between their bills.

The Fed has argued that putting capital ratios into law is a mistake, preferring to leave such standards up to agency discretion.

"You can't be in the business of dealing with specific capital instruments, particularly hybrid instruments, in legislation ... that's the wrong place to do it," said Oliver Ireland, a former Fed lawyer and now a partner at Morrison & Foerster.

But it seems clear that regulators have been moving to eliminate trust-preferred securities as Tier 1 capital on their own. In interviews with current and former regulators as well as industry officials, few offered any defense of treating trust-preferreds as capital, noting they are a form of debt.

"Regulators have a strong preference for equity as the dominant source of Tier 1 capital," said Kevin Jacques, the Boynton D. Murch Chair in Finance at Baldwin-Wallace College and a former Treasury Department official. "It is the ultimate loss-absorbing element."

Ireland said investors also clearly favored equity.

"What we saw in the recent crisis is the market preferred tangible market equity," he said. "The way they seemed to judge institutions was on tangible market equity. The market was less confident with other types of capital instruments."

Industry officials and the Fed are trying to ensure any change that does take place has a transition period.

"Suddenly taking something away that has been considered capital can be quite problematic," said Randall Kroszner, a former Fed governor and economics professor at the University of Chicago. "You really need to give institutions enough time to be able to make adjustments."

The Collins amendment would affect all holding companies immediately if the bill becomes a law as is. But Collins has said her intention was to limit its impact to holding companies with more than $500 million of assets. Collins also has indicated that she would support some type of transition period. The banking industry has argued that existing trust-preferreds should be grandfathered.

The FDIC said it backs phasing in the requirement.

"There is some recognition that holding companies that rely heavily on trust-preferreds may not be able to get out of that immediately," said Paul Nash, deputy to the FDIC chairman for external affairs. "We want to recognize the market realities and give them some time to do it, but there will be no new trust-preferred issued that will count as Tier 1 capital."

Nash said he expects the final bill will include a transition period to give holding companies the chance to divest themselves of trust-preferreds and add new capital.

But the Fed is also concerned because the provision hurts its bargaining position on Basel III. Late last year, the Basel Committee on Banking Supervision proposed eliminating trust-preferreds as Tier 1 capital, but agreed to continue to talk about the issue.

Many said the Fed had hoped to extract some concessions from international regulators for eliminating trust-preferreds, a move that would not be possible if they were already not counted as Tier 1 capital. "They're currently in negotiations for Basel III and the Europeans are trying to eliminate TRUPS as capital," Miller said. "They really feel this undermines their negotiations."

Another industry source, who spoke on condition of anonymity, agreed. "It really undermines the U.S. position," the source said. "The Europeans can say, 'Wait a minute, one of your own sister agencies doesn't believe it should count, and Congress passed it.'"

Industry representatives said the issue should receive a full airing from Congress and regulators so that its impact is fully understood. They estimate that roughly 644 banks - mostly mid-sized institutions - would be hurt by the provision, and eliminate close to $130 billion in capital. "When you are going to address $130 billion-plus in capital in the banking system it warrants a hearing, it warrants a discussion, it warrants that people understand the ramifications of what they are doing before they do it," said Diane Casey-Landry, senior executive vice president and chief operating officer of the American Bankers Association.

For now at least, it seems likely that some part of the Collins amendment will survive. In a briefing with reporters on Wednesday, Michael Barr, the Treasury assistant secretary of financial institutions, expressed support for the measure. "We 100% share the goal of the Collins amendment," he said. "The basic goal of the Collins amendment is there should be higher capital in the system going forward. Large banks and large bank holding companies, particularly firms that are interconnected should hold significantly more capital than their smaller counterparties."

Still, Barr alluded to unspecified fixes to the provision. "There's some technical issues in the drafting that we hope to work through in the conference process," he said.

Cheyenne Hopkins contributed to this story.

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Silla Brush, *Obama administration downplays Lincoln's derivatives provision*, The Hill, May 27, 2010.

The Obama administration on Wednesday downplayed the importance of a provision in Wall Street overhaul legislation that would restrict banks' derivatives trading. Michael Barr, assistant Treasury secretary, told reporters that the provision to eliminate banks' in-house derivatives operations is not among President Barack Obama's "core" objectives for new regulations of the $600 trillion dollar market for derivatives. Senate Agriculture Committee Chairwoman Blanche Lincoln's (D-Ark.)

"push out" provision has met with fierce resistance from financial and business lobbyists, Republican and Democratic senators and federal regulators, including Federal Reserve Chairman Ben Bernanke. Barr said the president's focus is on moving to central clearing of derivatives, increasing transparency of the market, ensuring prudential oversight of derivatives dealers and swap participants and establishing strong anti-abuse measures. "Those four key objectives need to be met in the final bill," Barr said. "Both the House and the Senate have strong provisions on this, and we're going to be working to make sure that they are in conference. There are other provision like that Lincoln provision that are not part of that core set of questions, and I think those are going to be worked through in conference." The House and Senate are aiming to reconcile differences between their bills before the July 4 recess. The Lincoln provision is one of the biggest; the House legislation that passed in December contains nothing similar. "Using swaps to manage risk and using depositors' money for casino-style swap dealing are two very different things," Lincoln said. "The Senate bill moves this risky activity out of the bank and into fully regulated entities, protecting depositors and American taxpayers." The derivatives market is a lucrative business for big banks. National banks recorded $23 billion in revenue in 2009 on derivatives trading, according to the Office of the Comptroller of the Currency. Five large banks represent 97 percent of the total face value of the market in derivatives, which are used to hedge a variety of risks, including changes in interest rates or the potential for an asset to default. Many lawmakers and outside critics blame derivatives for exacerbating the financial crisis in 2008. Barr said the effect of the Lincoln provision is "somewhat unclear" but that it could have a big impact on the banking industry. "If it would result in banking organizations not being allowed to engage in swap transactions, the provision could have very serious consequences," Barr said. "If it has a narrower set of interpretations, its consequences would be smaller." The Senate legislation includes language backed by Paul Volcker, an administration adviser, that seeks to bar proprietary trading at banks. Barr said the Volcker provision may also limit the speculative nature of derivatives trading at large banks. "It address proprietary trading of all kinds of financial instruments, including derivatives instruments," Barr said Barr and Diana Farrell, deputy national economic adviser, declined to comment on the administration's position on the Senate bill's effort to rein in debit card interchange fees. Senate Majority Whip Dick Durbin (D-Ill.) successfully added a provision to limit fees paid by merchants to debit card issuers, including banks and credit unions. The provision was not part of the House legislation. "We frankly have not developed a formal position on it," Barr said.

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Dylan Matthews, *Wonkbook: Shrinking jobs bill; Medicaid costs; SEC to track trading,* Washington Post, May 27, 2010.

The latest jobs bill is being pared down to cater to centrist members of Congress. Will this stop additional bills in the future? Meanwhile, a study suggests that the federal government will bear almost the entire brunt of Medicaid expansion. And the SEC is proposing a database to track trades. Welcome to Wonkbook.

Top Stories

The jobs bill is getting trimmed down, reports David Rogers: "With time running out, Democrats pared back their more than $190 billion jobs and economic relief bill Wednesday, hoping to win over nervous moderates and muster the votes for passage before Memorial Day. As labor unions weighed in, the behind-the-scenes maneuvering took on the character of an old-fashioned brawl, matching union leaders against a fierce business-backed lobbying campaign to derail the bill and its tax reforms affecting multinational corporations."

The federal government will pay for almost all of health care reform's Medicaid expansion, reports Alec MacGillis: "The Kaiser study released Wednesday predicts that the increase in state spending will be relatively small when weighed against the broad expansion of health coverage for their residents and the huge influx of federal dollars to cover most of the cost. Even the small increase in Medicaid costs may be canceled out by the savings states will enjoy from no longer having to subsidize the uncompensated care of uninsured people who will be on Medicaid, study co-author John Holahan said."

The SEC is setting up a database to track all trades on all exchanges, reports Zachary Goldfarb: "The Securities and Exchange Commission took a step Wednesday toward making that job a bit easier by proposing to unify the collection of trading data across all stock and options markets. The many exchanges and self-regulatory organizations that Wall Street has set up to monitor financial activity have different standards for keeping track of trades, which occur at lightning speed on electronic hubs located around the world."

Adorable children interlude: The Langley Schools Music Project plays "I'm Into Something Good". Table of Contents: The US may lose money on its stake in AIG (and other FinReg news); BP is already fighting new offshore drilling regulation (and other energy news); Tim Geithner is in Europe urging fiscal discipline (and other economic news); and police chiefs say the Arizona immigration law will increase crime (and other domestic policy news).

FinReg

The federal government's investment in AIG may not be repaid in full, reports Sewell Chan: "The American International Group is likely to repay the $83.2 billion it owes the Federal Reserve, but whether an additional $49.1 billion in taxpayer investments in the company will ever be recovered remains uncertain, officials said Wednesday. Two discordant views of the company's condition emerged after a nearly six-hour hearing about the government bailouts. Elizabeth Warren, the chairwoman of the Congressional Oversight Panel for the Troubled Asset Relief Program, said afterward that the hearing had been 'an exercise in great frustration.'"

Treasury officials are cool to the Blanche Lincoln spinoff provision in FinReg, reports Carrie Budoff Brown: "'The key for us is what are the president's core set of reforms, and are those in the bill?" [assistant Treasury secretary Michael] Barr said, citing the need to require transparency of all derivatives transactions, central clearing and exchange trading of derivatives, prudential oversight, and strong enforcement. 'Those four key objectives need to be in the final bill,' he continued. 'There are other provisions like the Lincoln provision that are not part of the core set of questions, and I think those are going to be worked through in Congress.'"

Treasury made $1.32 billion selling Citigroup shares, report Matthias Rieker and Tom Barkley: "The sale of 1.5 billion shares by the Treasury Department reduced the size of the taxpayer-owned stake in the third-largest U.S. bank to about 22% from the previous 27%.--In a statement Wednesday, the agency said it plans to sell an additional 1.5 billion shares of Citigroup, out of a total of 6.2 billion still held by the U.S. government. Treasury officials said that Morgan Stanley, which was hired to manage the government's divestment, would complete the next phase of the sales effort by June 30 even if not all 1.5 billion shares are sold."

Lenders used flawed risk models before the economic crash, reports James Hagerty: "A long period of strong economic growth and rapidly rising house prices pushed defaults down to unusually low levels and created a 'mirage' of adequate risk management, according to the study by Clifford Rossi, a former banker who is now a finance professor at the University of Maryland. Because defaults were so low, lenders grew more willing to accept risk as they pursued market share and sought to please investors with rapid earnings growth, Mr. Rossi said in the study--'Anatomy of Risk Management Practices in the Mortgage Industry: Lessons for the Future.'"

European banks are hoarding cash, report Carrick Mollenkamp, David Enrich, and Mark Gongloff: "In the latest signs of stress for European banks, new data show they are increasingly hoarding cash while borrowing far less in a key short-term funding market. In the past month, the amount of short-term IOUs, or commercial paper, issued by some European banks in Spain, Portugal and Italy has fallen, according to bankers operating in the financial hubs of London and Brussels. That is potentially a sign money-market funds and others that buy the debt are refusing to do business with these banks. At the same time, banks fortified with cash are keeping a tighter rein on it by moving it to the European Central Bank rather than lend it to other banks."

Politicos are overselling financial reform, writes Joshua Green: "First, the new financial regulations are the most profound since the Depression chiefly because most of what Congress did in the interim was to eliminate regulations, which brought on the recent crisis.Ã¦Second, whatever Obama signs into law will be modest given the scope and severity of the crisis, nothing like the New Deal reforms..--The third point likely to be underplayed is that this unusual dynamic owes nothing to the integrity of the senators and everything to the anger of the American public."

FinReg should give free access to credit scores, writes Michelle Singletary: "'I'm very pleased that the bill includes my credit score amendment, which is going to help arm consumers with the information they need to take control of their own financial health,' said Sen. Mark Udall (D-Colo.), who proposed the Fair Access to Credit Scores Act of 2010. Well, it's going to arm some people. To be truly significant, the final bill needs to give free access to credit scores for everyone, regardless of any action taken by a creditor or company. The earlier people have this information, the more likely they can make changes to improve their scores."

Classic rock cover interlude: Wye Oak plays The Kinks' "Strangers".

Energy

BP is already lobbying against new offshore drilling regulation, reports Elizabeth Williamson: "Since the April 20 oil rig explosion that started the Gulf spill, BP's lobbyists and crisis communications experts have helped to shore up congressional opposition to measures punishing oil companies, and moved to position BP as an ally with the government to manage the crisis. After the spill, the company brought on crisis communicator Hilary Rosen, former Democratic congressional staffer, former chief executive of the Recording Industry Association of America, and a current editor-at-large for HuffingtonPost.com."

BP says the "top kill" technique is "proceeding as planned", reports Joel Achenbach: "The 'top kill' is underway, success uncertain. BP engineers are pumping mud at a furious rate into the damaged blowout preventer that sits on the uncapped well at the bottom of the Gulf of Mexico. The high-risk, high-reward maneuver comes five weeks into the oil spill crisis amid an intensifying atmosphere of political recrimination that has spread from the Gulf Coast to the White House and Congress. The early bulletins on the top kill were encouraging. 'The operation is proceeding as we planned it,' BP chief executive Tony Hayward said Wednesday evening, adding that it would be 24 hours before BP knows if the well is dead."

Obama thinks the oil spill underscores the urgency of climate change legislation, reports Carol Lee: "Obama pivoted off the current crisis to reinforce how dangerous the United States' dependence on oil is and to press for energy and climate change legislation. 'We all know the price we pay as a country,' Obama said. 'With the increased risks and increased costs, it gives you a sense of where we're going. We're not going got be able to sustain this kind of fossil fuel use. This planet can't sustain it.'

Ken Salazar still supports continued drilling, reports Jake Sherman: "The policy will 'strengthen safety and improve overall management, regulation and oversight.' No drilling permits will go forward, he plans to say, and legislation is pending that would give $29 million to his department for inspecting platforms until investigations are complete. But he remains committed to offshore drilling for a 'new energy future.' 'Offshore development is a necessary part of that future,' Salazar said, according to prepared testimony."

There are five questions Obama needs to answer on the spill, writes Karen Tumulty: "1. In explaining and defending your decision in March to open up additional offshore areas to drilling, you argued that improvements in technology have made drilling significantly less risky. Just 18 days before the explosion of the Deepwater Horizon drilling rig, you said: 'It turns out, by the way, that oil rigs today generally don't cause spills. They are technologically very advanced.' What kind of assurances were you given that this was the case and by whom? What do you think of those assumptions now?"

Everyone's a socialist when an oil rig explodes, writes EJ Dionne: "'Deregulation' is wonderful until we discover what happens when regulations aren't issued or enforced. Everyone is a capitalist until a private company blunders. Then everyone starts talking like a socialist, presuming that the government can put things right because they see it as being just as big and powerful as its Tea Party critics claim it is. But the truth is that we have disempowered government and handed vast responsibilities over to a private sector that will never see protecting the public interest as its primary task. The sludge in the gulf is, finally, the product of our own contradictions."

Daytime television interlude: RIP, The Tyra Banks Show.

Economy

Tim Geithner told European leaders to strive for fiscal discipline, report Bob Davis and Ian Talley: "U.S. Treasury Secretary Timothy Geithner landed in Europe and reasserted a traditional American role of dispenser of financial advice to the world, telling European governments to get their fiscal houses in order.Â¿Inside No. 11 Downing Street, the home of his British counterpart, Mr. Geithner pushed continental Europe to speed up the rescue of debt-laden economies, and to not stint on fiscal stimulus. Thursday, in Frankfurt and in Berlin, he will chide the Germans about their recent move to ban certain financial practices, which has spooked markets."

Increasing jobless claims pose a mystery to economists, reports Kelly Evans: "Employers have added more than half a million private-sector jobs this year, and separate leading indicators of job growth--such as rising overtime, a growing workweek and temp hiring--are pointing to further gains.--It may be that special factors like the generosity of jobless benefits and the lag between layoffs and filings are making claims stickier lately. And most economists think the recent spike will prove temporary, with Thursday's report expected to show claims falling back to about 455,000 last week."

The OECD's global growth projection is up, report Paul Hannon and William Horobin: "In its twice-yearly Economic Outlook published Wednesday, the Paris-based think tank cited strong growth in developing economies and the rapid rebound in world trade to predict that the OECD's 31 members will see their combined gross domestic product will increase 2.7% this year, and 2.8% next. In November, the OECD forecast growth in its members at 1.9% this year and 2.5% next. The OECD also raised its growth forecasts for the global economy. Having previously expected world GDP to rise 3.4% this year and 3.7% next, it now expects growth of 4.6% in 2010 and 4.5% in 2011."

Expiring tax credits boosted home sales, reports Renae Merle: "The biggest boost, economists said, came from an $8,000 tax credit available to some first-time home buyers and a $6,500 tax credit available to some repeat homeowners who buy a new primary residence. To qualify for the tax credits, a buyer must have entered into a contract by April 30 and complete the transaction by June 30. The tax credits also helped boost existing home sales, which jumped 7.6 percent in April, according to an industry report released this week. Now that the tax credits have expired, many economists are expecting to see sales activity in both markets begin to slow. The tax credits probably spurred some people planning to buy a house to purchase them earlier, analysts said."

House Democrats are speeding up deficit reduction, reports Jared Allen: "House Majority Leader Steny Hoyer (D-Md.) said during a Wednesday morning meeting with committee chairmen that he and Speaker Nancy Pelosi (D-Calif.) intended to hold them to a Friday deadline to submit detailed lists of duplicative and wasteful programs that can be eliminated from the $3 trillion budget. 'You need to produce something on this,' Hoyer said, according to a person in the room. 'You all need to find some programs to cut.'"

Entrepreneurship can solve government problems, writes Matt Miller: "Entrepreneurs, given the chance to ply their talents, can. And liberals -- paradoxically, the group that tends to bash business the most -- have the greatest stake in these entrepreneurs' success. Here's why. Making our health-care and education sectors run smarter and better will become a national imperative in the era of permanent fiscal pressure ahead, an effort with special stakes for those who believe in using government for affirmative purposes. Even if taxes are inevitably going up as the baby boomers retire, there will be limits to how high voters will let taxes rise. That means the vast waste in our health-care and education systems will soon take a huge bite out of other liberal priorities."

EU austerity requirements are hollow, writes David Ignatius: "Investors keep pounding Europe in part because they don't yet see the mechanisms that will enforce discipline. The European Union just established a trillion-dollar bailout fund, but what happens when it runs out? There's a pledge to impose strict conditions on Greece, Portugal and the rest in exchange for loans, but it still isn't clear how Brussels will make this austerity regime work. The problem is the one Napolitano describes: Europe remains a union of convenience, which can be discarded by national governments when it suits their purpose."

Standup interlude: Aziz Ansari on the perils of Craigslist roommates.

Domestic Policy

US police chiefs say the Arizona immigration law will increase crime, reports Spencer Hsu: "Arizona's new crackdown on illegal immigration will increase crime in U.S. cities, not reduce it, by driving a wedge between police and immigrant communities, police chiefs from several of the state's and the nation's largest cities said Wednesday. Arizona's law will intimidate crime victims and witnesses who are illegal immigrants and divert police from investigating more serious crimes, chiefs from Los Angeles, Houston and Philadelphia said before meeting with Attorney General Eric H. Holder Jr. to discuss the measure."

Neither side is happy about the jobs bill, reports Perry Bacon: "'Economic studies consistently show that when workers collect longer UI benefits they also stay unemployed longer,' said James Sherk, a fellow at the conservative Heritage Foundation. 'This does not happen because unemployed workers are lazy, or want welfare handouts. It happens because unemployment insurance changes the jobs the unemployed look for.'Â¿'It's definitely a good bill,' said Ross Eisenbrey, vice-president of the liberal Economic Policy Institute, of the legislation the House is considering. 'But we should be doing twice as much as we are considering right now. We have to do more about high unemployment now.'"

John McCain and Tom Coburn are proposing cuts to offset war spending, reports Ed O'Keefe: "Sens. Tom Coburn (Okla.) and John McCain (Ariz.) said they will not vote for the $59 billion war spending bill unless lawmakers come up with ways to offset its costs. Their first proposal would cap the number of workers at each federal agency and implement a one-year freeze on pay raises, bonuses and other salary increases for civilian federal workers, saving $2.6 billion. It would also cancel $1.8 million in expenses for a commission reviewing the financial crisis, eliminate $68 million in foreign aid, cancel a $500 million State Department training facility planned for a Maryland community that opposes its construction and collect more than $3 billion in unpaid taxes from federal workers."

The House is set to pass a package to stop 100,000 teacher layoffs, reports Nick Anderson: "Senior congressional Democrats and the Obama administration scrambled Wednesday to line up support for $23 billion in federal aid to avert an estimated 100,000 or more school layoffs in a brutal year for education budgets coast to coast. As early as Thursday, the House Appropriations Committee expects to take up a bill that couples the school funding with spending for the Afghanistan war -- a measure that has bipartisan support. But a parallel push in the Senate stalled this week after a leading proponent concluded that he couldn't muster enough votes to surmount Republican opposition."

Mitch McConnell is condemning the jobs bill as "reckless", reports Meredith Shiner: "'Let's be perfectly clear: there's one reason Democrats are having trouble getting an agreement on this bill and one reason only Â¿ and that's because it's so blatantly reckless,' McConnell said. 'Europe's in the midst of what German Chancellor Angela Merkel describes as an existential crisis, all brought about by governments that spent money they didn't have. Americans are watching this crisis play out, and they see Democrats doing the same thing here day after day after day. 'This extenders package is just the latest example, just the latest evidence of a majority that's out of control.'"

The property tax is faring surprisingly well in the recession, writes Kim Reuben: "Nationally, property tax revenues have yet to fall both because the levy tends to be backward-looking (it takes a while for assessed values to catch up with reality on both the upside and the downside) and because local governments can raise rates. The strength of the property tax was the main driver of the small positive growth in overall state and local taxes for the fourth quarter of 2009.Â¿New research by Byron Lutz, Raven Malloy and Hui Shan illustrates that house value declines don't necessarily lead to lower property taxes, and when they do, it can take a while."

Small business groups are mounting a legal challenge to health care reform because it threatens business owners, writes Dan Danner: "National Federation of Independent Business (NFIB), on behalf of small business owners nationwide, has joined the lawsuit with 20 states mounting a constitutional challenge to this devastating new health-care law. This law is death by a thousand cuts for small business owners. According to the Congressional Budget Office (CBO), the overhaul will cost about $115 billion more than first projected, bringing the total to more than $1 trillion. Small businesses will also now have to deal with an onslaught of new taxes and burdensome paperwork."

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Damian Paletta, *White House Signals It Won't Fight to Keep Rule on Derivatives*, The Wall Street Journal, May 26, 2010 6:07 PM ET.

WASHINGTON—A senior Treasury Department official on Wednesday said a controversial provision that could force banks to spin off their derivatives portfolio was not part of the "core" changes White House officials wanted in the financial overhaul, offering the second signal in two days that the provision could be stripped out.

But Treasury Department assistant secretary Michael Barr went out of his way not to disparage the amendment or say it should be killed. Rather, he said the provision's wording left it open to various interpretations that could have varying impacts on the financial system.

"It's a little bit hard to tell with certainty today how the provision would operate," Mr. Barr said of the provision, written by Senate Agriculture Committee Chairman Blanche Lincoln (D., Ark.). "If it would result in a banking organization not being able to engage in swap transactions, the provision could have very significant consequences. If it has a narrower set of interpretations, those consequences would be smaller, and the language in the provision is somewhat unclear on that point."

On Tuesday, House Financial Services Committee Chairman Barney Frank (D., Mass.) said the provision "goes too far," and suggested it wasn't necessary for new financial rules.

Mr. Barr's statements came as lawmakers and administration officials began the process of trying to reconcile differences between the House and Senate financial overhaul bills, a process Democrats hope to complete by July 4.

In addition to trying to fend off efforts by bankers and business groups to change the bill, lawmakers and government officials will face the politically dicey process of jettisoning or modifying powerful lawmakers' pet provisions in the bill.

The stakes are high, as offending any single lawmaker could have consequences for final passage. The bills narrowly passed in each chamber of Congress, so losing just a handful of votes could derail the overhaul.

Administration officials showed less restraint when asked to weigh in on the practices of the financial community.

"We expect [lobbyists] to be crawling all over the Hill as they've been doing every day for the past year to be promoting scare tactics of all sorts of things that are not in the bill, or consequences that would not be rendered by the bill," Diana Farrell, deputy director of the White House National Economic Council said at the press conference.

Mr. Barr was asked repeatedly about the derivatives provision, and he mostly sidestepped every opportunity to define the White House's view on the matter.

He acknowledged it wasn't one of the "core" changes to derivatives rules the White House wanted, but he didn't say necessarily that the administration would fight to kill it. Core to the bill, from the White House's perspective, is that derivatives trading be done in a much more transparent way, with tighter regulation and more "anti-abuse" powers, Mr. Barr said.

"There are other provisions like the Lincoln provision that are not part of that core set of questions, and I think those are going to get worked through in conference," Mr. Barr said.

Bankers, regulators and others have said the provision could essentially force all derivatives operations out of banks and into hedge funds and other companies that face less regulation.

Lawmakers and administration officials face another difficult dance with a provision that would make it much harder for banks to charge retailers high fees for debit-card transactions. This provision was added to the Senate bill by one of the chamber's most powerful lawmakers, Dick Durbin (D., Ill.). It wasn't in the package of changes White House officials wanted, and Mr. Barr said, "we frankly have not developed a formal position" on it.

Similarly, Mr. Barr said the administration fully supported the gist of a controversial amendment added by Sen. Susan Collins (R., Maine) that would change the capital requirements for bank-holding companies. But he said the administration would push for what he called technical changes. The banking industry is pushing for fundamental changes to the provision, arguing that it could force scores of banks to raise large amounts of reserves.

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Zachery Kouwe, *Blanche Lincoln's Derivatives Provision All But Dead Now*, DealBreaker, May 26, 2010 4:50 PM ET.

Blanche Lincolns famed derivatives legislation, which would basically prevent any big bank from ever trading CDS again, has already been chastised by Barney Frank. Now, a senior Treasury official has essentially delivered another blow to the Lincoln legislation.

In a briefing for reporters today, Assistant Treasury Secretary Michael Barr said the derivatives rules were not part of the administrations four oecore objectives for financial reform. Translation: The Lincoln legislation can die a slow death for all we care.

oeThere are other provisions, like the Lincoln provision, that are not part of that core set of questions and I think those are going to get worked through, Barr told reporters.

He stopped short of explicitly disowning the Lincoln provision, however, when asked whether the administration opposes it. oeI think Ive laid out pretty clearly what the presidents core objectives are, he said.

Both the House and Senate have approved the overall package of financial reform legislation. The two bills will be reconciled in a conference between the two chambers starting in early June. They hope to deliver a final bill to President Obama before July 4.

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Ronald. D. Orol, *Obama fights effort to have Congress OK guarentees*, MarketWatch, May 26, 2010 2:58 PM ET.

WASHINGTON (MarketWatch) -- The White House on Wednesday took issue with a provision in sweeping bank-reform legislation that would require bank regulators to get congressional approval before they could provide debt guarantees to solvent firms in the event of a financial crisis.

"Yes we are concerned about a provision that would limit the flexibility of people in the heat of resolution to be able to provide liquidity to solvent firms in the form of loan guarantees," Diana Farrell, Deputy Director of the White House's National Economic Council, told reporters. "And we'll continue to work with Congress to make sure that that is properly fine-tuned."

The congressional approval measure was based on a deal struck between Senate Banking Committee Chairman Christopher Dodd, D-Conn., and Sen. Richard Shelby, R-Ala., the panel's ranking member. Specifically, the Federal Deposit Insurance Corp. would be required to seek approval from Congress before providing debt guarantees -- to solvent institutions -- in the event of an unfolding crisis.

It is part of a section of the bill seeking to limit the collateral damage to the markets of a failing Lehman-like mega-bank.

Both the House and Senate bank reform bills, which lawmakers will begin to reconcile in the coming weeks, contain a so-called resolution authority package of provisions. With one aspect of the package, bank regulators will have the authority to inject funds into solvent financial institutions so that they don't collapse when a mega-bank is failing.

The White House would like the Federal Deposit Insurance Corp. to have the authority to quickly provide debt guarantees to solvent funds, to help stabilize so-called healthy banks, without waiting for the approval from Congress. Congressional observers worry that a congressional rejection -- seeking to protect taxpayers -- could hurt future administrations' ability to limit the ability of a failing bank's impact on the markets.

"We want to make sure that the resolution authority is flexible enough to minimize -- if not altogether avoid -- any collateral damage from a failing institution," said Farrell.

SEC self funding?

Farrell also said the White House was not going to get into the middle of a brewing battle emerging between the House and Senate over whether the Securities and Exchange Commission should be self-funded.

The Senate approved a provision that would allow the SEC to be self-funded and no longer subject to the annual appropriations process, which includes vetting and approval on Capitol Hill.

However, the House bill, which was approved in December, would authorize Congress to double the SEC's funding over five years. Based on that measure the SEC would receive $1.3 billion in 2011, $1.5 billion in 2012, $1.8 billion in 2013, $2 billion in 2014 and $2.3 billion in 2015. But the SEC argues that authorization doesn't translate into the kind of funds and assurances the SEC needs. With the House measure, the Treasury Department has the legal authority to give the money to the SEC, however that money isn't provided unless Congress appropriates the money.

"The whole question of funding and appropriations has many jurisdictions in the chambers," said Farrell. "We recognize that the mandate for the SEC has grown even though their resources have not, and that needs to be brought into alignment. Exactly how Congress is going to resolve that, we're not going to weigh in."

Lincoln provision

Senate Agriculture Committee Chairman Blanche Lincoln (D., Ark) is expected to champion a controversial measure she introduced that would force big banks to transfer derivatives units to separate well-capitalized units. It's unclear whether the measure would prohibit big banks from engaging in derivatives transactions.

Michael Barr, Assistant Secretary of the Treasury for Financial Institutions, told reporters that there are different ways of interpreting the language on the provision.

"If it would result in banking organizations not being able to engage in swap transactions, the provision could have significant consequences," Barr said. "If it has narrower set of interpretations, the consequences would be smaller, and the language of the provision is somewhat unclear on that."

Lincoln is expected to have tough opposition. Frank, a key critic, said Tuesday he opposes the Lincoln measure.

"There was a special rule by Sen. Lincoln that says no derivatives at all," House Financial Services Committee Chairman Barney Frank (D., Mass) said at a Compliance Week annual conference. "Well, that goes too far. Certainly, banks ought to be able to hedge their own commercial risk with derivatives. They ought to be able to hedge for customers."

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Binyamin Appelbaum, *In Mandating Banks' Reserves, regulators Seek to Balance Growth and Safety*, The New York Times, May 26, 2010.

WASHINGTON -- Capital is the body fat of banking: too much is debilitating, too little is fatal. During the financial crisis, as large banks burned through their capital reserves, governments were forced to add padding at public expense.

Now one of the most consequential decisions about new restraints on the banking industry -- how much more capital banks should hold in their rainy day reserves -- is being decided not on Capitol Hill but far from Washington, by a committee based in Basel, Switzerland.

The Obama administration is pursuing an international agreement to make banks hold significantly larger reserves, which it regards as essential to increase the stability of the global financial system. It wants to complete the negotiations, which are being coordinated by the Basel Committee on Banking Supervision, by the end of the year.

The world's largest banks have responded with consternation, arguing that the proposed standards would tie up too much money that otherwise could be used for lending, a loss that would curtail economic growth.

The debate between regulators and banks is about the proper balance between growth and safety, but the implications are much broader. In fixing reserve requirements, governments are deciding how much horsepower belongs under the hood of the global economy.

"We need them to get the balance right," said Douglas J. Elliott, a Brookings Institution expert who has studied the Basel proposals. "More safety will make loans more expensive. We don't want to buy so much safety that the economy suffers."

There is tremendous political pressure to decide quickly. With the Senate's passage of financial overhaul legislation, administration officials said that increasing capital and liquidity reserve requirements was the critical remaining piece in their efforts to overhaul financial regulation.

The Group of 20 nations affirmed the year-end deadline at its April meetings in Washington, notwithstanding divisions between the United States and some European nations on a range of banking issues.

"Reform is multifaceted, but at its core must be stronger capital standards," the group wrote in its communique. "We recommitted to developing by end-2010 internationally agreed rules to improve both the quality and quantity of bank capital and to discourage excessive leverage."

The rules governing capital are dry and technical, a subject that even bankers leave to specialists, but they have become the single most important tool that governments use to restrain and preserve financial institutions.

Banks are required to set aside capital in proportion to loans and investments. The rules shape behavior because banks must hold more capital against assets or loans that regulators consider more likely to lose value.

Capital is so important that the United States has pushed for international agreements on reserve requirements so as not to place American banks at a disadvantage. As a result, the financial bills passed by the House and Senate leave the issue largely untouched.

The first international agreement, known as Basel I, was reached in 1988. Work began almost immediately on a revision, but the standards known as Basel II were not completed until 2004. Now officials are racing to overhaul that framework in little more than a year.

"We're going to be pushing through this year to make sure that happens. That's an absolutely critical part of reform," said Michael S. Barr, assistant Treasury secretary for financial institutions.

The industry mostly is reconciled to an increase -- many bankers regard it as necessary -- but in comment letters to the Basel committee made public in mid-April, large banks from across the world linked arms to argue that the initial proposals went much too far.

For instance, analysts for JPMorgan Chase estimated that banks would need to raise prices by 33 percent to maintain profits. They also predicted that the Basel proposals would reduce the gross domestic product of the United States by "a multiple" of $30 billion.

Banks also warned that governments were piling on proposals to tax and constrain the beleaguered industry.

"The cumulative financial impact represents a level of conservatism so extreme that it will harm the banking sector, banking customers and national economies," Wells Fargo's chief financial officer, Howard I. Atkins, wrote in a letter to the committee.

Most large banks held more capital than regulators required in the fall of 2008. But they did not hold enough to survive the financial crisis. As borrowers defaulted and the value of investments fell sharply, many banks failed or were fortified with public money. The United States distributed more than $165 billion to nine of the largest American banks.

The Basel committee is still discussing how much to increase the minimum capital requirement. The amount will depend in part on the results of a study estimating the impact of the proposals on banks, scheduled for discussion at the next meeting of the G-20 in June.

Already on the table, however, are an overhaul of the risk-weightings, and a tighter definition of capital, closing loopholes that allowed banks to count borrowed money and projected profits as part of their reserves.

Separately, the proposals would create a new reserve requirement, mandating that banks keep enough cash on hand -- or assets sold easily for cash -- to pay their bills for 30 days. Some banks ran out of cash during the crisis as depositors withdrew, investors fled and the borrowing markets shut down. The new rule, called a liquidity requirement, is intended to ensure that banks can survive such a financing drought.

A central point of international disagreement is whether banks should be allowed to hold smaller reserves because it is understood that central banks will provide loans during times of crisis.

Financial analysts say that some nations, including France, are reluctant to make banks duplicate the safety net that the government provides already.

"Trying to get global buy-in is going to be hard to achieve," said Frederick Cannon, a banking analyst at Keefe, Bruyette and Woods.

Banks argue more broadly that the initial Basel proposals are based on the extremes of recent experience, and that the cost of preparing for such extremes is too high in terms of lost lending and growth.

The liquidity standard, for example, directs banks to prepare for the loss of 15 percent of deposits. A study of 121 recent bank failures by the American Bankers Association found the average institution lost 2.1 percent of its deposits. Only one bank lost more than 15 percent.

###

Carrie Budoff Brown, *White House cool to derivatives ban*, Politico, May 26, 2010 4:28 PM ET.

Top administration officials declined Wednesday to reject - or embrace - a controversial proposal in the Wall Street reform bill that would force big banks to spin off their derivatives operations, a cool reception that suggests the provision might be expendable to the White House.

Michael Barr, an assistant treasury secretary, and Diana Farrell, deputy director of the National Economic Council, repeatedly deflected questions on the provision - authored by Sen. Blanche Lincoln (D-Ark.) - which has drawn fierce opposition from the industry, Republicans and some Democrats. It is expected to be a key flash point in the joint House-Senate conference committee set to begin work next month.

"The key for us is what are the president's core set of reforms, and are those in the bill?" Barr said, citing the need to require transparency of all derivatives transactions, central clearing and exchange trading of derivatives, prudential oversight and strong enforcement.

"Those four key objectives need to be in the final bill," he continued. "There are other provisions like the Lincoln provision that are not part of the core set of questions, and I think those are going to be worked through in Congress."

Pressed by reporters for the fourth time to stake out a position, Barr declined once again. "I think I've laid out pretty clearly what the president's core objectives are," he said at a briefing.

Lincoln, chairwoman of the Senate Agriculture Committee, faces a tough fight in the conference committee to persuade the House and Senate to maintain the provision. Along with the administration, House Financial Services Committee Chairman Barney Frank (D-Mass.) and Senate Banking Committee Chairman Chris Dodd (D-Conn.) have been cool to the idea of forcing banks to shed their derivatives business.

On the proposed new consumer financial protection agency, Barr and Farrell said the administration was comfortable with either the Senate or House language. Even though the

Senate would place the agency within the Federal Reserve, the agency would enjoy independent rulemaking, authority, funding and enforcement, Farrell said.

"Our assessment is [that] both the House and the Senate version deliver that," she said.

The officials declined to take a position on an amendment authored by Senate Majority Whip Dick Durbin (D-Ill.) that curtails credit card "interchange" fees, charged to merchants by lenders whenever a customer uses a credit card.

"There are some issues that have arisen in the process that were not part of the president's original package, and we have, frankly, not developed a position on them," Barr said.

Farrell said the White House views both the House and Senate bills as "very strong" and does not see any major stumbling blocks to signing the bill into law this year.

"It would stand to reason the likely outcome of this is a bill that meets the true test of reform," she said. "I don't think there is anything we see now that would suggest we couldn't resolve our differences."

###

Tim Fernholz *Two Differing Approaches to U.S. Global Leadership*, Tapped, May 26, 2010 2:47 PM ET.

One oft-noted fact about U.S. financial-reform efforts is the significant international component to the project waiting in the wings -- with globalization, it's necessary to craft, as best we can, an international regulatory regime that prevents bad practices from springing up in one country and affecting the entire world. In practice this means negotiations on prudential requirements like capital reserve standards, rules about exchanges and bankruptcy, and frameworks for capital flows. Ideas like these are knocked around at global conferences like Basel I and II that proceed at a maddeningly slow pace and often feature deep-seated disagreement.

The U.S., however, has distinguished itself by being far ahead of other countries in terms of its financial reform efforts; other global market centers, primarily in Europe, are still in earlier stages of the debate. This has prompted concerns that the U.S. may be out of step with the global community, but at a White House briefing earlier today, Assistant Treasury Secretary Michael Barr made a different argument: The U.S. should lead by example.

"We will lead more by action than by talk," he said. "[We are] starting U.S. reform here so we can work with our colleagues around the world." This has already had an affect, he continued, on the derivatives debate in Europe, where leaders have coalesced around ideas similar to those in U.S. financial-reform legislation after early discussions fractured. American championing of higher capital standards has also raised the profile of the topic abroad, as the always-excellent Binyamin Appelbaum chronicles here.

This contrasts with the Obama administration's approach to global-warming legislation, which has been marked with a dual track approach: legislation at home and negotiations abroad that rarely seem to match up; indeed, despite recent international agreements, it is unclear whether the cap-and-trade bill stands a chance in Congress this year.

While there may be different dynamics in the climate-change debate that I'm not familiar with -- broader up front costs across the economy, more controversy over the nature of the problem -- it seems to me that following a financial-reform approach would give the U.S. greater leverage when negotiating climate change agreements abroad. Showing our approach, rather than telling people about it, could be a powerful argument as negotiators descend into the great morass of international debate.

###

Cheyenne Hopkins, *Reg Reform Bill Misses Opportunity to Overhaul Agencies*, American Banker, May 24, 2010.

WASHINGTON — Though House and Senate lawmakers still have plenty of issues to work out in the final regulatory reform bill, one thing is already clear: The legislation will do little to streamline the fractured financial regulatory framework.

In the aftermath of the financial crisis, many observers said reform was the best opportunity in decades to rework the supervisory structure, which includes four banking regulators and 50 states with overlapping authorities.

But in the end, the final bill is likely to get rid of only one agency — the Office of Thrift Supervision — and leave most of the rest of the existing system intact.

"It's a huge missed opportunity to restructure our regulatory system in a manner that makes sense," said Kevin Jacques, the Boynton D. Murch Chair in Finance at Baldwin-Wallace College and a former Treasury official. "Politically, I completely understand why the administration did what it did, but economically, this is a terrible crisis to have wasted."

Every president in recent memory has tried to revamp the regulatory structure, with many — including proposals from Presidents George H.W. Bush, Bill Clinton and George W. Bush — recommending some form of consolidation.

The Obama administration initially appeared ready to do the same, considering combining the banking regulators into one agency and merging the Securities and Exchange Commission with the Commodity Futures Trading Commission. But by the time it released its white paper last June, the administration had dropped those plans, instead suggesting a merger of OTS into the Office of the Comptroller of the Currency.

Michael Barr, the Treasury assistant secretary for financial institutions, said that the administration ultimately had other priorities it wanted to address.

"When we were going through the process with the White House, with the [National Economic Council], to think through what the key issues were, we looked at a range of proposals, including regulatory consolidation," he said in an interview Friday. "Our basic view was we'd spend enormous amounts of political energy and tremendous time with Congress and others on something that wasn't core to reform."

Though House Financial Services Committee Chairman Barney Frank appeared content with that approach, Senate Banking Committee Chairman Chris Dodd initially had a much more ambitious plan. He talked repeatedly in hearings about the "alphabet soup" of regulators, suggesting that it was partly to blame for the financial crisis.

In his initial bill, introduced last fall, Dodd proposed combining the banking regulators into one agency. By this spring, he had amended it to eliminate only the OTS but also to strip the Federal Reserve Board of most of its oversight of banking companies. By the time the bill passed last week, however, the Fed's supervisory power had been restored.

Even a Senate provision to eliminate the thrift charter is likely to be struck from the final bill during negotiations with the House.

"We changed virtually nothing in terms of the regulatory structure," said Bill Isaac, chairman of LECG Global Financial Services and a former chairman of the Federal Deposit Insurance Corp. "We got rid of the OTS, but that's something everyone assumed would happen."

Isaac supported Dodd's original consolidation idea but conceded that such a move would have required a huge political battle. Indeed, the Federal Reserve Bank presidents and a phalanx of community banks protested the proposed reduction in the Fed's power, helping Sen. Kay Bailey Hutchison, R-Texas, to win passage, 90 to 9, of an amendment to keep the central bank's authority intact. "It's hard for the government to really eliminate agencies," said Alex Pollock, a resident fellow at the American Enterprise Institute. "A very interesting element of this is the Federal Reserve, which started off in Dodd's original bill as having its authority restricted, and now it's a major winner. There is a lot going on, but it isn't consolidation and streamlining."

Ultimately, with the exception of the OTS, the regulatory agencies are almost certain to gain power. Under both bills, the Fed would be the systemic risk regulator, and the FDIC gained resolution authority over systemically important bank holding companies. The OCC, meanwhile, will now supervise thrifts.

"This is not a consolidation bill," said Donald Ogilvie, the chairman of the Deloitte Center for Banking Solutions. "It was an expansion of regulatory authority."

Although eliminating the OTS is significant, its demise had been all but assured for some time. Within a few months of its creation in 1989, American Banker ran an article speculating how long the agency would last. With a steady decline in the number of thrifts and failures and charter conversions at most of the largest savings and loans, few fought to save the agency. "It's clear they failed, but also they've ceased to have critical mass to be effective," said William Longbrake, an executive in residence at the University of Maryland and a former vice chairman at Washington Mutual Inc. Another "reason they don't need to exist is, the difference between the charters is pretty minimal."

By contrast, every other agency had a constituency ready to fight for it. Community bankers complained to Congress at the very suggestion that the FDIC — the regulator of most small institutions — would lose its oversight role, and they defended the Fed as well. "Everyone is very comfortable with the status quo, … and the lobbying was very, very significant," Longbrake said.

Still, others said the administration should have at least tried for more consolidation.

"The financial reform agenda as framed by Treasury last year, and as likely to continue in conference, reflects monumental lost opportunity," said Rick Carnell, an associate professor at Fordham University School of Law and a former Clinton Treasury official. "There was a huge opportunity here for real reform, and it was squandered. I think it was fair to say it was co-opted."

But Barr defended the administration's strategy. "The key thing is, the rules of the game are fixed," he said. "Would it have been neater or tidier? There are certainly neater and tidier ways of setting up the structure, but that doesn't necessarily mean it will be better."

Brian Gardner, a political analyst at KBW Inc.'s Keefe, Bruyette & Woods Inc., said the administration made the right political judgment. "You wind up having to spend political capital on things less important than other issues," he said. "At the end of the day, how many regulators there are is less important than what the powers are."

###

Jonathan Weisman and Damian Paletta, *Financial-Bill Playbook: Don't Mess Around*, The Wall Street Journal, May 22, 2010.

Mindful of their mistakes in advancing the health-care overhaul, White House officials approached the effort to regulate the financial industry in a different way—with detailed legislative language, teams of experts lobbying lawmakers in war rooms, and negotiations that started as far back as last summer.

The outcome was different as well. Senate passage of the bill Thursday didn't have much of the horse-trading, heated town-hall meetings and political exhaustion that marked the health-care debate. For the health bill, the White House had left the drafting to Congress.

"We not only framed the debate very early, but we sent up very detailed legislative proposals, thousands of pages," Assistant Treasury Secretary Michael Barr said of the financial-sector bill. "And Republicans never came up with an alternative framework and plan."

Lawrence Summers, director of the White House National Economic Council, said it was impossible to argue an overhaul wasn't needed. "The health care system was a long-gathering, deep and profound structural problem," Mr. Summers said. "The financial system had a catastrophic heart attack in 2008."

The Senate's bill must still be reconciled with a version of the legislation that the House of Representatives passed in December. That process will begin in the next several days.

Negotiators say they are aiming to have a final bill for President Barack Obama to sign by late June.

The Obama team's attack was so focused this time around, Republican negotiators complained throughout the wrangling that the administration was intrusive and had bypassed normal Senate consideration of key legislation. Sen. Bob Corker (R, Tenn.) accused administration officials of pulling the plug on fruitful bipartisan talks to avoid compromise on important elements.

"The White house and Treasury in my opinion have worked in a very heavy-handed way," Mr. Corker said.

The lessons learned from the health care debate appeared most starkly one day when Mr. Barr and his team of lawyers trekked to the Senate with boxloads of binders filled with rebuttals for hundreds of Republican amendments to the regulatory overhaul.

As it turned out, the preparation wasn't needed. Before Senate Banking Committee Chairman Chris Dodd (D., Conn.) gaveled the session open, his Republican counterpart, Sen. Richard

Shelby (R., Ala.), withdrew a mountain of Republican proposals, worried that in several cases they contradicted each other. In 21 minutes, a showdown expected to last weeks was over.

The Republicans would later regroup and introduce dozens of amendments after the legislation had left committee and was on the floor of the Senate in full debate. But by then, the core of the bill had been crafted.

"That was the moment," Mr. Summers said. "I had thought it was likely to pass. Then I thought it was a near certainty."

The White House had organized its attack after watching the fight over the bill in the House and seeing the arguments the Republicans were most likely to employ in the Senate.

One official said the Democrats had also read a strategy memo that consultant Frank Luntz had written for Republican senators, advising them to frame the bill as a Wall Street bailout. A counterargument was framed by Democrats.

That happened after President Obama recommended that the legislation prohibit banks from using their own money in speculative trades, and that it set limits on the size of financial institutions.

Sen. Shelby confronted a Treasury official, accusing him of injecting this major new recommendation into the debate just as both sides were close to a deal. Republicans had argued all along that the administration was seeking to overregulate the financial industry with rules and restrictions that would throttle economic growth. Here, they felt, was evidence.

The resulting animus soured talks, and they broke down. The White House counseled Chairman Dodd to abandon bipartisan talks and forge ahead with the Democrats' agenda.

White House officials began convening frequent "message sessions" in the office of Chief of Staff Rahm Emanuel to hash out strategy with Treasury Secretary Timothy Geithner, Mr. Summers and White House senior adviser David Axelrod. The objective: Keep their desired message clear and the core bill moving.

In early May, Treasury officials created a war room at their headquarters next to the White House, where officials met at least three times a day to scour amendments, determine which ones would be targeted for attack and report back to Capitol Hill. Mr. Geithner made frequent trips to Congress to persuade individual senators.

And when Republicans attacked the Democrats' plan to set up a $50 billion, industry-financed fund to help dismantle failed financial institutions—arguing that it amounted to a permanent bailout of Wall Street—the Democrats had already read the playbook. They dropped the fund.

"We knew they were going to come after us on a bailout theme," Mr. Barr said. "We had a strong reply ready."

###

Jim Kuhnhen, *Financial Overhaul: Regulators, once deemed lax, get big say,* The Associated Press, May 22, 2010.

WASHINGTON - Banking regulators shared the blame for the financial crisis that buckled Wall Street. Now they're the ones lawmakers are counting on to give final shape to the new overhaul of financial rules.

In section after section of the massive 1,560-page Senate bill, lawmakers leave much of the details for the regulators to figure out. These are the bank and market overseers - the Federal Reserve, the Office of the Comptroller of the Currency, the Securities and Exchange Commission - who took a beating for not overseeing Wall Street more strictly and for failing to see the danger before it struck in 2008.

When it comes to key decisions about how to rein in complex, previously unregulated securities, how to liquidate large, interconnected failing financial firms, even how to protect consumers, the bureaucracies in charge of setting the rules get plenty of discretion.

Lawmakers and Obama administration officials confronted the question time and again, about when to be specific and prescriptive and when to give the regulators latitude.

"There is room for imposing more duties and responsibilities on the regulators, and the bill contains a number steps to do that," Assistant Treasury Secretary Michael Barr said in an interview. "But we also don't want to lock anything in stone."

It's a delicate balance. For the financial industry, the more leeway regulators have, the more they can influence the final rules.

"It gives them wiggle room and pressure points," said Ed Mierzwinski, consumer program director for the U.S. Public Interest Research Group, a nonprofit organization in Washington.

Of prime interest to the industry will be the final rules on derivatives, how much money and assets they must have on hand as capital, and to what degree they will have to give up their securities trading activities.

On each of those matters, the House legislation, which passed in December, and the Senate's, which passed Thursday, leave key decisions to regulators. For the next few weeks, all eyes will be on House and Senate negotiators who are blending both bills. In many respects the bills are similar and there should be no conflicts.

Overall, the bills aim to prevent a recurrence of the crisis that deepened the recession and cost millions of Americans their jobs and their savings. The legislation would create an oversight council of regulators to watch for risks in the financial system. It would create a consumer protection entity to police lending and enshrine a mechanism for liquidating large, interconnected firms.

On Friday, Senate Banking Committee Chairman Chris Dodd and House Financial Services Committee Chairman Barney Frank both said they expect to have a bill ready for President Barack Obama to sign by July 4.

###

David Shepardson, *Obama firm on dealer oversight*, The Detroit News, May 13, 2010.

Washington - The White House stepped up its efforts to prevent auto dealers from being exempted from oversight by a new consumer watchdog agency.

Sen. Sam Brownback, R-Kan., has introduced an amendment to exempt the dealers from the proposed Consumer Financial Protection Agency - part of a massive overhaul of the nation's financial system.

President Barack Obama said in a statement Wednesday the Brownback proposal would undermine "strong consumer protections with a special loophole for auto dealer-lenders."

He argued that exempting auto dealers "would allow them to inflate rates, insert hidden fees into the fine print of paperwork, and include expensive add-ons that catch purchasers by surprise." An exemption, the president said, "guts provisions that empower consumers with clear information that allows them to make the financial decisions that work best for them."

Auto dealers fighting efforts to include them under the new agency argue that they aren't responsible for the woes that a massive financial reform bill seeks to address.

The U.S. House exempted dealers from oversight when it approved a similar measure in December.

Ed Tonkin, chairman of the National Automobile Dealers Association, issued a response to Obama's statement saying: "Sadly, the White House is continuing to issue misleading statements in its efforts to get auto dealers wrongly included in Wall Street reform legislation. Much of what's included in its latest statement is pure fiction."

Michael Barr, an assistant Treasury secretary, said in a White House blog post that the dealers' efforts were "particularly egregious."

"For the sake of responsible consumers - as well as for responsible community banks and credit unions - we must ensure that all businesses that are significantly engaged in providing consumer financial products and services play by the same basic rules of the road," Barr wrote.

The Brownback amendment will possibly be voted on today.

Earlier Wednesday, two Democratic senators and the wife of Gen. David Petraeus urged Congress to reject a dealer exemption.

The No. 2 Democrat in the Senate, Richard Durbin, D-Ill., along with Sen. Jack Reed, D-R.I., and Holly Petraeus, the wife of the head of U.S. Central Command, said young soldiers, sailors and airmen are often preyed upon by unethical auto dealers.

The bill "really tries to eliminate some of the misleading language, some of the tricks and the traps that lenders use many times in luring people into loans that are difficult to understand and impossible to pay," Durbin said in a conference call with reporters.

"Abusive financial practices by auto dealers are the number one source of complaints received by the Better Business Bureau and state and local agencies. If they are the number source of the problem, why would we ever exempt them from this type of consumer financial protection?"

Reed rejected the argument advanced by auto dealers that the agency could limit access to auto lending by raising costs. "The record is pretty clear that there is a lot of activity by auto dealers around military bases that is shameful."

Durbin said ethical dealers "have nothing to fear - in fact, they are going to benefit by driving out some of the people who are predatory lenders taking advantage of borrowers."

Holly Petraeus, who directs a Better Business Bureau program for military families, said auto lending needs oversight.

"It's a fact that military personnel love their cars," she said. "Sadly, many of them end up paying far more for those cars than they should."

She noted that many are locked into very high interest rates and "and many are inexperienced. They don't recognize a bad deal when they see it."

###

Cheyenne Hopkins, *Right Target, But Mod Plan May Do Little*, Mortgage Servicing News, May 2010.

WASHINGTON-The Obama administration's latest foreclosure prevention plan got an A for effort from most observers, who said it targets the right group of borrowers-the unemployed and those whose mortgages exceed the value of their home.

But consumer groups and industry analysts alike said the proposed changes will do little to address a still cumbersome process, investor resistance and continued second-lien hurdles.

The plan is a "real paradigm shift in how they are approaching foreclosure prevention," said Julia Gordon, senior policy counsel for the Center for Responsible Lending. "But so far with the administration's efforts we've seen a real problem on the implementation side."

Many observers said they expect the plan will help only borrowers on the margins.

"I don't think it will have a huge impact unless it becomes mandatory," said Bruce Marks, chief executive of the Neighborhood Assistance Corp. of America. "I think you are going to see it increase [participation], but not enough as necessary until President Obama requires the servicers to do it."

Under the plan, the administration's Home Affordable Mortgage Program will emphasize principal writedowns over interest rate and payment reductions. In order to participate, lenders must write down the loan by at least 10% and ensure the total loan-to-value ratio on the home is not greater than 115% after refinancing. Lenders will be able to refinance these borrowers into Federal Housing Administration loans. To qualify, homeowners must be current, meet standard FHA underwriting guidelines and have a FICO score of at least 500.

The administration is also encouraging principal reductions directly through HAMP, pushing lenders to write down the loan to 115% loan-to-value. Lenders are required to consider borrowers who have already received a trial or permanent modification under the program. Servicers that choose to participate will receive incentive payments for any amount of the loan they forgive over three years, as long as the borrower remains current.

The administration is also targeting unemployed borrowers by calling for three-month forbearance on foreclosure proceedings against those borrowers who have recently lost their jobs. The administration will provide assistance to such borrowers for three to six months to help reduce a mortgage to 31% of the borrower's income based on their unemployment insurance.

Although many critics have said the administration's plan should have encouraged principal reduction from its inception, Michael Barr, Treasury assistant secretary for financial institutions, said that lenders are only now more receptive to the idea.

"There is a change in attitude, perception among servicers and investors from a year ago," Barr said. "I think there is an increased recognition for doing principal-reduction plans."

Some observers argued the FHA changes could have a big impact-if the administration can implement it as designed. By refinancing into FHA-guaranteed loans, the lender is off the hook if the loan defaults again.

But they also noted Congress has tried this route before without much success. The Hope for Homeowners program, which at some point was projected to help hundreds of thousands refinance into FHA loans, has so far helped less than 50 people. "I remain skeptical of another FHA program," Gordon said. "This effort improves on [Hope for Homeowners], but it's still voluntary for the servicers to put the loans through."

The administration counters that it cannot make the program mandatory without further legislation.

Although consumer groups continue to push a bill that would allow judges to modify mortgages in the bankruptcy process, the administration has offered the bill just tepid support.

"It's very hard to hold them to do this-legally what's necessary," said Herb Allison, Treasury assistant secretary for financial stability.

Stephen Ornstein, a partner at the law firm Sonnenschein Nath & Rosenthal LLP, said that the latest program was an improvement but that he still worried it was not going far enough.

"There are still too many barriers to entry," he said. "You still have to qualify for FHA and even if you have a streamlined program it is still complicated."

Some critics also worried that the FHA's losses could rise.

The agency has already experienced high losses on its loans, and many fear that it could push it further to the brink of insolvency. To that end, the administration said it would use $14 billion of Troubled Asset Relief Program funds-out of the $50 billion already devoted to foreclosure prevention-to absorb higher losses.

Investors are more optimistic about the plan's impact. Tom Deutsch, deputy executive director of the American Securitization Forum, said the program would be appealing to investors.

"Investors are very interested in the FHA short refi program," he said. "Severely underwater borrowers are very concerning to investors, so if they can take the pain up front and refinance it to an FHA loan, many investors will be willing to make that change. But there are operational challenges to that."

Howard Glaser, a housing consultant, agreed. "It has a much greater chance of success than anything they've done before," he said. "I think they understand the reality that you have to align mortgage debt and home values."

Still, some industry participants said the program remains cumbersome and confusing.

Diane Casey-Landry, senior executive vice president of the American Bankers Association, said many bankers are doing their own workout efforts which are more flexible than the administration's plan.

"It was a lot easier for the banks to operate outside of one of the structured programs," Casey-Landry said. "They see it as too limiting and structured around the borrower. What the bankers are saying is it doesn't allow you to address the unique circumstances of the borrowers."

Observers said the second-lien issue also remains a large impediment to workouts, even though the administration offered yet more incentives for principal writedowns for such loans.

"The banks have tried to push out those losses as far in the future as possible and any government program that tries to get them to recognize that today the industry will fight," said Paul Miller, managing director of Friedman Billings Ramsey & Co.

Cheyenne Hopkins is a reporter for American Banker.

###

***Sen. Corker says risk retention could shut market* down, Mortgage Banking, May 2010.**

Republican Senator Bob Corker (R-Tennessee) told the National Policy Conference held by the Mortgage Bankers Association that the 5 percent risk-retention provision in the Senate Banking Committee financial reform bill has the potential to disrupt the mortgage market. He told the conference audience, "I think that's just going to shut the market down."

Corker had been negotiating on a bipartisan bill with Senate Banking Chairman Chris Dodd (D-Connecticut) up until the final hour, when the chairman decided he was running out of time and needed to report a bill out of committee. Corker told the conference, "We came down to the five-yard line. It would have been a good bill for America. I was kind of left at the altar." Corker added that Dodd was "losing Democrats as he was negotiating with me."

Dodd decided to move his bill on a straight party-line vote out of committee. Corker said the bill "took a pretty big left turn" once Dodd decided to abandon the bipartisan negotiations.

Corker said he believes the Senate regulatory reform bill can be fixed. He told the MBA conference that he thinks Congress is going to pass a financial regulatory reform bill "over the next 60 days - before Memorial Day."

The Tennessee Republican told the policy conference, "We had a lot of loans that shouldn't have been written in this country. They had really poor underwriting."

In terms of the role played by Treasury officials and the White House in guiding the financial regulatory reform provisions, Corker said the White House is feeling pretty confident in the wake of the victory over health-care reform. He praised Treasury Secretary Timothy Geithner. "Geithner is actually a pretty pro-market guy," the senator said.

But the Treasury's point main on the finer details of financial regulatory reform came in for a lesst ha n-enthusi as tic endorsement from Corker. Treasury Assistant Secretary for Financial Institutions Michael Barr is playing a prominent role in the legislative negotiations. But Corker told the conference, "Michael Barr thinks consumer protection is the end-all and the cure-all."

Corker added, "He wanted for Treasury to decide what kind of loans consumers want. We thought that was a bit heavy-handed."

In a separate address to the MBA conference, Assistant Secretary Barr had his own pointed remarks about what led to the downfall of Fannie Mae and Freddie Mac. In his speech, Barr said, "Some have claimed that Fannie and Freddie's collapse was caused by the government's imposition of affordable-housing goals. This claim simply is not supported by the facts. Affordable-housing goals did not drive the GSEs to the poor decisions that caused them to fail. The GSEs relaxed standards for the same reasons other market participants relaxed standards: old-fashioned greed and flawed regulation."

Finally, another speaker at the conference, Rep. James Clyburn (DSouth Carolina), House Majority Whip, offered his own observations on what led to the housing crisis. In response to a question from the audience, Clyburn agreed that housing policy may have pushed too hard in promoting homeownership. "I really think we did," he said. He added, "We pushed before people were ready to own."

He recalled a couple who worked on Capitol Hill and together earned less than $200,000. "I was shocked when they got a $900,000 house - I saw that." He added, "I just don't understand how we got to that point."

###

Jen Psaki, *Military Families: The Potential Victims of Proposed Auto Lending Carve Out,* The White House Blog, April 28, 2010.

As the Senate considers the Wall Street reform bill, military families are continuing to fall victim to predatory lenders and abusive auto lending practices -- and lobbyists for the industry are hoping to make sure it stays that way by getting a carve-out into Wall Street reform.

Military families have been a target of unscrupulous lenders because of their demographic characteristics. Often, for recently enlisted soldiers and sailors, their steady paycheck means the chance for deceptive lenders to lure them into easy credit offers. And many experienced military families struggling with daily expenses such as child care in the face of deployments and frequent moves have become targets for deceptive lenders.

Undersecretary of Defense Clifford Stanley recently sent a letter to Michael Barr, Assistant Treasury Secretary for Financial Institutions, that states the "personal financial readiness of our troops and families equates to mission readiness." He reports that 72 percent of military financial counselors surveyed had counseled Service members on auto lending abuses in the past six months.

How can this possibly be happening?

Wall Street buys and packages auto loans made by dealers into securities. Wall Street pays dealers more for loans that have higher interest rates than borrowers qualify for. This gives dealers selling to Wall Street a perverse incentive to charge higher rates. This is the exact same dynamic that encourages abuses in the mortgage market and hurts community banks. Like auto dealer-lenders, mortgage brokers are paid to sell loans at higher rates than borrowers qualify for. Looking to get the highest commissions possible, mortgage brokers and some dealer-lenders steer families toward these Wall Street loans instead of towards the community banks and credit unions that often offer better loans.

This incentive leads some dealer-lenders to devise other ways to charge higher rates too. Sometimes a dealer-lender sends the buyer home with a "purchased" car and calls a few days later to say that the financing "fell through." The dealer-lender gives the borrower the choice of giving up the car or paying a higher interest rate.

Dealer-lenders can also receive commissions to sell expensive add-ons to the loans, such as extended warranties. Dealer-lenders can obscure the cost of add-ons, which can be thousands of dollars, by emphasizing that they only moderately increase the monthly loan payment.

At a time when thousands of servicemen and women are overseas, it is unthinkable that we are not taking the steps to shield their families from financial ruin and ensure they are not targeted and victimized by predatory and abusive lenders.

Those who argue that rules of the road will somehow make auto loans more expensive have it backwards. The consumer financial protection agency will set strong, consistent rules of the road that will bring more transparency for consumers about what they're getting and what they're paying for it. That means lower prices, higher quality, or both.

The consumer financial protection agency will put in place strong protections for consumers, including: o For Mortgages. The piles of forms needed for a mortgage can be overwhelming, and many lenders and brokers have taken advantage of that confusion to sell borrowers loans they couldn't afford. The consumer financial protection agency will be required to consolidate and simplify two overlapping and sometimes inconsistent federal mortgage forms. o For Credit Cards. The consumer agency will enforce the new credit card law that bans rate hikes on existing balances and other unfair practices. Military families who sometimes use credit cards to get by when times are tight will benefit from strong protections. o For Overdrafts. The consumer agency would help enforce new rules that give consumers a real choice as to whether to join expensive overdraft programs and make sure banks don't find ways to unfairly manipulate consumers and to take away their choice. o For Payday Loans, Credit Bureaus, Debt Collectors, and Other Nonbanks. For the first time, a federal agency whose mission is to protect consumers for financial products and services would establish fair rules of the road for financial providers such as check cashers, payday lenders, credit bureaus, debt collectors, and mortgage brokers.

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Whitney Kisling, *Most Stocks Decline on Worries About Finance Overhaul*, Bloomberg News, April 26, 2010 4:47 PM.

Most U.S. stocks declined, pulling the Standard & Poor’s 500 Index down from a 19-month high, as concern that proposed legislation will hurt banks overshadowed improving earnings at Caterpillar Inc. and Whirlpool Corp.

JPMorgan Chase & Co. and Goldman Sachs Group Inc. helped lead financial shares lower as Congress prepared to vote on whether to open debate on the financial overhaul. Citigroup Inc. tumbled 5.1 percent on the Treasury Department’s plan to sell as many as 1.5 billion shares. Caterpillar gained 4.2 percent on its first earnings increase in seven quarters, while Whirlpool rallied 10 percent as the appliance maker lifted its forecast.

About eight stocks fell for every seven that rose on U.S. exchanges. The Standard & Poor's 500 Index dropped 0.4 percent to 1,212.05 at the 4 p.m. close in New York. The Dow Jones Industrial Average gained 0.75 point, less than 0.1 percent, to 11,205.03, led by Caterpillar. Stocks in Europe and Asia rose.

"The market's got plenty of reasons to be choppy and down," said Stephen Wood, who helps manage $176 billion as chief market strategist for Russell Investments in New York. "We are on the eve of an overhaul with Congress, we don't know what the details are. That's probably contributing to the move."

Earnings Season

Stocks advanced earlier as earnings reports signaled the economic recovery is gaining momentum. Profit estimates for S&P 500 companies rose 9.1 percent on average in April, twice the gain in prices and the largest monthly increase since at least 2006, data compiled by Bloomberg show. The S&P 500 started today trading at 14.2 times forecasts for its companies' profits, lower than any time since 1990, except for the six months after Lehman Brothers Holdings Inc. collapsed.

JPMorgan fell 2.3 percent to $43.89. A gauge of financial companies lost the most among 10 groups in the S&P 500, dropping 1.7 percent.

Goldman Sachs retreated 3.4 percent to $152.03. Executives and traders from the most profitable Wall Street firm in history will be questioned tomorrow by a Congressional panel about trading in the U.S. mortgage market, less than two weeks after the company was sued for fraud by the Securities and Exchange Commission.

Chairman and Chief Executive Officer Lloyd Blankfein will tell the committee that the firm didn't wager against clients and didn't make a big bet against the housing markets, according to a prepared text of his remarks.

Senate negotiators plan to include in financial-overhaul legislation a provision that would force JPMorgan, Bank of America Corp. and rival banks to wall off swaps trading desks in a financial-regulation bill that may be debated this week, according to a Democratic Senate aide briefed on the talks.

'More Vulnerable Than Ever'

Michael Barr, the assistant Treasury secretary for financial institutions, said the U.S. is "more vulnerable than ever" to another crisis. He spoke at an independent community bankers summit from Washington.

PMI Group Inc. fell 2.6 percent to $6.46. The third-largest U.S. mortgage insurer posted a quarterly loss greater than analysts estimated. The company also said it will offer $400 million of common stock and $200 million in convertible senior notes due 2020.

Citigroup declined 5.1 percent to $4.61 after the U.S. Treasury Department said it plans to sell "up to" 1.5 billion shares in the company as it weans the bailed-out bank off government support. The deal is part of a goal announced last month.

Travelers, DeVry

Travelers Cos., the property insurer, declined 2.7 percent to $51.92 after saying first-quarter profit slid, missing analysts' estimates, as catastrophe claims cost increased.

DeVry Inc., the owner of for-profit colleges, slid the most in the S&P 500 after Credit Suisse AG cut the shares to "neutral." The stock fell 5.8 percent to $65.45.

Greek stocks and bonds tumbled, pushing yield premiums to German debt to the highest since at least 1998, on speculation Germany may refuse to guarantee an early release of bailout funds. The yield premium investors demand to hold the nation's 10-year bonds rather than bunds climbed to 652 basis points.

Caterpillar, the world's largest maker of bulldozers, climbed 4.2 percent to $71.65. The company posted first-quarter earnings of 50 cents a share, excluding costs related to a change in health-care laws, beating the 39-cent average estimate of analysts. Caterpillar also raised its full-year forecast on an improving global economy.

Whirlpool climbed 10 percent to $112.42. The world's largest appliance maker said it will earn $8 to $8.50 a share in 2010, higher than its earlier estimate of $6.50 to $7 a share. Analysts surveyed by Bloomberg had estimated profit of $6.83 on average.

'Extraordinarily Well'

"There are two things that really matter to the markets, one is the economic numbers and two is the earnings numbers," said Hugh Johnson, who oversees $1.78 billion as chairman of Albany, New York-based Johnson Illington. "If you ask yourself the question 'How's the earnings season been going?' It's been going extraordinarily well."

More than 80 percent of S&P 500 companies that have reported quarterly earnings have surpassed estimates. Profits should increase 44 percent in the first quarter, according to analyst estimates as of April 23.

Hertz Global Holdings Inc., the world's largest car-rental company by market value, raised its full-year earnings forecast as business travelers and holidaymakers resume trips and hire more cars. The company also agreed to buy Dollar Thrifty Automotive Group Inc. for $41 a share, a 5.5 percent premium based on Dollar's closing price last week. Hertz shares climbed 14 percent to $14.69, while Dollar Thrifty increased 11 percent to $43.07.

Eastman Kodak Rallies

Eastman Kodak Co., the 130-year-old photography company, surged 11 percent to $8.90. Camera-maker Canon Inc. said today it raised its full-year forecasts for profit and revenue, as sales in Asia boosted earnings. Kodak is due to report quarterly earnings on April 29.

Trading of call options to buy the stock surged to a seven- month high of 82,252 contracts April 23, eight times the four- week average. Almost all of that volume was concentrated in the January $10 calls, which rose 30 percent that day and have climbed another 26 percent today.

Digirad Corp., the maker of medical imaging products, advanced 16 percent to $2.39 after saying it received U.S. Food and Drug Administration clearance for a nuclear medicine camera.

Office Depot Inc., the second-largest office-supplies retailer, rallied 5.9 percent to $8.95 after Credit Suisse AG raised the shares to "neutral" from "underperform," saying the company could benefit from future improvements in employment.

###

Floyd Norris, *Sometimes, stars align for a change,* The International Herald Tribune, April 23, 2010.

Sometimes there are coincidences. Those who campaign for financial reform have benefited from two of them in the past decade.

The first was the collapse of WorldCom in 2002. Until that happened, it appeared that the accounting industry and corporate America had managed to stave off the harshest reforms that had been proposed after the Enron scandal. Suddenly, passing a tough bill was politically necessary.

The second coincidence came this year, but it is not as easy to pinpoint exactly what it was. It was not just the suit by the U.S. Securities and Exchange Commission against Goldman Sachs; that suit came after the most important decisions were made. It had a lot to do with the hubris of Wall Street.

Whatever the reason, Wall Street is being routed in one of the most important parts of the financial reform debate - that of derivatives reform. As a result, it appears that the vast majority of derivatives trading will be done in the open, with margins required to be posted and with all traders, as well as the rest of us, seeing what is being paid.

If that happens, it will devastate Wall Street profit margins. It would also raise the visible cost to companies that buy derivatives, since the price would be separate from the margin they had to post if markets moved against them. They might notice that and have no way of knowing that they were being compensated by better pricing when they bought and sold.

In the end, Wall Street may make less on each trade, and have fewer trades as well.

"We beat back a lot of Wall Street lobbyists," exulted Michael Barr, an assistant Treasury secretary, after the Senate Agriculture Committee voted Wednesday for a bill far tougher than had seemed possible only a few weeks ago.

It was expected that the Agriculture Committee, with a history of bipartisanship and a chairman, Blanche Lincoln, an Arkansas Democrat who faces a difficult re-election campaign this year, would put together something mild that would weaken the tougher provisions in the version passed by the Senate Finance Committee.

But negotiations broke down, and last Friday - before the Goldman suit was announced - Ms. Lincoln unveiled her own bill, which went beyond what the Finance Committee wanted.

The most surprising part of the Lincoln bill would effectively force banks to spin off their swap dealers. That may well be negotiated out when a merged Finance-Agriculture bill goes before the entire Senate.

Ms. Lincoln did not know of the S.E.C. suit when she chose her course, but other senators knew of it when they decided to pass the bill out of committee Wednesday.

Republican opponents of strong legislation cried foul. "The events of the past five days have fueled legitimate suspicion on the part of the American people that the commission has attempted to assist the White House, the Democratic Party, and congressional Democrats by timing the suit to coincide with the Senate's consideration of financial regulatory legislation," said a letter sent by Representative Darrell Issa, a California Republican, to Mary L. Schapiro, the S.E.C. chairwoman.

Ms. Shapiro promptly denied anything of the sort had taken place. So did the White House.

One reason to think it did not happen is simply the way the S.E.C. works. Goldman knew of the enforcement division's thinking last summer. In September, it tried, and failed, to persuade the S.E.C. staff that its case was unreasonable.

Under normal S.E.C. procedures, the enforcement division would have asked for commission approval of a court filing at least a month before the commission acted. How anyone would have known in early March what the Senate would be doing now is not clear.

In any case, someone could use the case as an argument against legislation.

This case is damaging to Goldman's already tattered pubic image, but not because of the legal case its lawyers will face. The commission's legal theory may well be a stretch that a judge will reject. But the case has details that make people squirm.

It may have been quite legal for Goldman to put together synthetic collateralized debt obligations, or C.D.O.'s, to allow people to bet on the collapse of the housing market. But such a product does not raise capital for any useful purpose. And we know that the buyers of this paper went broke.

Nor does it help that the man who put the deal together, Goldman's Fabrice Tourre, wrote in an e-mail message to a friend, "More and more leverage in the system. The whole building is about to collapse." He went on to describe himself as "fabulous Fab," a man who created "complex, highly leveraged exotic trades" that he called "monstruosities" whose implications he did not understand.

He wrote that while he was putting this deal together.

The S.E.C. case asserts that Goldman should have told potential buyers that John A. Paulson, a hedge fund manager who wanted to short the synthetic C.D.O., had been heavily involved in choosing which earlier deals would provide the reference points for the C.D.O., and misled some people who did know of his role into thinking that Mr. Paulson was bullish.

Goldman argues that few knew who Mr. Paulson was then and that it would not have mattered to the investors. It also argues that the choices he influenced were immaterial in the end because the whole market collapsed, just as Mr. Paulson had expected.

The final straw for Goldman, and for Wall Street, may have been the statement by Lloyd C. Blankfein, the Goldman chief executive, that he and his firm were doing the Lord's work. Somehow that seemed to be a better description of those treating the ill in Haiti.

Wall Street thought that its lobbying could weaken any reform, and it appeared to work when the House bill's section on derivatives was filled with loopholes late last year, while the public and the news media were focused on health care.

All that has changed.

###

Bill Swindell, *Panel Approves Tough Derivatives Measure*, National Journal's CongressDaily, April 21, 2010.

The Senate Agriculture Committee today approved legislation to bring greater regulation of the over-the-counter derivatives market to correct the mistakes that led to the banking crisis, most notably in the downfall of American International Group.

The panel passed the measure 13-8, with GOP Sen.Chuck Grassleyof Iowa joining all Democrats in approving Agriculture ChairwomanBlanche Lincoln's bill.

The bill is the toughest measure so far aimed at in reining in the Wall Street banks that dominate the OTC market, where trades are conducted bilaterally with little oversight. It will force most transactions to go through a third-party clearinghouse to guarantee the deal and set margin requirements. Those trades would then have to be placed on exchanges.

Looking for more? Check out our issue page detailing the debate on overhauling the nation's financial regulatory structure. For the latest stories, related documents and other coverage click here.

"This is real reform. This is strong reform. But it is important to point out this is not regulation for regulation's sake," said Lincoln.

The Lincoln measure will be combined with broader legislation by Senate Banking ChairmanChristopher Doddrevamping the nation's financial regulatory system, with floor debate coming as early as this week. The biggest potential sticking point in merging both bills will be whether standardized trades that are cleared must go through an exchange. Such a decision would cost the big banks that dominate the market billions of dollars.

Republicans said they were disappointed that Lincoln broke off negotiations with Agriculture ranking memberSaxby Chamblissto advance a tougher bill that takes advantage of the prevailing anti-Wall Street mood. But some Democrats also expressed reservations, forcing Lincoln to modify her bill prior to the markup. Her changes included expanding the definition of what types of businesses would be considered a commercial end-user and therefore exempt from the mandatory clearing and trading requirement.

For example, Lincoln included language from Sen.Debbie Stabenow, D-Mich., that would not consider the captive finance arms of manufacturers as a swap dealer. That exclusion would exempt them from greater clearing and trading requirements and benefit in particular the Big Three automakers, which have affiliates to help finance car buying.

But Sen.Tom Harkin, D-Iowa, said he was concerned the change could open up a broader exemption, noting the revised language includes those who engage in a primary business of manufacturing, distributing or marketing such things as fuels, electricity and distillates.

"I have somewhat of a concern that we have kind of almost pried open the Enron loophole again," he said.

Grassley said he would push for further changes, such as whistle-blower protections, and added his vote did not signify that he would vote for the Dodd package.

"The draft isn't perfect ... but the Lincoln bill is an important step in the right direction for transparency and accountability in the derivatives market," Grassley said.

The Lincoln draft also handed a victory to the Obama administration regarding the coverage of the $60 trillion-plus foreign exchange derivative market. The Lincoln bill originally included all trades, including spot foreign exchange and spot foreign exchange forward trades. Treasury officials had argued that those two should be exempt on grounds there is sufficient transparency and liquidity in those markets, and that the resulting uncertainty could provide for the dollar.

The new language would allow Treasury to exempt those trades from clearing and exchange reporting requirements if it determines they are not structured to evade accountability under the bill.

The panel rejected, 12-9, a Chambliss substitute amendment that would have included a broader exemption for commercial end-users; repealed the mandatory reporting requirement; and removed language that would require trades still conducted on the OTC market to have higher margin requirements.

"We probably generally agree on 90 percent of the specifics," Chambliss said. "However, the remaining 10 percent of the issues involved here - namely, the extent to the end-user exemption and whether there is a mandatory trading requirement on exchange for swaps instead of the more functional price reporting -- are very important, because they involve real costs for businesses and real implications for properly functioning derivatives markets."

The Chambliss measure also would have stricken language that would have effectively required big banks like JPMorgan Chase and Goldman Sachs to spin off their swaps desk. Sen.Kirsten Gillibrand, D-N.Y., filed an amendment to strip that provision, but she did not offer it. Financial lobbyists will target that language as it comes to the floor.

Panel members also expressed concern that cooperatives in the Farm Credit System would have to go through the mandatory clearing and trading requirements, even though they pose little risk. But that view ran up against the administration's belief that all transactions among financial firms must go through a clearinghouse.

"They are participants in the financial system. There is significant risk that we will increase the chance of failure in that system if those firms are exempt from the central clearing requirement, so we think it's important that they be in," said Assistant Treasury Secretary Michael Barr.

###

Rebecca Christie, *U.S. Treasury Seeks to Ease Patch for Bank Seizures,* Bloomberg News, April 16, 2010 12:00 AM ET.

U.S. Treasury Department officials are seeking to change provisions in the Senate's proposed financial-rules overhaul that they say might hamper regulators' ability to seize a large bank and prevent a financial panic.

Treasury officials say part of the Senate proposal would restrict the amount of money regulators could use to operate a failing firm after it has been seized. They also say a provision requiring bankruptcy judges to sign off on the seizure of a systemically important firm could prevent fast action.

The Obama administration wants to give regulators authority to head off the kind of credit freeze that followed the collapse of Lehman Brothers Holdings Inc. in September 2008. Provisions of the Senate bill backed by Banking Committee Chairman Christopher Dodd might impede efforts to dismantle failing firms that pose a threat to the system, Treasury officials say.

Speed is vital because "the moment you say we're going to let someone look at this, everyone starts scurrying around lining up their ducks, and you basically have invited a run on a bank," said Bill Brown, a Duke University law professor and former managing director at Morgan Stanley.

Treasury officials say they want to change some provisions of the Senate plan without scuttling the financial-regulation overhaul, which has been a top priority of President Barack Obama since he took office in January 2009.

"There's openness to making sure that the whole process works," Michael Barr, Treasury's assistant secretary for financial institutions, said in an interview yesterday.

Council of Regulators

The Senate Banking Committee approved a financial-rules overhaul on March 22 that advances the Obama administration's call for the biggest restructuring of Wall Street oversight since the 1930s. The bill proposed by Dodd would create a council of regulators to monitor systemic risks, set up an independent consumer-protection agency at the Federal Reserve and shift oversight of mid-size and small banks from the Fed to other agencies.

"We're very close to something that we could stand up and say with pride is going to be a good and strong bill, prevent us from ever seeing this kind of crisis again in the future," Treasury Secretary Timothy F. Geithner said at a news conference on April 14.

The Senate proposal gives the Federal Deposit Insurance Corp. authority to borrow from the Treasury as much as 90 percent of the "fair value" of a firm's assets to cover operational costs while it is in receivership.

Too Restrictive

Treasury officials say such a limit could lead investors to wonder whether a firm could meet its obligations, and they worry that "fair value" is too restrictive and could be distorted in a panic.

Dodd and the FDIC say the 90 percent cap limits risks to taxpayer funds because the bank's assets could be tapped to make up any government losses.

"It'll be money we can get back," said Kirstin Brost, a spokeswoman for Dodd, a Connecticut Democrat.

This effort to limit taxpayer liability could prevent regulators from halting a crisis, said Stephen Myrow, a former Treasury official who is now managing director at ACG Analytics Inc., a Washington-based investment research firm.

"In trying to thread the political needle and maintain flexibility for the future, Congress is running the risk of spooking the market today," Myrow said.

Legislators at the same time are considering requiring big banks to pay into a resolution fund for winding down systemically important firms. Both the Senate proposal and a House bill call for making banks pay ahead of time into such a fund, although they differ on its size.

Bankruptcy Judges

Treasury officials also oppose giving bankruptcy judges too big a role in the decision to take down a failing firm, and they want to shorten the time allowed for judicial review. The FDIC agrees, according to two officials with knowledge of the negotiations.

The Senate bill would require regulators to get a bankruptcy panel's approval to seize a failing firm. Treasury officials want to limit the approval process, possibly to 24 hours.

Senate Minority Leader Mitch McConnell said this week that big financial firms ought to turn to bankruptcy, not government assistance, when they run into trouble. Geithner has said banks are different from other companies and need extra help with ensuring emergency liquidity.

"The normal bankruptcy regime cannot work for banks, because banks need funding to operate, even as they are being wound down," Geithner said in a March 22 speech at the American Enterprise Institute. "In a crisis, there is no plausible private source of temporary financing, like debtor-in-possession financing for companies in bankruptcy."

Compromise Effort

Bankruptcy judges were given a role in the Senate bill when Dodd was working with Senator Bob Corker, a Tennessee Republican, on a bipartisan measure. That effort fell apart, and the banking committee ultimately passed a bill supported only by Democrats. A congressional aide said Dodd is not wedded to the bill's current bankruptcy language and instead plans to work on the issue with the Senate Judiciary Committee.

The House bill doesn't include a role for bankruptcy judges in deciding whether regulators should seize a failing financial firm. Regulators also don't consult bankruptcy judges during the FDIC's existing bank-failure process.

###

Nick Timiraos, *Treasury Official Says Housing Goals Not to Blame for Fannie, Freddie Failures*, The Wall Street Journal's Developments blog, April 13, 2010 7:07 PM ET.

Poor management decisions and weak regulation—and not government-mandated affordable housing goals—resulted in the collapse of mortgage-finance giants Fannie Mae and Freddie Mac, a top Treasury official said on Tuesday.

While the Obama administration won't propose legislation to revamp Fannie, Freddie and the broader housing-finance market until next year, the remarks could offer insight into the administration's thinking over how to repair the broken housing-finance sector.

Republicans have criticized affordable housing lending goals, which were increased first by the Clinton administration and later by the Bush administration, for steering the companies into making riskier loans

"This claim simply is not supported by the facts," said Assistant Treasury Secretary Michael Barr in a speech before the Mortgage Bankers Association on Tuesday.

Fannie and Freddie, facing the loss of market share to Wall Street lending operations, "relaxed standards for the same reasons other market participants relaxed standards: old-fashioned greed and flawed regulation."

Mr. Barr said that management decisions to join in a "destructive race" to lower standards in an effort to compete with Wall Street, which was buying increasingly risky loans from unregulated nonbank lenders to package and sell as securities, ultimately doomed Fannie and Freddie.

The government took over Fannie and Freddie in September 2008 as rising loans defaults threatened to wipe out thin capital reserves. So far, the Treasury has injected $126 billion to keep the companies afloat, and it has pledged to back unlimited losses for the next three years.

###

Anna Bahney, *Bankers: Reforms may limit consumer*, Argus Leader, April 12. 2010.

Bankers and others in the financial industry in South Dakota are concerned that provisions in the sweeping financial regulatory reform legislation working its way through Congress ultimately will limit consumers' financial options by placing unnecessary regulation upon them.

Two of the central features of the financial reform bill coming before the Senate are the Consumer Financial Protection Bureau and regulations that would keep firms from becoming "too big to fail."

While there is a lot of discussion about whether the consumer protection arm will be a "bureau" or an "agency" and whether it will be housed within the Federal Reserve or be a self-contained entity, a top official at the Department of the Treasury in Washington said the most important thing is that it has the independence and authority it needs for accountability.

"It must have an independent head and an independent budget to enforce those rules," said Michael Barr, assistant secretary for financial institutions. "Our preferred approach is a stand-alone agency, but it is most important that it has features of independence that let it act in an accountable way."

For many bankers, there is a tension in the legislation between whether this is a bill to protect consumers or to promote safety and soundness of the system. Many feel that in this environment, consumer rights always will trump safety and soundness.

"The Consumer Financial Protection Agency will have rule-writing authority without accountability," said Bob Rutten, chairman of the South Dakota Bankers Association and president and chief executive of Citizens State Bank in Arlington.

Some question the body's ability to enforce its rules.

"We don't think this new agency, even though they will write new rules, we don't think they will have the authority to enforce them," said Curt Everson, president of the South Dakota Bankers Association.

For Curtis Hage, chairman and chief executive of Home Federal Bank in Sioux Falls, the main problem is that the proposal would mandate a one-size-fits-all regime that banks would have to follow.

"The idea would be that one consumer is like every consumer," he said. "But they have individual circumstances, and we can't treat each situation the same way.

"They want to take to task the mortgage products like interest-only payment loans. There were problems with those, but the problems weren't with the product, the problem was with how they were applied."

Hage points out that an interest-only loan is not for all consumers but might be ideal for an up-and-coming, high-income earner such as a doctor. They might not have a history of earnings but will have strong earnings going forward to pay the higher mortgage payments.

"But when there is one person in Washington who says a product doesn't apply anymore, a whole sector of people who could be serviced by that without undo risk to the economy is eliminated," Hage said.

Others, such as Bob O'Connell, the public affairs and communications director with the Sioux Falls Area Chamber of Commerce, are concerned with the wide-reaching effects on small businesses. In some versions of the bill, businesses that allow customers to pay over time - lawyers, dentists, CPAs, retailers - fall under its jurisdiction, which will create a lot of red-tape and regulations for them.

"These are things that businesses have never had to do before," he said. "It will cost the consumer more, eventually."

At the same time businesses are being treated as entities that need to be regulated, he said, they also could be considered "consumers" and might be prevented from getting certain types of loans under the new rules.

"It does not mean we oppose all regulatory reform," O'Connell said. "Issues can and should be resolved. Just don't hit it with a sledgehammer so hard you hurt the consumer and businesses."

The concern about firms that are "too big to fail" stems from the events surrounding companies such as AIG that were so massive a bankruptcy proceeding would have taken years while their failure placed the economy in immediate peril. Other firms in peril received massive bailouts.

"The biggest firms can't put all their costs on the rest of us," Barr said. "We need a system where the biggest firms need to internalize their costs. They can't hurt community banks, small businesses or taxpayers. The costs of their failures need to be borne by the companies and their stockholders."

The three components of doing this, he says, are raising standards throughout the system - such as making sure firms have more capital, increasing liquidity requirements and limiting risk exposures - strengthening oversight on credit rating agencies and the derivatives markets, and giving the government greater authority to wind down impaired companies similar to the way the FDIC handles failing banks.

Part of banker's frustration here is that they are being asked to pay - in terms of money, resources and new regulations - for the sins of large investment-type banks on the coasts.

"Traditional banks in this part of the country are saying we played by the rules, we didn't cause the problems. We've incurred an immense amount of cost to clean up the messes that others have made," Everson said.

A plan in one version of the legislation requires financial firms to contribute money to help pay for the government's ability to unwind firms.

"We have a problem with that funding," Rutten said. "If I know that money is there, what's going to stop me from doing these things, knowing the money's there to bail me out?"

Consumer counselors say that the legislation could be beneficial if it protects consumers, but their best protection is always educating themselves.

"We strongly advocate that people look to educate themselves about their finances," says Tracy Gran, director of the Consumer Credit Counseling Service in Sioux Falls.

"We find that people make assumptions that the government is protecting them and don't truly understand the products they are in."

###

Anna Bahney, *Bankers: Reforms may limit consumer*, Argus Leader, April 12. 2010.

South Dakota bankers, financial executives and small business owners are among those most vocal about pushing back against the latest fast-track legislation moving through Congress: financial reform.

With President Obama and his administration working to get reform legislation on his desk before the Memorial Day break, this bill will be the top priority when lawmakers return Monday to Washington.

But many critics of the legislation, including some Democratic lawmakers concerned about the short timeline to push this through, say the daunting recipe for fixing the financial system makes the health care overhaul look as simple as making toast.

The 1,300-page financial regulatory reform bill aims to address a vast spectrum of ills in the financial system, ranging from firms becoming "too big to fail" to protecting consumers from abusive lending practices, and from raising standards on risk and liquidity for banks to regulating derivatives.

A version that passed the House in December, which Rep. Stephanie Herseth Sandlin voted for, included provisions that curb executive compensation, implement investor protections and regulate hedge funds.

'A lot of holes in it'

"They put a lot of stuff in there," said Bob Rutten, chairman of the South Dakota Bankers Association and president and chief executive of Citizens State Bank in Arlington. "It was hastily put together, and it has a lot of holes in it."

Rutten and other financial executives in South Dakota say they understand the need for financial reform, but not done this way.

"I am against the whole package," he said. "It is very threatening to core banking. It will have a big effect on our state."

Still, officials in the Obama administration are calling for speedy movement.

"We're as badly in need of financial reform as we've been," said Michael Barr, assistant secretary for financial institutions at the Department of the Treasury in Washington.

"We're still living with the same regulation on unregulated entities, loopholes, no meaningful consumer protections, no oversight on derivatives," he said. "We need fundamental reform."

S.D. bankers balk

But if you ask South Dakota bankers what problems this legislation fixes, they say there's none. "I don't think we need more regulation; we need regulations formally applied," said Curt Everson, president of the South Dakota Bankers Association.

Curtis Hage, chairman and chief executive of Home Federal Bank in Sioux Falls, echoed that concern. "What powers of regulation were not present before that this allows for?" Hage asked. "The fact is, there aren't any."

He sees reform as the administration's political bid to tell the public that financial flaws can be fixed by applying a new law, with new layers of governing.

"But regulatory bodies have all the authority they need already," Hage said. "The regulators just didn't have the will to enforce them in the face of a public that says, 'We aren't going to continue to have easy money? No more easy loans?' "

Both men, along with 16 other members of the South Dakota Bankers Association, took these and other concerns to Sen. John Thune, Sen. Tim Johnson and Herseth Sandlin while they were visiting Washington last month.

Everson said that while face-to-face meetings with the delegation were productive, it is hard to discern what is going on within various groups on Capital Hill right now.

"There is an immense amount of pressure coming from the administration," he said.

He suspects the schedule the administration is recommending is purely political. "I guess that's how things work in Washington, but I don't know that that makes it right."

Everson expressed interest in a more deliberate approach that could more thoroughly identify weaknesses in the system.

He pointed out that the Financial Crisis Inquiry Commission, a bipartisan body established to scrutinize the financial system and given until Dec. 15 to produce a report, is only starting its work.

With testimony last week from former Federal Reserve Chairman Alan Greenspan, former Citigroup executives Chuck Prince and Robert Rubin, and former Fannie Mae executives Robert Levin and Daniel Mudd, the commission is casting a wide net in its hearings.

'Healthy discourse'

"I think it is a very healthy discourse," Everson said. "That ought to help get Congress where they need to go."

The effect of this legislation on the consumer is difficult to see through all the financial technicalities, but Tracy Gran, director of Consumer Credit Counseling Service, said any reform that protects consumers is good.

Her question with this legislation is whether the consumer is the bill's primary focus. "I don't know that this is going to affect the average person in an immediate way," Gran said.

Hage said the reforms put in place through tighter standards in lending and credit card reform already are having a negative effect on consumers, one that only would be exacerbated by this legislation.

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If this legislation passes, "There will be no more taking risk," he said. "It will restrict credit, and it will deny marginal-income people from having access to credit."

The administration promotes a different message.

"This reform is designed to help people make informed decisions," Barr said. "Households are paying for the failures of our financial regulatory system. We can't afford to live in system like that. There is a strong bipartisan interest in reform."

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Cheyenne Hopkins, *New Powers in Reg Reform Feel Familiar*, Merger and Acquisitions Reports, April 12, 2010.

WASHINGTON- From its inception, a key pitch for legislation to rework the regulatory system has been that it will provide regulators with more tools to prevent another banking crisis.

Yet the most highlighted provisions of both the House and Senate bills would give regulators authority they already have, and so far have largely ignored.

The legislation would order regulators to create higher capital requirements, boost leverage limits and restrict risky activities. But Congress already passed laws to let regulators take such action more than a decade ago.

Many experts said regulators were no more likely to follow through now if legislation is enacted than they were prior to the crisis.

"It's sort of like dealing with your three-year-old," said John Douglas, a partner at Davis Polk & Wardwell, and a former general counsel of the Federal Deposit Insurance Corp. "It's like 'this time I really mean it.'"

Following the savings and loan crisis, regulators were given vast authority to raise capital, limit risky activities, set leverage limits and other broad powers.

For example, the Financial Institutions Reform, Recovery and Enforcement Act, enacted in 1989, gave regulators the power to restrict an institution's growth and limit its size. That power is the same as a much-touted provision of the House and Senate regulatory reform bills, which would allow regulators to restrict risky activities and limit an institution's size and growth.

Some observers said that is why they are skeptical of the current regulatory reform bills.

"It creates an appearance of real reform," said Rick Carnell, an associate professor at Fordham University School of Law and a former Treasury Department official. "You are creating a semblance of reform beyond what you are really doing and it makes Congress and everybody else think you are being tough and meaningful when in fact you are recycling the same provisions that failed us before when regulators didn't use their discretion when they should have."

Carnell argues that regulators already have discretion to require quarterly stress tests, place limits on credit exposure and restrict certain transactions between banks and affiliates.

They can also constrain proprietary trading, set standards for bank investments for mortgage-backed securities, and make rules for assets and liabilities that are off balance sheet, he said.

Treasury officials acknowledged that regulators already have much of this power, but said it was granted on a discretionary basis. The reform bills, they said, would place more emphasis on ensuring they use those tools, such as requiring "heightened" capital standards for systemic institutions.

"The bill would not merely authorize, but require, regulators to take stronger actions with respect to constraining risk-taking by the largest firms," Michael Barr, Treasury assistant secretary for financial institutions, said in an e-mail. "We learned painfully in the last crisis that authority, while necessary, is insufficient."

The regulatory reform bills would require the Federal Reserve Board, with the assistance of a systemic-risk council of regulators, to set heightened prudential standards for risk-based capital, leverage, liquidity and credit exposure. it sa

In most cases, however, the bills do not spell out how those standards should be crafted, leaving it for the regulators to decide. Some observers said that is a recipe for keeping the status quo.

"Just Congress putting provisions like liquidity, capital, and not breaking them out doesn't do a whole lot," said Cornelius Hurley, a professor of banking and financial law at Boston University School of Law. "If we are talking about too-big-to-fail banks, nothing has changed."

Treasury Secretary Tim Geithner often touts these provisions as a step to end "too big to fail."

But observers said that under existing rules Geithner himself could have set higher capital standards when he was president of the Federal Reserve Bank of New York.

Bill Isaac, a former FDIC chairman, said these provisions merely give political cover.

"It makes politicians pretend like they have done something," he said. "There is no purpose to be served other than to give politicians bragging rights that they are being tough and doing something."

Isaac doubted regulators would behave differently following this round of reform.

"They will do whatever they are going to do," he said. "They have power right now, so what good does it do to give them power twice or three times?"

Not everyone is convinced nothing will change.

Brad Sabel, co-leader of Shearman & Sterling LLP's Economic Stabilization Advisory Group and a former New York Fed official, said regulators are more likely to act this time.

"The agencies cannot simply decide to blow Congress off," he said. "If Congress passes a statute saying enhance and make the rules stronger, I think the lawyers would say that the agencies make them stronger."

Still, some question whether regulators will only change standards slightly, undercutting the point of reform.

Carnell said regulators could satisfy "heightened" capital levels by increasing them only incrementally.

"I think the existing capital levels are not high enough," Carnell said. "They were a second or third best solution when they were adopted. You've technically complied with the law if you've raised them two-tenths of 1%....I don't put much weight on 'shall' because I think Geithner's idea of being tough is not being very tough."

Others, however, said regulators are already using the power they were granted - a process that could accelerate if reform is enacted. They note, for example, that as the Basel Committee revamps international capital standards, most expect it to result in higher requirements.

Mark Calabria, director of financial regulations studies at the Cato Institute, said higher capital standards will come even if reform fails.

"A lot of this is more of a nudge for regulators than anything else," he said. "Even if Congress passes nothing, regulators are going to move forward on stronger capital requirements. That's happening. That's going to happen."

Some also note that the bills would give regulators more leeway than they currently have. For example, though the agencies have the power to limit activities at banks on an institution-by-institution basis, the reform bills would let them set industry-wide standards.

"The Fed can limit an activity if it is not being conducted safely," Sabel said. "I don't think that it can order a bank-holding company to stop engaging in a certain activity, but it can put pressure on the holding company to put the right controls in place."

But even if that power is expanded, some doubted regulators would ever take advantage of it.

"I think you are going to have the same temptations for the regulators, which is do nothing," Sabel said. "They are going to go to the path of least resistance."

The House bill would also give regulators the right to break up a bank - a power they do not have under current law. Still, many observers doubted if they would ever use it.

"That is a hard scenario for me to contemplate," said V. Gerard Comizio, a partner in the corporate department at Paul, Hastings, Janofsky & Walker LLP. "It seems counterintuitive that when a banking institution is doing well to ask it to begin disassembling itself."

But Alan Blinder, an economics professor at Princeton and a former Fed vice chairman, said change would come whether a bill passes or not. He said the regulators are reluctant to use their existing powers now while Congress contemplates legislation. But once it passes, or if it is clear it will not be enacted, he expected them to act.

"The regulators have been burned," Binder said. "All the regulatory agencies have egg on their face. ...It's perfectly reasonable for these regulators to defer to Congress. But if Congress gives up on the issue and doesn't do anything, then I think it should be the regulators' responsibility to step up to the plate."

###

Anna Bahney, *SD Bankers leery of DC reform*, Argus Leader, April 10, 2010.

South Dakota bankers, financial executives and small business owners are among those most vocal about pushing back against the latest fast-track legislation moving through Congress: financial reform.

With President Obama and his administration working to get reform legislation on his desk before the Memorial Day break, this bill will be the top priority when lawmakers return Monday to Washington.

But many critics of the legislation, including some Democratic lawmakers concerned about the short timeline to push this through, say the daunting recipe for fixing the financial system makes the health care overhaul look as simple as making toast.

The 1,300-page financial regulatory reform bill aims to address a vast spectrum of ills in the financial system, ranging from firms becoming "too big to fail" to protecting consumers from abusive lending practices, and from raising standards on risk and liquidity for banks to regulating derivatives.

A version that passed the House in December, which Rep. Stephanie Herseth Sandlin voted for, included provisions that curb executive compensation, implement investor protections and regulate hedge funds.

'A lot of holes in it'

"They put a lot of stuff in there," said Bob Rutten, chairman of the South Dakota Bankers Association and president and chief executive of Citizens State Bank in Arlington. "It was hastily put together, and it has a lot of holes in it."

Rutten and other financial executives in South Dakota say they understand the need for financial reform, but not done this way.

"I am against the whole package," he said. "It is very threatening to core banking. It will have a big effect on our state."

Still, officials in the Obama administration are calling for speedy movement.

"We're as badly in need of financial reform as we've been," said Michael Barr, assistant secretary for financial institutions at the Department of the Treasury in Washington.

"We're still living with the same regulation on unregulated entities, loopholes, no meaningful consumer protections, no oversight on derivatives," he said. "We need fundamental reform."

S.D. bankers balk

But if you ask South Dakota bankers what problems this legislation fixes, they say there's none. "I don't think we need more regulation; we need regulations formally applied," said Curt Everson, president of the South Dakota Bankers Association.

Curtis Hage, chairman and chief executive of Home Federal Bank in Sioux Falls, echoed that concern. "What powers of regulation were not present before that this allows for?" Hage asked. "The fact is, there aren't any."

He sees reform as the administration's political bid to tell the public that financial flaws can be fixed by applying a new law, with new layers of governing.

"But regulatory bodies have all the authority they need already," Hage said. "The regulators just didn't have the will to enforce them in the face of a public that says, 'We aren't going to continue to have easy money? No more easy loans?' "

Both men, along with 16 other members of the South Dakota Bankers Association, took these and other concerns to Sen. John Thune, Sen. Tim Johnson and Herseth Sandlin while they were visiting Washington last month.

Everson said that while face-to-face meetings with the delegation were productive, it is hard to discern what is going on within various groups on Capital Hill right now.

"There is an immense amount of pressure coming from the administration," he said.

He suspects the schedule the administration is recommending is purely political. "I guess that's how things work in Washington, but I don't know that that makes it right."

Everson expressed interest in a more deliberate approach that could more thoroughly identify weaknesses in the system.

He pointed out that the Financial Crisis Inquiry Commission, a bipartisan body established to scrutinize the financial system and given until Dec. 15 to produce a report, is only starting its work.

With testimony last week from former Federal Reserve Chairman Alan Greenspan, former Citigroup executives Chuck Prince and Robert Rubin, and former Fannie Mae executives Robert Levin and Daniel Mudd, the commission is casting a wide net in its hearings.

'Healthy discourse'

"I think it is a very healthy discourse," Everson said. "That ought to help get Congress where they need to go."

The effect of this legislation on the consumer is difficult to see through all the financial technicalities, but Tracy Gran, director of Consumer Credit Counseling Service, said any reform that protects consumers is good.

Her question with this legislation is whether the consumer is the bill's primary focus. "I don't know that this is going to affect the average person in an immediate way," Gran said.

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Damian Paletta, *Obama Administration Officials Vow to Fight Efforts to Soften Derivatives Rules*, The Wall Street Journal, April 7, 2010 9:28 PM ET.

WASHINGTON - Senior Obama administration officials Wednesday said they would fight efforts to broadly exempt companies and others that use derivatives contracts from having to abide by new trading restrictions.

"The idea that all end-users of derivatives somehow be absolved from having to clear their trades is something that we do not agree with... and we will fight hard to oppose," Treasury Department Deputy Secretary Neal Wolin said during a briefing with reporters.

The issue of derivatives regulation has become one of the biggest flashpoints in the broader effort to overhaul financial regulations, in part because a broad swath of companies has weighed in, including major energy, agriculture and manufacturing businesses.

At issue is how much these instruments are used as speculative investments and how much they are used by companies to simply hedge against the risk of fluctuations in commodity prices, interest rates or currency rates.

Many companies say they use derivatives to hedge risk and shouldn't be forced to post collateral against their trades.

Obama administration officials believe too many companies are fighting to be excluded from new rules. They also worry derivatives remain a danger to the financial system, particularly after the near-collapse of American International Group Inc.

"This is an area that there is an enormous amount of lobbying on from the financial industry," Treasury's assistant secretary Michael Barr said at the briefing.

"You have the largest financial players and very large nonfinancial firms that are significant participants in the derivatives markets fighting against reform, fighting to keep derivatives trades in the dark, fighting to be excluded from the definition of entities that are going to be subject to that regulation. They are spending enormous amounts of lobbying money trying to block these basic reforms."

The U.S. Chamber of Commerce and the National Association of Manufacturers have helped organize a large group of companies to lobby against some of the derivatives trading restrictions the White House has pushed.

Large banks that are considered "dealers" of these derivatives, and counterparties, known as "end-users," have aggressively lobbied lawmakers to exempt certain companies or trades from new requirements, which they have argued would be costly for companies and make it harder to add jobs to the economy.

"All we've asked for is a narrow exemption for corporate end-users," said David Hirschmann, chief executive of the center for capital markets competitiveness at the U.S. Chamber. "Everybody agrees there's a legitimate business case for doing this."

One reason the debate has become so complex is because two Senate committees are fighting for jurisdiction over the issue. The Senate Banking Committee has already advanced legislation to the Senate floor that would make it harder for end-users to be exempted from most trading requirements. The Senate Agriculture Committee is working on its own bill, which many expect will be better received by business groups.

"We are putting transparency at the forefront of what we're trying to do," said Sen. Saxby Chambliss (R., Ga.), the ranking Republican on the agriculture panel. He said he was "very hopeful" he could reach a deal with his Democrat counterpart, Sen. Blanche Lincoln of Arkansas.

"Timetable-wise, I don't know whether it will be this week, next week, or the week after," he said in the interview.

###

Cheyenne Hopkins, *New Powers in Reg Reform Feel Familiar*, American Banker, April 6, 2010.

WASHINGTON — From its inception, a key pitch for legislation to rework the regulatory system has been that it will provide regulators with more tools to prevent another banking crisis.

Yet the most highlighted provisions of both the House and Senate bills would give regulators authority they already have, and so far have largely ignored.

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###

Jennifer Liberto, *A consumer watchdog for your wallet*, CNNMoney.com, April 6, 2010 12:10 PM ET.

You've heard talk about a consumer financial protection regulator, the signature part of proposed legislation to prevent the next Wall Street crisis.

But amid the hundreds of pages of the House and Senate bills are some new powers the watchdog could wield that would directly impact your wallet.

The new regulator could ban penalty fees charged when high-interest mortgages are paid off early. It could let you take credit card disputes to court rather than be forced into mediation. And it could start a financial literacy drive to warn seniors about financial fraud and teach veterans to shop and compare auto loans.

"We need to make it easier for families to take better control of their financial lives," said Assistant Treasury Secretary Michael Barr.

The next step for the regulatory overhaul legislation is a final Senate vote in coming months, followed by a hashing out of differences with the House. Passage is by no means certain.

Mortgage prepayment penalties

Generally, the bills leave a lot of leeway for the proposed consumer regulator to figure out what practices should be stopped or limited. However, Congress is more prescriptive in one case: Cracking down on penalty fees for paying off mortgages early.

The new consumer regulator must prohibit these penalty fees for subprime mortgages, and cap and phase out the fees for more traditional mortgages, according to the legislation.

More common in subprime markets, the fees are charged when a loan is repaid or refinanced in the first three to five years. The penalty can run 5% of the loan or several months of interest payments. Consumers often agree to risk the fee, because it allows them to lock in a comparatively lower subprime rate.

The banking industry says the penalties allow them to guarantee investors a return, while helping risky borrowers.

"If properly disclosed, the penalties allow consumers to make better choices," said Tom Koonce, chief lobbyist for the Mortgage Bankers Association. "It's a valuable tool for lowering rates. And if you take that away, you're going to risk rates going higher."

However, the penalties can trap some subprime borrowers into loans as their credit scores improve, preventing them from getting cheaper loans, said Mark Flannery, finance professor at the University of Florida Graduate School of Business.

"These penalties are going to make it unlikely that somebody repays the mortgage early," Flannery said. However, he agreed that doing away with penalties could result in higher mortgage rates.

The proposal goes beyond the Federal Reserve's 2008 effort to limit penalties on subprime mortgages and is being hailed by consumer advocates for nixing a "key ingredient to the subprime mortgage crisis," said Center for Responsible Lending spokeswoman Kathleen Day.

Arbitration contracts

Many mortgages, credit cards, gift cards and auto loans force the buyer and seller to hash out disputes before a neutral party called an arbitration panel.

These arbitration contracts prevent disputes from going to court, with an eye toward forcing parties to work things out and cut down on lawsuits.

But consumer advocates and Treasury officials don't like the mandatory part of the contracts. They want consumers to be able to choose between arbitration and court.

The House bill directs the consumer regulator to consider banning forced arbitration for sales of financial products such as credit cards. The Senate says the watchdog needs to study the issue before banning or limiting them.

"If you can't go to court or join a class action lawsuit, that perpetuates unfair practices," said Ed Mierzwinski, national consumer program director at Public Interest Research Groups (PIRG). "Companies can ignore consumer complaints because they know they won't escalate to litigation."

Industry groups say the mandatory arbitration contracts lower the cost of providing products and services, by cutting back on lawsuits.

"These efforts are really a Trojan horse for more lawsuits," said Bryan Quigley, spokesman for the U.S. Chamber Institute for Legal Reform.

He said that many attorneys won't take smaller-dollar credit card cases. "Most people won't have access to justice at all. Instead of having an arbitration outlet, they're going to be forced to sue," Quigley said. "But if they can't find a lawyer, they can't sue."

Financial literacy

A major role for the proposed consumer financial protection watchdog is to teach Americans to be more financially literate.

The Senate version creates an Office of Financial Literacy and the House creates an Office of Financial Protection for Older Americans. In both cases, the agencies create or embrace programs that teach Americans about savings, loans, liens and fees.

The agencies would set best practices standards for financial advice programs, preventing Americans, particularly seniors, from becoming victims of scams or from being steered to buying certain financial products.

"With everything that's happened with the economic crisis, you'd think there's so much economic education around. But there isn't," said Cindy Housell, president of the Women's Institute for a Secure Retirement.

The financial literacy agency would also streamline existing programs across agencies. For example, the Department of Defense has programs to train soldiers to watch out for abusive financial products. Under this proposal, the consumer agency and Defense Department would work together.

"We're worried about situations where consumer finance companies and auto lenders take advantage of young military families, which is bad for families, bad for the military and bad for military security," Barr said. "The financial literacy programs would continue, but with the help of the (consumer regulator) to convey best practices."

Banking lobbying groups, including the Financial Services Roundtable, support the general concept of financial literacy, said Scott Talbott, the group's chief lobbyist.

Yet, advocates worry that neither of the bills specify a funding source for new financial literacy programs. Existing financial literacy programs are already stumbling for lack of resources, Housell said.

###

***Obama Administration to Hang Tough on Regs*, Derivatives Week, April 5, 2010.**

Senior officials of the Obama administration said they would work aggressively to make sure tough proposed derivative regulations are not watered down. Neal Wolin, deputy Treasury secretary, told reporters that "we will fight hard to oppose" efforts to exempt some end-users from the rules. Michael Barr, an assistant Treasury secretary, added that major players in the derivatives market have been aggressively lobbying against the proposals, which include a requirement that end users post collateral against their trades. David Hirschman, ceo of the center for capital markets at the U.S. Chamber of Commerce, one of the agencies that oppose some of the restrictions, responded, "Everybody agrees there's a legitimate business case for doing this. All we've asked for is a narrow exemption for corporate end-users."

###

Peter Schroder, *HFAs Seek an Extension for NIBP Conversions*, The Bond Buyer, April 1, 2010.

WASHINGTON - Local housing finance agencies have asked the Treasury Department to push back the Dec. 31 deadline for converting short-term taxable bonds to long-term, tax-exempt, fixed-rate bonds under its New Issue Bond Purchase program, warning they will have trouble meeting it.

They made the request during the National Association of Local Housing Finance Agencies' Washington policy conference held here last week. Local HFA officials asked Michael Barr, the Treasury's assistant secretary for financial institutions, if the department could extend the deadline by six to 12 months, to ensure it is used to its fullest potential, according to John Murphy, NALHFA's executive director.

"We basically raised this with Secretary Barr and it was the first he'd heard of it," Murphy said this week.

Under the NIBP program, which was announced last October, the Treasury agreed to purchase $15.3 billion of state and local HFA bonds through Fannie Mae and Freddie Mac in an attempt to boost housing bond issuance, which has been hampered for years by adverse market conditions.

The Treasury, at that time, also provided HFAs with a temporary credit and liquidity facility for existing single-family and multifamily bonds. The HFAs have obtained $8.2 billion of liquidity from that program.

Under the NIBP, issuers had to sell the bonds by the end of 2009 and place the proceeds in escrow. The bonds, typically sold as short-term taxable debt, were to be converted this year to longer-term tax-exempt bonds, the proceeds of which would be used to originate new mortgage loans. Any proceeds left by the end of 2010 would have to be used to redeem the outstanding bonds, according to the program's requirements.

However, many local HFAs feel squeezed by that time frame and warn several issues could hamper their ability to fully use the program by the end of the year.

"The problem has always been that that was a very short time frame," said Jim Shaw, executive director of the Capital Area Housing Finance Corp. in Austin and current president of NALHFA.

For HFAs, the 12 months they have to finance mortgages with these bonds is actually being pressured on both ends. On the front end, the agencies have had to spend the first few months of

2010 educating and training lenders and reviving infrastructure that has been on the sidelines for several years because of the lackluster market.

"All these bond issuers have really been out of the market for quite some time ... [and] there's been a tremendous amount of turnover," Shaw said. "We're really just now starting to see the program take off."

"A lot of issuers have not been able to launch single-family bond programs for a couple of years, everyone is getting their capacity back in place in terms of their lender networks, and that's taking a little bit of time," agreed Mark Ulfers, executive director of the Dakota County Community Development Agency in Eagan, Minn., and a NALHFA board member.

And on the back end, if HFAs want to group mortgages in mortgage-backed securities or pools, they likely will need to convert their bonds by mid-October, and HFAs would like to originate the mortgages before converting to avoid negative arbitrage or losses.

"You're really left with a very, very short origination period," Shaw said.

In addition, some potential homebuyers are still sitting on the sidelines, waiting to see if the housing market has bottomed out, further slowing the process.

"Buyers are holding back a little bit ... until they're sure the real estate prices have dropped to the lowest possible level," Ulfers said.

"We certainly wouldn't want to see any of the resource go to waste, the need is definitely there," he added. "Once the infrastructure is in place ... there should be no reason this money shouldn't be fully utilized."

Even if Treasury officials are receptive to extending the program's lifespan, the question remains as to whether they could unilaterally extend it or if a statutory fix from Congress would be necessary.

Barr would not commit to a fix coming from within the Treasury, according to those in attendance at the NALHFA conference, but HFA officials are optimistic it could be handled without requiring Congress to rewrite the law.

"Our hope is that it wouldn't take a legislative fix," Shaw said.

Treasury officials could not be reached for comment.

Meanwhile the Federal Reserve Board stopped purchasing mortgage-backed securities yesterday, bringing to a close a 15-month stretch where it bought $1.25 trillion of the securities, driving down interest costs.

Murphy said yesterday that it is impossible to know what ultimate impact the Fed's departure will have on the HFAs. But he said it is expected to lead to higher interest rates, which in turn could open the door to more HFA deals.

"We'll just have to see where it comes out," he said.

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Neil J. Mores, *Euphemism or Hard Reality, Industry Talks About 'Graceful Exits'*, Mortgage Banking, April 2010.

Two words heard often at the Mortgage Bankers Association's (MBA) National Mortgage Servicing Conference in San Diego in February were "graceful exit." As government loan-modification efforts such as the Home Affordable Modification Program (HAMP) are generally considered to have fallen short of initial aspirations, more talk is being heard about borrowers leaving their homes and mortgage obligations rather than attempting to get their loan terms reduced.

"We have to get the word out that there is a certain percentage of people for whom homeownership is not an option anymore," conceded Alanna Brown-Scott, director, government programs and new initiatives, for Fannie Mae's National Servicing Organization in Washington, D.C. Those people "need to find a way out, and that's the concept of a 'graceful exit' and not having to foreclose on them. Working with them is a big focus [for us) going forward," Brown-Scott said.

Another MBA National Mortgage Servicing Conference speaker, Eric Schuppenhauer, senior vice president with Fannie Mae's National Servicing Organization, said, "It's incumbent [on us| to find liquidation - a graceful exit for borrowers. The options are at a final stage and rental capabilities will be instrumental as we move into 2010. We're hopeful that a lot [of borrowers] will be able to have a friendly exit [when] all tools have to be used," said Schuppenhauer, mentioning that in its borrower-contact efforts, Fannie has "used door-knocking firms [and] component servicers, and thank God we did. It's absolutely instrumental that we pull out everything in the tool kit."

Following on that theme, Scott Holzmeister, senior vice president based in the Fort Mill, South Carolina, office of Des Moines, Iowa-based Wells Fargo Home Mortgage, told a standing-roomonly MBA servicing conference audience: "If a borrower's not working, then the servicer has to assess whether to continue extending [forbearance]. The climate today is 'extend, extend, extend.' But modifications are here to create affordable payments; they're not there to build equity in your home."

Holzmeister noted that with modification efforts, "there's a lot of back-end debt management !occurring], and it takes a while to work through that. The leverage [debt] that's out there today is scary. It may be so high [that] a mod will not work." Then, asking a rhetorical question of the assemblage, Holzmeister said: "Is there a steadfast rule how to proceed? No. In loss mit, you have to apply expert judgment and dive deeper than ever before using a lot of the same tools, but at a deeper level. Outside of rate, term, forbearance and forgiveness, there's not much more we can do - but you have to structure [any deal] to fit a customer's needs and abilities."

Regarding borrower responsiveness, the Wells Fargo executive offered this rule of thumb: "The sweet spot is that ?o-to-co [-day] bucket. At 30 days, they're not sure that they're really broke. At 60 to 90 [days], it starts to hit them and they move. At 120 [days], they start to shut down" - that is, become non-communicative, he said.

Echoing that assessment, Richard Cimino, chief executive officer of iServe Servicing Inc., Irving, Texas, predicted that "there is going to be a large increase in REO [real estate-owned] inventory this year, (with] short sales |being| the exit strategy of some lenders, while others are going to an REO scenario. The 'elephant in the room is that these people can't stay in these houses," he said.

Colleen Hernandez, president and chief executive officer, Homeownership Preservation Foundation (HPF), Minneapolis, calls joblessness a "phenomenon" insofar as seeing "the newly middle and upper class unemployed |who] are very slow to catch up to their new lives; slow to apply for [unemployment] benefits or take a job that may not pay as much as their last job; and slow to shed the trappings of their former life that they can no longer afford, with the clock ticking."

A speaker at the New York-based American Securitization Forum's (ASF's) ASF 2010 conference held in National Harbor, Maryland, in early February, Hernandez said that in counseling, her group can help troubled homeowners "come to grips with 'the new world order."

At the same event, Nancy Mueller Handal. managing director, structured finance, in the Morristown, New Jersey, office of New York-based MetLife Inc., said of principal reductions or write-downs: "We have to be mindful of the hazards in [doing this] because everyone will want that deal. We need to put up gates' and safety measures in HAMP" to address this issue, Handal advised, suggesting that "to truly solve shadow inventory problems with modifications, you have to address the second-lien issue, to get to the right LTV [loan-to-value ratio]. Forgiving principal," she noted, "should be done with a long-term refi program where a borrower earns the right to dispose part of their principal."

Indeed, said Michael McKeever, an attorney with Goldbeck, McCafferty & McKeever, Philadelphia, "Without substantial principal reductions financed by government entities or collective thought, we're not going to see [a modification] - and I'm not sure it's in the homeowner's best interest to modify a loan that is substantially underwater and will remain so for what looks like a substantial amount of time." McKeever moderated a panel discussion at the MBA National Servicing Conference, and said he expects "over the next few years we'll see significant pain shocks on the horizon, starting January 201 1 through September 2012."

Pulling no punches in criticizing secondary mortgage market activities, Michael Barr, assistant secretary for financial institutions, Department of the Treasury, told an ASF 2010 audience that "imprudent lending, fueled by a flawed securitization process, harmed not just investors in these loans but caused great injury to millions of responsible families, our neighbors and our country."

A "defective securitization framework was a significant contributor to the housing bubble that set the stage for the financial crisis," said Barr. "We need to set in place clear rules of the road going forward, so we don't re-create the unlevel playing field - the race to the bottom - that existed in our mortgage markets in the last decade."

One MBA servicing conference attendee with a direct stake in all the discussions and decisions involving troubied borrowers is Stephen Bancroft, executive director of the Detroit Office of Foreclosure Prevention and Response (FPR). During an audience question-and-answer session, Bancroft asked why servicers are sending a "mixed message" to borrowers who, he said, "get [coincident) calls about loss mitigation and collection." In response, panelist Schuppenhauer of Fannie Mae said: "I'm not sure why that's happening; all things are not perfect. We have to do a better job on communications."

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Ruth Simon and Kara Scannell, *Securities Debate is All About Trust*, The Wall Street Journal, March 30, 2010.

The effort to revive the market to package loans into securities has turned into a battle between regulators and lenders over a fundamental question: Can banks and their overseers be trusted to prevent bad lending?

The Obama administration believes they can't, and one way to prevent lenders from making bad loans on credit cards, cars and homes to require that the lenders and companies that package loans into securities hold a portion of the loans on their balance sheets.

Industry officials counter that the requirement that they keep some skin in the game, combined with other regulatory and accounting changes could hinder any recovery in the securitization market. And that could prevent consumer and commercial real-estate lending from returning to normal.

Congress agrees with the president. Part of a broad overhaul of financial rules that cleared the Senate Banking Committee last week, the measure would require lenders and companies that package loans into securities to hold at least 5% of the credit risk, though regulators could set lower standards for less risky loans. A similar measure was included in financial-overhaul legislation passed by the House of Representatives in December.

The Securities and Exchange Commission is about to weigh into the debate, proposing a rule that would include, among other things, that banks need to hold onto a portion of the securities in order to be granted an expedited offering. As early as next week, the SEC will propose a series of new rules to require more disclosure about the pool of assets, steer investors to higher quality securities, and slow down offerings by giving investors more time to review prospectuses.

The risk-retention requirement is a key part of the Obama administration's efforts to restore confidence in the securitization markets. The provision "is meant to address a critical weakness of the securitization process: it reduces incentives for prudent underwriting," says Assistant Treasury Secretary Michael Barr. Lenders and underwriters issued too many risky loans in part because they had little stake in how these loans performed, administration officials say.

Industry groups counter that the risk-retention measure, combined with other changes, could hurt credit availability.

"[G]iven the totality and far reaching implications of regulatory and accounting changes, there are serious concerns about the future viability of the securitization markets," a coalition of 21 industry groups said in letter sent Thursday to Sens. Christopher Dodd and Richard Shelby.

The groups include the American Bankers Association, the Commercial Real Estate Finance Council, the Mortgage Bankers Association and the Securities Industry and Financial Markets Association.

Some critics of risk retention say that banks held a financial interest in many risky loans made during the housing boom. "People seem to forget that … the banks were holding too many subprime mortgages, not too little," says Dwight Jaffee, a professor of finance at the University of California at Berkeley.

Issuers of bonds backed by credit cards, auto loans and student loans typically keep a portion of the risk on their books. In 2003, hedge funds and other investors began investing in the riskiest slices of bonds backed by residential mortgages, making risk retention in these deals less common.

Appetite for these high-yielding slices helped fuel the market for so-called private-label mortgage securities, which don't carry government backing. At the peak of the housing boom in 2006, private-label securities accounted for 38% of mortgage originations, according to Inside Mortgage Finance, an industry newsletter. But the private-label market collapsed in 2007 amidst lax underwriting and rising mortgage delinquencies.

Some industry groups, including the Mortgage Bankers Association and the Financial Services Roundtable, which represents the largest financial institutions, say they don't oppose the concept of risk retention. But they want traditional 30-year fixed-rate mortgages and other well-underwritten loans to be exempt from the requirements.

"Mainstream products should not require risk retention," says John Courson, chief executive of the Mortgage Bankers Association. "We believe it needs to be on the riskiest products."

The American Securitization Forum, the trade group for the securitization industry, says that a better way to align incentives is to strengthen "representations and warranties," which spell out the circumstances under which troubled loans must be repurchased.

Tom Deutsch, executive director of the ASF, says that the proposed rules, combined with recent changes in accounting rules and capital requirements, would make it "highly unlikely" that banks would do many securitizations. Those rules, which took effect in January, will over time require banks to hold regulatory capital against the full value of any securitization in which they hold a meaningful interest.

Banking regulators, meanwhile, are split about the best way to foster better underwriting. The Federal Deposit Insurance Corp. included a 5% risk retention requirement in its preliminary proposals for how securitizations should be treated when a bank fails.

"Retaining some of the risk of the loan on the balance sheet will realign incentives," says Michael Krimminger, the FDIC's deputy to the chairman for policy.

Comptroller of the Currency John Dugan, on the other hand, has suggested that a better approach would be for regulators to set minimum loan standards, such as verification of borrower incomes and a requirement that borrowers make meaningful down payments, for all mortgages.

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Michael R. Crittenden and Sarah N. Lynch, *Five States Get $600 Million in Housing Aid*, The Wall Street Journal, March 29, 2010 3:16 PM ET.

WASHINGTON—The Obama administration on Monday committed $600 million in new funds to help struggling homeowners in some of the nation's hardest hit states, part of a growing effort to address the ongoing effects of high unemployment.

Officials from the Treasury Department and White House said the funds being made available to North Carolina, Ohio, Oregon, Rhode Island and South Carolina would allow officials in areas that have seen the most concentrated effects of the economic downturn address issues locally.

"We're trying to provide some extra help in some particularly hard hit communities," Treasury Assistant Secretary Michael Barr said during a conference call with reporters.

The new funds are on top of the $1.5 billion President Barack Obama announced last month for the states hardest hit by the drop in housing prices, and are part of a broader effort by the administration to respond to criticism that it isn't doing enough to help homeowners and deal with high unemployment levels.

The administration on Friday said it was retooling its centerpiece program to help slow foreclosures, placing a greater emphasis on helping borrowers who owe more than their homes are worth. The changes to the Home Affordable Modification Program also include an effort to reduce or suspend mortgage payments for three to six months for those recently unemployed.

Diana Farrell, deputy director of the National Economic Council, told reporters Monday that the $600 million in new funds is part of a broader effort that will "continue to evolve as we see changes in unemployment."

The five states eligible for the new funds have wide latitude in using the money, but must first submit a detailed plan to the Treasury to be approved. While the Treasury provided a number of suggestions—assistance to unemployed homeowners and mortgage modifications, for instance—officials stressed that they want local government to design their own programs.

"We're not trying to proscribe the innovations, we want to learn from the innovations," Treasury Assistant Secretary Herbert Allison told reporters.

Treasury officials said the five states eligible for the new funds were chosen based on the share of their state population living in counties were the average unemployment rate exceeded 12% in 2009. Officials acknowledged that a number of other states have higher unemployment rates, but that their goal was to target federal money in "areas of concentrated economic distress."

Mr. Barr said the choice of those five states is "not meant to suggest other states might not need help," while Farrell said the goal was to "surgically go into areas" where officials think efforts by local housing finance agencies will be successful.

"We're trying to let the program evolve," Mr. Barr said.

Among the five states chosen, Ohio will receive the most money with $172 million and North Carolina will get the second highest amount, $159 million. South Carolina, meanwhile, will get $138 million, Oregon will receive $88 million and Rhode Island will see $43 million.

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Cheyenne Hopkins, *Foreclosure Plan Finds Right Target But Doubts Remain*, American Banker, March 29, 2010.

WASHINGTON — The Obama administration's latest foreclosure prevention plan got an A for effort from most observers, who said it targets the right group of borrowers — the unemployed and those whose mortgages exceed the value of their home.

But consumer groups and industry analysts alike said the proposed changes will do little to address a still cumbersome process, investor resistance and continued second-lien hurdles.

The plan is a "real paradigm shift in how they are approaching foreclosure prevention," said Julia Gordon, senior policy counsel for the Center for Responsible Lending. "But so far with the administration's efforts we've seen a real problem on the implementation side."

Many observers said they expect the plan will help only borrowers on the margins.

"I don't think it will have a huge impact unless it becomes mandatory," said Bruce Marks, chief executive of the Neighborhood Assistance Corp. of America. "I think you are going to see it increase [participation], but not enough as necessary until President Obama requires the servicers to do it."

Under the plan announced Friday, the administration's Home Affordable Mortgage Program will emphasize principal writedowns over interest rate and payment reductions. In order to participate, lenders must write down the loan by at least 10% and ensure the total loan-to-value ratio on the home is not greater than 115% after refinancing. Lenders will be able to refinance these borrowers into Federal Housing Administration loans. To qualify, homeowners must be current, meet standard FHA underwriting guidelines and have a FICO score of at least 500.

The administration is also encouraging principal reductions directly through Hamp, pushing lenders to write down the loan to 115% loan-to-value. Lenders are required to consider borrowers who have already received a trial or permanent modification under the program. Servicers that choose to participate will receive incentive payments for any amount of the loan they forgive over three years — as long as the borrower remains current.

The administration is also targeting unemployed borrowers by calling for three-month forbearance on foreclosure proceedings against those borrowers who have recently lost their jobs. The administration will provide assistance to such borrowers for three to six months to help reduce a mortgage to 31% of the borrower's income based on their unemployment insurance.

Although many critics have said the administration's plan should have encouraged principal reduction from its inception, Michael Barr, Treasury assistant secretary for financial institutions, said Friday that lenders are only now more receptive to the idea.

"There is a change in attitude, perception among servicers and investors from a year ago," Barr said. "I think there is an increased recognition for doing principal-reduction plans."

Some observers argued the FHA changes could have a big impact — if the administration can implement it as designed. By refinancing into FHA-guaranteed loans, the lender is off the hook if the loan defaults again.

But they also noted Congress has tried this route before without much success. The Hope for Homeowners program, which at some point was projected to help hundreds of thousands refinance into FHA loans, has so far helped less than 50 people. "I remain skeptical of another FHA program," Gordon said. "This effort improves on [Hope for Homeowners], but it's still voluntary for the servicers to put the loans through."

The administration counters that it cannot make the program mandatory without further legislation. Although consumer groups continue to push a bill that would allow judges to modify mortgages in the bankruptcy process, the administration has offered the bill just tepid support.

"It's very hard to hold them to do this — legally what's necessary," Herb Allison, Treasury assistant secretary for financial stability, told reporters last week.

Stephen Ornstein, a partner at the law firm Sonnenschein Nath & Rosenthal LLP, said that the latest program was an improvement but that he still worried it was not going far enough.

"There are still too many barriers to entry," he said. "You still have to qualify for FHA and even if you have a streamlined program it is still complicated."

Some critics also worried that the FHA's losses could rise. The agency has already experienced high losses on its loans, and many fear that it could push it further to the brink of insolvency. To that end, the administration said it would use $14 billion of Troubled Asset Relief Program funds — out of the $50 billion already devoted to foreclosure prevention — to absorb higher losses.

Investors are more optimistic about the plan's impact. Tom Deutsch, deputy executive director of the American Securitization Forum, said the program would be appealing to investors.

"Investors are very interested in the FHA short refi program," he said. "Severely underwater borrowers are very concerning to investors, so if they can take the pain up front and refinance it to an FHA loan, many investors will be willing to make that change. But there are operational challenges to that."

Howard Glaser, a housing consultant, agreed. "It has a much greater chance of success than anything they've done before," he said. "I think they understand the reality that you have to align mortgage debt and home values."

Still, some industry participants said the program remains cumbersome and confusing.

Diane Casey-Landry, senior executive vice president of the American Bankers Association, said many bankers are doing their own workout efforts which are more flexible than the administration's plan. "It was a lot easier for the banks to operate outside of one of the structured programs," Casey-Landry said. "They see it as too limiting and structured around the borrower. What the bankers are saying is it doesn't allow you to address the unique circumstances of the borrowers."

Observers said the second-lien issue also remains a large impediment to workouts, even though the administration offered yet more incentives Friday for principal writedowns for such loans.

"The banks have tried to push out those losses as far in the future as possible and any government program that tries to get them to recognize that today the industry will fight," said Paul Miller, managing director of Friedman Billings Ramsey & Co.

Although lawmakers and an independent report sharply criticized the Hamp initiative last week, Barr said the administration is doing the best it can given shifts in the market. "We are trying to adjust to changing circumstance over time," he said. "We launched this program a year ago from scratch. … There have been growing pains in that program. "I think that we all think that we could have certainly done better."

Some said focusing on unemployed borrowers was a crucial first step toward repairing the program. "We are dealing with a very different reason for defaults today than a year ago," said John Courson, president and CEO of the Mortgage Bankers Association. "When you have 10% unemployment and the major cause of default is unemployment, you are not going to get the kind of modification numbers the administration was hoping for."

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James R. Hagertu and Nick Timiraos, *Mortgage Plan Remodled Again*, The Wall Street Journal, March 27, 2010.

The Obama administration said Friday it would step up help for borrowers who owe more than their homes are worth.

But officials also tried to tamp down expectations for their latest revamp of the government's year-old foreclosure-prevention drive. Some of the adjustments face logistical hurdles and it could be months before the initiatives are in place.

Diana Farrell, a senior White House economic adviser, said the programs couldn't be expected to prevent the majority of expected foreclosures. "The purpose is to deal with just enough of the overhang…where we have a real chance of changing the dynamic," she said.

The overhaul creates a much bigger role for the Federal Housing Administration, which will offer a new way for some underwater borrowers to refinance into a smaller loan. Previous efforts to refinance underwater borrowers have faced challenges.

The FHA plan is targeted at investors who own mortgages that were bundled and sold by Wall Street. Under the plan, such mortgage holders would write down the principal of a first mortgage at least 10%. The loans would then be refinanced into FHA-insured mortgages.

To qualify, homeowners must be current on their loan, occupy the home as a primary residence, fully document their income and have at least a 500 credit score.

For borrowers with second mortgages, total mortgage debt would have to be written down to a maximum of 115% of the home's current value. The government would pay the holder of the second lien, but their cooperation wasn't assured.

Some mortgage investors have been clamoring for such a plan. "I would not overstate, by any stretch, expectations that this is going to be a huge program in the investor community," said FHA Commissioner David Stevens. He said it would appeal to investors who have an exposure to markets where home prices have plunged.

The agency would take on more risk by refinancing underwater borrowers and that risk would grow as the program grows more successful. The administration said it would steer $14 billion in Troubled Asset Relief Program, or TARP, funds that had already been allocated for foreclosure prevention to cover costs.

Meanwhile, the administration will now require banks that participate in the government's Home Affordable Modification Program, or HAMP, to consider writing down principal for eligible borrowers whose mortgage debt is more than 115% of the current value of their home. The principal would be reduced in stages over three years if the borrower keeps up on payments.

Lenders were to receive 10 to 21 cents of federal subsidies for every dollar of loan principal reduced, depending on the degree to which the borrower was underwater.

The administration said it would double the amount money it would pay to second-lien mortgage holders under an existing program. Some second mortgages, which have been one major obstacle for short sales and modifications, are "worth effectively zero," said Michael Barr, an assistant Treasury secretary. The question, he added, was how much "nuisance money" was needed to satisfy the second-lien mortgage holder.

The administration also unveiled a program to sharply reduce or even suspend mortgage payments for three to six months for unemployed borrowers to help them keep their homes while looking for a job.

Among borrowers already looking at the new options was Phillip E. Jones, a real-estate broker in Orange Park, Fla. Mr. Jones bought a five-bedroom home in 2006 for about $410,000 but figured the market value had dropped to around $250,000, well below his $350,000 of mortgage debt. He said his lender rejected his application for a HAMP loan modification on the ground that his retirement savings disqualified him for hardship assistance.

"I'll try again" for a refinance into an FHA-backed loan, Mr. Jones said, though he had become skeptical of government efforts to prod lenders into modifying loans. HAMP, he said, was "smoke and mirrors."

So far, around 170,000 borrowers have received permanent modifications in the HAMP program, while another 835,000 are in a trial stage.

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Bart Jensen, *President announces housing relief plan*, The desert Sun, March 27, 2010.

Obama administration officials announced Friday an expansion in debt-relief programs to keep families in their homes despite being unemployed or owing more than their homes are worth.

The programs aim to keep families in their own homes if they are making payments and intend to continue living in the residences. Lenders will be encouraged to reduce principal owed and payments in an effort to stabilize the market and stop prices from dropping further.

Diana Farrell, deputy director of the National Economic Council, said the goal is to help responsible borrowers "who are in fear or in danger of foreclosure when we can help them. But it's important to recognize we're not going to stop every foreclosure."

Housing is the big albatross that's holding back the economy in the Coachella Valley, said Brad Mix, business consultant for the Coachella Valley Small Business Development Center.

"That's going to take a couple of years or more before we get to equilibrium. There's still a large backlog of foreclosures being processed by the banks. Until we see a meaningful stabilization, and see new construction, we won't see rapid job growth."

Gov. Arnold Schwarzenegger applauded action by the Obama administration to help struggling unemployed and underwater homeowners stay in their homes.

"This housing crisis has been devastating for many, especially in California," he said, adding as an aside that the state also has taken significant steps to help homeowners.

"We have achieved more than a quarter-million home loan modifications in California," he said in a statement.

"I am confident these new initiatives will have a meaningful impact for even more California homeowners and their communities."

On Thursday, Schwarzenegger signed legislation on a $200 million stimulus package that offers a $10,000 tax credit to new and existing home buyers in California beginning May 1 as to fire up the real estate economy.

California homebuilders said the $10,000 tax credit, or 5 percent of the purchase price of a newly built home, and a $10,000 tax credit for first-time buyers of existing homes will help the homebuilding industry and create jobs.

Farrell, of the National Economic Council, characterized the housing crisis as stabilizing, but she said it still presents a problem for residents to remain in their less-valuable homes. The administration's goal is to offer 3 million to 4 million struggling homeowners help through the end of 2012.

"Some people simply will not be able to afford to stay in their homes because they bought more than they could afford," a White House statement said.

At the end of 2009, delinquent home loans totaled 494,640 in California, 309,022 in Florida, 120,030 in Michigan, 105,853 in Arizona and 62,622 in Nevada.

"With the unemployment crisis being what it is and with more houses being underwater, the nature of the crisis has changed," said Herbert Allison, assistant secretary of Treasury.

The expanded programs announced Friday will come from $50 billion allocated for housing under the Troubled Asset Relief Program, which Congress created to rescue failing banks.

Officials said that despite creating a $700 billion program, losses to the government are estimated at only $100 billion.

For the unemployed, mortgage payments will be reduced for three to six months while those who are eligible to borrow look for new homes. Payments will be capped at 31 percent of income, which officials said could be low if they are receiving unemployment benefits.

For homes now worth less than their mortgages, loan servicers will be required to reduce principal in loans where housing prices have fallen. Servicers will receive incentive payments for processing loans under Federal Housing Administration guidelines.

"Lenders will be able to provide additional refinancing options to homeowners who owe more than their homes are worth because of steep price declines in their markets," said Michael Barr, assistant secretary of Treasury.

Because many delinquent homeowners have second mortgages, the FHA will cap first mortgages at 97.75 percent of the current value of the home and second mortgages at 115 percent of the value.

Lenders are expected to participate because the refinanced loans won't be counted against their solvency.

More information about the programs is available at www.makinghomeaffordable.gov.

Desert Sun staff writer Debra Gruszecki contributed to this report.

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Alejandro Lazo, *White House takes new aim at mortgage mess: Changes seek to aid ‘underwarter’ and jobless borrowers*, Los Angeles Times, March 27, 2010.

The Obama administration unveiled new measures Friday aimed at getting lenders to reduce the principal balances on problem mortgages and to refinance "underwater" borrowers, who owe more than their homes are worth, into government-sponsored loans.

The initiatives are part of an escalating effort to buoy the housing market -- and an acknowledgment that more steps are needed to prevent a fresh wave of foreclosures.

One provision will allow many unemployed homeowners to get three to six months of reduced mortgage payments while they look for a job.

But the most significant change to the $75-billion program is aimed at helping underwater borrowers. It would do this by encouraging banks to reduce the principal on loans in default, and by refinancing troubled loans into Federal Housing Administration-backed mortgages.

The change could help borrowers such as Hector Antonio Gomez and Sandra Segovia of Los Angeles. They were among the relatively small group of homeowners to get a permanent reduction in payments under the administration's current program.

The Salvadoran natives avoided foreclosure and now have monthly payments they can afford but are still saddled with big debts. They owe about $460,000 on a two-bedroom bungalow in the downtown-area Westlake neighborhood. The home is assessed at $350,000 but probably wouldn't fetch more than $286,000, according to a real estate industry estimate.

"We will never be able to pay that," Gomez said in Spanish as he stood in his tiny tomato garden. Like many first-time buyers who purchased during the bubble years, the couple figured that home values would keep going up.

With the changes announced Friday, the administration hopes its Home Affordable Modification Program will meet its target of helping 3 million to 4 million homeowners avoid foreclosure through 2012.

To date, just 170,000 people have gotten permanently lowered mortgage payments under the year-old program -- which barely puts a dent in the projected 10 million to 20 million foreclosures expected in the next three years.

"It's really important to recognize we're not going to stop every foreclosure," said Diana Farrell, deputy director of the White House's National Economic Council. "It wouldn't be fair, it would be too expensive and we probably wouldn't succeed, in any case, because many people got into homes that they simply cannot afford."

Slashing the principal on underwater mortgages is seen by many experts as a key to helping borrowers stay in their homes, but the administration has resisted such a move, saying it could encourage some borrowers to fall behind on their mortgages intentionally -- and stick taxpayers with the bill.

But under greater pressure from the government, and with more foreclosures looming, lenders are warming to the idea.

On Wednesday, Bank of America Corp. said it would offer to erase as much as $3 billion in principal owed by thousands of severely delinquent borrowers.

"There have been growing pains in that program. I think that we all think that we could have certainly done better," Assistant Treasury Secretary Michael Barr said of the Obama administration program. "And as the crisis unfolded, we wanted to be mindful of the need to adjust the program along the way."

Still, the new incentives just "tinker around the edges" of the problem, said John Taylor, president of the National Community Reinvestment Coalition. Taylor is concerned that the new incentives won't be strong enough to get mortgage servicers and investors to modify loan terms.

Others say the administration is going too far and is rewarding people who made bad financial decisions or bet that housing prices would keep soaring.

Rep. Jeb Hensarling (R-Texas) said Friday that the administration's program had been nothing short of "an abject failure" and that the decision to expand it by providing incentives for write-downs was troubling.

"This is another bank bailout that will reward irresponsible borrowers and lenders," Hensarling said. "Home buyers are taxpayers too, and there is nothing about these efforts that is taxpayer friendly."

Gomez and Segovia said they just wanted a home for themselves and three daughters.

They bought their 86-year-old, 952-square-foot home in July 2007, just as Southern California home prices were peaking, slapping down $23,500 as a down payment, paying closing costs and taking out two loans for the remaining $446,500.

The terms of the two loans were precarious, and typical of the kind of predatory lending that helped inflate the housing bubble.

The first mortgage carried an initial 6.5% interest rate but was scheduled to adjust after five years. Gomez and Segovia were granted a permanent modification in January. The second loan was a 15-year loan with a 10.5% interest rate.

"As we never had bought a house, we did not know this was high," Gomez said.

The couple was able to make the combined payments of $2,665 until last March when Segovia lost her job as a baby sitter and Gomez began losing hours at his job as an electrician. They dug into their savings and twice applied for a loan modification. Still, they fell behind on their payments and began receiving threats of foreclosure.

The nonprofit Los Angeles Neighborhood Housing Services helped them get their loans adjusted permanently earlier this year, but they would still like to see their principal reduced.

"That would be magnificent," Gomez said.

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Ronald D. Orol, *White house expanding mortgage-relief program*, MarketWatch, March 26, 2010 1:17 PM ET.

WASHINGTON (MarketWatch) -- With projections of millions of foreclosures over the next five years, the Obama administration announced Friday it would make major adjustments to its $75 billion mortgage-modification program, aimed at assisting a greater number of unemployed and other troubled homeowners in modifying or refinancing their mortgages.

The purpose of the changes is to "deal with people who we believe are in homes where foreclosures are preventable," said National Economic Council Deputy Director Diana Farrell.

The program modifications seek to transform a year-old modification program that has been having only limited success, by providing additional flexibility for mortgage servicers and originators to offer assistance to a greater number of unemployed homeowners.

In addition, the program would help more people who owe more on their mortgages than what their homes are worth -- a problem all too common in those local markets that saw large-scale declines in home values. Many people who signed to buy homes at the peak of the housing boom and who are current on their payments find they can't refinance since their homes are "under water."

The Obama administration will tap funds from $50 billion already allocated from the Troubled Asset Relief Program for housing to pay for the expanded assistance program.

Treasury Assistant Secretary Herbert Allison told reporters that only "several billion" of the funds have been allocated, leaving much available for the new programs. The nature of the nation's housing problems has changed from a mostly subprime crisis into a broader one that includes millions of jobless homeowners, he said, and as a result the administration has been able to free up funds from the $50 billion.

"If we could just get to the target set of helping 4 million borrowers, we could make a material difference in the markets," added Farrell.

Helping hand, with options

One aspect of the new program seeks to help, for three to six months, unemployed borrowers who are seeking jobs.

The administration has been struggling to help unemployed homeowners, the vast majority of which have been unable to participate in the Obama administration's modification program. The program seeks to provide temporarily relief for many of these homeowners and give them time to find a job.

Roughly 8 million to 13 million foreclosures are expected to take place over the next five years, according to the Congressional Oversight Panel for the $700 million TARP program.

As part of the program, jobless homeowners can have their monthly payments cut down to 31% of their unemployment insurance benefit for three months, an amount that Treasury Assistant Secretary Michael Barr said will be quite low, "given they are on unemployment."

Under another approach, some unemployed homeowners will be able to defer all payments for between three and six months, but this will require the lender or mortgage investor to agree to the deferral in a contract. All this will be funded through government subsidies.

The Treasury program also seeks to write down the value of home loans for borrowers already in the administration's mortgage-modification program. In other words, the program will seek to reduce the principal amount owed by borrowers.

Borrowers with loan-to-value ratios above 115% would be eligible. Negative equity above 115% of a home's value would be forgiven in this program, which would be subsidized by government funds. Treasury's Barr argued that borrowers with modified loans with home-to-loan values of 115% or less are less likely to default on their mortgages.

The Mortgage Bankers Association, a national association representing the real-estate finance industry, said in a statement that encouraging the reduction of mortgage principal "gives servicers yet more tools they can use to help underwater borrowers."

The largest program would use $14 billion of TARP funds employing the Federal Housing Administration to refinance loans for underwater borrowers.

With this approach, some TARP funds would be used to provide incentives for mortgage investors to participate. With this program, such investors would have to forgive negative equity and bring a mortgage to 96.5% of its loan-to-value ratio.

The Obama administration's existing program, known as the Home Affordable Modification Program, was designed, in part, to help troubled borrowers get their mortgages modified and thus avoid foreclosure.

However, it's been criticized for failing to address millions of foreclosures on the horizon. So far, it has converted fewer than 200,000 temporarily modified home loans into permanent modifications -- well below the goal of helping 3 million to 4 million struggling homeowners avoid foreclosure by the end of 2012.

The Housing Policy Council, a group of 26 mortgage-finance companies, proposed a number of recommendations to improve the program. The changes "will help more homeowners who are facing difficulty but want to stay in their homes," said John Dalton, president of the group.

The government has provided support to the troubled housing market through tax credits for buyers and by essentially taking over mortgage giants Fannie Mae (FNM) and Freddie Mac (FRE) . Another stimulus measure, the Federal Reserve's $1.25 trillion program to buy mortgage-backed securities, is set to wind down at the end of this month.

National home prices have fallen about 30% from their peak in 2006. Earlier this week, the Commerce Department reported sales of new homes dropped to a record low, underscoring the fragile state of the housing market.

Enough incentives?

Sylvia Alayon, vice president at the Consumer Mortgage Audit Center, endorsed the new programs, arguing that the existing White House effort wasn't helping enough troubled homeowners because lenders and banks weren't given sufficient incentives to modify problem mortgages.

"These new measures will give homeowners some temporary mortgage relief, while at the same time offering lenders and banks the necessary incentives to modify loans," she said.

However, John Taylor, president of the National Community Reinvestment Coalition, said he is not optimistic that the incentives will be enough to entice mortgage servicers and investors to reduce loan principals.

"Will they help 7 million people who are at risk of foreclosure?" he asked. "I will be pleasantly shocked if investors step up for half a million borrowers."

Te only way there will be a major reduction of foreclosures on the horizon, according to Taylor, is through mandatory principal write-downs, in which lenders would be required to reduce loan principals.

John Dodds, Director at the Philadelphia Unemployment Project, said the program is "woefully inadequate," in part because many homeowners are unemployed for far longer than the three to six months. He added that many will need longer than that to find a job.

"We believe that we need a loan program to allow homeowners enough time to get back to work, and have been discussing this with the administration for months," he commented. "Why offer three to six months' forbearance when millions are out of work for far longer? The unemployed need the help and the housing markets will not stabilize if large-scale foreclosures continue."

###

Jody Shenn, *American Home Has Flawed Bookkeeping, Moody's Says (Update 2)*, Bloomberg News, March 22, 2010 1:12 PM ET.

March 22 (Bloomberg) -- American Home Mortgage Servicing Inc., the loan-collections company assembled by billionaire Wilbur Ross, has bookkeeping flaws that may hurt bond investors, Moody's Investors Service said.

The servicer has been slow to reconcile numerous items in custodial bank statements with its accounting records, citing "inconsistencies" between two technology systems, the New York-based ratings firm said in a March 19 statement.

"Although reconciliation items are not uncommon in the mortgage servicing industry, servicers will typically resolve such items within 30 days of being identified," Moody's analysts Navneet Agarwal and Zhiqin Huang wrote in the statement. "In the case of AHMS, there is a significant amount of aged (60 days or more) reconciliation items."

As a result, Moody's may downgrade as much as $225 million of securities backed by American Home's advances of delinquent homeowners' payments to mortgage-bond investors, even though the Coppell, Texas-based company has boosted the transaction's reserve fund by $20 million to protect bondholders as it fixes its procedures, the analysts said.

Defaults may cost the Federal Reserve, which lent $107.5 million to buyers of servicer-advance bonds when the debt was issued in August through its Term Asset-Backed Securities Loan Facility.

Wilbur Ross's Role

WL Ross & Co., Ross's company, bought American Home from its bankrupt lender parent in 2008, and later added operations and contracts from H&R Block Inc., Citigroup Inc. and Taylor, Bean & Whitaker Mortgage Corp. The firm was the 14th largest home-loan servicer as of Dec. 31, overseeing $89.4 billion of mortgages, according to newsletter Inside Mortgage Finance.

The items American Home isn't tracking well include "loan liquidations, loan modifications, mortgage insurance claims, and the servicer's 'stop-advance' process on delinquent loans," the analysts said. The related mortgage bonds weren't put under review because the issue isn't "considered material in comparison to current expectation of losses" on those deals.

"We haven't incurred any losses to date directly related to the reconciliation effort nor do we expect to incur any losses in the future," American Home said in a March 19 statement. "Our agreement to increase the reserve fund by $20 million and to maintain a material additional deposit in the fund until the situation is resolved demonstrates our strong commitment to maintain the AAA rating of the securitization."

Has Plan

While extra reserves show American Home's "strong commitment to resolving the issues," Moody's may downgrade the securities if the faulty items grow over the next three months, the analysts said. American Home has said it has a plan to remedy the issues over the next four to six months, according to the analysts.

Craig Pino, American Home's treasurer, declined to comment.

Amid the highest mortgage delinquencies on record, servicers' operations have caused bondholders trouble and faced criticism from various sources, including Michael Barr, the U.S. Treasury Department's assistant secretary for financial institutions. He warned in December of potential "remedial action" against the companies as they struggled to rework debt for homeowners under the government's Home Affordable program.

Moody's placed $5.9 billion of mortgage bonds serviced by GMAC LLC under review for downgrades on March 4 because the company was mingling cash from multiple transactions, reducing its need to borrow to fund the payment advances that servicers recoup after foreclosures or when borrowers catch up.

GMAC, the Detroit-based lender controlled by the U.S. government, said the next day it was separating the accounts.

Missed Payments

For at least three months last year, holders of mortgage bonds serviced by Ocala, Florida-based Taylor Bean didn't receive payments after the lender filed for bankruptcy and its accounts at Colonial BancGroup Inc. were frozen amid federal probes into the failed bank.

Fannie Mae and Freddie Mac, the mortgage companies under U.S. control, have said they've been forced to provide help from outside firms on bad loans to servicers and pushed some to sell contracts, including Troy, Michigan-based Flagstar Bancorp Inc.

The Mortgage Investors Coalition, a bondholder group, has said servicers may be allowing conflicts of interests, such as holdings of home-equity loans, to influence their actions.

American Home was accused in a lawsuit last year by hedge- fund firm Carrington Capital Management LLC of dumping foreclosed properties at fire-sale prices so it could pay back lenders financing its advances.

The company, in turn, said that Greenwich, Connecticut- based Carrington, which had bought the servicing unit of bankrupt New Century Financial Corp., was dragging out loan defaults to keep cash flowing to its junior-ranked interests in mortgage bonds, and filed a separate suit.

###

Alan Zibel, *Numbers dispute casts pall over US mortgage aid program*, The Associated Press, March 18, 2010.

WASHINGTON - Last year, the message was clear. Now it is murky.

When President Obama first announced a sweeping effort to combat foreclosures in February 2009, he said the program would ``enable as many as 3 to 4 million homeowners to modify the terms of their mortgages."

Shaun Donovan, the administration's housing secretary, echoed with the claim the plan ``does a number of things to make sure that up to 3 to 4 million families can stay in their homes and have affordable mortgages."

Now, with only 170,000 successful cases a year later, administration officials are backpedaling. They say the plan is on track to offer - note the word ``offer'' - help to those millions. By that measure, the program has already reached 1.3 million of them.

But the new spin is drawing ire from some on Capitol Hill. Republican representatives Darrell Issa and Jim Jordan sent a letter to Treasury Secretary Timothy Geithner yesterday accusing Obama officials of distorting the numbers.

``If Treasury is to regain the confidence of the American people, it must become more candid about the success or failure of its policies,'' they wrote.

The program is designed to lower borrowers' monthly payments by reducing mortgage rates to as low as 2 percent for five years and extending loan terms up to 40 years. The government has set aside $75 billion in subsidies to entice mortgage companies to participate. More than 100 have signed up.

To complete the program, homeowners need to make three payments and provide proof of their income, plus a letter documenting their financial hardship.

But getting banks and homeowners to complete the process has been far more difficult than administration officials anticipated. About 90,000 homeowners have fallen out already, and hundreds of thousands more are likely to be disqualified this year.

Officials actually made a quiet tweak to Obama's message weeks after his initial speech. The word ``offer'' made its first appearance on March 4, 2009, when the Treasury Department released details of the program.

A fact sheet issued at the time says the plan would ``offer reduced monthly payments for up to 3 to 4 million at-risk homeowners.''

Michael Barr, an assistant Treasury secretary, says he has consistently used this language in interviews with reporters for the past year. ``When we said we would reach 3 to 4 million people, we didn't say all of them were going to succeed,'' he said in an interview last month.

This kind of hairsplitting irks Thomas Lawler, an independent housing economist.

Merely offering help, he said, is ``not what the president meant,'' he said. Obama officials would be better off acknowledging the program's flaws and moving on, he said. Plus, he argued, offers of help are a poor way to measure results.

###

Zachary A. Goldfarb, *No rush to restructure Fannie, Freddie: Politics, shaky economy make it an unsavory task for Obama, analysts say,* March 11, 2010.

The federal government has spent the past half year seeking to roll back its emergency efforts at propping up the financial markets -- with the notable exception of its involvement in mortgage giants Fannie Mae and Freddie Mac.

As the government has pledged more and more money to cover the companies' losses, it has assured the public that planning was underway for overhauling the firms so the bailouts would end. As recently as December, the Obama administration said it expected to release a preliminary report on how to remake Fannie Mae and Freddie Mac around Feb. 1.

But no plan was produced, and in response to questions from lawmakers, Treasury Secretary Timothy F. Geithner clarified last month that it would be another year before the government proposes how to restructure the firms.

Sixteen months after they were seized to prevent their collapse, the companies remain wards of the state, running a tab that has now exceeded $125 billion in what has become the single costliest component of the federal bailout for the financial system.

Some members of Congress have complained that the huge public commitment is unsustainable. But the administration has been reluctant to start reforming Fannie Mae and Freddie Mac, officials and analysts say, because the firms in their current form play an essential role in supporting the housing market at a time when it is still under severe stress. As other financial firms have exited the market and credit has seized up, Fannie and Freddie have been behind the vast majority of mortgages made since the start of the financial crisis. The companies now own or back more than half of all U.S. home loans.

Moreover, the companies are helping the administration pursue policies designed to make new homes more affordable, ease the burden on struggling borrowers and direct funding to parts of the country especially hard hit by the downturn. Any initiative to remake the firms could distract energy from these programs or, in some cases, put an end to them.

The political angle

Nor is the administration eager to foster a debate over Fannie Mae and Freddie Mac in an election year, according to analysts and lawmakers. The pair have long been lightning rods for criticism by many Republicans, who call them an intrusion into the free market and a Democratic patronage haven. Many Democrats, even as they faulted companies' excesses, have defended the firms' role in fostering home ownership.

And with Obama's campaign to overhaul financial regulation facing resistance on Capitol Hill, administration officials don't want to add another divisive issue to the mix.

"We've obviously had our hands full, as has the Congress," said Michael Barr, assistant Treasury secretary for financial institutions. "We're just beginning to see some positive signs in the housing market, but we're not out of the woods yet and so we want to be careful to be sure that we had an appropriate, paced process."

Barr said Treasury officials have been meeting informally with their counterparts at the White House and the Department of Housing and Urban Development and exchanging policy papers to develop principles for overhauling Fannie Mae and Freddie Mac. These principles include, for instance, that the government ensure borrowers could still get mortgages even when the private market is no longer offering loans. But whatever replaces Fannie and Freddie, it should not be allowed to grow so large that its failure could threaten the financial system.

So far, Barr said, the administration has been too busy to build out the principles.

The government's extended involvement in the companies has opened the administration to criticism from both parties that it has failed to begin winding down Fannie Mae and Freddie Mac fast enough.

"They weren't planning to do much about it," said Rep. Barney Frank (D-Mass.), chairman of the House Financial Services Committee, in an interview. "They're busy, and it's hard and it's complicated and they're trying to put it off." Frank said he is "forcing" the issue by scheduling a committee hearing later this month, summoning Geithner and other officials to discuss options for reforming the firms.

Once among their strongest supporters, Frank has more recently called for their abolishment. But he said he still expects the government to play a role providing funding for low-income housing and subsidies for home ownership.

Future scenarios for reforming Fannie Mae and Freddie Mac range widely -- from total privatization to total nationalization. But no consensus has emerged over the best fix.

Spokesmen for Fannie Mae and Freddie Mac said their current focus is on keeping funds flowing into the mortgage market and helping distressed borrowers remain in their homes. The companies did not address the question of how they should be restructured.

The firms' regulator, the Federal Housing Finance Agency, agreed they have to help support the market and help struggling borrowers in the short-term. FHFA added that the administration and Congress must still come up with a long-term solution for the companies.

The record of Fannie Mae and Freddie Mac under government control has been mixed. The companies, with support from the Treasury Department and the Federal Reserve, have been able to keep mortgage interest rates low by providing substantial amounts of money to lenders. This has kept the struggling housing market from declining even more, in turn helping to stabilize the wider financial system.

The companies have also been tapped by the Treasury Department to rewrite the terms of home loans for struggling borrowers facing foreclosure. But this program -- carried out by Fannie, Freddie and other firms -- has had less success. Although 1.3 million borrowers have been eligible, only about one-tenth have had permanent mortgage modifications.

And keeping the companies solvent has been costly. To cover their losses, the firms have both said they will need additional federal money beyond the more than $125 billion already committed. They are ramping up purchases of bad mortgages in an effort to keep borrowers in their homes.

When the Bush administration seized the firms, it said it would make $200 billion available to them. The Obama administration a year ago doubled that figure, then decided late last year to offer them unlimited financial assistance as a signal to investors that the companies' solvency was guaranteed.

But critics warn this has given Fannie Mae and Freddie Mac a blank check.

"This idea of having money laying around that they can spend on whatever they think politically makes sense is certainly consistent with what we've seen from this administration," said Rep. Jim Jordan (R-Ohio), a member of the House Oversight and Government Reform Committee who has called for an investigation into the delay in planning for the companies' future. "This is just one more example of ridiculous government spending and huge losses to the taxpayer."

Delicate timing

Some analysts say it's an inopportune time to wind down the companies -- or even hint at major change -- while the housing market and economy remain in bad shape.

"Any suggestion now about future changes could destabilize the market," said Karen Shaw Petrou, managing director of analysis firm Federal Financial Analytics and a longtime observer of housing finance policy. "The U.S. mortgage market is so fragile that all Treasury needs to say is 'boo' and it could fall apart."

But time could be tight. Under the firms' agreement with the Treasury Department, they must shrink their mortgage portfolios every year, eroding their ability to support the market.

James Lockhart, a former top regulator of Fannie Mae and Freddie Mac, said the administration is erring by waiting another year to begin the reform process.

"The clock is ticking. We need to reinvigorate the private mortgage market and create something new and we know how long Congress takes," Lockhart said. "It's unhealthy to have as much government involvement in the mortgage market as we have in this country."

###

Representative Jim Jordan, *New Mortgage Protection Plan Misses the Mark*, Roll Call, March 9, 2010.

The Obama administration has already implemented a program to bring relief to Americans - and much like government-run health care, it's costly and complex. The Home Affordable Modification Program has become yet another example of how massive government programs fail the American people.

In February 2009, the Obama administration rolled out its foreclosure mitigation plan, aimed at providing relief for homeowners struggling to pay their mortgages. At its center was HAMP, a $75 billion taxpayer-funded initiative that offers struggling homeowners who say they can't afford to make payments the chance to enroll in a months-long program in which, if everything works out perfectly and the homeowner's qualifications are confirmed, the modification becomes permanent and the program pays a small incentive to the mortgage company.

But instead of helping up to 4 million troubled homeowners as the Treasury Department predicted, HAMP had produced only about 31,000 permanent mortgage modifications as of November. It seems the Obama administration failed to anticipate the program's fatal flaws. While HAMP enrolled hundreds of thousands of homeowners, the vast majority who enrolled have not qualified for permanent mortgage payment reductions. This failure has put these homeowners in an even worse position than they would have been had they never entered HAMP.

HAMP is hurting more homeowners than it helps. For most enrollees, the program only offers false hope that they will be able to stay in their homes. These strapped homeowners sent mortgage payments to banks in a desperate effort to avoid foreclosure when that money could have been used for the move to more affordable housing.

In most cases so far, HAMP only delays foreclosure; it doesn't prevent foreclosure. It doesn't take an economist to realize that the longer it takes for homeowners to get out of mortgages that they can't afford, the longer the housing crisis will last.

HAMP is not the silver-bullet solution for the housing crisis; HAMP is a failure. But as with the health care debate, instead of acknowledging problems, the Obama administration doubled down, using strong-arm tactics to expand the program and inflate the numbers. When HAMP's bad numbers were reported last November, Treasury announced that additional pressure would be put on mortgage companies to grant more permanent modifications. Companies would be required to report to the Obama administration on a daily basis.

In a blatant display of the intimidation and hard-charging Chicago-style politics that this administration is famous for, Assistant Treasury Secretary for Financial Institutions Michael Barr said: "The banks are not doing a good enough job. ... Some of the firms ought to be embarrassed, and they will be." But it's the Obama administration that should be embarrassed, for promoting bad policy that creates false hope for struggling Americans and is doing more damage to our economy.

Unsurprisingly, the administration's pressure didn't work. The most recent numbers show about 116,000 permanent modifications, which is less than 3 percent of Treasury's stated goal. Only about 10 percent of borrowers who got temporary modifications have successfully achieved permanent ones.

Time and again, the Obama administration has promoted complex federal programs to confront America's economic problems. The well-documented failure of HAMP is a red flag for those who believe recovery can be achieved through government spending. The president must recognize that technocratic tinkering - whether in housing or health care - is not the way to strengthen our economy.

Rep. Jim Jordan is a Republican from Ohio.

###

Administration Urges CU Support, **Credit Union Journal, March 1, 2010.**

WASHINGTON-A top Treasury official tried last week to dissuade credit unions from their opposition to the Obama administration's proposal for a consumer financial protection agency, saying heavily regulated credit unions and banks ought to benefit by the proposed agency because it would put them on equal competitive grounds with non-banks and other lightly regulated financial services providers.

"Our proposal," Michael Barr, the Treasury's assistant secretary for financial institutions, said during CUNA's Government Affairs Conference, "will help strengthen the bank and credit union system, not weaken it."

The proposed consumer agency, said Barr, would also benefit credit unions by measuring their products and service up against banks and other competitors. "Credit unions will win in a competitive environment for fair, transparent pricing for consumers."

Barr's remarks come as the House-passed financial services bill, which has a provision to create a consumer protection agency, is being considered by the Senate Banking Committee, where doubt exists about the survival of the consumer agency. Republicans oppose creating a stand-alone agency, with some asserting that existing regulatory agencies can do the job adequately.

But Barr said those agencies have proven themselves inadequate to the task of protecting consumers in the past, most glaringly in the case of subprime and other exotic mortgages. "Prudential regulators have too often delayed action against unfair consumer practices until the threat to bank earnings becomes palpable," he said. "Delays in addressing failures of consumer markets is deeply damaging to banks and credit unions, not just consumers."

###

Jennifer Liberto, *Financial reform: Do-or-die time,* CNNMoney.com, February 24, 2010 9:18 AM ET.

A second Senate effort to come up with financial reform legislation could run aground unless a deal on protecting consumers is reached.

Negotiations are continuing this week and a new draft bill could be announced next week, aides say.

While there has been bipartisan agreement on such issues as forcing banks to meet stronger capital requirements and unwinding giant financial firms, lawmakers can't agree on a way to protect consumers.

Last December, the House passed a sweeping financial overhaul package. The measure would create a stand-alone consumer agency, impose tougher capital cushions for the largest banks and Wall Street firms, and force them to pay billions into an emergency fund that could be tapped when a troubled company needs to be broken up.

Getting a Senate version has been more problematic.

Early this month, the ranking member of the Senate Banking Committee, Sen. Richard Shelby, R-Ala., officially pulled out of negotiations with the committee chairman, Sen. Christopher Dodd, D-Conn., over an impasse on the consumer agency, although both left the door open for more talks which have since taken place.

Then, a freshman Republican, Sen. Bob Corker of Tennessee, said he'd work with Dodd in crafting a compromise consumer agency.

Key Democrats in Congress and the Obama administration say financial overhaul legislation can't move forward without a strong regulator who's looking to protect consumers.

Crunch time

"The status quo is not acceptable," Assistant Treasury Secretary Michael Barr told the Credit Union National Association in a Tuesday speech. Barr continues to push for a consumer agency, saying it would protect "consumers from sharp practices of the type that pervaded segments of the mortgage market before the crisis."

The clock is ticking -- veteran Congressional watchers say political will to tackle such a complex initiative could crumble as the campaign season picks up this summer.

The White House, the House and Dodd want an independent consumer protection regulator with strong powers to regulate credit cards and mortgages, saying existing regulators fell down on the job of protecting consumers during the financial crisis.

But Republicans -- including Shelby and Corker -- are steadfastly opposed to the independent stand-alone agency, saying a consumer regulator would be at cross-hairs with regulators watching for safety and soundness at banks.

"I believe a stand-alone agency for consumer protection or separating those protections from safety and soundness are nonstarters," Corker said when he started working with Dodd.

To win bipartisan support, Dodd has signaled that he could give up on a stand-alone consumer agency, and instead base the regulator in the Treasury Department or other existing government entity.

As a result, the debate has shifted to how much power and independence a consumer regulator should have and how it should be funded. There's also disagreement about which industries and financial products should be subject to the new regulator, with groups as diverse as credit unions, small banks, auto and payday lenders seeking to avoid a new regulator or new rules.

"Bad actors should be brought into some form of regulatory rubric," said Dan Berger, chief lobbyist for the National Association of Federal Credit Unions."But since credit unions didn't cause the economic crisis we are all clawing out of, we oppose a CFPA (consumer agency) for credit unions."

Other concerns

The banking panel also lacks consensus in a couple of other areas, including what --if anything --should be done to crack down on executive compensation.

And while senators generally agree that complex financial trades called derivatives should be more transparent and better watched, they disagree about which kinds of derivatives (like trades on currency or trades made by companies to mitigate risk) should get special treatment and continue unregulated.

Lawmakers are also still working out how to strengthen bank supervision and regulator's ability to watch for systemic risk, while reining in Federal Reserve powers.

But insiders say those issues aren't dealbreakers and expect they can be worked out.

"In general, I'm still pretty optimistic we'll get a regulatory reform bill this year," said Brookings Institution analyst Doug Elliott. "This isn't like health care, there are a lot of reasons for some Republicans to join with Democrats."

###

Rebecca Christie, *Treasury official urges creation of stand-alone consumer agency*, Bloomberg News, February 23, 2010.

WASHINGTON -The Obama administration is renewing its push to create a government agency to oversee consumer finance issues, Michael Barr, the Treasury's assistant secretary for financial institutions, said in a speech yesterday.

``Prudential regulators have too often delayed action against unfair consumer practices until the threat to bank earnings becomes palpable," Barr said in an address to the Credit Union National Association in Washington, according to the text of his remarks.

``Delays in addressing failures of consumer markets is deeply damaging to banks and credit unions, not just consumers."

Separating consumer protection would strengthen efforts to ensure the safety and soundness of the banking system by resolving ``structural problems" that weigh down the current system, Barr said.

He also made the case that a separate agency would put banks and credit unions on a more even footing with nonbank financial institutions, which he said receive little oversight currently.

The plan for a consumer agency should be enacted as part of a broader set of financial oversight changes needed to prevent a repeat of the financial crisis, Barr said.

``The status quo is not acceptable," he said. ``We must have comprehensive reform of our financial markets, including for derivatives transactions and securitization of mortgages."

Barr's remarks come as the Senate Banking Committee prepares a new draft of regulatory overhaul measures. Republicans have opposed a stand-alone consumer protection agency, stalling efforts by Senator Christopher Dodd, a Democrat and the committee's chairman, to put a proposal forward.

Senator Bob Corker, a Tennessee Republican who has reached out to Dodd in an effort to craft a bipartisan deal, has given no ground on a consumer protection agency. The proposal is also opposed by Senator Richard Shelby, the top Republican on the banking panel.

``What you don't want to have, in my opinion, is a consumer protection agency that's freestanding," Corker said in a Feb. 12 interview with Bloomberg Television.

Congress needs to make sure ``consumer protection is dealt with on balance with the safety and soundness side of prudential regulation," he said.

In yesterday's speech, Barr said proposals for a stand-alone agency have bipartisan roots. He said George W. Bush's administration supported a separate agency in its 2008 blueprint for financial regulation, and said the Obama administration agreed with its predecessor's assessment that it would be ``optimal" to separate consumer protection from other bank regulation.

``Proposals to create a separate and independent consumer financial protection regulator are neither partisan nor ideological; they are bipartisan and pragmatic," Barr said.

###

Patricia Daddona, *New Credit card law ma be tricky for consumers: Despite some beneficial changes, users must still watch out for loopholes*, The Day, February 23, 2010.

Feb. 23--Credit card reform goes into effect today, helping to curb flagrant abuses but leaving loopholes that may catch the consumer off guard.

Several of the protections afforded by the new Credit Card Accountability, Responsibility and Disclosure Act of 2009, which was championed by U.S. Sen. Chris Dodd, D-Conn., and Rep. Carolyn Maloney, D-N.Y., carry with them traps that can trick consumers.

For example, the teaser rate accompanying a promotion for a balance transfer cannot be increased -- that is, unless the credit card company explains that the future interest rate will be higher, and when that will kick in.

More than ever, the consumer must pay attention to teaser terms, said Lauren Bowne, staff attorney for Consumers Union. "Sometimes people don't finish reading and do the math," she said.

"So before you do any balance transfers, understand that if they offer you a higher interest 'go-to' rate, you'll actually be accepting a higher rate than what you may currently be at," Bowne said. "So be very clear about when the rate ends and what the new interest rate would be."

President Obama's advisers on Monday hailed the CARD Act in a conference call, though, saying it will provide greater transparency. While some companies have raised fees to offset the losses that come with new consumer protections, for instance, a new standard has been set that will prevent hidden charges, they said.

"Most of those changes under the CARD Act are going to be in the direction of more transparency so people can make their own choices, instead of credit card companies hiding information about the fees," said Michael Barr, assistant Treasury secretary for financial institutions. "The costs are going to be upfront, and you'll be able to decide: 'Is this a cost I want to pay? Or not?' "

Dodd, who was out of the country until late Monday, urged consumers late last week to educate themselves about these "significant new protections" and monitor their credit card usage and bills closely regardless.

Credit card companies had nine months to prepare for the new law while the Federal Reserve clarified some of the rules, which affect everything from interest rates and fees to rules for disclosure and young adults.

Many companies began charging annual fees to compensate for the loss of other fees. That hurts customers who stay on top of their bills, Bowne said. "It's the new fees that are the dagger for consumers that pay off their balances every month," she said.

At the same time, she said, credit card companies will ultimately respond to consumer demand, and if consumers withdraw their business it will send a clear message to lenders to adjust their terms and fees.

Credit card companies "are testing the waters," Bowne said. "People need to be patient. Today is the first day these major provisions are in effect. Things are going to level out. Credit card companies are going to need to appease their customers" going forward.

Other "gaping" loopholes include rate hikes on new balances, although credit card companies must give 45 days' notice, said Connecticut Attorney General Richard Blumenthal.

"Consumers should watch their cards carefully and dump issuers who create new ways to gouge them," Blumenthal said in a statement.

Another prohibition, on over-the-limit fees, allows the lender to charge such fees only if the consumer agrees. Lauren Saunders of the Washington-based National Consumer Law Center warns, however, that even if cardholders don't sign up, the lender could approve a purchase that puts them over the limit.

The lender could then charge the consumer not only for that amount, but a late fee as well, if applicable. If the consumer is 60 days late, the lender can jack up the card's interest rate, Saunders said.

"You still have to watch your credit limit and stay below it," she cautioned.

One lender, Bank of America, clarified credit card terms and conditions for customers before the new law took effect. It provided a page of disclosure about a new basic card with one rate for all transactions in October, and in December notified customers about the expected impacts of the CARD Act, said spokesperson Betty Reiss.

"That is something we did that is not required under the legislation to make sure customers understood the terms of their account," Reiss said.

In addition, after the legislation was signed last May, Bank of America chose not to increase interest rates on credit card accounts, except if a customer was late on two or more payments a year. Then, in December, the company decided not to raise rates even on delinquent customers, Reiss said.

"Longer term, our objective is to retain our customers," she said. "We feel like the more tools they have to better manage their credit responsibly is in both the bank's interest and our customers' interest."

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Jim Puzzanghera, *Consumer agency would put teeth in new credit card rules, backers say*, Los Angeles Times, February 23, 2010.

New federal credit card rules that took effect Monday outlaw the most egregious industry practices, such as retroactive interest rate increases and hidden fees, that have cost customers billions of dollars a year.

But Obama administration officials and consumer advocates said the landmark provisions needed to be followed by the creation of a regulatory agency that can ensure that the new standards are enforced and that can quickly rein in any new unfair fees or practices.

"Now that these really strong rules are in place, we need a strong agency to enforce them," said Pedro Morillas, consumer advocate for the California Public Interest Research Group. He was in Washington on Monday lobbying lawmakers for the Obama administration's proposed Consumer Financial Protection Agency.

The rules, passed by Congress in May, seek to "level the playing field" between consumers and credit card companies, President Obama said. But that field needs the new consumer agency to replace the fractured oversight of seven regulatory bodies that failed to prevent the abusive credit card practices, said Michael Barr, assistant Treasury secretary for financial institutions.

Among the changes that took effect Monday:

* Increased interest rates cannot be applied retroactively to existing balances. New rates can apply only to new charges.

* The interest rate on a fixed-rate credit card cannot be increased during the first year an account is open unless the customer is more than 60 days behind in making a payment.

* Banks cannot automatically sign up customers for programs that allow them to exceed their credit limit for a set fee. Customers must proactively opt-in to such programs.

* Fees on a credit card, such as the annual fee, cannot be more than 25% of the card's initial credit limit.

* People younger than 21 must show they can make credit card payments or have a co-signer to open an account.

* Bills must denote how long it would take to pay off the card's balance if only the minimum payment is made, and how much in total the customer would end up paying.

* Payments over the minimum must be applied to the balance with the highest interest rate.

* The due date for credit card payments must be the same every month, and payments cannot be due earlier than 5 p.m. on a business day. Customers have until the next business day when a due date falls on a weekend or a holiday.

Those provisions follow ones that took effect in August requiring banks to notify customers at least 45 days before increasing a card's interest rate and to mail statements 21 days before the bill is due, up from 14 days.

A study by the Pew Safe Credit Cards Project found that retroactive interest rate increases, and what the report called "hair-trigger" penalties assessed by banks -- such as large fees assessed when a user exceeds a card's credit limit by just $1 -- cost consumers at least $10 billion a year.

Many credit card companies had been trying to offset the expected loss of such income by reinstating annual fees, cutting credit limits and hiking interest rates before the new rules kicked in.

"They're going to have to try to make up the income some place, or reduce expenses," said Nessa Feddis, senior counsel for regulatory compliance at the American Bankers Assn. Credit card companies are experimenting with new products, and consumers will determine which ones survive, she said.

"The credit card companies got the message that they had some very frustrated customers," Feddis said.

The new rules will help consumers, but won't solve all the problems, predicted Adam Levin, chairman and co-founder of Credit.com, a website that helps consumers shop for credit.

"At least we're no longer going to get run over by the train from behind," he said. "Now we can see it coming and maybe jump to the next track."

###

Tim Fernholz, *New Credit Card Rules Show We Still Need the CFPA*, Tapped, February 22, 2010 5:08 PM ET.

Today, legislation passed last year to prevent bad practices by credit card companies goes into effect. So, woo! But also, boo! Because, as Kevin Drum notes, credit card companies are developing a lot ofnewwork-arounds to take advantage of consumers. This is entirely predictable, and luckily Obama and congressional Democrats have a plan to solve it: Create a new agency dedicated to consumer financial protection that can respond nimbly to changes in consumer finance.

"If credit card companies come up with new tricks to confuse consumers, the new Consumer Financial Protection Agency can look out for those problems, look at for consumers, so we don't see bad credit card practices coming back into play," said Assistant Treasury Secretary Michael Barr this afternoon.

The efforts of credit card companies to circumvent regulations -- like jacking up interest rates as much as they could before the laws came into effect -- demonstrate why consumer financial regulation can't just be a second priority at seven different agencies. It's time to treat this issue with the seriousness it deserves by streamlining bureaucracy and mandating the new agency to focus consumer lending all the time, not just in the wake of a crisis.

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Alan Zibel, *Mortgage program facing dismal reality*, The Associated Press, February 21, 2010.

WASHINGTON -- The new president climbed aboard Air Force One a year ago for a trip to Phoenix to reveal his strategy for attacking the housing crisis -- a signal moment in the buoyant early days of Barack Obama's administration.

The plan, Obama told a cheering audience of high school students, would keep as many as 9 million people in their homes by lowering their monthly mortgage payments. The program wouldn't save every home, Obama cautioned, but few people paid attention. Not with Treasury Secretary Timothy Geithner saying things like, "You'll start to see the effects quite quickly."

Ambition, though, got far ahead of reality.

The numbers show a program that failed to deliver. About 116,000 homeowners have had their loans modified to reduce their monthly payments, the Treasury Department says. Only about $15 million in incentive money has been paid to more than 100 participating mortgage companies, a tiny fraction of the $75 billion available.

"We were attempting to set realistic expectations, but I think we failed to do so," said Michael Barr, an assistant Treasury secretary.

Interviews with officials in the Obama and Bush administrations, bank executives and housing experts show the government launched the effort without thinking through many of the details of such a complex program. Banks were ill-prepared, as well. To implement the program, it took months to hire and train thousands of new workers, many of whom had no previous experience in the mortgage industry.

The economy also worsened. Unemployment soared to 10 percent, and home prices continued to fall, especially in Arizona, California, Florida and Nevada. Nearly 16 million homeowners nationwide now owe more to the bank than their properties are worth, according to Moody's Economy.com.

The dismal results of Obama's mortgage aid program now raise doubts about whether the government can fix the housing crisis. Low interest rates and tax incentives have boosted home sales but are ending soon. The $1.25 trillion program created by the Federal Reserve that has helped keep rates low is scheduled to end next month. The tax credits run out April 30.

At the same time, hundreds of thousands of foreclosed homes will hit the market this year, depressing prices even more.

"Realistically, we still have massive problems," said Christopher Thornberg, a Los Angeles economist who long warned that the housing bubble would burst.

No one is quite sure what comes next. An increasing number of people are opting to walk away from mortgages because they are underwater. That could put more downward pressure on home prices.

Obama's plan called for the government to channel $75 billion to banks to prod them into modifying the terms of mortgages for up to 4 million borrowers by the end of 2012. It would also relax rules to let up to 5 million homeowners refinance at lower interest rates.

Under the plan, borrowers could get their mortgage rates reduced to as low as 2 percent for five years and have the term of their loan extended to as long as 40 years. Borrowers must make three payments on time before the modification becomes permanent. Monthly payments for borrowers in the program have fallen to a median of about $835, down by about $520 a month.

Since the program started in March:

·1 million people have entered the program, and almost 12 percent, or 116,000, have completed the process.

·A third of homeowners who made the three monthly trial payments on time have now fallen behind.

·More than 61,000 homeowners have dropped out, and hundreds of thousands more are expected to in coming months.

·About 220,000 homeowners whose homes have plummeted in value have refinanced.

The process has been time-consuming, bureaucratic and fraught with communication mistakes. Borrowers often feel lost in a maze. When denied by their bank, they often don't get a clear explanation of why.

"President Obama is finding that, well, it actually is pretty hard" to fix the foreclosure mess, said Phillip Swagel a Treasury official under President George W. Bush. "It's very easy to say, 'You need to do more.' But it's very difficult to find something that is more -- and can be done."

###

Nick Timiraos and James R. Hagerty, *No Exit in Sight for U.S. as Fannie, Freddie Flail*, The Wall Street Journal, February 9, 2010.

MCLEAN, Va.—When Charles E. Haldeman Jr. became Freddie Mac's chief executive officer in August, the ailing housing-finance giant had already consumed $51 billion of government money to stay afloat. It's likely to need even more.

Freddie's federal overseers nevertheless have instructed Mr. Haldeman to focus on something that isn't likely to make the bleak balance sheet look any better: carrying out the Obama administration plan to allow defaulted borrowers to hang onto their homes.

On a recent afternoon, employees at Freddie's headquarters here peppered Mr. Haldeman with concerns about the company's future. He responded that they were "fortunate" to have such a clear mission—the government's foreclosure-prevention drive. "We're doing what's best for the country," he told them.

Freddie and its larger rival, Fannie Mae, were among the first big financial institutions to receive massive federal bailouts after the financial crisis hit in 2008. Government officials have been racing to fix bailed-out car makers and banks and are pushing to reshape the financial-services industry. But Fannie and Freddie remain troubled wards of the state, with no blueprints for the future and no clear exit strategy for the government.

Nearly a year and a half after the outbreak of the global economic crisis, many of the problems that contributed to it haven't yet been tamed. The U.S. has no system in place to tackle a failure of its largest financial institutions. Derivatives contracts of the kind that crippled American International Group Inc. still trade in the shadows. And investors remain heavily reliant on the same credit-ratings firms that gave AAA ratings to lousy mortgage securities.

Fannie and Freddie, for their part, remain at the core of a housing-finance system that inflated a dangerous housing bubble. After prices collapsed, sending shock waves around the world, the federal government put America's housing-finance system on life support. It has yet to decide how that troubled system should be rebuilt.

On Dec. 24, Treasury said there would be no limit to the taxpayer money it was willing to deploy over the next three years to keep the two companies afloat, doing away with the previous limit of $200 billion per company. So far, the government has handed the two companies a total of about $111 billion.

The government is willing to tolerate such open-ended exposure for two reasons. First, it sees the companies as essential cogs in the fragile housing market. Fannie and Freddie buy mortgages originated by others, holding some as investments and repackaging others for sale to investors as securities. Together with the Federal Housing Administration, they fund nine in 10 American mortgages. Worries about potential insolvency would cripple their ability to fund home loans, which would hamstring the market.

Second, the companies are a convenient tool for the administration to use in its campaign to clean up the housing mess.

"We're making decisions on [loan modifications] and other issues, without being guided solely by profitability, that no purely private bank ever could," Mr. Haldeman said in late January in a speech to the Detroit Economic Club.

Besides playing a key role in the loan-modification program, Fannie and Freddie have jump-started lending by state and local housing-finance agencies by helping to guarantee $24 billion in debt. They also are lending support to the apartment sector by becoming the main funders of loans to builders and buyers of apartment buildings

By using Fannie and Freddie for such initiatives, the White House doesn't have to go to Congress for funding. The Treasury and White House can simply issue instructions to Fannie and Freddie via their federal regulator, the Federal Housing Finance Agency, or FHFA.

The government is "running Fannie and Freddie as an instrument of national economic policy, not as a business," says Daniel Mudd, who was forced out as Fannie Mae's chief executive in September 2008 when the government took control.

Assistant Treasury Secretary Michael Barr says that because Fannie and Freddie are "owned by the taxpayers in the middle of the biggest housing crisis in 80 years," it would be unrealistic to expect the companies wouldn't be used to help stabilize the market. He says the administration's actions have been "prudent" and "consistent with taxpayer protection."

The companies are political lightning rods. The government's decision to absorb unlimited losses followed the Treasury's approval of multimillion-dollar pay packages for senior executives at each company. Republican critics have blasted those decisions, demanding investigations and pay cuts.

Massachusetts Democratic Rep. Barney Frank, a longtime supporter of the companies, said last month that ultimately they should be abolished and replaced with an entirely new housing-finance system. Last Thursday, he said he would convene a hearing next month to review the future of housing finance and the federal government's role in it

Some housing experts contend that prolonged government intervention will make it more difficult and costly to eventually wean the companies off government support. "The more aggressively we continue kicking the can down the road, the larger the losses become and the harder it becomes" to address the companies' future, says Joshua Rosner, managing director at investment-research firm Graham Fisher & Co.

Edward DeMarco, acting director of Fannie and Freddie's regulator, the FHFA, says efforts to modify loans and to stabilize the housing market ultimately will help the two companies' bottom lines. "The businesses are trying to mitigate the losses and remediate the problems that led to conservatorship in the first place," he says.

As mortgage delinquencies rise, Fannie and Freddie are required to set aside more capital to cover anticipated losses. Each quarter, if their revenues are insufficient to meet those financial needs, the Treasury has to kick in more money.

With delinquencies still rising, the outlook is grim. At Freddie, 3.87% of single-family mortgages were at least 90 days past due at the end of December, up from 1.72% a year earlier. Fannie is worse: 5.29% were 90 days past due in November, up from 2.13% a year earlier.

For decades, both Fannie and Freddie were highly profitable. The housing bust hit both hard, sharply reducing the values of the mortgages they guaranteed, along with their investment portfolios, which were stuffed with riskier loans.

By September 2008, their capital reserves were so depleted that the government seized control of both companies, using a legal process known as conservatorship. In exchange for injecting money, the government has received preferred shares that pay a 10% dividend, along with warrants to purchase up to 79.9% of the common stock of each company.

The Obama administration had said it would weigh in on how to revamp the companies when it released its proposed budget earlier this month. Instead, the budget contained only a single line about the companies' future, promising to "monitor the situation" and to "provide updates…as appropriate." That stance reflects policy makers' uncertainty about how to proceed and a lack of urgency about resolving the problem.

Lawrence Summers, the president's chief economic adviser, has said the companies shouldn't be run permanently by the U.S. or be allowed to "return to the failed model of the past, where Fannie and Freddie relied on an implicit government [debt] guarantee to borrow cheaply."

Some Republicans have said the government should play no role whatsoever in the companies in the future, meaning no implied debt guarantee and no government directives to support affordable housing. The other end of the spectrum would be to turn the companies into government agencies.

Many housing-industry leaders believe the eventual plan will fall somewhere in between. Housing-policy experts assembled by the Center for American Progress, a think tank that has provided the White House input on past policy and personnel decisions, recently proposed that Fannie and Freddie be transformed into two or more companies whose profits would be capped like those of public utilities. There would be explicit federal guarantees on certain mortgage-backed securities. The new entities would be required to ensure that mortgages are available to low-income borrowers.

Others have proposed turning the companies into cooperatives owned by lenders, but subject to strict regulation.

With the fate of the two companies now largely in the hands of the government, employees have shifted their attention to the administration's loan-modification effort, called Home Affordable Modification Program, or HAMP. It provides financial incentives for banks and other owners of mortgages to reduce monthly loan payments for at-risk borrowers. Fannie and Freddie's job is to oversee how loan servicers—the firms that collect monthly payments on mortgages—are working with homeowners on the front lines.

The program is off to a slow start. The administration said it would offer three million to four million borrowers the chance to modify loans. Through December, loan servicers have signed up 903,000 borrowers for trial modifications. Just 66,000 have received a permanent fix so far.

Both Fannie and Freddie have struggled at times to adjust to the new marching orders. Fannie has warned in financial filings that the modification program had shifted "significant levels of internal resources and management attention" from other parts of the business, which could lead to a "material adverse effect" on the business.

At Freddie, David Moffett, the chief executive who took over when the federal government assumed control, left last March after only six months, partly because it became clear that regulators would be calling the shots.

He says he and others warned administration officials that the loan-modification goals were unrealistic, that borrowers whose homes weren't worth what they owed were unlikely to take part, and that many participants would be likely to re-default within months. "They really didn't want our views," Mr. Moffett says.

Treasury's Mr. Barr says that isn't true. The Fannie and Freddie officials he worked with, he says, "were quite supportive of the program, of the structure and the basic design," and "were integral to the formulation."

Since then, Freddie has taken some heat for problems with part of the loan-modification drive. In an October report, the government said Freddie failed in its job as the program's auditor. Its task is to make sure loan servicers deal correctly with applications from borrowers for payment relief. Freddie says it has reassigned the vice president responsible for the effort.

Freddie's current chief executive, Mr. Haldeman, 61 years old, says it was immediately "very clear" to him that the loan-modification program was a top priority of the Obama administration. But the program isn't his only headache. As foreclosures mount, Freddie finds itself with title to more and more homes. The company wants to price them to sell, but doesn't want to put downward pressure on overall housing prices.

"Imagine having to keep the lawns mowed, the lights on, and the property secured for one house, let alone more than 40,000 homes all over the country," says Mr. Haldeman. "It's not an easy process."

John A. Koskinen, a turnaround specialist who became chairman of Freddie's board when the government stepped in, says that in all his years working for government agencies and troubled companies, "I've never been in one with as many challenges."

Last spring and summer, as interim CEO, he had to recruit executives to fill the top three jobs. Filling those jobs has put the company on firmer ground, he says, and having a clear mission—even a government-mandated one—is helping morale. "At least the getting yelled at by your neighbor in the grocery store is behind us," he says.

Loan standards today are tighter than they have been in decades. That means the default risk on loans guaranteed recently by Fannie and Freddie is much lower than it was a few years ago. But their mistakes during the housing boom are expected to continue burning holes in their balance sheets.

The Mortgage Bankers Association estimates that mortgage delinquencies won't peak any sooner than the middle of this year. At the current pace, around 6% of Fannie's loans and 4.9% of Freddie's are expected to go into default over the next 18 to 24 months, producing losses that would raise the price tag on Treasury's bailout to $175 billion, according to October estimates by investment bank Keefe, Bruyette & Woods Inc. The bank has since said that even that dire forecast is too optimistic.

Former FHFA head James Lockhart, the companies' top regulator until last August, says the U.S. is unlikely to ever fully recoup its investment in the two companies.

—Bob Davis contributed to this article.

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Theo Francis, *No Turning Back on Fannie, Freddie, Lockhart Says (Update 1)*, Bloomberg News, February 5, 2010 5:38 PM ET.

Feb. 5 (Bloomberg) -- The U.S. investment in Fannie Mae and Freddie Mac may be too deep to effectively transition the mortgage-finance companies out of government control and back into the hands of private investors, their former regulator said.

“I would love to figure out how to get there, but I think we may be too far along the line of government involvement,” James B. Lockhart III, who ran the Federal Housing Finance Agency and its predecessor agency from 2006 until August 2009, said in a Bloomberg Television interview today.

Lockhart, 63, said he wasn't excited about putting the companies into conservatorship in 2008 and pushed back against suggestions to take the more drastic step of receivership. Fannie Mae and Freddie Mac, the largest sources of money for U.S. home loans, were seized by FHFA 17 months ago because of their risk of failing and have since survived on $110.6 billion in taxpayer-funded aid.

"Most of that money will never be seen again," said Lockhart, who is now a vice chairman for Invesco Ltd.'s WL Ross & Co. "They were just allowed to leverage themselves so dramatically."

The world would have "effectively fallen apart" if FHFA didn't take the action it did as mortgage defaults rose, he said. Lockhart said he was "a little bit" disappointed in parts of Treasury Secretary Henry Paulson's memoir that characterized FHFA as weak during deliberations over Fannie Mae and Freddie Mac.

"Obviously, when you do something this big, you want to do it right," Lockhart said. "Both firms could have sued us, taken us to court, and reversed it. We wanted to have it so they voluntarily consented to the conservatorships."

Bernanke's 'Steady Influence'

Federal Reserve Chairman Ben Bernanke was a helpful and "steady influence" as regulators tried to figure out whether to seize Fannie Mae and Freddie Mac, Lockhart said.

The Obama administration has used Washington-based Fannie Mae and McLean, Virginia-based Freddie Mac to facilitate programs designed to revive the housing market and prevent foreclosure. Any new structure for the companies must wait until the housing market recovers, Lockhart said.

"We need to get through this crisis," Lockhart said. "We need the market to really stabilize, and then we can fix Fannie and Freddie."

While the housing market appears to be stabilizing in some areas, Lockhart said housing prices may fall lower.

The Obama administration's budget proposal on Feb. 1 didn't include proposals for changing the status of Fannie Mae and Freddie Mac as wards of the federal government. Michael Barr, the assistant Treasury secretary for financial institutions, said that day that the government may put forward a proposal "in the coming weeks and months."

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James R. Hagherty and Ruth Simon, *For Financial Engineers, a New Risk: Washington*, The Wall Street Journal, February 2, 2010.

NATIONAL HARBOR, Md.—The glitz is gone. Now firms involved in creating and buying asset-backed securities are using their annual meeting to exhort policy makers not to regulate their business to death.

The American Securitization Forum said higher attendance at the trade group's meeting which began in this Washington, D.C., suburb on Monday, is a sign that the securitization business is gradually recovering from the credit crisis of 2008. The industry was nearly paralyzed as investors lost confidence in securities backed by such things as home mortgages and credit-card receivables.

About 4,400 people are at this year's meeting, up from 4,200 last year but a far cry from the peak of about 6,700 in 2007.

Many of the bankers, lawyers and investors here are worried about the prospects for legislation in Congress that would require issuers of asset-backed securities to retain a sizable amount of the default risk. They say that could stifle the market by raising capital costs for issuers.

They also are nervous about recently proposed rules from the Federal Deposit Insurance Corp. that might crimp the ability of banks to issue asset-backed securities. And there is concern about the U.S. government's current dominance of the market for home-mortgage securities. Around 90% of newly granted home loans are backed by Fannie Mae, Freddie Mac, the Federal Housing Administration or other government-related entities. That has helped crowd out the private sector from the market for mortgage securities.

After six years of holding the meeting in Las Vegas or Scottsdale, Ariz., organizers concluded it should be somewhere more accessible to policy makers.

"Never before has the future of securitization depended so greatly on the decisions which will be made this year" in Washington, said Ralph Daloisio, chairman of ASF, in his opening remarks.

It also is no accident that the meeting is being held in a convention center that doesn't include casinos. In 2007, headline speaker Jay Leno delivered rapid-fire jokes to thousands of upbeat attendees. On Monday, ASF participants heard Michael Barr, a Treasury Department assistant secretary, make a faint joke about rainy weather in England.

Mr. Barr said securitization is an "essential vehicle" for providing credit to consumers and companies. But legislative reforms now moving slowly through Congress are needed before private securitization can come back in a major way, he insisted. "We cannot rebuild the securitization markets on the old infrastructure," Mr. Barr said.

The Obama administration wants better disclosures on assets backing the securities, as well as provisions that require issuers to keep "skin in the game" by retaining some of the default risk. Mr. Barr didn't promise speedy action from Washington. "These efforts will pay off in the medium to long term," he said.

Some of the participants said they expect issuance of private mortgage-backed securities to revive a bit, possibly within a month or two, after two years when the market has been virtually dead. It will come back only "in baby steps," said Jordan Schwartz, an attorney at Cadwalader, Wickersham & Taft LLP in New York who specializes in mortgage securities.

Before the private mortgage-securities market can recover, Mr. Schwartz said, issuers and investors need clarity about the regulations they will face. The market also will need to see a bottom in housing prices, he added.

Uncertainty over how mortgage terms will be revised to avert foreclosures also is holding back demand for securities backed by those loans.

Other types of asset-backed securities made a modest comeback in 2009, helped by support from the Federal Reserve's Term Asset Backed Lending Facility, or TALF. Under TALF, the Fed makes low-interest loans to investors in certain securities and offers them protection against losses.

New issues of consumer asset-backed securities rose to $128 billion last year from $125 billion in 2008, but were down sharply from $217 billion in 2007, according to Barclays Capital. Such securities include those related to credit card, auto, equipment and student debt.

In 2010, Barclays expects new issues of such securities to be "flat to slightly lower," partly because of legislative and regulatory uncertainties.

###

Dawn Kopecki, *Fannie Freddie Kept Off budget, Dividends Counted (Update 3)*, Bloomberg News, February 1, 2010 4:20 PM ET.

Feb. 1 (Bloomberg) -- President Barack Obama's budget blueprint for the next fiscal year excludes the $6.3 trillion in liabilities of government-controlled Fannie Mae and Freddie Mac and delays for a second time a decision on restructuring the mortgage-finance companies that were seized 17 months ago.

The companies may need $54.4 billion more in U.S. Treasury Department preferred stock purchases to stay afloat in the current year that ends Sept. 30, and $23 billion more for the next fiscal year, according to calculations made from the Obama administration's 2011 budget proposal to Congress today.

"The administration continues to monitor the situation of the GSEs closely and will continue to provide updates on considerations for longer-term reform of Fannie Mae and Freddie Mac as appropriate," the Obama administration said.

White House budget director Peter Orszag delayed a decision on whether to bring the companies' $1.6 trillion in corporate debt and $4.7 trillion mortgage obligations onto the federal budget. As the director of the Congressional Budget Office, Orszag criticized the Bush administration for keeping the 2008 rescue of the government-sponsored enterprises off budget.

At the time, Orszag said "the degree of federal control over Fannie and Freddie is so strong, we are incorporating them into the federal budget."

"We continue to be on track to release a statement in the very near future" on the GSEs, Housing and Urban Development Secretary Shaun Donovan said in a conference call with reporters today.

Market Stability

More ideas on Fannie Mae and Freddie Mac's future may be released "in the coming weeks and months," Michael Barr, the assistant Treasury secretary for financial institutions, said at the American Securitization Forum's annual conference near Washington.

"We want to be sure, that as we move to reform the GSEs, we are focused on retaining strong market stability in our housing sector," Barr said.

For now, Obama's budget plan classifies the GSEs as "non- budgetary" items and excludes them from being counted as federal liabilities because "they are privately owned and controlled." The administration counts $110.6 billion in taxpayer support already paid to the companies and $225 billion in GSE mortgage bonds purchased by the Treasury.

Fannie Mae rose 7 cents, or 7.3 percent, to close at $1.03 today in regular New York Stock Exchange composite trading. Freddie Mac increased 5 cents, or 4.2 percent, to $1.23.

So far, the companies have paid $6.8 billion in dividends to the Treasury on their borrowings.

Dividends

The Office of Management and Budget estimates the two will pay $18 billion in dividends in fiscal 2011 and $6.73 billion in annual dividends thereafter. The companies are required to pay an annual dividend of 10 percent on their borrowings, which Fannie Mae and Freddie Mac have separately estimated will cost at least $10 billion a year.

"They are using the Treasury's borrowings to repay" the Treasury, said Paul Miller, a former examiner for the Federal Reserve who is now an analyst with FBR Capital Markets in Arlington, Virginia.

"They never made that much money in their heyday," Miller said. "My guess is that Treasury and the government will come to the conclusion that the GSEs will not be able to pay this back and will begin to look at the banking industry to repay the loans."

###

Chris Feldman, *Mortgage rates expected to rise as government support phases out*, WalletPop, February 1, 2010 8:00 AM ET.

If you are fence sitting about whether to buy that house, you may not want to wait too much longer: If government officials can be believed, the more than year-long federal support of mortgages, which brought rates to post World War II lows, is slated to end within the next couple of months.

Should this happen, mortgage rates are expected to climb. By how much, no one seems certain.

Though fears are already being expressed by some, that any hefty increase in the 30-year fixed rate mortgage could cut any developing real estate market recovery off at the knees.

But forget the macro implications and let's keep to the micro ones: that would be you.

Right now, interest rates on 30-year fixed rate mortgages are around the 5% mark or slightly higher.

In case you have forgotten, or didn't know, that rate was as high as 6.04 % only back in the fall of 2008, before the government started buying up mortgage-related securities.

"We did what we thought was necessary to stabilize the market, but we don't think the government should continue special efforts forever," assistant U.S. Treasury secretary Michael Barr tells the Washington Post.

Now, as I said, not everyone thinks the feds will carry through with the plan to pull out of the mortgage securities market.

Even a few months ago, one credit advisory blog expressed skepticism: "Will the Fed stop buying mortgages and mortgage backed securities, come this April?" No, concludes the Bad Credit Advisor blog. " ...unless, of course, the Fed wants interest rates to rise, home values to fall and the economy to suffer even more."

But if you are seriously thinking about plunging into the home buying market, do you want to chance ending up on the wrong side of a bet? That by waiting a few more months, maybe rates will come down even more?

The only thing for sure is this: right now, mortgage rates are still very low by historical standards. If the skeptics are wrong and the government goes ahead and pulls the plug on its mortgage-rate initiative program this spring, many economists fully expect mortgage rates to rise.

If you have the job, the money, the credit line and the home of your dreams in sight, my question to you is: what are you waiting for?

Charles Feldman is a journalist, media consultant and co-author of the book, "No Time To Think-The Menace of Media Speed and the 24-hour News Cycle." He has blogged about real estate matters for several years.

###

Olivia Thetgyi, *Industry Will Not Escape Without more Regulation, Bar Says*, Total Securitization, January 29, 2010.

Wherever the securitization market goes from here, it will get there with a healthy dose of regulation in its system, Michael Barr, assistant secretary for financial institutions at the Department of Treasury, said during a featured address at the ASF2010 conference today. Barr expounded on the need for greater regulation, offering a firm reminder to attendees who had been warning against excessive policing of the industry in panel after panel this morning.

Barr said securitization needs to come with the appropriate safeguards. "Securitization with the appropriate rules in place extends the role of the banking sector to meet the needs of families... But "the same gaps and loopholes that allowed Lehman Brothers and AIG to escape oversight remain," he said. He noted the industry was not going to get away without further regulation. "We need to build a foundation that fosters innovation, yet innovation must be governed by rules."

The speech was in contrast to panels this morning, which warned that heavy-handed regulation would prevent securitization market from functioning. The fear of greater scrutiny was also evidenced in a survey of conference registrants, where respondents said proposed regulation and legislation was the number one challenge to the recovery of securitization.

Barr balanced his message with praise for the work the market, led by the American Securitization Forum, has done to reform itself. "This organization has taken a leading role in working to rebuild a more rational order in securitization... We look forward to seeing further reform efforts from this industry." He extended a hand promising the Treasury would work with them. "We are working alongside you to build and rebuild a sustainable securitization system."

Despite the offer of working together, some of the questions following Barr's remarks reflected market participants' impatience with the plethora of reform. One audience member asked if there was any coordination of the regulatory efforts. Barr responded that the President's Working Group on Financial Markets reform meets regularly with regulators on a wide range of topics. "At the end of the day each regulator has the authority to and does make independent judgments about the things that lie in their jurisdiction."Barr left the question of reform of the government-sponsored enterprises open. When asked when the Treasury will take up that reform, he said the department will have more to say about the reform and principles guiding that reform as it moves forward.

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Dawn Kopecki and Theo Francis, *U.S. May Retool Loan Program for Underwater Borrowers (Update 1)*, Bloomberg News, January 27, 2010 9:56 AM ET.

Jan. 27 (Bloomberg) -- The Obama administration's $300 billion Hope for Homeowners program may be retooled to help the growing number of Americans who owe more than their properties are worth as current anti-foreclosure efforts fail to account for these "underwater" borrowers.

The changes would be at least the third lease on life for the program, which began in October 2008 during the Bush administration and has so far helped just 96 of the 400,000 homeowners originally targeted.

The U.S. Federal Housing Administration is considering ways to make the program more effective, Commissioner David Stevens said in an interview. While he wasn't specific about any changes, he said Hope for Homeowners could be expanded to more directly help borrowers with negative equity.

"The Hope for Homeowners program is unique in that it involves equity writedowns, principal balance reductions to help the underwater borrower," Stevens said. "We're going to look at that program very closely to make sure it can be as effective as possible, because that's another segment of the population that needs to be addressed."

With home prices down as much as 30 percent from their peak in April 2006, more borrowers are walking away from their homes even if they can afford the payments, administration officials and analysts have said. The Treasury Department is looking for a solution for the more than 10 million underwater homeowners that analysts estimate may willingly let their mortgages slip into default, which would push home prices even lower and hamper the economic recovery.

Walking Away

"When negative equity gets very, very high, when people are very underwater, that starts to have a much larger impact on people leaving their homes," Michael Barr, the assistant Treasury Department secretary for financial institutions, said in a Jan. 15 conference call with reporters. "And the question then is which of those people is it fair and appropriate to help."

Hope for Homeowners was intended to help borrowers with loans of less than $550,440, according to the original terms of the program listed on FHA's Web site.

The decline in home prices has left 15 million borrowers owing more than their homes were worth in the third quarter, according to Loan Value Group, an advisory firm in Rumson, New Jersey. It says 10 million of those loans are at risk of so- called strategic default, citing data on mortgages that have loan-to-value ratios higher than 115 percent and where the borrower can afford the payment.

Rational Decision

"Strategic default is a rational decision," Frank Pallotta, a managing partner of Loan Value Group, said in an interview. "Are you going to pay a $500,000 mortgage when the house is worth $250,000?"

"Walking away is money in your own pocket," he said. "If you're not getting money from the government, it's your own self-stimulus for borrowers."

President Barack Obama's primary anti-foreclosure plan, the Home Affordable Modification Program, or HAMP, has helped fewer than 10,000 underwater borrowers cut their outstanding principal. HAMP is separate from FHA's Hope for Homeowners program,

HAMP has been a "failure" so far at converting temporary repayment plans into permanent loan reductions, said Bose George, an equity analyst at Keefe Bruyette & Woods in New York. Of the 787,231 trial modification plans, 66,465 have been approved for permanent repayment through December, according to Treasury data.

Lowering Payments

HAMP is designed to lower monthly mortgage payments by reducing interest, lengthening repayment terms and deferring principal repayments for up to five years. Less than 10 percent of the trial modifications through December actually cut outstanding principal as opposed to deferring interest charges on it, according to Treasury officials.

"It looks like that's not enough for many of these borrowers, especially the ones with significant negative equity," George said in an interview.

FHA's Hope for Homeowners program was designed to reduce outstanding principal primarily by extinguishing home equity debt, or second liens, in exchange for a cash payment from FHA. Participation is voluntary and pays second-lien investors 3 cents to 50 cents on the dollar.

'Good Deal'

"That probably actually is a good deal for the investor," said Scott Buchta, head of investment strategy for Guggenheim Securities. Buchta said HAMP's principal reduction program pays investors between 4 cents and 12 cents on the dollar to extinguish the second lien. "The alternative for some investors is to potentially receive nothing on their second lien if the home is foreclosed and is seriously underwater."

In helping people with negative equity, Treasury's Barr said "you have to be very careful not to design a program that would change people's fundamental behavior across the country in a destabilizing way or would be widely perceived as unfair to people who are continuing to pay."

There will have to be more efforts to reduce mortgage principals, as 42 percent of borrowers may be underwater by the end of the year, said Karen Weaver, the global head of securitization research at Deutsche Bank Securities Inc. in New York.

"At the end of the day we'll see more of it, because the government's attempt -- through modifications and the schemes and paradigms that have been in place -- I think anyone has to conclude has been a failure," Weaver said in a Bloomberg Television interview.

"I don't think we've seen the last of government policy trying to address this."

###

Ruth Simon, *Pennsylvania Mortgage Relief Wins Fans,* The Wall Street Journal, January 26, 2010.

With the Obama administration stumbling to modify large numbers of troubled mortgages, a little-known Pennsylvania program designed to assist struggling homeowners has been attracting increasing attention.

Pennsylvania's program is geared toward providing short-term aid to borrowers suffering from temporary hardship such as a job loss. It helps homeowners meet the terms of their existing mortgage with separate, below-market rate loans. The federal program, by contrast, aims primarily to provide long-term assistance to borrowers by modifying mortgages to make the payments more affordable.

Launched 26 years ago, the Pennsylvania plan has disbursed more than $453 million in loans and helped more than 43,000 borrowers keep their homes, according to the Pennsylvania Housing Finance Agency, the program's administrator. About 25% of loans are eventually written off because borrowers fail to repay them, the housing agency says, well short of the redefault rate for modified home loans. "I was pleasantly surprised it's that low given the nature of the program," says PHFA Executive Director Brian Hudson.

Interest in the Pennsylvania program comes amid growing concern that the federal program isn't doing enough to help financially troubled homeowners. When President Barack Obama announced the program in February, officials said it could help as many as four million borrowers through 2012. But through December, only 113,000 borrowers had received or were on the verge of receiving permanent fixes, according to data released earlier this month.

One criticism of the federal initiative is that it often doesn't help borrowers who have lost their jobs and incomes. A Treasury Department spokeswoman says that unemployed borrowers are allowed to participate in the government's foreclosure prevention program, but acknowledges "that some unemployed borrowers will have trouble qualifying for a modification because their income is insufficient."

The Pennsylvania program, which has received bipartisan support in the state, doesn't involve modifying existing mortgages. Instead, homeowners in financial distress receive either one-time loans that allow them to catch up on missed payments or continuing help with their mortgage payments for up to 36 months. The money is paid directly to mortgage companies and must be repaid when borrowers get back on their feet. Funding for the program comes from state appropriations and repayments of earlier loans.

The Pennsylvania effort has won praise from a congressional oversight panel and has been copied by a handful of states, including Delaware and North Carolina. Rep. Barney Frank wants to funnel money from the Troubled Asset Relief Program into a federal program that is similar to the Pennsylvania effort.

Cost would be a factor in any effort to expand the program nationally. The Pennsylvania program spends on average $10,500 per borrower. A record 10.04% of mortgages nationwide were delinquent in December, according to LPS Applied Analytics.

Assistant Treasury Secretary Michael Barr, who is overseeing the federal modification program, says the administration continues to look for ways to address unemployment. The Pennsylvania effort "is not a program that's been especially large or reached large numbers of people, but on the margin it has been helpful," he said.

Pennsylvania's Homeowners' Emergency Mortgage Assistance Program was created in the 1980s in response to job losses in the steel and coal industries. With funding tight, the approval rate for new loans in the Pennsylvania program has fallen to about 22% from a high of more than 40% in the 1980s. Roughly 80% of loans involve one-time payments, with just 20% going to borrowers who need continuing help with their mortgage payments for up to three years.

Karen and John Steele applied for a loan last year after Mr. Steele lost his job at a Pittsburgh bank. A 5.25% loan from the program will cover about $400 of their mortgage payments for up to 36 months, with the Steeles responsible for the remaining $284. "Knowing that there was help out there provided us with major relief, both emotionally and financially," Ms. Steele says.

Under the Pennsylvania program, borrowers are put on a formal repayment plan once an annual review of their finances shows they have sufficient income. Borrowers have repaid more than $250 million, money that is funneled back into the program.

Last year, the program received $11 million in state funds, less than half the $25 million authorized when it was created. Loan repayments, an additional source of funding, slipped to about $9 million last year from $16.9 million in 2006 amid the weaker economy.

Timothy Stockline Jr. worries that a loan might not be enough to help him avoid foreclosure. A hospice aide, Mr. Stockline got a loan that will allow him to catch up on more than $7,000 in payments he missed after he lost his second job at a furniture company. Without the loan, "I'd be done," says Mr. Stockline, who recently found a second job as a nursing assistant to supplement his income.

But staying on track will still be difficult, says Mr. Stockline, who was recently turned down by Citigroup Inc. for a loan modification under the federal programthat would have made his payments more affordable. "I will probably be in the same situation six months from now," he says.

A Citigroup spokesman says the company's policy is not to discuss specific borrowers, but added that Citigroup is committed to finding solutions for customers "that preserve homeownership and help mitigate the challenges faced by borrowers."

###

Kevin D. Williamson, *Smoking HAMP – On housing, Obama's successes are as dangerous as his failures*, National Review, January 25, 2010.

There are two main dangers proceeding from the Obama administration's attempts to intervene in the mortgage market as a way to prop up housing prices: The first is that the program won't work, and the second is that it will. If the program fails, it will, like the stimulus and any number of this administration's remarkably naïve economic initiatives, simply represent the frittering away of another mile-high mound of money on political flimflam that does little to benefit most Americans and nothing to address the fundamental problems plaguing our economy. If it works, it will represent a victory for the nefarious forces of C.R.I.B. -- the Committee to Re-Inflate the Bubble -- setting the economy up for a vicious second round of financial crisis with its roots in the housing market.

The good news is that, when it comes to reshaping the U.S. mortgage market, the Obama administration's top guns are bringing to bear all of the brisk, rough-'n'-ready entrepreneurial know-how they picked up in their previous careers as university professors, nonprofit activists, and holders of political sinecures. Obama may crack insensitive about Special Olympians, but his crack team of mortgage commandos is moving with the sort of speed that makes you want to organize a telethon for them. Their poster child is Michael Barr, the assistant Treasury secretary who added greatly to the nation's mirth in the waning days of 2009 by telling a McClatchy reporter that, when it comes to mortgage modifications, "I think that if you go back and look at what we said we would do in February, we are on track to meet the president's goals."

That's the economic equivalent Secretary Napolitano's "the system worked." How far from the truth is it? The Obama administration's HAMP initiative -- that's Home Affordable Modification Program -- is supposed to renegotiate some 4 million mortgages over the course of three years. At the end of the first year, it's about 1 percent of the way there. So we're "on track to meet the president's goals" around the time Chelsea Clinton's grandkids start making their first runs at the White House. The $75 billion HAMP has, so far, managed to help renegotiate about 10,000 mortgages, meaning that it's operating at about the same pace as Zambia's national toilet-installation campaign, which boasts of plumbing about 10,000 households and schools a year.

But what Zambia is putting in the septic tank, Obama is putting on the government's financial books, and that is the real point of HAMP. It's part of the stealth bailout, the ongoing, largely unremarked-upon campaign to supplement TARP and the other direct bailouts with a host of underhanded and sub rosa pieces of financial indirection designed to transfer yet more risk and outright losses from the big financial institutions to the taxpayers. And out in front, no surprise, are the Toxic Twins themselves, Fannie Mae and Freddie Mac.

If you weren't eyes-deep in the mirth and eggnog on Christmas Eve, you might have heard the disturbing news that the Obama administration has decided to commit not millions, not billions, not trillions, but theoretically infinite sums of money to backstopping Fannie and Freddie, the two most irresponsible players in the housing market, the entities that did more than any bank, hedge fund, or Wall Street greedhead to distort and pillage the real-estate market. The U.S. government originally capped its support of Fannie and Freddie at $200 billion each, but, on Christmas Eve, the elfin Tim Geithner went the full Papá Noel, announcing unlimited support for these two eternal entrants on the naughty list. That these two book-cooking, political-crony-rewarding bubble-pumpers have a limitless claim on the public fisc would be scandal enough if it were merely a side effect of Obama's mortgage plan. But it is the plan.

The Federal Reserve has been buying up Chernobyl-grade mortgage-backed securities since the onset of the financial crisis. About half of the Fed's balance sheet right now consists of mortgage-backed securities, and it's going to be aggressively purchasing them for the next couple of months. And then, if all goes according to plan, it's going to stop in March, reaching its point of satiety at around $1.25 trillion in MBSs. The Obama administration is worried that, without Fed purchases to inflate the MBS market, it will collapse, possibly igniting a new round of financial crisis -- and surely putting to ridicule the administration's fanciful claims that it has billions of dollars of "savings" in the form of "leftover" TARP money to spend on a new round of wheel-greasing stimulus projects. Under the previous terms of Treasury's Fannie/Freddie takeover, a $400 billion cap limited the Toxic Twins' ability to dig themselves deeper into the MBS market.

And that was by design: Treasury demanded that Fannie and Freddie begin reducing their portfolios, selling off securities and mortgages, as part of the bacon-saving deal. But now, with unlimited taxpayer backing for Fannie and Freddie, Geithner's Treasury is reversing itself, loosening those earlier requirements. Rather than forcing Fannie and Freddie to sell off mortgages and securities, the Obama administration now proposes to let them start buying them again -- fattening the very beasts that mauled the economy in the first place. Two greed-driven, politically connected institutions with trillions of dollars in dodgy mortgages and securities, with unlimited backing from the U.S. taxpayer -- what could possibly go wrong?

What this means is that the Fed's role in propping up the MBS market -- and, by extension, housing prices -- is going to be supplanted by Fannie and Freddie. Say what you will about the Fed, which has been caught with its pinstripes down on plenty of occasions, it remains one of the more responsible actors in the U.S. economic-policy game. Fannie and Freddie are arguably the least responsible, the Bozo and Cookie of the housing game. So why would the Obama administration want to put its eggs in their tattered basket?

The day before Geithner announced his Christmas gift to Fannie and Freddie, Bloomberg News reported, in what may have been an attempt at wry humor: "Purchases of new homes in the U.S. unexpectedly fell last month, indicating a recovery from the worst housing slump since the Great Depression will be slow to develop." Unexpected? With unemployment at 10 percent and the entire apparatus of the federal government working to keep home prices from plunging down to the level they need to reach to become attractive to buyers in these troubled times, the decline was anything but unexpected.

How bad was it? "Purchases dropped 11 percent to an annual pace of 355,000, lower than the lowest estimate of economists surveyed by Bloomberg News, figures from the Commerce Department showed today in Washington. The median sales price decreased 1.9 percent from November 2008." And that does not even capture the depth of the housing-market gloom: According to the Federal Housing Finance Agency, about one-third of those "sales" weren't really sales in the common sense of that word: They were foreclosures. The housing market is, if not quite dead, about half dead, and about one-third of the extant activity is foreclosures, exactly what the Obama administration says it wants to stop.

As the cynics will have guessed, this probably isn't about the families having to move out of their underwater, overleveraged, suburban McMansions and into cheaper accommodations or, horrors, an apartment in some unfashionable quarter of town. None of that campaign-commercial goo really applies at the nitty-gritty level: Families that make $100,000 a year cannot afford $600,000 mortgages and, even if the Obama administration manages to work feats of magic and get those mortgages down to $500,000 or $400,000 -- a snowball-in-hell probability -- they can't afford those, either. A family making $100,000 a year can afford, at most, a $300,000 mortgage. And families making $100,000 a year right now have other things on their mind: mainly, whether they'll be making $100,000 next year, or $50,000. Keeping prices high and keeping overextended families in their homes are mutually exclusive goals, but the Obama administration does not bend to economic realities.

So if it's not about Bud and Sis and the picket-fence gang, what's the deal? As Karl Denninger, a trader and relentless critic of the bailouts, points out, Citibank owns about $15 billion in second mortgages and home-equity loans in California alone. "A very significant percentage of the homes in that state are worth less than the first mortgage balance," he writes. "As such, should the people who own those homes stop paying, a huge percentage of the $14.6 billion that Citibank holds in second liens in California will be worth exactly nothing." Wells Fargo has nearly $50 billion in similar exposure in California and Florida, where the housing numbers are even more grim, by an order of magnitude, than the national average. There's plenty of that slime to go around, and the commercial real-estate market is, some fear, on the brink of doing in 2010 what residential real estate did in 2008-09.

The Obama administration has been aggressive in claiming credit for the period of relative stability that has followed the Bush administration's interventions in the markets. If those days of comparative calm turn out to be short-lived, Obama does not want to be the one that ton of political bricks comes down on.

That infinite line of credit for Fannie and Freddie? Expires in 2012.

###

Nick Timiraous, *Fannie Freddie Losses May Hit U.S.*, The Wall Street Journal, January 22, 2010 9:48 AM ET.

The U.S. government's move to deepen its ties to mortgage-finance giants Fannie Mae and Freddie Mac by agreeing to absorb unlimited losses for the next three years is igniting a debate over whether it should bring the business operations of the companies onto its books.

A decision on how the government treats Fannie and Freddie could have broader political implications. So far, the White House has resisted calls by Republicans to bring Fannie's and Freddie's obligations onto the government's books, a move that could boost the federal deficit by tens of billions of dollars. At a time when the deficit is already at a postwar high, that could create added urgency for Congress and the administration to address the companies' future.

The Congressional Budget Office has reiterated its support for bringing the companies onto the federal budget—and onto the government books—which would effectively mean accounting for their operations in the federal budget as if they were federal agencies.

"Recent events clearly indicate a strengthening of the federal government's commitment to the obligations of Fannie Mae and Freddie Mac," the CBO said in a report.

The CBO pegged the government's total costs of bailing out the two companies at $291 billion and said the government's takeover could cost an additional $99 billion in the coming decade.

So far, the White House has taken a different tack. It only projects costs equal to the actual cash infusions that the Treasury injects into the companies each quarter to keep them afloat. That tab is currently at $112 billion. The CBO's estimate, as opposed to the White House's, reflects the amount of taxpayer subsidy used by Fannie and Freddie as a result of lower borrowing costs enabled by their federal backing.

A Treasury official said the administration had no plans to alter how it accounts for Fannie and Freddie in the federal budget. "I don't anticipate any change," said Assistant Treasury Secretary Michael Barr. "They'll have the same appearance that they've had before in the budget books." A spokesman for the White House Office of Management and Budget declined to comment.

Officials have said it wasn't necessary to bring Fannie and Freddie onto the government books until the administration decided what to do in the long term with them. In September 2008, when the government took over Fannie and Freddie through a legal process known as conservatorship, the Bush administration cited the "temporary nature of the arrangement" in opting against incorporating the obligations of the companies into the federal budget.

But some Republicans say the arrangement has become more than temporary. "These are organisms that have now become a direct arm of the U.S. government and I assume that people who are now buying these securities are looking at them that way," said Sen. Bob Corker (R., Tenn.), in an interview. He asked Treasury Secretary Tim Geithner in a letter earlier this month to explain the rationale behind the "effective nationalization" of the companies, a move that he said "should absolutely be reflected on the balance sheet of the U.S. Treasury."

While such a move would raise the federal deficit sharply, critics of the companies argue it would reflect Fannie's and Freddie's actual risks to taxpayers. "It should have been done years ago," says David Kotok, chairman of Cumberland Advisors, a Vineland, N.J., money-management firm.

The debate comes amid growing concerns in Washington over how to limit government spending. The U.S. budget deficit reached a postwar record of $1.4 trillion in fiscal 2009.

Republicans also see the budget issue as an opportunity to jump-start a bigger discussion about how to overhaul Fannie and Freddie. "One of the ways you cause there to be a debate about the future is to debate whether they are or are not part of our country's obligations," said Mr. Corker.

The White House said it would weigh in with its proposals on how to reshape Fannie, Freddie and the broader mortgage market when it releases its budget next month. "There's no question that the future structure of the housing market is going to have to be very different from the structure that led Fannie and Freddie to the point of conservatorship," said Lawrence Summers, Mr. Obama's chief economic adviser. "But this is an issue that's going to play out over time."

Most investors already see the companies as effectively guaranteed by the government. Changing the budgeting of the companies "would be an accounting change rather than any fundamental change" that would affect the U.S. government's triple-A credit rating, said Steven Hess, lead U.S. debt analyst for Moody's Investors Service.

Moving the companies' assets and liabilities onto the government's balance sheet would bring the companies full circle. Fannie Mae, founded as a government corporation in 1938, was privatized by President Lyndon B. Johnson in 1968 to slash the government's debt obligations in the face of rising costs from the Vietnam War.

###

Joseph N. DiStefano, *PhillyDeals: A hot-wire connection for a small Del. Firm*, The Philadelphia Inquirer, January 22, 2010.

Delaware-based AutoPort Inc. says it has been chosen by the U.S. Postal Service as one of five U.S. firms that will build prototype electric vehicles in a competition to replace some of the mail system's 142,000 cars and trucks.

"We'll all send them down to Washington, and they'll run them for 12 months," said Dick Johnson, head of business development for privately held AutoPort. "At the end of that time, they'll pick one, or more" to convert some of the vehicles from gas to plug-in electric power.

AutoPort also ships U.S. vehicles to ports in the Middle East and elsewhere.

The other Post Office tryouts are ZAP, of Santa Rosa, Calif.; Quantum Technologies, of Lake Forest, Calif.; Bright Automotive Inc., of Anderson, Ind. (didn't they used to make Studebakers out there?), and German-based EDAG GmbH.

AutoPort is partnering with AC Propulsion, of San Dimas, Calif., which will provide the battery and operating systems, and the University of Delaware, which has licensed professor Willet Kempton's "vehicle-to-grid" (V2G) technology.

That lets the car owners sell excess battery power to electric utilities under a new Delaware state law.

AutoPort sits in the Port of Wilmington on the west shore of the Delaware, 10 minutes south of the former General Motors Co. plant on the west side of Wilmington, where California-based Fisker Automotive Inc. wants to build electric sports cars funded by a half-billion dollars in loans from the Obama-Biden administration.

While top-down Fisker is still raising equity as a condition of getting its government loans, bottom-up AutoPort has spent the last 10 months building five prototype electric Ebox cars from Toyota Scions for the University of Delaware, and four more for the State of Delaware, while training 10 workers to build more, thanks to a $94,000 state grant.

AutoPort is also trying to interest local companies that own fleets of 3- to 5-year-old Chevrolet Express vans in converting them to run on battery power. "They'll go 80 miles on a charge," Johnson told me. "That's ideal for delivery vans in an urban area."

If the conversions take off, AutoPort says it expects to hire roughly one worker for every four conversions per year.

Both ways

President Obama wants to stop really big banks from getting any bigger so they won't need taxpayer bailouts next time they get in trouble.

He also wants to stop government-insured banks from betting on all kinds of risky "financial products," when that means betting against their own customers, as bank trading desks often do.

The stock market reacted to Obama's plan yesterday as if the president were hurting Wall Street, and helping Main Street.

Big banking-and-trading giants JPMorgan Chase & Co., Bank of America Corp., and Citigroup Inc. each lost more than 5 percent of their trading value, on fears they'll have to sell or spin off operations.

By contrast, Comerica Inc., SunTrust Banks Inc., Fifth Third Bancorp, KeyCorp, and Huntington Bancshares Inc., provincial banks that aren't expected to be so directly affected by Obama's proposed restrictions, rose 5 percent and more. These banks have been reporting higher-than-expected fourth-quarter profits, or at least lower losses than last time. (PNC Financial Services Group, Pennsylvania's biggest bank, fell 5 percent, after warning it is still packed with bad real estate loans.)

I asked Assistant Secretary of the Treasury Michael Barr, in a reporters' conference call, why the president wants to break JPMorgan and its peers just now. Don't big, global, diversified U.S. companies such as Microsoft Corp. and DuPont Co. need big, global, diversified American banks to compete with their British, German, Swiss, and Chinese rivals?

"The proposals our president is putting forward are not about breaking up existing firms," Barr insisted. He asserted that Obama is more interested in preventing future concentration than in destabilizing today's bailed-out banks.

Sounds as if the president wants it both ways. Or maybe breakup isn't a real goal, it's a club to push for what he really wants: A single, powerful bank regulator and a consumer financial protection agency, to keep the financial system from blowing itself up again. The bailed-out banks are resisting.

###

Renae Merle, *Digest: Regulators find flaws in foreclosure program*, The Washington Post, January 21, 2010.

The high level of foreclosures plaguing the country will get worse before it gets better, according to a report that found that mortgage relief being offered to distressed borrowers is not keeping up with the need.

The report, issued Wednesday by the State Foreclosure Prevention Working Group, which is made up of 12 state attorneys general and three banking regulators, found that the number of borrowers falling into trouble exceeded the number of borrowers able to tap into a federal mortgage assistance program. The foreclosure relief process appears to be backlogged, with some mortgage servicers taking six months to complete a loan modification, according to the report, which includes data from 13 large mortgage servicers.

The report identified weaknesses in the government's mortgage relief effort, known as Making Home Affordable, including cumbersome documentation requirements. The program has slowed the tide of foreclosures, but "implementation failures have hindered the program's ability to reach its full potential," the report said.

"As we have previously said, we are continually reviewing our housing plan to ensure that it promotes stability in the housing markets," Michael Barr, a Treasury assistant secretary, said in a statement.

-- Renae Merle

###

Michael Crittenden and Ruth Simon, *No Plans for Mortgage-Principal Reductions*, The Wall Street Journal, January 20, 2010 9:22 PM ET.

Despite increasing pressure to take more aggressive steps to keep troubled borrowers in their homes, the Obama administration said Wednesday that it had no immediate plans to alter its foreclosure-prevention program by increasing its reliance on reducing loan balances.

The administration's statement came as attorneys general and banking regulators in 14 states warned that policy makers needed to do more to stem the tide of foreclosures.

The Obama program, announced in February as a cornerstone of the administration's efforts to stabilize the housing market, has been running into increasing criticism as delinquencies have mounted. The program has focused on reducing loan payments to affordable levels through interest-rate reductions and other changes in loan terms. But state officials and others say it needs to address falling home prices through principal reductions because many homes are now worth less than their mortgages.

"The failure to reduce principal jeopardizes the sustainability of loan modifications," Mark Pearce, North Carolina's deputy banking commissioner, said at a briefing for reporters.

In a related development, the Treasury Department said the administration next week will issue new guidance for lenders to deal with a looming deadline that is putting many homeowners participating in the program at risk of disqualification because of paperwork problems.

More than 900,000 homeowners have begun trial modifications under the program, but documentation issues are hampering efforts to convert those to permanent fixes. Last month, the administration gave many borrowers in the program an extension until Jan. 31 to provide the documents. But the administration said last week that it doesn't plan to extend the deadline further.

New York State Banking Superintendent Richard Neiman said Wednesday that he believed that about 450,000 homeowners who have made at least three required trial payments "face the prospect of foreclosure on January 31st strictly on account of documentation issues."

Administration officials haven't said how many borrowers in the program would be affected by the approaching deadline. "We expect to issue guidance to servicers next week to expedite conversions of current trial modifications and provide guidance on documentation," Assistant Treasury Secretary Michael Barr said.

Under the program, borrowers must make three trial payments and provide a hardship affidavit and other required documents. On Friday, the administration released a report that said only 7% of the homeowners who received trial modifications on their loans through the plan had received a permanent reduction as of Dec. 31.

Mortgage companies say many borrowers haven't provided some or all of the required paperwork, while borrowers complain they are asked for the same documents multiple times.

State officials on Wednesday called on the administration to loosen documentation requirements and expand the use of principal reductions. A report issued by state attorneys general and state banking regulators found that more than 70% of loan modifications resulted in an increase in the principal amount owed as unpaid interest, fees and other charges were rolled into the loan amount.

The report, by the State Foreclosure Prevention Working Group, said current efforts are failing to keep up with the number of borrowers falling behind on their loans. Only four in 10 borrowers who are at least two months behind on their payments are involved in any sort of loss-mitigation effort. Without more aggressive steps, including a focus on principal write-downs, foreclosures will continue to weigh on the economy, the report warned.

"Despite efforts of servicers, homeowners and the government, the foreclosure crisis continues to worsen. These signs point to more foreclosures in 2010 than in 2009," the report said.

The states' report, based on data from 13 mortgage servicing firms, offered a stark view of the housing market. Through the end of October, there were 1.7 million mortgages at least two months behind on payments, while the number of loans in the process of foreclosure increased by 52% between October 2008 and October 2009, the report said.

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James R. Hagerty, *Loan Modifications Help the Housing Market,* The Wall Street Journal, January 19, 2010.

President Barack Obama's plan to ease mortgage terms for millions of distressed homeowners, announced nearly a year ago, now is widely panned for having fallen short of its ambitious goals.

But some analysts say the program is a success in one sense: By slowing the flow of foreclosed homes to the market, it has helped prop up housing prices, at least for now. The administration's Home Affordable Modification Program, or HAMP, and other state and federal efforts to avert foreclosures have helped "buy time" for the housing market, preventing steeper home-price declines, said Ajay Rajadhyaksha, a managing director at Barclays Capital in New York.

The official goal of HAMP is to reduce monthly loan payments for distressed borrowers so they can afford to stay in their homes. But housing analysts at UBS Securities in New York, in a report last week, described HAMP as "a vehicle to delay the timing of new foreclosures hitting the market."

Most analysts assume that a large share of the people who get modifications will default again within a year or two. Thus, some critics say the government and banks are merely "kicking the can down the road" on foreclosures that will hit the market eventually. The unresolved question is whether the housing market will be better able to absorb foreclosed homes in a year or two. That depends on whether the economy and job growth recover.

Treasury officials argue that the loan-mod program is working out well in terms of keeping many people in their homes, but they also acknowledge the broader effect on home prices: "I think it has had quite a strong stabilizing influence" on the housing market, Treasury Assistant Secretary Michael Barr said in a briefing Friday.

In late 2008, banks dumped many of their foreclosed homes on the market, pushing prices down sharply in some areas. Around that time, though, banks began acquiring fewer homes through foreclosure. That was partly because of various moratoriums on foreclosures at the state and federal level, followed by HAMP. Because of HAMP, banks feel heavy political pressure to carefully screen borrowers to see which ones might qualify for loan modifications before proceeding with foreclosures. That has extended the time it takes to decide whether to force through a foreclosure, creating a huge backlog of unresolved cases.

As a result, there are fewer foreclosed homes on the market. The number of such homes available for sale dropped to 637,000 in November 2009 from 845,000 a year earlier, Barclays Capital estimated. Barclays expects the number to start rising again as people who don't qualify for a loan modification or don't want one lose their homes, and peak at 747,000 in April before declining gradually.

As recently as September, however, Barclays expected a peak of nearly 1.2 million foreclosed homes for sale in mid-2010. "Our projected peak keeps getting lower, the longer banks delay foreclosure sales," spreading the pain over a longer period, says Glenn Boyd, a senior researcher at Barclays.

That has implications for pricing. The S&P/Case-Shiller 20-city home price index is down 29% from its peak in 2006 but has leveled off in recent months as fewer foreclosures have hit the market.

As of Sept. 30, about 7.5 million households were behind on their mortgages or in the foreclosure process, according to the Mortgage Bankers Association, a trade group. It isn't clear how many of those homeowners can ultimately be rescued. HAMP so far has resulted in about 900,000 loan modifications, most of which are still in a trial period.

Louis Amaya, chief operating officer of National Asset Direct Inc., a New York-based asset manager whose affiliates purchase and service troubled mortgage loans, said the administration has used HAMP to shame lenders into offering lots of loan modifications but that a large share of those aren't sustainable. "The reality is that most people aren't going to qualify for a loan mod" that makes economic sense for both the borrower and lender, Mr. Amaya said. Those who can't afford their homes should be allowed to exit with dignity, such as through a short sale, in which the house is sold for less than the loan balance, he said.

Instead, HAMP is "dragging out" the foreclosure process, Mr. Amaya said, and "we need to let the market correct itself." Until the huge backlog of loans headed for foreclosure is cleared, he said, the housing market can't recover.

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Kate Berry, *Why Servicers May Bite the Bullet This Year*, American Banker, January 19, 2010.

With more than a million homes headed for foreclosure, and hundreds of thousands more in the process or repossessed, how long can lenders put off dumping these properties?

There are two main views on that question, and neither is particularly reassuring.

One group says a breaking point will come in the second or third quarter: The supply of these distressed homes will get so big that banks and mortgage servicers will have no choice but to begin moving more borrowers into foreclosure and working through their stockpiles of seized collateral.

Others say banks' reluctance to record losses, combined with the government's continued attempts to stem the foreclosure tide, could prolong the situation for years.

"When the shadow inventory will hit the market and what the impact will be are still the big unknowns," said Dan Reynolds, the director of business development at LAMCO, a Littleton, Colo., company that manages repossessed properties for banks. "The scary thing is that if they don't deal with it, the problem just gets larger and larger."

First American CoreLogic, an analytics unit of the Santa Ana, Calif., title insurer First American Corp., has estimated that 1.7 million homes make up the shadow inventory — properties that have been repossessed, are in foreclosure, or are seriously delinquent. This supply is not included in the official measure of inventory — amounting itself to 3.75 million homes — listed in Multiple Listing Services across the country.

Reynolds, a former vice president of mortgage lending at Merrill Lynch & Co., said banks are trying to figure out how to unload the shadow inventory without causing housing prices to plummet. "We're in a situation where no one has pointed out how to fix this problem, and the only strategy they have is to slow things down to get their arms around it," he said.

George Schwartz, an executive vice president at ServiceLink, a Pittsburgh firm that services defaulted mortgages, is one of those who say something must give, and soon.

"These loans just are not coming out of the foreclosure process, so the real estate-owned inventory is declining when we ought to see it increasing," Schwartz said. Meanwhile, "servicers are looking at their servicing costs going through the roof," he said.

"There is a view that the REO volume is going to spike, and the question really becomes, when do we think the tide will turn? I think it will come late in the second quarter, because servicers kept a lot of borrowers in limbo because no one wanted to throw people out of their homes at Christmastime," Schwartz said. (ServiceLink is a unit of Fidelity National Financial Inc., a Jacksonville, Fla., title insurer.)

Diane Pendley, a managing director at the rating agency Fitch Inc., agreed that the industry is likely to step up dispositions somewhat. "There's a huge inventory of 90-plus [-day] defaults, and the servicers will have to move more of these properties into liquidation and finally sell them this year," she said. "It also appears that the market is there to absorb these properties."

Even so, Pendley sees strong reasons for the situation to drag on, and one of them is the Obama administration's Home Affordable Modification Program.

"The time line for a recovery has been stretched out, because some of these government programs can't cleanly separate out the borrowers who can be saved from those who can't," she said. "Five years from now seems to be the time line for a lot of these servicers."

On Friday the Treasury Department released its monthly report card for the program, which showed that 66,465 trial mods had became permanent by the end of December. Though that was more than double the cumulative total at the end of November, it was still just a sliver of the more than 900,000 trials begun since March.

"Hamp is not working," said John Taylor, president of the National Community Reinvestment Coalition, a nonprofit housing group. "I don't see how anybody can say that it is, since the conversion rate [of trial to permanent mods] is dismal."

Servicers have approved another 46,056 modifications that are pending until borrowers sign the documents.

But on a conference call with reporters Friday, Michael Barr, the Treasury assistant secretary for financial institutions, said 25% of the 787,231 borrowers who are still in active trial mods have not made payments and are expected to fall out of the program.

He said the Treasury is constantly looking at the range of the administration's housing programs and will continue to make adjustments.

"You don't want to upset the basic stability of the housing market in any program you design," he said.

To speed the resale of foreclosed properties, the Department of Housing and Urban Development said Friday that it will temporarily waive a rule that restircts homebuyers from obtaining Federal Housing Administration-insured mortgages when the seller has owned the house for fewer than 90 days.

Pendley said she expects 65% to 70% of the small group of borrowers who received permanent mods to redefault within a year, largely because so many of these borrowers have large nonmortgage debts and they stretched to buy homes they could not afford.

Many experts say banks are expecting the government to come up with more money to fix the problems by tweaking the program to address borrowers who are unemployed and those who have negative equity.

"The industry will have to keep trying again, so we'll see Hamp 3 and Hamp 4," Schwartz said.

Frank Pallotta, an executive vice president and managing partner of Loan Value Group LLC, a privately held advisory firm in Rumson, N.J., said another core problem is that accounting rules give banks plenty of flexibility on marking down and taking losses on bad loans, and the current modification program lets the banks mark loans as current.

"If every bank had to mark down their residential loans, they'd have no capital reserves, and they'd be insolvent," said Pallotta, a former co-head of Morgan Stanley's mortgage conduit. "The endgame is going to have to be partly an accounting fix, or some realization that loans with certain characteristics have to take a hit."

By continuing with programs like Hamp, it will take five to seven years before housing prices bottom and there can be "a comfortable transfer of risk from the banks to the capital markets at a reasonable level," Pallotta said.

Fitch's Pendley said dragging things out may turn out to be the right move. "It's always been an industry mantra that the first loss is the best loss, and the quicker the market takes the hit, the better. Maybe because of the magnitude, this may turn out to be the best way, and five years from now we're stronger."

###

Ruth Simon and Michael Crittenden, *Paperwork Woes Plague Mortgage Plan*, The Wall Street Journal, January 19, 2010 10:42 AM ET.

Thousands of homeowners participating in the Obama administration's foreclosure-prevention plan could miss a government deadline for completing necessary paperwork, putting them at risk of disqualification.

The program, a cornerstone of President Barack Obama's housing-rescue effort, was launched in February and has been bedeviled by paperwork problems from the start. Many companies have given borrowers modified mortgage terms on a trial basis, based on verbal information, and have struggled to get the documents required to finalize mortgage modifications.

According to data released by the Treasury Department Friday, more than 900,000 borrowers have begun trial modifications under the program, but just 7% of them have received permanent changes so far.

Borrowers must make three trial payments and provide a hardship affidavit and other paperwork to receive a permanent mortgage fix. Many are still in the early stages and aren't at risk of being disqualified. But thousands are at risk.

Wells Fargo & Co. said 10% of its mortgage borrowers who have made the required trial payments under the program haven't provided any documents; another 15% have provided some, but not all the needed paperwork.

The administration last month gave borrowers who were current on their payments after at least three months an extension until Jan. 31 to provide needed paperwork. But the administration doesn't plan to extend that deadline, Assistant Treasury Secretary Michael Barr said Friday.

"We are going to have further guidance for [mortgage] servicers at the end of the month," he said.

It's not clear what will happen to borrowers who have made the required three payments but don't qualify for a permanent fix under the Obama program. Some are likely to receive modifications outside the program from mortgage companies. Others, including those who don't provide any of the necessary paperwork, are likely to wind up losing their homes through a short sale or foreclosure.

The administration has said the mortgage program could help as many as four million borrowers. It provides financial incentives for mortgage companies and investors to reduce loan payments to affordable levels.

Through December, 66,465 borrowers had received permanent fixes; an additional 46,056 modifications have been finalized, but await the borrower's signature. The number of borrowers who have received completed modifications, while low, has more than doubled since November. The Treasury Department announced in December a "conversion drive" designed to increase permanent fixes.

Administration officials are also considering new ways to fight foreclosures, particularly for the unemployed. The Treasury Department and other policy makers have not settled on a specific plan, but ideas being considered include finding a way to help borrowers who have lost their jobs to reduce the principal on their loans, according to people familiar with the matter. The administration's annual budget proposal could be a vehicle for such a plan.

A Treasury Department spokeswoman declined to comment on possible changes in the program, but Mr. Barr acknowledged that the administration is continually reviewing its efforts to deal with foreclosures.

Calls for change have increased as a weak economy continues to drive mortgage delinquencies higher. Since March, more than two million additional borrowers have fallen at least 60 days behind on their loan payments, according to LPS Applied Analytics. A record 13.15% borrowers were delinquent or in foreclosure in November.

"They need to have a radical restructuring of the program that would include dealing with the unemployment issue, dealing with the underwater mortgage issue and making the program much more effective and efficient," said Kenneth Rosen, chairman of the Fisher Center for Real Estate and Urban Economics at the University of California, Berkeley.

About 25% of borrowers who receive trial modifications are expected to fall out of the program because they don't make required payments, the Treasury Department said. For those who received a permanent modification, the median monthly payment dropped from $1,419 to $830, the department said.

"In a huge number of cases, the payment...is being reduced to or even below what a comparable rental property is likely to go for," said Thomas Lawler, an independent housing economist. "Unless the borrower is materially upside down, there is a strong incentive to remain current."

Among the largest mortgage companies, Wells Fargo completed 8,424 modifications and has more than 10,000 additional fixes pending. J.P. Morgan Chase & Co. completed 7,139 modifications and has another 5,518 pending.

Citigroup's CitiMortgage unit has completed nearly 5,000 modifications and has 6,968 pending. At Bank of America Corp., there were 3,183 permanent fixes with another 9,178 modifications pending.

Wells Fargo said it expects about half of borrowers who make the required trial payments to ultimately receive a completed modification under the Obama plan. Of those who don't, about half are likely to receive a modification outside the program, said Michael Heid, co-president of Wells Fargo Home Mortgage.

But a quarter of the borrowers in the trial program are likely to lose their homes through foreclosure or short sale, Mr. Heid said. They include borrowers who haven't provided any documents or don't qualify for a modification because they have too much debt or their income isn't sufficient because of unemployment and underemployment.

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James R. Hagerty, *Is Slashing Mortgage Principal the Answer?*, The Wall Street Journal Developments blog, January 17, 2010 9:43 AM ET.

Many critics of the Obama administration's mortgage loan-modification program say it won't work because it doesn't do enough to address "negative equity," the plight of people who owe more on their home loans than the current value of those properties. Without equity in their homes, these critics say, borrowers have little incentive to keep paying and are apt to walk away as soon as things get tough, if not before.

There is even a new word to describe this approach: Lenders need to "re-equify" borrowers by chopping the loan balances to something less than their homes' values. That would go well beyond the usual loan-mod formula of cutting the interest rate and giving the borrower more time to repay. It also would force banks to admit that the collateral backing their loans is greatly diminished, bringing their balance sheets closer to reality.

But some important voices are raising questions about whether widespread principal reductions are the answer.

When he was asked about that in a news briefing Friday, Assistant Treasury Secretary Michael Barr didn't rule out broader use of principal reductions. But he suggested that there would be a risk that such a program would change a lot of borrowers' behavior. "Most people, most of the time, make their mortgage payments …even if they're underwater," Mr. Barr noted. "You have to be quite careful not to design a program that induces more people to walk away" or one that strikes people as unfair.

How would principal reductions induce more people to walk away? Let's say your neighbor, who hasn't made any payments on his loan for months, gets a huge reduction in his loan balance.

Meanwhile, you've been working three jobs and dining on cat food to pay your note each month. Your reward from the bank? Zilch.

So maybe you'd decide to stop paying, too, in the hope of the same deal your neighbor got.

Goldman Sachs also is questioning the idea that principal reductions are coming on a huge scale. In a report last week, the Wall Street firm's economists wrote that the government is likely to make "some additional response" to improve the loan-mod program. "But," the economists wrote, "the notion that the Treasury will implement a principal-reduction scheme could be a setup for disappointment. While principal reductions would be more effective than rate reductions for many borrowers, well-known obstacles still haven't been overcome: second-liens pose obstacles; broadly applied principal reductions would involve significant costs, and selective relief could have negative political ramifications."

This debate isn't over. Others insist lenders will have to grant principal reductions in many cases. Here's one formula: The lender or other owner of the mortgage sells it at a big discount to an investor. That investor then reduces the loan balance and refinances the borrower into a mortgage insured by the Federal Housing Administration. Now Uncle Sam is holding the bag on a loan that (we all hope) might be sustainable.

Tom Capasse, a principal at Waterfall Asset Management LLC, a New York-based investor in mortgages, says it's too late to prevent a "seismic shift" in borrower behavior away from the old model of paying off the mortgage no matter what. Many Americans already see walking away as a legitimate option if they can't get a better deal from the bank.

"There used to be a scarlet D on your forehead if you defaulted," says Mr. Capasse. "Now it's a badge of honor."

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***Obama mortgage program fails to deliver*, Anderson Independent- Mail, January 16, 2010.**

WASHINGTON - President Barack Obama's plan to fix the foreclosure crisis has been a dud, putting the housing market recovery at risk.

Hopes were over-inflated when Obama unveiled the program before an adoring audience of Arizona high school students last February. Almost a year later, it appears only about 750,000 homeowners - a fraction of the 3 million to 4 million originally projected - might complete the application process, predicts Mark Zandi, chief economist at Moody's Economy.com.

The more borrowers who can't be helped, the more foreclosed properties will flood the market. And that means the nation's housing market, which appeared to recover last summer, could soon take another turn for the worse.

A record 2.8 million households were threatened with foreclosure last year, up more than 20 percent from a year earlier, RealtyTrac Inc. reported this week. The foreclosure listing firm expects another record this year.

Home prices, meanwhile, are down 30 percent nationally from the peak in mid-2006, and there is mounting evidence they will fall again over the winter as low-priced foreclosures make up a larger proportion of sales.

"It's a very serious threat to the housing market, and still one of the most significant risks to the broader recovery," Zandi said.

The Obama plan aims to help borrowers in financial trouble by making their payments more affordable. Modifications made under the program include a lower interest rate and often a longer repayment period. The average monthly payment has been cut by $500 on average.

The homeowners receive temporary modifications, which are supposed to become permanent after borrowers make three payments on time and complete the required paperwork, including proof of income and a letter explaining the reason for their troubles.

However, just 66,500 borrowers, or 7 percent of those who signed up, have completed the program as of December, the Treasury Department said Friday.

Another 49,000, or more than 5 percent, have dropped out of the program entirely - either because they missed payments or were found to be ineligible. Thousands more remain in limbo awaiting an answer.

There's blame on both sides: Mortgage companies say they have struggled to get back the necessary paperwork, while homeowners and housing counselors say navigating the bureaucratic maze often seems impossible.

But the 102 participating companies are getting wildly different results. While a handful of mortgage companies are "very good at it," said Michael van Zalingen, director of homeownership services at Neighborhood Housing Services of Chicago,"some either don't care or can't figure it out."

The biggest company in the program, Bank of America, has completed modifications for fewer than2 percent of the 200,000 borrowers it has enrolled. Rebecca Mairone, a Bank of America executive, said the bank has started sending notaries door-to-door to get signed documents back quickly.

Companies with disappointing results "need to do much better," Michael Barr, an assistant Treasury secretary, told reporters Friday.

Another major mortgage company, Wells Fargo & Co., is doing better but still has completed modifications for fewer than one in 10 borrowers.

To speed up the process, Wells Fargo has been holding a borrower assistance events in several major cities. It brought 200 loan counselors to Baltimore's downtown convention center this week.

Another major difficulty is that the program is failing to keep up with soaring job losses. Unemployment, now at 10 percent, is expected to remain elevated all year.

That's a problem for homeowners like Cindy Rose, 52, of Murietta, Calif. She and her husband have seen their painting business drained by the recession.

So they went to their mortgage company, Litton Loan Servicing Inc., for help. In August, they were approved on a trial basis for the Obama plan. The couple's new payment was about $1,700 a month, down from about $2,650.

But a few weeks later, they got a confusing letter in the mail explaining several potential reasons for their rejection.

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Ronald D. Orol, *Obama modification program helps 100,000 borrowers*, MarketWatch, January 15, 2010 2:32 PM ET.

WASHINGTON (MarketWatch) -- With expectations for millions of foreclosures, lenders in an Obama administration mortgage-modification program have approved converting more than 100,000 troubled mortgages from three-month trial plans into more affordable permanent loans, the Treasury Department said Friday.

So far, 66,000 borrowers have accepted the offer under the program, known as the Home Affordable Modification Program, or HAMP, according to a Treasury report.

"Over time, as loan servicers get their systems better in shape, we'll see improvements in conversion into permanent modifications," said Assistant Secretary of the Treasury Michael Barr in an interview with reporters. "We need to pick up the amount of permanent modifications, which we believe is mostly an issue of documentation, not people not meeting their qualifications."

Specifically, 112,521 permanent modifications have been approved by loan servicers. That number is more than triple the program's December data, which showed that 31,382 troubled mortgages converted from trial three-month plans into permanent programs.

As part of the program, roughly 850,000 homeowners have their median monthly payment reduced by more than $500 a month.

According to the Treasury report, 902,620 trial three-month modifications have started since the program's inception, up from 759,058 last month. Also, 1.2 million modification offers have been extended to borrowers by the end of December, up from roughly 1 million offers in November.

According to Barr, roughly 75% of the 902,620 trial three-month modifications started since the program's inception are making their required payments. The rest haven't made their required payments.

"They may have made some payments or none at all," Barr said.

Meanwhile, roughly 8 million to 13 million foreclosures are expected over the next five years, according to the Congressional Oversight Panel for the $700 billion bank-bailout program.

A number of the major banks made major strides in making trial modifications permanent.

Bank of America Corp. (BAC) is one: It approved 3,183 permanent modifications by the end of December, up from 98 at the end of November. In addition, the company started 206,775 trial modifications, the report said, up from 158,462 in the previous period.

Citigroup Inc. (C) approved 4,999 permanent modifications by the end of December, up from 271 in the previous period, according to the report. Citigroup started 119,097 three-month modifications under the plan by the end of December, up from 103,478 in November.

Through the end of December, J.P. Morgan Chase & Co. (JPM) had 7,139 trial modifications made permanent, up from 4,302 at the end of November. It had 156,359 three-month trial modifications started under the program as of the end of December, up from 143,027 started under the program at the end of November.

Wells Fargo & Co. (WFC) has 126,413 trial modifications started, up from 104,808 trial modifications at the end of November, and 8,424 permanent, up from 3,537 permanent modifications using the program in November.

Not quite enough, some say

HAMP was designed to help three million to four million homeowners reduce monthly mortgage payments. It is currently scheduled to continue through 2012.

As part of the program, mortgage servicers receive an up-front payment of $1,000 for each successful modification after completion of the trial period, and "pay for success" fees of up to $1,000 a year for three years, as long as the borrower remains current. Servicers that fail to meet their obligations could have incentive payments withheld.

However, John Taylor, president of the National Community Reinvestment Coalition in Washington, said the Obama administration isn't doing enough.

"Serious people inside and outside the administration have thought this through, and we all understand that a more substantial response is needed," Taylor said. "The question is: does the political will exist to force the banks to modify loans? Tough talk and action on bonuses and repayment of bailout funds should be accompanied by a stronger response on foreclosure prevention. This is an important pocketbook and a political issue for millions of Americans, and failure now means growing disillusionment."

Lenders also have provided thousands of modifications outside of the Obama program.

However, Henry Sommer, director of the in Philadelphia, said those modifications are generally less beneficial to the homeowner than modifications under the White House program. He added that he worries homeowners eligible for the HAMP program are being steered into less-favorable private modifications set up by lenders.

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Chris Adams, *Help outpaced by bank action*, McClatchy Newspapers, January 3, 2010.

WASHINGTON -- Banks and other lenders are still foreclosing on Americans' homes at a rate that's outpacing the Obama administration's main effort to stem the crisis.

In fact, while the Treasury Department's Home Affordable Modification Program, or HAMP, has started the mortgage modification process on almost 760,000 homeowners who are at risk of losing their homes, less than 5 percent of those workouts have become permanent, government data show.

"HAMP has made only limited progress for nine months now, and the residential foreclosure crisis continues to mount," said Richard Neiman, the superintendent of banks in New York state and a member of the Congressional Oversight Panel that was formed to monitor the Treasury bank bailout funds that support the mortgage program. He was appointed to the post by the Democratic leadership in the House of Representatives.

Another member of the oversight panel, U.S. Rep. Jeb Hensarling, a Texas Republican and a critic of the bailout bill, called the mortgage program "a failure."

In a recent report, he said the administration's efforts "have assisted only a small number of homeowners while drawing billions of involuntary taxpayer dollars into a black hole." (Hensarling recently left the panel.)

The Treasury Department acknowledges that its program needs to do a better job of making hundreds of thousands of trial modifications permanent, but an official said the program is making progress and is on track to meet many of its goals.

"I think that if you go back and look at what we said we would do in February, we are on track to meet the president's goals," said Michael Barr, an assistant Treasury secretary who helps oversee the nation's main modification program. "We are not going to be able to prevent every foreclosure in the country."

More than 5 million mortgages have been caught in foreclosure proceedings since the economy began slipping in 2007, and an estimated 8 million to 13 million more could follow in the next five years. The Treasury's goal is to help modify 3 million to 4 million mortgages in three years, but only about 1 percent of that number have completed the process.

The Treasury program could spend as much as $75 billion helping homeowners avoid foreclosure. The program seeks to pay three parties -- the company that services a loan, the bank or investor that owns the loan and the homeowner -- if they rearrange the mortgage so the homeowner's monthly payment is more manageable.

One of the central problems, the administration and its critics agree, is the slow pace of finalizing the modifications it's started.

Under the program, mortgage servicers -- companies that collect monthly mortgage checks and pay the bank, property tax and insurance -- arrange the modifications.

Through November, the Treasury Department said that more than 3 million homeowners had been sent information on potential modifications, and that 1 million of them had been offered modifications.

Of those, 759,058 trial modifications have been started -- but just 31,382 have been finalized into what Treasury calls "permanent modifications."

Part of that low conversion rate is to be expected because a modification's trial period is three months long. If a homeowner remains current on his or her payments and provides all the necessary documents, then the modification can become permanent. A trial modification that started in October, for example, wouldn't become permanent until January.

However, the conversion rate is low even for trial modifications that have been under way for more than three months.

As of Oct. 31, only 4.7 percent of the modifications that had been on the books for at least three months had become permanent, according to the Congressional Oversight Panel.

While that doesn't mean that more than 95 percent of trial modifications begun three months or more earlier "are failures," in the panel's words, it does mean that the "vast majority" of trial modifications failed to convert on the schedule that the Treasury originally announced.

Treasury's Barr said that mortgage servicers -- some them stand-alone companies, others units of big Wall Street banks -- simply aren't doing enough to move homeowners from trial to permanent modifications.

While most homeowners are making their payments once they're in a trial modification and the basic structure of the program is working, more needs to be done to push mortgage servicers to close deals, he said.

"It sounds really boring, but it is basic execution on the ground," Barr said. "They started to ramp up in the spring, and they have not done a good enough job to get the documents in that need to come in."

In part, that's because mortgage service companies generally haven't been set up to execute wide-scale mortgage modifications. Mortgage servicers historically have been highly automated -- more akin to collection agents than to loan officers, and they've needed to change their business model, hire staff and rethink how they interact with customers, a process that's been slow.

"The servicers need to do a better job," said Tom Miller, the attorney general of Iowa and a leader in state-level efforts to help desperate homeowners. "They have to make sure they have the full staff, make sure they are trained, make sure they don't make people wait and wait and wait. We have a tendency to accept the wait, and we shouldn't."

Faith Schwartz, the executive director of an industry foreclosure-prevention group called the Hope Now Alliance, said mortgage servicers have made a "huge investment in staffing and technology," and that much of the past year has been spent learning and adapting to the Treasury's new program.

"My impression is everything that gets done from here on is going to be much better than what was done a year ago," she said. In a few months, she said, many of the modification statistics will better reflect that.

Miller also said that mortgage companies need to reduce the principal on some of their loans in order to prevent more foreclosures. That could mean, for example, reducing the balance owned on a $200,000 home to, say, $180,000 if the home's value has dropped substantially. That, he said, was one of the tricks that helped his state emerge from a severe farm crisis two decades ago.

"We saw this movie before in Iowa in the 1980s, and modifications are what saved rural Iowa," he said. "Many of them were premised on reduced principal."

In the third quarter of 2009, nearly a quarter of single-family homeowners with mortgages owed more than their homes were worth, the Congressional Oversight Panel said. The Treasury's program does little to reduce mortgage principals, the panel said, adding that "as currently structured," the Treasury program "appears capable of preventing only a fraction of foreclosures."

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Zinitha Prince, *White House to Boost Loan Modifications*, Atlanta Daily World, December 24, 2009 – December 30, 2009.

WASHINGTON - Looking to enhance the success of its signature remedy for the foreclosure crisis, the Obama administration recently announced a new thrust to spur lenders to increase the number of permanent loan modifications.

The move is just another stage in an already successful program, officials told reporters recently.

Assistant Treasury Secretary Michael Barr said the administration is well on its way to helping the more than 3 million homeowners over three years as it had promised, with more than 650,000 homeowners currently in temporary modification plans, each seeing an average of $576 less per month in mortgage payments.

"Now we're at the stage where we need to turn to the next challenge, which is turning these trial modifications into a permanent solution for families," Barr said, adding, servicers had not done "a good enough job" of converting the trial plans.

Economist Andrew Jakabovics said the move clearly denotes a level of frustration among officials.

"I think they've gotten as frustrated as homeowners who need assistance," said Jakabovics. the associate director for housing and economics at the Washington-based think tank Center for American Progress.

"People are getting into the trial stage of the program, but very few are coming out at the other end At some point the trial expires and people are back where they started"

According to the program's last Servicer Performance Report released in November, servicers modified only one-fifth of eligible delinquencies in the past nine months. Large lenders such as Wachovia and Bank of America were among the worse offenders, activating trial modifications that were only 3 percent and 14 percent, respectively, of eligible accounts.

Wells Fargo and JP Morgan Chase were mid-range performers, at 29 and 32 percent, respectively. GMAC, CitiMortgage and Saxon topped the list at 35, 40 and 44 percent

"If Bank of America were doing as well as Citibank, there'd be another 250,000 homeowners in the program," said Jakabovics, as an example of the missed opportunity.

But Barr, even as he said banks were not doing enough, said homeowners need to be more responsible about sending paperwork.

Phyllis Caldwell, chief of the Home Preservation Office, which is overseeing the program, said based on reports from lenders, of the 650,000 households in trial modifications, 37 percent have submitted some documents and 20 percent have submitted none. That leaves only 375,000 homeowners eligible for permanent modifications this year.

"That story lacks credibility," Jakabovics refuted

Marcia Griffin, president and founder, HomeFree--USA--a nonprofit organization that offers housing counseling and other services--agreed with the economist, citing examples of clients who have been through bureaucratic hell--waiting for hours on the phone, getting the run-around or multiple answers to the same question and other horrors.

"I had one client who sent in their documents 11 times," Griffin told the AFRO.

The consumer advocate and economist said the problem lies less with consumers and more with "bottleneck" within the servicer shops.

"The servicers or lenders are overwhelmed They have people on the phone who are being trained by a script on a computer. And they aren't necessarily people who know anything about the industry," Griffin said For that reason, desperate homeowners not only encounter incompetence but the absence of a human touch.

"People are desperate, they're in distress, they're stuck and don't know how to get unstuck. And my God, when you're unemployed and losing your house?... [These] people are stressed and emotionally impaired," Griffin said "But the lenders don't see that impairment, they see [those homeowners] as numbers."

Caldwell said as part of the new focus, three--person "swat teams" were sent to major servicers, where for three days they observed and reported problems that hampered documents from being received or decisions made. Those observations would inform the administration's plan of action to smoothen the process of loan modifications.

Jakabovics and Griffin agreed that approved nonprofit housing counselors should be a bigger part of the process.

"What they really need to do is expand the intake process and let the housing counselors run the numbers then and there and put the burden on servicers to double check the numbers," the economist said "And if three months later the servicers haven't challenged the numbers, let it automatically convert to a permanent modification."

In addition to shifting the burden of proof, the administration also needs to change its tone with non-compliant lenders in the program, consumer advocates and counselors say. In trying to woo lenders into the program, they said, the administration offered too many carrots and not enough sticks. And many lenders seem to think that their cooperation is voluntary though they've signed contracts.

Barr promised that the administration would take a tougher stance.

"Servicers that don't meet their obligations under the program are going to suffer consequences," he said, adding officials have "contractual remedies that we will exercise if we need to ensure their compliance."

He added, "Not a penny is going out from the federal government to servicers unless they do what it takes to get the required procedures in place and make the loan permanent"

Some advocates remain skeptical, pointing to plan's lack of specificity with regard to penalties and also to the lenders' demonstrated lack of will--especially given the relative benefits of pursuing foreclosures as a well--known means of regaining their disbursements.

"The Obama administration's latest adjustments to its nine-month-old foreclosure prevention program do little but highlight the continued failure of lenders' voluntary efforts to stop the foreclosure crisis," said Michael Calhoun, president of the Center for Responsible Lending, in a written statement

"Without mandatory requirements and fully disclosed results, foreclosure prevention efforts--no matter how well-intentioned--will not succeed," he added "And the cost of failure will be borne by not just struggling homeowners, but by their neighbors, communities, and the larger economy."

Failure of this program could also bear a political cost for the administration, Jakabovics said

"The politics of a failure is particularly problematic especially in light of the record bonuses being paid on Wall Street and there's still a sense that the bailout basically helped the banks and the average person has not seen any of that assistance as promised," he said

Barr seemed well aware of that cost and predicted overall success in the end

"We've beat all the odds and defied the skeptics," he said "The reporters who covered this in February and the Congress said we'd never get anything done, we'd never get the program off the ground and it wouldn't help anybody and we're showing that's not the case. The numbers will prove the skeptics wrong."

###

Ronald D. Orol, *Advocates eye new plan for jobless borrowers*, MarketWatch, December 22, 2009.

WASHINGTON _ With the nation's jobless making up a major part of future home foreclosures, advocacy groups are meeting with top Obama administration officials to seek ways to help keep the growing wave of unemployed borrowers in their homes.

Groups are meeting with officials at the Treasury Department, Housing and Urban Development, and in the White House's National Economic Council to have them take part of an existing $75 billion program to help homeowners modify mortgages and put it in a program that would help the jobless stay in their homes.

The program would go beyond a measure included in sweeping bank reform legislation that would use $3 billion in bank bailout dollars to give the jobless fixed-rate, low interest rate loans.

"It's going to take a long time before the $3 billion plan is approved by Congress and takes effect," said Philadelphia Unemployment Project Director John Dodds. "We have people who are up against foreclosure now. There is an urgency to do something now."

Dodds argued that, with unemployment expected to remain in the 10 percent range for much of 2010 and above 8 percent in 2011, existing foreclosure prevention programs are only expected to avert a small number of the millions of foreclosures expected to take place in the next four years.

Dodds' proposal would give homeowners who have been unemployed during the recession a loan fixed at 31 percent of the family's income for two or three years or until the primary wage earner finds employment again.

Lenders and loan servicers would receive payments from the $75 billion in bank bailout funds allocated for homeowner assistance to cover their losses; however, they would be required to modify the loan payment down somewhat before government payments would begin.

A recently unemployed homeowner with a $1,000-a-month mortgage, who receives $1,600 a month in unemployment compensation, could need to pay $496 a month, or 31 percent of their jobless income. The other $504 a month would be paid in the form of a loan from the government directly to the lender.

However, to reduce the Treasury's concerns about administrative costs, the payments could be paid as a lump sum at the end of the period of unemployment.

The program is envisioned to work with the existing mortgage modification program, known as the Home Affordable Modification Program.

Under the plan, the jobless homeowner's principal and interest would be adjusted down before the borrower would receive the new loan. When the borrower is employed again, monthly payments would be at this modified level, not at the 31 percent of their household income at the time of being unemployed or at their original level.

Homeowners would cover the government loan by requiring additional payments at the end of their 30-year-mortgage, or when they refinance or sell the home.

"We think there is a clear need for the Treasury to do something about the second wave of foreclosures coming soon," Dodds said. "This program would help stabilize the housing market and would help with the recovery. We've been led out of the previous half-dozen recessions because the housing market recovered."

Earlier this month, Michael Barr, a Treasury assistant secretary, told reporters earlier this month that the agency is looking at a wide range of remedies, including a process "that is cost effective, protects taxpayers and gives responsible homeowners a chance to stay in their homes."

Efforts are underway to expand the program for jobless, in part, because of concerns that Treasury's existing mortgage modification program, which was introduced in March, wasn't designed to stem foreclosures resulting from jobless homeowners. The program focuses its attention on the problem evident early in the financial crisis of people having subprime mortgages they couldn't afford. Richard Neiman, a member of TARP oversight panel, contends that a new program for jobless is necessary because a second wave of foreclosures is coming that is based more on loss of income and unemployment.

"The mortgage crisis may have begun with unaffordable subprime or exotic loans, but it has expanded to capture an increasing number of homeowners with traditional, prime loans as the recession lingers," Neiman said.

The Treasury reported two weeks ago that, lenders have converted only 31,382 troubled mortgages into permanent, more affordable loans.

Jack Schakett, a credit-loss executive at Bank of America Corp., said that, as a practical matter, very few people can qualify for the HAMP program if the primary wage earner is unemployed.

A person who is unemployed can be considered for HAMP if they have nine months of unemployment insurance left.

Responding to concerns from the Congressional Black Caucus, the House approved a provision in the bank reform bill that would allocate $3 billion in bank bailout funds to give fixed-rate, low-interest loans of up to $50,000 to unemployed people facing foreclosure.

It is unclear whether the measure will survive in the Senate, where similar legislation has been written but not acted on.

Sen. Jack Reed, D-R.I., has introduced a homeowner bill, which has the backing of Sens. Richard Durbin, D-Ill., and Jeff Merkley, D-Ore., which would provide $6.4 billion in funds to provide troubled homeowners' grants for future mortgage payments or subsidized loans in 2010, as well as other assistance. It provides grants for states and local governments to establish mediation programs to assist borrowers on the verge of foreclosure and it funds relocation grants of $1,500 for those not eligible for other programs.

Reed is a member of the Senate Banking Committee, which has jurisdiction over mortgage matters and is expected to begin considering broad bank reform legislation early next year. The House banking bill also allows HUD to allocate some of the funds to similar state programs. Dodds contends that it is very likely that an under-funded Pennsylvania program for jobless homeowners would likely be permitted to receive some of the funding.

For example, HUD may have authority to provide TARP funds to the Pennsylvania-based Homeowners' Emergency Mortgage Assistance Program, or HEMAP, which gives government bridge mortgage loans to people who have recently lost their jobs. Under HEMAP, loans do not accrue interest until the participant's income is restored.

"The $3 billion in funds to help jobless stay in their homes is a program modeled after HEMAP," Sommer said.

He added that banks should be enthusiastic about it because they are more likely to be bailed out using it than with the HAMP program.

"Banks may be paid on loans that are currently underwater," Sommer added.

Henry Sommer, a director at the National Association of Consumer Bankruptcy Attorneys, argues that there should be an increased urgency to implement new programs to help unemployed homeowners, in part, due to the failure of legislators in both the Senate and House to pass bills to allow bankruptcy judges to modify mortgages for troubled homeowners.

"Permitting bankruptcy judges to make modifications was really a key way to help stem foreclosures," Sommer said. "Without it, the impetus is on the Obama administration to find other ways to limit the growth of foreclosures due to unemployment."

###

Ruth Simon, *Some Borrowers Find Little Relief*, The Wall Street Journal, December 9, 2010.

The Treasury Department announced plans Monday to beef up its foreclosure-prevention effort by pressuring mortgage companies to complete more loan modifications.

But the new initiatives don't address significant shortcomings of the program, which often provides little relief to borrowers who have lost their jobs or who owe far more than their homes are worth.

The program provides financial incentives for mortgage companies and investors to reduce loan payments to affordable levels for financially troubled borrowers. The Treasury said Monday that it would send "SWAT teams" to the largest mortgage servicing companies and talk twice a day with mortgage executives to boost their success rates.

More than 650,000 borrowers have begun making trial payments under the program, but few homeowners have received permanent fixes. Assistant Treasury Secretary Michael Barr said the Obama administration has called executives from top mortgage companies to Washington next week to explain. Mortgage companies that perform poorly in the modification program could face monetary penalties and sanctions, though the administration declined to provide specifics. "Servicers need to do better," he said.

To qualify for a reduced mortgage, borrowers must first make three reduced payments under a trial program. To receive a permanent fix, borrowers must also provide a hardship affidavit and other documents.

But many borrowers complain that it is difficult to get a permanent loan modification even after making required trial payments.

The administration continues to look at ways to expand the program, Mr. Barr said, including help to unemployed homeowners. But the campaign to increase the number of permanent fixes is "the top priority," he added.

Roughly 375,000 borrowers are on track to receive a permanent modification by year's end, provided they meet program requirements, the administration said.

But only one-third of applicants have submitted all their required documents. "Borrowers need to take responsibility," Mr. Barr said. Administration officials said they also are working with more than 300 state and local groups to assist borrowers with the paperwork.

The latest announcement comes amid concerns that rising delinquencies and foreclosures could threaten the housing recovery. Some 1.56 million mortgages current in March were at least 60 days past due in October, according to LPS Applied Analytics.

Many financially troubled borrowers can't even qualify for a trial modification under the Obama plan. For instance, borrowers who are unemployed can receive a loan modification provided they show eligibility for at least nine months of unemployment benefits. But as a practical matter, most borrowers getting unemployment benefits aren't likely to qualify.

Dolores Ross lost her job as a paralegal in December 2008 and has been struggling ever since. Last month, CCO Mortgage, a unit of Citizens Financial Group, turned her down for a modification. "I assume I'll get a job again," said Ms. Ross, who is still current on her mortgage payments. "But I still have to file for bankruptcy because I cannot make the mortgage and my utilities and pay the credit cards."

Martin Reavis, a housing counselor with Neighborhood Housing Services of Chicago, is working with Ms. Ross. He said she is receiving a little more than $1,400 a month in unemployment benefits, which is less than her $1,632 loan payment. Ms. Ross doesn't have "an excessive lifestyle," he said. "Unemployment won't support a modified payment."

A spokesman for Citizens Financial, a unit of Royal Bank of Scotland, declined to comment, citing customer privacy.

Falling home values present another challenge. Borrowers who are current on their modification can receive up to $5,000 to reduce their loan balance. But the program's primary focus is reducing interest rates, not principal, despite studies that show borrowers receiving principal reductions are less likely to redefault.

Carl Fischer, who lives in Fort Meyers, Fla., was offered a loan modification that would have dropped his $1,100 monthly payment to less than $400. But Mr. Fischer turned down the deal. He feared it would ruin his credit and leave him still owing more than his house was worth.

"There is no way the value of the house will come back," Mr. Fischer said. He paid $170,000 three years ago for a property he believes is now worth less than $40,000. Mr. Fischer is considering his options, including a deed-in-lieu of foreclosure -- handing over title to the property without completing the foreclosure process.

"We are doing principal reduction for certain loans in the company's portfolio or where the investor allows it," said a spokeswoman for Wells Fargo, Mr. Fischer's mortgage-servicing company.

###

Kevin Bohn, *Congress demands banks do more on mortgages*, CNNMoney.com, December 8, 2009 9:39 AM ET.

Executives for mortgage companies and government officials faced an angry congressional committee Tuesday concerning some of the problems with the Obama administration's mortgage-aid program aimed at avoiding foreclosures.

Many of the complaints lodged by members of the House Financial Services Committee focused on the slow pace of converting trial mortgage modifications into permanent ones under the program.

While over 680,000 borrowers now have temporary adjustments that last for several months, only a small fraction of those people have been offered new permanent mortgages.

"We are terribly frustrated," committee Chairman Rep. Barney Frank, D-Mass., told the hearing in a statement that was echoed by others.

"Why can't we do so something ... I am frustrated," Rep. Emanuel Cleaver, D-Miss., said.

In an attempt to dramatically raise the number of homeowners whose mortgages are permanently revised, the government last week announced new steps to pressure mortgage companies -- including sending Treasury Department and Fannie Mae personnel to the largest seven mortgage servicers to personally make sure applications are being processed efficiently -- giving the companies specific targets and publishing more detailed information about the institutions' conversion rates.

"I think the banks have a long way to go to get up to their full potential," assistant Treasury Secretary Herb Allison told the committee, adding that the institutions recently made progress towards more conversions. "Lights need to be shined on each of these banks."

Those eligible for the $75 billion Making Home Affordable program are people who occupy the home as their primary residence, have a loan balance less than $729,750 and have a mortgage payment greater than 31% of their gross monthly income.

Once the participants are deemed eligible, they enter into the trial modification phase in which their payments are lowered and under which the customer has to make at least three payments. If everything goes well in that preliminary stage and their financial situation hasn't changed, their applications are evaluated for the permanent modification.

A preliminary report showed that as of September 1, only 1,711 -- or 1.26% -- of all trial adjustments were made permanent after three months, according to the Congressional Oversight Panel, which is monitoring the government bailout programs.

Some members of Congress said more pressure needs to be applied.

"The banks thumb their noses at all of us," Rep. Maxine Waters, D-Calif., said.

In an effort to push the companies to put more eligible homeowners into permanent modifications, Treasury Department officials on Monday met in Washington with the 17 mortgage providers, including Bank of America, JPMorgan Chase, Morgan Stanley, CitiMortgage and Wells Fargo.

"Permanent modification numbers will be released on Thursday, so servicers are on notice that they must ramp up and provide sustained relief to struggling homeowners now," assistant Treasury Secretary Michael Barr said in a statement.

Failure to send in needed paperwork is a major problem that both the banks and the government are trying to solve. A Treasury Department official has said only a third of those homeowners who made at least three trial payments have submitted all necessary documents.

Officials of two companies who testified Tuesday said they want the program to work, have added staff to help improve processing and are increasing outreach to customers.

"We fully share Treasury's commitment to convert successful trial modifications to permanent as quickly as possible," Jack Schakett of Bank of America told the committee.

"In support of that commitment, Bank of America is focusing on assisting customers in providing all of the necessary documents for underwriting. Otherwise homeowners are at risk of missing this opportunity -- an outcome none of us wants."

For example, Schakett said, last week Bank of America sent out by overnight mail another request to 50,000 people who face a December 31 deadline, and who have failed to submit key documents.

Also at the hearing, Molly Sheehan, senior vice president for JPMorgan Chase, listed some of the efforts it has undertaken for the 51% of borrowers who are paying but who have not submitted all of their documents: "A coordinated program to call our customers 36 times, reach out by mail 15 times, and make at least two home visits if necessary to help complete documents, ordering key documents earlier in the process so they are ready when the borrower's documents come in to expedite underwriting ... assigning specific pools of accounts to loan modification counselors to provide continuity in dealing with the customer."

###

Brian Collins, *HAMP Servicers Must Report Twice Dailyon Their Progress*, National Mortgage News, December 7, 2009.

WASHINGTON-The White House says it is less-than-pleased with mortgage servicers and their record on loan modifications and aims to do something about it. Now.

Beginning this week, each Home Affordable Modification Program servicer will report to Treasury twice a day on their conversion of "trial" mods into permanent loans. In January

Treasury will begin publicly disclosing each HAMP servicer's conversion rate as a way to shame the laggards.

If Treasury doesn't like what it sees, it will impose monetary penalties and sanctions. However, the government isn't giving any hints about what type of sanctions mortgage bankers might face, though one senior Treasury official warned, "We will not hesitate to use the full range of authorities we have to ensure compliance with the program."

Despite the criticisms, HAMP has made substantial progress in placing more than 650,000 distressed homeowners into trial loan modifications but Treasury doesn't like the conversion rate which several months ago was about 1%. (No current figures were available at press time.)

Each family in the program has seen their monthly mortgage payments decline by an average of $576 per month.

To speed up conversions, Treasury is launching a communications and outreach campaign aimed at getting 375,000 borrowers into permanent modifications. Treasury officials insist most of these borrowers are current on their trial payments, and plans to increase pressure on servicers.

"Servicers who do not meet their obligations under the program are going to suffer the consequences," assistant Treasury secretary Michael Barr told reporters. (Last week, Treasury and Fannie Mae teams visited the eight largest servicers for three days to monitor their conversion efforts and troubleshoot problems.)

The major hang-up on conversions is tied to documentation. Candidates for a permanent modification must submit a package to the servicer that verifies their eligibility for the new affordable mortgage. Housing advocates claim servicers are not set up to process the documents and keep losing them, forcing borrowers to send the same document multiple times.

Mortgage industry groups are working with the Hope Now alliance to create a Web portal for housing counselors to help homeowners collect all the necessary documents. "This portal, when combined with the administration's Web-based resources, will help streamline the process to help convert trial modifications to permanent modifications," according to the Financial Services Roundtable. The roundtable also said servicers are "working hard" to keep distressed borrowers in their homes. Beside their HAMP efforts, lenders and servicers are helping borrowers through a variety of workout and loan modification plans.

The Center for Responsible Lending said the mortgage industry's voluntary efforts over the past three years have produced too few long-term modifications. "The Obama administration's latest adjustments to its foreclosure prevention do little but highlight the continued failure of lenders' voluntary efforts to stop the foreclosure crisis," said CRL president Michael Calhoun.

He noted voluntary efforts won't work unless borrowers have access to the bankruptcy courts to get a principal reduction, or Congress makes loss mitigation mandatory. Mr. Calhoun also called on the administration to create a low-cost, short-term loan program for unemployed homeowners who have no other option for keeping their homes.

The White House is working on a plan to assist unemployed homeowners but for now Treasury is focusing all its efforts on HAMP conversions. (It has created a Homeownership Preservation Office to push servicers and borrowers to take the necessary actions to complete the modifications.)

"Borrowers have to take responsibility," said Phyllis Caldwell, who joined Treasury in November to oversee the conversion campaign and head the Homeownership Preservation Office. Only one-third of 375,000 borrowers have submitted the necessary documents to qualify for a permanent modification, she said.

Meanwhile, 37% of the borrowers have submitted some documentation and more that 20% have not submitted anything. "Borrowers need to submit the necessary information or they could lose their eligibility for a permanent affordable modification," Ms Caldwell said.

###

Cheyenne Hopkins, *Creditors Fear New Resolution Process*, American Banker, December 7, 2009.

WASHINGTON — For weeks, Republicans have argued that creditors would benefit if lawmakers granted government regulators the power to unwind companies that pose a threat to the financial system.

But as the House prepares to vote on a massive regulatory reform bill this week, creditors oppose the measure, arguing that the existing bankruptcy process is clearer, allows them to negotiate payments and includes an independent judicial review.

They are also fearful that the legislation would give the Federal Deposit Insurance Corp. considerable leeway in deciding how and whether creditors of a failed institution get paid.

"Bankruptcy code has a hierarchy of parties," said Harvey Miller, a partner at Weil, Gotshal & Manges LLP who handled the Lehman Brothers bankruptcy. "Under resolution authority, there is no hierarchy. Almost everything is left to the FDIC receivership. That's the problem. There is no accountability."

The House Financial Services Committee debated a systemic-risk bill off and on for three weeks before finally passing it on Dec. 2. The measure will be rolled into a broader reform package that the House is expected to start debating Wednesday.

Republicans are likely to continue to argue this week that the existing bankruptcy process is preferable to giving the government resolution powers.

"The only way to end the bailouts is to resolve all failed nonbank financial firms through bankruptcy," said Rep. Spencer Bachus, the lead Republican on the financial services panel. "We need to end the uncertainty over which politically favored creditors will get paid off in a government-managed bailout and which will not."

But creditors do not think they would be favored. They say the bankruptcy process is designed to protect them while this new resolution authority attempts to preserve assets and guard against risks to the overall financial system.

For example, current bankruptcy law dictates in what order creditors should be paid, starting with securitized debt first, then unsecured senior debt, subordinated debt, preferred stock and finally common stock.

Under the systemic resolution bill, the FDIC would have a similar priority payout — with some key differences. Funds would be paid first to the FDIC for its expenses as receiver, then the government, for any amounts owed it. After that point, the FDIC would pay general or senior liabilities, subordinated debt and preferred and common stock.

But under bankruptcy, creditors can negotiate their payout in court, whereas under receivership, the FDIC decides the payout. Judicial review would occur only after the resolution is completed. Bankruptcy advocates said it is also unclear how the FDIC would treat contingent claims, guarantees and indemnities that have not been drawn on.

Creditors and their representatives argue the current process provides better clarity along with the ability to negotiate contracts.

"You want as much predictability for how creditors are treated because the more uncertainty, the more systemic instability," said Phil Corwin, a partner at Butera & Andrews.

But many other observers argue that, though the resolution process may disadvantage creditors, it is a much better way to protect against systemic collapse. "The reality is, there is a reason large financial firms have not been allowed to fail — because no one has had enough confidence in the bankruptcy code to handle it," said Michael Krimminger, a special adviser for policy to the chairman of the FDIC.

He pointed to the Lehman bankruptcy, which more than a year later is still being worked out in court. "Lehman was an example of why bankruptcy doesn't work for the largest financial firms because it did create systemwide consequences," Krimminger said. "It's now taken over a year, and we still have a backlog of unresolved derivatives contracts at Lehman. We must have a process that can close the largest financial firms without creating a systemic crisis. And I don't know anyone who thinks Lehman did not create a problem in the market."

The FDIC and others argue a government resolution process would be faster and provide more certainty to investors. "Bankruptcy … tends to be cumbersome and doesn't tend to have the flexibility to act rapidly and make instantaneous decisions," said John Douglas, a partner at Davis Polk & Wardwell and a former general counsel of the FDIC. "The FDIC should have more sensitivity to the economy and markets than a bankruptcy court might."

But Miller, the Weil Gotshal partner, argued that the FDIC would not have handled Lehman any better. "I don't think any court or agency could have taken care of Lehman as expeditiously as bankruptcy court did," he said.

He also said that a judicial review of the FDIC's actions after the fact would take too long.

"The FDIC operates without any sunshine," Miller said. "Under the FDIC you can file a complaint under the administrative procedures act, but that is a death-defying act and takes a long time."

Obama administration officials emphasize that the resolution process is better for the system as a whole. "The bankruptcy system in general is not set up to deal with externalities, with costs that are imposed outside the firm," said Michael Barr, the Treasury assistant secretary for financial institutions. "The bankruptcy process is about protecting creditors and winding down firms in a way that protects creditors. Resolution is about protecting Americans. It is not about protecting creditors. It is for a fundamentally different purpose. It is designed to provide stability to the financial system as a whole while winding down major firms in an orderly fashion."

Creditors continue to mistrust the FDIC, particularly after it championed an amendment to the House bill that would let it impose a 20% haircut on secured creditors when resolving a systemic institution. Rep. Brad Miller, D-N.C., who co-authored the amendment, said last week that the amendment would only apply to short-term creditors who demand more collateral as a troubled institution is failing.

But industry representatives see a much wider application and worry that it would raise the cost of debt for the largest institutions and spread uncertainty in the market. "We think that is a very bad idea that will increase systemic risk, not decrease it," said Tim Ryan, the president and chief executive officer of Securities Industry and Financial Markets Association. "If the marketplace thinks this will become law, we believe the intraday short-term credit markets will reprice and the repo markets will reprice to consider this 20% haircut. The next time we have a financial crisis, we'll have a situation where a number of institutions will be considered to be at risk, and secured creditors will get concerned they will be at risk because of this 20% haircut. Short-term credit will evaporate very quickly."

###

***Year in Quotes: The Industry in Its Own Words*, American Banker, December 7, 2009.**

"There are a lot of people who have had their come-to-Jesus meeting in the last several months … . They see there are failures in the system; they see there are weaknesses in the system, and they see the possibility that some of these things can only be resolved and changed by governmental action."

Rep. Paul Kanjorski, D-Pa., the chairman of the House Financial Services Committee's capital markets subcommittee. Jan. 2

"Brokers are flocking to get FHA approval, or they're going out of business."

Scott Dodson, the president of Dallas consulting firm Federal Mortgage Licensing Inc. Jan. 7

"That advice might have been suitable in 1776 in Scotland, but it would be difficult to apply here in the modern United States."

Paul Volcker, former Federal Reserve Board chairman, on the prospect of downsizing banks. Jan. 16

"These were careless mistakes. They were avoidable mistakes, but they were unintentional. I should have been more careful. I take full responsibility for them."

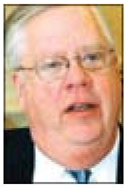
Treasury Secretary Tim Geithner at a Senate Finance Committee confirmation hearing, discussing errors made on his tax returns. Jan. 21

"This is painful, but we are doing everything we can to manage through this process."

Donald H. Wilson, Amcore Financial Inc.'s then president and chief operating officer. He was ousted in April. Jan. 23

"It's a key opportunity for the industry that some banks have not realized. … The more banks that participate in the space, the more a consumer is going to think about going to a bank, not a remittance company" to send money.

Daniel Ayala, the senior vice president for global remittance services at Wells Fargo & Co. Feb. 3



"It scares me that we would have a single regulator. That's an important legislative issue for us — to make sure we have a choice."

Josef M. Vich, president and CEO, Community National Bancorp. in Waterloo, Iowa. Feb. 13

"We're trying to be a leader in our community, and leaders don't take a handout."

Greg Morse, Worthington National Bank's CEO, on why his Fort Worth bank did not take Troubled Asset Relief Program funds. Feb. 18.

"We've been talking about the last mile. I think we may be down to the last yard now."

Fred Herr, a senior vice president at the Federal Reserve Bank of Atlanta, on the shift to check clearing by image. Feb. 26

"We will act to assure that our industry-funded reserves are adequate to cover our projected losses."

Sheila Bair, chairman of the Federal Deposit Insurance Corp. Feb. 27

"My bank is saying, 'Look, if you-all are saying this is for troubled banks, that's not us. We're in good shape.' So if that's the message, we'll just send them a check."

Rusty Cloutier, the president and CEO of MidSouth Bancorp Inc. in Lafayette, La., explaining why he was weighing repaying Tarp funds. March 2

"This is certainly not the time to assess new fees on banks. … We are already strained to the limit."

David Skiles, the president and CEO of the $240 million-asset First Peoples Bancorp Inc. in Port St. Lucie, Fla. March 2

"What more could they do to me? … They've already cut my pay, taken away my stock options and told me how to rewrite my mortgages."

Doyle Arnold, Zions Bancorp. chief financial officer, on whether the government might impose more restrictions if the company took additional government funds. March 6

"We need a systemic risk regulator … . The question is, who is going to perform that function?"

Senate Banking Committee Chairman Chris Dodd. March 12.

"It wouldn't be a great thing to nationalize a lot of banks that are perfectly healthy. That would be a terrible mistake."

Jamie Dimon, JPMorgan Chase & Co. chief executive. March 12

"In the offline world there are only really three global payment networks: Visa, American Express and MasterCard. And in the online world … we believe there will be only one winner. And that will be PayPal."

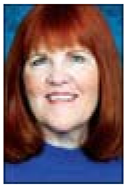
John Donahoe, eBay Inc.'s president and chief executive. March 13

"It is absolutely asinine that somebody would announce, 'We're going to do stress tests of banks, and we'll give you the answer in 12 weeks.' "

Wells Fargo Chairman Richard Kovacevich. March 13

"My administration is the only thing between you and the pitchforks."

President Barack Obama at a White House meeting with bank CEOs. March 30



"Nobody knows what regulators are going to do. They took over Downey while it was well capitalized, but they haven't taken over BankUnited, which is down to 1.37% core capital, when it is supposed to be 5%."

Babette Heimbuch, the chairman and CEO of FirstFed Financial in Los Angeles. April 2. (BankUnited was seized in May.)

"The depth and severity of this downturn are due, I believe, to a more profound panic phenomenon."

Kevin Warsh, Federal Reserve Board governor. April 7

"We're seeing prepaid becoming much more attractive to a broader segment of the population. … The current economy is to prepaid what high gas prices were to hybrids. … This is a transformational event."

Mark Troughton, Green Dot's president of cards and network. April 8

"So long as we're reliant on two-part authentication — card and PIN — we're going to continue to struggle here in North America."

Rob Evans, director of industry marketing in NCR Corp.'s financial self-service group, explaining the limits of security measures. April 13

"Folks, it has become a scarlet letter."

JPMorgan Chase's Dimon, describing Tarp. April 17

"It is kind of like a garage sale."

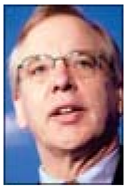
Terry Keating, a managing director of Amherst Partners LLC, an investment banking firm in Chicago, on the trend for banks to raise capital by selling ancillary units. April 17

"We absolutely don't think we need additional capital. … We think we are fine, but again, this is in the hands of the regulators at the moment."

Ken Lewis, Bank of America CEO. April 20

"Despite the problems and the interpretations, the fact is that Tarp helped us."

James B. Miller Jr., Fidelity Southern Corp.'s chairman and CEO. April 22



"Some investors are apparently reluctant not because the economics of the program are unattractive but because of worries about what participation might lead to."

William Dudley, Federal Reserve Bank of New York president on the Term Asset-Backed Securities Loan Facility. April 20

"We're going to launch a new brand that is focused on responsible lending and successful homeownership."

Barbara Desoer, the president of Bank of America's mortgage, home equity and insurance services, after B of A dropped the Countrywide Financial Corp. brand. April 27

"I think we are now, more than ever, in the service business. We're trying to help people through the economic crisis."

Bryan Bruns, president, Annandale State Bank in Minnesota. April 28

"Unsecured consumer credit, mainly credit cards, is where you feel the teeth of this slowdown."

Joe Price, Bank of America's CFO. April 29

"Why is it in this country, in America, that we can find hundreds of billions of taxpayers' dollars … to come to the rescue of bad banking decisions, rotten investments, mortgages that were fraudulent on their face and can't summon the political will to do something about 8 million families in America that are going to face foreclosure?"

Sen. Richard Durbin, Senate majority whip, on the failure of mortgage bankruptcy legislation. May 1

"If modifications don't pick up, I think mortgage bankruptcy returns with a vengeance."

Jaret Seiberg, a policy analyst at Washington Research Group. May 5

"While a carefully constructed safety net and a better resolution procedure for large institutions are critical, we also need to think about how to prevent such institutions from holding us hostage in the future. This may require breaking them up, limiting the activities or size, increasing capital requirements or taking other steps to limit the systemic risks they impose on the financial system."

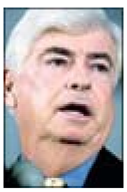
Thomas Hoenig, Federal Reserve Bank of Kansas City president. May 5

"We didn't get anything out of the tests except a lot of unnecessary anxiety and speculation and worry about what's going to happen to some of these banks, all of which could have been avoided."

Robert Clarke, a senior partner at Bracewell & Giuliani LLP, on the administration's stress tests. May 6

"I absolutely think the test was worth it. It's not the final word on the health of the banking industry, but it does provide an outside view of the top 19 banks."

Terry Moore, a managing director of North America banking for Accenture, on the stress tests. May 6



"We are trying to deal with a very important issue. Every day we delay is a day when people don't have protection from these abuses."

Sen. Dodd, on the importance of credit card reform. May 14

"You want to move at the point where people still have the memory of the trauma. If you wait for the memory to fade, then the impetus for reform will fade, and you will probably get less change than you need."

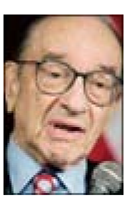
Treasury's Geithner, on regulatory reform. May 20

"The credit market will be smaller, more defined. … The fundamentals of making a credit decision — ability, stability and willingness to pay — there will be a lot more focus across the industry on those attributes and making the right choices of which customers you extend credit to. It's going to be a smaller market, but it still will be a very profitable market."

Ric Struthers, Bank of America's president of global card services, on the signing of the Credit Card Act. May 26

"We know what we've done wrong. I don't see how telling everyone that we are the dumb kids on the block is going to help us get back in shape."

Chuck Frost, First State Bank of Winchester's president and CEO. The Illinois bank failed in July. May 27



"All efforts, of which I am aware, at addressing ['too big to fail'] have drawbacks."

Alan Greenspan, former Federal Reserve chairman. June 4

"The threat was not what gave me concern. What gave me concern was they would make that threat to a bank in good standing."

Bank of America's Lewis, discussing regulatory pressure to complete his merger with Merrill. June 12

"Examiners have poked and prodded our portfolio. Everything we have has been written down to the worst-case scenario. There are no more 'hidden' assets."

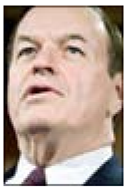
Dan Dunlap, Heartland Bancshares Inc.'s president and CEO. June 16. (Heartland's Union Bank failed two months later.)

"You don't convene a committee to put out a fire."

Treasury's Geithner, on why systemic risk should not be policed by a council. June 18

"There is not a lot of confidence in the Fed at this point."

Sen. Dodd, arguing against giving systemic risk oversight to the Fed. June 18



"The idea of putting more and more power in the Federal Reserve is, in my judgment, a huge mistake. The Federal Reserve cannot be everything to everybody, cannot do everything and do it well as far as a financial regulator."

Sen. Richard Shelby, the No. 1 Republican on the Senate Banking Committee, on the same topic. June 18

"If we have institutions that are 'too big to fail,' have we not failed already, since they create a systemic risk … ? I saw the road you traveled here in trying to deal with that in terms of trying to increase capital requirements, but is that really sufficient to get to the heart" of the matter?

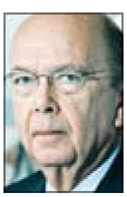
Sen. Robert Menendez, D-N.J., to Secretary Geithner at a hearing on the administration's reg reform plan. June 19.

"When they separated the consumer compliance division from the bank supervision division, it just set up a dichotomy of examiners working against the interests of what's being done on either side."

Nicholas J. Ketcha Jr., managing director at FinPro and a former FDIC director of supervision, on regulators' attempts to separate prudential oversight from consumer protection. June 23

"Let me just be quite clear; there's something rotten in the cotton here."

Edolphus Towns, House Oversight and Government Reform Committee chairman on the Fed's role in the B of A-Merrill merger. June 26



"It really feels like something simply designed to make it less attractive for private equity to invest."

Wilbur Ross, a prominent investor, on an FDIC plan to limit private-equity investment in failed banks. July 6

"Most financial institutions, particularly the big, systemically important ones, have all the capital they need. The problem, however, is [that] most of the capital is debt. There is not enough equity."

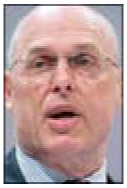
William Ackman, Pershing Square Capital Management's CEO. July 6

"I agree that we did not see the abuses as widespread as they were and were slow to react to them."

Donald Kohn, Federal Reserve Board vice chairman. July 10

"After our capital raise, we paid off Tarp, which was a glorious day, and after about three or four days we came down off the ceiling and got back to running the bank. It was seriously a very good feeling to have that done."

BB&T Corp. CEO Kelly King. July 17



"I was attempting to send a very strong message to Ken Lewis in terms of how strongly the Fed and Treasury viewed this matter."

Henry Paulson, former Treasury secretary, responding to accusations he pressured B of A to go through with its Merrill merger. July 17

"One of the greatest unused examples of power [was] the consumer protection powers we've given the Fed like the Home Ownership and Equity Protection Act."

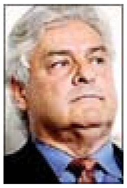
Barney Frank, House Financial Services Committee chairman. July 22

"We hear about glimmers of hope, to borrow the phrase, with respect to [the] economic and credit outlook, and while we know a recovery will be forthcoming, we're not looking for things to turn around quickly."

James Wells, SunTrust chairman and CEO. July 22

"I'm very open to discussing the role of the council. An important role is to coordinate regulation, to oversee risk. There may be situations where the council can have authority to harmonize certain practices or identify problems."

Fed Chairman Ben Bernanke, on whether a proposed interagency council to identify systemic risks should be strengthened. July 22



"Every time I go up there, I'm tripping over blue-suited lobbyists representing the banks. All the banking lobbyists are up there all over the place. They still have pull. It's the best Congress that money can buy as it relates to the Financial Services Committee."

John Taylor, the president of the National Community Reinvestment Coalition, on bank opposition to a proposed consumer protection agency. July 22.

"It's hard to just stand still and say we've thought all these things out and we can see how they come together … . I don't think anybody has totally, and I think that's our job before we go ahead and act."

Rep. Kanjorski, on a consumer financial protection agency. July 22

"Frankly, if I were the bankers, I would not invite a debate over whether or not I'd been all that great in the consumer area and whether or not people should just suffer, but if that's what they want, I think this is what we will have."

Rep. Frank, on the industry's pushback against a consumer financial protection agency. July 23.

"I don't know anyone besides Obama and Geithner who thinks the Fed is going to get all this new power."

Mark Calabria, the director of financial regulation studies at the Cato Institute, on regulatory reform. July 23.

"The oversight council described in the administration's proposal currently lacks sufficient authority to effectively address systemic risks. Bringing multiple perspectives together is going to strengthen it, not weaken it."

FDIC Chairman Bair. July 24.

"Federally chartered banks would be subject to the multiplicity of state operating standards because the proposal sweepingly repeals the ability of national banks to conduct any retail banking business."

John Dugan, comptroller of the currency, on the administration's proposal to repeal preemption. July 24

"There's often no consistency in what they're doing from one month to the next, or from one loan to the next."

Paul Molinaro, a partner in the Fransen & Molina law firm in Corona, Calif., on servicers' modification efforts. July 24

"If you give this agency only rule-writing authority and not enforcement, it will be too weak."

Treasury's Geithner, on the proposed consumer protection agency. July 27

"I expect the House to pass this in September/October. … I think it is overwhelmingly likely the Senate will get this bill in October and the president will sign the package before the end of the year."

Rep. Frank, on regulatory reform. July 28.

"You can't push out $3 trillion and not expect someone to take advantage of it."

Neil Barofsky, special inspector general for Tarp. July 29

"We planned for your typical recession. No amount of due diligence, though, could have predicted the macroeconomic environment. We didn't expect the complete collapse of the housing market, a complete closing of the capital markets, a complete changing of the landscape."

Gerald R. Francis, a managing director of FSI Group LLC, who invested $40 million in Security Bank Corp. a year before it failed. Aug. 3

"I have always acknowledged, both privately and publicly, that the regulators are independent and have every right to hold and express their particular views. While they have existing authorities that they feel compelled to protect, we have shared goals and a tremendous amount of common ground."

Treasury's Geithner, responding to criticism of his obscenity-laden dressing-down of bank regulators. Aug. 7

"The mark-to-market of a deposit is par, and to say otherwise is absurd. Deposits don't trade, there is no observable market, and they're mostly a function of how aggressive a bank's management wants to be in terms of growing or maintaining liabilities in that particular class instead of the alternatives. FASB has to hold back from this idiocy and just admit there are certain things we can't know."

Christopher Whalen, Institutional Risk Analytics managing director. Aug. 14

"I do think that community banks could use less supervision and examination than very large financial firms offering a wide range of complex products."

Assistant Treasury Secretary Michael Barr, on whether a CFPA would regulate all institutions equally. Aug. 17

"FHA was 5% of the market, and overnight it became 30%, and it didn't have one dime more for staff or IT systems. Everybody said FHA couldn't handle the volume, and guess what? We did. Can you imagine what would happen right now if we didn't have FHA?"

Brian Montgomery, the former FHA commissioner, who left the agency in July. Aug. 20

"Liquidity risk management at the level of the firm, no matter how carefully done, can never fully protect against systemic events. In a sufficiently severe panic, funding problems will almost certainly arise and are likely to spread in unexpected ways. Only central banks are well positioned to offset the ensuing sharp decline in liquidity and credit provision by the private sector."

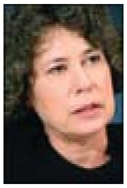
Fed Chairman Bernanke. Aug. 24

"The goal is to hold off on foreclosures and take losses as slowly as possible to keep balance sheets up."

Deborah Voelz, the chief financial officer of National Asset Direct Inc., a New York buyer and servicer of distressed loans, on why banks and servicers have been dragging out foreclosures. Aug. 26

"I haven't given that a second's worth of thought."

Sen. Dodd, on whether he would remain chairman of the banking panel after the death of Sen. Edward Kennedy. Aug. 27



"We expect the numbers of problem banks and failures will remain elevated, even as the economy begins to recover."

FDIC Chairman Bair. Aug. 28

"The authorities did not heed my warning when I predicted a tsunami of residential foreclosures in March 2007. I am now deeply concerned about a tsunami of commercial real estate foreclosures and what actions we are taking to avoid that."

Sen. Menendez. Sept. 1

"The real question isn't about what new products Fannie and Freddie are going to offer, it's whether or not we're going to still have a Fannie and Freddie."

Washington Research Group's Seiberg. Sept. 3

"Today, I believe, because of comprehensive policy actions put in place since then, we are back from the edge of the abyss."

Treasury's Geithner, on government action during the crisis. Sept. 10

"The investors are the ones who are going to lose money. We have no idea whether servicers are making the right decisions in modifying loans."

Michael Henriques, a principal at the Magnetar Capital LLC hedge fund, criticizing the administration's Home Affordable Modification Program, which pays incentives to servicers that rewrite loan terms. Sept. 15

"We have a construction loan portfolio that is a piece of crap."

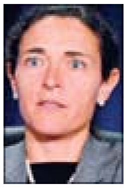
Mitchell Feiger, the president and CEO of MB Financial in Chicago. Sept. 15

"I'd suggest those ads are the financial regulatory equivalent to the death panel ads being run with respect to health care. Those without a good argument try to scare people … ; that's what is happening here."

Lawrence Summers, head of the National Economic Council, on Chamber of Commerce ads claiming a consumer protection agency would regulate butchers and bakers. Sept. 18

"We're not the new subprime by any stretch."

Dave Stevens, FHA commissioner. Sept. 21



"There's no question it gave new life to an age-old debate around 'too big to fail.' Some institutions get so large, complex, interconnected, leveraged or otherwise, that they pose a risk to the system that it can't take."

Diana Farrell, deputy director of the National Economic Council, on Tarp's impact. Sept. 23

"There will be death panels enacted by this Congress, but they will be for nonbank financial institutions … ; we are talking about dissolutions, not resolutions."

Rep. Frank. Sept. 24

"The good news is that the Federal Reserve actually knows something about the banking system, [as] opposed to Chris Dodd."

William A. Cooper, TCF Financial's chairman and CEO. Oct. 22

###

Jim Puzzanghera, *Renewed Push to Aid Struggling Homeowners: Companies Urged to Make Modifications Permanent*, The Baltimore Sun, December 6, 2009.

The Obama administration has announced a renewed push to get mortgage companies to convert hundreds of thousands of temporarily restructured home loans into permanent ones by the end of the year to help keep struggling homeowners from falling into foreclosure.

As part of its aggressive action, the administration is summoning executives from the nation's top mortgage servicers to Washington this week to prod them to speed up their efforts.

It also is sending what administration officials described as three-person "SWAT teams" to the offices of those firms to help them obtain the necessary documents from borrowers and troubleshoot problems.

"In our judgment, servicers to date have not done a good enough job in bringing people a permanent modification solution," Assistant Treasury Secretary Michael Barr said.

The administration is hoping to embarrass mortgage servicing companies into doing more to make trial modifications permanent by highlighting those that are not performing well. But it also could levy penalties or other sanctions against laggards based on the agreements they signed to participate in the program.

"Servicers that don't meet their obligations under the program are going to suffer the consequences," Barr said.

The moves come amid complaints of bureaucratic nightmares from people who have received the short-term reductions in their payments but have been unable to get their servicer to make the changes permanent. The mortgages have been altered under the administration's $75 billion Home Affordable Modification Program, which uses financial incentives to get banks and other mortgage holders to reduce the payments for homeowners who meet certain qualifications.

The program has temporarily modified more than 650,000 mortgages as of Oct. 30, with an average monthly payment reduction of $576. But few of those three-month trials are estimated to have been made permanent. As of Sept. 1, only 1,711 trial modifications had become permanent, according to the oversight panel monitoring the $700 billion Troubled Asset Relief Program. TARP money is used to fund the program.

The Treasury Department, for the first time, will release its own numbers this week. But Barr said the number was "low."

About 375,000 of the trial modifications are eligible to be made permanent by the end of the year. About a third of the homeowners with those temporary reductions have submitted the needed documents, including current income statements, so servicers can decide on permanent modifications, said Phyllis Caldwell, head of the Treasury Department's Homeownership Preservation Office.

"These homeowners, who took the time and effort to complete documentation, deserve a decision by their servicer," she said.

The administration's new plan focuses on increasing accountability by mortgage servicers. The leading mortgage servicers will be required to submit a schedule of their plans to reach a final decision on each loan for which they have the proper documentation and to send the borrower a permanent modification agreement or denial letter.

Many people in the program have complained of a bureaucratic runaround and inability to get a straight answer on their status from their mortgage holder.

Special account liaisons from the Treasury Department and Fannie Mae will be assigned to the eight largest servicers and monitor the progress as frequently as daily. The administration will require those companies to submit twice-daily updates throughout December on their progress.

Mortgage servicers that fail to meet standards they agreed to as part of the program "will be subject to consequences, which could include monetary penalties and sanctions," administration officials said.

The administration also is providing new information for homeowners on its Web site, makinghomeaffordable.gov, including links to lists of documents and a new instructional video, to help them get their trial modification made permanent.

###

Robert Reich, *Banks take billions but won't bother to help homeowners*, The Chicago Sun Times, December 3, 2009.

One out of four homeowners is now under water, owing more on their homes than the homes are worth.

Why? The biggest single factor behind the housing crisis is rising unemployment. According to the latest ABC-Washington Post poll, one of every three Americans has either lost their job or lives in a household with someone who has lost a job. Today it takes two and sometimes three incomes to buy the groceries and pay the mortgage or the rent. So if one of those incomes is gone, a homeowner can't make the payment.

Unemployment is splitting America into three groups: 1) the third just mentioned, whose households are in danger of losing their homes and whose kids are surviving on food stamps (that's up to one in four children in America today); 2) the vast majority of Americans who are managing but worried about keeping their jobs and homes, and 3) a small number who are taking home even more winnings than in the boom year 2007.

Prominent among Category 3 are Wall Street bankers, many of whom are having their most profitable year ever. Goldman Sachs is so flush it's preparing to give out bonuses totaling $17 billion. That will mean eight-figure compensation packages for lots of Goldman executives and traders. JPMorgan Chase is rumored to have a bonus pool of about $5 billion. The three other major Wall Street banks are ratcheting up their compensation packages so their "talent" won't be poached by Goldman or JPMorgan.

Wall Street is booming again in large part because the rest of America -- categories 1 and 2, above -- bailed it out to the tune of $700 billion last year. The Street has repaid some of that but, according to the bailout program's inspector general, much of it is gone forever.

For example, the taxpayer money that bailed out giant insurer AIG went directly through AIG to its "counterparties" like Goldman Sachs -- to whom Tim Geithner, according to the inspector general, gave away the store. As Goldman Sachs prepares to dole out $17 billion to its executives and traders, it's worth noting that Goldman received $13 billion a year ago from the rest of us via AIG and Geithner, no strings attached.

Which brings us back to homeowners who are falling further behind. The $75 billion federal program designed to bribe banks to modify mortgages has been a bust. No one knows the exact number of mortgages that have been modified (that will be reported next month) but housing experts I've talked with say it's a tiny fraction of the number of homeowners in trouble. Seems that the big banks can't be bothered. "Some of the firms ought to be embarrassed," Michael Barr, the assistant Treasury secretary for financial institutions, told the New York Times.

Barr says the government will try to use shame as a corrective, publicly naming institutions that have moved too slowly. "We've made dramatic improvements, and we continue to try to get better," says a spokesman for JPMorgan Chase, but as a practical matter, it has done squat.

Shame? Wall Street has none. Ten months ago, Wall Street lobbyists beat back a proposal to give bankruptcy judges the right to amend mortgages in order to pressure lenders to reduce principle owed, just as Wall Street lobbyists are beating back tough regulations to prevent the Street from causing another meltdown.

Shame? For Wall Street, it all comes down to PR, at minimal cost. Goldman Sachs, attempting to preempt a firestorm of public outrage when it dispenses its $17 billion of bonuses, is setting up a crudely conceived $500 million PR program to help Main Street.

Shame won't work. Only political muscle and courage will. Congress and the Obama administration should give homeowners the right to go to a bankruptcy judge to modify their mortgages.

And while they're at it, resurrect the Glass-Steagall Act, which used to separate investment from commercial banking, so Wall Street can't continue to use other people's money to gamble.

Finally, before Goldman hands out $17 billion in bonuses, claw back the $13 billion Goldman took from AIG and the rest of us and add it to the pool of money going for mortgage relief.

Robert Reich was secretary of labor under President Bill Clinton.

###

Ronald D. Orol, *Barr: We are examining 'tools' to help unemployed*, MarketWatch, December 3, 2009 3:58 PM ET.

WASHINGTON (MarketWatch) -- The Treasury Department is examining different options to help people who are recently unemployed, beyond the agency's mortgage modification program for troubled homeowners, Treasury Assistant Secretary Michael Barr told a consumer group Thursday.

"We are looking at a wide range of tools to help people who are unemployed," Barr told attendees at a Consumer Federation of America event in Washington. "There are a number of different models that can be used to do that, and we need to look at a process to come to a point that is fair to everyone and one that is cost effective, protects taxpayers and gives responsible homeowners a chance to stay in their homes."

He declined to say whether Treasury would consider committing funds from the Troubled Asset Relief Program for new homeowner programs.

Barr and the Treasury Department are under pressure from Elizabeth Warren, chairwoman of the Congressional Oversight Panel, which is a TARP watchdog group, and a gaggle of Pennsylvania groups representing troubled homeowners, to consider using federal TARP funds to give government bridge loans to people who have recently lost their jobs. The loans would not accrue interest until their income is restored.

The Treasury is considering foreclosure alternative programs that would provide incentives for short sales, where the property is sold but the lender is paid less than they are owed on the loan and interest payments.

"If we can find solutions through modifications, or through short sale, the situation tends to be better for borrowers," Barr said.

Barr said Treasury is "fundamentally committed" to a program announced last year that is using $50 billion of TARP funds to assist lenders and borrowers in modifying mortgages to avoid foreclosure. So far 650,000 homeowners are participating in the mortgage modification program.

However, Barr expressed concerns that many banks haven't been moving fast enough to convert participating homeowners from trial three-month plans into more permanent modifications.

"We can do better and we can hold people accountable for doing that right," he said.

Consumer protection agency

Barr also took issue with criticisms from high-level officials about aspects of a Consumer Financial Protection Agency that is being created in Congress. The CFPA would take away consumer protection regulators at bank regulators and place them together within the newly created CFPA.

However, Federal Reserve Chairman Ben Bernanke and Federal Deposit Insurance Corp. Chairwoman Sheila Bair, argue that synergies exist between safety supervisors and consumer supervisors at the bank regulators. Taking consumer-protection supervisors away from these regulators and placing them within a new CFPA would make it more difficult for each bank regulator to do its job, they say.

However, Barr argued that consumer protection examiners and rule-writers at bank regulators have a difficult time doing their jobs because of the structure of the bank agencies they work at.

"The danger that we still have is that consumer protection is not given enough attention in the bank regulatory agencies," Barr said. "We have in bank regulatory agencies in their consumer protection functions, really good people who have been in the field for a long time, who care about consumer protection, are talented individuals and historically they are given insufficient clout to get their job done."

###

Andy Leonatti, *Administration Uses Consumer Conference to Push Reform*, National Journal's CongressDaily, December 2, 2009.

Obama administration officials used a consumer protection conference on Thursday to push the case for financial services regulatory reform.

Assistant Treasury Secretary for Financial Institutions Michael Barr said the administration would also be doing more in the meantime to help jobless homeowners avoid foreclosure.

"We are looking at a wide range of tools to help people who are unemployed," Barr said at the Consumer Federation of America's Financial Services Conference.

Barr said the administration was unhappy with the participation of banks in the Making Home Affordable Program. It will be collecting data from mortgage servicers in January on why people are being denied mortgage modifications.

Looking for more? Check out our issue page detailing the debate on overhauling the nation's financial regulatory structure. For the latest stories, related documents and other coverage click here.

Barr, Commodity Futures Trading Commission Chairman Gary Gensler and SEC Chairwoman Mary Schapiro all praised legislation to rework the regulatory system that was completed Wednesday by the House Financial Services Committee, and they hoped for passage in the Senate to come soon.

Schapiro lent her support to a component of the House legislation that requires broker-dealers to be held to the same fiduciary standards as advisers, along with calling for brokers and advisers to disclose the compensation they receive from selling their products.

"Investors today should not be treated differently based on what door they walk into, or based on what is written on the business card that they are handed," Schapiro said, adding that the single fiduciary standard needs to be strengthened, including details on compensation and conflicts of interest.

Schapiro said point-of-sale regulation would not be easy to achieve. "There will be significant pushback from the industry related to cost and convenience," she said.

Schapiro said the SEC will hopefully make final rules to make it easier for common shareholders to nominate members to a company's board of directors sometime in 2010, but said the agency's reform agenda could be hampered if not given the proper resources. She praised a provision in the Senate's financial services bill making the SEC a self-funding agency not subject to the appropriations process.

Gensler called for toughening derivatives legislation that cleared the Financial Services Committee by not allowing derivatives trades to be exempted when they are traded with end-users. Gensler said the exemptions in the legislation would leave big banks with "a significant information advantage" over consumers they trade with. He said the best way to reduce risk to the financial system would be to bring all derivative trades into the open.

###

Kevin G. Hall, *Treasury pressures mortgage servicers to help homeowners*, McClatchy Newspapers, December 2, 2009.

Dec. 2--WASHINGTON -- The Treasury Department announced Monday that it would send financial "SWAT" teams to leading mortgage servicers in December to police their performance in a $75 billion government program that seeks modifications of distressed mortgages in order to reduce the high national rate of foreclosures.

It's an effort to ratchet up pressure on mortgage servicers, who act as bill collectors on behalf of banks that originate mortgages or investors who own bundles of mortgages pooled together as securities.

These servicers have been slow to modify mortgages, the administration charges, despite Treasury Department efforts since February to provide financial incentives to participate in the Home Affordable Modification Program.

"In our judgment, servicers to date have not done a good enough job of giving people a permanent modification," Assistant Treasury Secretary Michael Barr said.

In a conference call, Barr said servicers had extended a large number of trial mortgage modifications, more than 650,000, but had moved too slowly in converting them to new permanent mortgages.

Of the 650,000 trial modifications, about 375,000 could be converted to permanent mortgages in December, Barr said. The trial modifications have saved borrowers an average of $576 per month on mortgage payments, he said.

Halting foreclosures is a matter of urgency if the nation is to recover its economic footing. For home prices to stop falling, mortgage delinquency and foreclosure rates must stabilize and fall. The Mortgage Bankers Association said in early November that one in every seven mortgages was now past due.

The 10.2 percent unemployment rate is throwing millions more Americans into loan delinquency. At least 3 million additional foreclosures are expected in coming years. A special panel that's overseeing the use of taxpayer bailout money concluded in October that the taxpayer-funded mortgage efforts, while laudable, were likely to be swamped by surging foreclosures.

The Obama administration will send "SWAT" teams to keep an eye on the six largest mortgage servicers, who collectively handle about 85 percent of outstanding U.S. mortgages. Participating servicers also will be required to report to the Treasury twice daily on their progress to convert trial modifications to permanent fixes. The failure to boost permanent solutions significantly will trigger consequences, Barr said.

Pressed to detail those consequences, Barr refused, instead repeating that the Treasury wants servicers to step up their efforts and borrowers to do a better job of providing documents to servicers.

Insufficient documentation remains a major hurdle for struggling homeowners, but the problem cuts both ways. For more than two years, McClatchy has sat in on borrowers' phone calls with mortgage servicers. Virtually all the servicers have lost or misplaced documents repeatedly or are unaware of documents that they have in their possession.

Consumer advocates such as the Center for Responsible Lending in Durham, N.C., say that the solution is legislation that would allow bankruptcy judges to modify mortgages if servicers won't.

"The root failure of the current loan-modification program is that it has been voluntary," said the group's spokeswoman Kathleen Day, advocating a revamp of bankruptcy laws. "It's the only way to focus industry's attention."

Treasury's current leverage over mortgage servicers is questionable. Under the program, the government doesn't pay the servicers until a mortgage has been modified permanently, so warning that money will be withheld is an empty threat.

Servicers often collect a wide range of fees when a home goes into foreclosure. These fees can exceed what the servicer would get from participating in Obama's modification program.

"The incentives under the program can be sizable," Barr said, disputing the view that there are better incentives to move to foreclosure. "In general, it is in the servicer's interest to be proceeding (to modification) as expeditiously as possible."

So why aren't servicers moving more quickly?

"I think if you look at the state of the financial services industry, there are enormous competing pressures for time and attention of top management," said Barr, adding that many were slow to commit senior management to foreclosure prevention. "What we are reinforcing today is the importance of doing that."

The Financial Services Roundtable, which represents many servicers or their parent companies, issued a statement Monday that was silent on the administration's allegations.

"The industry remains committed to working with Americans to help them stay in their homes," the statement said.

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***Editorial: The mod squads: Treasury unleashes loan-relief 'SWAT teams.' Will it help?*, The Washington Post, December 2, 2009.**

MODIFYING mortgages to provide more affordable terms can help borrowers, lenders and neighborhoods avoid the economic and social costs of foreclosure. With that in mind, the Obama administration unveiled the Home Affordable Modification Program (HAMP) in March. HAMP provides $75 billion to help lenders reduce borrowers' monthly payments to 31 percent of their incomes. It offers loan servicers $1,000 per completed loan "mod," plus another $1,000 for each one still performing after three years.

The administration estimated that as many as 4 million households might benefit before HAMP expires at the end of 2012. Yet the results have been disappointing so far. The latest figures show that 650,000 eligible borrowers have been offered trial modifications, of which only about 2,000 have finished all the paperwork needed to finalize the new terms. Unless that changes, fast, some 375,000 borrowers will miss a year-end deadline. With foreclosures still on the rise, and nearly a quarter of mortgage borrowers owing more than their homes are worth, according to a recent FirstAmerican CoreLogic survey, the housing market has enough problems without a HAMP failure.

And so the Treasury Department has announced new pressure on loan servicers, who are supposed to modify the mortgages. It plans to dispatch what it calls "SWAT teams" -- we prefer "mod squads" -- of government staffers to check on their operations. It promises to name and shame the firms that aren't doing enough to convert trial modifications to permanent ones. And Assistant Treasury Secretary Michael Barr has spoken of unspecified additional "consequences."

Will it work? It depends on who is to blame for HAMP's shortcomings. The Treasury says slow-moving servicers are responsible, since a third of the 375,000 homeowners who are eligible for permanent modifications by the end of the year have submitted the required documents -- but still haven't been granted their final mods. Fair enough; servicers have ramped up, but they could always ramp up more. The servicers, though, reasonably cite the government's very strict income-verification demands. About 63 percent of the borrowers have submitted insufficient income documentation or none at all -- despite major outreach by servicers.

In short, government and business share the blame. And don't forget borrowers. The document that many of them are least eager to provide is a form authorizing the Internal Revenue Service to release information verifying a borrower's income, according to officials knowledgeable about the program. Many folks find the forms complex or intimidating. But some hesitate to submit them because -- how to put this? -- their true income, past or present, is not quite what they claimed. This is not necessarily because of fraud; lots of people have suffered job loss or other income "shocks." Yet the reality remains that they are not eligible for HAMP. The Obama administration did not perhaps fully anticipate this problem in designing the program. But it must deal with it if HAMP is to succeed.

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Cheyenne Hopkins, *Loan Mod Plan Hung Up on Jobs, Paperwork*, American Banker, December 1, 2009.

WASHINGTON — The Treasury Department's latest attempt to encourage servicers to modify more loans is unlikely to work because it does not address key underlying problems, sources said.

Treasury officials on Monday vowed to publicly identify servicers in the Home Affordability Modification Program, or Hamp, that are not doing enough to help struggling homeowners. Those firms could be subject to undefined penalties.

But observers described the administration's action as window dressing, saying it is rising unemployment that is preventing servicers from converting more trial modifications into permanent, affordable loans.

"The major problem right now is, it was designed for a different problem than we have now," said William Longbrake, a director of the $1.2 billion-asset First Financial Northwest, who helped design Hamp. "The program really needs to be redesigned to deal with problems created by unemployment and loss of income rather than poor underwriting and unaffordable interest rates."

Since the Treasury announced Hamp on March 4, 650,000 borrowers have gotten trial modifications that are converted to permanent, new loans after a borrower makes three consecutive payments.

But only 2,000 are likely to be made permanent, according to a congressional oversight board. The Treasury is expected to release its own data on permanent modifications this month, and a Treasury spokeswoman said Monday that the figure would be in the "tens of thousands."

Before the data's release, the Treasury said, it would require the largest servicers to submit schedules of their plans to make trial modifications permanent. Servicers are to be required to supply additional documentation on the status of each modification as well as data on situations in which trial modifications did not result in permanent ones. The Treasury also plans to appoint a liaison to monitor servicers' progress.

Servicers failing to meet obligations will face "consequences, which could include monetary penalties and sanctions," according to a Treasury press release.

Michael Barr, the Treasury assistant secretary for financial institutions, declined to elaborate on potential penalties beyond saying that the administration would release data to the public specifying which servicers are falling behind.

Public embarrassment would encourage servicers to work harder on the issue, he said.

"In our judgment, servicers to date have not done a good enough job of bringing people a permanent modification solution," he said in a conference call with reporters. "The number of conversions to permanent modifications thus far is low, and servicers need to do better."

But past attempts to use public disclosure have failed to yield results. The Treasury has released several report cards on Hamp that showed Bank of America Corp., for example, lagging behind other servicers in offering trial modifications to eligible borrowers. Yet the releases have not appeared to hurt B of A or spur it to make more modifications.

The Treasury has also failed to address legitimate issues with the program, servicers said. Since its inception, they have said that the paperwork is too complicated and that many modifications do not become permanent because borrowers do not complete it. Treasury officials said 37% of those eligible for conversion by yearend had submitted only partial documentation and 20% more had submitted none of the required documents.

Steve Nesmith, a senior vice president and assistant general counsel for strategic and government initiatives at Ocwen, a servicer participating in Hamp, said modifications have been bogged down by difficulties in getting paperwork from borrowers. He predicted that the program would be revamped as the housing market declines even more next year.

Though "the administration has made course corrections since the program has started," he said, "I think the program is definitely going to have to evolve with what I believe is a very fragile housing recovery and a very fragile housing economy."

The overarching problem, observers said, is that many borrowers have lost their jobs and are unable to find new ones.

"There are not more partial fixes to the plan," said Mark Zandi, the chief economist and a co-founder of Moody's Economy.com. "They are getting to the point where they need a new plan."

Barr said the administration is working on a plan to address rising unemployment but would not discuss its details.

Sources said the administration is considering options such as extended forbearance and unemployment benefits.

Brian Gardner, a political analyst at KBW Inc.'s Keefe, Bruyette & Woods Inc., said the administration's effort was more about improving political perceptions than addressing the underlying issues.

"At some point," he said, "the administration, the Congress and the industry have to ask and discuss the question, whether principal writedowns aren't the way to go because I think they are still kind of nibbling at the edges."

###

Jim Puzzanghera, *Mortgage modifications to get push: As Trial loan restructurings linger, administration wants more permanent solutions*, The Chicago Tribune, December 1, 2009.

The Obama administration on Monday announced a renewed push to get mortgage companies to convert thousands of temporarily restructured home loans into permanent ones by the year's end to help keep struggling homeowners from falling into foreclosure.

As part of its action, the administration is summoning executives from top mortgage servicers to Washington next week to prod them to speed up their efforts.

It also is sending what administration officials described as three-person "SWAT teams" to those firms' offices to help them obtain the necessary documents from borrowers and troubleshoot problems.

"In our judgment, servicers to date have not done a good enough job in bringing people a permanent modification solution," Assistant Treasury Secretary Michael Barr said.

The administration is hoping to push mortgage-servicing companies into doing more to make trial modifications permanent by highlighting those that are not performing well. But officials also said they could levy penalties, including fines against laggards.

"Servicers that don't meet their obligations under the program are going to suffer the consequences," Barr said.

The moves come amid complaints of bureaucratic nightmares from people who have received short-term payment reductions but have been unable to get their servicer to make the changes permanent. The mortgages have been altered under the administration's $75 billion Home

Affordable Modification Program, which uses financial incentives to persuade banks and other mortgage holders to cut payments for qualified homeowners.

The program has temporarily modified more than 650,000 mortgages as of Oct. 30, with an average monthly reduction of $576. But as of Sept. 1, only 1,711 of the three-month trial modifications had become permanent, according to the panel monitoring the $700 billion Troubled Asset Relief Program. TARP money is used to fund the program.

About 375,000 of the trial modifications are eligible to be made permanent by the end of the year. About a third of the homeowners with those temporary reductions have submitted the needed documents, including income statements, so servicers can decide on permanent modifications, said Phyllis Caldwell, head of the Treasury Department's Homeownership Preservation Office.

"These homeowners, who took the time and effort to complete documentation, deserve a decision by their servicer," she said.

Leading mortgage servicers will be required to submit a schedule of their plans to reach a final decision on each loan for which they have the proper documentation and to send the borrower a permanent modification agreement or denial.

Many people have complained of a bureaucratic runaround and inability to obtain a straight answer on their status.

Special liaisons from the Treasury Department and Fannie Mae will be assigned to the eight largest servicers and will monitor their progress as frequently as daily. The administration will require twice-daily updates throughout December on their progress.

The administration also is providing new information for homeowners at makinghomeaffordable.gov to help them get their trial modification made permanent.

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Joe Adler and Cheyenne Hopkins, *Bill Won't Curb TBTF? Not So Fast*, American Banker, December 1, 2009.

WASHINGTON — Critics of regulatory reform legislation claim provisions designed to let the government unwind systemically important institutions are riddled with exceptions that would allow bureaucrats to perpetuate too-big-to-fail policies.

However, under revised House language expected to be approved by the Financial Services Committee on Wednesday the Federal Deposit Insurance Corp. could only lend to a failing company for the purpose of unwinding it. It could not provide the kind of "open bank assistance" to holding companies that it now can give their subsidiaries.

The Senate Banking Committee is expected to follow suit and adopt similar changes.

Some former regulators said that, if anything, lawmakers may be taking too restrictive an approach.

"The House bill is quite reasonable, though my personal bias is giving a competent agency like the FDIC more authority, not less, more flexibility, not less," said Eugene A. Ludwig, the chief executive officer of Promontory Financial Group and a former comptroller of the currency. "In the wake of one crisis, it's hard to predict what the next crisis will entail."

Under the original bill from House Financial Services Committee Chairman Barney Frank, the FDIC would have been given significant authority to aid faltering companies without closing them, including the ability to provide loans or guarantees in individual cases, and to act as a so-called "qualified receiver" for struggling companies deemed to pose a risk to the financial system. In the latter role, the agency would have been like a quasi-conservator, taking steps "necessary to put the covered financial company in a sound and solvent condition."

Republicans and other critics cried foul, arguing that those powers would let the FDIC repeat the bailouts given to Citigroup Inc. and Bank of America Corp. during the depth of the crisis late last year and in early 2009. Both companies were given loan guarantees and billions in capital from the government in order to help prevent their failures.

But amendments that Frank's committee approved on Nov. 18 and Nov. 19 severely curtailed the FDIC's power to help keep a company alive. The committee stripped out any reference to a "qualified receiver" and said that the FDIC could only provide debt guarantees industrywide — not just for an individual company. Though the agency can still lend to a failing firm, it can do so only in order to wind it down. The FDIC is given no leeway to help keep a struggling company afloat indefinitely.

This has quieted some critics who had argued that the resolution powers would lead to ever more government assistance.

The bill "is a step away from the bailouts as compared to present statutes," said Rep. Brad Sherman, D-Calif., a vocal critic of the government's aid to large financial institutions.

Though Senate Banking Committee Chairman Chris Dodd's bill lacks the limits on assistance that are in the House bill, he is expected to change his legislation to echo the House version. For example, a Nov. 10 draft of the Senate bill would have let the FDIC take equity interests in companies, but this provision was later removed. "I want to clear up what I call some mischaracterizations," Dodd said on Nov. 19. "There is absolutely nothing in the bill we've drafted that would allow the government to prop up a failed institution."

Obama administration officials said both bills would ensure that the government could only provide assistance to an individual institution to ensure an orderly failure. "Neither the House bill nor the Senate bill would allow bailouts of failing firms," Michael Barr, Treasury assistant secretary for financial institutions, wrote in an e-mail response to a question. "Neither bill would enable the government to lend money to a failing firm outside of a government receivership designed to wind down that firm. In the resolution, the FDIC can only provide stabilization to the market through a bridge bank of a firm that has been put into receivership."

The changes have done little, however, to satisfy critics who remain convinced that resolution authority would lead to more bailouts. Peter Wallison, a fellow at the American Enterprise Institute, said the legislation has loopholes that would let regulators pay off creditors. "There are all kinds of ways you can provide assistance" to an institution "and pay off all the creditors," Wallison said in an interview. "To the extent you are paying off the creditors, it doesn't matter if you close" the company. "You are creating the same moral hazard."

But some observers said that the current bankruptcy process is even more favorable to creditors than a new government resolution process would be.

Critics' chief argument is that a House amendment would let the FDIC create another debt-guarantee program — similar to the Temporary Liquidity Guarantee Program it set up late last year.

Under the original bill, the FDIC could have made a loan to or guaranteed the debt of any solvent institution, and the legislation did not specify whether the aid could be supplied to individual companies instead of industrywide.

But Frank added an amendment to the bill that dropped any reference to lending to companies and said any debt guarantee must be "widely available."

But even that could be controversial.

"Anytime you start guaranteeing liabilities, it does seem to be a bit of a bailout," said Brian Gardner, an analyst at KBW Inc.'s Keefe, Bruyette and Woods Inc. "I was surprised that in this environment something like that passed. I think Republicans are going to have a field day on the House floor arguing against this."

Phillip Swagel, a visiting professor at Georgetown University, agreed.

"Once you give the executive branch authority to spend public resources without a vote of the Congress, it's just impossible for any administration to resist that temptation," said Swagel, a former Treasury assistant secretary for economic policy in the last administration.

But others said it would be difficult for the FDIC to create a large program just to save a particular institution, and they noted that starting it would require the concurrence of other federal regulators, the Treasury secretary and the president.

"It's hard for the FDIC to do this. … It's not just: 'Trust us,' " said John Douglas, a former FDIC general counsel who is now a partner in Davis Polk & Wardwell. "The government for the last 20 years has been very reluctant to use this systemic exception and allow the FDIC to do things like the TLGP" liquidity guarantees.

Steve Adamske, a spokesman for Frank, said the new authority would not be there for dying companies but rather as a liquidity spigot when market turmoil undermines the credit available even to healthy firms.

"This is for institutions in time of stress that cannot get credit and cannot use money for lending because there is a credit schism," he said.

###

Todd Spangler, *Teams aim to speed mortgage relief*, The Detroit Free Press, December 1, 2009.

WASHINGTON -- In horse racing, it's called showing the horse the stick, and the U.S. Department of Treasury gave the nation's largest mortgage companies a long look at it Monday.

Now, it will have to see how they respond.

Concerned that mortgage firms were moving too slowly to get struggling homeowners into affordable permanent loans, the Obama administration announced a series of immediate steps, sending so-called SWAT teams into lenders' offices; promising twice-daily progress reports and threatening financial sanctions and public shame if results don't improve.

Assistant Treasury Secretary Michael Barr said the banks simply have "not done a good enough job" in moving people to permanent loans.

What has happened so far

Overall, the administration considers its Making Home Affordable program -- announced last February -- a success, at least so far. With financial incentives for companies that service loans and collect payments, as well as for the lenders themselves, the intent remains to modify 3 million to 4 million home loans by 2012 for people paying more than 31% of their income for their monthly mortgage.

But nine months in, only 651,000 loans -- about 1 of 5 eligible loans nationwide -- is under a trial modification, envisioned as a 3-month-long period during which the mortgage companies collect documentation from the borrower and make sure he or she can afford the new amount. If not, the loan can revert to earlier terms, making foreclosure more likely.

2 sides of the problem

The administration said its problem is with homeowners who haven't provided documentation needed to convert trial modifications to permanent ones and with lenders and servicers that have lagged in moving borrowers from one plan to the other.

Barr and Phyllis Caldwell, the new chief of the treasury's Homeownership Preservation Office, told reporters Monday they would be sending teams into the biggest servicers' offices this week to determine what is needed.

Barr declined to say what sanctions could follow if lenders and servicers don't meet terms of contracts they signed earlier this year.

A report due next week will indicate how many trial modifications have been made, how many permanent ones and which banks are having the most success. About 375,000 trial modifications are expected to expire by year's end unless they are converted to permanent ones -- including a portion of the 22,000 modifications made to date in Michigan.

Trial loans that would have expired in early December will be extended to the end of the month to give borrowers more time to provide records.

The bigger issue

John Courson, president and chief executive of the Mortgage Bankers Association, said lenders and servicers are not dragging their feet because the incentive is already there for them not to. The payments they stand to get under the program are withheld until modifications are permanent.

It has become clear, he said, that some people can't document the income they say they have to qualify for the program; in other places -- particularly in hard-hit areas like Michigan, where joblessness is high -- people have trouble paying even the lesser amount.

"If you don't have a job and you don't have adequate income," Courson said, "you can't make the payment."

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***Losses at Fannie, Freddie May Hit US Books*, Institutional Investor, December 2009.**

The U.S. government's strengthened support of mortgage lending giants Fannie Mae and Freddie Mac has some analysts worried that absorbing unlimited losses for the companies for three years could increase the federal deficit by tens of billions of dollars, reports The Wall Street Journal.

The Congressional Budget Office has said that it supports bringing the companies onto government books, a move which would essentially treat them as federal agencies for accounting purposes. The CBO has projected that the takeover could cost as much as $99 billion over the next decade.

The White House is said to be weighing various proposals for the lenders, but Chief Economic Adviser Lawrence Summers has said that the issue that is "going to play out over time." Some officials believe that it will not be necessary to bring Fannie and Freddie onto government books in the meantime, and Assistant Treasury Secretary Michael Barr said, "I don't anticipate any change," adding that the lenders would "have the same appearance that they've had before in the budget books."

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Jim Puzzanghera and E. Scott Reckard, *Foreclosures: New rules serve notice to lenders: Banks and others could face fines for delays in making changes to mortgages permanent*, The Los Angeles Times, December 1, 2009.

With rising foreclosures still threatening the economy, the Obama administration is trying to pump new life into its much-criticized program to lower payments for homeowners at risk of defaulting on their home loans.

Officials unveiled requirements Monday that would step up government scrutiny and threaten fines on banks and other mortgage lenders should they lag in converting temporary mortgage modifications into permanent changes in loan terms and conditions by the end of the year.

Under the Home Affordable Modification Program, the aim is to reduce monthly mortgage payments for those facing foreclosures to 31% of their monthly income. But many homeowners participating in the program tell horror stories of bureaucratic runarounds in their quest for a permanently lowered mortgage bill.

A trade group for some large mortgage companies acknowledges problems with the complex program and said the industry was working to roll out a universal website to enable people to submit forms and documents online instead of relying on overloaded fax machines.

As part of its newly aggressive action, the administration is summoning executives from the nation's top mortgage servicers to Washington next week to prod them to speed up their efforts.

The effort also involves sending what Treasury Department officials described as three-person "SWAT teams" to the offices of those firms starting Wednesday to help them obtain the necessary documents from borrowers and trouble-shoot problems.

The hope is to shame mortgage servicing companies into doing a better job of making 90-day trial modifications permanent by highlighting those firms that are not performing well and threatening penalties or other sanctions against laggards based on the agreements they signed to participate in the program.

"Servicers that don't meet their obligations under the program are going to suffer the consequences," Assistant Treasury Secretary Michael Barr warned.

The changes also require mortgage lenders and servicers to provide updates to the administration, sometimes twice daily, about each mortgage being modified. Fines and other sanctions could be imposed on those companies that do not meet certain performance obligations.

But housing advocates doubted the tougher stance would work. They said the administration could do little more than kick companies out of the program.

"Shaming people into doing the right thing is very slow, and a lot of people will lose their homes in the meantime," said Diane Thompson, a lawyer with the National Consumer Law Center.

Loan servicers would seem to have an incentive to turn temporary modifications into permanent ones: They receive as much as $3,000 for each modified mortgage that is made permanent. But fees they receive in the foreclosure process could reduce the incentive to modify loans, Thompson said.

She and other advocates favor legislation that allows judges to reduce the principal on a primary residence as part of bankruptcy, a proposal that stalled in Congress this year.

The administration's announcement comes amid complaints from people who have received the short-term reductions in their payments but have been unable to get their servicer to make the changes permanent -- or even make a decision.

The mortgages have been altered under the administration's $75-billion modification program, which uses financial incentives to get banks and other mortgage holders to reduce the payments for homeowners who are unable to make monthly payments and meet other qualifications.

The program has temporarily modified more than 650,000 mortgages as of Oct. 30, with an average monthly payment reduction of $576. But to date, few of those three-month trials have become permanent. At the start of September, only 1,711 trial modifications had become permanent, according to the oversight panel monitoring the $700-billion Troubled Asset Relief Program. TARP money is used to fund the program.

The Treasury Department, for the first time, will release its own data on permanent modifications next week. But Barr said the number was low.

About 375,000 of the trial modifications are eligible to be made permanent by the end of the year. About 37% of those homeowners have submitted the needed documents, including current income statements, so servicers can decide whether to grant those owners permanent modifications, said Phyllis Caldwell, head of the Treasury Department's Homeownership Preservation Office.

"These homeowners who took the time and effort to complete documentation deserve a decision by their servicer," she said. About a fifth of those eligible have not submitted any documents, she said.

Bank of America Corp. has tried to get eligible customers to submit their documentation, spokesman Dan Frahm said.

"Once again this week, Bank of America will notify more than 50,000 of our own customers who have made their trial-period payments that we have not yet received all required documents," he said.

By the time a homeowner's 90-day trial period is complete, the company "will have made about 10 reminder phone calls and sent -- at least twice -- a summary of required documents and a postage-paid express mail package through which they can return their documents," Frahm said.

Scott Talbott, chief lobbyist for the Financial Services Roundtable, a trade group of the largest financial institutions, said the industry was committed to making the program work. Several companies are testing a new Web portal for documents that they hope will be unveiled before Christmas.

"There's a shared responsibility between the consumers and the industry," Talbott said. "The industry has its own challenges, and it is working to overcome them, whether it's fax machines or providing responses."

The administration's new plan focuses on increasing accountability by mortgage servicers. The leading mortgage servicers will be required to submit a schedule of their plans to reach a final decision on each loan for which they have the proper documentation and to send the borrower a permanent modification agreement or denial letter.

Special account liaisons from the Treasury Department and Fannie Mae will be assigned to the eight largest servicers and monitor the progress as frequently as twice a day throughout December.

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Kevin G. Hall, *Feds Pressure Mortgage Servicers in Foreclosure Fight: Treasury to Keep Watch to Ensure Help is Given to Troubled Homeowners*, The Modesto Bee, December 1, 2009.

The Treasury Department announced Monday that it would send financial "SWAT" teams to leading mortgage servicers in December to police their performance in a $75 billion government program that seeks modifications of distressed mortgages to reduce the high national rate of foreclosures.

It's an effort to ratchet up pressure on mortgage servicers, who act as bill collectors on behalf of banks that originate mortgages or investors who own bundles of mortgages pooled as securities.

These servicers have been slow to modify mortgages, the administration charges, despite Treasury Department efforts since February to provide financial incentives to participate in the Home Affordable Modification Program.

"In our judgment, servicers to date have not done a good enough job of giving people a permanent modification," Assistant Treasury Secretary Michael Barr said.

In a conference call, Barr said servicers had extended a large number of trial mortgage modifications, more than 650,000, but had moved too slowly in converting them to permanent mortgages.

Of the 650,000 trial modifications, about 375,000 could be converted to permanent mortgages in December, Barr said. The trial modifications have saved borrowers an average of $576 per month on mortgage payments, he said.

The Obama administration will send "SWAT" teams to keep an eye on the six largest mortgage servicers, who collectively handle about 85 percent of outstanding U.S. mortgages. Participating servicers will be required to report to the Treasury twice daily on their progress to convert trial modifications to permanent fixes. The failure to boost permanent solutions significantly will trigger consequences, Barr said.

Stanislaus, Merced and San Joaquin counties are at or near the top of the list of counties with the most foreclosures nationwide.

Adjustable-rate mortgages as well as subprime and other loans with extremely low initial interest rates were a popular choice for valley residents trying to get into a market where prices had soared beyond the reach of most of them.

The housing market downturn that started in late 2005 quickly snowballed as prices collapsed. That left homeowners with payments that were resetting to dramatically higher levels and no way of refinancing because their houses were worth far less than they paid for them.

NUMBER STILL GROWING

That resulted in record foreclosures. Since the housing market collapsed, more than 17,000 Stanislaus homes have been foreclosed on by lenders, and that number continues to grow, according to ForeclosureRadar statistics.

Unemployment numbers in the region soared to levels not seen in more than a decade as home prices and sales tanked. The unemployment rate, now 16.6 percent in Stanislaus County, spiked as construction, finance and other real estate-related businesses slashed jobs. Cutbacks and closures followed at other types of businesses.

However, valley home sales have started to rebound in recent months as first-time home buyers and investors have moved into the valley to take advantage of dropping prices.

MATTER OF URGENCY

But halting foreclosures is a matter of urgency if the nation is to recover its economic footing. For home prices to stop falling, mortgage delinquency and foreclosure rates must stabilize or drop.

To jump-start modifications, Barr said, the Treasury wants servicers to step up their efforts and borrowers to do a better job of providing documents to servicers.

Insufficient documentation remains a major hurdle for struggling homeowners, but the problem cuts both ways.

For more than two years, McClatchy Newspapers has sat in on borrowers' phone calls with mortgage servicers. Virtually all the servicers have lost or misplaced documents repeatedly or are unaware of documents they have in their possession.

Consumer advocates such as the Center for Responsible Lending in Durham, N.C., say the solution is legislation that would allow bankruptcy judges to modify mortgages if servicers won't.

"The root failure of the current loan-modification program is that it has been voluntary," said Kathleen Day, the group's spokeswoman, advocating a revamp of bankruptcy laws.

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Victoria McGrane, *Treasury to 'SWAT' big lenders*, Politico.com, December 1, 2009 4:52 AM ET.

Treasury is increasing pressure on mortgage lenders, creating "SWAT teams" of officials who will visit top financial firms this week and mandating that the firms check in with administration officials two times a day throughout December.

But the new campaign to stem foreclosures, launched Monday, didn't sit well with consumer advocates who believe the Obama White House hasn't done enough to help struggling homeowners.

"The Obama administration's latest adjustments to its 9-month-old foreclosure prevention program do little but highlight the continued failure of lenders' voluntary efforts to stop the foreclosure crisis," Center for Responsible Lending President Michael Calhoun said, arguing for more comprehensive action. "The number of Americans in foreclosure continues to rise dramatically, with up to 3 million new foreclosure starts this year alone, a trend that undermines economic recovery."

In February, the administration launched a $75 billion program to curb foreclosures, providing servicers with cash incentives to reduce monthly mortgage payments for struggling homeowners. Since then, the program has gotten more than 650,000 homeowners into three-month temporary loan modifications. Treasury officials said their new push is aimed at getting as many of those borrowers as possible into a permanent loan.

"Now we're at the stage where we need to turn to the next challenge, which is turning these trial modifications into a permanent solution for homeowners," Assistant Treasury Secretary Michael Barr told reporters on a conference call Monday.

Treasury's moves are aimed at smoothing out a slew of bureaucratic problems with the flow of paperwork from homeowners to loan servicers to the federal government. But the aggressive push by the Obama White House to crack down on lenders is certainly tinged with politics, as the administration realizes it has an image problem with financial institutions thriving while Main Street still struggles with foreclosures and rising joblessness.

With an unemployment rate above 10 percent, Democrats worried about the 2010 elections are increasingly antsy about the Obama economic agenda. Several powerful Democrats, including Senate Majority Whip Dick Durbin of Illinois, have been critical about the slow progress of loan modifications under the federal program.

Treasury tweaked the big lenders in its Monday announcement.

"In our judgment, servicers to date have not done a good enough job of bringing people a permanent modification solution," Barr said on the conference call.

At the same time, Barr disputed the notion that the administration's foreclosure plan has fallen short.

"We're exactly on the target we set out for you all back in February," he told reporters, saying he still believes the program will help 3 million to 4 million homeowners.

Already, the program has reached more than 650,000 homeowners, with an average monthly savings of $576 per family, he said. "I think we beat all the odds and we defied the skeptics on that basic fact. ... We're helping real people right now - today - and have been for many, many months. And I think the facts will overcome the skepticism."

As part of its new push, Treasury is dispatching what it's calling SWAT teams - made up of two Treasury officials and one staffer from Fannie Mae, which is handling compliance - to each of the top eight mortgage servicers participating in the program. Their mission: to report back on what's keeping servicers from receiving and processing documents and making decisions on converting trial modifications.

The companies will also have to report their progress on conversions to Treasury two times a day for the month of December.

Barr said mortgage companies that don't live up to their obligations under the program will suffer further consequences, but he repeatedly refused to detail just what these sticks might be other than to say that they're remedies set out in the contract each company signed with Treasury.

###

Harriet Johnson Brackey, *Treasury Presses banks for Mortgage Changes,* Sun-Sentinel, December 1, 2009.

Mortgage loan servicers are getting more pressure to help struggling homeowners obtain permanent changes in their mortgages.

Treasury Department officials said Monday that they'll send teams to monitor loan servicers and require twice daily reports in December about the companies' efforts to respond to the more than 3 million homeowners who are behind on their mortgage payments.

Last month, the Treasury reported that only 12.4 percent of the 676,754 Florida homeowners behind on their mortgages had received loan modifications.

Nationwide, 650,000 home loans are in the trial stage of modification, but the Treasury is expected to report next week that few of those modifications will become permanent, the final stage of the process.

"Now it is up to the banks to do their part and to convert the borrowers to permanent modifications. They have not done a good enough job," said Michael Barr, assistant Treasury secretary.

Barr stopped short of saying the Obama administration would withhold payments promised to loan servicers under its Making Home Affordable Program. That's the loan modification program announced in February to encourage banks to make loan modifications for up to 4 million troubled homeowners. All major lenders are participating. Lenders are eligible for a $1,000 per borrower incentive payment and $1,000 a year for three years for loans that remain current.

Although most banks haven't released figures on how many modifications become permanent, industry observers have hinted that very few are.

Loan modifications happen in two stages. First, there's a three-month trial period, and lenders then require homeowners to show that they still qualify to make the modified loan permanent.

Bank of America says it makes up to 20 phone calls and sends out a 22-page packet of instructions to try to guide its borrowers through the process. JP Morgan Chase says it uses dozens of letters and phone calls, culminating in two visits to each borrower. Yet only 26 percent of borrowers in trial modifications submit all of the required paperwork to make the modifications permanent.

Treasury's Barr said about two-thirds of borrowers in a trial period don't send in all the paperwork to make their modifications permanent. No reason for this was given.

"This is precisely what we're working to understand better, but we don't have definitive answers at this time," said Meg O'Reilly, Treasury spokeswoman, in an e-mail.

At the same time, frustrated Florida homeowners say it's impossible to determine what information lenders want.

"I faxed them 52 pages of information including months of bank statements, and they still say I don't qualify," said Claudia LeCompte, a Boynton Beach homeowner who says she has been trying to get a mortgage modification since March. She said this is the fourth set of documents she has submitted.

The Treasury called for servicers to streamline the process, including creating a checklist of required documents and giving directions on how to verify income. It called for lenders and servicers to simplify the process to just four steps.

Shari Olefson, a real estate attorney at Fowler White Boggs in Fort Lauderdale and the author of Foreclosure Nation: Mortgaging the American Dream, said a set of standards for mortgage servicers along with deadlines would improve the process from the lenders' point of view. For borrowers, "how to prove your income seems to be the biggest issue," she said.

Nationwide, borrowers are behind on more than 3 million home mortgage loans, according to the Treasury.

###

Renae Merle, *U.S. steps up pressure on lenders to modify more mortgages: Treasury threatens public shame and monetary penalties*, The Washington Post, December 1, 2009.

The Obama administration on Monday promised tougher scrutiny of lenders participating in its marquee foreclosure-prevention effort and threatened to penalize companies that don't do enough to help struggling homeowners.

The move is aimed at breaking a bottleneck in the Making Home Affordable program, which was launched in March but has been slow to reach many borrowers. Most of the 650,000 homeowners enrolled in the program are stuck in its initial phase and still must prove that they qualify for reduced mortgage payments. Moving those borrowers from trial modifications into permanent ones is a key test of the effort's effectiveness.

Treasury Department officials would not say Monday how many loans have been permanently modified. But a recent report by the Congressional Oversight Panel, which is monitoring the government's Troubled Assets Relief Program, found that only about 1 percent of borrowers had moved from a trial modification into a permanent one.

"In our judgment, servicers, to date, have not done a good enough job of bringing people a permanent modification solution," Assistant Treasury Secretary Michael Barr said during a conference call with reporters.

Under the program, eligible homeowners can have their loans modified to reduce their mortgage payments to 31 percent of their income. To qualify for a permanent modification, borrowers must provide extensive documentation and make three consecutive payments to prove they can afford the new loan.

To prod lenders to move more borrowers into permanent loan modifications, Treasury officials said they would use a combination of public shame and monetary penalties. Lenders' performance will be tracked in report cards that show how many loans have been permanently modified, and teams of officials from the Treasury and Fannie Mae will visit major banks to monitor their progress.

Lenders that fail to perform will be "subject to consequences which could include monetary penalties and sanctions," according to a Treasury statement. Officials declined Monday to detail what those penalties could be. Lenders are not paid under the program until a loan modification is made permanent, and it was unclear what additional recourse the government might have under its contracts with participating companies.

Continued frustration

The announcement, however, failed to satisfy housing advocates, who expressed continued frustration with what they consider slow progress on loan modifications and urged the administration to take more aggressive action.

"The lack of conversion of these loans is at dismal levels, which means the program has been a failure," said John Taylor, president of the National Community Reinvestment Coalition. "The government needs to take the gloves off and do something much more proactive, and I don't think penalizing is enough."

Taylor said the administration should support allowing bankruptcy judges to modify mortgages or use government bailout funds to buy these mortgages from lenders at a discount and then force their modification.

"If you wait for voluntary compliance you're going to get more of what the government is already experiencing, and that's frustration," he said.

Tough economic conditions, including rising unemployment, are making it harder for some borrowers to qualify, said John Courson, president of the Mortgage Bankers Association.

In some cases, a borrower qualifies for a trial modification, only to face a job loss or pay cut that makes it difficult for him to keep up with his payments, he said. In other situations, borrowers overstate their income to qualify and then struggle to maintain the payments, he said. "How can you penalize a servicer when they don't have control over that," Courson said.

According to the latest government data, J.P. Morgan Chase had modified about 139,000 loans under the program by the end of October. But the company notes that while 92,000 borrowers have made the initial three payments required under the trial program, only 26 percent have submitted enough documentation to move into the permanent phase. Citigroup has modified 89,000 loans under the program. But only 1,600 have made their way to a permanent modification.

Lenders have been working hard on the program, said John Dalton, president of the housing policy group of the Financial Services Roundtable. The administration, for example, set a goal of completing 500,000 trial modifications by Nov. 1, which lenders met early and surpassed, he said.

"It's a complex program, and we're making real progress," he said. "We have 650,000 people in the pipeline now, and we think a high percentage of those will end up in permanent modifications."

Lack of documentation

Part of the problem, government officials acknowledged, is that many borrowers have not turned in all the documents needed to prove they qualify. About 375,000 borrowers should be eligible to move into a permanent modification by the end of the year, but 20 percent have provided no documentation, for example.

"These homeowners must take action, or they could jeopardize their eligibility for permanent Home Affordable Modification," said Phyllis Caldwell, head of Treasury Department's homeownership preservation office.

But housing advocates have complained that even after submitting documents, it has been impossible for some homeowners to make their way through the program.

"This is a frustrating situation for homeowners who were told if they made three payments, they would get a permanent modification, but four or five months later, it hasn't come through," said Alan White, a law professor at Valparaiso University. "I think it's appropriate for Treasury to insist [lenders do more] and to back that insistence with sanctions."

Some lenders are already working to close the gap. Bank of America hired nonprofit groups in Chicago to go door-to-door to assist borrowers with their paperwork. Freddie Mac hired Titanium earlier this year for a similar effort, and since September, the South Carolina firm has reached more than 80,000 borrowers on Freddie's behalf, helping many fill out their final paperwork, said Michael Radesky, the company's chief operating officer.

"Sometimes it's just confusion. [The borrower says] 'I didn't understand the package.' It is fairly complicated," he said. "Having someone show up and explain the process is fairly helpful."

###

Alan Zibel, *Government increases pressure on mortgage industry*, Record Searchlight, November 30, 2009.

WASHINGTON - Faced with sluggish progress in its foreclosure-prevention effort, the Obama administration will spend the coming weeks cracking down on mortgage companies that aren't doing enough to help borrowers at risk of losing their homes.

Treasury Department officials said Monday they will step up pressure on the 71 companies participating in the government's $75 billion effort to stem the foreclosure crisis. They will start this week by sending three-person "SWAT teams" to monitor the eight largest companies' work and requesting twice-daily reports on their progress.

The mortgage companies, also known as loan servicers, have had a hard time getting borrowers to complete the needed paperwork for the administration's loan modification program. Nearly 60 percent of the 375,000 borrowers who qualify to have their loan modifications completed by year's end have either submitted incomplete paperwork or none at all.

"Borrowers must understand the urgency of getting their completed paperwork in so they do not miss out on the opportunity for more affordable mortgage payments," said Phyllis Caldwell, who recently was named to lead the Treasury Department's homeownership preservation office.

The program, announced by President Barack Obama in February, allows homeowners to have their mortgage interest rate reduced to as low as 2 percent for five years.

The administration is feeling intense pressure from lawmakers and consumer advocates to speed up progress. As of early September, only about 1,700 homeowners had finished all the paperwork and received a new permanent loan. About one-third of borrowers who have submitted complete applications are still waiting for a decision.

In an effort to shame the companies into doing a better job, the Treasury will publish a list next week of the mortgage companies that are lagging. While big lenders like Citigroup and Wells Fargo have made double-digit gains in the percentage of eligible borrowers they have signed up for trial modifications, other companies like Ocwen Financial and American Home Mortgage Servicing have only increased their borrower participation by 6 percentage points or less since July.

Paul Koches, executive vice president of Ocwen, said his company had already saved 90,000 of its roughly 370,000 distressed homeowners from foreclosure before the government program began. As of October, Ocwen had started trial modifications for 11 percent of its borrowers, up from 5 percent in July.

At American Home, spokeswoman Christine Sullivan said the company has a "large, dedicated team" working on the Obama plan, but also noted that the company modified more than 60,000 loans outside the Obama plan over the past year.

"We are addressing the needs of distressed borrowers and are confident that we are doing all that we can reasonably do to avoid foreclosure," she said in an e-mail.

Some companies have barely made any inroads. HomEq Servicing, a division of Barclays Capital, only signed up in August. As of October, it had only started 91 trial modifications out of a pool of nearly 41,000 eligible homeowners.

"We have solicited thousands of borrowers for the financial information and documentation necessary ... and expect the number of trial modifications to increase substantially in the coming weeks," company spokesman Brandon Ashcraft said, noting that the company has modified 45,000 loans outside the government program over the past two years.

The participating mortgage companies signed contracts earlier this year that give the government the right to withhold incentive payments or end their contracts with the Treasury. But mortgage companies don't receive those payments until they make a modification permanent, so there is little leverage over companies that aren't performing well.

That difficulty, consumer advocates say, highlights the program's key flaw: Since participation was voluntary, the government has little it can do besides shaming the industry into doing better.

"There's no meaningful accountability," said Diane Thompson, counsel at the National Consumer Law Center. "If you just aren't doing the loan mods, so what?"

And then there's lender limbo. About one-third of borrowers have submitted complete applications but haven't received a decision.

"In our judgment, servicers to date have not done a good enough job" of making the modifications permanent, said Michael Barr, an assistant Treasury secretary. Companies, he said, "that don't meet their obligations under the program are going to suffer consequences."

Industry executives acknowledge there have been problems.

"The documents were confusing. Borrowers did not understand the process wasn't closed until the documents came in," Sanjiv Das, chief executive of Citigroup's mortgage unit, said in early November. "Even when the documents came in, they were not always complete."

Mortgage finance company Freddie Mac has hired an outside company, Titanium Solutions Inc., to send real estate agents around the country to knock on borrowers' doors and help them complete the paperwork.

"It can be a little bit intimidating," said Patrick Carey, Titanium's chief executive. "They don't, in many cases, understand exactly what is being asked of them."

Analysts, meanwhile, say the foreclosure crisis is likely to persist well into next year as rising unemployment pushes more people out of their homes.

About 14 percent of homeowners with mortgages were either behind on payments or in foreclosure at the end of September, a record level for the ninth straight quarter, according to the Mortgage Bankers Association.

Homeowners who may be eligible for assistance can call 1-888-995-HOPE or go to www.makinghomeaffordable.gov.

###

Tami Luhby, *Treasury tightens screws on mortgage firms*, CNNMoney.com, November 30, 2009 7:02 PM ET.

Looking to jumpstart its foreclosure prevention plan, the Obama administration announced new steps Monday to pressure loan servicers to help homeowners long term.

Responding to complaints that too many borrowers are stuck in trial adjustments, administration officials said they will now focus more heavily on getting borrowers into permanent modifications. Government swat teams will go to the institutions to see what the holdup is and banks will have to submit progress reports twice a day during December.

"Now it's up to the banks to do their part to covert borrowers to permanent modifications," said Michael Barr, an assistant Treasury secretary. "Servicers to date have not done a good enough job."

Only a tiny percentage of troubled homeowners have received permanent modifications, raising concerns about the effectiveness of the $75 billion effort. Treasury officials will release the first comprehensive look at the conversions next week.

Top loan servicers will be required to report the status of each modification and their plan to reach a decision. Also, these servicers must say how they will communicate decisions to borrowers.

Those failing to meet their obligations could face so-far unspecified penalties and sanctions.

Servicers have been hiring and training more staff and implementing new technology to work with borrowers.

"Servicers recognize the importance of turning trial modifications into permanent situations," said Faith Schwartz, executive director of Hope Now, a coalition of servicers, community groups and mortgage investors working to stem foreclosures.

Treasury officials also urged borrowers to be more diligent in sending in the documents needed to evaluate their applications. Only one-third of homeowners who have made at least three trial payments have submitted all the needed forms, said Phyllis Caldwell, the new head of Treasury's Homeownership Preservation Office. Some 20% have not submitted any paperwork.

To help borrowers through the process, the administration is providing more information on the documents they need to submit to be considered for a permanent modification. Federal, state and local officials will increase outreach to delinquent homeowners.

Stuck in trial modifications

A growing number of borrowers are complaining that they are not receiving long-term assistance, fueling concerns that the plan will fall far short of its goal to help up to 4 million delinquent homeowners.

Under the president's plan, delinquent borrowers are put into trial modifications for several months to make sure they can handle the new payments and to give them time to submit their financial paperwork. Once the modification becomes permanent, servicers, investors and homeowners are eligible to receive thousands of dollars in incentive payments.

Loan servicers, however, say they are having trouble getting the necessary documents from borrowers, while homeowners maintain that their financial institutions are repeatedly losing the paperwork. Once their files are complete, borrowers may be denied long-term help if they don't meet the program's criteria.

Some 650,000 homeowners are currently in this preliminary phase, receiving payment reductions of about $576 per month, Barr said. About 375,000 people should be eligible to receive long-term relief by year's end.

Preliminary data shows that, as of Sept. 1, only 1,711, or 1.26%, of all trial adjustments were made permanent after three months. These figures come from the Congressional Oversight Panel, which monitors the government's use of bailout funds.

He would hope to see 50,000 to 100,000 people receiving permanent modifications by now, but is concerned the figure will be much lower.

"If we don't see a big increase in the permanent modification numbers, then there's something seriously wrong with this program," said Alan White, a law professor at Valparaiso University. "I can only assume the number is appallingly low."

White said he hopes that next week's report will show that at least 50,000 to 100,000 permanent modifications have been made.

Watching the banks

Increasing oversight of the servicers' modification efforts should help, White said.

This is not the first time the administration has had to twist the screws on servicers. Over the summer, Treasury and Housing department officials called bank executives to Washington, D.C., and told them to ramp up their trial modification efforts.

Treasury in August began publishing monthly reports detailing each institution's progress in putting borrowers into trial adjustments. The idea was to shame servicers who were lagging and officials say they are pleased with the results. Borrowers in trial modifications jumped from 235,000 at the end of July to 650,000 three months later.

"We did see it help dramatically in increasing the number of trial modifications, which was the focus over the summer," Barr said. "We're now going to the next stage, which is to focus the banks' attention on the need to go to permanent modifications."

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Alan Zibel, *Inside the morass of mortgage modification*, The Associated Press, November 23, 2009.

PLANO, Texas -- Shontaye Edwards spends her day in a gray cubicle at a Bank of America call center in this Dallas suburb. On the other end of the phone line are homeowners -- tense, exasperated and looking for help.

They often call with questions about the Obama administration's plan to help borrowers modify their mortgages, but many simply don't qualify. Their make too much money, or too little. They have too much debt. They don't actually live in the home.

"I do get attached at times," Edwards says during a momentary break, where she and about 350 colleagues sit under flat-screen displays showing how long callers have been kept on hold. "But at the same time ... we have to go by the procedures."

Since February, when President Barack Obama announced a lofty goal of limiting foreclosures by modifying up to 4 million loans over three years, the administration's program has been riddled with problems.

Banks couldn't hire and train employees fast enough to keep up with the crush of people who wanted to take advantage of the help. Documents were lost. The government kept changing the rules.

Before the housing crisis, mortgage servicing companies had collections departments that mainly tried to wring payments from tardy borrowers. Now the same departments, augmented with thousands of new employees, are engaged in the far more complex task of figuring out whether millions of borrowers qualify for help.

Bank of America, which collects payments on more loans than any other mortgage company, has lagged its competitors in the percentage of troubled borrowers it has signed up.

The steady rise in unemployment has made the problem even worse. Bank of America is now getting about 100,000 calls a day from troubled homeowners, up from about 60,000 at the start of the year.

Government officials insist the program is on track. "We're reaching borrowers at a scale that has not been done by any other modification program," said Michael Barr, an assistant treasury secretary.

Indeed, there has been some progress lately. More people have been helped in recent months after the government started publishing a monthly report card detailing how many homeowners each bank had helped.

But experts still doubt the administration will come anywhere near its goals.

The program allows homeowners to have their mortgage interest rate reduced to as low as 2 percent for five years. After that, the rate can rise again, but the increases are capped at levels that were prevailing when the modification was made.

Qualifying is a challenge. Uf you already spend less than 31 percent of your pretax income on your mortgage, you're out. Second homes don't qualify. Neither do vacant homes.

As of last month, about 20 percent of eligible borrowers, or more than 650,000 people, had signed up. However, most of those enrolled so far have been signed up only on a preliminary basis for trials lasting up to five months.

To make the change permanent, they have to complete a pile of paperwork and show they can make payments on time. As of the start of September, only 1,700 homeowners had completed the process. The government plans to publish an update in the coming weeks.

"We're just getting the early data in," Barr said. "But we can tell it's not good enough."

At the Bank of America call center in Texas, workers in the Home Retention division get as many as 15 calls an hour. They're from people being laid off, getting divorced, dealing with a pileup of medical bills or trying to get out of a risky loan made during the housing boom.

On the other line are workers like Edwards, 23, who is also finishing her bachelor's degree at night. They make $28,000 to $35,000 per year, plus overtime and bonuses. They get four weeks of classroom training, including scripts for how to respond to specific situations (such as when borrowers can't qualify because their income has been cut dramatically) and "soft skills" (such as how to express empathy).

Edwards is polite and professional, even when emotions run high. "I have family that ... are in the process of losing their home and needing assistance," she says. "So I definitely understand."

The size of Bank of America's problem is huge. It is the nation's largest mortgage servicer, with 14 million loans. Nearly two-thirds of those come from the troubled portfolio of Countrywide Financial, which Bank of America bought last year.

Since the Obama plan's launch, the bank has spent millions of dollars to upgrade its computer systems, including fax servers that couldn't handle the deluge of documents. It has hired and trained about 3,500 workers who take calls, process loans and work on computer systems since the start of the year, raising the total to about 13,000. The bank has 11 domestic call centers and one in Costa Rica that handles Spanish-speaking callers.

Many new hires have no previous mortgage industry experience. Edwards, for example, worked in a Westin hotel before starting at Bank of America last year. One of her co-workers used to be a marketing manager for an Oklahoma casino.

Bank of America has signed up 137,000 homeowners. That's nearly five times as many as in July, and the biggest number of any lender in the program.

But, as a percentage of the bank's nearly 1 million eligible borrowers, it works out to 14 percent -- far lower than lower than competitors like Citigroup or JPMorgan Chase, which have signed up about 40 percent and 32 percent respectively.

Frustrated homeowners say that getting the bank to respond is a confusing, prolonged ordeal.

George Hicks, a retired and disabled veteran from Clovis, Calif., has been trying since spring to get help with his mortgage after moving back into a home that he had used as a rental property. He owes nearly $340,000 on a Countrywide Financial option-adjustable rate mortgage -- a particularly toxic breed of loan that allowed borrowers to defer a portion of their interest payments and add them to the principal.

Hicks says he faxed documents several times and spoke with numerous Bank of America representatives but received conflicting responses. He finally was offered help after Associated Press inquired about his case. The modification, if it is made final, will lower his monthly payment by about $100.

The process has been trying, he says, but "you kind of have to dance to their music."

Bank of America got $45 billion in federal bailout money, and its executives are sensitive to charges that they aren't doing enough to help ordinary Americans. Still, they also say that the enormous publicity around the program has created a belief -- among homeowners whose financial pain isn't necessarily severe -- that their lender is obligated to help.

"It's not an entitlement," said Jerry Durham, Bank of America's Texas-based vice president of homeownership preservation. "It's something that we use as a tool to help keep them in the home when they're facing hardship."

At the call center near Dallas, a fundraising-style thermometer on the wall tracks the successes, and managers are being asked to provide regular updates to senior executives. But even bank executives say the industry and government made it all sound too simple.

"When you apply it in the real world," said Ken Scheller, a senior vice president, "it's got some additional complexities that I don't know that any of us thought of."

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***Banks behind in rush to help homeowners; Requests for aid swamp centers,* The Associated Press, November 17, 2009.**

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Banks couldn't hire and train employees fast enough to keep up with the crush of people who wanted to take advantage of the help. Documents were lost. The government kept changing the rules.

For the industry, the transformation has been tremendous.

Before the housing crisis, mortgage servicing companies had collections departments that mainly tried to wring payments from tardy borrowers. Now the same departments, augmented with thousands of new employees, are engaged in the far more complex task of figuring out whether millions of U.S. borrowers qualify for help.

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Indeed, there has been some progress lately. More people have been helped in recent months after the government started publishing a monthly report card detailing how many homeowners each bank had helped.

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###

***Federal programs to modify mortgages helps few struggling homeowners*, The Tennessean, November 17, 2009.**

Jureen Hendrickson used to have a job collecting debts for a bank. Now she finds herself on the other side of the phone line, desperately trying to get Bank of America to modify her home loan to avoid foreclosure.

"I'm calling and I'm asking for help, and I don't feel as if they're working with me," said Hendrickson, a 46-year-old who lost her job in March. "I'm up a creek without a paddle."

Five months after the Obama administration launched its ambitious $75 billion "Making Home Affordable" plan to provide incentives for financial institutions to modify home loans for struggling homeowners, only about 235,000 loans have been modified, or about 9 percent of those eligible nationwide.

Bank of America modified just 4 percent of eligible loans, and Wells Fargo 6 percent, a U.S. Treasury report said. Wachovia Corp., which was taken over by Wells Fargo in December, modified 2 percent.

"We think they could have ramped up better, faster, more consistently and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," said Michael Barr, a Treasury assistant secretary. "We expect them to do more."

Lenders say they're working to address problem loans, and some have been modifying home loans long before the federal government's program, but local housing counselors say not enough has been done on either front.

"The whole (federal) program is rife with problems and chaos," said Jarmaine Betts, counseling director at Affordable Housing Resources in Nashville.

At the current rate, it would take more than seven years to reach the government's goal of 4 million loan modifications. The Treasury, however, said it remains optimistic that the program can reach its goal of handling 3 million to 4 million loans in three years, assuming modifications speed up.

Betts said he has counseled close to 100 homeowners in trouble on mortgages since April, but only 10 to 15 have seen their home loans modified. One client has been waiting seven months for an answer.

"Come on, these people are losing their houses," Betts said. "(The lenders) don't seem to get it. The plan, in theory, is really good. But if no one is being forced to do it, how effective could it be?"

Plan started in March

The Treasury department launched "Making Home Affordable" in early March, a two-pronged plan to get lenders to voluntarily modify loans with interest rates as low as 2 percent for people struggling to afford their mortgage payments - as well as refinancing for people who owed more than their homes were worth.

Many banks farm out the work of handling customer service and billing to loan servicers, but those firms usually have little incentive to modify loans because they get paid whether or not a home ends up in foreclosure.

The modification part of the program offered $1,000 payments upfront to loan servicers and $1,000 annually for still-performing loans.

On Tuesday, the government reported that 38 servicers who cover 85 percent of the mortgages in this country are participating. But only 15 percent of eligible homeowners at least 60 days behind on their payments have received approval for modifications, and only 9 percent have actually seen their mortgage payments modified, the Treasury said.

At least four participating servicers did not modify any loans, the report shows.

The federal government, meanwhile, says its success rate is better in one sense than what banks previously had offered.

In 2008, only 42 percent of home loan modifications by the largest loan servicers actually lowered payments for the borrower, according to the U.S. Treasury. In some cases, lenders added past due payments to the borrower's monthly bill, calling that a modification even though it raised the monthly payment.

Under the government's program, all of the loans that were modified resulted in lower monthly payments, according to the U.S. Treasury.

Even homeowners who haven't missed a payment qualify for the federal program, said Diane Thompson, who works as a consultant to the National Consumer Law Center and trains foreclosure counselors.

She said some participating lenders are refusing to modify loans, or they charge added fees or make homeowners wait months to hear back. She said in testimony to the U.S. Senate Banking Committee last month that lenders' staff "continue to display alarming ignorance" of the program.

"It doesn't make sense to me, except that they don't want to do these modifications," she said Tuesday.

David Anthony, an attorney with Bone McAllester Norton in Nashville, said his law office has handled more than 100 foreclosures since February, and not one has been stopped because the loan was modified.

"Across the board, it didn't help the people we were dealing with," he said.

Some 4.5 percent of Nashville-area mortgages were 90 days or more past due in June, and 1 percent of mortgages were in foreclosure, according to research firm FirstAmerican CoreLogic. That's up from a year ago.

Waiting on help

Hendrickson said she got into trouble when she lost her job at Regions Bank in March. Hendrickson lives in a two-bedroom town home in Donelson, which she paid $59,900 for in 1999, according to records with the Davidson County Register of Deeds. In 2008, she refinanced into a $103,000 loan to get cash out of her home. Plus, she said she owes about $12,000 in credit card bills and $15,000 in a short-term bank loan for personal expenses.

She says Bank of America initially told her to wait 30 to 45 days after she mailed her paperwork on June 5 for a loan modification. Then in late July, she was told she didn't qualify.

Since then, she says a Bank of America representative told her on the phone that if she paid her past due July mortgage payment, he would be able to modify her FHA loan under a separate FHA program. She is waiting for confirmation.

Bank of America spokesman Rick Simon said he could not confirm details of Hendrickson's situation, but Simon said she may be eligible for an FHA loan under rules that will kick in Aug. 15.

Bank of America said in a prepared statement that it's committed to success of the "Making Home Affordable" program nationally.

Bank of America Home Loans President Barbara Desoer said the federal report doesn't count the more than 150,000 loan modifications Bank of America made in the first half of 2009 outside of the federal government's program.

###

Ruth Simon, *Mortgage Program Gathers Steam After Slow Start,* The Wall Street Journal, November 11, 2009.

The Obama administration said Tuesday that its mortgage-modification program has enrolled one in five eligible homeowners, a sign the effort is gathering momentum after a slow start. But so far few of those trial modifications are turning into permanent fixes.

The Making Home Affordable program has begun trial modifications for more than 650,000 borrowers since it was launched in February, according to data released Tuesday by the Treasury Department. That amounts to 20% of those eligible for the program. More than 217,000 trial modifications, or roughly one-third, were under way in just two states: California and Florida.

The program provides financial incentives to mortgage companies and investors to reduce loan payments to affordable levels. The Treasury Department said the program was on track to meet its goal of offering help to between 3 million and 4 million borrowers over the next several years. Those who are 60 days or more delinquent on their mortgages or at risk of imminent default are eligible.

Whether the program will ultimately be judged a success will depend upon how many trial modifications become permanent. To receive a permanent fix, borrowers must be current on their payments in the trial program after three months and submit a hardship affidavit and other documents.

The administration won't release figures on completed modifications until December, but so far it appears that very few trial modifications are becoming permanent, often because of a lack of documentation.

J.P. Morgan Chase & Co. said last week that more than 92,000 of its customers have made at least three trial payments under the program, but just 26% of them had submitted all the required documents for a permanent fix. Many other borrowers are still in the early stages of the program.

"It's a fiasco in the making," said Alan White, an assistant professor at Valparaiso University in Indiana, citing preliminary information about low numbers of permanent modifications and complaints from attorneys and housing counselors.

"The good news is you've gotten all these homeowners in from the cold and on these temporary modifications," Mr. White said. "The bad news is we are stumbling in getting all these people...all the way" to keeping their homes.

At Morgan Stanley's Saxon Mortgage Services, about 26,000 of the 39,000 borrowers in the program have made more than three trial payments. Roughly 500 have received completed modifications.

"It's hard to get the documents in," said Saxon Chief Executive Anthony Meola, adding that 82% of borrowers are current on their trial payments. Mortgage servicers collect loan payments and work with troubled borrowers.

The Treasury Department last month gave borrowers who have made three trial payments sixty additional days to hand in their paperwork and relaxed some documentation requirements.

It's not clear yet what will happen to borrowers who make payments, but don't submit required paperwork.

"We have gone the extra mile," said Assistant Treasury Secretary Michael Barr in an interview. "Now it's up to the servicers to close the deal."

The administration continues to look for ways to address challenges in turning trial modifications into permanent fixes, a Treasury spokeswoman said.

Loosening documentation requirements should make it easier to complete some modifications, said Sanjiv Das, president of Citigroup's mortgage unit, which has finalized more than 1,600 of the modifications. Roughly 70% of the 68,000 borrowers in the program are current on their payments, Citigroup said.

Still, some borrowers say their mortgage companies have kept them in limbo for months. Gerald Bullock of Cincinnati said he has made seven trial payments and provided J.P. Morgan more than 60 pages of documents, but this week got another request for documents.

"We don't know if we have a house to live in or not," said Mr. Bullock, who fell behind on payments after becoming disabled in a workplace injury. "It just adds to [my] anger and depression."

A J.P. Morgan spokesman said Tuesday that Mr. Bullock's final modification was approved Friday and paperwork finalizing it will be sent this week. "Unfortunately, we mistakenly called him for additional documents," the spokesman said.

In an effort to get required documents, Saxon recently offered more than 5,000 Florida and California borrowers in the trial program $25 gift cards if they brought their paperwork to a nearby company event. About 15% responded, the company said.

Freddie Mac, the government-controlled mortgage company, recently hired Titanium Solutions Inc. to go door-to-door gathering needed documents. "Most of our borrowers got into the loan with assistance" and need similar help with the modification process, said Freddie Mac Senior Vice President Ingrid Beckles.

Susan Cook, a real-estate broker who works as a home-retention consultant for Titanium, said borrowers often report that they have sent in their paperwork "two or three times." But "there is always some little piece that is probably missing," she said.

###

***Housing plan reaches 1 in 5 borrowers*, Anderson Independent, November 11, 2009.**

WASHINGTON - The Obama administration's mortgage relief program has reached one in five eligible homeowners, a government report says, but most of those borrowers are on temporary trial plans that have yet to be made final.

As of the end of October, more than 650,000 borrowers, or 20 percent of those eligible, had signed up for trials lasting up to five months, the Treasury Department said Tuesday. The modifications reduce monthly payments to more affordable levels.

To make the change permanent, though, borrowers must complete a big stack of paperwork and show they can make their payments on time. At the beginning of September, only about 1,700 permanent modifications had been made. The Treasury Department expects to release updated data later this month.

"We're seeing some early indications that the servicers haven't done enough to get all the documents in," said Michael Barr, an assistant Treasury secretary.

Consumer advocates say banks aren't doing enough to follow through. "It's going to be the make-or-break issue," said Alan White, a law professor at Valparaiso University and a consumer attorney. The government, he said, will have to "crack the whip or consider firing some of these servicers."

Mortgage companies that are performing poorly, he said, should have their right to collect payments on loans revoked and transferred to companies that are doing the job better.

One legal challenge to the program was rejected this week, when a federal judge dismissed a class-action lawsuit filed by a group of Minnesota homeowners who sought to block foreclosures in that state. The lawsuit said the program failed to give people proper notice when they were rejected or tell them of their right to appeal.

###

***Just 5 percent of Americans planning to buy house within a year*, The Associated Press, November 11, 2009.**

NEW YORK - Just one in 20 Americans say they plan to buy a home within the next year, and they are most likely to be 34 years old or younger and living in the South or West, according to a survey released yesterday.

Roughly a quarter of potential buyers said the top reason they would buy now is because prices appear to have bottomed out - not because of bargain-priced foreclosures, worries about rising interest rates, or the wide selection of homes.

The survey, conducted for Move.com, a real estate listings site, shows the percentage of buyers thinking of jumping into the market was down slightly from a March survey, but up about 1 point from a poll in June.

Recent housing figures and homebuilder earnings reports support the idea the housing market is stabilizing, and concerns about the expiration of a federal home buyer tax credit are moot after Congress last week extended and expanded the credit.

Buyers who have owned in their current homes for at least five years are eligible for tax credits of up to $6,500, while first-time homebuyers - or anyone who hasn't owned a home in the last three years - would still get up to $8,000. To qualify, buyers have to sign a purchase agreement by April 30 and close by June 30. The poll was done before the credit extension.

And JPMorgan Chase & Co. said it sees a need for more housing-related staffers: It will hire 1,200 mortgage loan officers by the end of next year, a 60 percent increase in its sales force.

They are needed as the company goes after new home mortgage business and customers refinance home loans. New loan officers will work at bank branches in 23 states and in key cities such as Boston, New York, Chicago, and Washington.

In related news, the Obama administration's mortgage relief program has reached one in five eligible homeowners, the government reported yesterday, but most of those struggling borrowers are on temporary plans that have yet to be made final.

As of the end of October, more than 650,000 borrowers, or 20 percent of those eligible, had signed up for trials lasting up to five months, the Treasury Department said. The modifications reduce monthly payments to more affordable levels.

To make the changes permanent, though, borrowers must complete a stack of paperwork and show they can pay on time. At the beginning of September, only about 1,700 permanent modifications had been made.

``We're seeing some early indications that the servicers haven't done enough to get all the documents in," said Michael Barr, an assistant Treasury secretary.

Consumer advocates say banks aren't doing enough. Alan White, a law professor at Valparaiso University, said the government will have to ``crack the whip or consider firing some of these servicers."

Some economists doubt the administration can reach its goal of helping 3 million to 4 million borrowers in three years.

###

Duane Marsteller, *Program doesn't slow local foreclosure filings,* The Bradenton Herald, November 11, 2009.

MANATEE - Lenders continue to initiate foreclosures at an elevated rate in Manatee County despite government efforts to keep people in their homes.

Mortgage lenders and servicers filed 540 foreclosure lawsuits in Manatee County Circuit Court last month, six more than they filed in September, court records show. The number of October filings was the third-highest monthly total in 2009, which is on pace to break last year's record of 5,592 filings.

That's despite the federal "Making Home Affordable" mortgage-relief program, designed to help delinquent homeowners avoid foreclosure by modifying their loans.

After a weak start in March, the program had reached one in five eligible U.S. homeowners by the end of October, the Treasury Department said Tuesday. But it's just one in eight in Florida, possibly because of high numbers of investor-owned properties that don't qualify for the program.

A local attorney who represents homeowners in foreclosure cases said the program has been ineffective for another reason.

"They (lenders) say they're making offers, but they're not good-faith offers," said Dawn Bates-Buchanan, managing attorney of Gulfcoast Legal Services Inc. in Bradenton.

She said in one case, a lender made this offer to one of her clients who couldn't make his $1,370 monthly mortgage payment: Agree to pay $1,525 a month for three months and $17,000 in the fourth month. If the borrower made the three $1,525 payments on time, that would make him eligible for a permanent loan modification and the lender would consider waiving the balloon payment.

"No one in their right mind would agree to that," Bates-Buchanan said.

Government officials say they are pressing mortgage companies hard to improve their performance. Still, many housing advocates have been disappointed with the $50 billion plan's progress and say that getting a loan modification remains a battle.

Most of the more than 650,000 U.S. borrowers enrolled in the program so far have been signed up for preliminary trial modifications for up to five months. To make the change permanent, though, they must complete a big stack of paperwork and show they can make their payments on time.

"We're seeing some early indications that the servicers haven't done enough to get all the documents in," said Michael Barr, an assistant Treasury secretary.

Thus, Bates-Buchanan and others expect local foreclosure filings to remain elevated as the area's unemployment rate continues climbing. Manatee County's jobless rate rose to 12.7 percent in September, the highest since the state started keeping records in 1974.

The Herald's analysis of October foreclosure filings also showed:

n 73 percent of property owners were underwater or owed more than what their property is worth.

n 47 percent of the properties had homestead exemptions.

n The Serenata Sarasota condominium complex near Tuttle Avenue in southern Manatee County had the most foreclosure filings with 66, all but two of them owned by the developer. Greenbrook Village had the second-most, with 17, followed by 13 in Lakewood Ranch Country Club Village.

n Among homeowners, eight were from foreign countries: two each in Canada and the United Kingdom, and one each from the Czech Republic, Germany, Luxembourg and the West Indies.

- The Associated Press contributed to this report.

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***Mortgage-relief program finally in gear, government says*, The Associated Press, November 11, 2009.**

WASHINGTON (AP) -- After a slow start, the Obama administration's mortgage-relief program has reached one in five eligible homeowners, a government report says.

As of the end of October, more than 650,000 borrowers, or 20 percent of those eligible, have signed up for trials lasting up to five months, the Treasury Department said yesterday. The modifications reduce monthly payments to more affordable levels.

Launched with great fanfare in March, the plan got off to a weak start, but now nearly 920,000 loan modification offers have been sent to more than 3.2 million eligible homeowners. That works out to 29 percent, up from 15 percent at the end of July.¨

In California, about 130,000 homeowners have been enrolled in the "Making Home Affordable" loan modification plan, which President Barack Obama unveiled in February. That works out to about 19 percent of the state's homeowners who were either two payments behind or in foreclosure at the end of last month, according to Treasury Department data.

"We are reaching all the places that really got decimated," said Michael Barr, an assistant Treasury secretary. "The other basic story is we're reaching borrowers at a scale that has not been done by any other modification program."

Two other hard-hit states, Arizona and Nevada had similar rates of assistance as California, at 22 percent and 18 percent respectively.

Government officials say they are pressing mortgage companies hard to improve their performance. Still, many housing advocates have been disappointed with the $50 billion plan's progress.

And economists doubt the Obama administration will reach its broad goal of helping 3 million to 4 million borrowers within three years.

###

Peter Schroeder, *Overall Treasury Assistance Limited for HFAs*, National Mortgage News, November 9, 2009.

WASHINGTON-Treasury Department officials are warning state and local housing finance agencies that the Obama administration's recently unveiled temporary bond purchase program is oversubscribed and that agencies will likely receive less assistance than they requested as a result.

The officials issued the warning last week and asked the HFAs to identify their peak years of issuance from 2004 to 2008 for both single-family and multifamily issues to help determine how much they should receive under the relief program.

The scale-back comes after Michael Barr, Treasury assistant secretary for financial institutions, last month declined to put a dollar amount on the program and instead told reporters it would be sized to "meet demand."

"We felt it is important to build estimates for the program from the ground up," he said during an Oct. 19 press conference when the temporary New Issue Bond Program, or NIBP, was announced.

Mr. Barr said at the time that there would be some form of ceiling on the size of the programs, but did not give any specifics.

Program participants said last week that they do not know the total amount of allocations requested by the HFAs under the program and federal regulators could not be reached for comment.

But one housing source said, "It was apparently quite high," and that "Treasury's going to have to scale back the allocation amounts groups are asking for."

The Treasury Department seems to be seeking the information on peak years of issuance to ensure that the government does not agree to purchase more bonds from an HFA than it has historically issued, sources said.

The federal government is expected to announce allocations for specific HFAs sometime this week, according to program participants.

Housing officials had been saying that the state and local HFA programs would likely need as much as $20 billion in Treasury-financed purchases of their bonds and $15 billion in Treasury-financed liquidity to be effective.

But federal officials have declined to comment on those estimates.

The NIBP is designed to provide a temporary market for new single- and multifamily housing bonds that the HFAs issue to finance new mortgages. Treasury officials estimate the program - which will only be available through Dec. 31 - will support up to several hundred thousand new mortgages and tens of thousands of new rental housing units for working families during the coming year.

Under the program, Treasury will purchase Fannie Mae and Freddie Mac securities backed by new HFA bonds. State and local HFAs were to develop and submit requests, and purchases are to be made, based on the allocation formulas established by the Housing Economic and Recovery Act of 2008. HERA gave the agencies $11 billion of additional authority in which to issue housing bonds.

But some HFAs have had to curtail or shut down their programs because of the financial crisis.

Under the program, HFAs are to pay the government-sponsored enterprises and Treasury an amount intended to cover the cost of financing the new bonds as well as the risk posed by the individual HFA, based on its rating.

Generally speaking, the interest rate on the new bonds will be equal to a short-term Treasury interest rate for the period during which the proceeds are held in reserve before being drawn down by the HFAs to originate mortgages, federal officials said.

Because of the short timeframe in question of the program, Treasury will allow HFAs to issue short-term bonds that can be converted into long-term issues after the end of the year.

The NIBP was announced along with a temporary credit and liquidity program, which will be administered by Fannie and Freddie, and was designed in order to provide replacement credit and liquidity facilities to HFAs for existing single-family and multifamily bonds.

Treasury will backstop the replacement facilities by purchasing a participating interest in the GSE temporary credit and liquidity facilities, using its authority under the HERA.

The program will only apply to bonds issued under previous authority allocated by Congress, federal officials said.

Peter Schroeder is a reporter for The Bond Buyer.

###

Damian Paletta, *U.S. Seeks Power to Force Even Strong Banks to Shrink*, The Wall Street Journal, October 30, 2009.

WASHINGTON -- Treasury Secretary Timothy Geithner said Thursday that his proposal to overhaul banking rules would give the government the ability to order even healthy companies to "shrink and separate" if their size or scope threatened the broader economy.

His comments were the starkest admission yet from the Obama administration that the regulatory revamp working through Congress could lead to a drastic reshaping of financial institutions. That reflects a growing sentiment among some policy makers around the world, who believe the best way to prevent banks from being "too big to fail" is to prevent them from being big in the first place.

The financial crisis has redrawn U.S. banking in the past two years, with several of the country's largest firms collapsing into bankruptcy or into the arms of competitors. The result has been consolidation. J.P. Morgan Chase & Co., Bank of America Corp. and Wells Fargo & Co. controlled a combined 33% of U.S. deposits as of June 30, up from 22% at the end of 2008, according to SNL Financial.

Such market dominance has reinforced a view that some companies will never be allowed to falter, even if rescue comes at great expense to taxpayers, because the broader economic shock would be devastating. Critics also argue that the size disparity allows large companies to borrow money more cheaply and box out competitors.

Mr. Geithner's comments came in response to heated questioning at a House Financial Services Committee hearing from Rep. Paul Kanjorski (D., Pa.), who complained that the focus of proposed new regulations appeared to be on what to do with large financial companies after they collapse -- not on preventing them from becoming so large in the first place.

Mr. Geithner said the government's actions over the past year had created "moral hazard" -- the danger posed by companies' willingness to take large risks knowing they were likely to get government assistance if they stumbled.

He said legislation proposed by House Financial Services Committee Chairman Barney Frank (D., Mass.) and the White House would give the government power over large financial companies "to limit the scope of their activities, to compel them to shrink and separate."

Former Federal Reserve Chairmen Alan Greenspan and Paul Volcker in recent weeks have said the most effective way to stop banks from becoming too big to fail was to limit their size or scope.

White House officials have resisted calling for strict size limits and have focused instead on creating fees and other penalties to discourage banks from growing too complex. Mr. Geithner's comments Thursday, though, show the administration is toward to the idea that the government should have a pre-emptive authority to break up a large company even when it doesn't face imminent collapse.

"You want to have a regulator that can impose standards and require firms to divest or limit activities based on risks to the system, not just based on a narrow preservation of value for the firm," Treasury assistant secretary Michael Barr said in an interview.

The proposed legislation would give the Fed the power to force a firm to sell or transfer assets, or terminate activities, if its size or scope directly or indirectly threatened the financial stability of the U.S. The language goes beyond what regulators are currently able to do, as most of their power to push for change at companies is focused more narrowly on the soundness of the individual institution.

Spokesmen for J.P. Morgan, Bank of America and Wells Fargo declined to comment or didn't return calls seeking comment.

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Ruth Simon, *Strapped Borrowers Head to Court*, The Wall Street Journal, October 24, 2009.

Some struggling homeowners are turning to the courts in a bid to force mortgage servicers to consider them for the Obama administration's foreclosure-rescue program, arguing they are eligible for help but haven't received it.

The suits are the latest sign of difficulties some borrowers are having with the program, which has helped more than 500,000 people begin trial loan modifications since it was announced in February.

The program requires mortgage servicers to screen borrowers for eligibility for modifications before completing a foreclosure. But a growing number of borrowers say this isn't happening, or that their requests for help are improperly rejected by the servicers, which collect loan payments and work with delinquent borrowers.

"People are unbelievably frustrated with the way [the modification program] is working because it is so nontransparent, and because there is such a basic distrust of servicers," said Ira Rheingold, executive director of the National Association of Consumer Advocates, a group of attorneys and consumer advocates who work with homeowners facing foreclosure.

"I am not saying that the program is perfect," said Assistant Treasury Secretary Michael Barr, "but we are doing what we promised to do." He said the administration had already reached its initial goal of getting 500,000 borrowers on trial loan modifications by Nov. 1. He added that servicers have improved their performance under the program, "but they still need to do better."

John Courson, president of the Mortgage Bankers Association, said mortgage-servicing companies have been going through their records and inviting borrowers who qualify for help under the rescue program to contact them about a loan modification. "There are groups of borrowers that will not be offered a trial modification because they are not eligible" for the program, he said.

Statistics aren't available, but attorneys say legal action tied to the rescue program is being taken in states including California, Florida, Ohio and Pennsylvania. A lawsuit seeking class-action status in U.S. District Court in Minnesota wants to halt foreclosures on homeowners eligible for the rescue program until the administration puts in place certain procedural safeguards, such as creating a formal appeals process.

South Carolina Supreme Court Chief Justice Jean Toal in May issued an order requiring that all complaints seeking foreclosure state whether the loan is subject to the rescue program and, if so, why the borrower doesn't have a loan modification.

Victor Jones Jr., who operates a loader for a recycling company, recently asked the Greenville County South Carolina Court of Common Pleas to require Wells Fargo & Co. to consider him for the rescue program before proceeding with a foreclosure. The case is pending. After being contacted by a reporter, Wells Fargo reached out to Mr. Jones and is now attempting to determine what type of loan workout he qualifies for, a company spokesman says.

After months of growing pains, the Obama administration in September said the modification effort was picking up steam. But a critical report issued earlier this month by a congressional panel said there was "evidence that eligible borrowers are being denied incorrectly."

Later this month, the administration will begin requiring mortgage servicers to provide borrowers with more specific information as to why their modification request was denied. It has also ordered the companies to create an appeals process.

Not all ailing borrowers qualify for aid under the program. Some, for instance, can't meet a test used to determine whether a modification will be less costly than foreclosure. Others ignore notices from their mortgage company.

Margery Golant, an attorney in Boca Raton, Fla., has raised the modification issue in roughly 50 foreclosure cases, but has received rulings in only two of them. In one case, a Circuit Court judge in Broward County stayed the foreclosure proceeding by 90 days to provide time for J.P. Morgan

Chase & Co. and the borrower to work out a loan modification. A spokesman for J.P. Morgan said the borrower hadn't responded to previous offers of help.

Sometimes the legal maneuver doesn't win in court but is enough to get the servicer's attention. In August, Marvin Walker, a disabled former corrections officer, asked the Court of Common Pleas in Philadelphia County to set aside the foreclosure sale of his home and require his mortgage company, Saxon Mortgage Services, to consider a loan modification. In September, the court denied his request.

But while the case was pending, Saxon, a unit of Morgan Stanley, agreed to put him on a trial modification, said his attorney, Elizabeth Goodell of Community Legal Services of Philadelphia. "Now I can afford this," said Mr. Walker, whose monthly payment dropped by nearly 50% to $787. Mr. Walker said he didn't contact Saxon earlier because he thought his attorney at the time was negotiating with it.

A Morgan Stanley spokeswoman said it wrote all borrowers facing foreclosure in May about modifications.

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Juliana Gruenwald, *Judiciary Members Skeptical of Resolution Authority Plan*, National Journal's CongressDaily, October 23, 2009.

House Judiciary ChairmanJohn Conyersand other members of his panel voiced strong reservations Thursday about the Obama administration's proposal to create a new process to restructure, sell or liquidate troubled institutions seen as "too big to fail."

During a hearing before the Commercial and Administrative Law Subcommittee, officials from the Treasury Department and Federal Deposit Insurance Corp. defended the administration's call for "resolution authority" to deal with the potential failure of those nonbank financial institutions that could threaten the nation's financial stability.

The issue of how to deal with "too big to fail" institutions has emerged with the federal government's rescue of some major firms, most notably the insurance giant American International Group, and the bankruptcy last fall of Lehman Brothers, which the Bush administration declined to assist.

The "resolution authority we have proposed allows the government to impose losses on shareholders and creditors without exposing the system to a sudden, disorderly failure that puts everyone else at risk," Assistant Treasury Secretary Michael Barr said. He said such authority would be used in very limited circumstances and be based on the process used by the FDIC for dealing with failed banks. It would be administered by the FDIC.

Such institutions would be required to set up "living wills," laying out a resolution strategy in the event of their demise and to maintain large capital buffers. At the same time, such institutions would be subject to greater oversight and regulation, Barr said.

"We must end the perception that any firm is too big to fail," Barr said, adding that the administration's proposal would provide incentives for such firms to shrink and absorb their own losses without putting everyone else at risk.

But Conyers and other lawmakers questioned whether an FDIC-like resolution authority process for large nonbanks is preferable to the bankruptcy system. In particular, Conyers raised concerns that some of the protections provided under bankruptcy laws for union contracts and antitrust safeguards would not be provided under resolution authority.

"We're concerned about whether or not we would be dismantling many of the bankruptcy code protections that apply to nonbank financial institutions," he said.

Commercial and Administrative Law Subcommittee ranking memberTrent Franks, R-Ariz., added that he had yet to hear "any clear advantages over bankruptcy."

Harvey Miller, Lehman's lead bankruptcy attorney, argued that with some changes, bankruptcy laws could adequately handle the failure of even the biggest financial firms while providing for greater transparency and due process than resolution authority.

But Barr argued that Lehman's bankruptcy was "horrible for the system" and showed bankruptcy is not adequate to deal with the failure of such institutions and prevent them from destabilizing the financial system. He said the bankruptcy system is designed to protect creditors, while resolution authority would be more broadly focused on protecting the economy and taxpayers.

Resolution authority would allow regulators to act quickly and decisively when it comes to changing a firm's management, financing liquidity functions and reducing the risk to the financial system, Barr said. FDIC special policy adviser Michael Krimminger noted that some of the actions taken under resolution authority would be examined by the Justice Department to ensure they do not violate antitrust laws.

Commercial and Administrative Law Subcommittee Chairman Steve Cohen, D-Tenn., did not dismiss the administration's proposal but said it would be important to establish a standard for determining which firms would be subject to such a process.

"A resolution mechanism independent of bankruptcy, if carefully crafted to avoid the creation of moral hazard and with sufficient elements of transparency and due process, might be an effective way to save a systemically important institution while also creating a means for orderly wind-down should that be necessary," Cohen said.

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Bill McConnell, *Resolution power hits roadblock*, Daily Deal, October 22, 2009.

The Obama administration's plan to grant regulators new authority to seize and break up failing nonbank financial firms ran into strong bipartisan resistance Thursday from the House Judiciary Committee.

Democratic and Republican leaders of the panel questioned whether traditional bankruptcy law, with some enhancement for addressing issues raised by the failures of financial conglomerates, would be preferable to granting federal banking regulators broad new powers and the authority to commit unlimited amounts of taxpayer dollars to covering the obligations of seized firms.

"We are concerned that we would be dismantling a lot of the bankruptcy protections for creditors that would apply to nonbank financial institutions," said House Judiciary Committee Chairman John Conyers, D-Mich. He also worried that antitrust protections could be overridden. Conyers made his comments at a hearing of the judiciary panel's subcommittee on commercial and administrative law.

"I don't know how we can possibly trust government, the bureaucratic aspect of government, without having it blow up in our faces," said Rep. Trent Franks of Arizona, the subcommittee's ranking Republican. Franks insisted that the prospect of government intervention will encourage continued risk taking among the systemically important firms covered by the plan and that the government will never have enough examiners to stem those risks.

The White House is proposing the resolution authority as a way to prevent the chaotic collapses of Wall Street firms that marked the beginning of last year's financial panic. The ad hoc approaches to dealing with failing and troubled firms such as Bear Stearns Cos., Lehman Brothers Holdings Inc. and American International Group Inc. exposed taxpayers to trillions of dollars in commitments to bolster the financial system. A resolution authority would allow the government to intervene in a predictable way to seize failing nonbank firms and would be similar to the approach used by the Federal Deposit Insurance Corp. to take over a failed commercial bank. The process would allow the government to sort through counterparty financial dealings and unwind those positions in an orderly way, stem systemic threats to other financial institutions and ensure that consumer and other contracts are maintained until they can be sold to another institution.

Officials from the Treasury Department and the FDIC defended the White House proposal, although they stressed that the resolution power would be used sparingly and only when bankruptcy was not an option. "Bankruptcy is and will remain the primary method of resolving a non-bank financial firm," said Treasury Assistant Secretary Michael Barr. "But as Lehman's collapse has showed quite starkly ... there are times when the existing options under the Bankruptcy Code are simply not adequate to deal with the insolvency of large financial institutions in times of severe crisis."

Barr stressed that bankruptcy would be supplanted in only "the rarest circumstances," but cautioned that the bankruptcy code is too narrowly focused to address threats to the financial system posed by the failure of huge institutions. "The express purpose of the bankruptcy code is to reorganize or liquidate a failing firm 'for the benefit of its creditors,'" he noted. "Our proposed resolution regime is structured to manage the failure of a financial firm in a manner that protects taxpayers and the broader economy and promotes stability in the financial system."

Michael Krimminger, FDIC special adviser for policy, endorsed the main tenets of the White House plan. Bankruptcy does not give regulators the power to shut down a failing institution quickly enough to prevent problems from spreading to other institutions and leaves contracts and counterparty arrangements in limbo for too long. "Bankruptcy can create dangerous uncertainty about the resolution of a systemically significant financial firm because the process entails negotiated solutions that, as in the Lehman bankruptcy, may leave hundreds of thousands of contracts unresolved for months," he said.

Under the plan envisioned by the White House, which will release a detailed draft of proposed legislation in the next week or two, the FDIC would be the designated receiver of nonbank financial institutions, which would require a major expansion of the agency's responsibilities and expertise.

Because of its experience with commercial banks, "the FDIC is the natural place for the receivership function, although there may be cause for the [Securities and Exchange Commission] to be involved with respect to broker dealers," Krimminger said.

To ensure that the resolution regime is used sparingly, Barr said several steps would have to be taken for the authority to be exercised. First, the Federal Reserve and either the FDIC or the SEC must determine that a financial company is in default or in danger of default and that failure would inflict serious adverse effects on financial stability. The agencies' findings must be agreed to by a two-thirds vote of their boards or commissioners. The findings then must be accepted by the secretary of the Treasury in consultation with the president,

As for creditor rights, Barr said the priority system contained in the legislation will be generally modeled after those contained in the Federal Deposit Insurance Act and under the Bankruptcy Code, with one exception. Claims of the United States would be given priority over other stakeholders to protect the interests of taxpayers and to ensure that unsecured creditors and shareholders are exposed to the risks their firms incur.

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Ronals D. Orol, *Treasury wants more power over banks*, Market Watch, October 22, 2009 3:43 PM ET.

WASHINGTON (MarketWatch) -- Congress must allow bank regulators to swiftly replace the board and management of an insolvent megabank as part of an effort to limit collateral damage to markets of a Lehman-style collapse, a Treasury official said Thursday.

"This would end the firm -- wind it down -- without contributing to systemwide failure," Michael Barr, the assistant Treasury secretary for financial institutions, told the House Judiciary Committee, which has jurisdiction over bankruptcy legislation.

Barr provided additional details about the kind of legislation the White House is seeking from Congress. The proposal will be reviewed by other committees, including the House Financial Services Committee, which has principal jurisdiction in the area.

The move comes in response to the financial crisis and major taxpayer-fueled cash injections that the Treasury has provided to large financial institutions. The infusions included $190 billion for American International Group Inc. (AIG) to avoid the damage its collapse would have imposed on the financial system.

Regulatory reformers in Washington are seeking to avoid a repeat of the drawn-out bankruptcy process for Lehman Brothers, where derivative traders were permitted to quickly withdraw investments, leading to a cascade of defaults. Lehman filed for Chapter 11 bankruptcy protection in September 2008. The resolution process under consideration on Capital Hill would replace Chapter 11 bankruptcy or liquidation for a large insolvent financial institution.

The Financial Services Committee is scheduled consider legislation during the week of Nov. 2 that would replace the traditional bankruptcy process with a new regulatory "unwinding mechanism" for a mega-institution whose collapse otherwise would ricochet through the markets. The Senate Banking Committee is scheduled to consider similar legislation later this fall or early next year.

Barr is seeking a mechanism to allow bank regulators to quickly replace the board and senior management of an insolvent megabank with new managers selected by the Federal Deposit Insurance Corp.

The Treasury also wants bank regulators to have the authority to temporarily prohibit an institution's counterparties from liquidating their positions while regulators oversee its dismantling.

Barr added that the mechanism should establish a system of secured financing to fund "liquidity and capital" needs while bank regulators oversee the dismantling or orderly sale of the firm.

Barr didn't provide additional details about the origin of a financing mechanism. The Treasury has previously suggested that taxpayers would originally fund the dismantling of the firm, a process that would be followed up by fees on financial institutions to offset those costs. Lawmakers may consider up-front collection of fees from banks to create a fund for the financing.

Barr also argued that the system should allow bank regulators to create a bridge holding company that would preserve the business franchise, deal with counterparty claims from derivatives investors and protect healthy divisions and assets so they can be marketed and sold separately.

Dwight Smith, a partner at Alston & Bird LLP in Washington, said it was unclear what rights traditional bondholders would have if an institution the proposal becomes law and an institution is dismantled using the new authority. He said there will likely need to be changes in bankruptcy law to facilitate it.

"In a traditional bankruptcy, creditors have all the rights to force an institution into bankruptcy," said Smith. "If I'm a regular bondholder and it looks like I'm not going to be paid, do I still have rights under the bankruptcy code? Based on what it sounds like, the answer is no."

###

Nick Timiraos and Jessica Holzer, *More Housing Aid is on the Way*, The Wall Street Journal, October 20, 2009.

The Obama administration unveiled steps to help state and local housing-finance agencies provide mortgages and rental housing to thousands of low- and moderate-income families, underscoring the expansive role the government has taken to stabilize the U.S. housing market.

State and local housing-finance agencies, or HFAs, play a modest role in the housing market but represent one of the few sources of mortgages for many first-time and low-income home buyers. The federal aid is designed to revive HFAs' lending by shoring up their financing. State agencies sharply curtailed their lending after the credit crunch deepened one year ago.

Tax-exempt bond issuance by HFAs has fallen to $4 billion in 2009 from $10 billion last year and $16 billion in 2007, according to the National Council of State Housing Agencies.

"This initiative is crucial to helping working families maintain access to affordable rental housing and homeownership in tough economic times," Treasury Secretary Timothy Geithner said.

Under the program, the Treasury Department will purchase securities from Fannie Mae and Freddie Mac that are backed by state and local housing-agency bonds. Before using the proceeds of new bonds under that program, the HFAs will have to sell a portion of new debt to private investors in an effort to attract private capital to the market.

Housing agencies were slammed by a host of market forces a year ago, when the pool of investors who could take advantage of tax-exempt securities shrank and interest rates rose on municipal securities. Administration efforts to lower mortgage rates through government purchases of mortgage-backed securities have also competed against state agencies, making it harder for them to offer attractive financing.

The Treasury program will also allow Fannie and Freddie to offer temporary funding mechanisms designed to lower the costs associated with short-term debt that states increasingly issued in recent years to fund long-term mortgages. Around 38 HFAs have some $30 billion in variable-rate debt outstanding.

Some HFAs began a painful deleveraging process after that funding mechanism -- intended to increase the agencies' lending ability -- backfired. Some state housing agencies, including those in California and Wisconsin, have largely stopped making new loans.

The Treasury said it hadn't yet determined the scale of either initiative and wouldn't provide a dollar amount. Officials said the program would be funded by fees paid by the HFAs, in order to avoid any taxpayer subsidy. "We thought this was an appropriate and confined area in which we should take action," said Michael Barr, an assistant treasury secretary.

HFAs finance the development of affordable rental housing and offer a range of programs to first-time home buyers, including counseling for borrowers that begins before they buy a home and assistance programs that lend down payments and closing costs to borrowers. Loans from HFAs require full documentation of incomes, and have performed better than subprime loans.

"One of the unfortunate takeaways from the subprime crisis is that working people can't sustain homeownership. They can, if it's done right," said Barbara Thompson, executive director of the National Council of State Housing Agencies, a trade group that represents state HFAs.

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Andrew Ackerman and Lynn Hume, *State & Local Finance: Obama Aims to Help HFAs; Liquidity Purchase Program* Unveiled, The Bond Buyer, October 20, 2010.

WASHINGTON -The Obama administration yesterday unveiled a long-awaited temporary bond purchase and liquidity program designed to help state and local housing finance agencies that have been forced to curtail or shut down their programs during the financial crisis.

Officials from the Treasury Department, the Department of Housing and Urban Development, and the Federal Housing Finance Agency made the announcement in a conference call with reporters, but refused to quantify the programs, saying only that they will be sized to "meet demand."

"We felt it is important to build estimates for the program from the ground up," Treasury assistant secretary for financial institutions Michael Barr told reporters. Barr said that there will be some formof ceiling on the size of the programs, but refused to give any estimates of them.

But housing officials said that to be effective, the programs willlikely need to result in as much as $20 billion in purchases and $15billion in Treasury-financed liquidity.

Barr stressed that the two programs will be paid for by state and local HFAs, through fees, and not taxpayers. Asked who would be on the hook for losses, Barr said, "The HFAs are in the first loss position," followed by the Treasury and then the Fannie Mae or Freddie Mac.

The programs, which stem from a speech President Obama gave in February in which he promised to help state HFAs with their liquidity problems, comes as state HFA bond issuance has fallen to only about $4 billion, one-quarter of what it has been in the past, according to Susan Dewey, president of the National Council of State Housing Agencies and executive director of the Virginia Housing Development Authority. The housing market collapsed amid the financial crisis and has struggled to revive as banks, mutual funds, insurance companies, and other traditional investors have held off or limited purchases of tax-exempt housing bonds.

Some housing sources said that HFAs also have been unable to borrow at rates to make their programs work because the Federal Reserve and Treasury are buying GSE securities in a manner that has driven downoverall rates. They are so low that HFAs no longer offer an attractive product, though they previously were able to offer mortgages up to100 basis points below prevailing commercial rates.

HFAs that issued variable-rate demand obligations have been especially hurt because the financial institutions they relied upon to remarket the debt and serve as buyers of last resort have either withdrawn from the market, been downgraded by credit rating agencies, or are charging excessive fees and imposing unfavorable terms on issuers, housing experts said.

Some VRDOs unable to be remarketed by the HFAs have become bank bonds, which HFAs must pay off under aggressive amortization schedules.A May 2009 survey by the National Council of State Housing Agencies found that 37 HFAs had $23 billion of VRDOs outstanding, with nine holding more than $2 billion of bank bonds.

Dewey told reporters that the temporary liquidity program would benefit more than 30 states, including California, Colorado, Florida, Pennsylvania, Wisconsin, and Vermont.

More broadly, she said, both programs would allow HFA to continue to offer below-market financing for first-time homebuyers "and we areready and well-positioned to immediately begin implementing these critical programs."

John Murphy, executive director of the National Association of Local Housing Finance Agencies, said that the programs reflect "a true partnership" between federal, state, and local officials "to respond to a pressing need." NALHFA is delighted and anxious to see more details, he said.

The administration's temporary new-issue bond program, or NIBP, will provide temporary financing for HFAs to issue new single and multifamily housing bonds to fund new mortgages. Treasury estimates the program will support up to several hundred thousand new mortgages and tens of thousands of new rental housing units for working families during the coming year.

Under the program, Treasury will purchase Fannie Mae and Freddie Mac securities backed by these new housing bonds. State and local housing HFAs must develop and submit requests and purchases will be made based on the allocation formulas established by the Housing Economic and Recovery Act of 2008.

HFAs will pay the GSEs and Treasury an amount intended to cover the cost of financing the new bonds as well as the risk posed by the individual HFA, based on its rating. Generally speaking, the interest rate on the new bonds will be equal to a short-term Treasury interest rate for the period during which the proceeds are held in reserve before being drawn down by the HFAs to originate mortgages, federal officials said.

Because of the short time frame of the program, Treasury will allow HFAs to issue short-term bonds that can be converted into long-termissues after the end of the year. The short-term proceeds can be placed in escrow until used by the HFAs to fund new mortgages in 2010. Before an HFA can use the proceeds, it will be required to sell to theprivate market shorter-term bonds in a ratio equal to 40% of aggregate bond proceeds, with the other 60% of bonds to be purchased throughthe NIBP.

Seth Wheeler, a senior adviser to Treasury Secretary Tim Geithner,said Treasury, HUD, and the GSEs are still working on the program with the HFAs and the administration probably will not be able to purchase HFA bonds under the program until at least next month.

The temporary credit and liquidity program, or TCLP, which will beadministered by Fannie Mae and Freddie Mac, will provide replacementcredit and liquidity facilities to HFAs for existing single-family and multifamily bonds. The Treasury will backstop the replacement facilities by purchasing a participating interest in the GSE temporary credit and liquidity facilities, using authority it was granted under the HERA. The program will only apply to bonds issued under previous authority allocated by Congress, federal officials said.

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Alan Zibel, *Government unveils local mortgage aid*, The Associated Press, October 20, 2009.

WASHINGTON - The Obama administration yesterday unveiled a program to support state and local housing finance agencies.

The plan will help the agencies finance mortgages for first-time homebuyers and develop rental housing.

The agencies have had a hard time raising money because of the housing crisis and credit crunch.

This year, the agencies have sold about $4 billion in tax-exempt bonds - one-fourth the amount in a typical year.

That reduction is limiting the number of loans they can make.

The new program uses mortgage finance companies Fannie Mae and Freddie Mac to help fix the financing crunch.

The two companies will package mortgages made by the housing agencies and sell them as bonds to the Treasury Department.

``It's an additional layer of assistance to borrowers who are seeking a mortgage at a time when credit is scarce,'' said Howard Glaser, a mortgage industry consultant in Washington. ``It doesn't solve all the problems of the housing market, but every little bit helps.''

Officials declined to place a dollar value on the size of the bond program, saying it will be based on demand.

Fannie and Freddie also will help provide short-term financing for the housing finance agencies, with backing from the Treasury.

State and local finance housing finance agencies have pressed for federal help for months.

Treasury Department officials said any losses from loan defaults will be entirely covered by fees paid by the state agencies.

``The expected cost to the federal government is zero,'' said Michael Barr, an assistant treasury secretary.

The agencies play a relatively small role in the mortgage market, aiding about 100,000 to 200,000 first-time borrowers a year.

###

Jared Allen and Silla Brush, *Blue Dogs quiet on financial regulatory system overhaul*, The Hill, October 20, 2009.

Blue Dog Democrats have been largely silent on financial regulatory reform as House leaders advance one of President Barack Obama's highest priorities. The House Financial Services Committee this week will continue to mark up legislation overhauling the financial system as House leaders hope to hold a floor vote as early as mid-November. After passing legislation last week restricting the multitrillion-dollar market for financial derivatives, committee lawmakers are now debating a controversial new Consumer Financial Protection Agency (CFPA). Yet the 52-member group of Blue Dog Democrats, not known for its silence, has barely whimpered. The silence is notable given that the centrist bloc has weighed in significantly on healthcare, climate change and other domestic priorities this year, using its numbers to reshape much of that legislation.

Blue Dog Co-Chairman Baron Hill (D-Ind.) said last week the group has barely paid attention to financial reform. "We had a little discussion about it on Tuesday," Hill said. "It's been completely swallowed by healthcare." Rep. Walt Minnick (D-Idaho), a freshman Blue Dog, has criticized setting up an entire new regulatory agency over consumer financial protection. But Minnick does not speak for the entire group, and some Blue Dogs are working with more liberal members to tweak, not scuttle, the new agency. Blue Dog Rep. Dennis Moore (D-Kan.) and Rep. Brad Miller (N.C.), a more liberal Democrat, spearheaded an amendment to lift the agency's burden on small community banks and credit unions. The amendment would leave existing federal regulators with examination and enforcement powers over banks with less than $10 billion in assets and credit unions with less than $1.5 billion in assets. The effort would leave the new agency with the full breadth of the proposed powers over roughly 115 banks and 80 credit unions, Miller said. That effort was viewed as a major amendment to the agency and could mollify some of the concerns from the powerful community bank and credit union lobbies. "We strongly support the amendment," said Steve Verdier, senior vice president at the Independent Community Bankers of America (ICBA). "It's a big step forward." Bank and credit union lobbyists are continuing to press lawmakers to alter other provisions in the bill, including to limit the agency's power to set rules and regulations. Dan Berger, executive vice president at the National Association of Federal Credit Unions (NAFCU), said it was "a step in the right direction," but that the association would like to a see a "full exemption from this costly and unnecessary regulatory burden." The Credit Union National Association said it remained opposed, even with the amendment adopted. Moore himself admitted that financial reform has not registered with Blue Dogs as a group. "Some individuals are [concerned], but not as a group," he told The Hill. "This is kind of very specific, as you know, and there is not everybody that has working knowledge of all this right now." House Agriculture Committee Chairman Collin Peterson (D-Minn.) has been working on legislation restricting financial derivatives. Peterson is a senior Blue Dog, but his focus is also largely due to his committee retaining oversight of the Commodity Futures Trading Commission (CFTC), one of the federal agencies central to the derivatives legislation. The Agriculture Committee will mark up a derivatives bill on Wednesday. The policy disconnect also may stem from the fact that Blue Dogs are heavily represented on the Energy and Commerce Committee - which did most of the work on climate change and was the only committee not to see its portion of the healthcare bill sail through without interruption. At the same time, Blue Dogs have scant representation on the Financial Services Committee. Instead, the New Democrats, a separate group of centrist Democrats, have led the charge on major changes to legislation in the Financial Services Committee. They have worked closely behind the scenes and with amendments on the measures regulating derivatives and consumer financial products. The New Democrats are working now to balance the scope of federal and state powers under the new agency. The Obama administration, House Financial Services Committee Chairman Barney Frank (D-Mass.) and other liberal Democrats are in favor of allowing state and local officials to pursue additional or stronger regulations. Centrist Democrats and the financial industry support allowing federal officials to pre-empt state officials. "An important principle involved here is that Washington doesn't always know best," said Michael Barr, assistant Treasury secretary, "that sometime states set standards for their citizens that should be higher, can be higher than the federal standard. It's absolutely critical that we have a high national standard that operates around the country and that that is a floor, not a ceiling, on state activity." Still, despite the group's low profile on the issue, recent polling indicates that voters in Blue Dog districts are in strong support of financial reform. More than two-thirds of voters in Blue Dog districts back the creation of the new consumer regulatory agency, according to a poll conducted by Lake Research Partners. Those polled also favored new regulations for the derivatives market by a margin of more than 40 percentage points. And Democratic aides said that the Blue Dogs may very well weigh in, perhaps substantively, when financial reform comes to the floor.

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Victorial McGrane, *Frank gets moderates to relent*, Politico, October 20, 2009 4:45 AM.

Moderate Democrats - always courted and often feared in big roll call votes in the House - have backed down from a key fight over financial reform.

House Financial Services Committee Chairman Barney Frank (D-Mass.) has persuaded a bloc of moderates to withdraw an amendment that would have watered down a consumer protection agency bill and shield banks from tougher state laws.

Rep. Melissa Bean (D-Ill.) agreed to pull her amendment with a promise that Frank would continue to work with her to change the bill, though when that change would be made remains uncertain. This amendment, which would have allowed potentially softer federal financial rules to pre-empt individual state laws for banks, was a priority for moderates and the financial industry but was vociferously opposed by consumer advocates and liberals.

In backing down during this week's committee markup, moderates are giving Frank the power to craft a consumer financial protection agency bill that would grant the federal government a much stronger hand in cracking down on banks.

This concession by moderates - even if it's temporary - is the latest move by centrist Democrats to back down in the face of pressure from their more liberal leaders and chairmen. Moderates relented earlier this year on a much stronger cap-and-trade energy bill, and the centrists in the House are looking more and more like they'll have to deal with a public insurance option on health care.

Frank's panel is expected to add back a lesser degree of federal pre-emption to the bill, but it's not nearly as big of a change as Bean was seeking.

On the financial reform bill, Bean's decision to withdraw her amendment is a major loss for big banks and financial institutions, which are getting spanked hard by the House on financial reforms. Last week, big banks lost key battles on derivatives legislation and watched helplessly while community banks won exemption from CFPA's enforcement, at the expense of larger financial institutions.

The big banks have focused much of their lobbying against the CFPA on preserving this so-called federal pre-emption of state consumer laws that they currently enjoy.

Bean's amendment - which observers say had the votes to pass Frank's committee - was "one of the only hopes that we have right now on this issue" in the House, as one Democratic lobbyist for the financial industry said.

"It's not been a good couple months for the large banks; this is a continuation of that story," said Brian Gardner, a bank analyst with Keefe, Bruyette & Woods.

But financial industry officials are grumbling that some of the blame rests with the moderate House Democrats who say they're for pro-business policies but don't seem to be able to deliver on those principles. Bean and the five co-sponsors of her amendment are all members of the centrist New Democrat coalition, a group that has 15 members on the Financial Services Committee and has worked to position itself as a major force on the financial reform legislation in the House.

But some financial officials question the wisdom of not forcing more issues in committee, arguing that it's much harder to secure legislative changes on the House floor. One Democratic lobbyist said that New Democrats' ability to force real change to the CFPA and derivatives bill on the floor will be "do or die for the New Dems as a force in the House."

"This is the just the beginning of the legislative process. Industry should buckle down and deal with their own public relations crisis instead of trying to deflect it on to the New Dems," a senior aide to a New Dem leadership member shot back.

Frank was worried that Bean's amendment could sink the bill, Hill and K Street sources say. Republicans on the committee had publicly announced their plans to support the Bean amendment, guaranteeing its passage, but have no plans to support the underlying bill. But several liberal members of the panel vowed to oppose the final bill if it contained the Bean language, and Frank worried that these complications could derail the whole bill.

Frank asked Bean for help in moving the bill out of committee by delaying the debate on pre-emption until after the committee vote, and Bean did not want to let "Republican gamesmanship" kill the underlying bill, said the Democratic aide.

With Bean relenting, the bill that emerges from committee will be much more aggressive, giving states with much tougher consumer protection laws more power to scrutinize banks.

"If this gets painted as a very strong bill that comes out, then they've got a lot of maneuverability to pull back from that," said Mark Calabria, director of financial regulation studies at The Cato Institute and a former Hill banking staffer. "The last thing that [Frank] wants is for this to be painted as a bill that gives everything away to the banks."

Frank is also girding for eventual negotiations with the Senate, which most believe will produce a much more conservative package of financial reforms than the Obama administration has proposed.

The White House and Treasury have argued vocally against Bean's proposal for making federal powers trump state powers on bank regulations.

"Washington doesn't always know best," Assistant Treasury Secretary Michael Barr told reporters last week. "It's absolutely critical that we have a high national standard that ... is a floor, not a ceiling on state activity."

###

Benyamin Appelbaum, *Big financial firms losing power on Capitol Hill; House panel to vote on subjecting national banks to state rules*, The Washington Post, October 19, 2010.

Large banks are on the verge of losing a key legislative battle over the shape of financial reform, an unusual setback that reflects the continued political backlash over their role in creating the financial crisis.

The House Financial Services Committee is expected to vote Tuesday to let state governments protect bank customers by imposing restrictions that go beyond existing federal laws, according to congressional and industry sources.

The move would roll back a doctrine called preemption that has allowed big banks to answer solely to federal regulators. The banks argue that operating under a single set of rules is more efficient and results in lower prices for customers. But the Obama administration, which is pushing for the change, regards preemption as a cause of the crisis because it prevented state regulators from quashing obvious abuses.

The change essentially would unleash 50 additional regulators on the largest banks.

Large banks have fought bitterly against the proposal, which they regard as one of the most problematic components of the administration's financial reform plan, but they have been unable to sway House Democrats.

By contrast, the committee last week granted a major concession to smaller, community banks, agreeing that they would not be directly supervised by a new federal agency devoted to protecting consumers of financial products.

"The big banks don't have much political power, and the big banks are the ones that care about preemption because they operate in so many states," said Rep. Barney Frank (D-Mass.), the committee chairman. "The community banks were worried about examinations, and that's why we compromised, appropriately, on the examinations. They have political clout. . . . They're respected members of the community in everybody's district."

The Obama administration has proposed eliminating the ability of federal regulators to override state laws, but Frank said he supported a compromise under which federal regulators would retain a limited amount of override authority.

The version approved by the committee also is likely to pass the House, but it faces an uncertain future in the Senate, where financial lobbyists regard some moderate Democrats as more sympathetic to their concerns.

A bit of background

The federal government started chartering and regulating banks during the Civil War. These national banks were subject to state laws unless they got an exemption from the federal regulator, the Office of the Comptroller of the Currency. Beginning in the 1980s, as the government allowed national banks to expand across state lines, the banks started pressing the government for exemptions more often.

The point of expansion was efficiency, which was supposed to result in lower prices for customers.

The rise of federal preemption was gradual. In 1999, the OCC said national banks did not need to comply with a California law limiting the fees banks could charge for ATM withdrawals. In 2000, it lifted a Rhode Island law limiting changes in the interest rates on credit cards. In 2002, it overrode a Texas law that barred banks from charging check-cashing fees. Finally, in 2004, the OCC issued a blanket exemption, asserting sole authority to police national banks. That stance has since been upheld by federal courts.

John C. Dugan, the head of the OCC, has defended the value of the current policy for banks and consumers. He noted in a recent speech that without preemption, a bank operating in the Washington area could be required to disclose different information to borrowers in Maryland, Virginia and the District, complicating even the simple task of advertising.

"Consumers benefit from an efficient financial services system where you can operate under uniform rules wherever you go," Dugan said in an interview Friday. "It's important to have strong rules to protect consumers, but what we don't need is 50 different rules."

A divisive issue

But the policy has come under fierce attack from state regulators and consumer advocates. They noted that in many cases, federal regulators failed to impose comparable restrictions on national banks after clearing away the state laws. And they charged that during the financial boom, the OCC and other federal regulators failed to police mortgage lending abuses even when state regulators offered specific warnings.

The question of what should be done about that failure has divided Democrats.

A group of moderates organized as "new Democrats," led by Rep. Melissa Bean (D.-Ill.), argued that the idea of preemption was sound and that the single national standard benefited consumers. Problems had arisen because regulators were too lax, they said, but the appropriate solution was the creation of a strong new federal agency, not a rollback of preemption.

The Obama administration and state regulators, however, argued that the best solution to insufficient regulation is to empower more regulators. The administration proposed that the new agency would set a minimum standard, ensuring that residents of every state enjoyed basic protections, but allowing states the ability to go further.

"Washington doesn't always know what's best," Michael Barr, an assistant secretary in the Treasury Department, said on a conference call Thursday. He said the administration wanted to restore the right of states "to protect their citizens with the rules that they think make sense."

The debate came to a head last week. Bean's group said it would propose an amendment to retain the current law. Liberals warned that if the amendment drew enough Republican support to pass, they would oppose the broader legislation to create the new agency. House leaders and the White House pressured Bean and the moderates to fall in line.

Despite tremendous pressure from the banking industry, Bean ultimately agreed.

In a piece of political theater, Bean now plans to introduce the amendment and then to withdraw it, according to people familiar with the matter. She then plans to engage in a scripted conversation with Frank, in which both are to affirm the importance of further discussions about the issue. Bean can then reintroduce the amendment once the bill comes before the full House, but lobbyists on both sides say they regard the battle as over.

###

Anne Flaherty and Jim Kuhnenn, *House panel votes to regulate derivatives*, The Associated Press, October 16, 2010.

WASHINGTON - A House panel voted yesterday to regulate for the first time privately traded derivatives, the kind of exotic financial instruments that helped bring down Lehman Brothers and nearly toppled American International Group.

The 43-to-26 vote by the House Financial Services Committee was a first major step for President Obama's plans to overhaul federal regulations governing financial institutions.

The mostly party-line vote showed Democrats were prepared to override objections by Republicans and the financial lobby and demand increased oversight of Wall Street.

No Democrat on the panel opposed the measure. One Republican, North Carolina Representative Walter Jones, sided with them to approve it.

Next week, the panel is expected to approve another big piece of Obama regulatory plan that would create a federal agency dedicated to protecting financial consumers. Both measures would still face scrutiny by the full House, as well as the Senate, where business-minded Republicans are likely to wield more influence.

But for now, the administration is hailing yesterday's vote as a critical step toward throwing sunlight on an opaque and growing $600 trillion global market.

The bill ``is absolutely essential to preserving a strong marketplace, preserving transparency, [and] getting incentives right in the system," said Michael Barr, Treasury's assistant secretary for financial institutions.

AIG sold a form of derivatives, called credit-default swaps, to investors who were looking to protect themselves against losses in the housing market. When home defaults rose, AIG did not have enough resources to make good on all of its promises and required a hefty government bailout to avoid folding.

The government was caught off guard because regulators weren't monitoring the contracts and could only guess at the size of the derivatives market.

Under the bill, AIG would have to conduct those transactions on a monitored exchange and prove to regulators that it had sufficient reserves.

Democrats included an exemption for companies that use derivatives to protect against risk. The exemption was intended to distinguish between AIG and other financial institutions that use derivatives to make money, and manufacturers that rely on them to protect against a spike in fuel prices or fluctuating exchange rates.

Companies could lose that exemption if regulators see a pattern of activity that places other participants in the transactions at risk. Exempt or not, companies would have to report their trades and the prices.

``There will be no more hidden trades where we don't know the price," said Representative Barney Frank, the Massachusetts Democrat who chairs the panel.

Federal regulators have argued for a tougher proposal. Gary Gensler, chairman of the Commodity Futures Trading Commission, wants to work with Congress ``to complete legislation that covers the entire marketplace without exception and to ensure that regulators have appropriate authorities to protect the public."

Before reaching the House floor, the measure would have to be reconciled with a proposal from the House Agriculture Committee.

Republicans said derivative transactions should be disclosed and conducted under great visibility, but they object to trading them in regulated exchanges.

While the derivatives bill is considered more complex, Obama's proposed Consumer Financial Protection Agency faces a tougher political climb. Republicans oppose the measure, and industry groups have lobbied mightily against it. Moderate Democrats say they will support it but have already pushed to scale it back.

Yesterday, the panel ignored the administration's wishes and voted to spare the majority of banks and credit unions from agency examinations. These banks would still have to follow the agency's rules and open their books to other federal regulators monitoring their overall stability.

A remaining sticking point is whether the agency should be allowed to trump state laws.

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Kara Scannell and Damian Paletta, *Regulatory Overhaul Advances as Derivatives Bill Clears Panel*, The Wall Street Journal, October 16, 2009.

WASHINGTON -- The House Financial Services Committee approved a measure that would bring derivatives under the government's regulatory umbrella for the first time, a major step in advancing a broad regulatory overhaul pushed by the Obama administration.

The House committee passed the measure 43-26, with votes along party lines. One Republican, Rep. Walter Jones of North Carolina, voted with the Democratic majority.

Democrats showed a willingness to change parts of the financial-overhaul package to make it more palatable to businesses and financial firms that had opposed certain elements. For example, Democrats agreed to exempt almost all community banks with less than $10 billion in assets from being examined by a new federal agency enforcing consumer protection laws. This addresses community banks' concerns that they would be overwhelmed by too many bank examiners.

The derivatives vote suggests Democrats are happy to push the bills through without Republican support, at least in the House, where their majorities are stronger.

The derivatives bill will bring these complex financial products -- privately negotiated contracts used by financial institutions and companies to hedge interest-rate, commodity and credit risks -- under the responsibility of the Commodity Futures Trading Commission and Securities and Exchange Commission.

Treasury Assistant Secretary Michael Barr called it a "very strong bill," while CFTC Chairman Gary Gensler said it was a "significant step" but "substantive challenges remain."

One main goal is to bring daylight into what has long been a murky world. The near-collapse of insurer American International Group Inc. last year spotlighted the problems caused when regulators and financial markets can't tell who owes what to whom.

The bill draws a distinction between contracts made between financial institutions and those used by companies to hedge fluctuations in their underlying business. Derivatives contracts between financial institutions that are considered standard would have to be channeled through central clearinghouses that guarantee the trades. Those contracts would also have to trade on exchanges or electronic platforms. And dealers would have to put up some of their own capital to make the trades.

Nodding to corporations that heavily lobbied Congress, the bill carves out an exception for companies that use swaps, a kind a derivative, to hedge. They wouldn't have to pass through clearinghouses or trade on exchanges. Regulators also wouldn't be required to set margin requirements for companies that are hedging. Dealers on the other side of the trade would have to set aside capital that is higher than that required for standard, cleared swaps.

The CFTC worries the exception makes some derivatives transactions too hard to trace. The agency is concerned about an amendment from Republican Rep. Judy Biggert of Illinois that would shift authority to set margins for clearinghouses from regulators to exchanges.

An aide to Rep. Barney Frank (D., Mass.) said the amendments would be taken up by the Agriculture Committee, which also has authority in this area and is expected to mark up its own bill Wednesday. Mr. Frank, who is chairman of the House Financial Services Committee, said he hopes a bill could be signed into law by the end of the year.

After the derivatives vote, the debate shifted to a White House plan to create a Consumer Financial Protection Agency, which would write and enforce new rules pertaining to products such as mortgages, credit cards and overdraft fees. Creation of this agency has become a flashpoint between Democrats and Republicans, and both sides immediately faced off during the hearing. The panel could vote on it next week.

Republicans on the panel said the agency would amount to a new government bureaucracy intruding on the financial decisions made by Americans. The banking industry has lobbied aggressively to kill or weaken the agency, and Democrats have agreed to curtail some of its powers.

Lawmakers remain split over whether states should be able to enforce tougher consumer-protection laws against national banks than existing federal standards.

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Damian Paletta, *Treasury's Barr Draws Line in the Sand on States' Authority Over Banks*, The Wall Street Journal's Real Time Economics blog, October 16, 2009 2:37 PM ET.

Treasury Department assistant secretary **Michael Barr**, a key figure in the administration's effort to overhaul financial-market rules, appeared flexible Thursday during a conference call with reporters about several amendments Democrats plan to offer related to the creation of a new **Consumer Financial Protection Agency**. But he drew a line in the sand over potential efforts to weaken a key part of the White House's plan, which would give states the authority to enforce tougher consumer protection rules against national banks.

"We made it absolutely clear that we think an important principle involved here is that Washington doesn't always know best — that sometimes states can set standards for their citizens that should be higher, can be higher than the federal standards," Mr. Barr said. "It's absolutely critical that we have a high national standard that operates around the country and that is a floor not a ceiling on state activity. We have been making our points clear."

Mr. Barr's comments are very significant, because Democrats are split over whether states should be able to have rules trumping federal standards (this is a huge issue for banks, which argue it would be overwhelming to comply with state and federal rules). Treasury officials were believed to be somewhat flexible on this point, but Mr. Barr's comments suggest they are digging in and could influence the debate taking place in the **House Financial Services Committee** over the creation of the new agency.

He also outlined the way the administration would look at any amendments to their proposed Consumer Financial Protection Agency.

"Obviously there are going to be changes with respect to the consumer agency from what the administration proposed. I think the key thing as we move forwards is to preserve the core principals of the agency: that we have an agency that can cover the financial services marketplace with a clear, consumer-focused mission. And the ability to supervise, examine and enforce across the financial services marketplace and the ability for states as appropriate to protect their citizens with the rules they think make sense so that the rules enacted by the CFPA are a floor not a ceiling on state activity. We'll be judging the progress of the bill on the basis of those core principals."

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Dawn Kopecki, *U.S. Derivatives Bill Bans Dealers From Owning Clearinghouses*, Bloomberg News, October 16, 2009 12:00 AM ET.

Oct. 16 (Bloomberg) -- Derivatives legislation approved by a U.S. House panel yesterday would prohibit swaps dealers such as Goldman Sachs Group and JPMorgan Chase & Co. from collectively owning more than 20 percent of a clearinghouse.

"An inherent conflict exists between broker dealers and clearinghouses and exchanges," Representative Stephen Lynch said when he introduced his provision on Oct. 14. "Brokers and dealers should not be able to capture trading and clearing intermediaries."

A clearinghouse, such as CME Group Inc.'s, acts as an intermediary between banks and their customers, guaranteeing trades, requiring margin and collecting collateral. Dozens of broker dealers and large derivatives customers maintain their own clearing facilities, according to a list of clearing firms on CME Group's Web site.

The amendment on clearinghouse ownership is part of a broader bill to rein in the $592 trillion over-the-counter derivatives industry. The legislation, approved 43-26 yesterday by the House Financial Services Committee, would require that the most common, or standardized, OTC derivatives be executed on regulated exchanges or trading platform.

The House Agriculture Committee, which shares jurisdiction over the issue, has scheduled votes Oct. 21 on its derivatives plan.

The amendment on clearinghouses would restrict swap dealers, "major swap participants," and any "person associated with a swap dealer or major swap participant" from collectively controlling more than 20 percent of the voting rights in a facility used to clear derivatives contracts. It also would limit membership on boards of the clearinghouses and establish other rules aimed at limiting conflicts of interest.

Driving Business

"We're in a new situation, we're going to be driving a lot of business to the exchanges," Representative Barney Frank, chairman of the Financial Services Committee, said during debate on the provision. Frank, a Massachusetts Democrat, said the restriction on clearinghouse ownership may lead to more competition and help create more independent exchanges.

JPMorgan owns and runs two clearing platforms, J.P. Morgan Clearing Corp. and J.P. Morgan Futures Inc. Spokesman Justin Perras declined to comment on the House provision.

Goldman Sachs offers clearing services through its broker dealer, Goldman Sachs Execution & Clearing L.P., which also provides brokerage services. Spokesman Ed Canaday declined to comment.

Excluding the companies with the most experience and expertise with derivatives may lead to inefficiency and raise costs, said Cory Strupp, who represents the major broker dealers as managing director of the Securities Industry and Financial Markets Association in Washington.

Dealers 'Know How'

"The problem is that the dealers are the ones who know how to implement these kinds of clearing organizations from a business, risk management and operational point of view," Strupp said in an interview yesterday.

The provision would result in "less liquidity with fewer firms" involved in clearing transactions, said Jiro Okochi, chief executive officer of Reval.com Inc., a risk-management firm in New York, in an interview.

"A lot of the banks have subsidiaries that act as clearing agencies -- Barclays, Goldman Sachs, JPMorgan," he said. "If you exclude the swaps dealers or banks, there will be fewer clearing firms."

Assistant Treasury Secretary Michael Barr backed the clearinghouse restriction offered by Lynch, a Massachusetts Democrat, although the Obama administration's derivatives proposal hadn't included such language.

"The amendment appropriately takes count of the need for openness in the structure of our marketplace and fair and open competition," Barr said on a conference call with reporters yesterday.

ICE Trust

Intercontinental Exchange Inc. in Atlanta owns and runs five clearinghouses, including ICE Trust, which in March acquired a platform wholly owned by broker dealers. Citigroup Inc., JPMorgan, Credit Suisse Group AG, Bank of America Corp. and other large dealers retained a 50 percent profit-sharing agreement with ICE Trust that starts next year.

None of the banks have voting rights in any of Intercontinental's clearinghouses, ICE spokeswoman Sarah Stashak said.

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Shannon D. Harrington and Matthew Leising, *OTC Trading Amendment Won't Cut Risk, May Cost Bank Billions*, Bloomberg News, October 16, 2009 11:38 AM ET.

Oct. 16 (Bloomberg) -- A U.S. House committee's proposal to change how private derivatives are bought and sold won't make the financial system more stable and may shift profits to exchanges from banks, analysts and a former regulator said.

"Exchange trading doesn't reduce systemic risk," said Alexander Yavorsky, a senior analyst at Moody's Investors Service in New York.

Rep. Barney Frank, chairman of the House Financial Services Committee, reversed course with an amendment in a bill passed yesterday by the panel that may move much of the trading in the $592 trillion over-the-counter market to exchanges or regulated systems. His draft had allowed for no change in how the derivatives are traded, as long as transactions are reported to regulators.

Risk is reduced through clearinghouses and reporting transactions, not by trading on exchanges, said Richard Lindsey, a former director of market regulation at the Securities and Exchange Commission. The main effects of the proposal may be to slash profits at banks, including Goldman Sachs Group Inc. and JPMorgan Chase & Co., while boosting revenue at exchanges such as CME Group Inc. and Intercontinental Exchange Inc.

"We're in a new situation; we're going to be driving a lot of business to the exchanges," Frank, a Massachusetts Democrat, said during debate on the provision, which he said may lead to more competition and help create more independent exchanges.

$35 Billion

The top five U.S. commercial banks, including JPMorgan, Goldman Sachs and Bank of America Corp., were on track through the second quarter to earn more than $35 billion this year trading unregulated derivative contracts, according to a review of company filings with the Federal Reserve and people familiar with the banks' income sources.

Derivatives contributed to more than $1.6 trillion in writedowns and losses at the world's biggest banks, brokers and insurers since the start of 2007, according to data compiled by Bloomberg. After American International Group Inc. was forced to come up with $18.5 billion in collateral to cover $62 billion in credit-default swaps trades, the government was forced to rescue the insurer with a bailout that expanded to $182.3 billion.

Trading of private derivatives is now largely performed over the phone between banks, hedge funds, companies and other investors. Regulators who say they want exchange trading to boost transparency in the market have other means, said Lindsey, who now advises hedge funds and institutional investors at New York-based Calcott Group LLC.

'Lucrative Market'

"The transaction reporting is really what gives you transparency, not simply trading on an exchange," he said. The push for exchange trading "is mostly about the exchanges trying to capture what they view as a lucrative market."

Market owners Intercontinental Exchange, CME Group, LCH.Clearnet Ltd. and Eurex have all offered plans in which their clearinghouses guarantee swaps. The firms are only backing the trades through their clearinghouses and haven't executed any transactions on their exchanges.

Banks benefit when clients don't know the value of transactions they buy. The worst scenario for their profits would be for the trades to be bought and sold on exchanges, said Richard Repetto, an analyst with Sandler O'Neill & Partners LP in New York.

"The big spreads they made are going to go away because the more transparent pricing makes spreads narrow," he said. Dealers "will still make some money but nowhere near what they did before."

JPMorgan spokesman Justin Perras and Goldman Sachs spokesman Michael DuVally declined to comment. CME Group spokesman Allan Schoenberg and Intercontinental Exchange spokeswoman Sarah Stashak declined to comment.

Swap Execution Facilities

The bill also gives the option of trading on so-called swap execution facilities, systems that would have to register with the CFTC or SEC and meet reporting and monitoring criteria.

Potential beneficiaries of the swap execution facility designation include TradeWeb, a bond and derivative trading network owned by Thomson Reuters Corp. and 10 dealers; MarketAxess Holdings Inc., an electronic trading system for U.S. and European fixed-income securities; and Blackbird Holdings Inc., an electronic trading system for derivatives. Interdealer brokers ICAP Plc and GFI Group Inc. could also see an increase in business on their electronic platforms.

TradeWeb and Thomson Reuters compete against Bloomberg LP, the parent of Bloomberg News, in providing financial information and trading.

Exchange Fees

"There's no question that the multilateral clearing aspect of what's being discussed is far more important than the price discovery aspect," said Thomas Kloet, chief executive officer of TMX Group Inc., owner of the Toronto Stock Exchange and Canada's derivatives market.

A swap execution facility could protect some dealer profit by being less transparent than an exchange. No rules have been spelled out for how much public disclosure would be required for that type of trading. An amendment to Frank's bill specified that transactions done via telephone -- the way market participants have traded for decades -- qualified as a means of executing trades on the regulated platforms.

"Exchange trading, one could argue, is not a good thing for major banks because you're having to pay exchange fees to exchanges" rather than profiting from putting the trades together, Yavorsky said. "Creating more transparency is going to lead to tighter spreads."

Industry Group Opposition

The battle over how the contracts are bought and sold underscores a split in how banks and the government want to emphasize transparency at different parts of the transactions for credit-default swaps, interest-rate swaps and other contracts in the OTC market.

"ISDA and its members believe that mandatory exchange trading should not be required in any circumstance," Robert Pickel, chief executive officer of the International Swaps and Derivatives Association, told the House Agriculture Committee Sept. 17. "Mandating that OTC derivatives contracts trade on an exchange would undercut their very purpose, the ability to custom-tailor risk management solutions to meet the need of end- users."

New York-based ISDA sets standards in the market and represents more than 800 firms.

The Treasury, Commodity Futures Trading Commission and SEC have pressed Congress to tighten trading requirements.

"We don't want to allow any firm like an AIG to be able to engage in derivatives transactions without requiring those transactions to be reported and to be traded on an exchange or an alternative execution facility," Assistant Treasury Secretary Michael Barr said on a conference call with reporters this week.

Efficient for Regulators

Moving trades to exchanges or swap execution facilities is the most efficient way for regulators to keep an eye on the market and to create a level playing field for all participants, according to CFTC Chairman Gary Gensler.

Derivatives are contracts used to hedge against changes in stocks, bonds, currencies, commodities, interest rates and weather. Credit-default swaps, one type of privately traded derivative, were used to replicate pools of mortgages that banks created to sell to investors, in what was known as a synthetic collateralized debt obligation. Losses from synthetic and other types on CDOs have totaled more than $118 billion since the third quarter 2007, according to Bloomberg data.

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Emily Flitter, *In Surprise, Frank Seeks Tougher Derivatives Bill*, American Banker, October 15, 2009.

WASHINGTON — House Financial Services Committee Chairman Barney Frank unexpectedly sought Wednesday to toughen a bill to regulate derivatives, pushing an amendment that would require many major financial institutions to trade their derivatives contracts over exchanges.

If enacted, the amendment, which is expected to be voted on Thursday morning, could severely curb bank profits on derivatives — a prospect that left several large bank lobbyists scrambling Wednesday.

Though the banking industry had opposed the bill, Frank's measure had been considered the most acceptable of the three alternatives to derivatives regulation being considered on Capitol Hill.

But, responding to concerns raised by regulators last week, Frank said Wednesday that swap dealers and major swap participants must have their contracts exchange traded in addition to being cleared.

"If they are accepted for clearing, they've got to be traded on an exchange, if they are between financial institutions," Frank said of the derivatives contracts.

Since most derivatives contracts are confidential, banks and other derivatives dealers do not reveal the price they charge end users. But if the contract is cleared through an exchange, there would be greater price transparency — putting competitive pressure on dealers and potentially cutting into their profits.

Industry representatives argued Wednesday that such a requirement was pointless.

"We do not believe mandating exchange trading is necessary," said Cory Strupp, the managing director of the Securities Industry and Financial Markets Association, responding to news of the amendment. "There is no reason for the government to mandate one particular transaction mode over another."

But Frank said during the debate on the bill that the amendment was a good compromise. Smaller firms, known as end users, who use derivatives to hedge their risk and claim they cannot meet margin and collateral requirements posed by clearing houses and exchanges, would be exempted from clearing and exchange trading. But the Obama administration would achieve a major goal by having larger firms do both, providing greater transparency to the derivatives market.

"We do think we've got a reasonable proposal here that accommodates both interests," Frank said.

The switch was also supported by the administration.

"It's absolutely essential that the chairman's amendment gets passed," said Michael Barr, the Treasury assistant secretary for financial institutions, during a conference call with reporters.

Republicans balked at the change, but it was unclear if they could win enough support from moderate Democrats to stop it.

"This is a fundamental groundswell movement different from where we were just five days ago," said Rep. Scott Garrett, R-N.J., who had earlier praised Frank's draft bill as having moved "in the right direction" on the issues of mandatory clearing and exchange trading.

Rep. Spencer Bachus, the panel's lead Republican, said "you don't have to put them on an exchange to make them transparent."

So far, there appears to be sufficient support among business-friendly Democrats to approve Frank's changes.

"I very much support this amendment and urge the committee to adopt it," said Rep. Walter Minnick, D-Idaho.

"By ensuring to the extent possible that these transactions are regulated by an exchange, that there is adequate capital, that there is adequate disclosure and there is adequate information to regulators with regard to systemic risk," regulators could avoid another collapse of a big derivatives trader such as American International Group Inc., he said.

The committee is set to vote on the amendment and the full bill Thursday.

Debate over the legislation fell mainly along partisan lines, but there were some exceptions.

Rep. Shelley Moore Capito, R-W.Va., spoke out in favor of an amendment introduced by Rep. Stephen Lynch, D-Mass., that would limit ownership and control of clearing houses by dealers, dealer affiliates and major swap participants.

Lynch's amendment would have prevented swaps dealers from taking more than a 20% stake in clearing platforms. "There's a lot of incentive in there for them to try to dominate these clearing houses," he said, because it was in the interests of dealers to have a say in whether the derivatives they are selling have to be cleared or can be traded individually.

Garrett said the amendment went too far, but Capito disagreed.

"What this amendment is trying to get to is the greater transparency that I think we all want and the lessening of systemic risk," she said. "I believe that a small number of firms could and would dominate these clearing houses."

Several amendments passed on voice votes. One was Frank's revised definition of "major swap participant," which would widen the carve-out for end users to avoid clearing derivatives. Under the change, a major swap participant is a firm that not only takes large net positions but creates large exposures for counterparties by speculating in derivatives trades rather than using them to hedge.

At several points, Frank indicated that final derivatives legislation could drift into next year. At one point he speculated that a six-month implementation period in the bill could put the deadline for compliance with new laws at some point near the beginning of July.

After the hearing, he told reporters that his committee's bill, including some of the proposed amendments, took its stance closer to the one defined by the House Agriculture Committee's recent draft legislation on derivatives.

"There will be some harmonization between ourselves and Agriculture," Frank said, "but there are not major differences now as I understand it."

Though the exchange-trading requirement appeared to be a concession to criticisms the Obama administration made of Frank's bill, it did not go far enough for some. Michael Greenberger, a professor at the University of Maryland Law School, said the change was a small one. "It's only a baby step toward what Obama promised in his white paper which, is that all standardized products would have to be exchange traded," Greenberger said.

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Ronald D. Orol, *Lawmakers OK small bank exemption for agency*, MarketWatch, October 15, 2009 6:02 PM ET.

WASHINGTON (MarketWatch) -- Breaking with a White House proposal, a key congressional committee on Thursday approved a contentious provision that would give community banks with less than $10 billion in assets an exemption from on-site exams by a proposed consumer protection agency being established in response to the financial crisis.

The House Financial Services Committee approved the provision in an amendment that was passed on a voice vote.

"It is true that 98 percent of banks wouldn't need to have on-site exams performed by the consumer protection agency," said Chairman Barney Frank, D-Mass. "However, the 1.4 % of banks that would need exams under the CFPA have 77 % of all the assets and 74 % of the deposits and they are the greater contributor to the crisis."

The controversial measure, introduced by Reps. Brad Miller, D-N.C., and Dennis Moore, D-K.S., would also exempt credit unions with less than $1.5 billion in assets from the CFPA examinations. It was approved by a voice vote.

The consumer agency would still have the authority to write consumer protection rules for smaller banks. The legislation also would give the CFPA case-by-case enforcement authority over small and big banks.

Miller and Moore argued that the measure, as drafted without their provision, would have the consumer agency conduct its own on-site examination of banks in addition to the periodic supervision and examinations conducted by each institution's primary bank regulator. They argue that two sets of exams would add significant costs to smaller banks and credit unions.

"Most community banks and credit unions did not take advantage of consumers the way some others did," said Miller. "They have a valid argument that separate examinations by CFPA would double their administrative burden. CFPA can still take over enforcement if any bank, no matter what size, violates consumer protection laws."

However, it would still maintain the CFPA's authority to do on-site exams from for larger financial institutions and its primary regulator.

"This [two on-site exams] was the substantive complaint we got from the community banks," Frank said.

However, Rep. Spencer Bachus, R-Ala., the committee's ranking member, opposed the Miller-Moore amendment, arguing that the CFPA's broad rule-writing authority would expose small banks to additional costs.

"All we need to ask is: 'who is going to write the rules?'" asked Bachus. "The answer is clear: the CFPA, a regulator operating under a mandate that encourages them to ignore anything but consumer affairs. This single-minded focus will expose small community institutions to inevitably conflicting mandates and more onerous regulations than they could have ever dreamed."

Final passage of the legislation isn't expected until Tuesday or Wednesday.

With the amendment in place, the new agency would still strip consumer-protection supervision and enforcement responsibility for large banks away from the Federal Reserve and other bank regulators and place it with the consumer agency.

Staffing?

Staffers from the consumer protection division of the Fed, for example, would be transferred to the new agency along with $400 million in funds normally allocated to the central bank. However, it is unclear what would happen to consumer protection overseers at the Fed and other bank regulators.

Dwight Smith, a partner at Alston & Bird LLP in Washington, said that with the amendment, legislators would likely have to rethink details about staffing and funding because primary regulators would still be required to perform consumer compliance exams at smaller community banks.

He pointed out that problematic small lenders such as "pay day lenders" that contributed to the financial crisis would still be required to have on-site exams by the consumer protection agency because they have no depositors and they do not have a primary bank regulator.

"It is true that for smaller banks a disproportionate impact," Smith said. "The smaller banks have limited staff so it is a bigger issue for them to take staff away from regular duties to deal with the regulators."

However, he added that keeping the consumer compliance exam at the Fed and other bank regulators would still impose costs on small banks. "If the primary safety and soundness regulator comes in and does the compliance exam there still will be some additional burden, its not as if the burden of compliance goes away, there may be some savings," Smith said.

White House concern

In an interview with reporters, Assistant Treasury Secretary Michael Barr raised concerns about the amendment, which replaces a provision in an Obama administration proposal that would have the CFPA perform onsite exams on all banks--big and small.

"A core principal is that the CFPA must be able to examine and enforce banks regardless of size," Barr said.

Officials, including Fed Chairman Ben Bernanke and Federal Deposit Insurance Corp. Chairwoman Sheila Bair, have raised concerns about the proposed agency. They say that synergies exist today between safety and soundness supervisors and consumer-protection overseers at the bank regulators. Taking consumer-protection supervisors away from these regulators would make it more difficult for each bank regulator to do its job, they contend.

Frank sought to address the concerns of smaller banks with a provision that would require coordinated exams of banks by the CFPA and safety and soundness regulators of banks.

However, exempting smaller banks from the consumer agency's supervisory authority would eliminate the need for this provision at smaller banks.

Other consumer protection provisions

The proposal to create a commission, as drafted, would rewrite rules for all institutions offering mortgages and credit cards, including many lenders that escaped any oversight in the buildup of the financial crisis.

"For those of you who think the state of consumer protection is OK, none of you want to do anything about payday lending," said Frank, a key author of the bill. "Credit card debt, added to sub-prime debt and individual consumer problems all contributed to broader economic problems."

GOP lawmakers argued against separating consumer protection oversight from the Fed and other bank regulators, for both big and small banks.

"There are substantial synergies that come when one agency oversees both safety and soundness supervision and consumer protection oversight," said Bachus.

GOP lawmakers raised concerns about giving the consumer agency the authority to prohibit products it deems as abusive to consumers, however the legislation doesn't provide a definition of what constitutes abusive.

Bachus said that certain mortgage products raise ambiguities about whether they are abusive or not. "What if 95% of people use a mortgage product safely while with 5% it would be abuse?" asked Bachus.

Frank responded that he would rewrite the legislation with a definition but he pointed out that Federal Reserve Chairman Ben Bernanke argues that "no doc" mortgages are a good example of the kind of product that should be prohibited.

Rep. Don Manzullo, R-Ill., took issue with the a provision that would take $400 million in funds away from the Fed, which he argued would make the central bank less effective at doing its job.

However, Frank defended the provision, arguing that the Fed is losing the money because it is losing its consumer oversight responsibility. "Consumer protection has been in hands of federal bank regulators, and I figure it is fair to say that no calluses will be found on the hands of those that had consumer responsibilities, because there is no evidence of hard work there," Frank said.

Other amendments

Lawmakers are expected to consider amendments that would seek to alter a provision that would allow the CFPA to have both big banks and small banks comply with both state and federal consumer protection laws, including state attorneys general. Big banks are currently exempt from key state laws and they complain that they would need to comply with 50 different sets of regulations.

"Washington doesn't always know best, states can set standards that can be higher than the federal standards, but we should have a high national standard around the country," said Barr. "It is a floor on state activity."

In addition to pre-emption, Rep. Bill Posey, R-Fla., introduced an amendment that was approved requiring any statement made by the CFPA director or in any documents released by the agency to say that it does not endorse any particular product. The measure also makes clear that consumers are responsible for identifying what products are best suited for them.

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Ronald D. Orol, *Obama official defends consumer agency*, MarketWatch, October 15, 2009 2:06 PM ET.

WASHINGTON (MarketWatch) - A key Obama administration official on Thursday lashed back at critics of a newly proposed Consumer Financial Protection Agency, which they believe will limit mortgage and credit card choices for borrowers and pre-empt state regulations. "Washington doesn't always know best, states can set standards that can be higher than the federal standards, but we should have a high national standard around the country," said Assistant Treasury Secretary Michael Barr. "It is a floor on state activity." The U.S. Chamber of Commerce and other critics take issue with the proposed CFPA's reach which will require big banks to comply with both state and federal consumer protection laws, including state attorneys general. Big banks are currently exempt from key state laws.

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Dawn Kopecki, *House Panel Approves Measure Regulating Derivatives (Update 2)*, Bloomberg News, October 15, 2009 3:27 PM ET.

Oct. 15 (Bloomberg) -- The House Financial Service Committee approved legislation today to rein in the $592 trillion derivatives industry, after reworking several provisions regulators had criticized as too lax.

The measure, approved 43-26, was welcomed by officials at the Treasury Department and the Commodity Futures Trading Commission. They said it still lacked some elements sought by President Barack Obama's administration.

The administration called in August for imposing higher capital and margin requirements on derivatives markets and requiring that certain contracts be processed through clearinghouses. Regulators had said the original draft of the legislation sponsored by Representative Barney Frank, chairman of the Financial Services panel, left "gaps."

"Our view is this is a tough, strong piece of legislation," Assistant Treasury Secretary Michael Barr told reporters on a conference call today. "There are elements that we proposed that are not in the Frank bill. Those are the kinds of things that we think ought to be looked at going forward."

CFTC Chairman Gary Gensler said in a statement that the bill was a "significant step" toward lowering risk and increasing transparency in the marketplace. "Substantive challenges remained," he said. Mary Schapiro, chairman of the Securities and Exchange Commission, called approval "a very important step forward."

Barr and Gensler, who didn't specify the changes they want made, said they plan to work with Congress to reinstate some of the administration's ideas. The measure approved today must be reconciled with similar bills pending in the House Agriculture and Senate Banking committees.

Broker Dealers

Frank's panel today adopted an amendment, called "essential" by Barr, that would require broker dealers such as JPMorgan Chase & Co. and the Goldman Sachs Group, and their biggest customers, to trade and clear most derivatives contracts on regulated exchanges or swap-execution facilities.

It exempts from those requirements most "end-users," companies that employ derivatives to hedge their operational risks, such as rising fuel costs, currency fluctuations or extreme weather.

Hedge funds and other large derivatives users that "expose counterparties to significant credit risk," such as insurer American International Group Inc. and mortgage finance companies Fannie Mae and Freddie Mac, wouldn't be eligible for the exemption.

Writedowns, Losses

Opaque financial products, including derivatives, have contributed to almost $1.6 trillion in writedowns and losses at the world's biggest banks, brokers and insurers since the start of 2007, according to data compiled by Bloomberg. Toppled companies included Lehman Brothers Holdings Inc., the investment bank that filed for bankruptcy, and AIG, which is surviving on government loans.

Regulators had criticized an initial draft by Frank, a Massachusetts Democrat, at a hearing of the panel Oct. 7. That version "could unintentionally preserve existing regulatory gaps," Henry T.C Hu, director of the Securities and Exchange Commission's division of risk, strategy and financial innovation, said in testimony.

In response, Frank offered a new definition of "major swap participants" that would limit those eligible for exemptions from new regulations. The panel adopted that provision yesterday.

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Dawn Kopecki and Shannon D. Harrington, *Treasury Backs Frank's Derivatives overhaul After Revisions*, Bloomberg News, October 15, 2009 12:00 AM ET.

Oct. 15 (Bloomberg) -- The Treasury Department backed legislation to overhaul regulation of the $592 trillion over- the-counter derivatives market after a House panel changed provisions the Obama administration said left loopholes.

"The House has taken major steps toward enactment of this bill and is well on the path toward comprehensive financial reform," Assistant Treasury Secretary Michael Barr said on a conference call with reporters after the House Financial Services Committee amended the measure yesterday.

The committee, headed by Representative Barney Frank, a Massachusetts Democrat, is set to complete action today on the legislation, which would require many derivatives transactions to go through central clearinghouses. The administration wants to subject broker dealers such as JPMorgan Chase & Co. and derivatives users such as American International Group to new margin, collateral and disclosure requirements.

Opaque financial products, including derivatives, have contributed to almost $1.6 trillion in writedowns and losses at the world's biggest banks, brokers and insurers since the start of 2007, according to data compiled by Bloomberg. Toppled companies included Lehman Brothers Holdings Inc., the investment bank that filed for bankruptcy, and insurer AIG, which is surviving on government loans.

Administration officials had criticized Frank's original proposal at a hearing of the panel Oct. 7. That version "could unintentionally preserve existing regulatory gaps," Henry T.C Hu, director of the Securities and Exchange Commission's division of risk, strategy and financial innovation, said in testimony.

'Unintended Consequence'

Gary Gensler, chairman of the Commodity Futures Trading Commission, called the loophole an "unintended consequence" that could exclude from oversight all hedge funds as well as large derivatives users such as mortgage-finance companies Fannie Mae and Freddie Mac.

The House panel responded by passing an amendment yesterday redefining "major swap participants." Derivatives users large enough to "expose counterparties to significant credit losses," such as Fannie Mae and Freddie Mac, would meet Frank's revised definition and wouldn't be eligible for an exemption.

The latest plan still excludes from new rules most "end- users," corporations that use derivatives to mitigate their operational risks, such as a rise in oil prices or fluctuations in currency rates.

Barr said the exceptions for end-users in Frank's draft were "reasonable."

Republicans on Frank's panel said yesterday the measure would lead to too much government interference in markets.

"I continue to be fearful that at every single step we're making the use of derivatives more costly, more cumbersome," said Representative Jeb Hensarling, a Texas Republican.

Trading on Exchanges

Frank plans to offer today an amendment that would mandate trading on exchanges or swap execution facilities for standard contracts between dealers and their biggest customers. Barr called that provision "essential."

"We continue to think that as long as the chairman's amendment is enacted and all dealers and major swaps participants are covered that that is absolutely essential to preserving a strong marketplace, preserving transparency, getting the incentives right in the system," Barr said. "We don't want to allow any firm like an AIG to be able to engage in derivatives transactions without requiring those transactions to be reported and to be traded on an exchange or an alternative execution facility."

Frank said yesterday that transactions with corporations that use derivatives "purely for the purpose of managing risk to their production" wouldn't have to go on an exchange or trading platform. Companies would still have to report prices and trading.

'No Hidden Trades'

"There will be no more hidden trades where we don't know the price," said Frank.

The House Agriculture Committee has its own version of the derivatives legislation. House Speaker Nancy Pelosi, a California Democrat, would oversee efforts by the panels to forge a final bill.

“We believe the two House committees will pass their bills later this month and Pelosi will then likely combine the two into a hybrid to pass on the House floor before Thanksgiving with Senate action not likely until 2010,” Teddy Downey, Chris Krueger, William Hederman, and Jaret Seiberg wrote in a note issued yesterday by Concept Capital’s Washington Research Group.

Derivatives are contracts used to hedge against changes in stocks, bonds, currencies, commodities, interest rates and weather. Credit-default swaps, one type of privately traded derivative, were used to replicate pools of mortgages that banks created to sell to investors, in what was known as a synthetic collateralized debt obligation.

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Zacharu A. Goldfarb, *House Panel to Vote on Derivatives Bill; New Rules Would Lead Regulatory Reform*, The Washington Post, October 15, 2009.

A House committee is set to vote Thursday on a bill that would regulate for the first time the vast and opaque market of exotic financial instruments known as derivatives, marking the first major advance in Congress of a key piece of legislation to remake the nation's financial regulatory system.

The legislation, which is widely expected to pass the House Financial Services Committee, signals that, after months of debate and lobbying, Congress is ready to move ahead on new rules to protect investors and avert another financial meltdown.

In a session Wednesday, the committee, led by Chairman Barney Frank (D-Mass.), worked to fix several problems with the legislation that federal regulators had warned could undermine efforts to improve oversight of derivatives. Still, regulators have expressed concern that flaws remain.

After the clearing the derivatives bill, the committee plans to take up a proposal to create a new agency that would protect consumers of mortgages, credit cards and other financial products. Frank wants both pieces of legislation to pass the House by year's end.

"Today's events indicate that the House . . . is well on the path toward comprehensive financial reform," said Michael Barr, assistant Treasury secretary for financial institutions.

The legislation would require banks and firms trading in derivatives to meet robust capital and reporting requirements and require that many of the instruments be traded through clearinghouses, which would collect data about the market and require that buyers and sellers allocate enough money to cover any trades.

The Senate is moving on a slower schedule and legislation isn't expected to reach the president until well into next year.

In just a few years, trading in derivatives -- which are essentially contracts between two investors betting on whether a stock, bond or other security will go up or down in value -- has mushroomed into the world's largest financial market, estimated to be in the tens of trillions of dollars. It has allowed unregulated traders around the world to influence and bet on a vast array of sectors, from how much companies pay to borrow money to the value of currencies and critical goods such as oil and cotton.

Losses on a type of derivative known as a credit-default swap helped topple American International Group and stoked the financial crisis.

The financial industry remains opposed to a key proposal likely to be added to the derivatives bill before the vote Thursday. The proposal would require that a large percentage of derivatives be traded on public exchanges, like stocks and bonds, which would provide public information about the pricing and volume of trades.

"Mandatory exchange trading is a matter of very deep concern for the industry," said Cory Strupp, the managing director for government affairs at the Securities Industry and Financial Markets Association. "It isn't appropriate for many derivatives and it raises transaction costs and doesn't reduce risk."

Some regulators in Washington have been proponents of regulating derivatives for years, but lawmakers and many other policymakers have resisted it, worried about stifling financial innovation.

In addition, the House Financial Services Committee and the House Agriculture Committee, which is expected to take up the measure next week, have squabbled over the issue, as have the Securities and Exchange Commission and the Commodity Futures Trading Commission, which would share responsibility for policing the market under the legislation.

Some experts worry that these divisions will continue to hamper regulation. "Will it be effectively regulated? Or will there still be this gap where it's not clear which agency will do what? Or will there be duplicative regulation?" said Roberta S. Karmel, a financial regulation expert at Brooklyn Law School.

The SEC has expressed deep concern that it wouldn't have authority to oversee a type of derivative under the new law that is linked to an index of securities, such as the Standard & Poor's 500-stock index.

The SEC has said these kinds of limitations have made it much harder to investigate potential financial wrongdoing.

The CFTC has expressed its own concerns -- for example about whether it will have sufficient power to oversee clearinghouses and exchanges.

The committee has worked to ease other concerns. For example, it listened to regulators' complaints that a draft of the bill exempted too many derivatives traders from rigorous oversight and broadened the types of firms that would be subject to regulation.

With minor adjustments, the measure is not expected to face many hurdles going forward. By contrast, the proposal to create a Consumer Financial Protection Agency has become the most divisive element of the administration's wide-ranging plan to overhaul the nation's financial regulatory system.

Frank already has scaled back the original scope of his legislation in an effort to reach consensus on the new agency. He said last month that he would exempt certain nonfinancial businesses from oversight by the new agency, including telephone and cable companies, auto dealers, lawyers, providers of certain retirement and pension plans, accountants and real estate brokers.

Perhaps the most contentious issue that remains involves a provision that would require all states to enforce more rigorous rules than the federal guidelines for consumer protection set by the new agency. Business and financial firms say that could lead to burdensome, costly regulation that could create state and federal conflicts.

Staff writer Brady Dennis contributed to this report.

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Tom Brown, *Foreclosure flood endures in U.S.; Full recovery may take 20 years in some markets*, Reuters, October 13, 2009.

Every 13 seconds in America, there is another foreclosure filing.

That's the rhythm of a crisis that threatens to choke off hopes for a recovery in the U. S. housing market as it destroys hundreds of billions of dollars in property values a year.

There are more than 6,600 home foreclosure filings per day, according to the Center for Responsible Lending, a non-partisan watchdog group. With nearly two million already this year, the flood of foreclosures shows no sign of abating any time soon.

If anything, the country's worst housing downturn since record-keeping began in the late 19th century may only get worse since foreclosures, which started with subprime borrowers, have now moved on to the much bigger prime loan market on the back of mounting unemployment.

In congressional testimony last month Michael Barr, the Treasury Department's assistant secretary for financial institutions, said more than six million families could face foreclosure over the next three years.

"The recent crisis in the housing sector has devastated families and communities across the country and is at the centre of our financial crisis and economic downturn," Barr said.

A September report by a foreclosure task force appointed by Florida's Supreme Court pointed to a shift in the root cause of foreclosures: "People are no longer defaulting simply because of a change in the payment structure of their loan. They are defaulting because of lost jobs or reduced hours or pay."

Florida had the nation's highest rate of homes--23 per cent --that were either in foreclosure or delinquent on mortgage payments in the second quarter, and the report said "the latest news for Florida is horrifying."

A recent pickup in sales and home prices in some regions has been heralded as a sign that the crisis in residential real estate may be close to bottoming out, after the steepest price decline since at least 1890.

But nearly half of recent sales have been attributed to foreclosures or "short sales" at bargain-basement prices.

Even as the U. S. economy seems to be recovering from its worst recession since the Great Depression, mortgage delinquencies continue to rise.

That adds risk to any relatively upbeat assessment, since foreclosures depress the value of nearby properties while eroding the net worth of homeowners and the tax base for communities nationwide.

The Center for Responsible Lending says foreclosures are on track to wipe out $502 billion in property values this year.

That spillover effect from foreclosures is one reason why Celia Chen of Moody's Economy.comsays nationwide home prices won't regain the peak levels they reached in 2006 until 2020. In states hardest-hit by the housing bust, like Florida and California, the rebound will take until 2030, Chen predicted.

"The default rates, the delinquency rates, are still rising," Chen said. "Rising joblessness combined with a large degree of negative equity are going to cause foreclosures to increase," she said.

Take a look at Japan, Chen said. Prices there are still off about 50 per cent from the peak they hit 15 years ago.

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Ronald D. Orol, *Who should pay to unwind 'too-big-to-fail' banks?*, MarketWatch, October 2, 2009 5:15 PM ET.

WASHINGTON (MarketWatch) -- When it comes to super-sized financial institutions, who should pay to dismantle the 'too-big-to-fail' banks that are in danger of default?

In the shadow of the failure of Lehman Brothers and the subsequent credit crisis, White House, Treasury and Federal Reserve officials agree with key lawmakers on Capitol Hill: Taxpayers should not be stuck with the bill, and the costs instead should be covered by the financial firms.

"Even in a situation where there are short term extensions of funds by the government, the full cost should be born by the industry," Fed Chairman Ben Bernanke said to a congressional panel earlier this week.

But beyond the general consensus, specifics are hard to come by.

Fed, Treasury and key House lawmakers are generally in agreement that legislation should be crafted that would quickly dismantle an insolvent big financial institution whose collapse would otherwise cause massive collateral damage to the U.S. and global financial system.

They agree that a mechanism, known as a "resolution authority," should be set up to partly pay-off a defaulting mega-institution's counterparties, such as other banks and hedge funds they are tied to, so they don't fail as well -- thereby avoiding a ricocheting effect through the financial markets.

Regulators concur that these counterparties would not get paid in full, in an attempt to maintain a careful balancing act between keeping the economic system functioning and not spending wildly.

However, those answers raise more questions that, so far, none of the key players have an answer for.

Should big, medium and small financial institutions all pay for a resolution?

Should an agency collect periodic upfront fees from systemically significant institutions to fund a 'too-big-to-fail' fund or should financial institutions only pay for the resolution after-the-fact, once the government has temporarily forked over the capital to resolve it?

And if they collect funds up front, how much would be enough to unwind the problem mega-bank of the future?

"That's the $64 trillion question," said Alston & Bird LLP partner David Brown.

Follow the FDIC?

Fed Chairman Bernanke said he supports a system that would be based on the one employed by the Federal Deposit Insurance Corp. to close insolvent retail banks.

The FDIC collects periodic fees from banks to fund its Deposit Insurance Fund, which it then uses to pay out to depositors of failed banks. FDIC Chairwoman Sheila Bair envisions that systemic institutions would pay fees periodically into a separate fund that could be used to make payouts to counterparties of a failing super-sized bank.

But the Deposit Insurance Fund may not be the best model. The FDIC recently asked banks to prepay three years of their periodic premiums upfront in an attempt to limit the further draining of the insurance fund, which has been hit with 95 bank failures this year and had been sapped to a low of $10.4 billion.

To avoid the problems of a fund, Bernanke and the Treasury Department prefer a system where the government would first use taxpayer capital to fund a resolution and then pay for it with after-the-fact collections from the financial industry.

Consider comments made by Treasury Assistant Secretary Michael Barr at a recent event in Washington: "Any losses that might be incurred by the government in this special resolution process would be recouped through assessments on other large financial firms."

But Barr doesn't specify which large firms would be assessed. Key lawmakers in charge of legislation also have yet to come to a conclusion on the question.

When asked about who would pay and how much, Senate Banking Committee Chairman Christopher Dodd, D-Conn., said, "That's much further down the road than I have contemplated."

Little guys paying for the big guys?

All this has Rep. Brad Sherman, D-Calif., worried. Sherman, a senior member of the House Financial Services Committee, has been an outspoken critic of the Treasury bailout programs as they have expanded over the past year, and is regarded by lawmakers from both parties as having substantial expertise on the financial bailout issue.

Sherman said he believes taxpayers will still end up footing the bill when a mega-institution collapses. But he also believes "a token" amount of capital will be collected upfront from large financial institutions to fund a systemic insurance pool, a situation that he argues will result in massive inequities with mid-sized regional banks footing the bill for an insurance fund they will never see a penny of.

Sherman points to a provision in the $700 billion bank bailout bill approved by Congress a year ago that he thinks could become a model for the resolution mechanism. The statute for the Troubled Asset Relief Program envisions that in 2013 the president will submit a bill to Congress to require financial institutions with $10 billion in assets or more to pay a tax to recoup any remaining losses from the bailouts.

Such an approach would amount to a "regional bank death act," Sherman said, if it were employed for the resolution authority. He argued a large number of mid-sized regional U.S. banks with more than $10 billion in assets would never become a systemic risk to the economy if they were to collapse. But based on the approach envisioned, they would be required to pay into the systemic risk fund.

"It means they have to pay for a fund that they will never benefit from," Sherman said. "A mid-sized, regional bank is not a systemic risk to the U.S. economy, so they get zero chance of getting any money, the insurance fund doesn't insure their creditors in any way, but they have to pay to help the big banks have a lower cost of capital and out-compete them."

Sharing the pain

Alston & Bird's Brown contends that lawmakers are likely considering whether they want to expand their definition of systemically significant institutions beyond the largest 25 U.S. financial institutions, and beyond banks in general.

Should large insurance and auto companies pay into the fund?

Bernanke testified this week that a failure of a major U.S. auto company late last year, would have been "disruptive" to the markets and the already faltering economy. Beginning with efforts in December, Treasury chose to bailout General Motors Corp., Chrysler and auto finance company GMAC, with billions in taxpayer funds.

In addition to autos, Rep. Barney Frank, D-Mass., chairman of the House Financial Services Committee, said some smaller interconnected firms could be considered risky as well. That's why, he said, legislation will be unlikely to require supervisors to identify risky institutions.

"Regulators will know a systemic institution when they see it," Frank said. "It could be one large institution or a number of smaller institutions all doing the same thing that could be systemically risky."

Brown questions whether Congress might ask a wide-range of institutions, perhaps the 8,000 or 9,000 smaller U.S. banks -- beyond the mega-firms -- to pay into the fund.

"Would you only have the largest systemically significant banks pay into it, or every bank, including community banks?" asked Brown. "One argument is that the fund not only saves Wall Street but also saves Main Street, by averting an economic crisis."

However, he cautioned against building up a trillion dollar-plus fund that would sit idly during healthy times. "People would try to use it for other purposes," Brown said. "But if you fund a collapse afterwards, taxpayers have to pay for it first, raising concerns that the cost may never be covered by the industry."

Financial Transaction Tax

An alternative to periodic FDIC-style fees for financial institutions is a financial transactions tax that could be collected and deployed to avert economic collapses.

Germany's Finance Minister Peer SteinbrÃ¼ck recently proposed a global transaction tax that would be used to raise money to finance the costs of future financial crises. He cited a report by the Austrian Institute for Economic Research that said a 0.05% transaction tax on G-20 country financial institutions could bring as much as $690 billion a year, which could fight financial crises.

U.K. Financial Services Authority Chairman Adair Turner also recently defended a measure to tax financial transactions, as a measure to limit bank profits.

Former Federal Reserve chairman Paul Volcker recently was questioned on Capitol Hill about whether a transaction tax in the U.S. would make sense. Volcker, who chairs President Obama's economic advisory panel, said Congress should require a study be conducted about the viability of such an approach. However, he expressed some reservations.

"If the fee is low enough not to be disruptive to the markets, it won't be significant enough to pay for these costs," he said. "If it is large enough for what is needed, it likely will have a disruptive impact on the markets."

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***Opinion: We can temper the next mortgage meltdown*, The News Journal, September 21, 2009.**

Much of the talk of a jobless economic recovery will be edited in the coming months with additional news of yet another surge in mortgage foreclosures.

A new survey finds that 1 in 10 Americans is struggling to make mortgages payments.

This time, the buyers criticized for risky decisions based on their future income and home equity, on average, have more solid credit histories than those being left homeless in the subprime mortgage crisis.

About a third of option adjustable-rate mortgages are in default. These loans account for $750 billion in mortgages made from 2004 to 2007.

Although fewer in number than other exotic loans, options ARMs tend to have larger balances.

Buyers typically have a longer window - five years - of paying only the interest before their initial low rates expire. When that happens monthly payments usually double, but most of these loans are not eligible for refinancing into fixed rate loans.

"Expect millions of foreclosures," Treasury assistant secretary Michael Barr told a House committee recently.

"Adjustable-rate mortgages will trigger the next wave of defaults, which will make the subprime meltdown look like a walk in the park," said a senior vice president at RealtyTrac, a foreclosure-listing firm in Irvine, Calif.,

This is a dire warning that needs immediate attention by the Obama administration.

Obviously, as subprime mortgage holders are finding, loan modification plans the administration sell as a solution for keeping communities peppered with empty homes are not working efficiently or fast enough.

When it comes to option ARMs, housing counselors are finding that banks still wield the best hand.

More times than not they reject even the most eligible credit-worthy clients for restructuring payments plans.

With unemployment about to reach 10 percent, it makes no sense to deny all holders of option ARMs a fixed-rate out to stay in their homes.

This is the wiggle room that banks have chosen - or been forced to consider - for customers with less qualified chances of repaying their debt.

It's the kind of wiggle room that can also help keep the floodgates of more distressed properties from entering the market.

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Brad Kelly, *Real Estate Recovery Faces Relapse Risk: Foreclosures Ahead "Another Tsunami" Will Hit Big Rate Resets on Flexible "Option ARM" Mortgages Worry Analysts, Arizona AG*, Investor's Business Daily, September 18, 2009.

Over the past few months homebuyers have whittled away at the glut of distressed properties, as low prices have spurred a sales rise not seen in years. But many doubt that trend can continue, with the floodgates of housing distress about to open again.

Existing-home sales jumped a fourth straight month in July, the first such run since 2004, the National Association of Realtors says. The 7.2% increase from June broke records back to 1999, and distressed properties accounted for nearly a third of the 5.24 million homes sold.

"In some recovering markets like San Diego, Las Vegas, Phoenix and Orlando, the demand for distressed homes has spiked, and we're seeing a very high multiple of bidders because prices are so attractive," said NAR chief economist Lawrence Yun. Lack of inventory is becoming a common complaint, Yun says.

It may not be for long. "Expect millions of foreclosures" ahead despite loan-modification efforts, Treasury assistant secretary Michael Barr told a House committee last week.

Much of the problem, housing analysts say, will be with the kind of adjustable-rate mortgages whose monthly sum due can skyrocket as features such as teaser rates expire.

"Adjustable-rate mortgages will trigger the next wave of defaults, which will make the subprime meltdown look like a walk in the park," said Rick Sharga, senior vice president at RealtyTrac, a foreclosure-listing firm in Irvine, Calif.

At some point in the next year, he says, flexible "option ARMs" will likely become the majority of loans in foreclosure. Until then the majority will be a combination of other ARMs and fixed-rate loans.

Billions of dollars worth of option ARMs were originated in Arizona in the housing boom. That state, already hit hard in the downturn, still faces the reset of 128,000 option ARMs in the next 12 months, and a large percentage of those homeowners are at risk of foreclosure.

"The payment-option bubble has been looming for some time and now we're in it," Arizona Attorney General Terry Goddard told IBD. "It's going to be a very tough year if we can't get those loans modified."

Rising unemployment is also driving many prime fixed-rate borrowers toward foreclosure. And many failing loans reworked under the Obama administration's housing rescue plan are forecast to redefault.

The supply of distressed homes has hit record levels since the subprime meltdown in 2006 sparked a first wave of foreclosures.

Distress Pipeline Pumping

Inventory is split into two pools. The first includes about 1.1 million homes in the foreclosure process, which means owners are at risk of losing them to the bank. That's more than half the number recorded back in 2005 when the market was more normal, Sharga says. The other group is roughly 750,000 properties already taken back by banks, vs. a pre-crisis norm of about 120,000.

Working through the stock of distressed properties is vital to normalizing the housing market. But industry forecasts suggest the record supply of depressed homes will peak in 2010 and stay elevated through 2012. While sales are improving, median prices are expected to keep falling into next year.

Once distressed housing runs out, Yun says, prices will get a much needed boost and sales will be 10%-20% above recent months' annualized pace of around 5 million units.

"Distressed properties continue to weigh down the median price," Yun said, as "they typically sell for 15% to 20% less than traditional homes."

Moratoriums on foreclosures and loan modifications under the Obama administration's housing rescue plan have only delayed the inevitable march of repossessions, says Stan Humphries, vice president of data at real estate site Zillow.com.

Rising unemployment and negative equity, when the home is worth less than the loan amount, will put millions of homeowners at risk of default over the next few years, he says.

"We're going to see a ramp up in foreclosures, which won't peak until 2010 and (will) remain high for some time," he said. "A lot of the demand that is helping work through inventory of distressed properties is short-term."

Low mortgage rates and prices, improving economic views and the coming Nov. 30 deadline for first-time buyers to be able to claim an $8,000 tax credit have boosted sales. That has helped trim the stockpile of homes for sale down from '08 levels.

People buy distressed homes three main ways: from the homeowner as usual; in a short sale, which can be complex and lengthy; or buying lender-owned homes in a public auction.

Jeff Frieden, CEO of the nation's largest residential-auction firm, Real Estate Disposition Corp., is among those who expect a bigger flood of foreclosures ahead.

"We expect 2010 to be a watershed of a year for us as millions more of foreclosures loom," Frieden said. "Some have sensed it's the bottom of the market; we feel that's a false sense."

So far in '09 REDC has sold 25,000 distressed properties in auctions, discounted on average 10%-15%. That's vs. 34,000 sold in 2008. The firm runs about 300 auctions a year, with an average 1,700 bidders at each.

Awaiting Another Deluge

The full brunt of the distressed-property problem hasn't hit the market. Seventy percent of bank-owned properties aren't even listed as available for sale or auction yet, due to problems in and after repossession.

The delays, in Sharga's view, are not because banks are holding onto the homes waiting for them to appreciate. Instead, he says, it's things like title issues, repairs needed, required state redemption periods that delay evictions -- and the sheer volume of distressed homes.

"Its going to take some time to work through the inventory, which will be flooded by another tsunami of foreclosures," Sharga said.

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Stephanie Armour, *Homeowners end up worse after help; Many loan modifications leave people with higher payments*, USA TODAY, September 15, 2009.

Tens of thousands of financially strapped homeowners who have asked lenders to lower their mortgage payments are instead winding up with higher monthly payments and larger debts on their homes.

Homeowners who were hoping for lower payments are discovering to their dismay that lenders roll late fees, back taxes or other costs into the principal, sometimes turning a difficult payment into an impossible one. That is one reason that many reworked mortgages are sliding back into default.

It's too early to know if this pattern will continue under the Obama administration's $75 billion initiative to get lenders to reduce monthly payments for homeowners struggling to make their mortgages. A total of 360,165 mortgage modifications are now in a three-month trial period under the government's plan announced in March. But the initiative focuses on reducing interest rates rather than cutting principal, which has been found to be one of the most effective modifications for helping homeowners avoid defaulting a second time (known as a "re-default").

Of loans modified from Jan. 1, 2008, through March 31, 2009, monthly payments increased on 27% and were left unchanged on an additional 27.5%, according to a recent report by banking regulators. Many modified mortgages fall delinquent -- 25% to 40%, depending on the type of mortgage -- often because of homeowners' loss of income or additional outstanding debt, according to a report last month by CreditSights, a financial research firm.

"Payments have gone up .... (and) the payment relief can last for the first few years and then go up (again)," says Alan White, assistant professor of law at the Valparaiso University School of Law in Valparaiso, Ind. He has studied the subprime mortgage situation for 10 years. "(The lenders) focus on today and not on the future." Even under the Obama plan, they don't focus on permanent debt reduction, White says.

The majority of borrowers who've gotten mortgage modifications have seen their overall principal balance go up, according to an analysis by CreditSights and ICP of about 660,000 mortgages modified this year. In about 90% of the modifications, the principal balance after a modification was larger, CreditSights said.

Hit with a 1-2 punch

That's the situation facing Samantha and Steve Jensen. When the couple bought their $550,000 home in Scottsdale, Ariz., six years ago, they thought they'd found the perfect place to raise their three children.

But when their adjustable-rate mortgage reset to a higher rate, they could no longer afford the monthly payments that jumped by about $1,000 a month, to $3,300. So they were relieved when their bank in June offered to modify their mortgage by lowering their interest rate.

Under the modification they were to pay $2,600 a month -- but then they discovered they also had unpaid property taxes. Once the bank added taxes to their principal, they say, their monthly mortgage payment grew to $3,500. They got a modification in June and are now two months behind on their mortgage payments and facing possible foreclosure.

"The bank could have done more and reduced our principal," says Samantha, 40, a special education teacher. "You have the anticipation of relief and then you realize it's not going to make it better. It's like being punched in the stomach twice."

How most modifications work

A mortgage modification can take several forms. Lenders may allow borrowers to skip payments and then add the skipped payments to the amount of the loan. They may reduce the interest rate charged, extend the loan term, or reduce the total amount of the loan by forgiving principal.

Many lenders say that reducing principal remains the modification of last resort.

More than 80% of loan modifications that Wells Fargo has done in the past three months have led to lower payments for borrowers, but most involve rate reductions, the bank says. Wells Fargo has done more than 240,000 modifications, and more than 30,000 of those have been under the Obama administration program.

At CitiMortgage, about 92% of modifications involve reducing rates, lengthening terms of the loan, or both. About 8% provide principal reduction.

Providing relief to borrowers is complicated because of the financial interests of the parties on the other side of the loan. Many mortgages are commonly sold to investors, and borrowers' payments are collected by servicers, which may be the original lender or a different company.

Certain types of loans cannot be modified without the investors' approval. Lenders and investors may shy away from reducing a mortgage's principal balance because that requires them to write down the value of the loan. But temporarily reducing interest payments while adding to the mortgage's principal avoids any loss.

Some research suggests lenders may gain financially if they don't modify a mortgage at all.

According to a paper published this year by the Federal Reserve Bank of Boston, more than 30% of delinquent borrowers fix their situation on their own and are able to pay even if no action is taken.

Another reason lenders might resist modifications is the combined impact of high re-default rates and falling property values in many markets. A lender might calculate that helping a borrower avert foreclosure now only risks a deeper loss if the house goes to foreclosure anyway a year later.

And some lenders say even if they modify loans, so many homeowners are underwater -- meaning their homes are worth less than their mortgages -- that some borrowers are defaulting on purpose, "walking away" after the lender has spent money and time renegotiating the loan.

"We have customers who can afford the payments but are underwater. They default not because they have to, but because it's better for them," says Jack Shackett, Bank of America's head of credit-loss prevention. "They can act like they want the modification and then they still default, so they've stayed for three to four months in the house for free."

The Obama administration's plan tries to overcome some of these barriers by imposing a three-month trial period during which borrowers must pay the renegotiated mortgage, discouraging them from walking away.

Also, the emphasis under the Obama administration plan is on getting lower monthly payments for homeowners.

Servicers must follow an established process to reduce the monthly payment to no more than 31% of the borrowers' gross monthly income. To do that, lenders will first reduce the interest rate on the loan and then extend the original term of the loan to up to 40 years.

"In the past, modification increased the burdens on borrowers. Under the president's plan, it reduces payments to a meaningful level," says Michael Barr, assistant secretary for financial institutions at Treasury. "Investors and servicers get incentives and are paid only if loans succeed."

Under the program, mortgage holders and investors receive a one-time government payment of $1,500 for each modification agreement completed with borrowers who are current when they begin the program.

Short-term vs. long-term help

Mounting unemployment and loss of income threaten to complicate efforts to prevent foreclosures, even for mortgages that are substantially modified. That's why some banks and economists are pushing for short-term personal loans to the jobless, or a break for several months in making payments.

A recent Federal Reserve Bank of Boston study suggests that to reduce foreclosures, the government should shift its focus from providing mortgage help to directing more financial assistance to those who lose their jobs. The authors say one strategy might be giving loans or grants to individual homeowners for a year or two to help them through difficult periods so they don't lose their homes.

Some lenders are already trying similar tactics on their own. Bank of America is occasionally offering temporary mortgage forgiveness for three to six months in hopes the borrower will find a new job in that time. It is pushing the government to initiate such a program nationwide.

"Our view all along is that that will be a very effective way to address the problem," says Paul Willen, one author on the Federal Reserve study. "A lot of what's being done is a misplaced focus on modest, long-term relief when what they need is fast, short-term, massive relief (due to job loss)."

One such homeowner is Carol Cole, 71, who received a modification in February that cut her payments from more than $3,000 a month to $2,500. That's still $500 more a month than she was paying when she bought her $575,000 house in Santa Rosa Beach, Fla., about five years ago.

With income from her spa business falling, she's worried she'll become delinquent on her mortgage as soon as this winter. Cole has applied for another modification, but she says her bank has told her she has to wait 12 months to qualify for help. Her lender, Bank of America, said it had to deny her request for a further modification because the investor who holds her mortgage does not participate in the government's modification program. However the bank is continuing to pursue the case.

"It's a terrible challenge (making the payments) and I'm trying not to fall behind, but it's going to get to the point I can't make it," Cole says. "This affects your health, your relationships. You don't eat or sleep."

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Brian Collins, *Los to Work on Mods?* National Mortgage News, September 14, 2009.

WASHINGTON-Perhaps, servicing experts have it all wrong - maybe mortgage loan officers should be on the front lines of loan modifications, not telemarketers working for the servicing department.

New figures show that despite tremendous efforts to deal with the mortgage crisis, loan workouts and modifications have not kept pace with foreclosure filings. Servicing companies are under pressure from the Obama administration and Congress to increase their capacity while their workload is increasing.

The latest figures show that the pipeline of delinquent homeowners is building and 3.1 million borrowers are 60 days or more past due on their mortgages.

Scott Stern, chief executive of Lenders One, a cooperative of independent mortgage bankers, believes the administration's Home Affordable Modification Program is too focused on servicers. "It is a crapshoot whether or not your servicer is willing or able to help you - or that they understand the program enough to help you," he said.

Opening HAMP up to mortgage bankers and their loan officers would allow for better distribution. "We have physical locations to serve people," he said. "We have the capacity to help people."

Hope Now executive director Faith Schwartz noted that servicing shops have hired loan officers to work on modifications and refinancings. And fully integrated companies with lending and servicing capacity have leveraged their infrastructure to modify loans. Bringing in independent originators is "an interesting concept to help with the demand," she said. (Hope Now is an alliance of servicers created in October 2007 and most of its members are HAMP participants.)

Meanwhile, the foreclosure crisis continues without pause. "One in 25 homes in America is in foreclosure," Fannie Mae president and chief executive Michael Williams said. "And it's reasonable to expect another uptick in foreclosures."

As the government's administrator for the Fannie/HAMP effort, the GSE is working with servicers to increase their capacity. "We're working with them to put people, systems and processes in place to carry out thousands of modifications a week," Mr. Williams said.

To get ahead of the curve, he noted, the administration's HAMP program needs to be simplified. The Fannie CEO suggested that the program will yield better results if servicers can get through current workloads and start focusing on borrowers who are just starting to get into trouble. "We have had a propensity to go after borrowers who are seriously delinquent," he said. "Once they are seriously delinquent it is almost too late."

Mr. Williams stressed that markets in Florida, Nevada and California are unique and that different tactics and techniques are needed to target those hard-hit "sand states."

New figures released by Treasury show that servicers participating in HAMP have placed 360,000 homeowners in 90-day trial modifications, up from 235,000 in July. These borrowers are benefiting from lower affordable payments. HAMP servicers are now on track to meet the administration's goal of starting 500,000 trial modifications by Nov. 1, according to Treasury assistant secretary Michael Barr.

"We think all the servicers can do more than they are doing now and we would like to continue to work with him for better results," Treasury assistant secretary Michael Barr told a House Financial Services subcommittee.

Among individual servicers, Bank of America doubled the number of homeowners participating in trial loan modifications and is on pace to transition 125,000 at-risk loans into HAMP trial modifications by November. BoA had 68,000 homeowners in 90-day trials at the end of August, compared to 28,000 in July.

JPMorgan Chase had 144,050 loans in trial modifications as of Aug. 31, compared to 79,300 in July, according to Chase executive Molly Sheehan.

Of the 144,500 loans in three-month trials, "113,000 are currently active as of Aug. 31 and borrowers are making their trial plan payments," Ms. Sheehan said.

BoA has 7% of its HAMP-eligible borrowers in trial modifications and Chase has 25% of its eligible borrowers in trial modifications.

Servicers completed 253,000 workouts and loan modifications in July, Hope Now reported. The report also shows that there were 283,700 foreclosure starts and 89,200 foreclosure sales.

Only 40% of foreclosure starts end in an actual foreclosure due to modifications, refinancings and short sales, Ms. Schwartz said.

Foreclosure sales or loss of the home have come steadily down over the past two years, she said.

However, the number of homeowners 60 days or more past due is trending up again and it could lead to higher foreclosures. "It could go back up because the pipeline is too big," the Hope Now executive said.

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Kevin G. Hall, *Mortgage Help Patchy; Small Chinks in Lended Wall of Resistance*, McClatchy Newspapers, September 11, 2009.

Major mortgage service companies boosted the number of trial modifications they offered to distressed homeowners in August, the government reported Wednesday, but the workouts still cover only a small fraction of the delinquent loans that are eligible for help.

The Treasury Department released its second monthly report on loan modifications under the Obama administration's Making Home Affordable Program. It said that servicers had started 360,165 trial modifications through August, up by 124,918 from the modifications reported through July. The number of offers for trial modifications rose by 164,812, to 571,354 through August.

The total number of trial modifications started represented 12 percent of all loans that are 60 days late on payments and considered eligible for the Obama administration's program.

That's up from 9 percent seen through the end of July.

"We think all the servicers could do more than they are doing now," Assistant Treasury Secretary Michael Barr told the housing subcommittee of the House Financial Services Committee on Wednesday.

The program is on track to meet its target of 500,000 trial modifications by November, Barr said. That number, however, is a relatively small percentage of the more than 6 million potential foreclosures over the next three years that many analysts forecast.

Mortgage servicers, many of them large banks such as Wells Fargo and Bank of America, are essentially middlemen that collect mortgage payments on behalf of investors who own securities backed by pools of mortgages. Although borrowers negotiate with servicers as if they were the lenders, the servicers represent the interests of investors, not homeowners.

From 2005 to 2008, servicers modified just 3 percent of all delinquent loans, according to documents reviewed by the House panel.

That low number led the Obama administration to create the serv- icer performance report, dubbed "Name and Shame," in a bid to pressure investors and servicers to do more. Forty-seven servicers now participate in the administration's program, up from 38 in July.

Wells Fargo and Bank of America improved on their July numbers but are still modifying a low percentage of eligible loans under the government program. Bank of America increased from 4 percent of eligible loans to 7 percent, while Wells Fargo improved from 6 percent to 11 percent.

CitiMortgage, part of troubled Citibank, boosted its trial modification numbers to 23 percent of eligible loans in August from 15 percent in July. JP Morgan Chase, thought to be the nation's healthiest large bank, improved to 25 percent of eligible loans in August from 20 percent a month earlier.

The government's trial modification programs seek, through financial incentives to servicers and the investors they represent, to get borrowers into loans whose monthly payments are equivalent to 31 percent of their before-tax incomes.

Industry representatives said in testimony that their modification numbers were much higher than the report indicated, but there are no reliable breakdowns of individual servicer numbers to distinguish between, say, allowing a borrower to skip a payment versus modifying an adjustable-rate loan into a low-cost fixed-rate mortgage.

"There may be other things going on out there, but to comply with our program rules and to count as a real modification you've got to get people down to an affordable (payment) level," Barr told McClatchy Newspapers.

The administration will ratchet up more pressure on servicers, he said, requiring new data on why loans weren't modified.

"We are requiring next month the implementation of denial codes by each serv- icer, and at that point we will be able to have good empirical data on reasons for denial," Barr said.

Representatives of JP Morgan Chase, Bank of America and Wells Fargo acknowledged in testimony that they fold legal fees and other foreclosure-processing costs into reworked loans, upping the balance that borrowers owe.

Only Wells Fargo said it had a special program to help borrowers with strong payment histories should they lose their jobs.

Bank of America's executive in charge of credit loss mitigation, Jack Schakett, acknowledged to the panel something long suspected but rarely spoken about publicly. Distressed borrowers who have equity built up in their homes, he said, are more likely to get foreclosed on, because there's a greater likelihood that servicers and investors who hold pools of mortgages will profit from the sales of the homes.

"The more equity that is in the house, the more the market will actually walk away with money, the less likely you will actually modify the loan," Schakett confirmed in an interview after the hearing.

"We make mistakes. We learn from those mistakes. We correct those mistakes. I will be one of the first to acknowledge that we've made mistakes as far as handling customers," Schakett told McClatchy.

On the Net: August "Name and Shame" report, www.tinyurl.com/kknkco.

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Cheyenne Hopkins, *Frank Threatens Again to Pass Bankruptcy Bill*, American Banker, September 10, 2009.

WASHINGTON — Disappointed by the industry's poor loan modification efforts, House Financial Services Committee Chairman Barney Frank warned again Wednesday that Congress is likely to pass a bill that would allow judges to rework mortgages during the bankruptcy process.

Bankers have fiercely opposed the bill, and succeeded in helping to beat back efforts to pass the legislation earlier this year. But as the Treasury Department released more data showing what lawmakers saw as a lack of progress on modifications under the administration's Home Affordable Modification Program, Frank said the industry had run out of time to prove why bankruptcy reform was unnecessary.

"The best lobbyists we have for getting bankruptcy passed are the servicers who are not doing a very good job at modifying mortgages," Frank said. "And if they do not improve their performance, then they improve the chances of legislation."

While observers agree that the chances for the bill's passage are going up, it's unclear how much more leeway Democrats have. During a House subcommittee hearing on HAMP, many Democrats said it was time to revisit bankruptcy reform. While House lawmakers succeeded in passing a bill already, the legislation was hung up in the Senate, where a bill from Sen. Richard Durbin was rejected by a 51-to-45 vote.

There were also signs that the administration's support for mortgage bankruptcy is lukewarm at best. Treasury officials repeated Wednesday that they remain committed to the bill, but they have done little behind the scenes to push the issue. "Bankruptcy reform is an additional tool, but it is not the focus of the way to keep people in their homes," said Michael Barr, the Treasury's assistant secretary for financial institutions.

The administration had hoped public humiliation of servicers that fall behind on modifications would prompt them to step up their efforts.

"This kind of scorecard really helps benchmark servicer against servicer, and no one wants to be a low performer on that scorecard," Federal Housing Administration Commissioner Dave Stevens said.

But so far, it appears to be making little dent. In August, the top servicers started 360,165 trial modifications, up from 235,247 a month earlier. But the rankings of which institutions were doing the most appeared little changed.

JPMorgan Chase & Co. continued to exceed most other banks by modifying 25% of its eligible delinquent borrowers. Citigroup Inc. followed by modifying 23% of its delinquent loans and Wells Fargo & Co. modified 11% of its eligible delinquent loans. Bank of America Corp. however, continued to lag by modifying only 7% of its delinquent loans.

Barr defended the administration's progress, saying HAMP was on track to have 500,000 trial modifications by Nov. 1 and any delay was because of early implementation issues. Still, he reiterated that servicers needed to do more. "We think all the servicers could do more than they are doing now," Barr said. "And we'd like to continue to work with them to see better results."

But that promise was not enough for Democrats who said servicers have already had their chance.

"I am disappointed at the pace of this program," Frank said.

Other Democrats agreed.

"There is a place for bankruptcy," said Rep. Al Green. "That allows the consumer an option that will afford the opportunity to when the servicers can't serve, to go to court and take additional action."

But Republicans argued that unemployment was more of a driver of foreclosures. "I believe the overall approach of the administration's foreclosure prevention initiative was flawed from its inception," said Rep. Spencer Bachus, the lead GOP member of the House Financial Services Committee. "The best way, in fact the only way, to stop this foreclosures, is to get our economy growing again."

To address the unemployed borrowers facing foreclosure, many banks have created temporary forbearance programs. Barr said the administration is considering finalizing a formal plan as part of HAMP.

"Many servicers have forbearance programs for people who are temporarily unemployed, and I do think it makes sense within our program to try and formalize that more," he said.

###

Nick Timiraos, *Despite Frank's Threats, Cramdowns Still Long Shot,* The Wall Street Journal's Developments blog, September 10, 2009 10:07 AM ET.

Rep. Barney Frank wants to put mortgage servicers on notice: modify more mortgages, or the Massachusetts Democrat who chairs the financial services committee will revisit "cramdown" legislation that would allow bankruptcy judges to rewrite mortgage contracts when homeowners file for bankruptcy.

Bankruptcy judges currently have the ability to modify certain personal loans, including mortgages on vacation homes, but they cannot write down mortgages on primary residences. Still the political environment for a bankruptcy overhaul doesn't look any better than it did earlier this year, when the House passed that legislation but the Senate couldn't get it done.

That's why you don't see the Obama administration, which says it is supportive of the goal of bankruptcy reform legislation, preparing to spend much political capital on it. "Bankruptcy reform is an additional tool, but it's not the focus of our efforts to keep people in their homes," Assistant Treasury Secretary Michael Barr told reporters after testifying at a hearing Wednesday that examined the administration's efforts to modify loans for homeowners facing foreclosure. Mr. Barr indicated that administration officials aren't involved in talks on Capitol Hill about reviving the bankruptcy measure.

In an interview last month, Mr. Barr said that a "pretty rough" political climate for cramdowns earlier in the year hadn't improved.

Indeed, while foreclosures continue to reach new highs, the housing market has at the very least eased out of its downward spiral. Meanwhile, the Obama administration is pushing hard for its own package of financial regulatory overhaul measures, and early next year will offer its take on how to revamp Fannie Mae, Freddie Mac and the broader housing-finance structure in the U.S.

But Mr. Frank has been arguing that if the administration's loan modification efforts, which rely on voluntary participation by mortgage servicers, don't improve, then the political winds will move in his favor—and against the banks. "Let me put it this way," he said at Wednesday's hearing. "The best lobbyists we have for getting bankruptcy legislation passed are the servicers who are not doing a very good job of modifying mortgages. And if they do not improve their performance, then they improve the chances of that legislation."

Mr. Frank also struck against critics who have warned of a moral hazard that would be created by allowing bankruptcy judges to reduce borrowers' mortgage principal—in additional to other consumer debts, including credit cards and auto loans. "The notion that there are people out there eager to go bankrupt is, of course, fallacious," he said. "Bankruptcy is no picnic."

Republicans and the banking industry have warned that the bankruptcy overhaul would undermine steps that policymakers have taken to unfreeze credit. Rep. Spencer Bachus (R., Ala.) warned that the proposed measures "would prolong our housing recovery by adding uncertainty to the market and increasing mortgage costs for the vast majority of Americans."

###

***Mortgage relief program gains traction,* Anderson Independent-Main, September 10, 2010.**

WASHINGTON - The Obama administration's mortgage relief program is finally gaining traction. Nearly one in five eligible homeowners have been offered help so far, the government said Wednesday.

The plan, launched with great fanfare in March, had been slow to get going, but more than 571,000 loan modification offers, or 19 percent of those eligible, have been sent to nearly 3 million homeowners. That's up from 15 percent at the end of July.

More then 360,000 borrowers, or 12 percent of those eligible, have signed up for three-month trials, according to the Treasury Department report. The modifications reduce their monthly payments to more affordable levels.

While participation has been building, "we recognize that much more has to be done to help homeowners," Michael Barr, assistant Treasury secretary for financial institutions, said in remarks prepared for a House hearing Wednesday.

Treasury says 48 mortgage companies are now involved in the program, up from 38 in July.

###

Alan Zibel, *Obama program for mortgage relief growing; More loans being modified, but criticism remains*, The Associated Press, September 10, 2009.

WASHINGTON - The Obama administration's $50 billion mortgage relief program is finally picking up speed after a sluggish and disappointing start: Nearly one in five eligible homeowners have been offered help so far.

The ``Making Home Affordable'' plan was launched with great fanfare in March. As of last month, lenders had sent out more than 571,000 offers to reduce borrowers' monthly payments, the Treasury Department said yesterday.

That's 19 percent of the nearly 3 million homeowners eligible for a loan modification under the plan, up from 15 percent at the end of July.

``There are signs the plan is working,'' said Michael Barr, assistant Treasury secretary for financial institutions. ``But we can do better.''

Much better, lawmakers and housing counselors say.

``We think that you're missing the mark,'' Representative Maxine Waters, Democrat from California, told a panel of mortgage industry executives at a House hearing yesterday.

Of the modifications offered, about 360,000 borrowers, or 12 percent, have signed up for three-month trial modifications, which are supposed to be extended for five years if the homeowners make their payments on time.

To increase pressure on the industry, Waters and other lawmakers threatened to revive a failed proposal, opposed by banking lobbyists, to let bankruptcy judges rewrite the terms of a mortgage.

That change is necessary, consumer groups say, because getting a lender to do so voluntarily is still a time-consuming, bureaucratic nightmare. Many lenders are still scheduling foreclosure sales and charging borrowers fees for participating in the Obama plan.

``The administration has got to put some teeth in this and really get some consequences for the lenders and servicers who are not cooperating," said Bonnie Mathias, a board member of the Association of Community Organizations for Reform Now.

But mortgage executives say they are racing to implement the program, hiring thousands of workers to handle an unprecedented flood of calls.

``We fully understand the urgency," Jack Shackett, Bank of America's head of credit loss prevention, told lawmakers. ``We understand that we have a long way to go under very challenging circumstances."

Bank of America has doubled its number of trial modifications in two months to nearly 60,000. But it still lags its competitors, having enrolled about 7 percent of its 836,000 eligible loans, compared with 25 percent for JPMorgan Chase & Co.

The Treasury Department's decision to publish those numbers has provided a powerful inventive for many in the industry.

###

Nathan Olivarez-Giles, *Housing; Banks step up changes to loans; A month after being shamed for helping few borrowers, BofA and Wells post increases*, The Los Angeles Times, September 10, 2009.

The sluggish $75-billion federal mortgage relief program got a boost from Wells Fargo & Co. and Bank of America Corp., both of which stepped up their efforts last month to modify home loans.

The two banks, which took a total of $70 billion in taxpayer bailout funds to shore up their finances, have been roundly criticized on Capitol Hill for not moving quickly to help distressed homeowners.

Last month, Bank of America more than doubled the number of home loan modifications it started, to 59,891, over its July numbers, while Wells Fargo increased its modifications 64% to 33,172. That helped pump up the industry's response to the slow-starting federal program 53% to more than 360,000 modifications, according to figures released Wednesday by the banks and in the Treasury Department's now monthly report.

Still, the Obama administration's Making Home Affordable program isn't getting to struggling homeowners quickly enough, some argue. The administration itself set a target of modifying 500,000 mortgages by Nov. 1.

"I am disappointed at the pace of this program," said Rep. Barney Frank (D-Mass.), chairman of the House Financial Services Committee.

Kevin Stein, associate director of the California Reinvestment Coalition, a homeowner advocacy group, said, "These numbers still aren't where they should be."

Even the Treasury Department acknowledged that the pace of modifications had to pick up.

"There are signs the plan is working," Michael Barr, assistant Treasury secretary for financial institutions, told the House committee Wednesday. "But we can do better."

The department's monthly report, its second since the program was launched in March, should get some credit for giving the program a boost, Stein said.

"For the first time, last month we were able to see data on which companies were helping families avoid foreclosure and which companies were not," he said. That exposure for July's activity, he said, shamed especially Bank of America and Wells Fargo, which had turned in embarrassingly low numbers in July.

Also, although 85% of the mortgages nationwide are held by institutions voluntarily participating in the program, Stein suggested that banks and other lenders would be moving faster if participation were mandatory.

Up to 4 million homeowners have mortgages that qualify for adjustment under the administration's program.

Bank of America, Wells Fargo and other loan servicers said slowdowns were caused by the need to increase staffing in loan-servicing departments and by government delays in distributing information about the program. Wells Fargo said it was well on its way to modifying more than its share of eligible loans.

Overall, about 1 in 5 eligible homeowners, or nearly 19%, have had their mortgages changed through the program, the report said. In July, that number was about 9%.

In some cases, loan servicers are using the plan's rules to keep homeowners from taking part, which results in homes heading to foreclosure anyway, said Bruce Dorpalen, director of housing counseling for the Assn. of Community Organizations for Reform Now, or ACORN.

"We need stronger enforcement," Dorpalen said. "We're still finding foreclosure sales going through with no review to see if homeowners are eligible for loan modifications."

ACORN is calling for the federal government to impose a one-year freeze on foreclosures to allow homeowners more time to figure out whether they are eligible for loan changes under the program.

###

***Homeowner aid increases*, Orlando Sentinel, September 10, 2009.**

The Obama administration's $50 billion mortgage relief program is picking up speed: Nearly one in five eligible homeowners has been offered help so far, the Treasury Department said.

The Making Home Affordable plan, launched in March, had been slow to get going, but more than 571,000 loan modification offers, or 19 percent, have been sent to nearly 3 million eligible homeowners. That's up from 15 percent at the end of July.

Of those, more than 360,000 borrowers have signed up for three-month trial modifications, which are supposed to be extended for five years if homeowners make payments on time.

"There are signs the plan is working," Michael Barr, assistant Treasury secretary for financial institutions, said at a House hearing. "But we can do better."

###

Alan J. Heavens, *Mortgage –modification program shows improvement*, The Philadelphia Inquirer, September 10, 2009.

More than a half-million homeowners have been offered a chance to modify their mortgages to lower interest rates since February's launch of Obama administration efforts to reduce foreclosures nationwide.

Yet in testimony yesterday before a subcommittee of the House Financial Services Committee, Assistant Treasury Secretary Michael Barr indicated that the Home Affordable Modification Program, though more successful than previous steps, still had problems.

A continuing issue, Barr said, is the failure of some of the 45 loan servicers in voluntary compliance with the program to convert offers of trial modification into the real thing.

So far, these servicers, representing 85 percent of the nation's 45 million mortgages, have offered 570,000 borrowers trial modification, in which homeowners try the lower rates to see if they can consistently make payments.

But only 360,000 trial modifications are actually under way, he said. The administration wants to have 500,000 in operation by Nov. 1.

By contrast, Barr said, 2.8 million of the five million borrowers eligible are already participating in the government's Home Affordable Refinance Program. Through this program - designed to help homeowners who can still make their mortgage payments but cannot refinance, often because the value of their homes has decreased in today's depressed market - borrowers whose loans are held by Fannie Mae or Freddie Mac switch into a more affordable mortgage.

Yet to be either modified or refinanced, Fitch Ratings Inc. reported yesterday, are 88 percent of the one million so-called option adjustable-rate mortgages originated between 2004 and 2007.

Option ARM borrowers are in urgent need of assistance before those mortgages reset, resulting in additional foreclosures, according to Sylvia Alayon, vice president of operations for the Consumer Mortgage Audit Center.

"Housing bills are about to skyrocket as much as 63 percent" for those option ARM borrowers who have been able to make monthly payments of interest and principal, interest only, or just part of the interest due, Alayon said yesterday.

In the government's Home Affordable Modification Program (HAMP), there has been "substantial variation" in the performance of servicers in processing requests, Treasury officials said, a result of inadequate staffing and training, among other reasons.

Treasury Secretary Timothy Geithner and HUD Secretary Shaun Donovan have called on servicers "to devote more resources" to the program so it can succeed.

Barr testified that Freddie Mac was developing a "second-look" process for modification applications that have been declined. In addition, there will be a greater effort made to reach eligible borrowers and connect them with HUD-approved counseling agencies to help with the modification process.

Treasury data show that Bank of America Corp. more than doubled its modifications to 59,891 in August from July, while Wells Fargo & Co. improved 64 percent, to 33,172.

Citigroup Inc.'s rate was 23 percent; JPMorgan Chase & Co.'s was 25 percent. Morgan Stanley's Saxon Mortgage Services received top-performer status, with trial modifications for 39 percent of 73,694 eligible loans.

Still, figures show that 88 percent of troubled borrowers are not taking advantage of the program.

Bruce Dorpalen, ACORN's national director of housing counseling, said in a conference call yesterday that foreclosures were proceeding without modification, even though HAMP stops the process until a loan has been reviewed.

"We have seen a steady stream of borrowers who are two weeks away from a foreclosure-sale date when they should not be," he said.

"Once trial modifications have been obtained," Dorpalen added, "servicers appear to be following the rules."

Mortgage Program Basics

The Home Affordable Modification Program is available to all borrowers regardless of loan-to-value ratios, with a $729,750 limit for single-unit properties.

Borrowers can be current on payments but must demonstrate financial hardship or risk of default.

Servicers must adhere to program guidelines for all loans and evaluate every one using a test to determine the net present value of the property to see if the costs of modification would be less than foreclosure.

Servicers must cut the borrower's first lien to a 31 percent debt-to-income ratio, meaning the monthly payment can be no more than 31 percent. This is done by lowering the interest rate to a floor of 2 percent, extending the amortization up to 40 years, or forgiving principal until 31 percent is reached.

The monthly payment will remain in place for five years if the borrower remains current, and the rate will step up each year to a specified cap fixed for the life of the loan.

###

Kathleen Lynn, *N.J. foreclosure risk rose in Aug; Filings climbed 28% over 2008*, The Record, September 10, 2009.

The number of New Jersey households at risk of losing their homes rose last month, according to RealtyTrac, a California company that tracks the foreclosure market.

Foreclosure filings in New Jersey jumped 28 percent in August, compared with a year earlier, RealtyTrac said Wednesday. One in every 421 households in the state faced some sort of foreclosure filing during the month, ranging from a bank notice that they're late on mortgage payments all the way up to sale at sheriff's auction.

Earlier this year, foreclosure filings had slowed in New Jersey, apparently in response to state programs aimed at helping troubled homeowners. But it now appears that many of those efforts only delayed the foreclosures, rather than solve the underlying problems.

Sylvine Marabotto of Consumer Credit Counseling Services in Cedar Knolls said the agency has seen a steady stream of homeowners in need of counseling.

"We are seeing more people who have been unemployed for longer periods of time," Marabotto said. "Their homes are in jeopardy and their credit cards are maxed out."

Nationally, foreclosures were at a near-record rate, with one in every 357 households receiving a filing in August.

"We saw a record high number of properties either entering default or being scheduled for a public foreclosure auction for the first time," said James J. Saccacio, RealtyTrac CEO.

Nevada, Florida and California remained the most troubled markets. During the housing boom of the first half of this decade, those states were flooded with an oversupply of new homes. But in many cases, property values have plummeted, leaving homeowners in those states "under water," owing more on their mortgages than the properties are worth.

Also Wednesday, the Treasury department said that nearly one in five eligible homeowners have been offered help by the Obama administration's mortgage relief program.

The plan, launched in March, had been slow to get going, but more than 571,000 loan modification offers have been sent to nearly 3 million homeowners.

More than 360,000 borrowers, or 12 percent of those eligible, have signed up for three-month trials, according to the Treasury Department report. The modifications reduce their monthly payments to more affordable levels.

While participation has been building, "we recognize that much more has to be done to help homeowners," Michael Barr, assistant Treasury secretary for financial institutions, said in remarks prepared for a House hearing Wednesday.

Treasury says 48 mortgage companies are now involved in the program, up from 38 in July.

"The lenders do seem a little more willing to look at loan modifications," Marabotto said. "Some lenders are giving clients a three-month loan modification, with the suggestion that they get credit counseling to make sure their unsecured debt and budget are in line before making the loan modification permanent."

Nevertheless, housing advocates say getting approved for a modification is a time-consuming, bureaucratic nightmare.

###

Carolyn Said, *Trial loans, red tape grow; Foreclosure Crisis; BofA, Wells step up efforts in federal aid program*, The San Francisco Chronicle, September 10, 2009.

Nationwide efforts to help struggling homeowners avert foreclosure improved in August although red tape and bureaucratic snafus continued, according to a government report released Wednesday.

Bank of America and Wells Fargo, criticized for inadequate efforts after a previous report, both increased their participation in the Home Affordable Modification Program, a key White House initiative to address the foreclosure crisis.

Trial loan modifications - three-month tests to see if borrowers can handle lower payments - have started for about 360,000 U.S. homeowners under the program, the report said. That represents about 12 percent of eligible borrowers who are 60 days or more behind on mortgage payments. Trial offers have been extended to 571,000 borrowers, or 19 percent of those eligible.

"Our progress in implementing these programs to date has been substantial, but we recognize that much more has to be done to help homeowners," said Michael Barr, Treasury assistant secretary for financial institutions, in prepared testimony at a House hearing Wednesday. "We recognize that challenges remain in implementing and scaling up the program, and are committed to working to overcome those challenges and reach as many borrowers as possible." He reiterated what President Obama said when introducing the program in February: "Even if HAMP is a total success, we should still expect millions of foreclosures."

Consumer advocates said they remain disappointed by the program, which has the ambitious goal of helping 3 million to 4 million borrowers, but has come under fire for a slow start.

"It's not the broad-scale solution we need to this immense problem," said Kevin Stein, associate director of the California Reinvestment Coalition. "It still is a voluntary program. There is too much leniency for banks built into it. There are no requirements and no consequences for not doing well."

The $50 billion program offers banks an incentive payment to modify loans but lets the banks decide whether foreclosure will benefit them more financially. The 47 banks enrolled in the program cover 85 percent of U.S. mortgages.

Cara Heiden, co-president of Wells Fargo Home Mortgage, said in an interview that the bank "feels good about our 64 percent increase in HAMP modifications over the past 30 days." Wells had 33,000 borrowers, or 11 percent of those eligible, enrolled in trial HAMP modifications by Aug. 31. In addition, Wells has offered 251,000 customized modifications for struggling borrowers, she said.

The bank does not have data on the success rate of its modifications, a topic the overall report also does not address. Other reports from different government agencies and academic researchers have found that more than half of customers who receive loan modifications still end up in foreclosure.

Mounting homeowner complaints have indicated that the application process is frustrating, complex and often futile.

"I know that we've had service issues and we're working hard to fix them," Heiden said. Since early this year, the number of borrowers requesting assistance from Wells has risen 200 percent, she said. The bank now has 12,000 employees dedicated to working with struggling borrowers, including 4,600 who were added this year.

Rep. Barney Frank, D-Mass., chairman of the House Financial Service Committee, said he was disappointed with the program's slow pace. According to news reports, he threatened to revive legislation that would allow bankruptcy judges to reduce principal balances on home loans, an idea fiercely opposed by the industry.

Loan mod report card

The government released cumulative data as of Aug. 31 tracking its Home Affordable Modification Program, under which banks receive incentives to modify mortgages to make them more affordable for struggling borrowers.

Bank	Number trial modifications started	% eligible delinquencies* with trial mods
Bank of America	59,891	7%
CitiMortgage	44,750	23%
GMAC Mortgage	17,347	26%
JPMorganChase	106,288	25%
Wells Fargo	33,172	11%
All 47 participating banks	360,165	12%

*Loans delinquent more than 60 days; does not include loans that are current or less than 60 days delinquent, although they may also be eligible

Source: U.S. Treasury Department

"I know that we've had service issues and we're working hard to fix them."

Cara Heiden, co-president of Wells Fargo Home Mortgage

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Christina M. Mitchell, *Wednesday's Bank Stocks: Sector rises with market on economic news*, SNL Bank and Thrift Daily, September 10, 2009.

HIGHLIGHT: Bank and thrift stocks rose Wednesday, Sept. 9, after the Federal Reserve's latest report on economic activity across the country showed signs of improvement.

Bank and thrift stocks rallied Wednesday, Sept. 9, after the Federal Reserve's latest report on economic activity across the country showed signs of improvement in most regions.

The SNL Bank Index rose 1.30% to 277.80, while the SNL Thrift Index added 0.85% to 556.80. In the broader markets, the Dow Jones Industrial Average gained 0.53% to 9,547.22, the S&P 500 added 0.78% to 1,033.37, and the NASDAQ Composite Index rose 1.11% to 2,060.39.

The Federal Reserve's Beige Book indicated that economic conditions showed signs of improvement or stabilization across most of the agency's 12 geographic districts; however, key economic measures such as employment and consumer spending continued to show weakness, and credit standards remained tight.

Still, economists told SNL that the report, which contained few surprises, fed the growing consensus that the longest U.S. recession in decades may have ended during the summer.

"The question is now turning to, 'What is the recovery going to look like?' And the consensus view is that it's going to be gradual rather than robust: U-shaped, not V-shaped," said Christopher Probyn, chief economist at State Street Global Advisors.

Given conditions, the Fed may begin to think about raising rates. But with an anemic start to the recovery, there's little incentive to make those changes any time soon, added Joel Naroff, chief economist at TD Bank and president of Naroff Economic Advisors. "While the recession may be over, the recovery isn't yet in full force," Naroff told SNL.

In a speech to the Council on Foreign Relations, Chicago Fed President Charles Evans argued that the Federal Reserve had averted the risk of deflation, and it would work as well to thwart the possibility of inflation. "Just as the Fed acted responsibly to prevent a potential deflation, it will do so to prevent a future increase in inflation above our price stability objective," Evans said in prepared remarks. "Unfortunately, this sounds too much like, 'Just trust us to do the right thing.' This is uncomfortable for everyone, but it is a natural dilemma at this point in the economic cycle when it is yet too soon to actually begin removing policy accommodation."

On the housing front, the Mortgage Bankers Association said its index of mortgage applications for the week ended Sept. 4 jumped 17% from the previous week on a seasonally adjusted basis. The four-week moving average for the seasonally adjusted market index was up 7%. The association's report on commercial/multifamily mortgage groups showed a more negative trend, however, as delinquency rates once again increased, with the portion of loans held in CMBS that were at least 30 days delinquent rising 204 basis points between the first and second quarters, to 3.89%.

Michael Barr, the U.S. Treasury Department's assistant secretary for financial institutions, said Wednesday in congressional testimony that, while government programs aimed at reducing foreclosures were helping homeowners, millions more Americans still are expected to lose their homes. "Some of these foreclosures will result from borrowers who, as investors, do not qualify for the program," Barr said in prepared remarks for a House Financial Services subcommittee. "Others will occur because borrowers do not respond to our outreach. Still others will be the product of borrowers who bought homes well beyond what they could afford and so would be unable to make the monthly payment even on a modified loan."

Sen. Chris Dodd, D-Conn., confirmed Wednesday that he will remain the chairman of the Senate Committee on Banking, Housing and Urban Affairs, thus ending speculation that he would give up the position to succeed the late Sen. Ted Kennedy as chairman of the Senate Committee on Health, Education, Labor and Pensions. The possibility of a change in the banking committee chairmanship had prompted discussion about the potential impact on pending financial reforms.

In other government-related news, the FDIC's board voted to allow the debt guarantee component of the Temporary Liquidity Guarantee Program to expire Oct. 31, but left open the possibility of keeping a six-month temporary emergency facility in place after the expiration. The regulator said it will seek comment on whether such a program should be implemented.

Also Wednesday, Global Consumer Acquisition Corp. said it signed a letter of intent to acquire Las Vegas-based Service1st Bank of Nevada in an all-stock transaction. GCAC expects to become Western Liberty Bancorp, a new bank holding company, following regulatory and shareholder approvals. The special purpose acquisition company said Aug. 31 that it is still attempting to negotiate a deal for many of the Nevada assets of former Colonial BancGroup Inc. unit Colonial Bank. GCAC's original deal to acquire Colonial's Nevada assets fell through after the bank was seized by regulators and then acquired by BB&T Corp. in an FDIC-assisted deal.

Price leaders among bank stocks Wednesday included Capital One Financial Corp., up 5.73% to $37.47; First Horizon National Corp., up 4.02% to $13.28; and National Penn Bancshares Inc., up 7.88% to $5.75.

Laggards included Synovus Financial Corp., down 1.49% to $3.31, and Popular Inc., down 4.26% to $2.25.

In the thrift space, New York Community Bancorp Inc. gained 2.19% to $10.75, and Hudson City Bancorp Inc. added 0.92% to $13.18.

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Mike Lillis, *Wop Dems Rev\new Call for Cramdown*, The Washington Independent, September 10, 2009.

The White House program designed to prevent foreclosures by paying banks to alter loans voluntarily isn't doing nearly enough to keep struggling borrowers in their homes, several powerful Democrats charged Wednesday. Rep. Barney Frank (D-Mass.), who chairs the House Financial Services Committee, and Richard Durbin (Ill.), the Senates No. 2 Democrat, are threatening to renew the push to empower homeowners to escape foreclosure through bankruptcy " a proposal that's anathema to the banks and their congressional defenders.

In March, the Obama administration launched a program providing $75 billion in carrots to banks that make mortgages more affordable. While administration officials say the program is right on track, the number of modifications lags far behind new foreclosure filings. Indeed, the Treasury Department released figures Wednesday revealing that the voluntary initiative has encouraged roughly 360,000 trial modifications since the program began. Meanwhile, foreclosure filings topped 360,000 in July alone, according to RealtyTrac, an online foreclosure tracker. The figures, many lawmakers and consumer groups contend, are indication that leaving the modifications to the fancy of the banks wont stem the foreclosure crisis, which was at the root of the past years financial meltdown and threatens to prolong it.

Waiting for banks to [#x2dc]volunteer to end this foreclosure crisis is a waste of time, Durbin said in a statement Wednesday. Treasurys latest report show[s] this approach has failed miserably.

Durbin is calling on Treasury Secretary Tim Geithner to sit down with congressional leadership and work to end this blight on our economic future.

The comments come at a time when foreclosures continue to skyrocket, even as some other indicators suggest that the economy is on a slow rebound. Indeed, Julys 360,149 foreclosure filings represent a 7 percent jump from the month before, RealtyTrac reported. And the trend is expected to worsen as the leading cause of foreclosures shifts further from the risky subprime loans that collapsed so spectacularly in recent years to today's rising unemployment, which is approaching 10 percent. Even the most affordable modifications, experts point out, will likely be unaffordable to folks without incomes.

A payment of zero will never be attractive to a lender, Paul Willen, senior economist at Boston's

Federal Reserve, said Wednesday during a hearing of the Financial Services housing subcommittee.

Michael Barr, the Treasury Departments assistant secretary for financial institutions, told lawmakers that the administrations anti-foreclosure program " designed to modify between 3 million and 4 million mortgage loans over the next several years " is on pace to meet that goal. The 45 servicers who are participating, Barr testified, have offered 570,000 trial modifications, with 360,000 of those underway. Under the trial system, if homeowners meet their payment obligations for three straight months, then the new mortgage terms become permanent.

Still, Barr conceded that there’s plenty of room for more bank cooperation. We think that all the servicers can do more than they’re doing now, he said.

Administration officials, who called representatives of the major servicers to Washington in July to urge them to do more to help struggling borrowers stay in their homes, have planned a similar meeting for Thursday.

Frank said Wednesday that he’s disappointed at the pace of the White House initiative. Considering the reluctance of mortgage servicers to modify loans voluntarily, he added, mortgage bankruptcy reform has become relevant.

The best lobbyists we have for getting bankruptcy legislation passed are the servicers who are not doing a very good job of getting mortgages modified, Frank said.

Under the Democrats reform proposal, bankruptcy judges could reduce, or cramdown, the terms of mortgages, including interest rates and principal balances, to make the loans more affordable for struggling homeowners " a power judges currently have over loans for vacation homes, boats and other material assets, but not over primary mortgages.

Consumer advocates say such reform would provide an important stick nudging the banks in the direction of modifications rather than foreclosures. Alys Cohen, attorney with the National Consumer Law Center, an advocacy group, told lawmakers Wednesday that servicers, aiming to maximize their profits, have been all too quick to choose the latter.

As with all businesses, Cohen said, servicers add more to their bottom line to the extent that they can cut costs.

Willen, of the Boston Fed, pointed out another reason that carrots alone wont ensure the success of Washingtons anti-foreclosure strategy: There’s nothing, he said, preventing the banks from choosing to modify only those loans that are likely safest to begin with. oeA program that offers monetary incentives to do as many modifications as possible and to minimize the probability that modified loans redefault may not in fact prevent many foreclosures, Willen said.
Frank spokesman Steven Adamske said that, if the servicers don’t make significant progress on loan modifications in the coming months, the Financial Services chairman will add the cramdown provision to a larger package of finance reforms that House Democrats plan to take up later in the year.

They have a tough road. Although House lawmakers already passed mortgage bankruptcy reform legislation this year, the proposal hit a wall of bipartisan opposition in the Senate, after the Obama White House abandoned its previous support for the proposal. On top of that, the finance industry, despite its remarkable collapse, remains a powerhouse of influence on Capitol Hill, giving hundreds of millions of dollars to lawmakers each election cycle.

And Republicans, who have sided with the banks in opposing mortgage bankruptcy reform, didnt stray from that position this week. Rep. Spencer Bachus (Ala.), senior Republican on the Financial Services panel, said the only way to reverse the rising tide of foreclosures is to curb the rising rate of unemployment. The best way to tackle unemployment, Bachus added, is to get the government out of the way and allow the private sector to create these jobs.

That's how you save these homes, Bachus said.

Mortgage servicers, for their part, maintain that they've bent over backward to comply with the administrations loan modification program in order to help homeowners. Jack Schakett, executive in charge of credit loss at Bank of America (NYSE:BAC) , the country's largest mortgage servicer, told lawmakers Wednesday that BoA intends to transition 125,000 trouble loans into the trial modification phase before Nov. 1.

Threat of bankruptcy, Schakett said he would not change our policies of modification.

Yet such responses, many lawmakers say, are just further indication that, if Congress hopes to rein in foreclosures, mortgage modification decisions shouldn't be left solely in the hands of the banks. The servicers are not going to change, Rep. Al Green (D-Texas) said during Wednesdays hearing. So if we know that [they aren't going to change], then we have to do something different.

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Ruth Simon and Jessica Holzer, *Mortgage-Aid Plan Gets Tepid Results*, The Wall Street Journal, September 10, 2009.

Just 12% of eligible borrowers have started trial loan modifications under the Obama administration's $75 billion mortgage foreclosure prevention plan, according to a Treasury report released Wednesday.

The latest data come amid increasing concern that the effort, which relies on hefty government incentives for lenders and borrowers, won't be enough to effectively combat mounting foreclosures across the country.

Under the program, eligible borrowers who are behind on their mortgage payments or are at risk of imminent default can get their payments reduced during a trial period. Borrowers must typically be current on their payments in the trial program after three months and meet documentation requirements to qualify for a reworked mortgage.

There are growing questions about how many borrowers who receive trial modifications will ultimately get their loans reworked.

"I think they will be lucky to get 50% [of the trial modifications] to turn into real modifications," says Bob Caruso, executive vice president for strategy with Lender Processing Services Inc., a provider of mortgage technology, data and analytics.

The administration, which announced the program in February, has said it expects as many as four million borrowers to begin trial modifications. So far, more than 570,000 trial modifications have been offered to borrowers under the program and about 360,000 trial modifications are under way, the Treasury reported.

Nearly one in 12 borrowers are at least 90 days past due on their mortgage or are in foreclosure, the Mortgage Bankers Association reported last month.

Among large mortgage servicers, Wells Fargo & Co. and Bank of America Corp. have started trial modifications for 11% and 7%, respectively, of their eligible borrowers who are at least 60 days past due.

Cara Heiden, co-president of Wells Fargo Home Mortgage, said the company increased the number of trial modifications by 64% in August. Bank of America Credit Loss Mitigation Strategies Executive Jack Schakett said the Treasury's figures don't include modifications done outside of the administration's program.

J.P. Morgan Chase & Co. has started trial modifications for 25% of eligible borrowers, and Citigroup Inc. 23%.

In an interview Wednesday, Assistant Treasury Secretary Michael Barr called the program "highly effective" and predicted it will meet its goals.

But in a congressional hearing Wednesday, House Financial Services Chairman Barney Frank (D., Mass.) said he is disappointed at the pace of the program. He threatened to revive a measure to allow bankruptcy judges to rework the terms of troubled mortgages if servicers didn't improve their efforts.

Mr. Schakett said about 15% of borrowers who begin trial modifications aren't likely to be able to make three payments during the trial period as required. The "big wild card," he said, is how many people won't receive a modification because they haven't provided the required documentation.

Mortgage-servicing companies say they are often beginning trial modifications based on verbal information from the borrower.

Some borrowers aren't providing the required information or their documents don't match the information provided verbally, said Michael Brauneis, director of regulatory risk consulting at Protiviti Inc. Some borrowers complain that mortgage companies often misplace documents they send in

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Jessica Holzer, *Barney Frank Threatens to Revive Mortgage Bankruptcy Plan*, The Wall Street Journal, September 9, 2009 1:22 PM ET.

WASHINGTON -- House Financial Services Chairman Barney Frank (D., Mass.) threatened to revive legislation to allow bankruptcy judges to rewrite the terms of troubled mortgage loans.

Mr. Frank on Wednesday warned mortgage servicers that they would encourage support for the measure, which is fiercely opposed by the banking industry, if they don't do more to help strapped borrowers. The measure narrowly passed the House this year, and has been rejected in the Senate twice in the past two years.

"The best lobbyists we have for getting bankruptcy legislation passed are the servicers who are not doing a very good job of getting mortgages modified," Mr. Frank said at a House hearing on the Obama administration's foreclosure-prevention effort.

Mr. Frank has told people he plans to attach the bankruptcy measure to financial regulatory overhaul legislation, a person familiar with the matter said.

Under the measure, bankruptcy judges would be allowed to reduce mortgage debts for strapped borrowers by slashing interest rates, extending the loan term or cutting the loan's principal balance, known as cramdown.

Treasury Assistant Secretary Michael Barr indicated that administration officials aren't involved in talks on Capitol Hill about reviving the bankruptcy measure.

"Bankruptcy reform is an additional tool, but it's not the focus of our efforts to keep people in their homes," Mr. Barr told reporters after testifying at the hearing.

Rep. Spencer Bachus of Alabama, the top Republican on the panel, blasted the idea of bringing back the legislation. "Bankruptcy cramdown would seriously prolong our housing recovery by decreasing mortgage credit," he said in opening remarks at the hearing.

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Dawn Kopecki, *At 47 banks, pace picks up on mortgage adjustments*, Bloomberg News, September 9, 2009.

Bank of America Corp. and Wells Fargo & Co., among the worst performers of banks in the U.S. government's main foreclosure-prevention plan, stepped up their pace of mortgage modifications by at least 60 percent in August.

Bank of America more than doubled its number of modifications started through the Making Home Affordable Program to 59,891 in August from July, while Wells Fargo improved by 64 percent to 33,172, the U.S. Treasury said in a report Wednesday. Overall, 47 banks have begun 360,165 modifications through the program, up from about 235,247 in July.

Wells Fargo and Bank of America, which have taken a combined $70 billion in taxpayer-funded aid, had been criticized by lawmakers for not doing enough to offer assistance to struggling homeowners. The banks have cited the time needed to boost staffing in loan-servicing departments and government delays in distributing information about the program.

"A lot of our momentum pickup is working with those customers we had already made offers on, making sure they were aware of the offer and converting those offers into trial starts," Steve Bailey, a Bank of America home-retention strategies executive, said.

Bank of America's modification pace may quicken as the bank accounted for about 22 percent of the 571,354 modification offers made, though not all started, through the program. Wells Fargo accounted for about 13 percent.

Bank of America and Wells Fargo still lag their peers including JPMorgan Chase & Co. and Citigroup Inc. As of August, Bank of America had started modifications on 7 percent of its eligible loans. Wells Fargo was at 11 percent. Citigroup's rate was 23 percent, while JPMorgan's was 25 percent. The best performer among servicers that had at least 100 qualifying mortgages was Morgan Stanley's Saxon Mortgage Services, which had begun trials for 39 percent of its 73,694 eligible loans.

The Treasury said the program has been more successful than any other foreclosure relief effort for "at-risk borrowers," Michael Barr, the Treasury's assistant secretary for financial institutions, said in written testimony to the House Financial Services Committee panel on housing.

Barr said Treasury has asked loan servicers to expand call centers, add more staff than planned, increase training and allow borrowers to escalate complaints, among other things.

Eligible loans under HAMP are those at least 60 days past due, in foreclosure or bankruptcy, and originated prior to 2009. The underlying property must be occupied by the owner and conform to Fannie Mae and Freddie Mac loan limits, which can be as high as $729,750 in some areas. The data excludes Federal Housing Administration and Veterans Affairs loans.

The program requires banks that received federal aid from the Treasury's Troubled Asset Relief Program, as well as mortgage-finance companies Fannie Mae and Freddie Mac, to lower monthly payments for borrowers at "imminent risk" of default. Banks can lengthen repayment terms, lower interest rates to as low as 2 percent and forbear outstanding principal, among other methods.

Government-controlled mortgage-finance company Fannie Mae reported last month that 41 percent of the loans it modified in the fourth quarter, before HAMP was implemented, were still current or had been paid off.

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Ronals D. Orol, *Official says mortgage-aid program is on track*, MarketWatch, September 9, 2009 1:14 PM ET.

WASHINGTON (MarketWatch) -- A six-month-old, $75 billion White House-backed program to help homeowners on the verge of foreclosure is on track to help more than 500,000 homeowners, a key housing official with the government said Wednesday.

Loan servicers have extended more than 571,000 loan-modification offers while about 360,000 homeowners have begun the process of modification, according to Dave Stevens, assistant secretary at the Housing and Urban Development department.

"At the current pace, the program is well on its way to meet the goal of modifying mortgage loans for more than a half million deserving homeowners by Nov. 1," Stevens added.

At a meeting in July, mortgage servicers committed to modify more than half a million mortgages by Nov. 1. Stevens said that roughly 2.7 million homeowners have refinanced since February, as part of a government program and also through private transactions.

Yet the chairwoman of the housing subcommittee for the House Financial Services Committee, Maxine Waters, D-Calif., said that the program is still struggling, pointing out that only 15% of the eligible 2.7 million homeowners have received help. She noted that Credit Suisse expects 8.1 million homes to go into foreclosure over the next four years.

"More needs to be done," Waters commented. "Foreclosures are expanding."

The lawmaker also said that there were concerns about servicers continuing foreclosure proceedings, even as modification processes are under way. "Some servicers here today reported enrollment of only 4% of eligible borrowers."

Rep. Spencer Bachus, R-Ala., the ranking Republican member of the House Financial Services Committee, said he believed the White House approach was flawed from the start.

"The best way to improve the situation is get our economy going. If they are losing their jobs, they will lose their homes. We need to allow the private sector to create the jobs," Bachus argued. "A homeowner who has lost his job needs a new job, not a government handout."

Michael Barr, assistant secretary for financial institutions at the Treasury Department, said that the progress in implementing the programs have been substantial, and that government officials will not stop at 500,000 modifications once it meets that goal.

Nevertheless, he added that more needed to be done. "Servicer performance is uneven, geographic unevenness as well. Servicers need to reach out to find the eligible borrowers."

Barr said regulators are taking steps to have mortgage servicers expand the number of borrowers that can be eligible for the loan-modification program. He said the Treasury is pressing loan servicers to hire more staff, expand call-center capacities and generally devote more resources to the program.

At issue are two programs. The Home Affordable Modification Program is using as much as $75 billion, in part, from the Troubled Asset Relief Program to incentivize loan servicers to make loan modifications for troubled homeowners.

Another program, The Home Affordable Refinance Program, seeks to expand access to refinancing opportunities for families whose homes have lost value and whose mortgage payments can be reduced at market interest rates.

Republican lawmakers said they were worried that many borrowers who had their mortgages modified through the programs would subsequently default and go into foreclosure anyway, costing taxpayers additional funds.

Barr said that Treasury has not made data on "redefault" available yet. "As soon as we have data that would stand up to empirical examinations we will make that data available Our hope would be that everyone would succeed; we know that some people aren't going to make it, and we need to be realistic about our expectations."

The Treasury is establishing codes of conduct that will seek to require mortgage servicers to report the reason why modifications have been denied -- both to the government and to the rejected borrower, according to Barr. He also said that once Treasury receives that data, the agency will have good information about why certain borrowers are being rejected for the program.

Molly Sheehan, a housing-policy executive at J.P. Morgan Chase & Co. (JPM) , said that Chase has approved roughly 144,054 mortgage modifications as part of the White House modification program. Roughly 113,000 of those modifications are currently active, with borrowers making their revised payments as part of the plan.

Further, she indicated Chase has hired additional people for its mortgage-modification program, added additional office space and invested in new technology to facilitate the effectiveness of the program.

Cram-down

Bachus said he was disappointed that House Financial Services Committee Chairman Barney Frank, D-Mass., plans to support a controversial "cram-down" legislation, if it is introduced, that would allow bankruptcy judges to modify mortgages. Efforts to pass cram-down legislation in 2008 and early this year failed because of bipartisan legislation.

"It will delay our ability to pass important legislation," Bachus commented.

But Frank countered that bankruptcy reform is relevant. He pointed out that the measure would only be eligible for borrowers of the verge of foreclosure prior to the passage of the legislation. Frank spokesman Steven Adamske said the lawmaker plans to support cram-down legislation with Democratic leadership when it comes to a vote on the House floor.

Cram-down legislation is under the jurisdiction of House Judiciary Committee Chairman John Conyers, D-Mich., who has supported it in the past.

"It would be something Frank would like to do if mortgage modifications and other home programs don't seem to be working," according to Adamske.

Frank added that Bachus would do nothing to help people on the verge of foreclosure.

"The notion that this would stop the flow of credit is nonsense," Frank argued. "The notion that there are people out there that they want to go bankrupt is fallacious.

"I do agree jobs are better, but while unemployment is causing a new wave of foreclosures, that ignores the fact that the foreclosure crisis was inherited from the previous administration."

Rep. Al Green, D-Texas, said he believed it was a critical time to help "bail out" Americans through cram-down.

"What do we do now when we don't have jobs?" he asked. "I think there is a place for bankruptcy reform. It would afford the consumer the opportunity to go to court and take additional action to restructure loans or refinance loans when servicers cannot do it."

Consumer protection

Bachus and Barr sparred over legislation expected to be considered later this month that would create a Consumer Financial Protection Agency, which would approve mortgage and credit-card products.

Barr responded to Bachus' concerns that a CFPA would limit a consumer's ability to choose mortgage products. The CFPA would be charged with making sure borrowers are offered a plain 30-year loan product before other mortgage products are offered.

"I would not characterize my position as limiting choice for consumers. If a borrower is going to be offered a pay option ARM, shouldn't they get the information about the impact of such a loan?" Barr asked. "Let's give people the tools they need to make better decisions."

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Kevin G. Hall, *Mortgage service firms still doing little to help homeowners*, McClatchy Newspapers, September 9, 2009.

WASHINGTON -- Major mortgage service companies boosted the number of trial modifications they offered to distressed homeowners in August, the government reported Wednesday, but the workouts still cover only a small fraction of the delinquent loans that are eligible for help.

The Treasury Department released its second monthly report on loan modifications under the Obama administration's Making Home Affordable Program. It said that servicers had started 360,165 trial modifications through August, up by 124,918 from the modifications reported through July. The number of offers for trial modifications rose by 164,812, to 571,354 through August.

The total number of trial modifications started represented 12 percent of all loans that are 60 days late on payments and considered eligible for the Obama administration's program. That's up from 9 percent through the end of July.

"We think all the servicers could do more than they are doing now," Assistant Treasury Secretary Michael Barr told the housing subcommittee of the House Financial Services Committee on Wednesday.

The program is on track to meet its target of 500,000 trial modifications by November, Barr said. That number, however, is a relatively small percentage of the more than 6 million potential foreclosures over the next three years that many analysts forecast.

Mortgage servicers, many of them large banks such as Wells Fargo and Bank of America, are essentially middlemen that collect mortgage payments on behalf of investors who own securities backed by pools of mortgages. Although borrowers negotiate with servicers as if they were the lenders, the servicers represent the interests of investors, not homeowners.

From 2005 to 2008, servicers modified just 3 percent of all delinquent loans, according to documents reviewed by the House panel. That low number led the Obama administration to create the servicer performance report, dubbed "Name and Shame," in a bid to pressure investors and servicers to do more. Forty-seven servicers now participate in the administration's program, up from 38 in July.

Wells Fargo and Bank of America improved on their July numbers but are still modifying a low percentage of eligible loans under the government program. Bank of America increased from 4 percent of eligible loans to 7 percent, while Wells Fargo improved from 6 percent to 11 percent.

CitiMortgage, part of troubled Citibank, boosted its trial modification numbers to 23 percent of eligible loans in August from 15 percent in July. JP Morgan Chase, thought to be the nation's healthiest large bank, improved to 25 percent of eligible loans in August from 20 percent a month earlier.

The government's trial modification programs seek, through financial incentives to servicers and the investors they represent, to get borrowers into loans whose monthly payments are equivalent to 31 percent of their before-tax incomes.

Industry representatives said in testimony that their modification numbers were much higher than the report indicated, but there are no reliable breakdowns of individual servicer numbers to distinguish between, say, allowing a borrower to skip a payment versus modifying an adjustable-rate loan into a low-cost fixed-rate mortgage.

"There may be other things going on out there, but to comply with our program rules and to count as a real modification you've got to get people down to an affordable (payment) level," Barr told McClatchy.

The administration will ratchet up more pressure on servicers, he said, requiring new data on why loans weren't modified.

"We are requiring next month the implementation of denial codes by each servicer, and at that point we will be able to have good empirical data on reasons for denial," Barr said.

Representatives of JP Morgan Chase, Bank of America and Wells Fargo acknowledged in testimony that they fold legal fees and other foreclosure-processing costs into reworked loans, upping the balance that borrowers owe.

Only Wells Fargo said it had a special program to help borrowers with strong payment histories should they lose their jobs.

Bank of America's executive in charge of credit loss mitigation, Jack Schakett, acknowledged to the panel something long suspected but rarely spoken about publicly. Distressed borrowers who have equity built up in their homes, he said, are more likely to get foreclosed on, because there's a greater likelihood that servicers and investors who hold pools of mortgages will profit from the sales of the homes.

"The more equity that is in the house, the more the market will actually walk away with money, the less likely you will actually modify the loan," Schakett confirmed in an interview after the hearing.

Throughout the hearing, and later in the interview, he was unusually candid about errors that Bank of America made during the housing crisis.

"We make mistakes. We learn from those mistakes. We correct those mistakes. I will be one of the first to acknowledge that we've made mistakes as far as handling customers," Schakett told McClatchy.

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Bill Swindell, *Dems See New Push on Bankruptcy Bill*, National Journal's CongressDaily, September 9, 2009,

Frustrated by the ballooning foreclosure crisis, House Democrats said today they would revive legislation allowing bankruptcy judges to modify home-mortgage terms, including the principal of a loan.

House Financial Services ChairmanBarney Franksaid he would attach the measure to legislation that would revamp the nation's financial regulatory system because he thought the Obama administration's plan, designed to help up to 9 million at-risk borrowers, is moving too slowly amid a lack of urgency among lenders.

"I am disappointed at the pace of this program," Frank said today during a hearing on the issue. "We do believe the possibility of bankruptcy will be an important incentive to getting things done."

The bankruptcy measure passed the House this year, but in April a more expansive Senate measure fell 15 votes short of passage. The Obama administration supported the measure but did not push vigorously for it. The banking industry strongly opposed it, arguing it would lead to higher interest rates even though sponsors limited the bill to current mortgages.

Assistant Treasury Secretary Michael Barr testified today the bankruptcy proposal would have no negative effect on the administration's plan to help stem the tide of foreclosures, which Credit Suisse has estimated will hit 8.1 million homes over the next four years.

But Barr said the administration is concentrating on its voluntary program, in which certain eligible homeowners whose loans are owned or guaranteed by Fannie Mae or Freddie Mac are able to refinance into more affordable payments. The Obama program has also directed the Treasury Department to allocate up to $75 billion to help lower monthly payments for up to 4 million troubled borrowers.

"Bankruptcy reform is an additional tool, but it's not the focus of the way to keep people in their homes," Barr said after his testimony.

Senate Majority Whip Durbinhas said if the foreclosure crisis does not diminish by the fall, he will try to put the measure up for a vote again, possibly revising it to include other provisions that could attract more votes while keeping the bankruptcy language as a last resort.

Those additional items could include giving homeowners extra time to stay in their homes by letting them pay fair-market value during foreclosure proceedings and additional federal funds for cities that implement mandatory mediation proceedings for foreclosures.

House Financial Services Housing Subcommittee ChairwomanMaxine Waters, D-Calif., said at today's hearing that the voluntary efforts under the Obama plan did not provide enough of a stick for loan servicers to act, noting that only 15 percent of eligible borrowers under the Treasury program have received help.

"More needs to be done. I have been hearing about homeowners and counselors waiting months to hear back from mortgage servicers for the processing of trial modifications," she said. Barr countered the Obama plan is working but said "we can do better."

Treasury has set a goal that servicers complete 500,000 loan modifications by Nov. 1. Lenders have so far extended more than 570,000 modifications for at-risk loans, with more than 360,000 offers accepted, he noted.

Durbin has spoken of putting penalties on lenders that do not meet certain targets for modification under the voluntary Treasury plan.

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Paul Wiseman, ***A consumer focused agency: Protection or just red tape?; Proposal sets up debate on how best to police consumer products,*** **USA TODAY, September 9, 2010.**

Retired social worker Gloria Gray cut up her Capital One credit card in October and paid off the $500 balance. So she was surprised when Capital One sent her a $66 bill a few weeks later. She decided to pay, just in case. But the bills kept coming, bigger and bigger, month after month.

"I didn't owe them," says Gray, 76, of Charleston, W.Va. "I kept writing them letters. I would write on the bill: 'I have paid you. I do not have an account with you.' "

Frustrated, she took her case to the West Virginia state attorney general's office, which had received hundreds of similar complaints about Capital One. But the state attorneys were powerless. A court last year had ordered them to stop pursuing allegations of "unfair or deceptive practices" after Capital One swapped its state banking charter for a federal charter and became a national bank. Under the patchwork regulatory scheme covering the U.S. financial services, state attorneys no longer had jurisdiction over Capital One.

The Obama administration thinks it has a solution for consumers like Gray, who struggle to find someone to pursue their complaints against banks, credit card issuers, mortgage brokers and other financial firms. As part of a massive overhaul of the financial regulatory system, the administration wants to create an independent agency to police the financial marketplace on behalf of consumers.

The proposed Consumer Financial Protection Agency (CFPA), which faces fierce resistance from the banking industry and Wall Street, would have power to:

*Write a consistent set of rules to protect consumers from abusive practices.

*Examine financial institutions to ensure they comply with consumer laws and regulations.

*Enforce the law, sometimes seeking civil penalties for a victims' relief fund.

Assuming power and personnel from bank regulators, the agency would cover everything from mortgages to savings accounts to PayPal. Its reach would extend to non-bank payday lenders and mortgage brokers that have gone largely unregulated. States would still regulate insurance. The Securities and Exchange Commission would still oversee financial markets.

"It can change the financial marketplace," says Michael Barr, assistant Treasury secretary for financial institutions. "The system had nobody to look out for consumers across the board."

Under the plan, states could enforce even stricter financial regulations if they wanted to.

50 different state standards?

Opponents say the agency proposal would just create another layer of red tape, unnecessarily divide consumer regulators from regulators assigned to keep banks from taking on too much risk, smother innovative financial products and create uncertainty by exposing banks to 50 different state standards.

"We want to protect consumers. The CFPA doesn't accomplish that goal," says Scott Talbott, lobbyist for the Financial Services Roundtable, which represents big financial companies such as Citigroup, GMAC Financial and Capital One. "Each state could write its own laws. This will destroy uniformity, increase costs and confuse customers."

But supporters say the time is right for a financial version of the Consumer Product Safety Commission, which regulates everything from toys to toasters.

They say unscrupulous lenders and mortgage brokers steered families into high-cost subprime loans when most could have qualified for cheaper, conventional mortgages. Many didn't understand how expensive their mortgages would become after teaser rates expired. That, and a collapse in home prices, set off a wave of defaults that knocked the economy into a tailspin.

"We've gone through -- and in many ways are still in -- a traumatic financial and economic crisis," Treasury's Barr says. "Families are paying an enormous price for a lack of sound regulation. ... Risks were allowed to build up in the system, and consumers were left exposed."

In a poll of 1,018 people out today, the Consumer Federation of America found that 57% support the new agency. Enthusiasm was highest among blacks (79% support), Hispanics (70%) and the poor (69%) -- groups targeted by predatory lenders. "Americans want a cop on the beat to rein in these abuses," says Travis Plunkett, the consumer federation's legislative director.

He and other CFPA supporters say the current crisis exposed weaknesses in the U.S. regulatory framework:

*Responsibility for protecting consumers is fractured among different agencies. Unlike consumer products, food and pharmaceuticals, financial products are regulated based on the firms that offer them. It's as if General Electric refrigerators were regulated by one agency and Maytags by another. If you get a loan from a national bank, the Office of the Comptroller of the Currency is supposed to protect you from predatory practices. If you get a loan from a state bank, you may depend on your state regulators, the Federal Deposit Insurance Corp. or the Federal Reserve. "We don't regulate drugs based on the manufacturer," says Elizabeth Warren, a Harvard University law professor who first proposed the consumer financial protection agency in 2007. "We don't regulate baby car seats based on who makes them. Those products have to meet basic standards regardless of who issues them. The CFPA would do the same: one set of rules for each product."

True, a consumer-focused agency won't be perfect. Even the Consumer Product Safety Commission has come under fire for failing to protect consumers, as it did in the controversy over toxic toys and other imports from China.

*Bank regulatory agencies have other priorities. Making sure banks don't fail, for instance, can leave consumer protection "an orphan mission," writes Adam Levitan of the Georgetown University Law Center.

The Fed, for example, took 14 years to write rules on predatory mortgages after Congress gave it that authority and made a move only after the subprime meltdown. "The Federal Reserve could have done virtually everything this agency will do," says Warren, chairwoman of the congressional panel overseeing the government bailout fund. "It could have averted the crisis in mortgages, but it never acted. ... Fed chairmen are selected for their expertise in monetary policy, things like M1 and the velocity of money. The Fed is not staffed with bad people. The problem is that their expertise and interest is monetary policy, not consumer financial products."

Similarly, the Comptroller of the Currency, the Office of Thrift Supervision and the FDIC are chiefly responsible for making sure banks don't fail, not for protecting consumers. Suppose a bank kept changing the due date on its credit cards, causing some card holders to get confused, miss payments and get dinged with late fees. To a regulator responsible for a bank's health, Treasury's Barr says, "moving the due date around creates revenue for the bank -- and that's a good thing."

Critics say it's a mistake to separate consumer regulation from safety-and-soundness regulation. If the new agency banned prepayment penalties on some loans, for example, lenders' financial stability would be more vulnerable to interest rate changes that encouraged consumers to pay off loans early, warns Peter Wallison at the conservative American Enterprise Institute.

*Banks can change regulators by switching charters. That can lead to a "race to the bottom" by regulators loosening rules to entice more banks to choose their jurisdiction.

Capital One Bank, based in McLean, Va., was fending off subpoenas by the West Virginia attorney general when it switched charters and became a national bank. Several months later, a judge ruled that the attorney general could not enforce subpoenas against a national bank, killing an investigation into whether Capital One was failing to give consumers credit they'd been promised, gouging them with high interest rates and fees, and saddling them with a "payment protection plan" that offered no real benefits. "It's the most galling case I've seen in 30 years in the law," says Charli Fulton, senior assistant West Virginia attorney general.

In an e-mail response to questions from USA TODAY, Capital One spokeswoman Tatiana Stead says the charter change had nothing to do with the West Virginia investigation.

After two acquisitions, Capital One's operations fell under four different charters and four regulators. It converted to a national bank "to give us operational efficiency and supervisory consistency," she said. "Capital One believes it has acted properly with respect to the marketing and servicing of its products and services and in providing appropriate disclosures to our customers."

Industry rebuttal

Talbott of the Financial Services Roundtable dismisses concerns over charter changes as "a red herring. Can you show me a bank that has changed its charter more than once in five or 10 years?" The Government Accountability Office -- Congress' investigative arm -- found that less than 2% of the nation's banks changed between state and federal charters from 1990 to 2004.

The Federal Reserve, FDIC and the Comptroller of the Currency have joined the financial services industry to oppose the consumer agency. Fed Chairman Ben Bernanke told the Senate Banking Committee recently the Fed's "expertise in financial markets, payment systems and supervision positions us well to protect the interests of consumers."

But "no one cares" what the bank regulators think, says House Financial Services Committee Chairman Barney Frank, D-Mass., because they failed so badly in the run-up to the subprime disaster. Frank plans to begin serious work on the bill this month and to get it passed this year. "I am determined that it will pass," Frank says. "It's a test of my ability to provide leadership." The Senate Banking Committee plans to begin work on its version this month, too.

The big banks want responsibility for consumer protection to stay with the Federal Reserve. Smaller banks don't mind if the new agency gets rule-writing powers, but they want supervision and enforcement to remain with existing regulators. Then, says Steve Verdier, lobbyist for the Independent Community Bankers of America, the CFPA could focus on policing the non-bank lenders "that caused the problems in the first place by and large -- the unregulated mortgage brokers and the check cashers."

Barr says compromise is inevitable. Even so, "We're going to have a big fight with the financial sector. ... The country cannot afford to go back to the status quo."

"Of course the big lenders want to kill the CFPA," Warren says. "The agency will get rid of tricks-and-traps products. ... Let's face it. This is a fight where all the money is on one side, and all the hurt is on the other."

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Tami Luhby, *12% of eligible borrowers helped by Obama plan*, CNNMoney.com, September 9, 2009 4:17 PM ET.

Mortgage servicers have picked up the pace of loan modifications over the past month, after coming under fire for not doing enough to help troubled borrowers.

Servicers have placed 12% of eligible troubled borrowers into trial modifications under President Obama's foreclosure prevention plan, the Treasury Department said Wednesday.

The progress report, the second issued by the government, says that 360,165 homeowners who were at least two months behind in payments received relief through August. A month ago, just 9%, or 235,247 borrowers, were in trial modifications.

The program had gotten off to a rocky start, but officials said Wednesday that servicers should hit their goal of 500,000 loan modifications under way by Nov. 1.

"Our progress in implementing these programs to date has been substantial, but we recognize that much more has to be done to help homeowners," said Michael Barr, an assistant Treasury secretary, in prepared testimony before a House Financial Services Committee panel Wednesday.

The $75 billion initiative was announced in February and the first institutions to join began accepting applications in April. The plan, which is projected to help up to 4 million homeowners, calls for servicers to reduce the monthly payments of eligible borrowers to no more than 31% of their pre-tax income. Qualified borrowers are put into three-month trial modifications before the adjustment is made final.

Some 47 servicers are now participating in the Obama program, up from 38 servicers a month ago. Financial institutions, borrowers and mortgage investors all receive incentives for participating in the program.

Servicers' performance, however, was once again all over the map. Saxon Mortgage Services led the pack for a second month with 39% of its eligible delinquent borrowers in trial modifications, up from 25% a month ago.

JPMorgan Chase led the large banks with 25%, up from 20%, and Citigroup at 23%, up from 15%. Wells Fargo came in at 11%, up from 6%. Bank of America put 7% of its eligible borrowers in trial modifications, up from 4% a month earlier.

By releasing the servicers' progress reports each month, the administration is hoping to hold institutions responsible for their performance. The updates will allow the public to see which institutions are lagging in implementing the plan.

After the report came out last month, servicers acknowledged they needed to improve their performance and promised to do better in the future.

Wells Fargo said Wednesday that it has increased the number of its borrowers in trial modifications by 64% over the past month. The company expects to exceed its goal of putting 60,000 homeowners in trial adjustments by Nov. 1. It has 33,172 trial and final modifications underway.

Bank of America said it has doubled the number of its customers in the trial phase under the Home Affordable Modification Program to more than 68,000 since the last report.

"We are working hard and with a strong sense of urgency to ensure HAMP's success," Jack Schakett, the bank's credit loss mitigation strategies executive, said in prepared testimony.

Many borrowers, however, don't feel their servicers are on their side. They are complaining that servicers are not responding to their calls and applications, losing their paperwork or not making decisions. The financial institutions said they are ramping up their staffing and computer systems to handle the crush of applications.

Still, servicers need to continue bolstering their ranks and improving their training, Barr said.

"All servicers can do more than they are doing now," he said. "Servicers need to do a better job reaching out to borrowers."

The government is also implementing new measures aimed at improving the program, Barr said. Treasury officials are establishing codes that servicers will have to use for reporting denials to the administration and to borrowers. Many homeowners have complained they are denied without explanation.

Officials are also working to streamline application documents and develop Web tools where borrowers can get forms and check the status of their request. Servicers and housing counselors have said these steps can speed the process.

If servicers don't ramp up their efforts, Rep. Barney Frank, D-Mass., is willing to reintroduce legislation that would allow bankruptcy judges to lower the amount owed on primary residence. The financial services industry strong opposes this measure, which was defeated in the Senate this spring.

"The best lobbyists we have for getting bankruptcy legislation passed are the servicers who are not doing a very good job of modifying mortgages," said Frank, who chairs the House Financial Services committee. "And if they do not improve their performance, then they improve the chances of that legislation."

Despite the administration's and servicers' efforts, the housing market is still in trouble. The number of people falling behind on their payments continues to mount, especially as unemployment rises.

A record number of foreclosure filings were posted in July, according to RealtyTrac. There were more than 360,000 properties with foreclosure filings -- including default notices, scheduled auctions and bank repossessions -- an increase of 7% from June and 32% from July 2008.

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Stacy Kaper, *Congress Back to Reg Reform as Clock Ticks*, American Banker, September 8, 2009.

WASHINGTON &MDASH; Lawmakers return from summer recess today with grand plans to overhaul the structure of financial services regulation, but they are up against a rapidly dwindling legislative calendar without a clear consensus on how to proceed.

House Financial Services Committee Chairman Barney Frank and Senate Banking Committee Chairman Chris Dodd are still committed to sending a bill to the White House this year, but there are significant differences in how each would approach the various reform pieces. Lawmakers have yet to settle on nearly any part of reform, including the creation of a consumer financial protection agency and its powers, who should oversee systemic risk and how best to discourage institutions from becoming "too big to fail."

With Congress trying to adjourn by Oct. 30, observers expect a lot of activity but are hard pressed to see much reaching the finish line.

"There is still a tremendous urgency to get things done, but there is almost anarchy even within the Democratic Party now in terms of how to do it," said Chris Low, the chief economist at First Horizon National Corp.'s FTN Financial.

How far regulatory reform progresses may turn in part on whether Congress can pass a health-care reform bill, the dominant issue in Washington. If health-care reform is enacted, it would clear the decks for lawmakers to focus more on regulatory restructuring.

"Let's see what happens with health care because, if … they actually pass something in the next month, then I think that greatly increases the odds of reform this year," Low said.

Though Frank's agenda in the House is relatively clear, the Senate situation is hard to gauge. Dodd is expected to announce soon whether he will continue to lead the Banking Committee or give it up to chair the Health, Education, Labor and Pensions Committee, where he is the most senior lawmaker in the wake of Sen. Edward Kennedy's death.

Dodd has been working on a comprehensive draft reform bill that is expected to break from the administration in many areas, including consolidating all prudential supervision in a single banking agency.

If Dodd steps aside, Sen. Tim Johnson is next in line to chair the panel, but the South Dakota Democrat is expected to take his own approach to regulatory modernization. A moderate who often sides with community banks, which oppose a single regulator, he has also expressed doubts about the need for a separate consumer financial protection agency.

In the House, Frank plans to pick up where he left off before the recess with an ambitious schedule on regulatory reform. At the top of the list is a vote on the consumer financial protection agency, which ran into tougher opposition than expected before the recess and was pushed back to give members more time to work out issues and build support. A vote on the bill has been tentatively scheduled for the week of Sept. 23.

The issue is arguably the most crucial for the banking industry, which opposes it. Several aspects of it are up for debate and could change, including federal preemption, enforcement authority, product requirements and the scope of entities covered.

One element likely to be altered is a requirement that lenders first offer standard or "plain-vanilla" products before offering alternative products. Many lawmakers have said the idea is all but unworkable, and it is not expected to be included in the Senate Banking Committee bill.

It is unclear, however, whether some form of it may survive, such as providing incentives to banks that offer standard products and a safe harbor from liability for doing so. Another possibility is that lenders could satisfy the standard with disclosures that show borrowers a basis for comparing their loan against simpler terms.

Frank cast aspersions on the original concept during a speech at the National Press Club this summer. "I don't think you can force people to offer a palatable product," he said. "Going back to my youth, I remember when there were bars that were told they couldn't just serve liquor; they had to serve food. And they served the most inedible food known to man. I can still remember the jars of pickled hard-boiled eggs that sat on the counters of some bars. We're not going to make bankers offer people pickled hard-boiled egg mortgages."

As introduced, the bill would also gut federal preemption by allowing state attorneys general to enforce state and federal standards against all state and nationally chartered banks.

Several moderate Democrats privately have argued that this goes too far and that they could seek to scale back the power of states to regulate national banks.

"It's not clear yet what will happen on preemption, but there are plenty of members who have concerns," said a Democratic aide who spoke on condition of anonymity.

Another open issue is to what extent a consumer protection agency would have examination authority over banks, or whether it would write rules that could be enforced by existing bank regulators. Frank has suggested at least coordinating exams to cut down on the burden, and Michael Barr, the Treasury Department's assistant secretary for financial institutions, said last month that exams could be risk-based, potentially giving smaller banks a break.

"I do think that community banks could use less supervision and examination than very large financial firms offering a wide range of complex products," Barr said in an interview.

Sheila Bair, the chairman of the Federal Deposit Insurance Corp., has argued that culling her exam force for the new agency would be costly and counterproductive.

"We strongly, strongly recommend the examination and enforcement component [stays] with the bank regulators," she said at a Senate Banking Committee hearing in July. "There are important synergies between prudential and consumer supervision. We typically cross-train our examiners … ; abusive mortgages that are abusive to consumers are also unsafe and unsound, and frequently we will find those consumer affairs problems."

Other regulators have also weighed in against the plan, arguing that safety and soundness and consumer compliance are inherently linked.

Community bankers in particular have been lobbying hard for a pass from the costs and burdens associated with the proposed consumer agency. They argue that a new agency dedicated to mortgage lenders and others outside the banking sphere makes more sense.

"The potential is there for CFPA to be actually helpful for the banking industry provided that its focus is not on the folks who are already regulated but on the unregulated," said Steve Verdier, a senior vice president for the Independent Community Bankers of America. "The agency is going to have a lot of work just getting under way, and I think it would make a lot of sense for them to focus on trying to build up their supervisory staff to deal with those unregulated institutions."

Still, proponents of the bill say they expect the core of it will survive the committee process.

"My expectation is that we are going to go into a markup with the proposal that is already out there, and of course members will introduce their amendments and we'll vote on them, but at this point, I think the essential elements of the consumer financial products agency … will remain intact," said Rep. Keith Ellison, a sponsor of the bill, in a Sept. 3 call with reporters.

Even if the bill clears the Financial Services Committee, many observers said it will be all but impossible to pass it through both chambers this year.

"It's headed into a traffic jam," said Jaret Seiberg, an analyst with Concept Capital's Washington Research Group. "It is going to be a very difficult fight, and while it can move in committee, the idea that it could quickly move through the House and the Senate just isn't realistic."

Another key part of the regulatory overhaul plan is to try and curb "too-big-to-fail" institutions by creating a systemic risk regulator and expanding the FDIC's authority to unwind nonbanks and bank holding companies in an orderly fashion.

The Obama administration has dug in on its desire to give the Fed systemic risk authority, but expanding the power of the central bank remains extremely unpopular on Capitol Hill. Lawmakers in both chambers have expressed a preference for an interagency council that would oversee systemic risk.

Observers said the administration has to do a better job of convincing lawmakers on the issue or come up with a compromise soon. "It's getting more difficult as time goes on to actually put into place meaningful reg reform," said James Barth, a senior fellow at the Milken Institute. "There seems to be some growing discontent with President Obama's reg reform proposals. In particular, I'm pointing to the issue of who should be the systemic risk regulatory authority, whether it should be the Federal Reserve or if it should involve some combination of other regulatory authorities."

It is also unclear how much consolidation will occur. Though Dodd leans toward combining all bank regulators into one agency, stripping supervisory powers from the FDIC and Fed, Frank has publicly dismissed such an idea. The Massachusetts Democrat has endorsed the Obama proposal, which would merge the Office of Thrift Supervision with the Office of the Comptroller of the Currency.

Arguably, the part of the reform plan with the most momentum could be a drive to better regulate derivatives. Frank and House Agriculture Committee Chairman Collin Peterson, D-Minn., announced July 30 that they had agreed in principle on an outline for derivatives reform. The two have not introduced a bill, but they appear in tune with language floated by the Treasury Department last month.

Overall, observers said regulatory restructuring is likely to be an issue through at least next year.

"It's going to be quite difficult to achieve any sort of meaningful deep reg reform this year," Barth said. "It's not clear that there is any consensus on exactly what caused the crisis in a meaningful way and what sort of regulatory reform ought to take place."

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Jim Puzzanghera, *Financial Reform; Regulator's farm roots tangle effort; House and Senate agriculture committees oversee the CFTC. An SEC merger would threaten their turf.*, The Los Angeles Times, September 8, 2009.

The road to reforming financial regulations winds through the cornfields, hog farms and cattle ranches of America's heartland, and that complicates the Obama administration's already arduous effort to revamp oversight of Wall Street.

Lawmakers from Iowa, Minnesota, Oklahoma and other farm-belt states who sit on the congressional agriculture committees have a surprisingly influential role in the administration's proposed overhaul, which Congress resumes debating today after its summer recess.

Those committees oversee a key regulatory agency, the Commodity Futures Trading Commission, and committee members don't want to give up that role for a big reason -- they raise more money from the financial sector than they do from agribusiness.

Many experts have long believed that it makes no sense to have both the CFTC and the Securities and Exchange Commission regulating markets that have become increasingly indistinguishable. They have advocated merging the agencies.

"If you were to merge the CFTC and the SEC, it would be hard to make the argument that the primary [oversight] committees would be the agriculture committees," said Douglas Elliott, an economic studies fellow at the Brookings Institution.

"That would mean the agriculture committees would lose a significant amount of power that they have, and they also would lose a lot of campaign contributions," Elliott said.

The agriculture committees' oversight of the CFTC stems from its origins regulating markets once dominated by corn, soybeans, pork bellies and other farm products. But the fast-changing world of futures and options contracts became increasingly complex and led to holes in oversight between the CFTC and SEC.

Those contracts spun into sophisticated unregulated products, such as derivatives and credit default swaps, and were at the heart of the nation's financial crisis. They helped prompt the Obama administration to propose the biggest revamp of financial regulation since the Great Depression.

But even though President Obama had wanted to combine the agencies to close the gaps, the agriculture committees' power, many believe, was the reason the administration decided against merging them.

"I think they correctly judged the politics . . . that it would be a serious impediment to the passage of the overall reform bill to merge the SEC and CFTC," Elliott said.

Instead, the two agencies last week held their first-ever joint meetings to try to eliminate gaps and policy differences in their oversight of futures and options markets.

Critics said such a move might work for a while but could still lead to the same sort of regulatory gaps that helped cause the financial crisis as new products emerge.

Those meetings follow several hearings this year by the agriculture committees on overhauling financial regulations, adding more layers to the already difficult task of passing comprehensive legislation this year. The tangential role of the agriculture committees complicates the process because some committee members don't understand financial issues well, according to some in the industry.

"Derivatives are very complex, and we had to start from Square One before we could even get to the meat of the issue" in briefing them, said one financial industry executive, who requested anonymity to avoid alienating committee members. "Remember that old song, 'One of these things is not like the other'? Derivatives are just not like the rest of their jurisdiction."

Overall, committee members have raised more money from the finance, insurance and real estate sector the last two election cycles than from agribusiness, according to the Center for Responsive Politics.

Senate agriculture committee members have raked in $41.6 million from that Wall Street-related sector and less than half that -- $17.6 million -- from agribusiness in the 2008 and 2010 election cycles. House committee members have raised $7.9 million from the financial sector and $6.6 million from agricultural interests, according to the center.

Committee leaders make no apologies for supporting a tougher CFTC, and not eliminating it. They said the agency's role in regulating agricultural futures is important to America's farmers. And the committee chairmen -- Sen. Tom Harkin (D-Iowa) and Rep. Collin C. Peterson (D-Minn.) -- each have sponsored legislation tightening oversight of derivatives markets.

"Agricultural future markets are fundamental to the functioning of every aspect of our agriculture economy," Harkin said at a June hearing on regulatory overhaul.

The United States, though, is the only country that splits the oversight of the financial industry, said Roberta Karmel, co-director of the Dennis J. Block Center for the Study of International Business Law at Brooklyn Law School.

"It happened for historical reasons, and these agencies haven't been combined for political reasons," said Karmel, a former SEC commissioner.

She noted that when the SEC and CFTC fought over who should regulate credit derivatives in 2000, Congress had to step in to resolve the dispute -- and prevented either from regulating the products. That wouldn't have happened had there been one regulatory agency, Karmel said.

Acting jointly to eliminate gaps, a process dubbed harmonization, "could work for a while, but ultimately it's going to be a problem," she said.

Former Treasury Secretary Henry M. Paulson proposed merging the two agencies in 2008 as part of his regulatory overhaul plan.

Obama appeared headed in that direction this year when he chose Mary L. Schapiro as chairwoman of the SEC. She had chaired the CFTC in the 1990s, and some analysts said such experience would qualify her to run the merged agencies.

But it soon became clear that such a move would make the already difficult task of passing the overhaul even harder because of opposition from many agriculture committee members.

"In deciding what to do, we certainly took into account the realities of what opposition we would face to different kinds of proposals. And where it wasn't essential to the core of the reform, we took that into account," said Michael Barr, assistant Treasury secretary for financial institutions.

"We thought it was much more important to address the core substantive concerns than to focus on the turf issues."

Barr said the administration was focused on adding oversight of derivatives rather than arguing about which agency would do it. The plan calls for the SEC and CFTC to share the oversight, while at the same time harmonizing their regulations.

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Zachary A. Goldfarb and Dina ElBoghdady, *Mortgage Market bound by Major U.S. Role; Classes of Borrowers Cannot Find Loans as Publically Backed Debt Mounts*, September 7, 2009.

Second in an occasional series

In the go-go years of the U.S. housing boom, virtually anybody could get a few hundred thousand dollars to buy a home, and private lenders flooded the market, aggressively pursuing borrowers no matter their means or financial history.

Now the pendulum has swung to the other extreme. Only one lender of consequence remains: the federal government, which undertook one of its earliest and most dramatic rescues of the financial crisis by seizing control a year ago of the two largest mortgage finance companies in the world, Fannie Mae and Freddie Mac.

While this made it possible for many borrowers to keep getting loans and helped protect the housing market from further damage, the government's newly dominant role -- nearly 90 percent of all new home loans are funded or guaranteed by taxpayers -- has far-reaching consequences for prospective home buyers and taxpayers.

The government has the power to decide who is qualified for a loan and who is not. As a result, many borrowers among both poor and rich are frozen out of the market.

Nearly one-third of those who obtained home loans during the boom years of 2005 and 2006 couldn't get one today, according to mortgage industry analysts. Many of these borrowers were never really able to afford their homes and should not have gotten loans. But many others could, and borrowers like them are now running into tougher government standards.

At the same time, taxpayers are on the hook for most of the loans that are still being made if they go bad. And they are also on the line for any losses in the massive portfolios of old loans at Fannie Mae and Freddie Mac, which own or back more than $5 trillion in mortgages.

There is growing evidence that many loans being guaranteed by the government have a significant risk of defaulting. Delinquencies are spiking. And the Federal Housing Administration, another source of government support for home loans, is quickly eating through its financial cushion as losses mount.

The outlay has already reached about $1 trillion over the past year and is rising. During that time, the government has pumped more money into the mortgage market than has been spent on Medicare or Social Security or the defense budget, more even than Washington has paid to bail out banks and other struggling companies.

"Absent government intervention, there would be no lending," said Nicolas P. Retsinas, director of Harvard University's center for housing studies.

Government officials generally agree that it would be better for private lenders to resume their traditional role as major providers of finance for home loans. But policymakers now face some tough choices. They must decide how to reduce support for the mortgage market without letting it collapse. And they must decide what kind of support the government should provide in the long run.

"The problem was a long time brewing, and the problems in our mortgage finance system will take a long time to repair," said Michael Barr, the Treasury's assistant secretary for financial institutions.

Government Role

Fannie Mae and Freddie Mac were chartered by Congress four decades ago to create a marketplace where mortgage lenders could sell the loans they made and use that money to make more loans. The two companies were owned by private shareholders and for a fee guaranteed investors in mortgage loans that they would get paid. After the government seized Fannie and Freddie, it offered them an unlimited line of credit and pledged to inject up to $400 billion to keep them solvent.

But this is not the only form that government involvement in housing finance takes.

The Federal Reserve is purchasing hundreds of billions of dollars of mortgages with the aim of ultimately owning $1.25 trillion worth. This buying spree has flooded the mortgage market with money, forcing down interest rates and assuring lenders they have somewhere to sell their loans. The Treasury Department has a similar, though smaller, program.

The Federal Housing Administration, meantime, is dramatically increasing the amount of home loans it insures. Its share of new mortgages jumped from 1.8 percent in 2006 to 18 percent so far this year, according to Inside Mortgage Finance. It expects to insure about $400 billion this year. Several other agencies, such as the Department of Veterans Affairs, also provide mortgage guarantees.

All told, the government now stands behind 86 percent of all new home loans, up from about 30 percent just four years ago, according to Inside Mortgage Finance.

Fannie and Freddie had long played a dominant role in the mortgage market, providing traditional 30-year, fixed-rate loans. But earlier this decade, they faced competition from banks and other lenders promoting exotic mortgages, such as those that did not require proof of income or were available to people with checkered credit histories. With housing prices on the rise, these loans became ever more prevalent, and lenders figured that a struggling borrower could always get out from under a loan by selling or refinancing his home.

For the first time in decades, the rate of home ownership ticked up, reaching 69.2 percent. Many first-time buyers were of lower income, and many such buyers were black or Hispanic. Fannie and Freddie, afraid of losing more market share, also began funding risky loans.

Then, in 2006, the housing market began to tumble and many people couldn't or wouldn't pay their loans. Lenders and mortgage financiers suffered staggering losses. New loans dried up. Interest rates spiked. With investor confidence in Fannie and Freddie crumbling and the global economy at stake, the government seized the firms, nationalizing the U.S. housing finance system.

Niche Markets

Many borrowers had been put into loans they could not afford, and when the mortgages failed the results were catastrophic, precipitating the financial crisis.

The tighter market that emerged -- whether the consequence of stricter government standards or an industry retreat from risky practices -- now excludes some groups of aspiring home buyers.

"People say, 'Well that's good because of lots of people who got loans in the past shouldn't have gotten those loans at all,' " said Keith Gumbinger, a vice president at research firm HSH Associates. "But there were tiny niche markets for whom those products were originally intended, and those people who legitimately need them now won't get them."

Although Fannie and Freddie don't make loans, they effectively set standards for the mortgage industry by detailing what kind of loans they will purchase from lenders and at what cost. The companies, for instance, require documentation of income and have increased fees on loans for people who lack stellar credit and hefty down payments, especially those looking to buy condominiums.

All but gone are subprime mortgages, initially meant to help people with blemished credit until they could get another loan. All but gone are the no-money-down mortgages used by four out of 10 first-time home buyers in 2005 and 2006. Those loans originally catered to wealthy borrowers with great credit who wanted to buy a home without having to liquidate their investments.

And the advances in minority and low-income home ownership recorded earlier this decade have largely proved to be a mirage. The U.S. homeownership rate has declined to 67.4 percent.

Some people who are no longer eligible for loans elsewhere have turned to FHA, which does not demand top-notch credit scores or sizable down payments. But for some consumers, such as Lisa McCracken of Stafford County, the FHA's minimum 3.5 percent down payment can be a stretch.

McCracken, a traveling nurse, has been scrimping to raise the down payment, living with her parents to save money. "I think I can swing it, but it won't be easy," she said. "I'll be wiping out a lot of my savings to buy a house." The self-employed face difficulties because they tend to have a tough time documenting their income, as required by Fannie Mae, Freddie Mac and FHA loans.

Donald Prieto, who owns a roof contracting business in San Diego, has shelved his plans to buy a new home. Five years ago, he and his wife purchased a small home without having to verify his income. They have made their payments on time, have maintained solid credit scores and have plenty of cash in the bank, he said. Now, they have three children. They want a larger home, but several lenders have turned them away because he does not have two years' worth of paychecks to show.

For that reason, Prieto has incorporated his company and started cutting himself formal paychecks. "No bank wants to take risks anymore, and I understand that," Prieto said. "I just have to wait."

Other would-be buyers -- including investors, second-home and condo buyers, and people who need exceptionally large loans dubbed "jumbos" -- have fewer options than before.

Earlier this summer, Philip Zanga, an investor, signed a contract on a $367,000 condo in Bethesda this summer and paid a $15,000 deposit. He planned to put down 60 percent, but his loan was rejected. Investors and loans for condos are both deemed risky by Fannie and Freddie.

"Why turn away someone willing to put 60 percent down?" asked Avi Galanti, Zanga's real estate agent. "What's the risk in that?"

Mountain of Debt

Taxpayers could be hit with a staggering tab even if a small proportion of loans go bad. Fannie and Freddie now own or guarantee more than $5 trillion in home loans. (That equals two-thirds of the debt the U.S. government owes.)

And many could be in trouble. Mortgages owned and backed by the companies often required down payments of no more than 10 percent. With housing prices down sharply, many borrowers are underwater, owing more than their home is worth, so they cannot sell or refinance to pay off troubled loans.

As the economy has deteriorated, delinquencies are spiking and losses are mounting. In the past year and half, the companies have posted more than $150 billion in losses.

Similar risks threaten to engulf FHA. Nearly 8 percent of FHA loans at the end of June were either 30 days late or in the process of foreclosure, according to the Mortgage Bankers Association. That compares with 5.4 percent of such loans a year ago.

As a result, FHA has been exhausting much of its loss reserves, which are funded by premiums paid by borrowers. The reserves currently stand at an estimated 3 percent of all outstanding loans, half of what they were just a year ago. If the reserves fall below the 2 percent threshold set by Congress, they could require a taxpayer bailout.

"Having the government this heavily into the mortgage market is inherently a dangerous thing for taxpayers," said Anthony Sanders, a finance professor at George Mason University. "We've already gone through one big bubble and burst, and right now the taxpayers are on the hook for a substantial amount of money."

###

Alexander Collidge, *Key Treasury figure argues for reforms*, The Cincinnati Enquirer, September 3, 2009.

As Congress this month mulls the next piece in a mammoth proposal to overhaul regulation of the financial sector, Assistant Treasury Secretary Michael Barr met with local consumer groups, industry officials and the Enquirer to push President Barack Obama's plan.

Barr defended the White House's proposal to establish a Consumer Financial Protection Agency that would take over oversight of consumer lending products, such as mortgages and credit cards. Industry groups have expressed concerns the proposed agency would stamp out innovation and limit lending products for consumers.

"This is structured to be a lighter form of regulation," Barr said, noting that the agency would identify "plain vanilla" financial products as standards for consumers to make comparisons. He noted the agency wouldn't ban non-traditional products such as exotic mortgages, but rather requires they be sold with more detailed disclosures.

Another controversial component of the president's plan is the creation of a National Bank Supervisor that would be created by combining the Office of the Comptroller of the Currency, which examines nationally chartered banks and the Office of Thrift Supervision, which oversees nationally charter savings and loans. Barr, a chief architect of the proposed reforms, said the switch was necessary to prevent regulator shopping by financial institutions.

"(The proposal) closes loopholes in the system - it doesn't allow a company to choose its regulator by manipulating its corporate structure," he said.

Barr blamed the housing collapse, the credit crisis and the recession on a "brittle" financial system. He said huge financial markets sprang up and funded irresponsible lending that prompted the banking industry to lower standards.

"We're in this today because the financial system failed," he said. "We set up a system that made bad decisions."

U.S. Rep. Steve Driehaus, D-West Price Hill, accompanied Barr on his visit to the Enquirer. He said major reform of the financial system was long overdue and blamed Wall Street excesses for fueling the foreclosure crisis.

"I think it's the most important thing we're doing" in Congress, said Driehaus, a member of the House Financial Services Committee. he said. "We've been dealing with foreclosures for eight years - we've lost entire neighborhoods while we waited."

The proposals are relevant to a significant chunk of the workforce in Greater Cincinnati and Northern Kentucky. About 62,000 or 6 percent of the labor market is employed in the financial sector - 80 percent of those jobs are with banks or insurers.

Barr said the White House has sent Congress 600 pages of proposed legislation. Among the changes, the proposed legislation also establishes an Office of National Insurance to monitor players that might become "too big to fail" and identify gaps in regulation. Barr said the new body would not be a regulator itself, with that authority remaining with the 50 states.

Other changes the White House has recommended:

Expanding the Federal Reserve's authority to oversee "too big to fail" firms whose potential failure could jeopardize the financial system. It has also proposed giving the Fed powers to take over and resolve "too big to fail" firms that appear poised to fail.

It has proposed increased disclosure and regulation of exotic securities markets, such as derivatives.

It wants to work toward raising international regulatory standards for firms straddle borders.

Michael Van Buskirk, president of the Ohio Bankers League - who attended Barr's meeting with local bankers and insurers - said financial institutions share many goals outlined by the White House, such as regulating non-banks that contributed to the financial crisis. But his group disagrees on some key details. He said dozens of savings and loans would be forced to convert to commercial banks or state-chartered thrifts.

"There is no benefit to eliminating the (federal) saving and loan charter," he said.

Van Buskirk also said financial companies regulated by the Securities and Exchange Commission - including some insurers, mutual funds and investment advisers - would be exempted from regulation by the new consumer agency.

###

Nick Timiraos, *Confusion Roils HARP Program for Refinancing*, The Wall Street Journal, September 2, 2009 9:54 AM ET.

Helping borrowers with little or no equity in their homes refinance their mortgages has turned out to be far more difficult than government officials expected.

When the Home Affordable Refinance Program, or HARP, was rolled out in March, the Obama administration said that millions of borrowers would be able to refinance. By the end of July, just 60,000 borrowers had refinanced through the program.

Treasury officials say that the program was slowed by a plunge in mortgage rates that sparked a flood in refinance applications just as the administration rolled out the program. Thus banks were busy refinancing "run-of-the-mill" mortgage applications before moving on to HARP applications, which could be more complex to process. By then, mortgage rates had risen.

"It hasn't met our expectations," says Michael Barr, an assistant Treasury secretary. "It's been too slow."

Officials say that the program is expected to ramp up more fully later this year as it irons out technical hurdles. Logistical problems, from difficulty addressing second mortgages to mortgage insurance, have raised confusion and contributed to delays as borrowers work with their lenders who are charged with administering the program.

HARP, a counterpart to the administration's effort to modify loans for homeowners at risk of foreclosure, is designed to help borrowers who are making their mortgage payments but haven't been able to refinance and take advantage of low interest rates because their home values have dropped, leaving them with little to no home equity.

The program is open to borrowers whose loans are owned or guaranteed by state-backed mortgage-finance companies Fannie Mae and Freddie Mac but who owe more than 80% of there home's value—the normal cutoff for refinancing a Fannie- or Freddie-backed loan.

The program was initially set up for borrowers who owed between 80% and 105% of their home's current estimated value. In July, the administration said it would allow more borrowers to participate by including those with mortgages of as much as 125% of their homes' value.

Fannie began accepting HARP loans with the up to 125% loan-to-values on Sept. 1. Freddie will begin accepting them in October. Fannie and Freddie don't make loans directly to borrowers, but instead purchase them from lenders or guarantee lenders against losses.

Overall, Fannie and Freddie have refinanced 2.9 million borrowers this year. A survey of major mortgage lenders found that the number of completed refinances in this year's first half increased 11% from a year earlier, including HARP, according to LPS Applied Analytics.

'Good Chunk of Change'

HARP has helped some borrowers, like Tony Valles, who in July refinanced the $345,000 loan on his three-bedroom home in Whittier, Calif., which is valued at around $430,000. Mr. Valles couldn't have refinanced through conventional channels because he didn't have enough equity in his home.

His lender required him to cut his home-equity line of credit from $100,000 to $45,000, which is about the amount he owes. Still, the 43-year-old printing-company supervisor locked in a 5.125% rate, down from his previous 6.25%, and he will save nearly $400 a month.

"It's a good chunk of change," Mr. Valles says. "Things are tight."

But mortgage brokers say that most borrowers who would like to take advantage of the program can't do so because of high fees, restrictions and long delays.

Finding Complications

For borrowers with a first and second mortgage, for example, Fannie Mae and Freddie Mac require second-lien holders to agree to subordinate the loan, or remain in second position. "The chance of refinancing is nil" for those borrowers, says Scott Ginsburg, who runs Hiton Financial Services in Northbrook, Ill., because many second-lien holders aren't agreeing to subordinate.

Around one-third of borrowers who took out a loan in 2006 and 2007 aren't eligible for HARP because their income has fallen since they took out their loan, because their income wasn't fully documented, or because they have missed a loan payment during the past four months, according to Derek Chen, an analyst at Barclays Capital.

"I don't think it's fair that the president announces a program outlining all of this help, and there's no one ready to do anything," says Jim Tucker, who has been trying since March to refinance under HARP the $215,000 adjustable-rate mortgage that resets in 2011 on his daughter's Lincoln, Calif., home.

The lender, J.P. Morgan Chase & Co., originally told him that the application had been denied because she had taken out a "no-doc" loan that didn't require her to document her income.

Mr. Tucker says his daughter used that loan because the salesman for Washington Mutual, which was bought last year by J.P. Morgan, told her it would be faster and easier to process the loan application.

Locking in a Rate

Last month, however, the bank said it would be able to offer her a 5.75% rate, which she locked in on Tuesday.

While Mr. Tucker said he is happy that his daughter will be able to get a fixed rate, he is disappointed that it took so long. "It's just too bad. This has been an awfully long process," says Mr. Tucker, who with a better credit score was able to lock in a 4.5% rate earlier this spring for himself. A J.P. Morgan representative declined to comment.

Borrowers with high loan-to-value ratios—the very population the program is designed to serve—face additional fees as a result of the risk-based pricing formulas Fannie and Freddie use.

The companies have capped those fees at 2% of the loan and say they are necessary to protect themselves against taking on too much risk. Without that cap, those fees could have been considerably higher. The fees could translate to a 0.4% increase in the interest rate of the loan, or around $600 annually on a $250,000 loan. Fannie and Freddie will reduce those fees for certain borrowers who agree to refinance into mortgages with terms less than 30 years.

The Insurance Glitch

Some borrowers have been unable to participate so far because their loans were covered by insurance bought by the original lenders who then sold the mortgages to Fannie or Freddie. The companies had originally blocked those loans from the program because they would lose that insurance. Fannie and Freddie's government charters don't allow them to purchase loans with high loan-to-value ratios unless they have some type of insurance.

Fannie in July said it would begin allowing the majority of those borrowers to refinance under the program, though some will still be ineligible.

Patricia McClung, a Freddie Mac vice president, says the company is working to allow those borrowers to refinance, but its efforts "have lagged behind the program" because the loans are "a little bit more operationally onerous."

Offering Opportunities

For Joseph Dio, the program offered an opportunity to get out of an adjustable-rate mortgage that has a 6.35% interest rate but could adjust higher in two years. The value of his two-bedroom home in Plymouth, Mass., had dropped to around the $320,000 that he owes on two mortgages, leaving him unable to refinance without putting more money into his home. Mr. Dio, a 30-year-old service manager for an auto dealership, had been unable to refinance, in part, because his Fannie Mae-owned loan had been insured when the company bought it from Bank of America.

Last month his lender, Bank of America, said it would be able to refinance him into a 30-year fixed-rate loan with a 6.75% rate, and Mr. Dio says he locked into that rate last week, nearly five months after he first inquired about refinancing through the program. While he says he has never missed one of his $2,500 monthly payments, he worried about being unable to afford his mortgage once it resets. "I don't even care about getting a lower rate," he says.

A spokeswoman said that Bank of America is "pleased that Mr. Dio was able to refinance his mortgage" through HARP.

The program's piecemeal rollout has also upset borrowers who have watched mortgage rates rise in recent weeks. Mortgage rates fell below 5% for much of April and May, before rising this summer; last week rates ended at 5.32% for mortgages that conform to Fannie and Freddie's standards, according to HSH Associates, a financial publisher.

In June, Bob Hardamon, a 33-year-old accountant, discovered that his lender had taken out insurance coverage on his $510,000 first mortgage, complicating his effort to refinance his North Newark, N.J., triplex.

He says he was told last month that the best rate he could receive wouldn't be any lower than the 6.7% that he currently pays on an adjustable-rate mortgage that has a fixed rate for 10 years.

"It doesn't make any sense to pay them $10,000 to stay where I am," he says.

###

Brian Collins, *Cramdown Push as Mods Sag*, Mortgage Servicing News, September 2009.

Washington-Some of the largest banks scored poorly on the Treasury Department's first progress report on the implementation of the president's loan modification program.

While many banks and their servicers are pledging to do better, the report is giving critics of this voluntary modification effort more ammunition to push again for bankruptcy cramdown legislation.

The monthly "Servicer Performance Report" shows that servicers have placed 235,000 delinquent homeowners into 90-day trial modifications as required under the administration's Home Affordable Modification Program.

The report revealed that after four months HAMP is helping only 9% of delinquent borrowers that might be eligible for modifications that would lower their monthly payments.

Bank of America is conducting modifications on only 4% of its delinquent loans and Wells Fargo has reached 6% of its borrowers that are 60 days or more delinquent.

Wells Fargo pointed out that it has modified more than 240,000 mortgage loans during the first seven months of this year, including 20,220 HAMP trial modifications.

"Now that the program details are largely complete, our company has been accelerating our use of HAMP," said Mike Heid, co-president of Wells Fargo Home Mortgage.

Saxon Mortgage Services ranked highest with 25% of its delinquent loans in 90-day trial modifications, while JPMorgan Chase Bank has a 20% performance ratio with 79,300 loans in trials.

Despite the disparities, Treasury assistant secretary Michael Barr expressed confidence that the modification program is "on track" to meet the Obama administration's three-year goal of modifying 3 million to 4 million loans.

Center for Responsible Lending president Michael Calhoun noted that there were 254,000 foreclosure starts in June, which is more than the total number of trial modifications.

"For over three years, lenders have insisted they can handle this crisis on their own, but the report shows that the time for voluntary action is over," Mr. Calhoun said. CRL has supported bankruptcy changes, sponsored by Sen. Richard Durbin, D-Ill., which would allow judges to modify mortgages.

The banking industry has to do a "much better" job of preventing foreclosures, Sen. Durbin said last week. And the Illinois senator put the industry on notice that he is willing to make another try at passing a bankruptcy cramdown bill if they "don't make real progress in reducing the number of avoidable foreclosures."

But he indicated such a legislative drive is not imminent. "I am afraid it is going to take a lot more misery to move a lot more votes," Sen. Durbin said in a speech at the Center for American Progress in Washington. In April, the Illinois senator saw his bankruptcy cramdown amendment voted down in the Senate by a 45-51 vote.

Nevertheless, the high-ranking Senate Democrat is sending letters to servicers urging them to stop foreclosure proceedings when considering loan modifications.

"I am asking servicers to make a commitment that they avoid scheduling a foreclosure on any homeowner who is actively working in good faith to work out a loan modification that is fair, responsible and sustainable," Sen. Durbin said.

Separately, the GSE regulator reported on the loan modification efforts of Fannie Mae and Freddie Mac.

The Federal Housing Finance Agency said they completed 10,400 loan modifications in May, down nearly 25% from the previous month, as more delinquent loans are being steered into HAMP trials.

Agency officials noted that the completed modifications were conducted under the FHFA's streamlined modification program that was ended in April.

"Completed loan modifications fell for the second consecutive month in May," FHFA said, as the government-sponsored enterprises "continue to focus on implementing the Home Affordable Modification Program."

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Brian Collins, *Insurance for Mods*, Mortgage Servicing News, September 2009.

Washington-The Treasury Department has unveiled a mortgage loan modification insurance program intended to protect investors from declines in house prices.

The $10 billion Home Price Decline Protection program will "offset any incremental collateral loss on modifications that do not succeed" during the first two years, Treasury says.

The new program is another component of the administration's Home Affordable Modification Program that has been under development for some time. Treasury also is working on a second-lien component to expedite modifications of piggyback loans.

The HPDP program is aimed at giving investors and servicers an incentive to modify loans in markets with declining house values. "Home price decline protection can help homeowners who may not have been reached otherwise," Treasury assistant secretary Michael Barr said.

The amount of the HPDP "incentive" payment is determined at the time the servicer runs the net present value test to qualify homeowners for a loan modification trial. It is based on expected price declines over the next year and other factors.

Treasury is kicking off the incentive payment program for HAMP modifications with NPV test dates on or after Sept. 1.

"Mortgage loans that are owned or guaranteed by Fannie Mae and Freddie Mac are not eligible for HPDP incentive compensation," according to Treasury.

###

Jessica Yellin, *Homeowners frustrated by mortgage assistance program*, CNN.com, August 31, 2009 12:21 PM ET.

The Obama administration's Making Home Affordable program was designed to help homeowners like Mark Kollar and Angela Baca-Kollar keep their homes.

When the recession hit, the Arizona couple's income plummeted. They tried everything they could think of to hold on to their house: They drained their savings account, sold their 401(k), changed jobs.

It wasn't enough, and foreclosure is set to begin in a week.

The Kollars thought they had one last hope: the Making Home Affordable program, which should have reduced their monthly mortgage to affordable payments. In theory, it'd be a win-win: The Kollars and their two children keep their home, and the nation avoids one more foreclosure.

The problem? The bank hasn't been playing along, and the Kollars have no place to turn.

"I don't want a handout. I want to do the right thing," Mark Kollar said. "I thought this was supposed to give us a chance."

A CNN investigation revealed that the Kollars are far from alone. Housing counselors, homeowners and consumer advocates tell endless stories of banks giving homeowners the runaround: declining apparently eligible applicants; pressuring them into loans they can't afford; placing homes in foreclosure while the owners are being considered for a modified loan; lenders telling homeowners to waive their legal rights, even though the program prohibits it; or banks telling homeowners that they have to be in default to qualify, which isn't true.

According to the Treasury Department's most recent report, only 230,000 of the up to 4 million eligible homeowners have new mortgages under the program.

Treasury Secretary Timothy Geithner has told bankers that he's not happy with the pace. Banks say that it took 90 days to get the program's rules and procedures and that they're still training staff members to handle it.

The most common complaint from those applying for help: banks losing paperwork or dropping calls while the foreclosure clock is ticking.

Mark Kollar can testify to that.

Since receiving his Making Home Affordable offer, he's spent hours trying to reach someone at his bank who can help. A number of representatives told him that this is his only offer; accept it or lose his house.

After insisting on speaking to a supervisor, he was eventually told to resubmit the documentation he'd been submitting for months.

In return for billions of dollars from the government to help banks recover from bad loans, the banks are supposed to help homeowners make their mortgage payments more affordable. As President Obama said unveiling the program in March, helping "responsible folks who have been making their payments" because it will "leave money in their pockets and leave them more secure in their homes."

Under the Making Home Affordable formula, the Kollars' payment should have been reduced to 31 percent of their $3,000-a-month income.

The bank's offer? A payment of $2,892 a month, or 96 percent of their income.

Diane Thompson of the National Consumer Law Center says this isn't uncommon. "We've seen gross errors of banks putting in wrong income to get ... payments," she said.

Bank of America, which holds the Kollars' loan, says the offer it made was based on incorrect information from a government-approved housing counselor.

Bank of America spokesman Rick Simon said it's difficult to determine what the Kollars should pay because Mark Kollar recently started a commission-based job, and his monthly income fluctuates.

The bank plans to watch his earnings for a few more months before it moves ahead "with consideration of a trial modification offer." Simon said the bank is offering the Kollars a temporary new mortgage payment while it watches their earnings.

"Bank of America is committed to the success of the Making Home Affordable program and helping homeowners avoid foreclosure whenever a borrower has the ability to make a reasonable mortgage payment," Simon said.

By one measure, the Kollars are more fortunate than others in the same predicament; the bank hasn't sold their house out from under them. Beth Goodell, a lawyer with the nonprofit Community Legal Services of Philadelphia, says she's seen that happen.

"Its outrageous," said Goodell, who represents low-income families in foreclosure. "It has to be clearer that foreclosure should stop altogether while people are being considered."

She says the only outlet for these homeowners is the courts.

An official with the Treasury Department said that "in all identified instances where loans have been denied to eligible borrowers, the administration has worked with servicers to correct the problem and provide modifications."

And Michael Barr, the Treasury Department's assistant secretary for financial institutions, says the program is "off to a strong start." He admits that "servicer performance has been uneven" but believes that the lenders are on track to make improvements. And he vows that the administration "will hold these institutions accountable for their progress."

But Goodell has seen plenty go wrong, and she said, "There's not adequate recourse."

Frustrated with the bank, Angela Baca-Kollar called the Obama administration's helpline, 1-888-995-HOPE, but the representative told her that the hot line "can't strong-arm the bank" and urged her to call a government-approved housing counselor.

The Kollars had been working with such a counselor for months.

"There is nowhere to go," Angela Baca-Kollar said.

###

Jessica Yellin, *Making Home Affordable Program hasn't helped enough, some say*, CNN.com, August 31, 2009 11:51 AM ET.

When President Obama unveiled the Making Home Affordable Program in March, he said it would help "responsible folks who have been making their payments" reduce their monthly mortgage bills and avoid losing their homes to foreclosure.

But six months into the program, only 6 percent of the 4 million eligible homeowners have gotten help. A lot more say they've been frustrated with the runaround they've been getting from lenders.

Are the new program's growing pains responsible for the slow start, as bankers say, or is pain to their bottom lines really preventing the program from working, as critics say?

The Making Home Affordable Program is supposed to work this way:

In return for billions of dollars in taxpayer bailout money, banks would offer loans that would reduce troubled borrowers' monthly mortgage payments to 31 percent of their income. To qualify, a homeowner must have an income and must live in the house, and that house can't be worth more than $730,000.

The bank is also allowed to calculate the value of the mortgage against the profit it would make from a foreclosure.

Banks are prohibited from selling a house in foreclosure while the homeowner is being considered for an adjustment. The Treasury Department oversees the program, and the banks signed contracts with Treasury binding them to cooperate. Watch more about how the program has worked so far

Treasury Secretary Timothy Geithner has been so unhappy with the program's pace that he called in lenders for a meeting and demanded they do better.

In a July 9 letter to one servicer, JP Morgan, Geithner and Shaun Donovan, secretary of Housing and Urban Development, wrote "there is a general need for servicers to devote substantially more resources to this program for it to fully succeed and achieve the objectives we share."

They called on the banks to hire more staff, expand their call centers and allow homeowners "an escalation path for borrowers dissatisfied with the service they have received."

The mortgage industry's top lobbyist says any problems to date are the growing pains associated with getting such a massive program up and running.

"It is working, and it needs to be given some time," says John Courson, head of the Mortgage Bankers Association. He says banks are still staffing up and getting the program off the ground. "It took 90 days to get out the rules and the procedures and the forms, and so that's a fairly new program," he said.

Courson says that lenders are still "training more and more staff as they are getting more and more people who are familiar with this program."

He insists that the banks want to cooperate.

"It's in the banks' best interest to work with those borrowers to keep those loans on the books and avoid foreclosure," Courson said.

But critics say that the program works against the banks' best interests, as the homeowners who most need the program are the riskiest bets.

"If the borrower is really in trouble, [the lenders] probably don't want to do the modification, because they think there's a good chance the borrower will redefault, and they will do a lot of work and they won't collect money," said Paul Willen, an economist with the Boston Federal Reserve who has studied bank foreclosures and modifications.

"The problem with this is in some deep sense, you can't penalize the banks for acting in self-interest. It's a for-profit business."

Others are critical of the voluntary nature of the program and the Obama administration's hands-off relationship with lenders.

The Treasury Department official charged with overseeing the program insists it's "off to a strong start, with hundreds of thousands of trial modifications already underway."

Assistant Secretary for Financial Institutions Michael Barr acknowledges that "servicer performance has been uneven, but servicers have committed to ramping up efforts to improve the process for borrowers," and he insists that "the administration will hold these institutions accountable for their progress."

He says Treasury is on track to help 3 million to 4 million homeowners in three years.

Diane Thompson of the National Consumer Law Center has a theory on why the Obama administration isn't getting tougher with the banks: "This is a voluntary program. I think Treasury has been very concerned to make sure that servicers [the banks] are willing to participate."

She's convinced that banks will improve their track record only if they're forced to make loans.

"Until it's made a mandatory program, I think we will not see a significant drop in foreclosures," Thompson said.

Another problem with the program is that banks don't always have the final say.

Many of these mortgages are held by private investors, and the bank simply acts as a middleman. If investors think they can make more money by foreclosing than modifying the loan, experts say the bank is powerless to override that decision.

Susan Wachter, professor of real estate and finance at the Wharton School, explains, "These are contracts. The government does not have the right to rescind contracts. The government can legislate all they want, but there can be lawsuits."

Willen adds: "What's upsetting about this is that with Making Home Affordable, what you ended up with may be worse [than doing nothing]. We're giving more money to banks, and not preventing many foreclosures."

The Treasury Department has begun stepping up pressure on banks. This month, it began publicly reporting the number of the program's loans the banks had offered, as a way to shame banks into better participation rates.

While JP Morgan-Chase has enrolled 20 percent of its eligible customers and Citibank 15 percent, two banks that got the biggest bailouts have some of the lowest enrollment rates, according to Treasury: Wells Fargo has enrolled 6 percent of eligible customers, and Bank of America 4 percent.

Both banks say that those numbers are misleading -- that they have many more offers in the pipeline and have increased staffing.

Bank of America also says it is bigger than other banks, so it has more applicants to process. Wells Fargo also says that it has refinanced many hundreds of thousands of loans outside of the government program.

Courson said many other banks are also offering their own mortgage modification programs, and if you count those, "a million and a half borrowers were assisted in the first six months in this year."

Multiple administration officials insist to CNN that there is adequate oversight of the program and that the Treasury Department has enlisted Freddie Mac to monitor the banks.

A Freddie Mac official, who would speak only on the condition of anonymity because it is acting "at the direction of Treasury," told CNN that its investigators visit banks, but only after giving the banks' management notice that they're coming.

The agency reviews loan documents, but only those that lenders provide. There are no surprise visits, no tape recordings of bank calls to assure quality assurance, and no way to respond to individual homeowner complaints.

Recently, Freddie Mac began random reviews of cases in which homeowners were denied Making Home Affordable loans. So far, Freddie Mac has not found a single instance of noncompliance worth referring to the Treasury Department for a penalty.

The Treasury Department was unable to show CNN any instance of a lender being penalized for breaking the program's rules.

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Emily Flitter, *Treasury Takes Hard Line with OTC Derivatives Bill*, American Banker, August 24, 2009.

WASHINGTON — It was no secret that the Obama administration was gunning for strict regulation of the previously unbridled over-the-counter derivatives markets. But bankers were still caught off guard by the apparent severity of the 115 pages of legislation the Treasury Department released this month. The Treasury's bill is stricter than the rules under discussion by the House. In addition, bankers and other market participants will have less room to combat the proposal as regulators, lawmakers and the administration maintain a more unified stance on derivatives regulation than on any other area of financial regulatory restructuring.

The bill "would significantly change the derivatives market, principally for dealers," said Karen Shaw Petrou, a managing partner at Federal Financial Analytics Inc. "It's certainly a far-reaching legislative proposal that, because, I think, of the detail and the sophistication of the drafting, will have a lot of impact on the debate going forward."

The section of the plan that concerns them most is the proposed margin and collateral requirements for OTC counterparties. Under the bill, regulators could impose stringent requirements on both parties to trades still carried out over the counter.

The move is designed to force more trades through clearing platforms, which require all participants to essentially prove they have enough cash on hand to pay in the event of a loss in the trade. Though banks accept other types of collateral, clearing platforms want liquid collateral.

Ultimately, this could force a number of smaller customers out of the market altogether, depleting the volume of the derivatives business just as new transparency rules cut into its profitability.

"It is not fully clear what all of the unintended consequences are of the legislation for the end users," said Ernest Patrikis, a partner at White & Case LLP. "Will it make it more difficult for them to manage their risk, more expensive for them to manage their own risk, to the degree where it discourages them?"

Patrikis said that some regional banks that use swaps to hedge their interest rate exposures could suffer, simply because they would be required to post excessive collateral. In the end, it would be too expensive to make it worthwhile.

"There's an opportunity cost. Banks like to lend," Patrikis said. "If everybody has to post collateral there's going to be a lot of the asset side of the bank that's pledged, and that's not a bank anymore."

The banking industry is pushing back against the new requirements.

"Not everything can be cleared; not every product lends itself to being exchange traded," said Scott DeFife, a lobbyist for the Securities Industry and Financial Markets Association. "The industry believes in increased transparency, accountability and responsibility — all of these things are appropriate, but you have to maintain a role for customized products."

Administration officials appear ready for a fight — and unlike on other parts of the regulatory restructuring plan — enjoy significant political support.

The Treasury's bill proposes "significant change in the marketplace in a huge sector that's never been regulated," said Michael Barr, assistant Treasury secretary for financial stability, adding that the Obama administration is prepared to battle it out with the industry. "I think we're going to have a big fight," he said.

As is true for other parts of the administration's regulatory reform proposal, not all lawmakers are on the same page. For instance, a set of rules that House members had begun to draft would have offered a more generous carve-out for companies wanting to use derivatives to hedge their risk.

Also, some in the House are still calling for a partial ban on credit-default swaps, and a proposal being developed by House Financial Services Committee Chairman Barney Frank, D-Mass., and Agriculture Committee Chairman Collin Peterson, D-Minn., would divide jurisdiction differently between the two main candidates for derivatives regulator, the Securities and Exchange Commission and the Commodity Futures Trading Commission.

On the Senate side, a bill proposed by the Agriculture Committee's chairman, Sen. Tom Harkin, D-Iowa, would ban OTC derivatives by forcing all derivatives onto exchanges.

But these differences, unlike those that have emerged in other areas of the financial regulatory reform effort, do not seem to be throwing the potential for strict regulation into turmoil.

"Treasury has given us a very good proposal," said a spokesman for the Financial Services Committee. "We do not differ in any way in the fact that derivatives, currently unregulated, need to be regulated going forward. … There are going to be differences between us and Treasury. We are going to legislate things. We are going to compromise."

Most observers think a derivatives bill could pass through the House quickly and that the real fight over the details of the new regulation will take place in the Senate. But much of the initiative on that side could come from the future regulators themselves: the CFTC and the SEC.

"I suspect that, if CFTC Chairman Gary Gensler has pretty well cut a deal with Michael Barr over at Treasury, that the Senate will probably go with that," said Lynn Turner, a managing director at GlassLewis LLC.

With the health-care debate and climate change legislation dominating many of the Senate Banking Committee members' agendas now, derivatives regulation looks like it won't produce a lively fight. "It's a complex area. Most of the senators are probably not going to be people who could get in and understand that much anyway," Turner said.

Gensler has recently demonstrated a new gusto for strict oversight of the derivatives markets. A week ago he sent a letter to the Senate Banking and Agriculture committees outlining amendments he thought should be made to the Treasury bill. They call for a further tightening of the rules, including a further increase in collateral requirements for some market participants.

The Treasury bill would give the CFTC jurisdiction over derivatives of broad-based indexes, including interest rate indexes. This would give the CFTC oversight of a wide range of commonly used credit derivatives, including some credit-default swaps.

The biggest conflict of all, Turner said, could come after a derivatives bill is signed into law, when the CFTC and the SEC finally have to hash out rules and guidelines for the derivatives markets. But the agencies may cooperate willingly: they announced Thursday that they will hold joint meetings at the beginning of September to discuss harmonizing their regulatory practices, including their future approaches to derivatives.

###

Cheyenne Hopkins, *What's at Stake in the Fight Over Preemption*, American Banker, August 21, 2009.

WASHINGTON — Lawmakers are paying scant attention to one of the most sweeping provisions in the Obama administration's regulatory reform plan — the elimination of national bank preemption.

Congress has focused primarily on other parts of the plan, including the drive to create a systemic risk regulator and a new consumer protection agency, but many industry observers argue that the plan to force national banks to comply with state consumer protection laws could have equal or greater impact.

Bankers and their representatives argue it would change the nature of U.S. banking to force any institution that operates in multiple states to comply with several standards, limiting product choice and raising costs.

"This provision will fundamentally alter the national bank system as envisioned during the Civil War," said Howard Cayne, a partner at Arnold & Porter. "It allows the states to act independently and separately and without regard to any type of uniformity. It will totally balkanize the industry."

But the administration has shown no sign of backing down, and Treasury Department officials downplay the expected impact of their plan, arguing that a new consumer protection agency would set standards so tough that most states would not go beyond them.

"Our judgment is, the federal standards are going to be high and protective of consumers, so I don't think you're going to see a lot of states jumping in with different kinds of laws," said Michael Barr, Treasury assistant secretary for financial institutions. "The experience in this area is that states have tried to step in where there has been significant failing at the federal level."

Whether the preemption provision ends up in the final legislation is anyone's guess. Comptroller of the Currency John Dugan has objected in two hearings to eliminating preemption, but it was unclear from lawmakers' comments whether he has much support.

Community banks, meanwhile, have focused their energies on lobbying against the proposed consumer protection agency, leaving a relative handful of larger banks to target preemption. Privately, some bank officials argue that the preemption language is the most important part of the plan.

Despite the absence of public signs, the conventional wisdom is that the House Financial Services Committee will succeed in passing a bill that eliminates national bank preemption. Chairman Barney Frank has long complained that the Office of the Comptroller of the Currency overstepped its authority in 2004 by adopting rules that codified its preemption authority.

"Congressman Frank wants it in," said Ron Glancz, a partner at Venable LLP. "It may survive in the House."

Still, a few observers argue that the House may not approve language as sweeping as what the administration proposed. Several sources said a few House Democrats are preparing amendments that would water down the preemption language, though exactly how they would do so was unclear.

But most observers agree the banking industry's best hope to fight the provision lies in the Senate. Though the Democrats control 60 votes, enough to stop a Republican filibuster, many are pro-business moderates who would probably be receptive to bankers' arguments that eliminating preemption could disrupt their industry. Senate Banking Committee members like Tim Johnson, Mark Warner and Jon Tester are unlikely to support the preemption provision in its current form, observers said.

"It might get watered down to get the Testers and Warners on board," said Mark Calabria, a former Republican committee aide and now the director of financial regulations studies at the Cato Institute. "I think you are going to see pushback from members to get something they are more comfortable with."

Calabria suggested that Democrats could detail tougher consumer protection rules in legislation and continue to allow federal preemption — a tradeoff banks might accept. "I think there's a feeling on the part of the banking industry that they would take a stronger federal statute in exchange for making sure that it is preemptive," he said.

How successful bankers may be in pushing back against the preemption provision depends in part on whether they can persuade lawmakers it would significantly affect their business — a claim consumer groups dispute.

Under the administration's plan, a consumer protection agency would write and enforce federal protection standards for banks and nonbanks, but states could write tougher rules. States could also enforce both federal and state laws against national and state-chartered banks.

The provision won a boost in a recent Supreme Court decision, Cuomo v. Clearing House Association, which ruled that states could enforce nonpreempted state laws against national banks. But the administration's plan would remove many of the high court's restrictions, including limits on so-called "fishing expeditions" by state attorneys general.

Industry representatives argue that the provision would make business difficult for any banking company hoping to operate nationwide. Each of the 50 states could enact its own consumer protection laws on a range of topics, including mortgages, credit cards and other consumer loans.

Most observers concede it is highly unlikely that all 50 states would create their own standards but say that action by even a few could create a compliance nightmare.

"At the state level, legislatures tend to react to specific constituent issues," said Robert Cook, a partner in the Hudson Cook law firm, "and perhaps some of their reactions, and the constituent issues they come up with and need to address, are not uniform from state to state."

Though observers said California and New York are the states most likely to pass their own laws, Mark Tenhundfeld, the American Bankers Association's senior vice president of regulatory policy, said the situation would be unpredictable.

"I don't think anyone would think Georgia would be leading the charge on consumer protection, but they passed a very tough predatory lending law" in 2003, he said. "That's the problem with getting rid of preemption — you don't know what state will do what."

Comptroller Dugan has been the most vocal opponent of the provision, arguing repeatedly in congressional hearings that the outcome of ending preemption would be disastrous.

"Federally chartered banks would be subject to the multiplicity of state operating standards because the proposal sweepingly repeals the ability of national banks to conduct any retail banking business," Dugan said in a July hearing by the House Financial Services Committee.

But Art Wilmarth, a professor at George Washington Law School, said bankers are overdramatizing the impact of eliminating preemption. It would return the world to what it was before the OCC's 2004 rule, he said.

"I do not believe it does change what the system looked like before the rules were adopted," he said.

State supervisors said that their new powers would be used sparingly.

"If the federal standard is a good one, the states won't act," said Mark Pearce, the North Carolina bank commissioner. "By having a floor, not a ceiling, it ensures we will reach a good minimum standard at the federal level."

But this argument has done little to calm bankers.

"You will always have certain states that will go beyond the federal scheme," said Cathy Ghiglieri, the president of Ghiglieri & Co., a former OCC examiner and former Texas banking commissioner.

Industry representatives also argue that if states are so sure the consumer protection agency will write tough rules why do they want the power to go further?

"It's inconsistent if we are going to create this tough new regulator and not to trust it in being the tough cop on the beat," said Glancz.

For his part, the Treasury's Barr said the provision is meant to guard against cases of inaction by the consumer agency, not to express a lack of faith in it.

"I think it's unlikely that any agency all the time will get everything right," he said. "We ought to be a little bit humble about all institutions all the time to get everything right."

Still, even if only a few states enact tougher laws, bankers said, problems would arise. They cited increased compliance costs — which may be passed along to consumers — more expensive products in certain states and inequality of products offered state-by-state. In some cases, banks could choose to stop doing business in a state altogether. This happened with the Georgia predatory lending law, much of which was later repealed.

But Barr argued that the Georgia case is an example of the system working, since the state did change the law.

"If the state wants to pass a more protective consumer protection law, and it turns out the state has gone too far, the market will let that state know very, very quickly … , and the states are going to adjust," he said.

L. Richard Fischer, a partner in the Morrison & Foerster law firm, said banks would probably do cost/benefit analyses on operating in each state, depending on their consumer protection laws. Customers in small states with tough consumer protection laws would be at a disadvantage, he said.

"In big states, even though it's costly, at least there are enough customers to recoup costs, but in other states like Vermont, North Dakota, there's absolutely no incentive for anyone to lend there because the number of potential customers is just not big enough," he said. "Where the likely compliance costs are greater than another, you would be foolish to enter that state."

Steve Wilson, the CEO of LCNB National Bank in Lebanon, Ohio, said his bank has 25 offices in Ohio and has opened several in Indiana and Kentucky. It would be burdensome to comply with, in effect, four different standards — the three states' and the federal one, he said.

"I'm a smaller bank that would be hampered in our marketing efforts and products if it weren't for preemption," Wilson said. "It would greatly increase our costs, and either way we went, it could limit our product offering."

###

Jessica Marron and Bill Holland, *Administration's OTC proposal gives end-users leeway in posting collateral*, Inside EERC's Gas Market Report, August 21, 2009.

Alleviating the concerns of numerous energy end-users and producers, some parties will not have to post collateral under the final piece of financial regulation, designed to bring over-the-counter products under stricter scrutiny, the Obama administration unveiled on August 11.

"We provided room for non-financial firms engaged in hedging to not have to margin those hedges," Assistant Treasury Secretary for Financial Institutions Michael Barr said at a news conference in Washington. "Margining will be focused on dealers [and] swaps participants," although "end-users with significant open positions" might be required to post margins.

The 115-page piece of legislation is designed to regulate the lightly monitored over-the-counter derivatives market. It would allow regulators to impose cash margin requirements on non-financial players if regulators decide significant market risks are being built up, Barr said.

Page 93 of the proposal allows regulators to waive margin requirements for swaps in which the counterparty is not a swaps dealer or is using the swap as a hedge under normal accounting rules -- or is engaged in a business that "is not financial in nature."

In July, a group of 15 energy producers and manufacturers wrote Congress, urging lawmakers not to require all OTC contracts be taken onto an exchange. The group said, "We believe that such proposals would significantly increase costs for companies seeking to hedge risks through OTC products, as well as greatly limit, or eliminate altogether, needed customized products used for risk management."

The legislation, the final piece of a full package to decrease systemic risk and reform financial oversight, is largely aimed directly at regulating credit default swaps but will ultimately bring all OTC derivatives -- including energy products -- under full federal oversight.

"Treasury's legislative proposal is a very important step toward much-needed reform to protect the American people by lowering risk, promoting transparency and protecting market integrity," Commodity Futures Trading Commission Chairman Gary Gensler said. "I believe that all over-the-counter derivatives and dealers should be brought under comprehensive regulation."

The administration's proposal would require standardized OTC derivatives to trade on an exchange and be cleared by an approved organization regulated either by the CFTC or the Securities and Exchange Commission.

The proposal provides a broad definition of what constitutes a standardized swap -- taking into account how much it trades, how often it is referenced in contracts or agreements and whether any changes to the swap's components "are of economic significance."

The administration said its plan will promote standardization of OTC derivatives, pushing them onto exchanges by imposing higher capital and margin requirements on more exotic, customized products.

The measure would give CFTC and the SEC "clear authority" to prevent traders from "spurious customization to avoid central clearing and exchange trading." All federal financial regulatory agencies would have private access to all OTC data, including trader identification and volumes, while the public would have access to aggregated data on trading volumes and open OTC positions.

The proposed language would give the CFTC and the SEC authority to oversee OTC dealers and other major market participants, subjecting them to strict capital and margin requirements and requiring a full audit trail for all transactions.

The two agencies have 180 days to decide what products and transactions each will regulate. If they can't agree, the Treasury secretary will decide, according to the proposal.

The CFTC and SEC would also have "clear, unimpeded authority" to police market manipulation and fraud and will be able to set position limits and large-trader reporting requirements for OTC contracts that perform a significant price discovery function, according to the language.

Barr said the legislation has been forwarded to the banking, financial services and agriculture committees of both the House of Representatives and Senate.

The International Swaps and Derivatives Association, a New York trade group for swap merchants, provided little reaction August 11 other than to say it looked forward to working with legislators on the new law.

"We are examining the details of the draft legislation being especially mindful of the need to preserve the availability and flexibility of privately negotiated derivatives for American companies," ISDA CEO Robert Pickel said. "Privately negotiated derivatives are important both in order for American companies to manage risk as well as to compete on a global basis."

The Futures Industry Association also offered little comment, saying that it is "studying the proposed legislation and its implications for the regulated futures markets." The association hopes to work with Congress in order to ensure the standard futures markets continue to serve their purpose of price discovery and risk management.

###

Bill Swindell, *Nonbanks Take Aim At Regulatory Agency*, National Journal's CongressDaily, August 20, 2009.

Overshadowed by the banking lobby, nonbanks ranging from mortgage brokers to auto financers and title insurers are weighing in against a proposed Consumer Financial Protection Agency, which would impose far greater regulation than they currently face.

Such nonbanks are primarily regulated at the state level, but they also are supervised by the FTC, although consumer activists contend the agency is not equipped to aggressively provide oversight of abusive and deceptive financial products.

In contrast, banks regulated at the federal level are supervised by three agencies in addition to a limited FTC role: the Federal Reserve, the FDIC and either the Office of the Comptroller of the Currency or the Office of Thrift Supervision.

Under the Obama administration proposal and legislation sponsored by House Financial Services Chairman Barney Frank, those federal regulators would be stripped of their consumer protection duties and the sgency would be granted rule-writing, examination and enforcement powers for products such as credit cards, mortgages, payday loans and credit insurance products. The FTC would play a backup role.

Industry has been uniform in its opposition to the plan and the U.S. Chamber of Commerce has organized a 23-member group to scuttle the bill.

But banks have been aided in their quest by regulators such as Federal Reserve Chairman Bernanke and Comptroller of Currency John Dugan who argue their consumer protection function goes along with their mission to ensure an institution's safety and soundness. That has given banks an upper hand in their lobbying.

FDIC Chairwoman Sheila Bair has proposed a compromise to leave examination and enforcement for consumer protection to banking regulators while allowing the proposed agency to play a backup role in those services with rule-writing authority.

Bair said during a July 24 hearing in front of Frank's panel that the focus should be placed on the nonbanks because it is the "key to addressing most of the abusive lending practices faced by consumers."

Nonbanks are on guard against any deal that might ameliorate at least some of the banks' concerns -- especially smaller institutions -- but leave them out in the cold in a final bill.

"The assumption is by some in Washington -- and even some of my sister trades at the banks -- to refer to [us] as the nonregulated. We take great exception to that. There is a sense that if you are not regulated by all the federal agencies then you are not regulated," said Bill Himpler of the American Financial Services Association, which represents consumer credit firms such as those that provide small-dollar personal loans and auto financing.

Himpler noted that in a July meeting with Assistant Treasury Secretary Michael Barr two-thirds of the discussion was on the abuses in the home mortgage market and the rest was on credit cards -- areas his members are not involved with.

"The proponents of this proposal have said the system is broke, we need to fix it. But when they talk about the system being broke, it's mortgages and credit cards. There is a heck of lot that doesn't fit into that category from our members' perspective that ain't broke. Yet we get swept up on it," he noted.

Roy DeLoach of the National Association of Mortgage Brokers said his group also is concerned that banks could get an upper hand in the proposed agency, noting that it would have power to stop indirect compensation in mortgage markets, such as yield spread premiums that allow a broker to garner a higher fee for moving a borrower into a loan at a higher interest rate.

DeLoach contends that banks, in comparison, build such costs into their products by bumping up interest rates on loans that have no closing costs. "You cannot possibly say you can ban indirect compensation," he said.

But consumer advocates contend the new agency is needed because the current structure does not regulate nonbanks well when it comes to consumer protection.

Rep.Luis Gutierrez, D-Ill., has argued it is needed to protect consumers "who are most vulnerable to predatory products" such as certain payday loans and remittance services.

"They [nonbanks] all have been nominally regulated by the FTC. But the FTC doesn't issue many rules. It takes it forever to issue some kind of rules because of some procedures that Congress imposed on it years ago. It acts on only large numbers of complaints," said Ed Mierzwinski, consumer program director for the U.S. Public Interest Research Group.

###

Emily Flitter, *Will Banks Be Primary Target of New Agency?*, American Banker, August 17, 2009.

WASHINGTON — Though the Obama administration has attempted to assure lawmakers that its proposed new consumer protection agency would focus equally on banks and nonbank lenders, there are growing doubts about whether that will really happen.

With approximately 8,000 banks already examined once a year by their regulators, observers unanimously say it would be impossible for a new agency to oversee tens of thousands of nonbank lenders to the same degree.

But Michael Barr, the Treasury assistant secretary of financial institutions, said in an interview last week that consumer protection exams would be risk-based — potentially giving smaller banks a break, while ensuring larger banks and nonbanks receive the same treatment.

"I do think that community banks could use less supervision and examination than very large financial firms offering a wide range of complex products," he said. "I think there are probably some community banks that have supervision and examination more in a shorter time period than is required. There may be some community banks that have more intrusive forms of supervision than is required to assess the risk they pose to consumers."

Despite those assurances, community bankers remain skeptical. Industry representatives said that if a new agency is staffed by examiners and senior officials picked off from current bank regulators — who would lose the right to enforce consumer protection under the Obama plan — banks will continue to face far stricter supervision.

They argue that examiners' years of experience analyzing bank records will make them more inclined to continue studying banks than companies whose business models and procedures are foreign to them.

"Banks have regulators who examine them every year," said Floyd Stoner, the American Bankers Association's chief lobbyist. "Who will examine nonbanks in any comparable fashion and how will any such examination of nonbanks be funded?"

During the past week, Treasury officials have attempted to reassure the community bank lobby. On conference calls with bankers, Barr has made the case for risk-based supervision. Last week, Treasury officials also added more details about how the new agency would be funded, emphasizing that banks with assets of more than $10 billion would pay more in examination fees than smaller institutions.

While Treasury made it clear last month that it was creating a two-tiered fee structure for supervision by a new national bank supervisor, it was not clear until Friday that it would also use that structure to fund a new agency. The exact details on how much banks would have to pay, or even what the assessment would be based on, were left unclear. Though community bankers were pleased with charging larger institutions more, most still fear the creation of a new consumer protection agency. They point to enforcement of the Bank Secrecy Act and other anti-money-laundering laws as proof that bankers usually receive tougher oversight than other financial firms — even when the requirements are meant to be substantially similar.

Although the USA Patriot Act of 2001 extended the scope of BSA to cover money services businesses, broker-dealers, casinos and others at risk of money laundering, few receive regular examinations. Indeed, while banks are examined each year for money laundering issues, many MSBs are not even registered. Approximately 37,000 of the estimated 200,000 MSBs in the country are registered with the Federal Crimes Enforcement Network, even though registration has been mandatory for 10 years. Though BSA enforcement for those firms falls to the Internal Revenue Service, only a fraction have been examined even once.

A similar situation appears likely — at least on paper — if the administration succeeds in creating a consumer protection agency. There are roughly 75,000 nonbank mortgage lenders in the country, and tens of thousands of other type lenders.

"There are around 8,000 banks in our country today," said John Funk, a partner at the Concord, N.H.-based Gallagher, Callahan & Gartrell PC, who represents the New Hampshire Bankers Association. "There are — I would venture a guess — hundreds of thousands of nonbank financial companies in our country. How is the consumer protection agency alone going to examine all of these?"

Funk said it would take a massive exam force to even attempt oversight of all these firms.

"We're just looking at it from a practical standpoint — how is this going to work?" he said. "The problem is that the banks feel they are easy targets."

Some analysts note that compared to banks, nonbank lenders may also be harder to oversee.

"The nonbank financial firms are so diverse and so numerous," said Jaret Seiberg, an analyst with Concept Capital's Washington Research Group. "A lot of these companies don't have regular safety and soundness exams. There isn't this regular government oversight of their activities to the same extent that banks have, so it is going to be a bigger challenge for a new agency to get a handle on a large universe of firms that the government doesn't look at nearly as closely now."

But Ellen Seidman, a former director of the Office of Thrift Supervision, argued that the administration is taking the right tack by focusing on banks and nonbanks on a risk-based basis.

"Do I think it is more important that regulators spend their time looking at the consumer behavior of the Big Four than 7,000 of the 7,200 smaller banks? Yes," she said. "In part, they're doing more; in part they're cleverer, and if they're out there doing something not so great, they're doing it in larger volumes."

This logic could apply to nonbanks as well, Seidman said.

"Would I want them to be looking at the big payday lending chains and so on first and leaving my local bodega for later? Yeah," said Seidman, who is now director of the Financial Services and Education Project at the New America Foundation. "The beauty of focusing on consumer protection is they will hopefully prioritize their resources under at least two dimensions, namely what kinds of products and potential abuses do we have here and what kinds of volume is it being done in."

That is exactly what the administration wants to do, Barr said.

"One of the things that this agency can do, looking across the financial system, is that this big institution over here, it's offering pay option arms to millions of people, I'm really worried about that, I'm going to put a lot of resources into that," he said. "This little community bank over here, it's doing a bunch of really basic 30-year mortgage loans, I'm really not that worried. I don't need to spend that much time there. I don't need to visit that often."

But others counter that while the new agency might intend to take such an approach, it could quickly be overwhelmed and default to just closely supervising banks. "I can't get my arms around the universe of players that would need to be regulated from a consumer protection point of view and how wide and deep that is," said Tom Vartanian, partner at Fried Frank Harris

Shriver & Jacobson LLP. "If it gets down to pawnbrokers, that's really pretty broad and pretty deep."

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Sarah Hansard, *Treasury unveils bill to reform derivatives on OTC; Legislation aims to limit products' sales to unsophisticated parties*, Investment News, August 17, 2009.

The Department of the Treasury last Tuesday sent to Capitol Hill the final piece of its financial regulatory reform legislation, a 115-page bill aimed at reforming regulation of over-the-counter derivatives.

"These markets have largely gone unregulated since their inception," the Treasury Department said in a statement. "Enormous risks built up in these markets, substantially out of the view or control of regulators, and these risks contributed to the collapse of major financial firms in the past year and severe stress throughout the financial system."

Under the legislation, the OTC derivative markets would be regulated in a comprehensive way for the first time. OTC derivatives dealers and other major market participants would also face regulation.

Rules governing credit default swaps markets would be aimed at guarding against activities posing excessive risk to the financial system, and at preventing market manipulation, fraud, insider trading and other abuses.

Regulation also would seek to ensure that OTC derivatives aren't marketed inappropriately to unsophisticated parties, including small municipalities.

The legislation would require standardized OTC derivatives to be centrally cleared by a derivatives clearing organization regulated by the Commodity Futures Trading Commission or a securities clearing agency regulated by the Securities and Exchange Commission.

OTC dealers and banks would be regulated by federal banking agencies. OTC derivatives dealers and market participants that aren't banks would be regulated by the CFTC and the SEC.

To improve transparency and market efficiency, standardized OTC derivatives would be required to be traded on exchanges or on regulated swaps execution facilities.

Customized derivatives would be subject to higher capital and margin requirements to encourage standardization, said Michael Barr, assistant secretary for financial institutions at the Treasury Department. He spoke to reporters during a telephone briefing on the legislation last week.

'BROAD DEFINITION'

"More product will be moved into the standardized space," as the legislation would impose a broad definition of standardized products, in addition to higher capital and margin requirements for customized products, Mr. Barr said.

For companies that need customized products, "we want to make sure that there's an appropriate regulatory regime, but one that doesn't stifle the marketplace," he said.

Full reporting into a trade repository would be required, along with aggregated data released to the public, and specific information would have to be reported to regulators for customized transactions, Mr. Barr said.

"It is a comprehensive reform going right to the very heart of the problems that we saw in the last crisis to block any kind of future AIG problems from arising in the system," he said, referring to American International Group Inc. of New York.

###

Brian Collins, *Treasury's Insurance Protects Investors*, Home Equity Wire, August 15, 2009.

The Treasury Department has unveiled a loan modification insurance program to protect investors from declines in house prices.

The $10 billion Home Price Decline Protection program will "offset any incremental collateral loss on modifications that do not succeed" during the first two years, Treasury says.

The new program is another component of the administration's Home Affordable Modification Program that has been under development for some time. Treasury also is working on a second-lien component to expedite modifications of piggyback loans.

The HPDP program is aimed at giving investors and servicers an incentive to modify loans in markets with declining house values. "Home price decline protection can help homeowners who may not have been reached otherwise," Treasury assistant secretary Michael Barr said.

The amount of the HPDP "incentive" payment is determined at the time the servicer runs the net present value test to qualify homeowners for a loan modification trial. It is based on expected price declines over the next year and other factors.

Treasury is kicking off the incentive payment program for HAMP modifications with NPV test dates on or after Sept. 1.

"Mortgage loans that are owned or guaranteed by Fannie Mae and Freddie Mac are not eligible for HPDP incentive compensation," according to Treasury.

###

Sarah N. Lynch, *Derivatives Overhaul Seeks to Reduce Risk*, The Wall Street Journal, August 13 2009.

WASHINGTON -- The Obama administration detailed a sweeping plan to more closely oversee the giant market for derivatives by forcing many of the products to trade on regulated exchanges or electronic venues.

The proposal, which was sent to legislators on Capitol Hill for consideration, seeks to prevent a repeat of problems last year, when the growing use of derivatives by many financial firms went unchecked. The proposal would essentially make it easier to see prices and make markets more transparent.

The derivatives plan is the final piece of the administration's proposed regulatory revamp, which includes a consumer-protection regulator, mandatory registration of hedge funds and private-equity firms, and new powers aimed at helping the Federal Reserve ensure market stability. While the administration says it believes the plan is on track, its effort has been criticized by lawmakers, the financial-services industry and financial regulators concerned about losing power.

To help ensure support and dodge another regulatory turf battle, the administration proposed spreading regulatory responsibility across several federal agencies. The 115-page draft bill would give the bulk of the proposed new powers over derivatives to the Securities and Exchange Commission and the Commodity Futures Trading Commission but also keep banking regulators in the mix by granting them authority to oversee banks that deal in derivatives.

The legislation doesn't stray far from what Treasury Secretary Timothy Geithner outlined in May, but it details for the first time how authority among federal regulators would be divided. In a concession to small market players, the proposal has an exemption easing margin requirements for some hedging transactions.

The proposed legislation aims to reduce the risks derivatives may pose "to the financial system and reduce the likelihood they could be used to engage in inappropriate business conduct or to hurt investors," said Michael Barr, the Treasury's assistant secretary for financial institutions.

The proposal is designed to address markets such as those for credit-default swaps, which many say exacerbated the financial crisis. The administration wants to require standardized derivative contracts to be processed through clearinghouses, which guarantee trades and help cushion against the blow of a potential default. Off-exchange derivatives are sold both as highly customized products and more standardized contracts that closely mirror products traded on exchanges.

The industry, which had been expecting the proposal, reacted cautiously, saying legislation needs to be crafted in such a way that it doesn't hurt the ability of companies to use derivatives.

"We are examining the details of the draft legislation being especially mindful of the need to preserve the availability and flexibility of privately negotiated derivatives for American companies," said Robert Pickel, executive director and chief executive of the International Swaps and Derivatives Association Inc., a trade group.

The administration proposals mirror many of the efforts proposed by a recent European Union white paper, including incentives to trade and clear over-the-counter products. The U.S. has been working with its counterparts overseas to adopt similar rules in an effort to avoid "regulatory arbitrage."

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Emily Flitter, *Treasury Outdoes Hill in Crackdown on Derivatives*, American Banker, August 12, 2009.

WASHINGTON — The Treasury Department set its sights on tough regulation for over-the-counter derivatives with the release Tuesday of legislative language that is stricter than other recent proposals.

The Treasury's bill would let bank regulators set margin and capital requirements for banks entering into derivatives contracts. All firms using derivatives, whether they were trading them as major market participants or forging swap agreements as end users to hedge risk, would have to have their standardized contracts centrally cleared and traded over regulated exchanges.

The Treasury also outlined separate requirements for dealers of derivatives to not only clear standardized contracts, but trade them on exchanges. Dealers will no longer be able to directly trade standardized contracts among themselves; they will have to use an exchange or an equivalent trading platform.

"There will be significant incentives for financial institutions both large and small to use more standardized products in the future," Michael Barr, the Treasury's assistant secretary for financial stability, said during a conference call with reporters.

Barr denied that lack of any exemption for end users from clearing requirements would put a squeeze on small banks trying to hedge their risks.

"I think that they'll find the new system much less subject to the concerns that we saw in the last financial crisis and for which they and all of us are currently paying."

In these respects and others, the bill is tougher than one authored by House Financial Services Chairman Barney Frank, D-Mass., and House Agriculture Committee Chairman Collin Peterson, D-Minn.

"It's a very strong piece of legislation. It carries forth what the administration had been promising," said Michael Greenberger, a professor at the University of Maryland School of Law.

Also differing from the Frank-Peterson proposal, the Treasury's bill would divide jurisdiction between the Securities and Exchange Commission and the Commodity Futures Trading Commission based on the distinction between contracts derived from a narrow index or single security, such as a stock, and contracts based on broad indexes.

Frank and Peterson wanted to divide jurisdiction along the lines of the underlying asset, giving credit-based derivatives to the SEC and commodity-based derivatives to the CFTC.

The Treasury's approach would effectively divvy up regulation of the most infamous of credit derivatives — credit default swaps — which have been the target of scrutiny by lawmakers and the public since the credit crisis began last year. Unlike the Frank-Peterson proposal, the Treasury would not place specific limits on trading CDS.

The Treasury's proposal would, however, "fundamentally change the nature of the CDS market by requiring for the first time meaningful, full transparency," said Barr.

The Treasury envisions a central repository for information on all derivatives trades, both standardized and customized. The SEC and the CFTC would jointly determine the definition of standardization within six months after enactment.

"Standardized products are presumed to be standardized if they are centrally cleared," Barr explained, but the two regulators will have a final say on the level of standardization of a contract.

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C. Westbrook Murphy, *Exam Component of CFPA Ill-Advised*, American Banker, August 12, 2009.

The Obama administration proposes to create a Consumer Financial Protection Agency that would write and enforce regulations governing all providers, both banks and nonbanks, of "any financial product or service to be used by a consumer primarily for personal, family, or household purposes." Note that the CFPA's jurisdiction is not limited to consumer credit, but covers any consumer product or service, including deposits, fund transfers, investment advice, and collecting, analyzing, maintaining and providing consumer report information.

This new agency would duplicate existing consumer examination and enforcement activities of the prudential regulators of depository institutions. And it would charge banks and thrifts for the privilege of doing so.

The administration proposes that prudential bank regulators would transfer to the CFPA the regulators' existing consumer protection rulemaking, examination, and enforcement functions — plus the regulatory staff performing these tasks.

FDIC Chairman Sheila Bair recently told the Senate Banking Committee that while FDIC supported creation of the CFPA, "We strongly, strongly recommend that the examination and enforcement component for banks be left with the bank regulators." Other bank regulators agree to a greater or lesser extent with Ms. Bair.

Whatever happens to the proposed CFPA, prudential regulators will continue to examine for compliance risk. They expect an institution's compliance program to extend to all compliance risk, encompassing both consumer and nonconsumer laws. Assessing the compliance program's effectiveness is an integral part of an examiner's evaluation of the institution's overall risk management. To omit consumer law compliance would require the bank's regulator to ignore a significant component of the institution's legal and reputational risk.

The Fed has been criticized — and rightly so — for its slowness in adopting regulations to address abusive mortgage lending practices. But no one has questioned the effectiveness of the Fed's or any other bank regulator's examination regime in assuring a depository institution's or holding company's adherence to whatever consumer laws were in effect at any given time.

In presenting to the Senate Banking Committee the administration's case in favor of the proposed CFPA, Treasury Assistant Secretary Michael Barr admitted that the compliance regime of the prudential regulators generally "identifies and resolves weaknesses in banks' consumer protection systems before they harm consumers."

Thus, the administration's proposal would simply add an unneeded, duplicative and costly examination force. As Secretary Barr testified: "In large banks, CFPA examiners could reside in the bank just as the consumer compliance examiners often do today, right next door to the safety and soundness examiners."

How will this duplicate examination force be funded? Why, by the banks, of course.

The bill (HR 3126) to enact the administration's consumer proposal directs the CFPA to "recover the amount of funds expended by the agency … through the collection of annual fees or assessments on covered persons."

Secretary Barr told the Senate Banking Committee that transferring consumer examination functions to the CFPA "will not increase the overall level of fees being collected in the [banking] system" because the "new agency will be able to use existing fees that are collected for this purpose by the banking agencies." He went even further by asserting that the consolidation of existing consumer functions into one agency "likely would result in a reduction of fees."

Just one problem with Mr. Barr's testimony: It is incorrect. No prudential bank regulatory agency collects fees for consumer examinations.

The Fed's funding comes not from assessments, but from its earnings on member banks' reserves. Operations of the FDIC and NCUA are funded by deposit insurance premiums. The OCC and OTS assess semiannual fees on their regulated institutions, but neither agency has a separate fee to support its consumer compliance functions.

So, "covered persons" — banks and thrifts — would be subjected to "annual fees or assessments" to pay for the CFPA.

During hearings on the proposed agency, Senate Banking Committee Chairman Christopher Dodd told Secretary Barr that the committee "will not warmly receive" saddling the costs of the new agency on the community bankers and credit unions which played no role in creating the current financial meltdown. Let's hope the views of Chairman Bair and Chairman Dodd prevail.

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Lynn Hums, *Derivatives: Bill Seeks Curbs on Derivatives; Treasury Seeks to Limit OTC Deals*, The Bond Buyer, August 12, 2009.

WASHINGTON - The Treasury Department has sent lawmakers draft derivatives legislation that would prohibit municipalities that have less than $50 million in discretionary investments from participating in over-the-counter derivative transactions that are not centrally cleared or exchange-traded.

But it appears the draft legislation, which Treasury officials detailed yesterday in a conference call with reporters, would not expand the commission's existing anti-fraud authority over municipal-bond related interest rate swaps, according to sources.

The SEC is currently in a court battle with the Securities Industry and Financial Markets Association as well as the former head of the Jefferson County, Ala.,Commission and an Alabama bond dealer over how far the commission's derivatives enforcement authority extends and whether the SEC can take enforcement action in connection with the county's municipal bond-related interest rate swaps.

The draft legislation was sent to the House and Senate committees with jurisdiction over derivatives and appears to be broader in some respects than the derivatives legislative proposals recently agreed to and released by House Financial Services Committee chairman Barney Frank, D-Mass., and House Agriculture Committee chairman Collin Peterson, D-Minn. Their proposals, which were only briefly outlined, did not address unsophisticated investors.

But Treasury deputy secretary Neal Wolin and assistant secretary for financial institutions Michael Barr told reporters that the administration wants to tighten the definition of eligible investors that are able to engage in OTC derivative transactions to better protect individuals and municipalities.

Specifically, the draft would amend the definition of "eligible contract participant" in the Commodity Exchange Act so that it would include a government or political subdivision that owns less than $50 million of discretionary investments.

Municipal market participants said they want to study the draft.

"It's a first-cut, broad-stroke measure to limit systemic risk related to the use and the overall use of derivatives," said Scott Fairclough, senior vice president and head of public finance derivatives at Sterne, Agee & Leach Inc. in New York. "It needs to be more defined."

"The vast majority of small municipalities should really be no where near the derivatives market," said Peter Shapiro, managing director of Swap Financial Group in South Orange, N.J. "But it has to be carefully defined to keep unscrupulous players out while not excluding those larger municipalities that have legitimate hedging needs."

Shapiro said using the level of a municipality's investments "may not be the right way, but there's nothing wrong with the concept of protecting small unsophisticated municpialities from making expensive mistakes" by engaging in derivatives they don't understand.

Like Frank and Peterson's proposal, the administration draft would try to push more OTC derivatives into becoming standardized by requiring that regulators set higher capital and margin requirements for non-standardized contracts. Standardized derivative contracts would have to be centrally cleared and traded over an SEC or Commodity Futures Trading Commission regulated exchange.

The SEC, CFTC, and banking regulators also would be given authority to prevent market participants from "spurious customization" to avoid central clearing and exchange trading.

The same three entities would have access, on a confidential basis, to information about OTC derivatives transactions and related open positions of individual market participants. The public would have access to aggregated data on open positions and trading volumes.

All derivatives dealers and those who take large positions in derivatives would be subject to federal regulation. The regulators also would have clear, unimpeded authority to deter market manipulation, fraud, insider trading, and other abuses in the OTC derivatives markets.

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Donna Block, *White House sends derivatives bill to Congress*, The Deal, August 12, 2009.

The Obama administration on Tuesday sent lawmakers the last piece of a sweeping package of measures to revamp the financial regulatory system.

The final section deals with regulation of the over-the-counter derivative (OTC) market and aims to prevent a repeat of the problems that many say worsened the financial crisis. The proposal would make the derivatives market more transparent.

The legislation encourages derivatives traders and dealers to use a clearing organization for all standardized products.

Customized products that cannot be cleared would face higher capital and margin requirements as a way of enticing traders onto exchanges and electronic platforms. Information about all derivatives, meanwhile, would be reported to a central repository to help regulators police the market.

The administration also recommends that dealers in OTC derivatives should come under federal supervision along with traders that take large positions in OTC swaps.

The plan defines standardized derivatives broadly. An OTC derivative that a clearinghouse accepts would be presumed standardized. In addition, the Securities and Exchange Commission and the Commodity Futures Trading Commission would get authority to prevent attempts by market players to falsely portray derivatives as customized to skirt the oversight of clearinghouses and exchanges.

The 115-page draft bill would give the SEC and the CFTC powers to oversee the derivatives markets but also keeps banking regulators as prudential regulators. While the CFTC and SEC would regulate major market players and nonbank derivative dealers, big banks that deal in derivatives would be subject primarily to oversight by their current banking regulators.

To avoid the jurisdictional squabbles that have been a staple of the relationship between the SEC and CFTC, Treasury officials said the bill assigns jurisdiction according to principles the agencies have relied on for well over a decade. That means the CFTC and SEC would, for instance, each get a slice of the large credit-default swap market.

"The basic line is if a credit-default swap is on a broad-based index, it would be subject to CFTC jurisdiction," Michael Barr, the Treasury's assistant secretary for financial institutions, said during a conference call Tuesday. "If it is on a single-stock or less likely on a narrow-based index, it would be subject to SEC jurisdiction."

The bill would also give the agencies joint rule-making authority to help avoid "regulatory arbitrage."

To prevent market manipulation fraud and abuse, the agencies will have the authority to set position limits and large trader reporting requirements for OTC derivatives. The eligibility rules for investors in the OTC derivative market will be tightened to protect individuals and small municipalities.

The proposal mirrors one released last month by Rep. Barney Frank, D-Mass., and Rep. Collin Peterson, D-Minn., chairmen of the House Financial Services Committee and the House Agriculture Committee, respectively, but there are some differences.

Under the White House plan, bank regulators will oversee bank dealers and traders of OTC derivatives, while the SEC and CFTC will regulate nonbank investors and dealers in the market. By contrast, the Frank-Peterson proposal would empower a council of regulators to resolve disputes within 180 days between the two agencies if they could not agree on rule making or jurisdiction.

The administration would have the Treasury step in if the SEC and CFTC could not come to terms during a specified period. The SEC and the CFTC are charged with overseeing different parts of the derivatives industry.

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Jessica Marron and Bill Holland, *Plan exempts producers from OTC margins*, Platts Oilgram News, August 12, 2009.

Energy producers and consumers using derivatives as hedges will not have to post cash collateral for those hedges under new legislation the Obama administration sent to Congress on August 11.

"We provided room for non-financial firms engaged in hedging to not have to margin those hedges," Assistant Treasury Secretary for Financial Institutions Michael Barr said at a news conference in Washington. "Margining will be focused on dealers [and] swaps participants," although "end-users with significant open positions" might be required to post margins.

The 115-page piece of legislation is designed to regulate the lightly monitored over-the-counter derivatives market. It would allow regulators to impose cash margin requirements on non-financial players if regulators decide significant market risks are being built up, Barr said.

The proposal allows regulators to waive margin requirements for swaps in which the counterparty is not a swaps dealer or is using the swap as a hedge under normal accounting rules--or is engaged in a business that "is not financial in nature."

The legislation, aimed directly at credit default swaps, is designed to reform the nation's financial markets and bring all over-the-counter derivatives under full regulation.

"Treasury's legislative proposal is a very important step toward much-needed reform to protect the American people by lowering risk, promoting transparency and protecting market integrity," Commodity Futures Trading Commission Chairman Gary Gensler said. "I believe that all over-the-counter derivatives and dealers should be brought under comprehensive regulation."

The administration's proposal would require standardized OTC derivatives to trade on an exchange and be cleared by an approved organization regulated either by the CFTC or the Securities and Exchange Commission.

The proposal provides a broad definition of what constitutes a standardized swap--taking into account how much it trades, how often it is referenced in contracts or agreements and whether any changes to the swap's components "are of economic significance."

The administration said its plan will promote standardization of OTC derivatives, pushing them onto exchanges by imposing higher capital and margin requirements on more exotic, customized products.

The measure would give CFTC and the SEC "clear authority" to prevent traders from "spurious customization to avoid central clearing and exchange trading."

All financial regulatory agencies would have private access to all OTC data, including trader identification and volumes, while the public would have access to aggregated data on trading volumes and open OTC positions.

The proposed language would give the CFTC and the SEC authority to oversee OTC dealers and other major market participants, subjecting them to strict capital and margin requirements and requiring a full audit trail for all transactions.

The two agencies have 180 days to decide what products and transactions each will regulate. If they can't agree, the Treasury secretary will decide, according to the proposal.

The CFTC and SEC will also have "clear, unimpeded authority" to police market manipulation and fraud and will be able to set position limits and large-trader reporting requirements for OTC contracts that perform a significant price-discovery function, according to the language.

Barr said the legislation has been forwarded to the banking, financial services and agriculture committees of both the House of Representatives and Senate.

The International Swaps and Derivatives Association, a New York trade group for swap merchants, provided little reaction August 11 other than to say it looked forward to working with legislators on the new law.

Jessica Marron, Bill Holland

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Charlene Carter, *Administration Details Plan for More Oversight of Over-the-Counter Derivatives*, CongressNow, August 11, 2009.

The federal government would impose new registration and reporting requirements on those seeking to do business in the over-the-counter derivatives market, under the final piece of the Obama administration's proposed financial regulatory overhaul plan.

The administration today sent the draft legislation to the House Financial Services Committee, the Senate Banking, Housing and Urban Affairs Committee, and the House and Senate Agriculture committees.

Financial firms often use OTC derivatives such as credit default swaps to help insure against risk in investments. The administration acknowledges the necessity of the derivatives market but is pushing for regulation. It argues that because the risk-hedging business was substantially out of the view or control of regulators, it brought severe stress throughout the financial system when some of the major financial firms collapsed in the past year.

New reporting and registration requirements in the draft would bring OTC derivative dealers and other major market participants under prudential supervision to prevent risks from building up in the market.

The language, based on the proposal the White House announced in mid-June, is aimed at stabilizing the market, promoting efficiency and transparency, preventing market manipulation and protecting consumers and investors of the OTC derivatives market, which was valued at $20 trillion at its peak in 2008.

On a conference call today Neal Wolin, deputy Treasury secretary, said that the administration and the House Agriculture and Financial Services leaders' plans are on the same page.

"Very substantially, we are in the same place, though some of the details may be different," Wolin said.

House Financial Services Chairman Barney Frank (D-Mass.) and Agriculture Chairman Collin Peterson (D-Minn.) share jurisdiction over the financial instruments and have been working together to ensure that use of the products by financial firms don't create systemic risk.

Just before lawmakers adjourned for the summer recess, the two announced a "conceptual agreement" on how over-the-counter derivatives should be regulated, and they expect the House to consider their legislation shortly after lawmakers return in September.

Both the administration and the Frank-Peterson plans would require central clearing and trading of standardized OTC derivatives. Both plans would require higher capital and margin requirements for non-standardized derivatives rather than banning those products.

According to Michael Barr, assistant secretary of financial institutions at the Treasury Department, the administration's draft language would broadly define standardized derivatives and allow for the definition to evolve with the market.

Banks acting as OTC derivative dealers or as major market participants would be regulated by the federal banking agencies under the administration's draft. Like the administration, Frank and Peterson have no plans to merge the Securities and Exchange Commission and the Commodities Futures Trading Commission. The two agencies would share jurisdiction. Which agency would take the lead on that regulation would depend on the underlying asset on which the derivative is based. Under the Frank-Peterson plan, the Financial Services Oversight Council would resolve any disputes between the two agencies, whereas the administration proposes that the Treasury Department would settle disputes.

To deter market manipulation, fraud, insider trading and other abuses in the OTC derivative markets, the CFTC and SEC would have authority to set position limits and large trader reporting requirements.

"We expect that the SEC and CFTC will work well together on these proposals," Barr said.

Under the Frank-Peterson plan, regulators would have the authority to prohibit the use of credit default swap contracts unless the party owns the security it would protect. Companies would also be allowed to use credit default swaps to hedge risks if they have a "bona fide economic interest" that would be protected by the contract.

The House Financial Services Committee is expected to move next on the legislation.

The House Agriculture Committee in February approved a measure (H.R. 977) to put credit default swaps under tougher government scrutiny. It would mandate the use of clearinghouses to provide transparency for credit default swaps and other derivative instruments. It would also boost staffing and regulatory authority for the CFTC, the federal agency that oversees futures markets.

The panels are expected to merge the plans with the administration's proposal before sending it to the Senate in a package with the other regulatory overhaul plans.

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Kevin G. Hall, *Treasury proposes new regulation for "derivatives"*, McClatchy Newspapers, August 11, 2009.

WASHINGTON -- The Obama administration on Tuesday sent Congress its proposal to regulate a complex part of the financial world that played a key role in the near-meltdown of the global financial system last year.

The comprehensive plan to regulate so-called derivatives was the final element in the largest proposed overhaul of U.S. financial regulation in generations. Tuesday's plan would subject a largely unregulated financial market whose size is in the trillions of dollars to federal scrutiny.

"It is a comprehensive reform, going right to the very heart of the problems we saw in the last crisis," Assistant Treasury Secretary Michael Barr said.

Derivatives have grown explosively in recent years, developing faster than regulators could keep pace with, especially the market for swaps. These are private deals between two parties on anything from a change in the value of the dollar versus other currencies to a bet that a company will default on its corporate bonds or suffer a downgrade of its credit rating, called a credit-default swap.

Credit-default swaps were instrumental in the near-collapse of the global financial order last September. The Federal Reserve and the Treasury Department saved insurance giant American International Group from collapse, concerned that the lack of transparency in swaps markets would trigger runs on other financial institutions.

Neither markets nor regulators were certain who owed what to whom in the swaps market. There was no central place to settle the bets or to resolve disputes.

That's where Tuesday's proposed legislation comes in. Under the Treasury's plan, most derivatives would become standardized financial products and be traded on a regulated exchange, much as stocks and commodities are. Settling these private bets would take place in a clearinghouse regulated by either the Commodity Futures Trading Commission or the Securities and Exchange Commission.

One especially popular swap product involves energy prices, with two parties betting on the price movements of oil, airliner fuel, natural gas and other products.

Some end users of these products complained that they need a specialized deal, and could be harmed by a standardized approach. For them, the Treasury would allow customized swaps. They'd be subject to tough reporting standards and would require more cash held in reserve than would be required for standardized products.

The lack of sufficient reserves to cover losses was one reason that the government was forced to seize AIG. Tuesday's proposed legislation would require more capital reserves from participants in the swaps market.

For the first time, any firm that deals in derivatives and any large firm that engages in a derivative transaction also would come under direct supervision by regulators. However,

the Treasury's proposal would require transactions to be settled in a clearinghouse only if they were between large financial institutions that pose a risk to global finance. One noted analyst finds that insufficient.

"By putting that in there, you sort of eviscerate what you want," said Michael Masters, a hedge-fund manager whose testimony before Congress has highlighted a dangerous lack of transparency in oil swaps. He considers the large-firm stipulation "a large loophole."

A Treasury official, who spoke only on the condition of anonymity in order to talk freely, countered that the exception was necessary to avoid hurting smaller corporations that use swaps to hedge against risk. Every swap dealer, regardless of size, would be regulated for the first time, the official said, as would major participants, whether or not they were financial institutions.

The chairman of the Commodity Futures Trading Commission, Gary Gensler, recently held three hearings on proposed regulatory changes involving derivatives. In a statement Tuesday, he welcomed the new proposals as "a very important step toward much-needed reform to protect the American people by lowering risk, promoting transparency and protecting market integrity."

His fellow commissioner, Bart Chilton, added in a statement that the proposed regulatory overhaul "represents much-needed modifications to the former 'hands-off' attitude toward complex derivatives trading and clearing in the United States."

"These critically important markets that affect the prices American consumers pay for the gasoline in their cars and for the oil that heats their homes are too important to be allowed to fall prey to the types of market catastrophes and sharp dealing we have witnessed in recent years," Chilton said.

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Jim Puzzanghera, *Regulation; Rethinking consumer protection; The Fed got flak for the loan crisis. Now a proposed new agency would strip it and others of some powers.*, The Los Angeles Times, August 10, 2009.

Congress gave the Federal Reserve the power to enact rules to protect consumers from unscrupulous mortgage lending in 1994. But as the years passed and risky subprime loans inflated the housing bubble, restrictions on lenders never came.

It wasn't until last summer, long after the bursting bubble triggered the deep recession, that the central bank adopted rules prohibiting unfair, abusive or deceptive lending practices.

The 14 years it took the Fed to act are now cited by Obama administration officials, consumer advocates and lawmakers as a key reason for scrapping a fragmented regulatory structure spread across multiple agencies and replacing it with a new Consumer Financial Protection Agency.

"Its inability to move quickly on consumer protection blocked reform in the mortgage market that could have helped avert this crisis," Michael Barr, assistant Treasury secretary for financial institutions, said of the Fed at a recent Senate hearing.

At the heart of the push for a new consumer agency are two basic bureaucratic realities:

* The priorities of agencies with a lot of responsibilities depend on who's in charge. By all accounts, former Fed Chairman Alan Greenspan didn't make consumer protection a priority. His successor, Ben S. Bernanke, has been forced to elevate it.

* Regulatory agencies are designed primarily to monitor the economy and oversee the health of banks and other institutions.

The Fed and other regulatory agencies have a long-standing culture that puts those responsibilities ahead of protecting consumers from an increasing variety of complex financial offerings, said supporters of a new agency.

"It is definitely second fiddle," Ellen Seidman, a former director of the Office of Thrift Supervision, said of consumer protection at that and other agencies. "I worked very hard to elevate it. And that says something important -- namely that somebody had to work very hard to elevate it."

Seidman, now a senior fellow at the New America Foundation, said she created an award for the best bank examiner on consumer affairs and compliance issues when she headed the agency from 1997 to 2001. Her successor eliminated it.

But it is the Fed that has become the prime example of the government's failures to protect average Americans from financial predators, and it stands to be the biggest loser if Congress creates the new agency.

The Obama administration has made the proposed consumer protection agency a centerpiece of its financial regulatory overhaul. Key congressional Democrats are strong supporters, and a House committee is poised to approve it in September.

But the proposal faces strong opposition from many Republicans and business groups. They argue it will add an unnecessary layer of bureaucracy and limit consumer access to lending and credit by discouraging innovative -- though often higher-risk -- loans and other financial products.

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Stripping the Fed

Under the legislation, the central bank would be stripped of its ability to write rules covering mortgages, credit cards and other consumer offerings. The new agency would take over that job, as well as take authority from the Fed and other regulators for examining financial institutions for compliance with the rules and punishing those who violate them.

The Fed's struggles with writing consumer protection rules highlight the secondary position those responsibilities often take at financial regulatory agencies, including the Office of Thrift Supervision and the Securities and Exchange Commission, according to supporters of a new agency.

Consumer advocates, for example, have slammed the Office of the Comptroller of the Currency, which regulates national banks, for blocking oversight of those institutions by state attorneys general, many of whom are more aggressive than federal officials in protecting consumers.

The Supreme Court ruled in June that states could enforce some of their consumer protection laws against such banks, and Obama's regulatory plan would formally give states such a role.

And the dysfunctional nature of spreading consumer protection across eight agencies -- the Fed, the OTS, the SEC, the OCC, the Federal Deposit Insurance Corp., the National Credit Union Administration, the Department of Housing and Urban Development and the Federal Trade Commission -- has become clear in the fight over the Obama administration's proposal.

Some of those other regulators have endorsed the idea of taking away the Fed's rule-writing power while arguing to retain their own compliance and enforcement authority.

"I think one of the lessons learned in the crisis we're in is there were truly gaps," said John E. Bowman, acting OTS director. "Ideally you would have one agency that sets the rules, then delegates the enforcement of those rules to . . . bank and thrift regulators at the state and federal level."

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An 'octopus'

Turf protection has been a major problem in adopting consumer protection rules, which require input from other regulators, said Travis Plunkett, legislative director for the Consumer Federation of America.

"It's like a multi-armed octopus that's very hard to get a handle on," he said of the existing structure. "All the agencies are interested in protecting their jurisdiction over their slice of the financial marketplace, so typically there's a great deal of resistance to imposing uniform restrictions that affect the whole marketplace."

The Fed is fighting back.

Bernanke, who took over in 2006, has admitted the central bank's failure to protect consumers under Greenspan. But Bernanke said he had made consumer protection a priority, noting not only the mortgage rules that finally came out on his watch but also new rules for credit cards and recent proposed changes for mortgage and home-equity loan disclosures.

"We were not quick enough and we were not aggressive enough to address consumer issues earlier in this decade," he told lawmakers. "I think the Federal Reserve in the last three years or so has demonstrated that it can be very effective."

Like the Fed, other agencies are scrambling to highlight their commitment to consumer protection.

Just days after the Obama administration proposed the new agency, the National Credit Union Administration proposed creating a consumer protection office in its 2010 budget. And FDIC Chairwoman Sheila Bair appointed a senior advisor for consumer policy, a new position.

But supporters of the Obama administration's proposal worry that when a new Fed chairman takes over or the financial crisis abates, consumer protection could be pushed onto the back burner again unless those powers are given to a new agency with that sole function.

"Clearly all of the agencies have a core mission that simply reduces consumer protection to the margins," said Rep. Bill Delahunt (D-Mass.).

The prime example of that is the Fed's failure to act on subprime mortgages, said supporters of a new agency.

"There were definitely people at the Fed then who understood the problem and wanted to fix it," said Kurt Eggert, who served on the Fed's Consumer Advisory Council from 2004 to 2007. "They can advise, but the policy comes from the chair."

He said Greenspan, who headed the central bank from 1987 to 2006, was the main reason the agency didn't act.

"The problems in the subprime world were readily apparent well before the crash and during his reign as chair," said Eggert, a law professor at Chapman University in Orange, who has studied the mortgage industry. "It wasn't the lack of information out there. Some of it was not treating it seriously enough and some of it was not viewing the Fed's job as consumer protection."

Greenspan said during a contentious congressional hearing last fall that former Fed Gov. Edward M. Gramlich had warned of the risks of predatory lending in 2000. Greenspan said he didn't think regulations would be successful and opted to leave the problem to free-market forces.

He conceded he was later "distressed" to learn that his long-standing belief in the power of competitive markets had failed when it came to subprime mortgages.

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Staff increases

The budget for the Fed's Division of Consumer and Community Affairs, which handles rule-writing, has increased from $25 million in 2005 to $41.8 million this year, and average staffing has risen from 84 employees to 116.

Fed officials said that effort was in addition to consumer protection services provided by economists and others at the agency, mainly bank examiners who integrate consumer protection standards in their routine bank compliance reviews.

When the Fed finally rolled out the mortgage rules last summer, as well as new limits on credit card interest rates and fees, Congress wasn't mollified. Unhappy that the Fed gave banks until July 2010 to comply with new credit card rules, lawmakers this year accelerated the effective date by five months.

"It is true that things have improved, but the Fed's track record over the last 10 to 15 years has been overall dismal in addressing consumer protection concerns in the financial services marketplace," Plunkett said.

"There's no evidence this is a change that will last more than a year or two, until Congress is paying attention to something else."

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Brian Collins, *Treasury Report: Banks Aren't Meeting Loan Mod Goals*, National Mortgage News, August 10, 2009.

WASHINGTON-Some of the largest banks scored poorly on the Treasury Department's first progress report on the implementation of the president's loan modification program.

While many banks and their servicers are pledging to do better, the report is giving critics of this voluntary modification effort more ammunition to push again for bankruptcy cramdown legislation.

The monthly "Servicer Performance Report" shows that servicers have placed 235,000 delinquent homeowners into 90-day trial modifications as required under the administration's Home Affordable Modification Program.

The report revealed that after four months HAMP is helping only 9% of delinquent borrowers that might be eligible for modifications that would lower their monthly payments.

Bank of America is conducting modifications on only 4% of its delinquent loans and Wells Fargo has reached 6% of its borrowers that are 60 days or more delinquent.

Wells Fargo pointed out that it has modified more than 240,000 mortgage loans during the first seven months of this year, including 20,220 HAMP trial modifications.

"Now that the program details are largely complete, our company has been accelerating our use of HAMP," said Mike Heid, co-president of Wells Fargo Home Mortgage.

Saxon Mortgage Services ranked highest with 25% of its delinquent loans in 90-day trial modifications, while JPMorgan Chase Bank has a 20% performance ratio with 79,300 loans in trials.

Despite the disparities, Treasury assistant secretary Michael Barr expressed confidence that the modification program is "on track" to meet the Obama administration's three-year goal of modifying 3 million to 4 million loans.

Center for Responsible Lending president Michael Calhoun noted that there were 254,000 foreclosure starts in June, which is more than the total number of trial modifications.

"For over three years, lenders have insisted they can handle this crisis on their own, but the report shows that the time for voluntary action is over," Mr. Calhoun said. CRL has supported bankruptcy changes, sponsored by Sen. Richard Durbin, D-Ill., which would allow judges to modify mortgages.

The banking industry has to do a "much better" job of preventing foreclosures, Sen. Durbin said last week. And the Illinois senator put the industry on notice that he is willing to make another try at passing a bankruptcy cramdown bill if they "don't make real progress in reducing the number of avoidable foreclosures."

But he indicated such a legislative drive is not imminent. "I am afraid it is going to take a lot more misery to move a lot more votes," Sen. Durbin said in a speech at the Center for American Progress in Washington. In April, the Illinois senator saw his bankruptcy cramdown amendment voted down in the Senate by a 45-51 vote.

Nevertheless, the high-ranking Senate Democrat is sending letters to servicers urging them to stop foreclosure proceedings when considering loan modifications.

"I am asking servicers to make a commitment that they avoid scheduling a foreclosure on any homeowner who is actively working in good faith to work out a loan modification that is fair, responsible and sustainable," Sen. Durbin said.

Separately, the GSE regulator reported on the loan modification efforts of Fannie Mae and Freddie Mac.

The Federal Housing Finance Agency said they completed 10,400 loan modifications in May, down nearly 25% from the previous month, as more delinquent loans are being steered into HAMP trials.

Agency officials noted that the completed modifications were conducted under the FHFA's streamlined modification program that was ended in April.

"Completed loan modifications fell for the second consecutive month in May," FHFA said, as the government-sponsored enterprises "continue to focus on implementing the Home Affordable Modification Program."

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***Regulators Seek Relief for Banks*, National Mortgage News, August 10, 2009.**

Federal regulators are working on providing capital relief for banks that have to bring securitized assets back on their balance sheets due to a change in the accounting rules that goes into effect at yearend. Regulators told a Senate panel they cannot delay the impact of the Financial Accounting Standard 167 on a bank's leverage-capital ratio.

MBA App Index Rises

The Mortgage Bankers Association Market Composite Index increased 4.4% on a seasonally adjusted basis for the week ended July 31 when compared with the previous week. The MCI is calculated from the MBA's Weekly Mortgage App Survey.

Las Vegas Shows Improvement

Often pointed to as the poster child for real estate excess, the Las Vegas housing market is showing some signs of improvement, local agent Rob Jenson reports in his monthly market study. "Lower interest rates and a drop in the average sales price to under $158,500 for homes priced under $1 million is attracting more bargain-hunting foreclosure and short sale buyers," says Mr. Jenson, whose Jenson Group flies under the Re/Max banner.

Two Sentenced for RE Fraud

Howard Edwards and John Foster, both formerly of Rancho Cucamonga, Calif., were sentenced to 20 years, four months in prison and 10 years, four months in prison, respectively, for real estate fraud crimes. The two defendants befriended unsuspecting victims on an Internet chat line. Their personal information was used to obtain loans on luxury cars and real estate in Fontana, Calif. The victims were then liable for these loans. The loan proceeds were transferred to a phony escrow company.

PA Man Pleads Guilty to Fraud

Robert Ratkovich of New Castle, Pa., pleaded guilty before Senior U.S. District Judge Gustave Diamond in federal court to fraud and money laundering charges connected to his scheme to defraud a bank and affordable housing entity. The board of directors of Affordable Housing of Lawrence County hired Ratkovich as a consultant to advise the board of which properties that it should purchase and at what price, according to Mary Beth Buchanan, U.S. attorney for the Western District of Pennsylvania.

FDIC Calls for Review of HELs

Federal regulators are starting to put pressure on banks to recognize losses on second liens in markets where the first mortgage is underwater due to declining house values. "Failure to timely recognize estimated credit losses could delay appropriate loss mitigation activity, such as restructuring junior lien loans to more affordable payments or reducing principal on such loans to facilitate refinancing," the Federal Deposit Insurance Corp. says in a letter to banks. House Financial Services Committee chairman Barney Frank, D-Mass., and Senate Banking Committee chairman Christopher Dodd, D-Conn., recently urged the regulators to stop allowing banks to carry home-equity loans at inflated values.

Pending Sales Up Again

Pending home sales, a key leading indicator for the resale sector, were up in June for the fifth consecutive month, according to the National Association of Realtors. The last time there were five straight monthly gains was in July 2003. The index, a forward-looking indicator based on signed contracts that have not yet closed, rose to 94.6, up 3.6% from an upwardly revised reading in May and 6.7% above June 2007.

Treasury TALKs HAMP Performance

The Treasury Department said the 38 servicers participating in the Home Affordable Modification Program are conducting more than 235,000 trial modifications and released its first monthly report on each servicer's performance. "Today's report discloses performance on a servicer-by-servicer basis in order to increase transparency for participating institutions. The data show that servicer performance is uneven," Treasury said. The report rates servicer performance in terms of trial modifications started in relation to the size of their portfolio of eligible loans that are 60 days or more pass due. Saxon Mortgage Services ranks highest with 25% of its delinquent loans in 90-day trials, while Bank of America is conducting modifications on only 4% of its delinquent loans. BofA has 27,600 loans in trials, compared to 21,100 trial modifications at Saxon. JPMorgan Chase Bank has a 20% performance ratio with 79,300 loans in trials.

COFI Falls to 1.6% in June

The San Francisco Federal Home Loan Bank Cost of Funds Index for June 2009 is 1.599%, a decline of 23 basis points from May's 1.832%. This is the second large abrupt change in direction in COFI in the past two months, with the index reporting its second biggest rise ever between April and May. In calculating the June index, the FHLBank used average total funds of $93.5 billion and total interest expense of $124.5 million.

Two Bank Insiders Sentenced

After pleading guilty to a $1 million scheme involving the approval and disbursement of two fraudulent home-equity loans, four individuals, including two bank insiders, were sentenced to prison. U.S. District Judge Alan S. Gold sentenced Ramon Puentes to 57 months in prison and five years of supervised release, Jorge Nobrega to 27 months and five years of supervised release and Jorge Arrieta to 22 months and five years of supervised release. Sebastian Kishinevsky, who cooperated with the government and assisted with the investigation, received a sentence of six months in prison, six months of home confinement and three years of supervised release. Judge Gold also ordered Puentes and Nobrega to each pay $796,700 in restitution, Arrieta $470,000 and Kishinevsky $326,700.

Durbin: STOP ForeclosureS

The banking industry has to do a "much better" job of preventing foreclosures, according to Sen. Richard Durbin, D-Ill. He wants servicers to stop foreclosure proceedings when homeowners are seeking a loan modification. "I am asking servicers to make a commitment that they avoid scheduling a foreclosure on any homeowner who is actively working in good faith on a loan modification that is fair, responsible and sustainable," Sen. Durbin said in a speech at the Center for American Progress in Washington. In a letter to the 34 servicers participating in the administration's Home Affordable Modification Program, the high-ranking Senate Democrat also is asking servicers 20 questions about their efforts to help homeowners avoid foreclosures. Sen. Durbin made it clear that he is not impressed with servicers' efforts so far and he said the administration's goal of getting 500,000 homeowners into trial HAMP modifications by Nov. 1 is "easily attainable."

Treasury OFFERS Price Protection

The Treasury Department has unveiled its loan modification insurance program to protect investors from declines in house prices. The $10 billion Home Price Decline Protection program will "offset any incremental collateral loss on modifications that do not succeed" during the first two years, Treasury said. The new program is aimed at giving investors and servicers participating in the administration's Home Affordable Modification Program an incentive to modify loans in markets with declining house values. "Home price decline protection can help homeowners who may not have been reached otherwise," Treasury assistant secretary Michael Barr said.

FDIC Tests First Legacy Sale

The Federal Deposit Insurance Corp. is conducting its first legacy loan sale, which gives investors access to affordable financing to purchase a 50% stake in a pool of residential mortgages. Investors paying cash can take an 80% equity position in the pool of receivership assets and manage the mortgages, which are being sold on a servicing released basis. Investors seeking government financing can take a 50% equity position and split any profits with the FDIC.

41 Congressmen Seek TALF Extension

Rep. Paul Kanjorski, D-Pa., and 40 other congressmen are urging the Federal Reserve Board to extend its Term Asset-Backed Securities Loan Facility to provide "essential support" for the commercial real estate mortgage market. The program is due to expire at yearend and the Fed just recently opened the special facility to finance purchases of newly issued and legacy commercial mortgage-backed securities. "The $6 billion commercial real estate market has recently experienced a massive credit shortfall, which the TALF has only just begun to help stabilize," the congressmen say in a letter to Fed chairman Ben Bernanke.

New Primary MI Rebounds

The amount of primary new mortgage insurance written in June rebounded upwards from the year-to-date low totals written in May, according to information collected by the Mortgage Insurance Cos. of America. There was a total of $7.65 billion of primary new insurance written in June, compared with $6.92 billion in May. June was the best month of the year for transactions through the bulk channel, with $45.6 million, up from $18.8 million in May, the previous high for the year. Still the amount of primary insurance-in-force continued to decline from $922.1 billion in May to $915.1 billion in June. In December 2008, when Radian Group's performance once again was included in the statistics, the amount of primary insurance-in-force was $952.2 billion.

Fannie Mae MBS Issuance Rises 44%

Fannie Mae issuance of mortgage-backed securities jumped 44% in June from the previous month but the mortgage giant did not report its monthly purchases of refinanced loans. Fannie saw new MBS issuance of $97.7 billion in June, up from $67.7 billion in May. This jump is most likely due to high refinancing volumes, but there are no numbers to support this as the mortgage giant omitted data on its purchases of refinanced loans in its monthly report. Freddie Mac reported earlier that its issuance of MBS in June jumped 40% and its purchases of refinanced loans were up 26% from May.

Appropriators Cut HECM Proceeds

Senate and House appropriators are taking slightly different approaches in trying to cover an $800 million shortfall in the Federal Housing Administration reverse mortgage program. The Senate Appropriations Committee is providing $288 million to cover part of the shortfall, which is based on expected losses due to declining house prices, and requiring HUD to reduce the loan proceeds seniors receive by 5%. House appropriators are not providing any funds for the FHA Home Equity Conversion Mortgage program, but they are instructing the Department of Housing and Urban Development to cover the shortfall by reducing the proceeds on HECMs. Reverse mortgage lenders are opposed to such reductions, claiming it would hurt seniors who can't sell their home, but need a large HECM to pay off the existing mortgage.

Quarter's Refis May Cut Payments

Refinances tracked by Freddie Mac in the second quarter are expected to cut payments by about $3.4 billion in the coming year. Refinancing borrowers' new interest rates were 1.25% below the old rates on average. "We are anticipating more than one-half of originations to be for refinancing throughout the rest of the year as long as rates stay their current levels of 5.25%," said Freddie Mac vice president and chief economist Frank Nothaft. In the second quarter, cash-out refinancing dropped to its lowest share since the third quarter of 2003, according to Freddie's Refinance Report.

Brokers Face Higher Licensing Fees?

The California real estate commissioner said he would oppose increases in mortgage broker licensing fees that the state Legislature is considering as part of a regulatory reform package. Commissioner Jeff Davi told attendees at the California Association of Mortgage Brokers convention in San Diego he would fight to insure the new regulatory scheme would not drive up the costs for mortgage broker licenses.

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Nick Timiraos, *Freddie Turns Profit, but Issues Caution*, The Wall Street Journal, August 8, 2009.

Freddie Mac reported a surprising profit in the second quarter and indicated that it may not need additional federal aid -- at least for now. But the profit turned to a loss for shareholders after the company paid the U.S. government a $1.1 billion dividend.

The giant residential-mortgage company, which has been struggling with rising delinquencies and foreclosures, said it posted $768 million in net income. The second-quarter profit was its first in two years and reversed a loss of nearly $10 billion in the first quarter.

After making the dividend payment to the government on senior preferred stock, the company had a net loss attributable to common stockholders of $374 million, or 11 cents per share.

The company attributed the gain to accounting changes, higher interest rates that improved the value of its derivatives and improvements in the housing market. Still, the company remained cautious and warned that it could require additional capital injections from the Treasury in the future.

"While we are seeing some early signs pointing to a housing recovery -- including a modest uptick in house prices in some markets -- our outlook remains cautious due to rising foreclosures, growing unemployment, tight lending standards and buyers' reluctance to re-enter the market," said interim Chief Executive John Koskinen.

Fannie Mae, Freddie Mac's larger rival, on Thursday reported a $14.8 billion net loss and said it would need nearly $10.7 billion more from the Treasury. Some analysts say Fannie Mae has been more aggressive in building up its loan-loss reserves, to about $55 billion, compared with $25 billion for Freddie Mac.

So far, Freddie has taken nearly $51 billion in government aid, compared with about $46 billion for Fannie. The Treasury has agreed to provide up to $200 billion to each of the firms to keep them running. Fannie Mae said on Thursday that that commitment, which the Obama administration increased from $100 billion in February, may not be enough to keep the company out of receivership. The companies' regulator last week said he didn't expect the government to ever directly recoup its entire investment in the companies.

Nearly a year after the government placed both companies into conservatorship amid rising losses, the Obama administration is just beginning to consider how to restructure the mortgage market and decide the fate of Fannie and Freddie. "Given everything else that's on our plate right now, it's unrealistic to expect faster action," said Michael Barr, an assistant Treasury secretary.

The White House won't make specific policy recommendations until February but has said it will consider a range of alternatives, from incorporating the companies' functions into a federal agency to privatizing and breaking up the companies.

The prospect of continued losses as the housing market struggles to stabilize also will complicate efforts to revamp the companies. "Until there's a better handle on what their credit costs are going to be, it's kind of hard to do anything," says Bert Ely, a longtime banking consultant in Alexandria, Va., who has argued for the U.S. to privatize the companies. "Even, next February, we're not going to know how deep the hole is."

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Andrew Ackerman, *Lawmakers Fault Obama's Plan to Regulate Raters*, American Banker, August 6, 2010.

WASHINGTON — Several members of the Senate Banking Committee warned Wednesday that the Obama administration's proposal to regulate credit rating agencies does not go far enough to ensure that the agencies use reliable information to determine ratings.

At at hearing on enhancing regulation of rating agencies, committee chairman Christopher Dodd, D-Conn., told a top Treasury Department official he was "stunned" to learn that the agencies routinely do not perform any due diligence to verify information presented to them by issuers.

Dodd said he was disappointed that the administration's proposal, which was released last month, would not require them to do so.

Dodd added that he had "just assumed" that due diligence was conducted by the rating agencies.

But Michael Barr, Treasury assistant secretary for financial institutions, resisted calls to expand the administration's proposal, which would only require that the agencies disclose what, if any, due diligence they performed.

Requiring anything more than additional disclosures would result in the government dictating the agencies' methodology, he argued.

"We've tried to be quite clear that the government shouldn't be in the business of designing the methodologies for the rating agencies or validating them in any way, as we think that will just increase reliance on them," Barr said.

But that response failed to satisfy Dodd. "How we can have any confidence" in ratings, he asked, unless the agencies are required to consider credible information "that might contradict the information they are receiving from the issuer that is paying [them]?"

The hearing took place about two weeks after the administration unveiled its legislative proposal to strengthen federal oversight of the agencies, mitigate conflicts of interest, increase the transparency of the ratings process, and reduce investor reliance on ratings. The bill would, among other things, require all rating agencies to register with the Securities and Exchange Commission and would establish a dedicated office within the SEC to supervise the agencies.

Some members of the committee were outraged at how poorly the top three agencies' ratings have performed over the years. Sen. Charles Schumer, D-N.Y., characterizing the firms — Standard & Poor's, Moody's Investors Service and Fitch Ratings — as "one of the weakest links" during the financial crisis because they were riddled with conflicts of interest stemming from their so-called issuer pays model. The agencies have conceded that they failed to accurately rate mortgage-backed structured products, but noted that there are conflicts of interest in any payment model.

Schumer proposed establishing a new system that would require the SEC to randomly select securities to receive a second rating from a different agency than the one initially hired by the issuer. He said that the second rating could be performed on out of every 10 securities, that it could be "secret," and that the issuer would pay for it.

Asked by Schumer for reaction to his proposal, Barr said that he shares "the conceptual goal" of having more than one agency rate bond issues, but is concerned about requiring an additional rating.

Barr also noted that the administration's proposal includes provisions to boost the integrity of ratings and reduce "rating shopping." One provision, for example, would require that every issuer provide full information about the bonds they are planning to issue to other rating agencies, who could then voluntarily provide unsolicited ratings for them.

Columbia University Law School professor John C. Coffee, who testified on a second panel, warned that rating agency performance will not improve unless the agencies are required to perform additional due diligence and are subject to a "modest" litigation threat if they are willfully ignorant about the accuracy of the information used for their ratings. Currently, agencies designated by the SEC as nationally recognized statistical rating organizations are legislatively shielded from liability under the federal securities laws, he said.

Another speaker, Lawrence White, a professor of economics at New York University's Stern School of Business, warned that efforts to toughen regulation are "misguided and potentially quite harmful," because they are likely to discourage entry of new firms into the rating business.

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Susan Tompor, *Lenders' mortgage help varies greatly*, The Detroit Free Press, August 6, 2009.

David Waxer, financial counselor for GreenPath Debt Solutions in Southfield, said his office has seen all extremes when it comes to how lenders handle troubled homeowners.

One small mortgage company, he said, didn't want to budge and wouldn't lower the 12% mortgage rate held by one of its delinquent Michigan customers.

The lender would only add the past-due amount to the back end of the mortgage to make the loan current and avoid foreclosure for a while.

So what should consumers expect if they reach out to a lender because they're struggling making a mortgage payment?

"It would depend on who your servicer would be," said Marietta Rodriguez, national director for homeownership for NeighborWorks America, the administrator of the congressionally authorized National Foreclosure Mitigation Counseling program.

"You could find a very responsive team," Rodriguez said.

Or not.

The responsive service loan company might get back to you quickly, say in 10 to 15 days with an answer.

The unresponsive company could make you wait 30 to 60 days.

So, it seems those who looked for easy answers to the housing mess aren't exactly finding them as part of the stimulus package's Making Home Affordable program. Lenders argue that loan modifications are complex and require time to do.

But regulators express disappointment with the performance of some of the loan servicers.

"We're going to be requiring ramped-up efforts across the board," Michael Barr, the assistant Treasury secretary for financial institutions, said in a teleconference this week for reporters.

Lenders, such as Bank of America, also say that the Making Home Affordable program is one part of the picture -- and banks have other programs in place to help homeowners, too.

Even so, some loan-servicing companies -- including PNC Financial Services Group Inc. -- have yet to modify a single loan under the program, according to government data.

Aiming for 500,000

The federal government programs are designed to help delinquent homeowners, as well as those who are current with their payments but in imminent danger of default.

The federal government now wants to see 500,000 borrowers helped by Nov. 1.

Homeowners, though, are advised to try to talk to lenders -- and HUD-approved housing counselors -- as early as possible to avoid foreclosure. They're going to need to provide as much financial detail as possible -- and they should be honest.

Bank employees who work with home modifications say some homeowners now try to hide income -- and show higher expenses -- so they can qualify for breaks.

Homeowners also should take advantage of outreach programs when they're offered.

Last month, Fifth Third Bank mailed a letter to most of its customers in Michigan who have a mortgage, consumer loan or credit card with the bank to publicize its You Have Options ... Michigan program.

"With our autos in bankruptcy and layoffs or pink slips on the horizon for so many of our customers, I felt we had to respond with a special Michigan program," David Girodat, president and CEO of Fifth Third Bank Eastern Michigan, said in a statement.

The plan, which is specific to Michigan, enables Fifth Third customers to defer payments for consumer loan or credit cards, if they're facing a job layoff for up to 60 days. Customers eligible for the program will need to provide proof that the layoff is temporary.

Fifth Third customers can contact 888-434-5520.

Fifth Third also offers face-to-face appointments with experienced advisers from the Fifth Third Homeowners Assistance Travel Team.

New foreclosure law

In Michigan, a new law went into effect July 5 that lets homeowners delay foreclosure proceedings if they meet with a housing counselor and the bank.

Within 14 days after the written notice is mailed, the borrower may request a meeting with the designated agent to attempt to work out a loan modification to avoid foreclosure and request a housing counselor to attend the meeting.

If the borrower requests the meeting, foreclosure proceedings in Michigan will not begin until 90 days after the date the notice is mailed to the borrower.

Meade said such face-to-face efforts, which Fifth Third offered before the change in Michigan's law, can help customers see whether they qualify for any types of programs, including new hardship programs that were part of the stimulus package.

This week, the Fifth Third housing team, all from the Ohio office, said they expected the bank to be able to do about four loan modifications for homeowners in metro Detroit. That's based on meetings Tuesday morning in Southfield.

Other meetings were set for Wednesday and today in Southfield, and for next week in Grand Rapids.

Nora Roberts, part of the Fifth Third travel team that visited the branch on Lahser Road in Southfield this week, said some Michigan families face special challenges given that the economic downturn has lasted for several years in Michigan.

The state's jobless rate, now 15.2%, also makes it tougher for families to hold onto a home that they once could afford to own.

"If someone has no income, there's very little you can do for them," Roberts warned. "You can't give someone a new loan payment if they can't make the payment."

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Emily Flitter, *Shame May Be Only Stick U.S. holds Over Mortgage Servicers*, American Banker, August 5, 2010.

WASHINGTON — Treasury Department officials acknowledged Tuesday that new data on loan modifications showed that many servicers are underperforming in trying to carry out the Obama administration's foreclosure prevention plan, but they appeared to have little leeway to force improvements.

For the first time, a report detailed how individual institutions were faring: Bank of America Corp. and Wells Fargo & Co. were listed among the worst performers; JPMorgan Chase & Co. had one of the highest rates for helping eligible borrowers.

Though servicers have pledged to more than double the number of trial modifications offered through the program, to 500,000, by Nov. 1, Michael Barr, the Treasury assistant secretary for financial institutions, said there clearly is room for improvement.

"We're disappointed in the performance of some of the servicers," Barr said during a conference call on the loan modification data. "We think they could have ramped up better, faster, more consistently and done a better job bringing stabilization to mortgage markets and the economy."

But there appears to be little the Treasury can do to require servicers to step up. During the call, Barr said officials would be carefully watching the worst-performing servicers and that Freddie Mac would do random audits of servicers to ensure they were following the rules.

"For some of them that means better training," he said; "for some of them that means ramping up capacity; for some of them that means treating people better in their call centers, with more respect."

But many observers said these things alone would not be enough to stimulate the pace of modifications.

"It's hard to tell what it would take for servicers to do more," said Alan White, a professor at Valparaiso University Law School, "but it's sort of a national economic necessity. We have to find a way."

After the report's release, some servicers said they were committed to improving their efforts; it was just taking longer than expected to ramp up, they said.

Mike Heid, a co-president of Wells Fargo Home Mortgage, said his institution waited for the administration to release specific Home Affordable Modification Program guidelines on April 6 before diving in. Wells helped 6% of its potentially eligible borrowers — those who were 60 or more days delinquent and fell within the program's parameters — to get trial modifications. (The borrower must stay current for at least three months before being offered a permanent modification).

"It was a new program," Heid said, saying the servicer did not want to put borrowers in a trial modification and later re-underwrite the loan. "We took more of a 'gather the documents first' path. We wanted to make sure that we had the actual pay stub, the actual tax returns in hand… Now that we've got some operating experience on the program, we feel we can be less restrictive on that."

A spokesman for Chase Home Mortgage said it was able to help 20% of eligible borrowers because it began work early.

Though CitiMortgage was able to help 15% of eligible borrowers, its chief executive, Sanjiv Das, said it was committed to increasing the number of modifications.

"We are pleased with our numbers and with what we have been able to accomplish in the past two months. But we can, and want to, do more," Das said.

In a press release Tuesday, Barbara Desoer, the president of Bank of America Home Loans, which helped 4% of its eligible borrowers, had performed loan modifications outside of the parameters of the Obama program, and had halted foreclosure sales in cases where borrowers could qualify for the plan.

Ron Faris, president of Ocwen Financial Corp., which helped 5% of its eligible borrowers, said in an earnings call Tuesday that some of the numbers are deceiving. He said some servicers are just taking verbal income information from the borrower and sending them an offer immediately, following up at a later time with required information. He argued such a method would result in a high number of modifications initially, but they may not last.

Other institutions, like Ocwen, are requiring borrowers to submit all the documentation first before underwriting a modification.

"Many of the big servicers are using the first option and therefore showing more initial offers and more active trial plans," he said. "We believe that in the long run, our approach will result in a greater number of sustainable loan modifications."

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Ruth Simon, *Foreclosure Plan is off to a Bumpy Start*, The Wall Street Journal, August 5, 2009.

A report card released Tuesday by the Treasury Department showed wide variations in how quickly mortgage companies are helping financially troubled borrowers under the Obama administration's foreclosure-prevention plan.

So far, more than 400,000 borrowers have been offered help. More than 235,000 borrowers, or roughly 9% of those eligible for the program and at least 60 days past due, have begun trial mortgage modifications, the first step to getting a loan reworked.

Among the largest mortgage-servicing companies, J.P. Morgan Chase & Co. has put the most borrowers on a trial modification, having begun the process for roughly 79,000 of them, or about 20% of those whose loans are at least 60 days past due.

Saxon Mortgage Services, a unit of Morgan Stanley, has begun trial modifications for more than 21,000 borrowers, or roughly one-quarter of its delinquent borrowers eligible for the program.

Other companies have made less progress. Bank of America Corp. has begun trial modifications for fewer than 28,000 borrowers, or about 4% of those who are delinquent, while Wells Fargo & Co. so far has started with about 6% of such borrowers.

Borrowers can get help under the Obama program if they are delinquent, or current but at risk of imminent default. Mortgage companies are often beginning trial modifications before receiving full income documentation. That suggests some trial modifications will ultimately fail or be reworked. Borrowers must document their income and make payments during the trial period to qualify for a full modification.

Administration officials said they were releasing the data in an effort to hold mortgage companies accountable.

"While the program has ramped up in an impressive way, there are significant variations among servicers in their performance," said Assistant Treasury Secretary Michael Barr. He said some companies need to boost capacity or improve employee training.

In September, the government will begin requiring mortgage companies to tell borrowers why their modification application was turned down, Mr. Barr said. Some borrowers say they are being denied help under the program even though they fall within its guidelines.

The Obama program provides financial incentives to mortgage companies and investors to reduce loan payments to affordable levels. The administration has called on mortgage companies to boost the number of trial loan modifications to 500,000 by Nov. 1. Administration officials have said the program could ultimately help as many as three million to four million homeowners.

Anthony Sanders, a real-estate finance professor at George Mason University in Fairfax, Va., said government officials should focus on the success rate for loan workouts, not the number being done.

The administration's figures don't present a full picture of each company's activities. Bank of America said it completed 150,000 loan modifications in the first six months of this year outside the Obama program. Wells Fargo said it completed 240,000 modifications in the first seven months, mostly outside the program. Unlike some companies, Wells Fargo has been requiring certain borrowers to fully document income, slowing the pace of its modifications under the program.

Mortgage companies are facing increased pressure to step up the pace. Sanjiv Das, chief executive of Citigroup Inc.'s CitiMortgage unit, said he receives an update at 7:30 each morning on the number of completed modifications. CitiMortgage has begun trial modifications for about 15% of its delinquent borrowers eligible for the Obama program.

Mortgage servicers face substantial challenges. Call volume is running 500% above normal levels, said David Sisko, a director with Deloitte & Touche. Meanwhile, mortgage-servicing companies have boosted staffing by an average of 30% to 40%.

Mr. Sisko said employees who evaluate borrowers for loan modifications now are responsible for an average of 200 to 300 loan files, up from 50 to 100 in the third quarter of 2008.

J.P. Morgan put its modification program in place last fall and began gearing up for the Obama plan even before final details were announced, said David Lowman, who runs J.P. Morgan's mortgage business. Still, like its competitors, J.P. Morgan had trouble keeping up with customer calls, Mr. Lowman said.

Bank of America, meanwhile, has been slower than some companies to implement some parts of the program, such as help for borrowers who are current on loan payments but still at risk of default. The company is also operating two different loan-modification systems, one for legacy loans and one for mortgages originated by Countrywide Financial Corp., which it acquired last year.

The Countrywide operation has gotten up to speed more quickly, a company spokesman said, largely because it had agreed to step up modifications as part of settling a lawsuit brought by state attorneys general regarding Countrywide's lending practices.

Bank of America is "very supportive" of the program, said Steve Bailey, the company's mortgage-servicing executive. But "it's difficult to implement," he said.

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Jenifer B. McKim, *Holders of delinquent loans under fire; US says Bank of America, Wells Fargo lag in easing homeowners' payments*, The Boston Globe, August 5, 2009.

Bank of America Corp. and Wells Fargo Home Mortgage, two of the nation's largest owners of delinquent mortgages, have reduced mortgage payments for only a small number of homeowners under the Obama administration's plan to stem the foreclosure crisis, well below the performance of other banks.

The Treasury Department yesterday released its first monthly report card on the government program to help distressed homeowners reduce their mortgage payments. The report analyzed, lender by lender, the percentage of 2.7 million mortgage loans that have been renegotiated nationwide.

Bank of America, which holds nearly 800,000 of the loans, restructured only 4 percent of its share. Wells Fargo, with 330,000 such loans, has modified 6 percent.

Several big banks did better, according to the Treasury report. JPMorgan Chase & Co. modified 20 percent of its share of the loans, and Citigroup Inc. modified 15 percent.

Other lenders approved payment reductions on up to 25 percent of their loans.

In March, the government launched the $50 billion program to help up to 4 million financially troubled borrowers, those who can't afford to pay their mortgages because their interest rates spiked or they have lost income. The Treasury's report card analyzed eligible loans that were delinquent for at least 60 days. It showed that only 235,247 of those borrowers, or 9 percent of the total, have been given a three-month trial modification, which becomes permanent if the borrower pays on time.

Boston-area housing advocates were not surprised by the government's findings.

Bill Minkle, executive director of the nonprofit Ecumenical Social Action Committee in Jamaica Plain, said his counselors have had to send and resend documentation to lenders, and then wait a long time for a response. If loan modifications are approved, the new agreements often come with large balloon payments added to the end of the loan term.

Minkle said Bank of America and Wells Fargo - which have received billions in federal bailout money - have been especially difficult. ``They look for reasons to not do modifications," Minkle said. ``There is no consistency."

Eloise Lawrence, a staff attorney at Greater Boston Legal Services, wondered whether government incentives are enough to get lenders to help struggling borrowers. She said Bank of America has been one of the most difficult when it comes to helping her clients avoid foreclosure. In one case, she's been negotiating for more than a year, without a resolution.

``I can't get an answer to basic questions in letters I've sent," she said. ``It's so far from acceptable, it's incredible."

Bank of America said it has doubled the number of employees assigned to its loan-modification efforts since last year and acknowledged improvements are needed.

Wells Fargo said it is helping distressed borrowers through other programs, and is accelerating its use of the Obama plan.

The government yesterday detailed big disparities among the 38 companies that have signed up for the program.

According to the report, Saxon Mortgage Services Inc. had the best results among the large lenders, with one in four of its eligible borrowers getting a new deal. Aurora Loan Services LLC, GMAC Mortgage Inc., and JPMorgan Chase all had one in five qualified borrowers in a trial loan.

``We think they could have ramped up better, faster, more consistently, and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," said Michael Barr, a Treasury Department assistant secretary. ``We expect them to do more."

Meanwhile, several smaller companies, including PNC Financial Services Group Inc. in Pittsburgh, have yet to modify a single loan. PNC owns National City, which is working with qualified customers to make mortgage modifications available, a spokesman said.

Material from Globe wire services was used in this report. Jenifer B. McKim can be reached at jmckim@globe.com

MORTGAGE TIPS

For mortgage advice, rates, calculators and other information, go

to www.boston.com/business.

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Sarah Johnson, *Treasury Treads Lightly on Rating Reform*, CFO.com, August 5, 2009.

A top Treasury official says proposed reforms walk a fine line between interfering with the rating agencies' business and giving the raters too much credence.

The Obama Administration's laundry list of proposals for fixing the rating agencies got a ho-hum response Wednesday from longtime reformers who had been hoping for stronger demands.

For those critics who question the reforms the Administration left on the cutting-room floor, the U.S. Treasury Department, which is spearheading changes to the U.S. financial regulatory framework, has a quick answer: too much interference into the raters' business could lead to further reliance on their work.

Michael Barr, assistant secretary for financial institutions for the Treasury, continually used that reasoning during his testimony before the Senate Banking Committee on Wednesday, two weeks after the department proposed legislation. "We would want to be careful not to take steps that would suggest excessive confidence in the ratings themselves," he said.

As it is, Barr and a number of senators observed, shareholders have been overly reliant on the agencies -- mostly the Big Three of Fitch Ratings, Moody's Investors Service, and Standard & Poor's -- when making investment decisions involving corporate and municipal bonds and structured-finance products. It's the latter, of course, that got the agencies in hot water when the credit crisis hit.

That's because some of their ratings of financial products tied to the subprime-mortgage market didn't accurately depict the risk of default. The raters have also been blamed for contributing to the crisis by not reacting fast enough to changes in the marketplace.

For the past two years, lawmakers and regulators have been mulling how to repair the credibility of what many believe is a failing niche industry. Among the questions raised:*Is the Big Three's issuer-pay model inherently flawed -- and should it be scrapped?* On the other hand, don't investor-pay models have their own conflicts of interest?* Should the government change rules used by banks and insurance companies that require the use of certain rating agencies?*Is the Securities and Exchange Commission doing enough to keep the agencies in line?*Or should a newly created entity -- à la the Public Company Accounting Oversight Board -- take over?

Nevertheless, as Senate Banking Committee chairman Christopher Dodd (D-Conn.) lamented, "No one has a quick solution."

In the bill it's pushing, Treasury's proposals include banning raters from providing consulting services to issuers they rate and forming a separate SEC office to oversee the raters. (The job currently falls under the commission's Division of Trading and Markets.) Further, Treasury would put some onus for ratings transparency on the companies that hire the firms to rate their debt. Issuers would disclose how much they paid for each rating along with any ratings they were offered by raters that were trying to win their business.

Barr was open to the senators' suggestions for refining Treasury's legislation -- but only in minor ways. "We tried to draw a line to be quite clear that the government shouldn't be in the business of designing the methodologies of the rating agencies or validating them in any way," he said.

Dodd prompted that response after suggesting the rating agencies should be formally required to do their own due diligence. (They currently base their ratings on information issuers give them.) Dodd said he was "stunned" to learn the agencies don't consider other kinds of information from outside sources that could contradict that data.

What Treasury's proposal would do, Barr said, is cut back the agencies' conflicts of interest, make their processes more transparent, and reduce so-called ratings shopping, wherein companies grant their business to the agency that promises the best rating.

None of the proposals were surprising, participants said. James Kaitz, president and chief executive of the Association for Financial Professionals, said the legislation does not reflect "substantive change."

"We could not support the legislation in its current form," he recently told CFO.com.

Kaitz, a longtime advocate for reforming the ratings industry, has suggested that the agencies adopt a new business model that would rid them of their biases by limiting their business to ratings issuance. That concept, however, would erase their lucrative consulting business.

Barr said Treasury considered a range of business models, but feared legislating one system over another could "enshrine the rating agencies even more...[by] giving them the government seal of approval."

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Charlene Carter, *Senate Banking Weighs Options for Changing Role of Credit Agencies*, CongressNow, August 5, 2009.

Financial regulatory overhaul plans will include proposals to address the use of credit rating agencies, Senate Banking, Housing and Urban Affairs Chairman Chris Dodd (D-Conn.) said today at a hearing.

Investors use credit rating agencies to inform them about the risks involved with certain investments, but lawmakers say that they inaccurately assigned high ratings to many of the mortgage-backed securities that helped spark the financial crisis.

"Rating agencies market themselves as providers of independent research and in-depth credit analysis," Dodd said. "But in this crisis, instead of helping people understand risk better, they hid risks throughout layers of complex structures."

Earlier this month, the Obama administration sent to Congress draft legislation to prohibit credit rating agencies from selling consulting services to companies whose debt or creditworthiness they are rating. The ratings agencies also would be required to disclose information about any financial models used to provide a rating for debt instruments.

To provide more transparency to investors and deter rating shopping, the administration's proposal requires debt issuers to disclose all the preliminary ratings it received from rating agencies to show how much it shopped for ratings and whether the final rating exceeded one or more preliminary ratings.

Sen. Richard Shelby (R-Ala.) ranking member of the Banking Committee, said that removing regulatory requirements for the use of ratings and "materially improving disclosure" should be options to regulate credit rating agencies.

"I strongly believe that the credit rating agencies played a pivotal role in the collapse of our financial markets," Shelby said. "Any regulatory reform effort must take that into consideration."

Michael Barr, assistant secretary for financial institutions at the Treasury Department, said that disclosure of preliminary ratings should help deter ratings shopping.

"The government should not be in the business of regulating or evaluating the methodologies themselves or the performance of ratings," Barr said. "However, the government should make sure that the rating agencies perform the services that they claim to perform."

Dodd suggested that a separate office within the Securities and Exchange Commission dedicated to monitoring credit rating agencies would help prevent some of the conflicts of interest and rate shopping in the industry.

"Having a dedicated office on this would advance the mission," Barr agreed.

Sen. Bob Corker (R-Tenn.) said that the administration's approach to regulating investment products and consumer products is inconsistent.

"On one hand, we are doing almost nothing but transparency ... and on the other hand, we are designing products," Corker said.

Barr countered that the sophistication of the two markets are different and thus strategies to regulate them should be crafted to recognize those differences.

Corker suggested that credit rating agencies should have a stake in the debt instruments they rate.

"I do wonder if we should consider a different payment model ... where credit rating agencies have skin in the game," Corker said.

Barr said that diversification of the pay models from the common issuer-pay model would work.

"I think there's an opportunity to have both the issuer-pay and investor-pay models exist and strive."

Sen. Jack Reed (D-R.I.), who sponsored legislation (S. 1073) to give the SEC authority to review the policies, procedures and methodologies used to determine ratings, suggested that instructing investors to not rely on ratings for their due diligence about the investment instruments unless there was third-party information used to determine the rating. Sen. Charles Schumer (D-N.Y.) suggested giving the SEC the authority to randomly assign a second rating agency to provide a check on the rating of the agency contracted by the issuer to prevent rate shopping.

"We found that rating systems were filled with conflicts of interest," Schumer said. "They went shopping for ratings like they were shopping for used cars."

Barr said the ultimate goal is to reduce reliance by regulated entities on ratings and warned against legislating any changes that would encourage reliance on credit ratings.

"We have to be careful not to take steps that would suggest inflated confidence in the ratings themselves," Barr said.

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Karen Mracek, *Few homeowners get modified mortgages*, The Des Moines Register, August 5, 2009.

Fewer than 10 percent of eligible homeowners have had their loans modified through a government effort to avoid foreclosures, a new report from the Treasury Department shows.

Wells Fargo, which has its home mortgage headquarters in West Des Moines, lagged behind other large lenders in the percentage of loans that were modified.

The company started loan modifications for 6 percent of its 329,085 customers eligible for the Home Affordable Modification Program.

Mike Heid, co-president of Wells Fargo Home Mortgage, said, "While the majority of our customers who request help are getting through to us and receiving the help they need, we know we've fallen short of our customer service goals in some cases."

Wells Fargo, Iowa's largest bank and the Des Moines area's largest private employer, services one of every six mortgage loans in the nation. The company was one of 38 loan servicers who signed up to participate in the mortgage modification program.

Among various lenders, more than 235,000 modifications nationwide have been started since the program was announced in February. That amounts to just 9 percent of those eligible through the end of July.

The program, which was cornerstone of the Obama administration's efforts to stem foreclosures, is intended to assist up to 4 million homeowners in the next three years. Lenders agree to reduce homeowners' monthly mortgage payments to no more than 31 percent of income.

Other big lenders like JP Morgan Chase and GMAC started modifications on 20 percent of eligible loans, while CitiMortgage started modifications for 15 percent of its eligible customers. Bank of America started modifications on 4 percent of its eligible accounts.

Only 2 percent of the eligible Wachovia loans have been modified. Wells Fargo bought Wachovia at the end of 2008.

Servicers that modify loans receive an up-front fee of $1,000 for each modification, as well as additional pay if the modification is successful.

Wells Fargo has received $20.2 million for the modifications it has already made, plus $1.3 million from Wachovia loan modifications.

Treasury criticizes loan servicers' pace

About 15 percent of homeowners eligible for loan modification - those more than two payments behind - have been offered a modification as of the end of July, the report said, but not all accepted the offers or finalized the process.

More than 2.7 million homeowners are eligible to participate in the program, and almost 1.4 million have been contacted by their servicers requesting financial information.

However, Treasury officials insist servicers should be further ahead in modifying loans.

"We think they could have ramped up better, faster, more consistently and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," Michael Barr, the Treasury Department's assistant secretary for financial institutions, told reporters in a conference call. "We expect them to do more."

Servicers say the administration has been slow to define the details of the program, some of which were updated as recently as early July.

Last week, the Department of Housing and Urban Development announced details for modifying Federal Housing Administration loans through the mortgage modification program.

Guidelines for modifying option-adjustable rate mortgages through the program still are not available.

"Now that the program details are largely complete, our company has been accelerating our use of HAMP," said Heid. "We're confident we can achieve our portion of the government's goal to reach 500,000 HAMP trial modification starts by Nov. 1."

Servicers agreed last week to ramp up implementation to help 500,000 homebuyers by Nov. 1. So far, the program has been offered to 406,542, but just 58 percent of those offers have turned into actual modifications.

Wells Fargo adjusts to speed up process

Wells Fargo has added employees to accommodate modification requests. It hired and trained an additional 4,000 people in the first half of the year.

Besides HAMP, Wells Fargo has also had a wave of refinancing applications, thanks in part to lower interest rates. Wells Fargo refinanced 860,000 mortgages in the first six months of the year.

The company also says that within weeks it will eliminate the customer service backlog created by the time lag between when the government announced the modification program and when the guidelines were defined.

"We've recently undertaken new steps that will soon enable us to qualify most borrowers for a HAMP trial modification during our initial point of contact, and then send eligible customers the required trial modification agreement within 48 hours," Heid said.

The Treasury also said it will create a process for evaluating modification applications that have been declined.

"We believe the administration's 'second look' process - through which Freddie Mac will audit declined applications - will promote additional transparency and will help ensure all participating servicers across the country are doing all they can to prevent avoidable foreclosures," Heid said.

Wells Fargo conducts its own final review of a loan to make sure all options are exhausted before heading to foreclosure, he added.

Intentions and outcomes

HOMEOWNER HELP: The Obama administration announced the $75 million Home Affordable Modification Program in February. The program is designed to help as many as 4 million homeowners avoid foreclosure by modifying their loans to reduce interest rates or extend the terms of the loan.

SLOW SERVICING: A Treasury report out Tuesday showed only 9 percent of the 2.7 million loans eligible for the program have started the modification process. Almost half of eligible customers have been contacted by their servicers requesting financial information.

WELLS FARGO LAGS: Wells Fargo, which services one out of every six mortgages in the United States, has modified only 6 percent of its eligible loans. Other large lenders modified up to 25 percent of loans. Wells Fargo has added staff to handle the applications.

Eligibility requirements for a HAMP loan modification

* Loans originated on or before Jan. 1, 2009.

* First-lien loans on owner-occupied properties can have an unpaid principal balance up to $729,750.

* Borrowers must document income with two most recent pay stubs and their most recent tax return and must sign an affidavit of financial hardship.

* Property owner occupancy status will be verified; no investor-owned, vacant or condemned properties are eligible.

* Modifications can start from now until Dec. 31, 2012.

* Loans can be modified only once under the program.

Find out if you are eligible at www.makinghomeaffordable.gov.

Trouble making loan payments?

Iowa Attorney General Tom Miller suggests calling the Iowa Mortgage Help Hotline at (877) 622-4866 weekdays, 8:30 a.m. to 5 p.m., or visiting www.IowaMortgageHelp.com. The hotline is free, confidential and open to all Iowans.

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***Mortgage program aids few; Ten lenders hadn't changed single mortgage, report shows,* The Grand Rapid Press, August 5, 2009.**

WASHINGTON -- The government's $50 billion program to ease the mortgage crisis is helping only a tiny fraction of struggling homeowners, and a list released Tuesday showed which lenders are laggards.

As of July, only 9 percent of eligible borrowers saw their mortgage payments reduced with modified loans. And the first monthly progress report showed 10 lenders did not change a single mortgage.

The report indicated lenders such as Bank of America Corp. and Wells Fargo and Co. have lagged behind government expectations. Both banks received billions in federal bailout money.

BofA modified just 4 percent of eligible loans, and Wells Fargo 6 percent. Wachovia Corp., which was taken over by Wells Fargo in December, modified only 2 percent.

"We think they could have ramped up better, faster, more consistently and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," said Michael Barr, the Treasury Department's assistant secretary for financial institutions. "We expect them to do more."

Wells Fargo said it plans to speed up its efforts, signing up most borrowers for the Obama plan with one phone call and sending customers a trial offer within two days.

The report is "only part of the story" because the numbers do not reflect an additional 220,000 loans Wells modified outside the Obama plan this year, a company executive said.

BofA said it would improve its "processes for reaching those in need" and continue working with the Treasury Department to help homeowners who fall outside the program's eligibility requirements.

Meanwhile, foreclosures continue to rise. About 1.5 million households received at least one foreclosure-related notice in the first half of this year, according to RealtyTrac Inc.

"There are certainly more foreclosures going on in the country than there are modifications by a long shot," said Bruce Dorpalen, director of housing counseling at Acorn Housing, a nonprofit housing group. He said his group has intervened to prevent about 500 foreclosure sales in cases where borrowers wanted to be considered for Obama's plan.

A housing counselor told 36-year-old Veronica Cassella she should qualify for a loan modification, but Green Tree Servicing LLC claims she does not. Cassella, who works at a hair and nails salon in Visalia, Calif., has seen her income shrink with the economy from $35,000 to $25,000.

Her husband still works, but their income is not enough to cover the $213,000 mortgage on their home, which has lost about half its value.

"My life has been a standstill with these people for at least half the year," Cassella said. Green Tree, which modified 4 percent of eligible loans, did not return calls for comment.

There are 38 companies participating in the government program, and some noticeable holdouts that control 15 percent of outstanding mortgages.

HomEq Servicing, owned by Barclays PLC, and Litton Loan Servicing, owned by Goldman Sachs, have yet to join. Spokesmen for both companies said they plan to do so soon.

So far, banks have extended only 400,000 offers among 2.7 million eligible borrowers who are more than two months behind on their payments. More than 235,000 of those borrowers have enrolled in three-month trials.

But the government is partly to blame for the languid start. The administration rolled out the guidelines gradually this year. Much of the program was not finished until mid-May, and the guidelines were updated again in early July.

The White House maintains it is on track to meet its goal of helping as many as 4 million homeowners by 2012. Last week, the administration extracted a verbal promise from the mortgage industry to reach 500,000 borrowers by Nov. 1.

American Home Mortgage Servicing and PNC Financial Services Group Inc. were among the companies that had a zero next to their names on Tuesday's report.

In a statement, American Home Mortgage Servicing explained it did not join the program until July 22 but had modified nearly 37,000 loans in the first six months of 2009.

David Friedman, president and CEO, said executives expect to help 60,000 customers, or about 40 percent of the company's eligible delinquent borrowers.

PNC, which owns National City Bank, began the process in early July.

The best results among the large loan services came from Saxon Mortgage Servicers Inc. One in four of Saxon's eligible borrowers has a trial loan modification with a lower monthly payment to help the homeowner avoid foreclosure. Aurora Loan Services LLC, GMAC Mortgage Inc. and JPMorgan Chase all had one in five qualified borrowers in a trial loan.

"We've got feet on streets in neighborhoods where borrowers need help," said David Lowman, chief executive of the JPMorgan Chase's home lending division.

For each homeowner who makes regular payments for three months, the loan servicer collects $1,000 from the government. The company is paid thousand of dollars more if the borrower stays current for three years.

Housing advocates cite numerous cases in which companies have not followed the program's rules. And when borrowers are denied, they often are not told why.

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Stephanie Armour, *Home sellers frustrated as short-sale deals collapse*, USA Today, August 5, 2009.

Scores of homeowners who thought they'd cut a deal with their banks to sell their houses for less than their unpaid mortgages are seeing those agreements fall apart months later, contributing to the mounting foreclosures that threaten the housing market's recovery.

The sales of homes for less than the amount owed the bank, known as "short sales," have been widely viewed as an alternative that could help slow the foreclosure epidemic. In theory, delinquent homeowners escape a mortgage they cannot afford, and lenders, although taking a loss, avoid the even costlier process of completing a foreclosure.

Instead, many homeowners are watching potential buyers walk away as months pass while they deal with lenders' lengthy delays, lost documents and unreturned calls, according to the National Association of Realtors (NAR). Not all the snafus are lenders' fault; inexperienced real estate agents who fail to turn in complete paperwork also are causing holdups, as are severely underpriced homes.

The problems have become such a kink in the market's recovery that banks and the federal government are launching new efforts this month to simplify and speed up the short-sale process.

Just 23% of short-sale offers that homeowners receive from potential buyers actually close, according to a February study of 1,300 real estate agents by Campbell Communications. More than 90% of agents cited a slow response from the lender as the reason short sales were lost.

"The delays are quite extensive and a real problem. It's a serious issue," says Mark Zandi of Moody's Economy.com. "You're seeing a lot of short sales go bust, and it's contributing to the crisis because it's one of the reasons foreclosures continue to mount."

Jorge DeMattos, 45, just completed the short sale on his home in Pembroke Pines, Fla. - a process he and his real estate agent, Edward Goldfarb, say took 17 months and eight separate offers.

DeMattos began pursuing a short sale after he was laid off two years ago and his income plunged from $46,000 to $26,000 a year.

Chase Bank, his mortgage servicer, rejected the first offer, which was $14,000 over what was then fair market value, according to Goldfarb.

On the next seven offers, the bank took months to respond. Each prospective buyer got tired of waiting and canceled the contract. The eighth offer, accepted in May, was $24,000 less than the first one that Chase rejected in February 2008, Goldfarb says.

"Chase made it very difficult. I had to stop paying the mortgage. It was so frustrating," says DeMattos, who now lives with his sister in Kissimmee, Fla. "We would put the paperwork in, and they would never give a definite answer. Buyers waited for months."

DeMattos says he owed $355,000 on his mortgage. The short-sale price was $225,000.

Christine Holevas, a Chase spokeswoman, says earlier offers on the home weren't accepted because they were significantly below the appraised value and the homeowner didn't send in updated financial information.

No longer uncommon

Short sales once were extremely rare. But now, with unemployment climbing and home values down, more homeowners are pursuing short sales when they can't afford their mortgage. About 11% of all sales transactions in June are such short sales, according to the NAR.

Some delays stem from agents who fail to prepare buyers and sellers for the length of time it takes to get a short sale approved or who supply incomplete information to banks.

But many short sales are faltering, largely because some lenders may lack the internal staffing, expertise and systems to process such sales in a timely fashion. And short sales can be complex, especially if they involve home-equity lines of credit or other second liens held by different lenders, who also must agree to take less than the amount they're owed from a home's sale.

Several lenders acknowledge that banks have been part of the problem, in part because most have done so few short sales in the past that they've faced a steep learning curve.

"About half of short sales never close. We see it as a big lost opportunity, and we need to improve the rate we close them," says David Sunlin, vice president in charge of short sales at Bank of America.

Uncompleted short sales that go to foreclosure are costlier for lenders and homeowners. For lenders, a short sale may save as much as 30 percent of the expense incurred by going to foreclosure.

For homeowners, a foreclosure wreaks longer-lasting damage to their credit records. A homeowner who has gone through a short sale typically can get a new home loan in one to three years, according to the NAR. A foreclosure usually means it takes seven.

Borrowers are expected to pay their mortgage during the short-sale process, but not all can afford to. That leads to abandoned properties that may sit vacant and deteriorate for months. In other cases, homeowners unable to make their payments may stay put and pay nothing, in some cases for up to a year, until the lenders' review-and-approval process plays out.

Large numbers of uncompleted short sales are especially troublesome, because other efforts to stem foreclosures have been less effective than expected. The Obama administration's housing rescue plan, which includes getting banks to rework home loans into more affordable mortgages, has made such slow progress that representatives from 25 major mortgage servicers were called to Washington, D.C., last month to discuss improving the efforts.

Short sales are moving into the national spotlight now as:

Mortgage servicers ramp up their programs.@ Bank of America has begun trying to slash the turnaround time on short sales from up to 90 days after a buyer submits an application to just a week. @In a typical short sale, a buyer makes an offer, then the bank conducts appraisals to determine the price it will accept. Setting that price can take so long that would-be buyers may walk away. To try to avoid such delays, Bank of America has begun doing appraisals and determining a minimum price it will accept before a home goes up for sale.

Meanwhile, Wells Fargo has created a real estate agent education guide that explains the process, has increased staffing and has set up procedures to handle short-sale requests and explain the process to homeowners. The bank says it has cut its average turnaround time from offer to approval from up to 90 days to about 30.

The U.S. government is getting more involved.@ The Treasury Department soon will detail a plan to streamline short sales by providing standardized documentation and cash incentives to lenders and a moving allowance to homeowners.

Treasury has said that servicers have opted to pursue foreclosures instead of short sales because of the complexity and time required to complete the discounted home sales.

Borrowers who complete a short sale will be eligible for $1,500 to help with relocation expenses. Second-lien holders will get up to $1,000 to relinquish their claims in such transactions.

Eligible homeowners can be accepted through Dec. 31, 2012, but the short-sale program is for those unable to get mortgage modifications from their banks.

"We realized we couldn't reach everyone with a modification. For us, that wasn't the end of the story," says Michael Barr, Treasury assistant secretary for financial institutions. "The alternative is to significantly speed up short sales."

No authoritative figures on short sales' completion times are available, but some research indicates the problem is worsening.

A survey in March 2008 by Campbell Communications found that the average time for a mortgage servicer to respond to an offer to buy a short-sale property was 4.5 weeks. Campbell's follow-up survey in February found that the average response time had doubled to nine weeks.

A third survey in June found the response time was 9.5 weeks. The surveys were sponsored by Inside Mortgage Finance, an industry publication.

"The foot-dragging means it's taking six weeks to six months," says Lawrence Yun, chief economist with the NAR. "There are big delays. The review process is taking way too long."

'We had a learning curve'

Lenders say the approval process takes time because there are so many parties involved. Some bank officials say they've been learning as they go.

"We had a learning curve," says David Knight, senior vice president for Default Retention Operations, Wells Fargo Home Mortgage. "Any stakeholder has a right to disapprove the sale. Realtors out there were used to regular sales. Now, all of a sudden, the servicer and Realtor have had to learn a lot."

Some real estate groups also are trying to improve the process. Re/Max International Chairman David Liniger says his company is aggressively working to train agents on handling short sales and other so-called distressed properties. Instead of eight weeks to close a short sale, trained agents can get them done in two to four weeks, he says.

Within the real estate industry, hopes are rising that short sales will become a shorter process.

"It's horrible the amount of time it's taking to do these sales," says Valerie Torelli, who owns Torelli Realty in Costa Mesa, Calif. "It happens all the time that short sales fail and then go to foreclosure. A seller doesn't make payments for a year and then just walks away. It's unbelievable."

Would a short sale be right for me?

Homeowners who owe more than their homes are worth don't automatically qualify for a short sale.

Borrowers have to show financial hardship to get their lender to agree to a short sale. Typically, they must write a hardship letter outlining why they are unable to make their payments.

A homeowner does not need to be in default first. Lenders may suggest borrowers consider a short sale if they don't qualify for a mortgage modification.

One such circumstance might be if their monthly debt obligations are higher than their income.

A homeowner must owe more than the home is worth.

That means that if the home is sold on the open market, the borrower will not get enough money to pay back what he or she owes their bank.

The lender must agree to accept less than the balance on the loan. Homeowners work with a real estate agent to sell the home, but the lender must agree to the final sales price. Pricing is often determined by a broker's price opinion and multiple appraisals. Lenders may also need approval from other parties, such as second lien-holders or special assessment lien-holders.

A short sale results in a blemish on a credit record that is less severe than a foreclosure.

For more information on short sales, go to www.realtor.org.

For more information on the Treasury Department's plan to streamline the short-sale process, go to http://www.treas.gov/press/releases/docs/05142009FactSheet-MakingHomesAffordable.pdf

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Kevin G. Hall, *"Name and Shame"*, McCaltchy Newspapers, August 5, 2009.

WASHINGTON - The Obama administration on Tuesday offered the first of what will become monthly reports on mortgage modifications, including a name-and-shame approach that'll allow the public to see which banks are and aren't working to help keep struggling Americans in their homes.

The first report, covering more than 30 lenders, found a dismal performance to date from two banks - Bank of America and Wells Fargo - that have received large sums of taxpayers' bailout money. The report is likely to produce more pressure on these two institutions because the rescue money spent on them was expected to encourage greater lending and more loan modifications.

In a conference call, Assistant Treasury Secretary Michael Barr said that servicers who collect monthly mortgage payments on behalf of banks and investors who hold pools of mortgages had modified 230,000 distressed mortgages since mid-February. The administration wants large mortgage servicers to modify 500,000 troubled home loans by

Nov. 1.

"I think we've been disappointed ... about their performance in helping people in a timely fashion with the respect they deserve under difficult circumstances," Barr said.

Most of the homeowners who're falling behind on their mortgage payments are thought to have sub-prime or Alt-A mortgages, those given to weaker borrowers during the housing boom, which was fueled in part by loosened lending standards.

Publishing the first of its monthly reports on the performances of individual lenders and servicers, the Treasury Department found that Bank of America serviced 796,467 mortgages that were thought to be at least 60 days late on payments and potentially eligible for lower monthly rates.

The bank, however, extended modification offers to just 99,649 homeowners, or about 13 percent of those eligible, the Treasury report said, and it began trial loan modifications with only about 4 percent, or 27,985 borrowers.

Wells Fargo led the banking sector's voluntary loan-modification program during the Bush administration's efforts. Yet Tuesday's Treasury report didn't show Wells Fargo in a favorable light, finding that while the bank serviced 329,085 mortgages that were 60 days late, it extended offers to only 38,673 homeowners, or about 12 percent of those eligible, and started trial modifications with an additional 20,219 loans, about 6 percent of eligible.

CitiMortgage, part of troubled Citibank, did a bit better, according to the report. It extended offers of modifications to 21 percent of eligible homeowners and provided trial modifications for 15 percent. JP Morgan Chase, which has emerged as the nation's strongest bank, extended offers to nearly one in three eligible homeowners and started trial modifications for one in five of its eligible homeowners.

As many as 2.5 million homes may go into foreclosure this year, the result of a three-year crisis in housing that's seen prices tumble nationwide, and especially in states where prices soared in the first half of the decade: Florida, California, Arizona and Nevada.

Treasury officials said they didn't have data yet for servicer performance in these four hard-hit states or for high unemployment states such as Michigan and Indiana.

"I think it is too early to draw any conclusions about how different markets are doing with respect to modifications," Barr said, adding that the Obama administration is aware of widely varying market conditions. "We're highly cognizant of that. ... We've taken steps to address regional variation."

One of the steps taken since the Making Home Affordable program was launched is new payment programs for servicers who modify first lien and second lien mortgages, and government money to servicers who agree to short sales or deed-in-lieu transactions, both of which involve banks taking back properties under expedited terms and without ruining borrowers' credit.

Last week, the administration offered payments to servicers if home prices continue to deteriorate after loans have been modified, addressing the concerns of states with sharp drops in home prices.

The administration also has offered a refinancing program in which lenders Fannie Mae and Freddie Mac, which the government has seized, buy qualified loans that can be refinanced. This effort recently was expanded to allow homeowners who owe up to 25 percent more than their homes are now worth to refinance.

In all, the administration seeks to help as many as 4 million homeowners through loan modifications or refinancing by the end of 2012.

The monthly performance rating will help the public assess information from the banks that suggests that four in five borrowers are being helped. Many banks have other modification activity that isn't part of Making Home Affordable, Barr said.

"We have no way of auditing them, of checking their numbers," he said, adding that to date, lenders' efforts have been disappointing. "We think it could have ramped up better, faster and ... we expect them to do more."

Sales of existing homes have picked up slightly in recent months, and the contraction in new home construction has slowed, giving hope that the housing sector finally may be finding a bottom.

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John W. Schoen, *Help slow to arrive for homeowners*, MSNBC.com, August 5, 2009 8:33 PM ET.

HIGHLIGHT: After over a year of various industry initiatives, the slow pace of rewriting unaffordable loans remains at a crawl, threatening a fragile recovery. By msnbc.com's John W Schoen.

For the past 16 months, Courtney Scott has been trying to get her lender, Bank of America, to modify the mortgage on her Atlanta-area home. She's sent dozens of letters and e-mails to state and federal officials, bank representatives and mortgage assistance groups like HOPE Now.

For a time, she said, she got little response. Lately, she's been getting at least a call a week from different Bank of America representatives. Lots of calls, but little progress discussing a new loan.

"Two months ago they said, 'Well, you're too far behind for us to help you: You need to make a few payments,'" she said. "So I had my brother send me some money and made three payments. Then they said, 'You're not far enough behind for us to help you.'"

Scott is not alone. After more than a year of government and industry initiatives, capped by the Obama administration's $50 billion Making Home Affordable program, the pace of rewriting unaffordable loans is still at a crawl.

"At best we've been treading water," said Alan White, a law professor at Valparaiso University, who tracks mortgage modifications. "And the number of new (foreclosure) filings is not going down - it's pretty much steady at about (250,000) a month. So we're behind the curve."

According to government data released Wednesday, only 9 percent of an eligible 2.7 million borrowers had seen their mortgages modified under the new program as of the end of July. Some lenders had not reported modifying a single loan.

Bank of America Corp. and Wells Fargo & Co. - which have received billions in federal bailout money - were below average. BofA has modified just 4 percent of eligible loans under the program.

In a statement, Bank of American said it has provided additional loan modifications that don't show up in the government data, but that it still has a lot of work to do to stem the pace of foreclosures.

"Despite our aggressive efforts to find solutions for homeowners in default, we must improve our processes for reaching those in need," the bank said. " Additionally, we continue to work with

Treasury to find solutions for at-risk homeowners who fall outside the eligibility requirements of the current program as well as the growing number of customers now unemployed."

Wells Fargo has modified 6 percent of eligible loans . Wachovia Corp., which was taken over by Wells Fargo last December, has modified just 2 percent.

"We know we've fallen short of our customer service goals in some cases," Mike Heid, co-president of Wells Fargo's mortgage unit, said in a statement. He said the company is aiming to streamline its modification process to a single phone call for most eligible borrowers.

For more than a year, Congress and the White House have struggled to help homeowners at risk of foreclosure, some of whom were victims of predatory lending and others who were simply approved for loans they couldn't afford.

The Bush administration's Hope Now Alliance, a voluntary consortium of lenders and loan servicers, had some early successes. But the program was plagued by a "redefault" rate of more than 50 percent because many borrowers were offered new loans with little or no reduction in payments.

In April, Congress approved the Obama administration's program, which offers cash incentives to servicers who help for troubled borrowers. At the time, the administration said it expected as many as 4 million homeowners to get modified loans.

But according to Tuesday's report, the pace of loan modifications has slowed. White said that under the Hope Now program, roughly 370,000 loans were modified in the first quarter. Under the Making Home Affordable program, lenders and servicers have completed just 235,000 "trial" modifications, which will be made permanent if the homeowner remains current for three months.

"We think they could have ramped up better, faster, more consistently and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," said Michael Barr, assistant treasury secretary for financial institutions. "We expect them to do more."

Since the pace of defaults and foreclosures began rising two years ago, lenders and loan servicers have complained they are badly understaffed to cope with the wave of homeowners seeking new loan terms.

"The No. 1 bottleneck now is the voluntary nature of the (Obama administration's loan modification) program," said John Taylor, president of the National Community Reinvestment Coalition.

Since the foreclosure crisis began, Congress and the White House have tried several times to put pressure on the industry to speed the pace of loan modifications. The most hotly contested proposal would allow bankruptcy judges to modify loan terms form the bench. But the mortgage industry has fought the measure fiercely and so far blocked it.

The pace of loan modifications varies widely among lenders and servicers. The best results among large loan servicers came from Saxon Mortgage Servicers Inc. One in four of Saxon's 84,000 eligible borrowers has received a trial loan modification with a lower monthly payment. Aurora Loan Services, GMAC Mortgage and JPMorgan Chase all had one in five qualified borrowers in a trial loan.

American Home Mortgage Servicing, with 153,000 eligible borrowers, was among the servicers that has not yet reported a single loan modification.

David M. Friedman, president and CEO, said the company only joined the program July 22 and expects to help 60,000, or about 40 percent of its borrowers.

Loan servicers who participate in the new program can earn up to $4,500 for every loan they modify. The reduction in payments means that investors who own bonds backed by these modified loan will suffer a loss. Since any given mortgage may be backed by bonds held by hundreds of investors, some servicers still face pressure from investors not to modify loans.

"Given that (the program) is voluntary, not a lot of loans are being rushed into the pipeline because of the fact that there is a loss," said Taylor. "(Lenders and servicers) may have calculated that it's better to wait for the market to turn and then suffer less of a loss."

Unless the pace of foreclosures can be slowed, the fragile economic recovery could be at risk.

"The idea that we're going to drift along in a foreclosure crisis with foreclosure levels at triple pre-crisis levels - that's just throwing in the towel on any kind of recovery," said White.

Meanwhile, Scott says she'll continue to try to work with Bank of America on a more affordable loan.

"It's been a good year and a half, and they just don't seem to understand," she said. "I'm running out of ideas."

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Ronald D. Orol, *Treasury: Government shouldn’t rate securities*, MarketWatch, August 5, 2009 9:47 AM ET.

WASHINGTON (MarketWatch) - A key Treasury official said on Wednesday that the government should not get involved in regulating credit rating agencies, considered a key contributor to the financial crisis because of their excessively glowing debt outlooks for mortgage products. "The government should not be in the business of regulating or evaluating the methodologies themselves or the performance of ratings," said Michael Barr, assistant secretary-designate for financial institutions, at a Senate Banking Committee hearing. "To do so would put the government in the position of validating private-sector actors and would likely exacerbate over-reliance on ratings." Barr defended the Treasury's July proposal to reform the industry, which includes a provision that would limit conflicts, in part, by barring consulting by rating firms for their rated companies. It does not have a proposal considered by some lawmakers that would have the government set up an entity to pick rating firms or even create a state-funded agency to rate products and compete with private raters.

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David Hess, *Panel Considers Tough Credit Rating Rules*, National Journal's CongressDaily, August 5, 2009.

Legislative proposals from the Senate and White House appear rolling on parallel tracks to crack down on lax risk-rating by credit rating agencies, but at a Senate Banking Committee hearing today ratings spokesmen and one academic expert waved red flags to slow the process lest the rules end up handcuffing the industry.

Both Banking ChairmanChristopher Doddand ranking memberRichard Shelbymade it clear that legislation to require more transparency in the dealings between the rating agencies and their big-time corporate clients is necessary.

They also agreed that the practice of giant financial institutions shopping around for favorable bond and security ratings for ever more risky and complicated financial instruments had to be curbed.

Sen.Jack Reed, D-R.I., principal author of a proposed new regulatory regime, said he wants aggrieved investors to have easier access to the courts to press claims of negligence against credit-rating agencies.

Reed's bill is quite similar to a proposal offered by President Obama and defended today by Michael Barr, assistant Treasury secretary for financial institutions.

Barr laid at least part of the blame for the catastrophic collapse of the financial system on the rating industry -- which is dominated by Moody's, Fitch Ratings, and Standard & Poor's -- for permitting the creation of "a system where risks built up without being accounted for or properly understood. ... These ratings contributed to a system that proved far too fragile in the face of changes in the economic outlook and uncertainty in financial markets."

Although a panel of industry officials called for a slower and measured pace of reform to guard against what one called "unintended consequences" of overregulation, Barr said time is no longer on their side. "We cannot afford to wait," he said.

Looking for more? For additional information on the implementation of the stimulus law, and on auto company restructuring, housing and TARP, see our Economic Crisis page.

A major piece of the administration's bill is the creation of a Consumer Financial Protection Agency to foster "a level playing field" that assures fair competition and high analytical standards among credit rating agencies.

"Our proposals focus on three major tasks," Barr said. One is to set up an effective system for monitoring risks, a second is to create a single point of accountability for tougher and more consistent supervision of the largest and most interconnected [financial] institutions, and the third is to prevent the build-up of risks outside the range of the supervision and monitoring.

Stephen Joynt, head of Fitch Ratings, acknowledged that some changes have to be made to restore public confidence in the securities ratings. And he detailed several steps his company already has made to improve transparency and mitigate conflicts of interests.

He complained that some of the provisions in the Reed and Obama plans "are ill-advised" and could be rectified simply by better enforcing existing securities law and strengthening the SEC's hand in doing so.

Economics professor Lawrence White of New York University's business school called the whole effort to toughen regulation "misguided and potentially quite harmful."

He said "heightened regulation of the rating agencies is likely to discourage entry [of new firms], rigidify structures and procedures, and discourage innovation in gathering and assessing information" and new ways of doing business.

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Paul Tharp, *Hall of Shame – Treasury Rips Banks for Not Helping Homeowners*, The New York Post, August 5, 2009.

Uncle Sam yesterday released its "hall of shame" for banks that haven't lifted a finger to help struggling homeowners prevent foreclosures - with Bank of America as one of the worst offenders.

Even after taking tens of billions in bailout aid from Uncle Sam, BofA and dozens of other banks have helped just a tiny fraction - just 9 percent - of the desperate 2.7 million homeowners who are eligible for federal help but still face being tossed into the street.

The government offered $50 billion to dozens of big banks to modify onerous mortgages, but a lot of banks have ignored the effort, the Treasury Department said yesterday.

"I think it's safe to say we're disappointed in the performance of some of the servicers," said Michael Barr, the Assistant Treasury Secretary in charge of financial institutions, referring to the divisions within banks that collect mortgage payments and which would be the first responders should a borrower get in trouble.

"We think they could have ramped up better, faster, more consistently and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," he added. "We expect them to do more."

BofA modified 4 percent of eligible loans, and Wells Fargo 6 percent. Wachovia, which was acquired by Wells Fargo last December, modified just 2 percent.

Higher marks came for JPMorgan Chase, with modifications underway for 20 percent of eligible loans.

Citigroup's CitiMortgage unit has modified 15 percent of its eligible loans. The best results among large loan services came from Saxon Mortgage Servicers Inc., with 25 percent in modification.

Treasury said it will continue to publicize its "hall of shame" with a monthly list of servicers' performance.

Results are mixed thus far among the 38 institutions eligible to get the $50 billion in loan modification aid. Ten of them have done nothing at all, the Treasury said.

For each homeowner who makes regular payments for three months, the loan servicer collects $1,000 from the government.

The company is paid thousands of dollars more if the borrower stays current for three years.

Housing advocates, however, say the companies aren't following rules and deny numerous eligible homeowners the chance to prevent foreclosure.

The Treasury said it makes spot audits to catch offenders.

Two servicing arms of major investment banks - HomeEq Servicing, owned by Barclays Plc, and Litton Loan Servicing, a unit of Goldman Sachs - haven't signed onto the program.

Treasury officials are considering ways to help borrowers who have lost their jobs. Barr said the current program contained flexibility to provide short-term assistance.

###

Alan Zibel, *Mortgage program helping few*, The Associated Press, August 5, 2009.

WASHINGTON -- The government's $50 billion program to ease the mortgage crisis is helping only a tiny fraction of struggling homeowners, and a list released Tuesday showed which lenders are laggards.

As of July, only 9 percent of eligible borrowers had mortgage payments reduced with modified loans. Ten lenders had not changed a single mortgage.

The report indicated that lenders such as Bank of America Corp. and Wells Fargo and Co. have lagged behind government expectations. Both banks received billions in federal bailout money.

BofA modified just 4 percent of eligible loans, and Wells Fargo modified 6 percent. Wachovia Corp., which was taken over by Wells Fargo in December, modified only 2 percent.

"We think they could have ramped up better, faster, more consistently and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," said Michael Barr, the Treasury Department's assistant secretary for financial institutions. "We expect them to do more."

Wells Fargo says it plans to speed up its efforts, signing up most borrowers for the Obama plan with one phone call and sending customers a trial offer within two days. The report is "only part of the story," a company executive said, because the numbers do not reflect an additional 220,000 loans that Wells Fargo modified outside the Obama plan.

BofA said it would improve its "processes for reaching those in need" and continue working with the Treasury Department to help homeowners who fall outside the program's eligibility requirements.

Meanwhile, foreclosures continue to rise. About 1.5 million households received at least one foreclosure-related notice in the first half of this year, according to RealtyTrac Inc.

"There are certainly more foreclosures going on in the country than there are modifications, by a long shot," said Bruce Dorpalen, director of housing counseling at Acorn Housing, a nonprofit housing group. He said his group has intervened to prevent about 500 foreclosure sales in cases where borrowers wanted to be considered for the Obama plan.

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Shaheen Samavati, *Nat City lagging in mortgage program; Just 4 homeowners had terms modified*, The Plain Dealer, August 5, 2009.

National City Corp., now owned by PNC Financial Services Group, has barely taken advantage of a $50 billion government program to help banks modify loans for struggling homeowners.

As of July, only four of the 37,126 National City customers eligible for help through the program have had the terms of their mortgage changed, according to a progress report from the Treasury Department.

National City isn't the only mortgage company lagging behind government expectations for the Making Home Affordable program.

Bank of America Corp. modified only 4 percent of eligible loans, and Wells Fargo just 6 percent. Both banks, as well as PNC, have received billions in federal bailout money.

"We think they could have ramped up better, faster, more consistently and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," said Michael Barr, the Treasury Department's assistant secretary for financial institutions. "We expect them to do more."

But PNC spokesman Fred Solomon said it's too early to analyze National City's use of the program, since the company only enrolled in late June.

Since then, it has mailed more than 43,000 packets of information to potentially eligible customers and has made more than 120,000 follow-up phone calls, he said.

"What the report reflects is the amount of time it takes to process applications," he said. And, he pointed out, the federal report does not count more than 1,600 loan modifications National City has made outside of the federal program.

PNC, which bought Cleveland-based National City in December, also has its own mortgage company that services 724 eligible loans. Its results were not reported because the company enrolled in the program just three weeks ago, according to the report.

But some companies have been enrolled since April and still have not modified many loans. Across the 38 mortgage companies participating in the program, only 235,000 - of the 2.7 million eligible mortgage holders who were more than two months behind on their payments - have reached more favorable terms with their lenders through the program. Nearly one-third of those were customers of J.PMorgan Chase, which has modified 20 percent of its 394,000 loans.

The government could be partly to blame for the languid start. The Obama administration rolled out the guidelines gradually this year. Much of the program was not finished until mid-May, and the guidelines were updated again in early July. The program essentially makes payments to banks if they're able to work out a deal that keeps customers current on their mortgage payments.

The White House says it's still on track to meet its goal of helping 4 million homeowners by 2012. Last week, the administration got a verbal promise from the mortgage industry to reach 500,000 borrowers by Nov. 1.

Meanwhile, foreclosures continue to rise. There were about 1.5 million foreclosure filings in the first half of 2009, according to RealtyTrac Inc.

The Associated Press contributed to this story. To reach this Plain Dealer reporter:

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Adam Van Brimmer, *Feds' mortgage help program not helping*, Savannah Morning News, August 5, 21009.

Aug. 5--Jerry Vandergriff is an analytical chemist by trade, so he understood the mix of a high mortgage payment and a 70 percent cut in his income would leave his personal finances unstable.

The stabilizing element, the Oatland Island homeowner believed, was the federal government's Making Home Affordable program.

So when his employer, Tronox Pigments Inc., notified him in March he would be laid off effective May 1, he gathered his pay stubs, tax return, mortgage documents and credit card statements, filled out a hardship affidavit and applied for a government loan modification through his lender.

Five months later, Vandergriff is three months behind on his mortgage payments. He's received a letter from his mortgage holder, Fifth Third Bank, denying his modification request.

And the lender is stonewalling him as to why he doesn't qualify. Officially, they claim they don't know; unofficially, they've told him the rejection has to do with him not collecting unemployment long enough to provide an income basis to modify his payment.

"It is maddening," he said. "I really thought this system would be a partial salvation to me in my situation, and it isn't. So if it's not helping me, who is it helping?"

A government report Tuesday raised the same question.

Only 15 percent of 2.7 million homeowners nationwide who meet the program's five basic guidelines have been offered assistance, the report said. Of that 15 percent, a little more than half are enrolled in the program's three-month trial periods.

Local numbers were not available, and telephone calls to representatives of several that offer mortgage servicing went unreturned.

Bank of America, which the government report revealed had modified just four percent of the loans it holds, e-mailed a statement by the president of its home loans division, Barbara Desoer.

"Despite our aggressive efforts to find solutions for homeowners in default, we must improve our processes for reaching those in need," Desoer wrote.

President Barack Obama's administration is pressuring lenders to pick up the pace, particularly those that received stimulus money as part of the Troubled Asset Relief Program bailout.

The government set aside $50 billion to help as many as 4 million distressed homeowners by 2012.

"We think they could have ramped up better, faster, more consistently and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," a Treasury department official, Michael Barr, told The Associated Press. "We expect them to do more."

So does Vandergriff. He has appealed his lender's rejection and contacts Fifth Third weekly for updates.

He starts a new job next week at Savannah State University, and while the position pays more than unemployment, it is a limited-term deal and his salary will be "significantly less" than what he was making as a Tronox lab manager.

His best chance at avoiding foreclosure is a mortgage modification, which would reduce his payment to 31 percent of his monthly income.

"My wants are to keep my house and keep my credit in some semblance of order," Vandergriff said. "That way, when I do find a job, which probably won't be in Savannah, we can buy a new house. Right now, I doubt that happens."

MAKING HOME AFFORDABLE PROGRAM: The federal government set aside $50 billion to assist as many as 4 million distressed homeowners by modifying their mortgages to lower monthly payments.

Lenders have been slow to embrace the program, prompting a scolding from the Obama administration last week and the release of a service performance report Tuesday.

Many would-be participants report problems with the process, including lost paperwork, long delays in the application and approval periods and rejections with no explanation.

To be eligible for a modification, homeowners must:

-- Maintain the home as their primary residence

-- Owe less than $729,750 on their first mortgage

-- Struggle to pay their mortgage because of a hardship, like unemployment, reduction in income or unexpected medical bills

-- Closed their mortgage before Jan. 1, 2009

-- Pay more than 31 percent of their gross monthly income toward their mortgage.

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***Federal program to modify mortgages helps few struggling homeowners*, The Tennessean, August 5, 2009.**

Jureen Hendrickson used to have a job collecting debts for a bank. Now she finds herself on the other side of the phone line, desperately trying to get Bank of America to modify her home loan to avoid foreclosure.

"I'm calling and I'm asking for help, and I don't feel as if they're working with me," said Hendrickson, a 46-year-old who lost her job in March. "I'm up a creek without a paddle."

Five months after the Obama administration launched its ambitious $75 billion "Making Home Affordable" plan to provide incentives for financial institutions to modify home loans for struggling homeowners, only about 235,000 loans have been modified, or about 9 percent of those eligible nationwide.

Bank of America modified just 4 percent of eligible loans, and Wells Fargo 6 percent, a U.S. Treasury report said. Wachovia Corp., which was taken over by Wells Fargo in December, modified 2 percent.

"We think they could have ramped up better, faster, more consistently and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," said Michael Barr, a Treasury assistant secretary. "We expect them to do more."

Lenders say they're working to address problem loans, and some have been modifying home loans long before the federal government's program, but local housing counselors say not enough has been done on either front.

"The whole (federal) program is rife with problems and chaos," said Jarmaine Betts, counseling director at Affordable Housing Resources in Nashville.

At the current rate, it would take more than seven years to reach the government's goal of 4 million loan modifications. The Treasury, however, said it remains optimistic that the program can reach its goal of handling 3 million to 4 million loans in three years, assuming modifications speed up.

Betts said he has counseled close to 100 homeowners in trouble on mortgages since April, but only 10 to 15 have seen their home loans modified. One client has been waiting seven months for an answer.

"Come on, these people are losing their houses," Betts said. "(The lenders) don't seem to get it. The plan, in theory, is really good. But if no one is being forced to do it, how effective could it be?"

Plan started in March

The Treasury department launched "Making Home Affordable" in early March, a two-pronged plan to get lenders to voluntarily modify loans with interest rates as low as 2 percent for people struggling to afford their mortgage payments - as well as refinancing for people who owed more than their homes were worth.

Many banks farm out the work of handling customer service and billing to loan servicers, but those firms usually have little incentive to modify loans because they get paid whether or not a home ends up in foreclosure.

The modification part of the program offered $1,000 payments upfront to loan servicers and $1,000 annually for still-performing loans.

On Tuesday, the government reported that 38 servicers who cover 85 percent of the mortgages in this country are participating. But only 15 percent of eligible homeowners at least 60 days behind on their payments have received approval for modifications, and only 9 percent have actually seen their mortgage payments modified, the Treasury said.

At least four participating servicers did not modify any loans, the report shows.

The federal government, meanwhile, says its success rate is better in one sense than what banks previously had offered.

In 2008, only 42 percent of home loan modifications by the largest loan servicers actually lowered payments for the borrower, according to the U.S. Treasury. In some cases, lenders added past due payments to the borrower's monthly bill, calling that a modification even though it raised the monthly payment.

Under the government's program, all of the loans that were modified resulted in lower monthly payments, according to the U.S. Treasury.

Even homeowners who haven't missed a payment qualify for the federal program, said Diane Thompson, who works as a consultant to the National Consumer Law Center and trains foreclosure counselors.

She said some participating lenders are refusing to modify loans, or they charge added fees or make homeowners wait months to hear back. She said in testimony to the U.S. Senate Banking Committee last month that lenders' staff "continue to display alarming ignorance" of the program.

"It doesn't make sense to me, except that they don't want to do these modifications," she said Tuesday.

David Anthony, an attorney with Bone McAllester Norton in Nashville, said his law office has handled more than 100 foreclosures since February, and not one has been stopped because the loan was modified.

"Across the board, it didn't help the people we were dealing with," he said.

Some 4.5 percent of Nashville-area mortgages were 90 days or more past due in June, and 1 percent of mortgages were in foreclosure, according to research firm FirstAmerican CoreLogic. That's up from a year ago.

Waiting on help

Hendrickson said she got into trouble when she lost her job at Regions Bank in March. Hendrickson lives in a two-bedroom town home in Donelson, which she paid $59,900 for in 1999, according to records with the Davidson County Register of Deeds. In 2008, she refinanced into a $103,000 loan to get cash out of her home. Plus, she said she owes about $12,000 in credit card bills and $15,000 in a short-term bank loan for personal expenses.

She says Bank of America initially told her to wait 30 to 45 days after she mailed her paperwork on June 5 for a loan modification. Then in late July, she was told she didn't qualify.

Since then, she says a Bank of America representative told her on the phone that if she paid her past due July mortgage payment, he would be able to modify her FHA loan under a separate FHA program. She is waiting for confirmation.

Bank of America spokesman Rick Simon said he could not confirm details of Hendrickson's situation, but Simon said she may be eligible for an FHA loan under rules that will kick in Aug. 15.

Bank of America said in a prepared statement that it's committed to success of the "Making Home Affordable" program nationally.

Bank of America Home Loans President Barbara Desoer said the federal report doesn't count the more than 150,000 loan modifications Bank of America made in the first half of 2009 outside of the federal government's program.

Contact banking and finance reporter Naomi Snyder at 615-259-8284 or nsnyder@tennessean.com

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Renae Merle, *banks Slow to Modify Mortgages; Most Facing Foreclosure Not Getting Help, Treasury Says*, The Washington Post, August 5, 2009.

Less than 10 percent of delinquent borrowers eligible for the Obama administration's foreclosure prevention program have received help so far, according to Treasury Department estimates released Tuesday, which also illustrated how unevenly the effort has been carried out.

Of the 2.7 million borrowers who have missed at least two mortgage payments, only 235,247 have received loan modifications since the $75 billion program was launched in March. Most of those modifications have been completed by just a few banks; other lenders have modified far fewer loans under the program.

"We're encouraged by the way the program is ramping up," said Michael Barr, Treasury's assistant secretary for financial institutions. But "we're disappointed in the performance of some of the servicers -- we think they could have ramped up faster . . . and we expect them to do more."

Under the program, J.P. Morgan Chase has modified 20 percent, or 79,304, of its borrowers who have missed at least two payments. Saxon Mortgage Services, which is owned by Morgan Stanley, has modified 25 percent of its eligible delinquent borrowers. Citigroup has modified 15 percent, or 27,571, of its delinquent borrowers.

But other large banks are lagging. Bank of America has modified 4 percent, or 27,985, of its delinquent borrowers. Wells Fargo has modified 6 percent, or 20,219.

This is the first progress report on the administration's Making Home Affordable program. Under the initiative, the government is offering subsidies to help lenders offset the cost of lowering mortgage payments for distressed borrowers.

Industry executives said they are reacting quickly to a complicated program. It took time, for example, to develop a protocol for judging when a borrower who has not missed any mortgage payments should qualify for the program, they said. The data also do not reflect modifications that banks have made outside of the government initiative. Wells Fargo said that it had completed more than 220,000 modifications this year besides the 20,000 counted under President Obama's program.

"It would be false or unfair to paint Wells Fargo as if [the government program] was the only thing we were doing," said Mike Heid, co-president of Wells Fargo Home Mortgage.

Bank of America has doubled the number of employees working on loan-modification efforts since last year, the company said in a statement. "Despite our aggressive efforts to find solutions for homeowners in default, we must improve our processes for reaching those in need," said Barbara J. Desoer, president of Bank of America Home Loans and Insurance.

But part of the problem is that there is a lot of confusion, even within some of the banks, about what kind of help is available to troubled borrowers. Lisa Harris of Lorton requested a loan modification from Bank of America earlier this year after her husband's work hours were cut and her family incurred medical bills. Harris said the bank offered her in June a modification outside the federal program that would lower her payments by about $250 a month.

She declined the deal and asked for a modification under the federal program that would lower her payments by about $1,000 a month. But Bank of America refused, saying her loan was not covered by the initiative. "Servicer participation in this program is voluntary," according to a June letter Harris received from the company's loan modification department. The bank "is not actively participating in this program."

Bank of America said that Harris received the letter by mistake and that she would qualify for a modification under the federal program. The company is reviewing its records to make sure no similar letters exist, a company spokesman said. "It was very frustrating," Harris said. "At all levels at Bank of America, they were wrong and not coming through. It's just unbelievable."

Banks have been facing increasing pressure to speed up implementation of the program, and the administration set a goal last week of more than doubling the number of borrowers who will receive help, to 500,000, by Nov. 1. Some Democrats in Congress are threatening to revive legislation allowing bankruptcy judges to modify the mortgages of troubled borrowers, known as cramdowns, if lenders don't do more to prevent foreclosures.

The results of the program so far are disappointing, said Senate Majority Whip Richard J. Durbin (D-Ill.), who has led two previous attempts to pass legislation to allow loan modification in bankruptcy proceedings.

"I think it's further evidence that voluntary programs have not succeeded. We need to create some deadlines" for these lenders, Durbin said. "This mortgage foreclosure crisis will not to come to an end until we have a more aggressive approach than we have seen up to this point."

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Nick Timiraos, *Barney Frank Threatens Return of "Cramdown" Legislation,* The Wall Street Journal's Developments blog, August 4, 2009 1:26 PM ET.

The Treasury Department released the first wave of data that shows how many loans that mortgage servicers have modified under the Obama administration's effort to help at-risk homeowners. Around 9% of eligible borrowers have received modifications, and Treasury said that servicers' performance has been "uneven."

Treasury last week convened a meeting of 25 mortgage servicers to encourage them to ramp up the program. But, in a statement on Friday, Rep. Barney Frank, the Massachusetts Democrat who chairs the financial services committee, threatened to revisit "cramdown" legislation if banks don't step it up. That legislation, which the House passed earlier this year but which couldn't get through the Senate, would allow bankruptcy judges to rewrite mortgage contracts when homeowners file for bankruptcy.

"[I]f this last effort to produce significant modifications fails, the argument for reviving the bankruptcy option will be extremely strong," Frank said.

While the President has continued to express support for bankruptcy legislation, administration officials say they'd rather focus on getting the modification program working at full speed.

"If that's the only option left, then [bankruptcy] might be appropriate in some cases. But if we can reach people with modifications, as we are doing now, that is a much better outcome for homeowners than bankruptcy," said Michael Barr, Treasury's assistant secretary for financial institutions.

Mr. Barr says he doesn't believe that the political climate—which he said was "pretty rough" earlier this year towards so-called "cramdown" legislation—has improved. "We don't have any indication those politics have changed significantly, and our focus really has been on trying to make sure we reach as many borrowers as we can with the modification program," Mr. Barr said in an interview.

Likewise, James Lockhart, who heads the government agency charged with overseeing government-controlled mortgage-finance companies Fannie Mae and Freddie Mac, says he doesn't see a need for revisiting bankruptcy overhaul legislation. "We shouldn't make people have to go through bankruptcy to get their mortgages modified or refinanced," he said on Monday. "The modifications are starting to ramp up."

Instead, the current approach to hold servicers feet to the fire includes releasing more public information about which servicers are and aren't modifying loans. Treasury said Tuesday it will release monthly transparency reports. (See the list released today.)

Meanwhile, Freddie Mac has been put in charge of auditing servicers to assess whether rejected modifications were done properly, and some borrowers who were improperly rejected may get a second chance.

Treasury could withhold payments or fine servicers who violate their contractual commitments under the modification program.

###

Alan Zibel, *US will pressure loan firms to act; Frustration builds over plan to redo mortgages*, The Associated Press, August 4, 2009.

WASHINGTON - The Obama administration wants to shame the mortgage industry into doing a better job of helping borrowers avoid losing their homes to foreclosure.

By publishing the names of companies that are lagging behind in the government's plan to ease the housing crisis, officials are counting on public outrage to get the industry on track. The Treasury Department today plans to report on the progress of loan servicers - companies that collect mortgage payments - that are in line for up to $50 billion in subsidies.

``We want to go faster," said Michael Barr, the Treasury Department's assistant secretary for financial institutions. ``There are a bunch of servicers that are lacking in performance. They have to lift their game."

When the plan was launched in March, the government said it hoped to help up to 4 million financially distressed homeowners modify their mortgages to lower their payments. As of last week, just 200,000 homeowners were on track to get a modification, and the government has extracted an oral promise to reach 500,000 borrowers by Nov. 1.

Meanwhile, foreclosures are continuing to rise. RealtyTrac Inc. says 1.5 million American households received at least one foreclosure-related notice in the first six months of this year.

``We're losing houses rather than making modifications," said Bruce Dorpalen, director of housing counseling at Acorn Housing Corp., a nonprofit housing group based in Philadelphia. ``The foreclosure train has not stopped."

The 31 participating companies include Bank of America, Citigroup, JPMorgan Chase, and Wells Fargo. They have received billions in federal bailout money and are sensitive about their public image.

But there also are many independent companies involved. Most are secretive about their operations and may be less sensitive to bad publicity.

For much of the industry, ``there's no market value to having a good brand," said Julia Gordon, senior policy counsel at the Center for Responsible Lending, a consumer group.

Housing advocates say the plan has been a big disappointment so far, citing many cases in which companies have not followed the rules. When borrowers are denied, they often are not told why, leading to battles between mortgage companies, housing counselors, and borrowers.

The lending industry asks for patience and more time to get going. The administration rolled out the program's guidelines gradually this year. Much of the program was not finished until mid-May, and the rules were updated again in early July.

###

***Treasury Finds Homeowner Aid Lagging*, National Journal's CongressDaily, August 4, 2009.**

Finance.Bank of America and Wells Fargo got low marks today in the Treasury Department's first monthly report card on the Obama administration's plan to stem the foreclosure crisis. Although both have received billions in federal assistance, Bank of America has modified just 4 percent of its eligible loans, and Wells Fargo 6 percent, theAssociated Pressreported. "We know we've fallen short of our customer service goals in some cases," said Mike Heid, co-president of Wells Fargo's mortgage unit, in a statement. Other big banks did better, as JPMorgan Chase & Co. modified 20 percent of eligible loans and Citigroup Inc. modified 15 percent. According to the report, only 15 percent of the 2.7 million eligible homeowners have been offered assistance. "We think they could have ramped up better, faster, more consistently and done a better job serving borrowers and bringing stabilization to the broader mortgage markets and economy," said Michael Barr, the Treasury Department's assistant secretary for financial institutions. "We expect them to do more."

###

Alan Zibel, *U.S. plays shame game to boost mortgage help*, The Associated Press, August 4, 2009.

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###

Tami Luhby, *Obama mortgage rescue: Only 9% getting help*, CNNMoney.com, August 4, 2009 8:04 AM ET.

The Obama administration's first progress report on its foreclosure prevention plan confirms it is off to a slow start.

Just 9% of delinquent borrowers are in trial modifications so far, the Treasury Department said Tuesday. That translates into 235,247 loans that were at least two months delinquent.

Under fire for the program's rocky start, the Obama administration says it is on pace to help up to four million homeowners over the next three years. The initiative was announced in February and the first institutions to join began accepting applications in April.

Tuesday's report comes a week after the administration called servicers to Washington, D.C., to discuss ramping up the program's implementation after hearing a flood of complaints from borrowers. Officials want to see 500,000 loan modifications under way by Nov. 1.

By releasing the servicers' progress reports, the administration is hoping to hold institutions responsible for their performance. The monthly reports will allow the public to see which institutions are lagging in implementing the plan.

Institutions have extended modification offers to 406,542 troubled borrowers, or 15% of those behind in payments. The bulk of trial modifications have been done by a handful of servicers.

Performance was very uneven among the 38 servicers participating in the program. Saxon Mortgage Services, a subsidiary of Morgan Stanley, led the pack, putting 25% of its delinquent loans into trial modifications, followed by Aurora Loan Services, a subsidiary of Lehman Brothers Bank, with 21%.

GMAC Mortgage, which is partly owned by the federal government, put 20% of its delinquent loans into trial modifications.

Among the major banks, JPMorgan Chase came in first with 20% of late loans in trial modifications, followed by Citigroup with 15%. Wells Fargo and Bank of America lagged with 6% and 5%, respectively.

Servicers contacted acknowledged they need to improve their performance, saying they were committed to the president's foreclosure prevention plan. They also stressed that they were doing many modifications outside of the administration's initiative.

Wells Fargo said it will eliminate its backlog within weeks, attributing it to the time lag between when the government announced the initiative and when it released the guidelines. It did not start modifying loans owned by private investors until the end of June, though it began adjusting loans owned by Fannie Mae and Freddie Mac in April.

The bank soon will be able to send eligible borrowers the trial modification agreement within 48 hours. In a change from past practices, it will enroll homeowners in a preliminary adjustment right away after receiving the initial application if they meet the basic eligibility requirements. During the three-month trial, the servicer will gather additional information to see whether the borrower qualifies for a permanent modification.

The shift should address concerns that the bank is not responding to customers as rapidly as it should, said Mike Heid, co-president of Wells Fargo Home Mortgage, in an interview.

"We set a high bar for ourselves in terms of customer service, and we didn't hit that bar in all cases in the first seven months of this year," said Heid, noting that Wells Fargo added 4,000 employees in its loan workout division this year.

Chase, which said it has another 150,000 applications to process, is in the midst of training an additional 950 workout specialists hired earlier this year. This brings its modification staff to 3,500 people.

"We know we've got more work to do," said Tom Kelly, a Chase spokesman, noting that the bank is pleased with its performance to date.

CitiMortgage, the mortgage arm of Citigroup, has added 1,400 people to its modification team and opened a call center in Tuscon with 800 people dedicated to loss mitigation. The company started putting people in trial modifications in early June and expects the volume to grow.

"In the next quarter, one can expect the pace will be even higher," Sanjiv Das, head of CitiMortgage, said in an interview.

Bank of America also acknowledged it needs to improve its efforts to reach out to those in need, but noted that it accounts for nearly one in four trial modifications offered under the Obama plan. The bank has extended nearly 100,000 offers, though only 28,000 trial modifications are under way.

The bank, which purchased mortgage titan Countrywide Financial last year, has by far the largest number of eligible delinquent loans: nearly 800,000.

Both the Obama administration and the industry are feeling mounting pressure from borrowers who say their servicers are not responding to their calls and applications, losing their paperwork or not making decisions. The financial institutions said they are ramping up their staffing and computer systems to handle the crush of applications.

Treasury officials said they are working with servicers to make sure they can implement the program. In addition to increasing staff and training, servicers must treat borrowers with more respect and respond in a more timely manner, said Michael Barr, assistant Treasury secretary for financial institutions.

"For us, the bottom line is they need to reach the borrowers," Barr said. "We will be requiring ramped-up effort across the board. We expect them to do more."

Moving quickly is important. The number of people falling behind on their payments continues to mount, especially as unemployment rises. Some 1.5 million people fell into foreclosure in the first half of 2009, up 15% from a year ago.

Meeting the criteria

Participation in the program is voluntary, though once an institution agrees to participate, it must offer a trial modification to those who meet the criteria. The 38 participating servicers cover 85% of mortgages.

The loan modification plan allows eligible borrowers who are in or at risk of default to lower their monthly payments to no more than 31% of their pre-tax income through a loan modification. Adjusting the loan must recover more value than foreclosing on the home would for a modification to be offered.

The adjustments are made permanent after the homeowner makes three on-time payments. Homeowners, servicers and mortgage investors receive thousands of dollars in incentive payments in hopes of increasing participation.

So far, the government has committed $20 billion to the effort and has said it would provide $75 billion overall.

###

Halah Touryalai. *Michael Barr the Pitch Man*, Registered Rep, August 1, 2009.

AGE: 43

POSITION: Department of the Treasury's Assistant Secretary for Financial Institutions

LOCATION: Washington, D.C.

EDUCATION: Yale University, B.A., J.D.; Oxford University

Michael Barr, who served as deputy assistant at the Treasury Department under the Clinton administration, is back. In May, President Obama appointed Barr to oversee financial institutions and help Treasury Secretary Timothy Geithner tackle the industry's regulatory overhaul.

Since his appointment, Barr has become a familiar face on Capitol Hill and Wall Street alike. Not only is he developing and coordinating the administration's policies on legislative and regulatory issues affecting financial institutions, Barr has also been presenting these policies to lawmakers. For one thing, he's pushing Congress on the administration's proposals to consolidate the consumer financial protection functions into a single agency. Perhaps more controversial for financial services firms is his effort to sell the idea of harmonized broker/dealer and investment advisor regulation.

Dubbed the Investor Protection Act of 2009, the proposed legislation would give the SEC broad authority to harmonize rules for brokers and investment advisors across the board. Not only that, the proposal would give the SEC power to prohibit "sales practices, conflicts of interest, and compensation schemes for financial intermediaries (including brokers, dealers, and investment advisers) that it deems contrary to the public interest and the interests of investors."

But Barr will have to do plenty of persuading. Skeptics abound. The National Association of Personal Financial Advisors (NAPFA), for instance, says that just because the SEC is given the authority to enforce a fiduciary standard throughout the industry, doesn't mean it will. And the Consumer Federation of America's Travis Plunkett told the House Financial Services Committee last month that there's a chance that the fiduciary standard could be "watered down" by the SEC.

"The devil is in the detail with the word 'harmonization,'" says David Tittsworth, executive director of the Investment Adviser Association. "It's really a huge debate, it's easy to say you're going to do it. What gets complicated is when you try to implement it." "Michael Barr is the point person in the administration as far as these issues go. He's got to help figure it out."

###

Tom Buerkle, *Can Finance Be Fixed?*, Institutional Investor, August 2009.

As the global financial system teetered on the brink of collapse in September 2008, policymakers and regulators around the world responded with unprecedented speed and boldness. They injected hundreds of billions of dollars of capital into financial institutions and extended trillions of dollars worth of debt guarantees, effectively declaring that no more major banks would fail. In addition to those short-term remedies, they promised to undertake sweeping regulatory reforms to tighten control of financial institutions and put an end to the culture of loose credit, lax oversight and distorted incentives that many have blamed for causing the turmoil.

"We need to prevent a crisis like this from ever happening again," Treasury Secretary Timothy Geithner said in unveiling the Obama administration's reform proposals.

But one year after the collapse of Lehman Brothers Holdings, efforts to overhaul the financial system to make it safer and sounder have run into serious trouble. Geithner's draft legislation for strengthening regulation has generated stiff opposition from members of Congress, the financial services industry and even several regulatory agencies since it was introduced in June. The disputes range from matters of turf - should retail products be regulated by a new body, as the administration proposes, or by existing agencies? - to questions of principle, such as whether giving the Federal Reserve Board and its recently renominated chairman, Ben Bernanke, expanded powers to oversee systemic risk and the largest financial institutions will concentrate too much authority in the central bank and compromise its ability to conduct monetary policy.

"I see all the big banks that failed. They were mostly regulated by the Fed," says Senator Richard

Shelby of Alabama, the ranking Republican on the Senate Banking Committee and a leading opponent of an expanded Fed role. "I think the Fed ultimately failed the American people."

A revival of the fortunes of many banks, meanwhile, has emboldened industry opposition to key elements of the proposals, including recommendations to impose significantly higher capital charges on the largest banks. The Obama administration and European Union officials argue that the biggest firms should hold more capital than other banks because their failure can be so costly in terms of public bailouts. As Jacques de Larosi&re, the former French central banker and onetime International Monetary Fund boss who authored an EU report on reforming bank supervision, puts it, "The bigger you are, the more connected you are, the more you pay."

But the Washington-based Institute of International Finance, a lobbying group for major global banks, warns that raising capital ratios too high or too quickly could stifle bank lending at a time when policymakers are seeking an economic rebound. "You could end up taking several percentage points off GDP growth," asserts William Winters, co-CEO of the investment banking division of JPMorgan Chase & Co. and a member of the IIF's board of directors.

In the U.K., industry opposition prompted the country's Financial Services Authority to water down new rules on compensation last month. The FSA, like other regulators, argues that the promise of hefty cash bonuses encouraged bankers to make big bets in search of short-term profits in areas such as subprime mortgages without accounting for the risk that those positions could blow up. The authority's new rules seek to tie pay more closely to risk and ban guaranteed bonuses of more than one year, but the FSA abandoned proposals floated earlier this year to require banks to defer two thirds of bonus payments and link them to company performance. The regulator said it was responding to industry complaints that tougher rules "could have adverse competitive implications for the U.K. as a financial center."

To those who believe that banks' ability to arbitrage among competing regulators contributed to the crisis, the FSA's climb-down on pay was a worrying sign. "I was disappointed to see that they felt they needed to do that," says Sheila Bair, chairman of the Federal Deposit Insurance Corp. (see article, " FDIC's Sheila Bair Affirms Agency's Role "). With Goldman, Sachs & Co. announcing a jump in compensation expenses that could see the average employee's pay more than double this year, to $773,000, and Citigroup seeking an exemption from federal pay guidelines so it can hand a $100 million bonus to commodities trader Andrew Hall, Bair warns that "we are getting back into some bad behaviors" and argues for principles-based rules to link pay to long-term performance and discourage excessive risk-taking.

Many reform advocates are dismayed by what they see as a waning appetite for change. Raghuram Rajan, a professor at the University of Chicago's Booth School of Business who issued prescient warnings about the risks of complex financial products while serving as chief economist of the IMF earlier this decade, says he is "very pessimistic" about the prospects for meaningful reform. He believes that the kind of capital increases officials are proposing fall well short of what's needed. "The crisis was deep, but it seems to have abated enough for the pressure to think creatively to have worn off," he notes.

Says William White, former chief economist of the Bank for International Settlements, the

Basel-based organization that is helping to coordinate global reform efforts, "It is not right to have firms that are too big to fail."& The problem is only getting bigger, he contends, because of the emergence from the crisis of an elite bracket of major firms, led by Goldman Sachs and JPMorgan, and the widespread assumption that governments won't let those firms go bust.

"It's worse now than it was before," White asserts. "We've got a few really dominant firms globally. There doesn't seem to be the political will to attack this head-on."

Government officials on both sides of the Atlantic insist they remain fully commited to a far-reaching regulatory revamp.

U.S. Deputy Treasury Secretary Neal Wolin expresses confidence that Congress will by the end of this year pass a comprehensive bill incorporating the administration's key proposals - including creation of a systemic risk council to monitor systemwide rather than bank-specific dangers, tightening of capital requirements, regulation of derivatives and establishment of new consumer protection rules.

"We want to make sure that we don't go back to business as usual," says Wolin, a former Clinton administration legal adviser and, until January, a top executive at Hartford Financial Services Group.

In Brussels the European Commission plans to issue legislative proposals this fall for establishing a European Systemic Risk Council, establishing legal authority for winding up failed banks and increasing capital requirements for lenders. "There is still quite a determination to put some order in here," says one senior EU official.

And officials are well aware of the need to act as quickly as possible, while the severity of the crisis is fresh in people's minds and political support for fundamental change is strong. "We have to do the reforms properly, but we should not wait," avers Jaime Caruana, general manager of the BIS. "There is now a window of opportunity because of the crisis, and we should take advantage of this window."

U.S. and European authorities are pursuing broadly similar reform plans thanks to intensive cooperation since the outbreak of the crisis. The Financial Stability Forum, a group of top regulators from the major industrial countries that was formed in the late 1990s after the Asian financial crisis, set the reform agenda when it identified the chief causes of the most recent calamity and made recommendations for change in April 2008: Banks were overleveraged and require more capital and closer supervision; compensation should be tied to long-term performance, not short-term profits; the originate-to-distribute system of securitization needs a major overhaul to improve underwriting standards and transparency; credit rating agencies should meet higher standards and eliminate conflicts of interest in advising on and rating structured products; and the industry should standardize over-the-counter derivatives to contain risks.

At a meeting in London this past April, leaders of the Group of 20 nations adopted an action plan that promised to enact most of the FSF's recommendations. The leaders also agreed to extend regulation to all systemically important financial institutions and markets, including hedge funds, and to overhaul regulatory systems to monitor macroprudential risks, or dangers to the entire financial system rather than to a single bank or brokerage firm. In addition, the G-20 expanded the FSF into the Financial Stability Board, with a mandate to coordinate global reform efforts and work with the IMF to provide early warnings of future crises (see article, "IMF Enjoys Newfound Respect").

These reform promises, combined with G-20 pledges to triple the IMF's lending resources to some $1 trillion, have played a key role in restoring confidence in the financial system, policymakers and analysts agree. "The clear message coming out of the London summit was: 'We get it. We get the magnitude of the challenge, and we're going to act. In fact, we'll do whatever it takes,'" says John Lipsky, the Fund's first deputy managing director.

A sharp rally in financial stocks in recent months, driven by a positive reaction to the U.S. Treasury's stress tests of major banks and the early repayment of Federal bailout funds by institutions such as Goldman, JPMorgan and State Street Corp., has encouraged some analysts and investors to believe that the industry, and the economy, are well on the road to recovery. Regulators continue to urge caution, though. It took many years of low interest rates, soaring asset prices and investor underpricing of risk to trigger the credit crisis, and it will take a long time for deleveraging to run its course.

"Anybody who argues that the crisis is over doesn't understand what's been going on for the past ten years," says one European central banker, who spoke on condition of anonymity.

Regulatory reform is a key part of the healing process. The Obama administration's proposals, as well as similar measures unveiled by the U.K. government in July and ones due to be put forward by the EC this autumn, represent a decisive break from the free-market liberalization that had held sway in financial markets since the Reagan administration in the early 1980s. Advocates of reform say that's precisely the point. The financial crisis "followed a period of 15 or 20 years of deregulatory cant where the investor was surely disadvantaged by the power and cohesiveness of business groups that persuaded Congress we were an overregulated society," says former Securities and Exchange Commission chairman Arthur Levitt Jr.

Enacting reforms was never going to be easy. The demand to increase safety and reduce leverage in the financial system sits in open conflict with the political desire to see banks increase their lending to spur the economy. Regulatory agencies and their legislative overseers are eager to protect their turf, a leading reason that the Obama administration declined to propose a consolidation of the SEC and the Commodity Futures Trading Commission. \x{200a}And notwithstanding its tarnished reputation, the financial services industry remains one of the most powerful, well-connected lobbying groups.

"Large banks are useful to the economy and business," Deutsche Bank CEO Josef Ackermann wrote in a recent column in the Financial Times. "As we move forward in our quest to make the global financial system less prone to crises, we would be well advised to bear this in mind."

Such arguments explain why U.S. and European officials early on discarded bolder reform ideas, such as the reimposition of Glass-Steagall barriers between commercial and investment banking or the forced breakup of institutions deemed too big to fail.

Paul Volcker, the former Fed chairman and sometime adviser to President Barack Obama, told a recent gathering of bankers at an IIF conference in Beijing that it was "unwarranted" for banks funded by taxpayer-protected deposits to "be engaged in substantial risk-prone proprietary trading and speculative activities that may also raise questions of virtually unmanageable conflicts of interest."

Similarly, Mervyn King, the governor of the Bank of England, called earlier this year for a public debate on separating the deposit-taking activities of banks from "the casino trading of an investment bank." But key policymakers, led by Geithner and head of the National Economic Council Lawrence Summers, who led the repeal of the Glass-Steagall Act as top Treasury officials in the late '90s, contend that big universal banks are too central to today's financial system to be taken apart. "My ideal world would be the kind where banks take deposits and make loans," says the FDIC's Bair, "but the genie is out of the bottle."

Instead of forcing structural change in the industry, officials are hoping to constrain excessive risk-taking and avert future crises through tighter capital controls and closer supervision. Geithner's reform proposal would apply the strictest capital rules to so-called tier-1 holding companies, or financial firms so big and so interconnected that their failure would pose a threat to the stability of the financial system. In addition, the plan would grant the Federal Reserve expanded powers to supervise those firms.

Officials maintain that the new requirements will be costly and act as a strong disincentive for banks to undertake the kind of leveraged, high-risk activities that led to the financial crisis. "Firms are not going to want to be designated as tier-1 holding companies," says Michael Barr, the Treasury's assistant secretary for financial institutions.

The intention seems clear, but many industry observers question whether regulators will deliver. Most of the new capital rules will be decided not by governments but by the Basel Committee on Banking Supervision, a BIS sister organization. In July the committee published revised rules raising capital requirements for banks' trading activities and off-balance-sheet exposures and laying out guidelines for banking supervisors to adjust capital requirements according to banks' risk management practices.

Supervisors will test the impact of the new rules over the next year and may amend them before they are implemented, by the end of 2010. Earlier this decade big banks took advantage of similar tests to lobby successfully for an easing of the Basel II capital standards, and they have begun taking aim at the new rules.

The banks argue that although the case for individual capital-tightening moves may be sound, the cumulative effect would raise requirements excessively for big banks with broad activities and large trading operations. "The impact is material," says JPMorgan's Winters. The new requirement for securitizations is particularly onerous, he contends, with some banks likely to face capital charges of as much as 100 percent for collateralized debt obligations of asset-backed securities. Such costs, he adds, would effectively snuff out attempts to revive the securitization markets, which policymakers regard as vital to restoring credit for consumers and businesses.

The Basel Committee is also considering measures to require banks to build up capital buffers that can be drawn on to cover losses in a crisis. The aim is to reduce the procyclicality of the current system, which allows banks to operate with relatively little capital in boom times - thereby fueling credit expansion - and then forces them to raise capital sharply during a bust, just when it is most scarce.

The BIS's Caruana led the Bank of Spain in implementing such a system, also known as dynamic provisioning, when he was governor of the central bank in the first half of this decade. Many regulators credit the technique with leaving Spain's big banks relatively untouched by the global crisis. But requiring banks to set aside reserves for loans before any impairment occurs would fly in the face of mark-to-market accounting standards.

So far regulators have refused to project what the net impact of the various rule changes will be on overall capital levels, except to say that increases should be phased in over perhaps three to five years to avoid any diminution of lending in the short term. "We should not overdo it," says Caruana. "We should find the right balance."

Banks currently are required to hold capital equal to 8 percent of their risk-weighted assets, of which half must be core, or equity-type, capital. University of Chicago's Rajan predicts a compromise increase of a couple of percentage points, offering some greater margin of safety but still leaving banks vulnerable to the tail risk of a major crisis. "The levels of capital that would really deal with the problem are just too high to have a profitable industry," he explains.

Just as controversial as the suggested capital requirements is the administration's proposal to put the Federal Reserve in charge of overseeing systemic risk and supervising 20-odd major institutions whose failure could spark a broader financial shock. Some believe that the Fed should be out of consideration because of past mistakes. Senator Shelby criticizes it for inadequate oversight of troubled banks like Citigroup and for its role in leading the bailout of insurance giant American International Group. Senator Christopher Dodd of Connecticut, the Senate Banking Committee chairman, tells II the Fed had an "abysmal performance" in letting the subprime-mortgage industry grow out of control. Both senators say they lean toward giving systemic oversight responsibilities to a council of regulators including members from the SEC, the FDIC, the Fed and other agencies.

Having a systemic regulator is one thing. Having that regulator perform the job effectively is another. So far it remains unclear whether any regulator will be up to the task.

Officials have sketched out broad principles behind so-called macroprudential supervision: Focus on linkages between financial institutions rather than on individual firms, and between financial markets and the economy. Interconnectedness, not sheer size, is the key. But it's far from clear how anyone should use that concept to nip a future crisis in the bud. The fact that regulators failed to spot the systemic risk in AIG's massive portfolio of credit default swaps until it was too late suggests a need for skepticism in any assessment of a regulator's crisis prevention capabilities, acknowledges one European central banker. The Fed, moreover, continues to reject the idea that it should try to restrain the growth of credit or prevent asset-price bubbles from developing, a stance that many analysts believe contributed to the crisis.

Former IMF chief de Larosire acknowledges the skepticism but defends the new approach. "I can't demonstrate that a macroprudential oversight system would have avoided the crisis," he explains. "But what I can say for sure is that the absence of a prudential risk council, and toothless warnings, have done nothing to avoid this crisis."

Much the same could be said for the broader regulatory reform agenda. Investors and taxpayers had better hope that policymakers are making the right choices.

###

Stephanie Armour, *Lenders to step up loan changes; Meeting addresses mortgage program*, USA TODAY, July 29, 2009,

WASHINGTON -- Government officials summoned 25 top mortgage lenders to a meeting on Tuesday where they set a new goal of reaching 500,000 mortgage modifications by November.

The meeting was called to discuss delays and other problems hampering the Obama administration's housing recovery effort.

According to Treasury officials, during the meeting:

*Lenders agreed to significantly increase the rate at which they are performing loan modifications, in which home mortgages are changed so that monthly payments are more affordable.

*Lenders voiced concerns about the system. A suggestion: an online application system.

*Government officials said they will track details such as the average borrower wait time for inquiries.

"The meetings were very positive, very worthwhile," says Scott Talbott of the Financial Services Roundtable. "Everybody is committed to the same goal."

Problems in the mortgage-modification program have included lengthy delays in getting responses to homeowners seeking mortgage modifications.

Progress has been slow. About 1.16 million properties -- or more than 9,400 homes a day -- have received a filing of foreclosure notice from March through June, RealtyTrac says.

Under the program, eligible homeowners can get a modified mortgage from their bank on a trial basis for the first three months. If they make payments on time, the modification goes into full effect.

More than 200,000 trial loan modifications are underway, Treasury said Tuesday. An additional 170,000 offers for modifications have been made.

In August, the government will begin publishing monthly reports about servicers and how many loans they modify.

The meeting was led by Michael Barr, Treasury assistant secretary for financial institutions; Herb Allison, Treasury assistant secretary for financial stability; FHA Commissioner David Stevens; and William Apgar, HUD senior adviser to the secretary.

Some economists say the discussion is a sign that government officials are getting nervous about the plan's lack of progress.

"The Obama plan so far has had problems, and they're putting pressure and arm-twisting on servicers to do more (modifications) quickly," says Mark Zandi at Moody's Economy.com.

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Ruth Simon, *U.S. Effort to Modify Mortgages Falters*, July 28, 2009.

An Obama administration effort to reduce home foreclosures by lowering the mortgage payments of struggling borrowers before they fall behind is failing to help as many people as expected.

Among the problems: Some homeowners are being told they must be behind on their payments to receive help, which runs counter to the aim of the program. In other cases, delays are so long that borrowers who are current on their payments when they ask for a loan modification are delinquent by the time they receive one. There is also confusion about who qualifies.

Administration officials have summoned executives of 25 mortgage-servicing companies to Washington on Tuesday to discuss efforts to help borrowers, both delinquent and at risk. Among the items on the table: what steps the companies should take to increase and speed up modifications.

"We've made good progress," said Assistant Treasury Secretary Michael Barr. "But in our judgment, servicer performance is insufficient" and varies "quite significantly." Helping at-risk borrowers "is one of the items I think we can do better on."

The Obama administration in February laid out its foreclosure-prevention plan to much fanfare. One part of the program provides financial incentives for mortgage-servicing companies to reduce loan payments to affordable levels, not just for people already in trouble but also for those who are at risk of falling behind because of a change in their circumstances.

So far, more than 200,000 borrowers who are delinquent or at risk of default have received trial modifications -- the first step. Administration officials said the modification program could eventually help three million to four million people.

Lisa Sitkin, a staff attorney with Housing and Economic Rights Advocates in Oakland, Calif., said she was pleased when help for at-risk borrowers was announced. "It's disturbing to see that it is several months later and it's still not up and running at any scale that is meaningful," she said.

Mortgage-servicing companies said they were fully committed to the administration's plan.

Bank of America Corp. is only this month beginning to implement the Obama plan for all at-risk borrowers, a company spokeswoman said. Bank of America has been putting such borrowers on a plan that allows them to make a partial mortgage payment for several months and then be considered for a loan modification.

Wells Fargo & Co. didn't begin offering some at-risk borrowers loan modifications under the Obama plan until early June. One issue was that mortgage companies were waiting for final federal guidelines on key issues such as how to determine whether a loan modification is preferable to a foreclosure, said Mary Coffin, head of loan servicing for Wells Fargo Home Mortgage.

"We do realize that the last 90 days have been frustrating," she said. In June, nearly 40% of borrowers seeking a loan modification with Wells weren't yet delinquent, up from nearly 10% at the end of 2008.

Some borrowers say they are being told to stop making loan payments and seek a modification later. Alisha Gorder of Bridgeport, Conn., was referred to Auriton Solutions, a federally approved housing counselor, after she called a mortgage industry hotline because she wasn't getting anywhere with her mortgage company. Ms. Gorder has been struggling to make ends meet because sales have slid at her children's boutique and her husband, Christoph, who runs disaster-relief programs for the nonprofit AmeriCares, had to take a 21% cut in compensation.

"Stop paying on the mortgage since you don't have the resources to cover all your expenses," an Auriton employee said in a letter to Ms. Gorder in mid-July. The letter advised Ms. Gorder to focus on basic living expenses and to follow up with the lender after she had increased her income.

Ms. Gorder said she was stunned. "To be told I should do something to put my family in this risky position doesn't make sense," she said. "I had a lot of faith in the system. For me, it's really shocking and jarring to see that the system doesn't work."

Auriton President Tiff Worley called the letter "poorly worded." But he added that the letter "correctly recognizes that this person has an upside-down budget situation and is still shorting things to her family every month."

Employees at mortgage-servicing companies often tell borrowers they can't be helped if they are current on their loans, said Michael van Zalingen, director of homeownership services for the nonprofit Neighborhood Housing Services of Chicago.

Other borrowers complained of long waits for help. Suzanne DeNick of New Jersey said J.P. Morgan Chase & Co. told her it would take four to six weeks for her modification request to be assigned to an analyst and another 90 to 120 days before she received a decision. The company also asked her to resend her application, further delaying the process.

July was the "last month we have savings to pay our mortgage," she said.

A J.P. Morgan spokeswoman acknowledged "that the process took more than our typical time frame," but added that "it took some time for us to receive a completed and signed paperwork package from the borrower." Once paperwork is complete, it typically takes 30 to 60 days to determine whether a modification is possible, she said.

Meanwhile, there's plenty of confusion about just who is eligible for help. "Given widespread public mis-expectations, a significant percentage of borrowers seeking Home Affordable modifications under the imminent-default provisions will not qualify," said a Bank of America spokeswoman.

Mortgage companies say that to be considered at risk of imminent default, borrowers must typically have liquid reserves that amount to less than three months of mortgage-related payments and, after figuring in expenses, a few hundred dollars or less left at the end of each month.

###

Cheyenne Hopkins, *Obama Plan Would give Fed Seat on FDIC* Board, American Banker, July 24, 2009.

WASHINGTON — The Federal Reserve Board would get the fifth seat on the Federal Deposit Insurance Corp.'s board under legislative language submitted Thursday to Capitol Hill by the Obama administration.

The move would hand the central bank even more power under the Treasury Department's regulatory restructuring plan, which has also included calls to give the Fed systemic risk oversight and enhanced supervision of bank holding companies.

It would also give it partial control over an agency with which it has historically feuded. In recent years, the FDIC and the Fed have clashed over Basel II capital standards and other key issues.

Industry representatives were quick to point out problems with the plan, saying the Fed should not be able to interfere with the workings of the FDIC.

"Having the Fed on the FDIC board is a bad, bad, bad idea," said Camden Fine, president of the Independent Community Bankers of America. "Giving the Fed a vote on the FDIC board would be like giving a loan customer a vote on the bank credit committee. It is blatant conflict of interest."

William Isaac, a former chairman of the FDIC, said Congress should never have put two other agencies, the Office of the Comptroller of the Currency and the Office of Thrift Supervision, on the FDIC board to begin with.

"Having other agencies on the FDIC board can present big problems when there are vacancies among the appointed members as there were during the first couple of years of the Clinton administration," he said.

But Ricki Tigert Helfer, a former FDIC chairman who was a senior attorney at the Fed, did not see the harm in having the Fed on the FDIC board.

"I believe it actually could be very useful to have all the regulators represented on the FDIC board, particularly because the FDIC has been called upon to participate much more dramatically than ever before in addressing the problems of this financial crisis," she said.

Observers said the Fed was previously not added to the FDIC board because of fears there would be a conflict of interest given the central bank's monetary policy responsibilities. But Michael Barr, Treasury assistant secretary for financial institutions, said Thursday that was no longer a concern.

"We don't view the Federal Reserve's role in banking supervision as inconsistent with its role with monetary policy and so by extension we would not view it as conflict for them to be a member of the board of the FDIC," he said.

Treasury argued that it was simply trying to fill a seat left open by the proposed elimination of the OTS. Other existing regulators, like the Securities and Exchange Commission or the Federal Housing Finance Agency, are not relevant to the FDIC's mission. Treasury did not want to leave a four-member board (it includes the chairman of the FDIC and two outside directors) because it would be easily deadlocked.

But observers detected other motives.

"I would be surprised if it's solely about numbers of seats on the board," said David Nason, a managing director at Promontory Financial group and a former Treasury assistant secretary for financial institutions. "I would guess that the administration is trying to achieve more than that."

The proposal was one of several new details contained in the legislative language that detailed parts of the regulatory restructuring plan.

Treasury provided legislative language Wednesday on its plan to give the Fed systemic risk oversight, and detailed Thursday how it would merge the OTS and OCC.

The plan included details on ways to standardize banks' exam fees. Currently, banks can pay radically different rates depending on if they have a state or federal charter because state-chartered banks are not charged for their federal supervision by the Fed or FDIC.

Under the Obama plan, regulators would be required to ensure that all banks over $10 billion in assets will pay "bank examination fees regardless of charter based on their size, complexity and financial condition," according to a summary of the language.

The administration said that for banks below that level, national bank fees "cannot be higher than the average charged by states for banks of similar size."

The Treasury said such a move would effectively lower bank fees for many community banks and emphasized that there would be no basis to raise fees for state-chartered community banks.

While the Obama administration's plan would call for the elimination of the federal thrift charter, the legislative details finally spelled out the fate of state thrifts. Under the plan, state thrifts would continue to exist, as would all mutuals.

State thrifts would be regulated by the FDIC, while mutuals would be designated national mutuals and regulated by the enhanced OCC.

Thrift advocates had championed mutuals as a reason to keep the charter, but Diane Casey-Landry, chief operating officer and senior executive vice president for the American Bankers Association, said she was not satisfied with the concession.

"It's not sufficient by just moving mutuals over to the federal mutual charter you also have state chartered mutuals so it kind of suggests to me a lack of understanding of mutuality," she said. "What are they going to do with the mutual holding companies? It's obviously going to raise some questions in terms of the future of the mutual holding company."

Treasury officials said the proposal would effectively end charter shopping.

"They would be required to work through and be regulated by the other federal regulators to minimize charter shopping," said Barr.

###

Bill Swindell, ***Draft Legislation Would Consolidate Agencies, Affect Fees, National Journal's COngressDaily, July 24, 2009.***

Small banks would pay lower assessment fees under an Obama administration draft bill released Thursday that also would consolidate banking agencies as well as provide a resolution authority to unwind large firms that are too big to fail.

National banks with less than $10 billion in assets under the measure would not be charged higher fees than the average charged by state regulators for banks of similar size.

Assistant Treasury Secretary Michael Barr said the change would result in lower regulatory fees for many community banks. He added that he did not expect the Federal Reserve or the FDIC to impose new fees.

Larger institutions, however, could see their fees go up under the draft. It would require the Fed, FDIC and a proposed National Banking Supervisor to adopt joint rules on fees for banks with more than $10 billion in assets, providing no breaks depending on charter, size or financial condition. Obama officials said the change would eliminate institutions from forum-shopping for the weaker regulator.

"Large banks pay significantly larger bank examination fees ... to take account of their size, risk and financial conditions -- and that smaller community banks that haven't really been the heart of the current crisis will see lower fees," Barr said.

The draft also would merge the Office of the Comptroller of the Currency and the Office of Thrift Supervision into the proposed National Banking Supervisor and eliminate the thrift charter and make mutual saving banks switch from a thrift charter to a mutual bank charter. The move is opposed by the American Bankers Association, which contends that the approximately 800 thrift-chartered institutions play a crucial role in communities, especially in providing home mortgages during a housing downfall.

The OTS has been on politically shaky ground as the regulator of such notable thrift failures as Washington Mutual, Countrywide Financial, IndyMac Bank and entities operated by American International Group.

"We don't think eliminating the thrift charter is a cure for any of the wrongs that have caused the problems of the crisis that has occurred," said Diane Casey-Landry, chief operating officer for the ABA. "If you look at failures across the board, you have had more state-chartered banks as well as national banks fail as thrifts. The proposal also reflects a lack of understanding of what a mutual is." House Financial Services ChairmanBarney Franksaid he would keep the thrift charter in his bill.

The draft bill also would establish a resolution authority to take over large systemically significant failed firms, unwind their assets, and get them back into the private market, just like the FDIC does for banks. To take over such a firm, it would require a two-thirds vote by the Federal Reserve Board and the Board of the FDIC or the SEC, as well as the approval of Treasury.

The holding companies would be required to have more conservative capital standards to cover unanticipated losses for the resolution. In addition, Treasury would be granted the authority to provide a line of credit to the failed firms. The credit would be later repaid after the firm was placed back into the private market. Such an approach might trigger opposition among lawmakers who argue it would be too much like a bailout activity.

Deputy Treasury Secretary Neil Wolin said the administration did not want to create a FDIC insurance fund for such entities. "We expect this regimen will be used rarely," Wolin said.

###

Ronald D. Orol, *Obama sends Congress plan to unwind problem banks*, MarketWatch, July 23, 2009 4:44 PM ET.

WASHINGTON (MarketWatch) - Facing opposition to key parts of its bank regulatory reform package, the Obama administration on Thursday submitted a detailed proposal to Congress for unwinding systemically significant financial institutions so their collapse does not cause collateral damage to the financial system.

The proposal, which also included more details about the White House's plan to subsume the Office of Thrift Supervision into a larger national bank regulator, would give the Securities and Exchange Commission authority to administer the resolution of a large financial institution that operates a broker-dealer within it.

The proposal, which is based on a broader administration proposal released in June, follows measures released by the White House in recent weeks that would impose new rules for a systemic regulator, credit rating agencies, hedge funds, buyout shops, along with additional restrictions on executive compensation. The proposal will be considered by Congress as it works on writing legislation based, in part, on the proposals.

Key lawmakers, including House Financial Services Chairman Barney Frank, D-Mass., and Senate Banking Committee Chairman Christopher Dodd, D-Conn., will consider the proposal as they draft legislation responding to the financial crisis.

The proposal calls for the OTS, which regulates thrifts and savings and loan banks, to be consolidated into the Office of the Comptroller of the Currency, which has traditionally been responsible for overseeing regional and national commercial banks.

The consolidation would seek to end the practice by financial institutions of seeking to escape meaningful regulation by acquiring a thrift and organizing the institution as a unitary thrift holding company.

Critics argue that American International Group Inc. (AIG) avoided the kind of more thorough supervision that comes if it had been required to register with the OCC.

"This consolidation will also eliminate the thrift charter and thrift holding company framework and remove one of the central sources of arbitrage in the bank regulatory system," according to a Treasury statement.

The White House proposal also seeks to harmonize regulatory fees among agencies to make it less likely a bank will seek to escape meaningful regulation.

A new area of the proposal, which was not provided in the June white paper, would require that the FDIC, the National Bank Supervisor, which would be made up of the OTS and the OCC, to jointly write rules to harmonize fees. Banks with over $10 billion in assets would pay bank examination fees regardless of their charter, size or complexity, according to the proposal.

Seeking to assist community and national retail banks, which many consider victims of the financial crisis, the proposal recommends that fees on national banks with less than $10 billion in assets cannot be higher than the average charged by states for banks of a similar size.

"Fees between banks are equalized," said Treasury Assistant Secretary Michael Barr. "Large banks would pay significantly larger examination fees to take into account their larger systemically interconnected nature and smaller community banks pay fewer fees. This will lower the effective fees on community banks."

Resolution time

The proposal also would establish a process to resolve large insolvent systemically significant financial institutions in a way that their collapse does not cause collateral damage to the financial markets.

The goal would be to pay off counterparties to deter any such damage arising in the markets. The proposal said the mechanism would be modeled after the Federal Deposit Insurance Corp.'s approach to dismantling insolvent smaller banks, but it would be for larger systemically significant financial institutions.

It would give the Treasury the authority to appoint either the Securities and Exchange Commission or the Federal Deposit Insurance Corp. to administer the resolution depending on whether the insolvent institution fell into their jurisdiction. The SEC could be responsible for administering the resolution of investment banks with broker-dealer divisions.

However, the Treasury department's proposal for funding the cash infusions to counterparties to the collapsing institution is at odds with ideas suggested by key regulators including FDIC Chairwoman Sheila Bair.

Treasury deputy secretary Neal Wolin proposed a system where taxpayer dollars would be used to fund the payments to counterparties and financial institutions would be required to cover those costs in the form of a one-time fee collected some time after an institution's collapse.

But Bair said Wednesday that she envisions a system where systemically significant institutions, including large investment banks, hedge funds and private-equity firms would periodically pay upfront fees to fund a pool of capital that would be reserved to pay off counterparties of an insolvent, failing institution so the collapse does not cripple the markets. The up front fee approach is supported by a number of lawmakers and other observers.

However Wolin said the decision to propose having the assessment take place after a large institution becomes insolvent, rather than before, was made because having a pool of funds available through a periodic fee structure could make it more likely that a regulator would seek to use them.

"We wanted to make sure this wasn't a pool of money available for use all the time," Wolin said. "We set some high bars that would have to be met before the resolution authority could be exercised. It would make sense not to have a pool of money available for something that would be rare to use and hard to trigger."

He added that the White House envisions that this resolution would not be a form of insurance the way the FDIC insures depositors through fees on retail banks.

Government funds would be made available to resolve an insolvent mega-institution if the Treasury Secretary, the president and two-thirds of both the Federal Reserve Board and the FDIC board approved the action.

###

Damian Paletta, *Treasury Proposes Putting a Fed Official on the FDIC's Board*, The Wall Street Journal's Real Time Economics blog, July 23, 2009 4:09 PM ET.

The **Treasury Department** inserted a potentially explosive provision in legislative language it sent to Capitol Hill on Thursday as it detailed its plan to reshuffle the authority of federal bank regulators.

Because Treasury's plan would consolidate the **Office of Thrift Supervision** and the **Office of the Comptroller of the Currency** into a new regulator known as the **National Bank Supervisor**, Treasury had to come up with another entity to sit on the **Federal Deposit Insurance Corp.**'s five-member board (the head of the OTS and the OCC currently occupy two of the FDIC's five board seats).

Who did Treasury officials pick for the fifth seat? The **Federal Reserve**.

The reason is it potentially explosive is because the FDIC and Fed are both proudly (or frustratingly, depending on who you ask) independent, and they clashed several times last year over how best to manage the financial crisis. It could also make things sort of interesting, especially if there is a systemic risk council that includes the FDIC advising the Fed and then the FDIC's own board including the Fed.

It could also make for other interesting cases. If the FDIC wants to extend extreme assistance to a large, flailing bank, it must have a vote of its board (which would include someone from the Fed), then a vote of the Fed's board (which would presumably include the same person), and then the recommendation from the Treasury Secretary.

"We would not view it as a conflict for [the Fed] to be" a member of the FDIC's board, Treasury assistant secretary **Michael Barr** said on a press call Thursday.

###

Alistair Barr, *Moody's falls on news Buffett firm sold stock*, MarketWatch, July 23, 2009 2:24 PM ET.

NEW YORK (MarketWatch) -- Shares of Moody's Corp. slipped 4% on Thursday after National Indemnity, an insurer owned by Warren Buffett's Berkshire Hathaway, reported that it sold almost 8 million shares of the rating agency this week.

National Indemnity sold the stock in the open market at prices ranging from $26.6425 to $28.7269, according to a regulatory filing late Wednesday.

Berkshire Hathaway (BRK.A) (BRKB) still owns more than 16% of Moody's outstanding shares, according to the filing.

Buffett is known as a long-term investor and rarely sells. So when Berkshire cuts a position, other investors take note.

"Until Mr. Buffett clarifies his outlook for Moody's through either word or deed, there will be that much more pressure on the incremental Moody's buyer to stay on the sidelines and that much more encouragement for the incremental short seller who can understandably speculate that Berkshire's remaining 40 million shares now constitute an overhang," William Blair and Co. analyst John Neff said.

Neff cut his rating for Moody's shares to market perform after the news.

In late May, David Einhorn, head of hedge-fund firm Greenlight Capital, called AAA credit ratings a curse and said he is shorting, or betting against, Moody's shares.

Rating agencies like Moody's have generated huge profits over the years, partly because they have few rivals and their ratings are an established part of some institutional investment strategies and are even embedded in laws. For instance, some institutions have to sell holdings if leading rating agencies downgrade the securities below investment grade.

Einhorn called for regulators to eliminate the formal credit rating system in May, arguing such a move would improve the stability of the financial system.

"Nobody I know buys or uses Moody's credit ratings because they believe in the brand," Einhorn said, according to a transcript of a speech he gave in late May. "They use it because it is part of a government created oligopoly and, often, because they are required to by law."

Indeed, Buffett has said that investors should do their own homework, rather than relying on ratings.

Earlier this year, Moody's Investors Services cut Berkshire's AAA rating. Buffett said in May that the downgrade irritated him, but added that it wouldn't have a material effect on the company's performance.

A Berkshire representative said Thursday that she would pass on a request for comment to Buffett. Einhorn declined to comment.

Moody's shares were down 4.1% at $25.44 in afternoon action on Thursday. The stock had slumped more than 10% earlier in the day.

Rating agencies have come under stinging criticism for their role in the financial crisis, in part because many of the leading firms gave AAA ratings -- the highest mark available -- to mortgage securities that plunged in value.

Key agencies under scrutiny along with Moody's (MCO) include Standard & Poor's, a unit of McGraw-Hill (MHP) , and Fitch Ratings Inc., a unit of Fimalac (FIM) .

It's hard to know why Buffett reduced Berkshire's stake in Moody's, according to Justin Fuller, editor of Web site Buffettologist.com and a partner at Midway Capital Research & Management LLC.

"He could be looking for ways to raise cash for other investments," Fuller said. "Or he may be worried about Moody's from a reputational perspective or from a profitability perspective."

Moody's reputation has been "battered brutally" by the financial crisis, while the company will be less profitable because of the decline in the market for structured products like collateralized debt obligations, Fuller explained.

Legislators and regulators have recently unveiled plans to clamp down on ratings agencies.

The Securities and Exchange Commission will propose new rules later this summer, including a requirement that companies disclose "pre-ratings" obtained from rating agencies before a rating firm is actually selected to conduct a rating, the head of the SEC said Wednesday.

A day earlier, the Obama administration unveiled other plans to curb rating agencies. A central feature of the White House proposal would bar agencies from doing consulting work for the companies they rate.

"We are trying to make the system less fragile in the future. We had a failure of our system of regulation to provide the rules of the road, and credit rating agencies were a critical part of that failure," Michael Barr, assistant Treasury secretary for financial institutions said on Tuesday.

###

Bill Swindell, *Frank Downplays Democrats' Derivatives Differences*, National Journal's CongressDaily, July 23, 2009.

House Financial Services ChairmanBarney Franksaid Wednesday he believes differences between Democrats over further regulation of the derivatives market is slight and should not interfere in passing legislation.

Frank noted during a panel hearing that "there will be some disagreements I believe at the edges," but they are outweighed by a general agreement to bring curbs on trading practices that were blamed for the downfall of American International Group -- especially in the over-the-counter market, where there is no central exchange or clearinghouse and only agreements between parties.

Frank is working with House Agriculture ChairmanCollin Petersonon such legislation to increase further regulation of the multitrillion-dollar derivatives market, where companies can use such products to hedge against interest rate spikes, currency fluctuations as well as speculative traders looking to boost profits.

Frank wants to ban "naked" credit default swaps, where the seller does not own the underlying product. "Activities whose major justification is that they make a profit for some entity unconnected to that [trading] function are not going to be well received by us," Frank said during the hearing that featured testimony by SEC Chairwoman Mary Schapiro and Commodity Futures Trading Commission Chairman Gary Gensler.

A bill by Rep.Michael McMahon, D-N.Y., and backed by the New Democrat Coalition would allow such naked swaps, a position shared by Treasury Secretary Geithner. One New Democrat, Rep.Melissa Bean, D-Ill., said there will likely be discussions on the issue, including the possibility of allowing naked swaps to market makers, which are firms that are readily available to buy and sell a particular stock. Such market makers could provide needed liquidity to the OTC market, Bean said.

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The McMahon bill would create an Office of Derivatives Supervision within the Treasury Department to settle disputes among the CFTC and SEC on regulations. Frank and Peterson are exploring establishing a coordinating council. Bean cautioned that the McMahon language could end up being a placeholder and that final legislation could give such authority to an advisory council of regulators to be created under the regulatory restructuring package.

On another matter, Frank said he agreed with the SEC that hedge fund advisers should be registered with the agency rather than requiring the registration of funds because it would be easier legislatively. "It would give us everything we need ... in terms [of] registration, inspection ability," Schapiro said. Frank said it did not make a lot of sense to require hedge funds to register as investment companies under the Investment Company Act of 1940 and then try to exempt them from some of the requirements to tailor it to the needs of private pools of capital. "We need to get it right in the first place," Frank said.

Additionally, the Treasury Department sent a draft bill to Congress that would give the Federal Reserve the authority to be the top regulator to monitor systemic risk throughout the financial system -- a proposal met with skepticism by Republicans and some Democrats. "We are pounding out the legislation every day. We are sending it up to the Hill as soon as we are sure it is right," said Assistant Treasury Secretary Michael Barr. Barr added that Treasury will soon release language on creating a resolution authority for failed nonbank firms as well as derivatives oversight.

###

Damian Paletta, *Doubts Slow Financial Regulation Overhaul on Capitol Hill*, The Wall Street Journal, July 22, 2009.

WASHINGTON -- The Obama administration's effort to swiftly overhaul supervision of financial markets is running into trouble on Capitol Hill, with some Democrats balking at key elements of the plan.

Democrats are unsure they can muster enough votes to support the administration's plan to create a new consumer-products regulator, and expand the powers of the Federal Reserve. On Tuesday, Massachusetts Democratic Rep. Barney Frank, who chairs the House Financial Service Committee, delayed until September a vote on a regulator to oversee consumer products, such as mortgages and credit cards.

The administration plans an aggressive effort to rebuild support for the overhaul, including a series of public speeches intended to remind lawmakers why the efforts must move forward.

"We're very much in the thick of this, and it's an all-out push on a number of fronts," Treasury assistant secretary Michael Barr said.

Treasury Deputy Secretary Neal Wolin will try to sell parts of the plan on Wednesday to a group of bank executives in Washington. Administration officials also hope to release draft legislation outlining how their plan would consolidate supervision, and increase oversight of large institutions. Treasury Secretary Timothy Geithner is expected to try and sell the proposal on Friday to Mr. Frank's committee, where the reception has been lukewarm.

Treasury's efforts come as several members of Congress have grown more critical of the plan. Some Democratic senators, including Virginia Sen. Mark Warner, have questioned whether the Fed should be given more power.

Lawmakers have also complained that the package is too complex, and hasn't been adequately vetted. The delay announced by Rep. Frank is significant because it could push back other votes on the proposal.

Lawmakers are "simply overwhelmed," Rep. Spencer Bachus (R., Ala.) said at a hearing Tuesday. The "proposals are complex," and the "ramifications are hard to gauge," he said.

Obama administration officials are concerned that chances for reform will fade as the economy recovers. Senate Banking Committee Chairman Christopher Dodd (D., Conn.) said he was still "very optimistic" this could get done by the end of the year.

"The administration has a very bold plan," Sen. Dodd said. "It's clearly one that needs more work."

The regulatory-reform proposal is the latest effort by the administration to run into trouble in Washington. President Barack Obama's health-care push is also facing resistance from lawmakers in both parties who are concerned about the plan's costs.

In June, President Obama proposed sweeping new rules for financial markets, pushing tougher federal standards for issues such as executive compensation, credit-rating agencies and consumer protection. It would also empower the government to take over and break up large financial institutions, and create a new national bank regulator after closing down the Office of Thrift Supervision.

The proposal would have ramifications for financial institutions of all sizes, though it could have a bigger impact on the operations of large firms, such as Bank of America Corp., J.P. Morgan Chase & Co., Citigroup Inc. and Wells Fargo & Co., by requiring higher reserve requirements and intensifying oversight of credit they extend.

The lack of a key lawmaker who embraces the entire package poses a problem for the administration. Rep. Frank and Sen. Dodd support only parts of the plan. There is also discord within the government, as top officials from the Fed and Federal Deposit Insurance Corp. have questioned parts of the proposal.

Many critics say it would overwhelm the financial sector with regulation, stifle innovation and create so much bureaucracy that it could become nearly impossible for consumers to access credit. The drumbeat of criticism has frustrated supporters who say there is only a short window for Congress to adopt major changes.

"We're missing a tremendous opportunity to do some good," said John Taylor, president of the National Community Reinvestment Coalition, who supports tough consumer-protection rules. "It's all very disappointing."

—Dan Fitzpatrick contributed to this article.

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Stacy Kaper, *Frank Gives Allies Shot to Rally for New Consumer Agency*, American Banker, July 22, 2009.

WASHINGTON — House Financial Services Committee Chairman Barney Frank said Tuesday that he will postpone next week's planned vote on legislation to create a consumer protection agency until after the August recess.

The delay was due in part to the panel's busy schedule, but committee officials also said they wanted to give consumer groups more time to respond to lobbying by the banking industry, which is opposed to the bill. Industry lobbyists said this week that their arguments to curb the powers of a new agency were gaining traction.

Steve Adamske, a spokesman for Frank, said consumer groups needed time to respond to industry arguments against the new agency and efforts to limit its authority.

"Consumer groups and advocates have planned a ground campaign in August and we want to give them time to preserve this agency," Adamske said. The goal is to allow lawmakers more time to "hear from their constituents," he said.

"The Wall Street lobbyists have been heavily lobbying against this, but that's only telling one side of the story," he said.

John Taylor, the president of the National Community Reinvestment Coalition, said it was clear the banking industry was going all out to stop the agency.

"Every time I go up there I'm tripping over blue-suited lobbyists representing the banks. All the banking lobbyists are up there all over the place," he said. "They still have pull. It's the best Congress that money can buy as it relates to the Financial Services Committee."

Consumer groups are already beginning to fight back. Americans for Financial Reform has scheduled a press conference for Wednesday on the need for a new consumer protection agency. Frank and other top committee Democrats are scheduled to attend.

Administration officials also said they remain confident that the bill will eventually pass.

"I think the prospects for our package of reforms, including the consumer protection agency, are strong," said Michael Barr, the Treasury Department's assistant secretary for financial institutions, during a conference call. "I think we have an enormous amount of support, but we are obviously mindful of the chairman's desire to run the process in the way he thinks is most effective and that's what he's doing. But we have 100% confidence in him and in the process."

Frank announced the delay as a hearing with Federal Reserve Board Chairman Ben Bernanke got under way.

The Massachusetts Democrat said he would delay a vote until next week on a bill to set limits on executive compensation. As a result, he said, the consumer protection bill would have to be put off until September.

"When I set the schedule, I was aware it was on the heavy side," Frank said.

The schedule has been altered several times this month and congressional staff and industry lobbyists speculated that the delay on the consumer protection agency was more than just a scheduling issue.

They attributed it to a series of unresolved issues and a push by some members, including many Republicans, to slow the pace.

"I believe that slowing down the process would be in the best interest" of the committee, said Rep. Spencer Bachus of Alabama, the panel's senior Republican.

The concept of breaking off consumer protection from prudential supervision and housing it in a separate agency has emerged as one of the most contentious parts of the administration's regulatory reform plan.

Under the bill, banking regulators would lose the power to write and enforce consumer protection rules, which would fall to the new agency. It would also gut federal preemption by allowing states to set higher standards and enforce federal and state laws against both national and state banks.

The legislation was introduced by Frank with a handful of Democratic co-sponsors July 8, but it instantly became clear that many issues about how the agency would function had been left largely unresolved.

Rep. Paul Kanjorski of Pennsylvania, the panel's No. 2 Democrat, has argued the committee should take more time to consider the legislation.

"It's hard to just stand still and say we've thought all these things out and we can see how they come together," Kanjorski said in an interview early this month. "I don't think anybody has totally and I think that's our job before we go ahead and act."

Several outstanding questions include the agency's cost, how it will be funded, what enforcement authority it will have over banks and nonbanks and how conflicts with the banking regulators would be resolved.

The Financial Services Committee has an aggressive agenda, scheduling at least one hearing nearly every day this month, and briefings on a range of regulatory reform and other issues. In addition to the hearing with Bernanke, the panel also held a hearing Tuesday on institutions deemed too big to fail. It is scheduled to hold a regulatory reform hearing on Friday with Treasury Secretary Tim Geithner and the heads of the banking agencies.

The consumer financial protection agency is the latest piece of regulatory modernization to be pushed on the fast track and then delayed.

On March 18, after outrage erupted over bonuses paid to employees of American International Group, President Obama announced that he was asking Congress to expedite legislation that would provide regulators with resolution authority to unwind systemically risky bank holding companies and nonbank financial players like investment banks.

For weeks, both Frank and Senate Banking Committee Chairman Chris Dodd discussed the idea of rushing though such legislation. But the legislation was complicated by cost, and the power to unwind a firm appeared too intertwined with how best to regulate these systemically risky companies, which is significantly more controversial.

###

Lynn Hume, *Regulation: Treasury Offers Ratings Legislation*, The Bond Buyer, July 22, 2009.

WASHINGTON - The Treasury Department yesterday sent Congress draft legislation designed to strengthen federal oversight of credit rating agencies, mitigate conflicts of interest, increase the transparency of the ratings process and reduce investor reliance on ratings.

Sources said House Financial Services Committee chairman Barney Frank, D-Mass., will consider adding to the measure legislation he introduced earlier this year that would require the rating agencies to rate municipal bonds more similarly to corporate debt, based only on the likelihood of timely repayment to investors.

Michael Barr, Treasury assistant secretary for financial institutions, told reporters during a briefing that the department consulted extensively with the Securities and Exchange Commission on the draft legislation and that the Obama administration also strongly supports pending SEC rule changes for the rating agencies.

The administration's bill would require all credit rating agencies to register with the SEC and would establish a dedicated office within the commission to supervise the agencies. It calls for the SEC to require each rating agency to document its policies and procedures for determining ratings and mandates the commission to examine each rating agency's internal controls, due diligence and implementation of rating methodologies.

To minimize conflicts of interest, the legislation would bar rating agencies from consulting with any company they rate and would prohibit or require the disclosure and management of conflicts resulting from fees paid, business relationships, or affiliations.

Each rating agency would have to disclose the fees paid by an issuer for a rating as well as the total amount of fees the issuer paid to the agency during the previous two years. In addition, under a draft "look-back" provision, if a rating agency employee was hired by an issuer the rater would have to review all of its ratings for the issuer to ensure there was no undue influence on them.

Asked if the Treasury considered other models than the one where the issuer pays, Barr said yes, but that the department found each had potential conflicts of interest. If an investor paid for ratings, it would not want the rating agencies to lower the ratings of any securities it had purchased, he said.

The draft legislation would try to deter issuers from shopping for preferred ratings by requiring them to disclose all preliminary ratings they obtain from different rating agencies. In addition, the legislation would require rating agencies to issue reports with ratings assessing the reliability of the data, the probability of default, the estimated severity of loss in the event of default, and the sensitivity of the rating to changes in assumptions. Raters also would have to come up with different symbols for structured products that would distinguish them from other securities, such as corporate bonds.

Barr stressed that the administration is not proposing to change the substantive methodology of the ratings process, only increase its transparency.

To reduce reliance on the rating agencies, the legislation would require the Treasury, SEC and President's Working Group on Financial Markets to determine where references to ratings can be removed from federal regulations. The draft bill also would require the Government Accountability Office to study and issue a report on the reliance on ratings in federal and state regulations.

Barr noted that the SEC's proposed changes to money market fund rules asks for public comments on how to reduce the reliance on ratings in the rules.

Asked why the administration did not propose allowing investors to sue the rating agencies, Barr said it did not want to "overly inflate the role of the credit rating agencies" and encourage "blind faith" in their ratings.

Andrew Ackerman contributed to this story.

###

***Tighter credit ratings sought,* Associated Press, July 22, 2009.**

WASHINGTON - The Obama administration yesterday sent the US Congress legislation seeking to tighten government oversight of Wall Street's credit rating agencies and stem potential conflicts of interest in their business practices to protect investors.

The plan also seeks to reduce reliance on an industry widely criticized for failing to give investors adequate warning of the risks in subprime mortgage securities that triggered the financial crisis.

The legislative proposal is meant to bring greater transparency to the rating agencies and would bolster the authority of the Securities and Exchange Commission over them. Now voluntary, registration would be made mandatory for all agencies large and small.

Investor advocates and other critics maintain that conflicts of interest can arise under the current system when companies that issue securities - as opposed to investors - pay the agencies for ratings.

Assistant Treasury Secretary Michael Barr said the proposal would not force agencies to change how they come up with ratings, but would improve ``transparency and disclosure'' surrounding existing methods.

The proposal is the latest in a series rolled out in recent weeks by the Treasury Department as part of the administration's sweeping plan for overhauling the US financial rule system to help avert another meltdown.

Several lawmakers also have proposed stiffer federal supervision of the $5 billion-a-year industry dominated by McGraw-Hill Cos. Standard & Poor's, Moody's Investors Service, and Fitch Ratings.

The agencies are crucial financial gatekeepers, issuing ratings on the creditworthiness of public companies and securities.

Their grades can be key factors in determining a company's ability to raise or borrow money, and at what cost, and which securities will be purchased by banks, mutual funds, state pension funds, or local governments.

###

Charlene Carter, *White House Outlines Plans for Oversight of "Too Big to Fail" Firms,* CongressNow, July 22, 2009.

A proposal to increase oversight of financial firms whose failure could pose a risk to the economy is the latest legislative outline the White House has delivered to Congress as part of its comprehensive financial regulatory overhaul package.

Under the plan sent to Capitol Hill this afternoon, firms that pose a threat to the economy's financial stability because of their size, leverage and interconnectedness to the financial system would be labeled as "Tier 1" firms and subject to consolidated supervision and regulation.

On a conference call this afternoon, Michael Barr, assistant secretary for financial institutions at the Treasury Department, said the goal is to create disincentives for firms to grow too large or connected that they pose stability threats to the economy. Those firms, he said, would fall under stricter and more conservative prudential standards - including higher capital, liquidity and risk management requirements.

"Firms aren't going to want to be labeled as Tier 1," Barr said. "They will face more scrutiny."

Tier 1 firms would be required to prepare and maintain plans to quickly dissolve themselves in the event of severe financial distress. The legislation also would raise the minimum capital standards for all financial firms, regardless of a Tier 1 designation.

Barr said the administration's latest legislative proposal also would close gaps and loopholes in the Bank Holding Company Act to "block regulatory arbitrage" preventing firms from organizing themselves in ways to avoid supervision. The proposal also would give the Securities and Exchange Commission and other banking regulators authority to craft regulations to require a 5 percent risk retention rule for companies investing in asset-backed securities.

Later this week, the administration is expected to send to Congress a legislative proposal that would give an entity authority to wind down failing financial firms and also outline plans to merge the Office of the Comptroller of the Currency and the Office of Thrift Supervision to create a national banking supervisor.

Barr said the White House would wrap up its legislative proposals before lawmakers adjourn for its summer recess. The last piece of its comprehensive plan will address regulation of the derivatives market.

"We are pounding out the legislation everyday," Barr said. "We are sending it to the Hill as soon as we are sure it's right."

Barr dismissed concerns that the timeline for their regulatory plans could be delayed beyond the end-of-the-year deadline set by President Barack Obama.

"We're working with a strong set of chairmen," Barr said. "They can get it enacted in a timely fashion."

Congressional consideration of the proposals will come in the fall when lawmakers return. Although House Financial Services Chairman Barney Frank (D-Mass.) has abandoned plans to push a consumer financial protection agency proposal through his committee before lawmakers break for the rest of the summer, he said executive compensation legislation could still make it through his panel before lawmakers adjourn.

At a press conference today where he confirmed that markup plans for the CFPA would be nixed until September, he said that unlike the consumer protection legislation, debate on proposals to address executive compensation has been thorough.

"That debate is over," Frank said.

Last Thursday, the White House sent to Congress language to require all publicly traded companies to give their shareholders a vote on executive compensation packages. The nonbinding vote requirement would be effective this December, if Congress can get the bill through both chambers.

That would mean that companies with early 2010 proxies would be subject to the new rules. It also aims to ensure the independence of compensation committees.

Frank circulated a draft proposal on Friday that would incorporate the administration's proposals and also require all financial institutions to disclose compensation structures that include any incentive-based elements. Frank's bill also would require federal regulators to proscribe inappropriate or imprudently risky compensation practices as part of solvency regulation.

Frank's bill is similar to say-on-pay legislation that that passed the House in 2007 but was not considered in the Senate. Frank said both the United Kingdom and the European Union are contemplating similar rules.

###

Bill McConnell, *Treasury steps up pressure for overhaul*, The Deal, July 22, 2009.

The Treasury Department sent Congress proposed legislation Wednesday that would enact the heart of the Obama administration's financial overhaul plan, including the creation of a council of regulators to guard against new financial risks and establishing the Federal Reserve Board as the supervisor of giant financial firms.

Speaking to a conference of the American Bankers Association, Deputy Treasury Secretary Neal Wolin defended the plan, which faces increasing skepticism from lawmakers. He also tried to convince bankers the administration's proposal to create a consumer financial products agency would help them compete against less-regulated mortgage brokers and would not pose an undue burden to banks.

The White House in June initially floated the plan for a Financial Services Oversight Council to guard against systemic risk as part of an administration white paper on financial change. The legislative proposal calls for the Department of the Treasury to chair the council, but would give sweeping new powers to the Fed.

The Financial Services Oversight Council would "keep an eye on and understand what's going on across the financial system," Wolin said. It would coordinate policies across regulators and identify gaps in their oversight. It also would attempt to prevent systemic risks from building unnoticed, he said.

Along those lines, the Government Accountability Office, the auditing arm of Congress, issued a report Tuesday calling for banking regulations to reassess their methods for gauging the amount of leverage financial firms established. Over-leveraging was a main reason why many financial firms needed federal assistance after the collapse of the housing bubble and the resulting declines in the value of mortgage-backed securities.

Under the administration's proposal, the Treasury would coordinate the council's activity. Other council members would include a new national banking supervisor, the Federal Deposit

Insurance Corp., the Fed, the Securities and Exchange Commission and the Commodity Futures Trading Commission. The Federal Reserve would be designated the consolidated supervisor of all holding companies of interconnected financial firms whose failure could cause damage throughout the financial system - companies the Treasury has called Tier 1 firms.

Tier 1 firms would be subject to stricter standards than other bank holding companies - including higher standards on capital, liquidity and risk management - and would be based on the risks the firms pose to the financial system as a whole. The firms would be required to take prompt corrective action should their capital levels decline below established thresholds, and they would be required to prepare a plan for the rapid resolution of the firm in the event of failure.

The legislation also has provisions addressing all financial firms. For instance, prudential standards would be raised across the board. Also, banking regulators and the SEC would have to issue regulations requiring the securitizers of asset-backed securities to retain 5% of the credit risk of the underlying assets. The legislation also clarifies the SEC's authority to require loan-level disclosure for asset-backed securities in a standard format to enhance the ability of investors to perform their own due diligence.

Republicans and some Democrats oppose the notion of putting new powers in the hands of the Fed, but Wolin tried to assuage fears that the central bank will gain overarching power over the financial system.

"We do not propose to create a systemic risk regulator," he said. "Rather we propose to a create a comprehensive approach to systemic risk regulation." The additional powers for the Fed would be "an incremental step" to supervision it already conducts on holding companies of commercial and investment banks, he said. Wolin insisted they are necessary because one regulator must have final responsibility for large, interconnected firms whose failure could wreak havoc on the larger financial system.

"A council is not the answer" for regulation of large interconnected financial institutions, he said.

That job is a specific task "requiring tremendous institutional capacity and organizational accountability," Wolin said. "It simply cannot be done by a panel of independent bodies. With respect to our largest and most interconnected financial institutions, we need no lack of clarity about exactly who is accountable for their safety and soundness."

Wolin's comments echoed those of Fed Chairman Ben Bernanke, who told lawmakers Tuesday that the Fed would not become a "super-regulator" but would share power with a variety of federal agencies.

Wolin argued that the central bank is "the only regulatory body with the experience and deep and broad understanding of capital markets necessary to oversee Tier 1 financial holding companies in a comprehensive way."

Republicans have made opposition to the Fed's proposed new duties a centerpiece of their stance against the overall financial overhaul plan. Several have pointed to the Fed's perceived role in fueling the housing bubble with low interest rates and its failure to ferret out problems within the country's largest financial institutions before the financial crisis as evidence of the agency's unsuitability for the new job.

In a hearing of the House Financial Services Committee on Tuesday, Rep. Spencer Bachus of Alabama, the committee's ranking Republican, said assigning new powers to the Fed would be "inviting a false sense of security that will inevitably be shattered at the expense of taxpayers." He also argued the Fed would be distracted from its core mission of conducting monetary policy.

At the same hearing, New York Democrat Carolyn Maloney, a longtime critic of the Fed, questioned whether naming a handful of large firms as Tier 1 firms would entrench their too-big-to-fail status and give them a competitive edge over the rest of the financial industry.

However, in a press briefing late Wednesday, Treasury Assistant Secretary Michael Barr said Tier 1 firms will be subject to higher capital levels, more exacting supervision and more restrictions on their activities. "Firms are not going to want to be designated as Tier 1."

Bankers, however, worry most about the proposed creation of a Consumer Financial Protection Agency that would assume most of the consumer protection duties of banking regulators and the Federal Trade Commission.

Bankers argue that an agency solely focused on consumer protection will not account for financial institutions' safety and soundness. They also argue that nearly all of the abuses that contributed to the subprime meltdown were committed by nonbank mortgage brokers competing against banks.

But Wolin insisted that a regulator solely focused on consumer protection is exactly what's necessary.

"We have a consumer protection system that has failed," he said. "It's important for consumer protection to be focused on by an agency that does that full time ... without other things on its plate.

"You have a system in which different agencies take different positions on consumer issues; consumer protection is bifurcated; rule writing is separated from enforcement and perhaps most disturbingly, a whole big piece of the market isn't captured from a consumer protection or regulatory perspective at all," Wolin added.

Wolin said creation of the agency would help banks, which already face tight consumer protection regulation, because it would even the playing field with their competitors.

The bankers didn't buy his arguments, however. Stephen Wilson, chairman and chief executive of LCNB Corp. in Lebanon, Ohio, said bankers already have been hurt by accounting rules established by the Financial Accounting Standards Board, which focuses single-mindedly on enforcing fair-value accounting rules without regard to bank safety and soundness.

"It seems like we're reinventing another disaster," he told Wolin.

Frances Grossman, executive vice president of ShoreBank Corp. in Chicago, predicted bankers would bear an unwarranted share of the new agency's scrutiny. "You're going to spend too much time in the banks and not enough on the people who are truly abusing consumers," she said.

But Wolin countered that the new agency will not jeopardize banks' safety and soundness. "There's no good reason to think that the tension between consumer protection and safety and soundness is real," he said.

###

Donna Block, *Ratings-agency clampdown reaches Congress*, The Deal, July 22, 2009.

The Obama administration sent Congress draft legislation Tuesday that proposes limits and disclosure requirements for credit-ratings companies that are intended to pre-empt conflicts of interest in their business practices and give investors more information.

The proposal is the latest legislative initiative the Treasury Department has introduced in recent weeks as part of a plan for overhauling the financial regulatory system.

The administration's proposal seeks to limit conflicts of interest by barring ratings firms from consulting with companies they rate and requiring corporations to disclose their fee arrangements with the ratings agencies. Ratings reports would have to include a history of issuers' fee payments dating back two years.

It also calls for disclosure of "pre-ratings," or those preliminary reports obtained from credit ratings agencies before a rating firm is actually selected to conduct a rating.

Investors would have access to all the pre-ratings a corporation received for a particular security before a final rating firm is selected.

Michael Barr, the Treasury's assistant secretary for financial institutions, said during a conference call Tuesday that such a provision would eliminate the problem of "ratings shopping," where companies solicit preliminary ratings from multiple agencies and then settle on the one offering the highest rating. A disclosure of all fees would also come with every rating report.

The credit-ratings agency proposal seeks to reduce investor reliance on ratings. The industry has been widely criticized as too slow in warning investors about subprime mortgage securities. "In recent years, investors were overly reliant on credit ratings agency that often failed to accurately describe the risk of rated products," the Treasury said.

The draft legislation, however does not answer the problem of making it easier for investors to file lawsuits against credit-ratings agencies for knowingly or recklessly failing to review key information. Sen. Jack Reed, D-R.I., earlier this year introduced a bill that would make it easier for investors to sue the agencies for substandard work.

Treasury chose not to include the litigation provision in the proposal in an effort to avoid what Barr described as "blind faith reliance on ratings."

"Our view was that including such a provision in the statute would overly inflate the role of credit-ratings agencies," Barr said. "We think the system needs to fundamentally move away from that approach with better investor due diligence.

"We're not going to be able to eliminate the need for investors to use their own judgment."

The measure is intended to make the ratings agencies more transparent and would give the U.S. Securities and Exchange Commission greater authority over them. Registration, now voluntary, would become mandatory for all agencies.

###

Silla Brush, *Frank delays legislation on consumer protection*, The Hill, July 22, 2009.

House Financial Services Committee Chairman Rep. Barney Frank (D-Mass.) has postponed legislation that would create a new regulatory agency that is key to President Obama's financial overhaul plans, putting off committee work until the fall. Frank had intended to pass legislation through his committee on the Consumer Financial Protection Agency (CFPA) before the House adjourns for the summer, but his office confirmed on Tuesday that Frank will delay work until after the August recess.

Setting up the new agency is one of the first major parts of Obama's overhaul to be debated in Congress as lawmakers consider proposals to regulate "systemic risk," derivatives and executive compensation policies. The new consumer agency, backed by Frank and other Democrats, would gain the consumer protection authorities of other banking regulators. Officials from the Federal Reserve have expressed concern about losing those authorities in the regulatory shuffle. The administration believes it has strong congressional support for the agency, although it is being opposed by a vast majority of Republicans and most industry groups. "I think the prospects for our package of reforms, including the consumer protection agency, are strong," said Michael Barr, assistant Treasury secretary. "I think we have enormous amounts of support. Obviously, we're mindful of the chairman's desire to run the process he thinks is most effective." Industry groups have pushed back hard on the agency idea, saying it would have sweeping authority that could hamper financial innovation. In a letter on Monday, 22 associations, including the U.S. Chamber of Commerce and organizations representing auto dealers, real estate industries and property and casualty insurance, urged the committee to slow down the debate. "Everyone is for protecting consumers. The CFPA is just the wrong way to do it," said Scott Talbott, senior vice president of government affairs at the Financial Services Roundtable. "We hope the extra time will allow for a thorough explanation of the problems it creates." Chris Stinebart, president and CEO of the American Financial Services Association, a group of 350 consumer and commercial finance companies, said that the proposed agency would result in fewer and less flexible borrowing options. "Consumers are likely to pay more for financial products and services at a time when they can least afford it," he said. Meanwhile, the Obama administration on Tuesday unveiled draft legislation to bolster oversight of credit rating agencies that were blamed for issuing top ratings for products that wound up wreaking havoc on the financial system. The ratings firms issued rosy ratings for structured financial products, such as securities comprising a wide range of mortgage loans. When those loans, particularly sub-prime mortgages, began to default, the high ratings belied the risk in the securities at large. The legislation intends to curb conflicts of interest in the ratings industry. Issuers generally pay the agencies to rate their products, raising concerns among critics that the system inherently is biased in favor of top ratings. The legislation doesn't overturn this system. "We looked at a wide range of proposals," Barr said. "There are problems with all different kinds of reforms, whether investor-pay models or the existing system." The legislation would bar firms from consulting with any company they rate, require agencies to disclose their fees and mandate that issuers disclose preliminary ratings. The administration also aims to set up a dedicated office at the Securities and Exchange Commission (SEC) to oversee ratings agencies. As the administration and lawmakers debate a variety of changes to the financial regulatory system, members of the New Democrat Coalition on Wednesday will unveil legislation on the derivatives market.

###

Ronald D. Orol, *Obama sends systemic regulator plan to Congress*, MarketWatch, July 22, 2009 6:25 PM ET.

WASHINGTON (MarketWatch) - The Obama administration on Wednesday submitted a detailed proposal to Congress to make the Federal Reserve a systemic risk regulator, able to oversee large financial firms based on their size, leverage and interconnectedness to the financial system.

The proposal would also create a Financial Services Oversight Council made up of bank and securities agencies that would coordinate and collect information on systemic risk. However, the council is considered weak by many in Congress that would like to see it supersede the Fed or at least provide recommendations or set capital standards for big banks.

The legislative proposal, which is based on a broader Obama administration proposal released in June, follows measures released by the White House in recent weeks that would impose new rules for credit rating agencies, hedge funds, buyout shops, along with additional restrictions on executive compensation. The proposal will be considered by Congress as it works on writing legislation based, in part, on the proposals.

Key lawmakers, including House Financial Services Chairman Barney Frank, D-Mass., and Senate Banking Committee Chairman Christopher Dodd, D-Conn., will consider the proposal as they draft legislation responding to the financial crisis.

The measure seeks to subject large financial institutions to new higher capital, liquidity and risk management restrictions; however it did not provide details about what those limits might be. It also seeks to raise capital requirements, to a lesser degree, for all financial holding company firms registered with the Federal Reserve, but no additional details were provided about those restrictions.

It is expected that lawmakers will identify specific qualifications identifying which financial institutions will be considered systemically significant. Regulatory observers expect that to include the largest investment bank financial institutions as well as some large hedge funds and private equity companies.

Treasury's Assistant Secretary for Financial Institutions, Michael Barr, said no financial institution will want to be designated as a systemically significant financial institution because of new capital, leverage and other limits.

"Everything in our proposal is designed to ensure that large systemically complicated firms are subject to higher capital standards, additional firewalls, more exacting forms of prudential supervision and further restrictions on their activities," said Barr. "Firms will not want to be designated as systemic companies."

Barr added that the proposal seeks to ensure that firms don't come up through the system and pose a threat for financial stability. However, he added that if firms are large enough to be systemically risky, they have no incentive to grow in size.

He added that many large firms are pursuing strategy to reorganize, however he declined to comment on whether the incentives will seek to press corporations to break up to avoid the regulation.

"Not designing a system of regulation targeting particular firms today, but one that will last us for many decades. We think we will create a set of incentives with respect to the system so there is a disincentive to growing so large in size that you are subject to these additional capital requirements, Transition

The proposal also releases transition rules for firms that would be designated systemically risky. The measures are designed to take into account different circumstances facing firms and various different provisions such as capital limits, Barr said. He added that the proposal's transition rules require immediate effectiveness for some regulations, while it would permit some firms up to five years before other provisions take effect.

"We want to make sure we get things in place in a reasonable time," Barr said.

For example, financial institutions designated a systemically significant will be required to conform their activities to numerous bank holding company rules, after a five year transition period. In other words, large systemically significant hedge funds and buyout shops could be subject to a variety of new restrictions that otherwise would only be required of large banks, after the transition period.

More White House reform proposals expected Thursday

Barr said the department will release details Thursday about the White House's proposal to set up a process to resolve large insolvent systemically significant financial institutions in a way that their collapse does not cause collateral damage to the financial markets. Treasury also is expected on Thursday to release additional details about its proposal to subsume the Office of Thrift Supervision into the Office of the Comptroller of the Currency. Barr added that the Treasury will release an additional proposal later this month, hiking regulation for derivatives, which will be the final plan making up the Treasury's regulatory reform package.

Game plan

However, Treasury's proposal released Wednesday requires each large systemically significant institution to set up a plan for the firm's resolution in the event of severe financial distress. "Make sure that

The proposal also seeks to expand firewalls between banks and their affiliates.

"This would better address conflicts of interest," said Barr

The measure also seeks to eliminate loopholes in the bank holding company act.

"If you are AIG, no more could you decide to organize yourself as a unitary thrift holding company, acquire a thrift and escape meaningful regulation at the holding company level," Barr said. "You could not form an industrial holding company and avoid real supervision through loopholes in bank holding company act supervision."

Skin in the game

Originators of mortgage backed securities would have to maintain at least a 5% stake in the asset, a measure designed to discourage investors to package mortgage securities with problematic subprime loans and sell them with no concern about their ultimate valuation.

###

***U.S. Proposes Restrictions on Credit-Rating Companies*, Bloomberg News, July 22, 2009.**

The Obama administration on Tuesday proposed setting disclosure requirements and limits on credit-rating companies, aiming to reduce conflicts of interest and provide more information about investment products.

Standard & Poor's and Moody's Investors Service are among the firms that would be barred by the Treasury's proposal from consulting with any company they rate.

"We need tough rules to regulate conflict of interests," Michael Barr, assistant Treasury secretary for financial institutions, said in a conference call.

The administration's proposal, part of a regulatory overhaul announced last month, follows accusations by investors and lawmakers that S.& P., Moody's and Fitch Ratings gave AAA rankings to subprime mortgage bonds just before that market collapsed.

That led to more than $1.5 trillion in write-downs and losses at the world's largest financial institutions since the start of 2007.

Regulators and lawmakers have questioned the independence of the firms, which are paid to grade securities by borrowers and underwriters who want to sell them.

The Treasury proposal would create an office at the Securities and Exchange Commission to supervise ratings firms. It would require the companies to disclose preliminary ratings of companies and use different symbols for structured products to make investors more aware of the risks that may be associated with asset-backed securities. The firms would also be required to hire a compliance officer.

S.& P. and Moody's are among the firms that have already adopted some of the proposals as they seek to restore confidence in the grading system. Officials from Moody's and Fitch said they supported the goals of improving transparency. Chris Atkins, a spokesman for S.& P., said the firm was studying the proposals.

###

Bill McConnell, *Barney Frank eases back . . . slightly*, The Deal, July 21, 2009.

At the request of Republicans on his panel, House Financial Services Committee Chairman Barney Frank, D-Mass., has decided to slow down a bit what was shaping up to be a frenetic pace for moving financial reform legislation to the House floor. His committee was tentatively scheduled to vote on the consumer protection component of financial reform next week, but Frank said a vote on that measure won't occur until September.

The measure would create a new Consumer Financial Protection Agency that would assume consumer protection duties currently assigned to banking regulators and the Federal Trade Commission. Frank said there is no reason to rush a vote because lawmakers already have a heavy schedule and House leaders have told him no full House votes on financial reform will occur until lawmakers return from August break anyway.

The consumer protection measure is fiercely opposed by the financial services industry, but Treasury Assistant Secretary Michael Barr said during a conference call Tuesday that delaying the committee vote doesn't indicate lack of support among lawmakers. "We are mindful of the chairman running the process in a way he thinks is most effective," Barr said.

The committee, however, will vote on executive compensation legislation either July 28 or July 30, Frank said. The executive compensation bill is expected to require public companies to give shareholders a nonbinding vote on executive compensation and require separate shareholder votes for golden parachutes or other special payments to executives in mergers or acquisitions. The legislation would also authorize federal regulators to prohibit financial sector compensation practices seen as inappropriate or imprudent.

###

Ronald D. Orol, *White House targets ratings firms for oversight*, MarketWatch, July 21, 2009 5:19 PM ET.

WASHINGTON (MarketWatch) -- The Obama administration moved Tuesday to crack down on credit-rating agencies' conflicts of interest and other controversial practices, in a bid to rein in a part of the financial-services industry that has been blamed for contributing to the credit crunch by issuing overly rosy debt outlooks.

A central feature of the proposal unveiled by the White House would bar consulting by rating firms for their rated companies.

Rating agencies have come under stinging criticism for their role in the financial crisis, in part because many of the leading firms gave AAA ratings -- the highest mark available -- to problematic mortgage securities made up of subprime loans.

Michael Barr, assistant Treasury secretary for financial institutions, said the administration is seeking to restore faith in credit ratings through the new prohibitions and disclosures.

"We are trying to make the system less fragile in the future," said Barr. "We had a failure of our system of regulation to provide the rules of the road, and credit-rating agencies were a critical part of that failure."

Key agencies under scrutiny include Moody's Corp. (MCO) , Standard & Poor's and Fitch Ratings Inc. Chris Atkins, a spokesman for Standard & Poor's in New York, said officials at the rating agency are studying the proposal; he declined to provide further details.

Fitch Ratings President Stephen Joynt said in a statement that the White House proposals are "generally consistent" with Fitch's view on providing the market with greater transparency into the ratings process and managing conflicts of interest.

Moody's did not return a call seeking comment.

However, rating agencies argue that they limit key conflicts, in part, by prohibiting officials that provide consulting services from working on ratings at the same client firms. However, the White House proposal seeks to eliminate any possibility of that kind of conflict by prohibiting rating agencies to consult with their rated firms.

The proposed regulations, which are subject to congressional approval, also would require corporations to disclose "pre-ratings" obtained from rating agencies before a rating firm is actually selected to conduct a rating.

Under another provision, investors would have access to all the pre-ratings a corporation received for a particular security before a final rating firm is selected.

That measure is intended to eliminate a practice known as "ratings shopping," in which a corporation solicits preliminary ratings from multiple agencies and then only pays for and discloses the most favorable rating received.

The proposal is to be considered by key lawmakers on Capitol Hill, including House Financial Services Committee Chairman Barney Frank, D-Mass. Frank and his counterpart in the Senate, Christopher Dodd, D-Conn., have both indicated that they will seek to introduce some sort of legislation to reform the ratings process.

Securities and Exchange Commission Chairwoman Mary Schapiro is due to testify Wednesday before Frank's committee, and she is expected to discuss ratings-agency reform.

Oversight package

Ratings legislation is expected to be lumped in with bills seeking to hike oversight of hedge funds, executive-pay packages and credit cards, while reforming the bank regulatory regime. A legislative effort in the House to create a Consumer Financial Protection Commission will be put off until September.

Some ratings-agency proposals don't require legislation and could be approved by the SEC.

The White House proposes to have the SEC set up a special office to watch over rating agencies. Schapiro indicated last week at a congressional hearing that she may support disclosures about such pre-ratings.

However, Columbia Law School professor John Coffee said that rating agencies would simply stop doing pre-ratings of corporations and instead provide broad qualitative descriptions about whether they have a high or cautious opinion of the security being reviewed.

"There will be a mutual agreement between the corporation and the rating agency not to provide a pre-rating because of the disclosure requirement," contended Coffee, who specializes in securities law. "It will be easily evaded."

At the same time, Coffee backed the idea of barring rating agencies from providing consulting services to companies that are also ratings clients. "This was a major problem, even if rating agencies said they had protective walls between the rating divisions and the consulting divisions," he said.

The proposal also seeks to have a credit agency disclose any fees paid by a corporation for a particular rating as well as the total amount paid by the corporation to the rating agency over the previous two years, in order to reveal any conflicts of interest between the two entities.

"Corporations pick and choose their favorite, in part, because of previous ratings," according to Coffee.

Barr said the Treasury examined a variety of models, including a mandate that investors, rather than corporations, pay for ratings. Barr pointed out that some companies are offering investor-paid ratings, which "add to the diversity" of ways ratings are produced. "We think it is good; we like diversity," he added.

The proposal also would seek to limit conflicts that occur when a rating-agency employee goes to work for a corporation that is having its securities rated. In such a circumstance, it would require agencies to conduct a review of ratings of the corporation to determine if any conflicts of interest influenced the ratings.

The White House's proposal also would have each rating agency designate a compliance officer responsible for overseeing internal controls. The rating firm would need to provide more details about risks related to any rated security, such as data about the probability of default.

Barr argued that investors will be able to rely on the data in addition to the ratings. "Having that information is good for the investors and markets," he said. "This additional information will increase market discipline by providing clearer estimates of the risks posed by different investments."

However, Evan M. Drutman, a partner at Alston & Bird LLP in New York , questioned whether that information would have any impact on investor decision-making when it comes to ratings. "With the investor has all that information, are they going to rely less on the numerical rating?" he asked. "My guess is they will still rely on the numerical rating."

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Cheyenne Hopkins, *The Fed, the Council, and a Whole Lot of Gray*, American Banker, July 20, 2010.

As the debate over regulatory reform unfolds, a key question is just how much control over large companies should be vested in one agency.

The Obama administration wants to hand sole authority to identify and oversee companies that pose systemic risks to the Federal Reserve Board. A council of eight regulators would be created to advise the Fed, but the central bank would not have to heed its recommendations.

Proponents praise this model as nimble, efficient and accountable, and say the Fed is the obvious choice for the job.

But critics claim the Fed already has a wide range of responsibilities, some of which it failed to fulfill in the run-up to the crisis, and should be counterbalanced by a strong advisory council.

Karen Shaw Petrou, managing director for Federal Financial Analytics Inc., neatly summed up the question: "The real heart of the matter is the qualms with the Fed and the lack of a clear alternative to it as a systemic risk regulator."

Dealing with systemic risk is a key goal of President Obama's 88-page proposal to revamp financial services oversight.

The administration envisions that the council would serve as a forum for discussing systemic risk issues and identifying gaps in regulation. But it would have no supervision, enforcement or rule-writing authority. The Fed would hold all those powers.

In an interview Friday, Michael Barr, the Treasury Department's assistant secretary for financial institutions, reiterated the point both the administration and Fed officials have made time and again — this proposal simply builds on the Fed's existing mandate.

"The Federal Reserve Board is our central bank and the central bank should be involved in the supervision of the largest, most systemically important firms," Barr said. "They are already regulating the largest, most interconnected firms in the country so it is, in our mind, a modest expansion of that authority."

As one might expect, the Federal Deposit Insurance Corp., which would get a seat on the council, wants its authority beefed up.

"This council ends up falling by the wayside if it's got no teeth," said Paul Nash, FDIC deputy to the chairman for external affairs.

Sentiment on Capitol Hill is more closely aligned with the FDIC position. There have already been five hearings on the best way to ensure a large company does not threaten the financial system and the Fed has come in for more than its fair share of criticism. On Friday, Rep. Paul Kanjorski, D-Pa., became the latest lawmaker to weigh in. "I have extreme doubts about the Fed" as systemic risk regulator, he said at a House Financial Services Committee hearing. "I don't know how they can manage that and all monetary policy decisions."

Even the panel's chairman, Barney Frank, who once supported making the central bank the sole systemic risk regulator now says that is not politically feasible. "I originally said the Fed," the Massachusetts Democrat said in a May interview. "I think politically there's going to be a problem with that, and I think some form of group is going to have to do it."

The Fed's primary job is to run the country's monetary policy, but it also regulates financial holding companies, some state-chartered banks and the payments system. It has a big say in how consumers are protected from financial fraud.

That list leads to concern about putting even more power in the Fed's hands.

"Should we create the be-all-end-all super regulator?" asked Kevin Jacques, the Boynton D. Murch Chair in Finance at Baldwin-Wallace College and a former Treasury official. He laid out the pros and cons and concluded the Fed should get input from other agencies.

"The Fed, despite its expertise and brilliance, can't solve this on their own," he said.

Ernest Patrikis, a lawyer at White & Case LLP and a former official at the Federal Reserve Bank of New York, said he suspects the central bank would pay close attention to advice it got from the council, which beyond the FDIC chairman would include the Fed chairman, Treasury secretary, the new national bank supervisor, the head of the new Consumer Financial Protection Agency, the chairs of the Securities and Exchange Commission and the Commodity Futures Trading Commission and the director of the Federal Housing Finance Agency.

"If a council made a recommendation to the Fed, and it didn't follow it, I think the Fed would have some answering to do," he said.

Nash of the FDIC is not convinced, and argued it is another reason why the council needs more power. "You would have more opportunity for dialogue so rash actions aren't taken without proper vetting," he said.

Fed officials declined to provide substantive comment for this story, but noted Fed Gov. Dan Tarullo will testify on the issue Thursday before the Senate Banking Committee.

But Fed veterans were quick to defend the agency.

"There's a very good case for giving it to the Fed up front," said Gil Schwartz, a partner at Schwartz & Ballen LLP who used to work at the Fed. "The Fed was created to deal with systemic risk."

"You have to separate whether you like the people doing the job right now or whether the structure is a good structure," said Oliver Ireland, a partner at Morrison & Foerster LLP and a former Fed lawyer.

Ireland said a strong advisory council could just create barriers to action. "If you have too many checks and balances, you never get anything done," he said.

Schwartz agreed.

"Interagency councils don't work," he said. "There's too much rivalry. Someone has to be in charge."

That's exactly the point Treasury Secretary Tim Geithner has been making, saying a strong council "would risk more confusion and less accountability."

Bob Clarke, a senior partner at Bracewell & Giuliani LLP and a former comptroller of the currency, agreed — to a point.

"It's always easier if you just have one person to be accountable, but I don't think accountability goes away just because you have a council rather than one entity," he said.

Some sources cited a third option: create a new agency solely dedicated to gauging systemic risk.

William Isaac, a former FDIC chairman, said it should be an independent agency chaired by a presidential appointee. "It must have some teeth," he said. "It must be independent. It shouldn't be an arm of the Department of Treasury."

Bill Longbrake, an executive in residence at the University of Maryland, said the agency could be modeled after the Congressional Budget Office or the General Accountability Office, reporting directly to Congress. Existing regulators would coordinate and provide data to this new agency.

"Such an arrangement would reduce the potential for subordination of risk assessment to other matters, as would be the case if systemic risk assessment were a Fed responsibility, or the potential for delay and watered down findings and recommendations as would be the case for a council," he said.

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Stacy Kaper and Cheyenne Hopkins, *Washington People*, American Banker, July 20, 2010.

Flavor of the Week

The financial crisis has seen its share of catchphrases. The rotating cast has included a "tsunami of foreclosures," which produced "toxic assets" and in turn "zombie banks." And as policymakers have sought solutions, they stress there are no "silver bullets."

The newest: "plain vanilla" to describe the type of products a new consumer protection agency proposed by the administration would encourage financial institutions offer.

"We need to … authorize one agency to encourage and help develop some plain-vanilla, safe-harbor mortgages, credit cards, car loans and the like that will automatically pass regulatory muster," Harvard professor Elizabeth Warren, sometimes mentioned as a possible head of the new agency, said in congressional testimony last month.

But even lawmakers poked fun at the term last week. At a House Financial Services Committee hearing Wednesday, Chairman Barney Frank joked that he would like to hold an essay contest to receive feedback on the administration's regulatory reform plans.

Later, Rep. Spencer Bachus, the panel's top Republican, responded: "The chairman invited you to submit essays, and I would simply say to you they need to be plain-vanilla essays, and if they are not, you need to get Elizabeth Warren's OK before you submit them."

Humor for Hire

Who couldn't use some laughter these days? As banks keep failing and the government keeps bailing, levity is in great demand.

Just ask the Treasury Department. The agency is seeking to hire a contractor in its Bureau of Public Debt to conduct humor workshops to boost staff morale.

Potential candidates wouldn't have to fuss with capital infusions or setting prices for illiquid securities. Instead, the person must know "how to use talents in a creative way that adds humor to everyday experiences," and "prevent burnout," according to the job posting.

Next Question

Treasury official Michael Barr had more than his share of grilling last week.

The administration's point man on the proposed regulatory overhaul was something of a punching bag at Tuesday's Senate Banking Committee hearing, where senators pressed him about the plan's most contentious item: a new consumer financial protection agency.

The reviews were not glowing, as his testimony left many questions about the agency unanswered.

Barr delivered an arguably savvier performance the next day at the Exchequer Club, where questioners included the never-shy consultant Bert Ely, who offered this whopper: Will the administration veto the bill creating the new agency if it exempts credit unions?

Barr dodged that one with this response: "I think this is a time I'd say: Do I look that stupid?"

Tally One for Dodd

Every vote clearly counts as Sen. Chris Dodd faces a tight re-election battle.

The Connecticut Democrat and Senate Banking Committee chairman can now likely count on his constituent Thomas Perretta, whom he invited to testify along with top servicers at a hearing Thursday about the lack of progress on loan modifications.

Perretta's appearance follows a tradition of panel chairmen — especially those in closely contested campaigns — inviting ordinary people from their home states to hearings. He told the committee of his financial and personal troubles, including the recent death of his wife. He also said he had received little help from JPMorgan Chase & Co. in restructuring his mortgage. (The company did not have a representative testifying at this hearing.)

"It seemed that Chase did not realize that people like me, who have just had an overwhelming event in their life, may still be" among the "honest, responsible human beings who need help," Perretta said.

Promotion at OCC

The Office of Comptroller of the Currency has named Kathy Murphy its chief accountant.

She will be responsible for the OCC's oversight of bank auditing and financial reporting, and provide accounting counsel to examiners.

Murphy has been the OCC's deputy chief accountant for the past four years. She joined the OCC in 2002 after working as a public accountant with two large firms. She succeeds Zane Blackburn, who recently retired after 28 years in the job.

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Gregg Carlstrom, *Details hazy on planned financial regulatory agency*, Federal Times, July 20, 2009.

The Obama administration is moving forward with plans to create a new financial regulatory agency - but it's not clear how the agency will interact with the half-dozen other financial regulators, or what kind of funding and staffing it will receive.

The proposed Consumer Financial Protection Agency (CFPA) would have jurisdiction over all financial institutions. But it would focus on how those institutions interact with consumers; existing regulators, such as the Office of Thrift Supervision and the Securities and Exchange Commission, would monitor whether the institutions are financially sound.

Treasury Department officials say the new agency will fix the fragmentation that plagues financial regulators. Nearly a dozen agencies, ranging from SEC to the Federal Trade Commission, have some jurisdiction over consumer protection.

"The present system is designed to fail. It is simply incapable of earning or keeping the trust of the American people," said Michael Barr, assistant Treasury secretary for financial institutions, testifying July 14 before the Senate Banking, Housing and Urban Affairs Committee. "It fragments jurisdiction for consumer protection across many agencies."

Experts say the new agency will likely have a limited role in regulating financial products; in most cases, it will simply set standards for how much information financial institutions need to disclose.

"[It] is analogous to how we regulate drugs. Those with minimal risks are regulated only to prevent fraud and malfeasance," said Sendhil Mullainathan, a Harvard University professor of economics. "More complicated drugs are more stringently regulated."

CFPA would play a stronger role in regulating "exotic" financial products, such as the subprime mortgages that played a central role in the foreclosure crisis.

The agency would have the authority to ban certain features in those products that it deems too complicated for consumers to understand.

"In most circumstances, disclosure is going to get you most of the way there," Barr said. "But some circumstances are too complicated. A responsible consumer, trying to do the right thing, couldn't behave responsibly in that circumstance."

But experts, and some members of Congress, are concerned that the new agency will conflict with the existing financial regulators.

For example, a bank's "soundness" regulator might support certain practices, such as prepayment penalties that penalize borrowers for paying back their mortgages too quickly, because they reduce risk for the financial institutions. CFPA, though, might be inclined to ban those practices because they create extra risk for consumers.

The Obama administration's draft CFPA legislation specifically mentions prepayment penalties as the kind of practice that could be prohibited.

"Inherent conflicts between consumer protection and prudential regulation will arise," said Peter Wallison, a financial fellow at the conservative American Enterprise Institute. "The bank supervisors and the CFPA will have different policies on many issues, and the banks will be caught in the middle."

Enough resources?

It's also unclear whether Congress will allocate enough resources for the agency - and whether that will affect other agencies' efforts to increase their budget and staffing. Most regulatory agencies, including SEC, have received only modest budget increases in recent years.

The administration did not recommend a level of funding for the agency in its request to Congress; senators on the banking committee declined to provide an estimate.

Lobbying groups for the financial industry are generally opposed to the new agency, and Republican senators expressed reservations at last week's hearing, but the plan received strong support from Democrats on the banking committee.

"Stronger consumer protection could have stopped this crisis before it started," said Sen. Christopher Dodd, D-Conn., the committee chairman. *

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Sarah Hansard, ***Compensation: SEC mandate called too broad; Bill would let it ban commissions, 129b0-1s and cold calling*****, Investment News, July 20, 2009.**

Financial advisers are troubled by an administration proposal that would allow the Securities and Exchange Commission to ban commissions and take other sweeping actions regarding their fees.

Even fee-only advisers have reservations about the plan, put forward in draft investor-protection legislation the Department of the Treasury sent to Capitol Hill July 10. The bill would give the SEC broad powers to rule on sales practices and compensation by brokers and advisers.

"The question is how would they make those broad-based decisions," said Diahann Lassus, chairman of the National Association of Personal Financial Advisors of Arlington Heights, Ill., which represents fee-only financial planners.

"We're not clear what it really means yet and how it would impact the way people do business," said Ms. Lassus, who is president of Lassus Wherley & Associates PC, a New Providence, N.J., firm that manages about $250 million.

The Obama administration's draft legislation, which includes the stipulation that brokers acting as advisers abide by fiduciary duties in acting solely in the interests of customers, requires the SEC to examine -- and, where appropriate, issue rules prohibiting -- questionable sales practices, conflicts of interest and compensation schemes for brokers and investment advisers found to be "contrary to the public interest and the interests of investors."

"It's almost like they're saying it's wrong to make a profit," said Richard Salmen, president of the Denver-based Financial Planning Association.

"There can be many, many situations where it serves the investor's best interest and it's profitable for the intermediary," said Mr. Salmen, who is senior vice president of GTrust Financial Partners Co., an Overland Park, Kan., firm that manages $400 million.

Under the investor-protection draft bill, the second in a series of legislative proposals the administration is asking Congress to enact to reform regulation of the financial services industry, the SEC could take a wide range of actions, including banning commissions.

Indeed, the precedent for doing that has already been set. The Financial Services Authority in London, the United Kingdom's financial service regulatory agency, issued a rule June 25 that prohibits financial advisers in that country from accepting commissions to sell investment products as of 2012, FSA spokesman Robin Gordon-Walker said.

The Financial Services Institute Inc. of Atlanta, which represents independent-contractor broker-dealers, fears that a ban on commissions could become a reality if the Obama legislation is passed in its proposed form.

That would be bad for investors who do not have large sums to invest, said David Bellaire, the organization's general counsel and director of government affairs. "Unless we want small investors to take a do-it-yourself approach to their financial decision making, we need to have a viable economic model and commissions provide that," he said.

The SEC has traditionally required that disclosures be sufficient to give investors enough information to make good choices. Under the proposed legislation, the SEC would become the industry fee czar, banning compensation practices deemed not to be in the best interest of investors.

Fee levels themselves could be set by the SEC, said Richard Marshall, a partner in the investment management and securities litigation group of Ropes & Gray LLP in New York. "If something was outside the industry average, the SEC could say 'that's too much,'" he said.

The language is broad enough that it could lead to the banning of a wide range of compensation practices, including particular types of sales loads or 12(b)-1 fees charged by brokers who sell mutual funds, Mr. Marshall said. Other mutual fund sales proposals that never got off the ground, such as the SEC's proposed 2004 point-of-sale rule, which would have required brokers to disclose payment methods that could pose a conflict of interest, could be resurrected.

In addition, "payments for shelf space," made by funds to brokerage firms to get on lists of "preferred" funds that the brokers push, could be abolished, Mr. Marshall said. The payments, while disclosed, are difficult for investors to understand, he added.

Revenue-sharing payments made by mutual fund managers to compensate brokers also could come under the ax, said Soo Yim, a partner in the Washington office of international law firm Wilmer Cutler Pickering Hale and Dorr LLP. "There may be some pressure to take another look at these type of arrangements," she said.

The Investment Company Institute in Washington is still evaluating the proposal and declined to comment on it, said spokesman Mike McNamee.

"The most likely low-hanging fruit is differential compensation," said Barbara Roper, the Pueblo, Colo.-based director of investor protection for the Consumer Federation of America in Washington. Paying brokers more for selling a certain investment than they would make selling other investments is "clearly designed to encourage sales based on the financial interest of the broker or adviser, rather than the best interest of the clients," she said.

"Taken to its logical conclusions, the whole system of compensation in the securities industry is riddled with conflicts of interest," Ms. Roper said. "No one seeking to design a system to encourage sales practices in the investor's best interest would come up with the system we have."

The proposed mandate will give the SEC "the tools it needs to ensure that side payments or sales practices, or conflicts of interest, do not in fact interfere with investor interests," Michael Barr, the assistant Treasury secretary for financial institutions, said at a July 10 press briefing on the legislative proposal. "That may be cold calling in terms of sales practices or other measures," he said.

SEC Chairman Mary Schapiro is under pressure to beef up investor protections at the agency after its failure to detect the gigantic Ponzi scheme perpetrated by Bernard L. Madoff and for failing to detect catastrophic weaknesses in mortgage-backed securities. That may lead it to to be more aggressive in pursuing measures that investor advocates have been pushing for in recent years.

That has advisers concerned. "They're asking to legislate morality from compensation," said Sean Sebold, president of Sebold Capital Management Inc., a fee-only advisory firm in Naperville, Ill., that manages $60 million. "Are we going to have investment advisers that can't sell products because of the commission structure even though they can be, in fact, good for the client?"

###

Stacy Kaper, *FTC to Hill: Thanks, But No* Thanks, American Banker, July 9, 2010.

WASHINGTON — Creating a new government agency always leads to battles over turf, but it's usually the regulators doing the fighting.

At a hearing Wednesday on the Obama administration's plan to consolidate authority for protecting consumers of financial products into a new agency, members of the House Energy and Commerce Committee went to bat for the Federal Trade Commission, arguing it should keep its existing financial protection powers.

Their arguments, however, were undercut by none other than the agency's head, Chairman Jon Leibowitz.

"The president's goal of streamlining the overall system for protecting consumers from financial [entities] is more than commendable … and eliminating balkanization of consumer protection oversight of banks and nonbanks is laudable and very, very pertinent," Leibowitz testified before the panel's consumer protection subcommittee.

But lawmakers may be less concerned about protecting the FTC than about guarding their own jurisdiction.

Energy and Commerce lost a big chunk of its power in 2000, when the then House Banking Committee absorbed much of its oversight responsibilities over financial matters and was renamed the Financial Services Committee. Since that time the two panels have clashed over matters that fall into a gray area between the committees' jurisdiction, including the FTC.

In nearly an hour of opening statements, lawmakers on both sides of the aisle gave a lukewarm reception to the Obama proposal, arguing that the FTC, which currently has authority over mortgage lenders and other nonbanks, should keep its responsibilities. Banking regulators have also lobbied to keep their power over financial institutions.

"I believe that the FTC should remain intact as it is currently constituted, and that this committee and subcommittee should continue to oversee and authorize the FTC," said Rep. Bobby Rush, the chairman of the commerce, trade and consumer protection subcommittee. "Importantly this 'push and pull' between our respective committees has pressured the providers of financial services and products, including banks and depository institutions, to balance the allure of profits and determinations of safety and soundness against the needs of consumers."

Despite repeated attempts by members to goad Leibowitz to fight for keeping the FTC's existing authority over financial services, he would not take the bait.

Rep. George Radanovich of California, the senior Republican on the subcommittee, questioned the FTC's position outright.

"I gotta think you are doing a bit of a dance because you stand to lose some jurisdiction in the FTC," he said. "It seems to me at least under the proposal you are getting more money and authority to do less."

But Leibowitz said the issue was not about turf, but what is best for consumers.

"From my perspective, if you create this new agency and you also give us more resources and authority from the perspective of consumers, they will be getting a better deal," he said. "We will continue to have a backstop authority with respect to financial matters and we are going to be able to concentrate and do more for consumers."

Under the plan, the FTC and federal banking agencies would lose oversight of consumer protection issues related to financial products to the new agency but would still be able to refer cases if they spotted problems.

If the consumer protection agency did not act within 120 days on those referrals, the FTC or banking agencies could pursue their own action against a financial firm. The FTC would keep its role to police anticompetitive practices among businesses, and still have the power to write rules defining unfair and deceptive practices.

Michael Barr, the Treasury assistant secretary for financial institutions, also testified about the need for a new agency solely focused on protecting consumers, arguing the issue was personally important to President Obama.

"The president feels very strongly about the need to protect consumers," Barr said. "He feels very strongly that we need a fundamental change from the past and we need to lay a new foundation with a consumer financial protection agency that covers the financial services sector and creates high and consistent standards to protect consumers. It is a very, very top priority to the president."

Asked by reporters after the hearing if he was concerned about a turf battle between congressional committees, Barr said he was confident any issue could be worked out.

"The committee and the Congress and the leadership are all going to work together to get the entire financial regulatory reform plan done and I don't think we as a country can afford and consumers cannot afford to let concerns about that dissuade us from getting the job done," he said. "The FTC does after-the-fact enforcement on a small part of the problem. It has a very small staff. It hasn't brought safety into the areas we need it."

Indeed, some observers noted that Energy and Commerce Committee Chairman Henry Waxman avoided taking a hard stance. Instead he raised general concerns about ensuring the FTC had sufficient power to accomplish its mandate and appeared to leave the door open to also supporting a new agency.

"It only makes sense to create a new agency if that new agency will become a strong, authoritative voice for consumers," the California Democrat said. "We must ensure the Federal Trade Commission is strengthened not weakened, by any changes. Unlike the banking agencies, FTC has consumer protection as its core mission. … It is not clear what impact these proposals would have on FTC or its ability to its perform consumer protection mission."

While the FTC backs the Obama plan, the banking agencies are not ready to give up their authority.

Supported by the industry, the banking regulators have argued that consumer protection can not be separated from prudential oversight of banks and thrifts. The agencies have not had a chance to testify before Congress on the issue. Some analysts said turf considerations could slow passage of a bill creating the agency, which the House Financial Services Committee is hoping to vote on this month.

Jaret Seiberg, an analyst with Stanford Research Group, a division of Concept Capital, said the concerns among members of the Energy and Commerce Committee are going to have to be addressed in some way.

"The turf battle here is another complication that the administration has to overcome it to get its consumer financial protection agency," he said. "They are going to have to be accommodated."

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Jessica Holzer, *Republicans Criticize Agency for Consumers*, The Wall Street Journal, July 15, 2009.

WASHINGTON -- Senate Republicans criticized White House plans for a new agency to regulate consumer financial products as a hindrance to innovation and consumer choice, foreshadowing the battle lines taking shape around the proposal.

"I am greatly concerned over many aspects of the president's plan, not to mention its underlying premise," Sen. Richard Shelby of Alabama, the top Republican on the Senate Banking Committee, said in opening remarks at a hearing on the matter.

Republican Sen. Bob Corker of Tennessee called the proposal "an example of this administration being Big Brother" and "a tremendous overreach" that would limit what companies could sell and consumers could buy.

The proposed Consumer Financial Protection Agency would have broad authority to ban practices in the financial industry and require firms to offer "plain vanilla" products that carry fewer risks. It would oversee consumer protection for consumer credit products including mortgages, credit cards and auto loans.

Assistant Treasury Secretary Michael Barr, the administration's witness at the hearing, defended the plan, saying it wouldn't prevent firms from offering complex products, such as pay-option adjustable-rate mortgages. Firms will merely have to offer simple products alongside those products, he said.

"I trust consumers tremendously. What I don't trust is if you set up the marketplace to confuse consumers," he said. In his prepared remarks to the panel, Mr. Barr argued that the current system allows banks to shop for regulators with the lightest touch on consumer protection. Attitudes toward the proposed agency broke along partisan lines, with Democrats defending it. "It'll stifle innovation -- clever ways to dupe the consumer," said Democratic Sen. Charles Schumer of New York.

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Meena Thiruvengadam, *Treasury to Unveil Hedge-Fund Proposal*, The Wall Street Journal, July 15, 2009 2:18 PM ET.

WASHINGTON -- The U.S. Treasury Department on Wednesday plans to unveil proposed legislation that would require all hedge funds and private capital pools with more than $30 million under management to register with the Securities and Exchange Commission.

The legislation is part of a comprehensive Obama administration plan to overhaul the way the financial sector is regulated in the wake of the ongoing economic crisis.

It would require hedge funds to disclose more information about asset size, borrowing and off-balance-sheet exposures. It also would regulate large, highly leveraged and heavily interconnected firms as Tier 1 financial holding companies, subjecting them to more stringent capital, liquidity and risk management rules.

"These firms continue to present unknown risks, and that lack of transparency is no longer tenable," Treasury Assistant Secretary for Financial Institutions Michael Barr plans to say in a Wednesday speech on financial regulation. "We need a system that's flexible enough to adapt to the emergence of other institutions that could pose a risk to the system."

While not at the heart of the current financial crisis, deleveraging among hedge funds has contributed to continued market strains. Also, the cloak under which they operate has pushed many lawmakers and officials to call for greater transparency as a means of preventing future crises.

"We cannot rely on perfect foresight -- whether of regulators or firms," Mr. Barr plans to say. "This crisis has also clearly demonstrated that risks to the system can emerge from all corners of the financial markets and from any of our financial institutions."

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Donna Block, *Treasury submits plan for hedge funds*, The Deal, July 15, 2009.

As lawmakers prepared Wednesday to discuss how best to improve federal oversight of hedge funds and other private pools of capital, the Obama administration was already sending Congress its own list of demands on the subject.

The legislation put forth Wednesday by the Treasury Department, part of the Obama administration's plan to overhaul financial regulation in the wake of the economic crisis, would require all hedge funds and private capital pools with more than $30 million under management to register with the and Exchange Commission.

Treasury's proposal would require hedge funds to disclose more information about asset size, borrowing and off-balance-sheet exposures. It also would regulate large, highly leveraged and heavily interconnected firms as Tier 1 financial holding companies, subjecting them to more stringent capital, liquidity and risk management rules.

"These firms continue to present unknown risks, and that lack of transparency is no longer tenable," Treasury Assistant Secretary for Financial Institutions Michael Barr said in the prepared text of a speech he gave Wednesday on financial regulation at the Exchequer Club in Washington. "We need a system that's flexible enough to adapt to the emergence of other institutions that could pose a risk to the system."

Barr said the measure is aimed at discouraging excessive risk taking among the biggest financial players.

"Our proposal would require more exacting forms of prudential supervision, including higher capital requirements for those firms and higher capital still for conduct within those firms that poses the most risk to the system," he said.

The plan aimed to "counteract any incentive for the largest firms gambling with their size," Barr added.

Meanwhile, Sen. Jack Reed, D- R.I., who recently introduced legislation dubbed the Private Fund Transparency Act of 2009, was on Capitol Hill discussing the best way to regulate hedge funds. Reed's bill is similar to the administration's plan and gives the SEC the authority to collect information from hedge funds. The SEC would be required to cooperate with other agencies to evaluate systemic risk.

The bill already has the support of the SEC. The agency's Director of the Division of Investment Management, Andrew Donohue, told lawmakers Wednesday that the measure's approach "would provide the commission with needed tools to provide oversight of this important industry in order to protect investors and the securities markets." Donohue, however, said the agency would need additional resources to police the industry effectively.

Hedge funds have not been blamed for playing a role in the financial meltdown but they appear to recognize that they will be a part of the regulatory regime change. Indeed, the hedge fund industry appears to have embraced the changes and then some.

James Chanos, head of Kynikos Associates, cheered Reed's legislation but said he thought it should go further to include private investment funds.

"A modernized financial regulatory system - one that addresses overall risk to the financial system and that regulates market participants performing the same functions in a consistent manner - will include appropriate regulation of hedge funds and other private pools of capital," Chanos said.

Chanos represents the Coalition of Private Investment Companies, a lobbying group he formed.

Under Reed's bill, the SEC would have full authority over private fund managers and inspection authority over all fund records. But Chanos suggested that lawmakers provide additional "statutory direction" and also require registration of private funds with the SEC, require funds and investment managers be subject to SEC inspection and enforcement, as well as address counterparty risk by requiring funds to provide key information to their lenders and counterparties, and require custody and audit protections to prevent fraud.

"The legislation, as currently drafted, could leave some doubt as to how broadly Congress intends the SEC to act in this area," he said.

Under current rules, fund managers are exempted from SEC registration if they comply with certain conditions: if they either have fewer than 100 shareholders or if they exclude investors with investments of less than $5 million.

Chanos said adding the additional provisions will benefit investors "by enhancing regulators' ability to prevent fraud and other abuse while also reducing systemic risk."

Last year, hedge funds were blamed for manipulating debt and credit default swap markets, while short-sellers were accused of bringing down some of Wall Street's largest banks.

The SEC previously tried to force hedge fund advisers to register with the agency, but a federal court overturned the requirement in 2006.

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Cecile Kohrs Lindell, *Debate simmers on regulatory rehab*, The Deal, July 15, 2009.

The Obama administration spent Wednesday pushing on multiple fronts its plan for a financial regulatory agency, with one official wooing members of an elite club while the proposal was being dissected by a key House committee on Capitol Hill.

Assistant Treasury Secretary Michael Barr addressed members of the four-decade-old Exchequer Club for what he described as a "sweeping set of reforms" proposed for the financial sector. Members of the Washington club include inside-the-beltway policy wonks and graybeards with expertise across the range of the financial industry.

Narrowing the debate to merely "more or less regulation" minimizes the concerns the administration has about avoiding a similar crisis in the future, Barr said. The goal should be to assess what caused risks to balloon, and why the existing regulations failed to limit - or even adequately respond to - those risks.

"Rapid growth hid misaligned incentives that people didn't recognize. Throughout our system we had inadequate buffers - as both market participants and regulators failed to account for new risks appropriately," Barr explained. As a result, he said, "the apparent short-term rewards in new products and rapidly growing markets overwhelmed private sector gatekeepers, and swamped those parts of the system that were supposed to mitigate risk. And households took on risks that they did not fully understand and could ill-afford."

That lack of transparency, coupled with a lack of financial acumen is what caused consumers to sign on to mortgages which they are now abandoning in record numbers, Barr said. And because the current regulatory structure parses responsibility among myriad federal and state authorities, there is no way to find one organization guilty of allowing the crisis to snowball out of control.

"If we create one federal regulator with consolidated authority, we will be able to leave behind regulatory arbitrage and inter-agency finger-pointing. And we will be assured of accountability," Barr promised. The solution, he explained, is President Obama's proposed Consumer Financial Protection Agency.

The notion that consumers' confusion over the type of loans that they agreed to prompted the crisis was a point of contention during a simultaneous hearing before the House Financial Services Committee, run by Chairman Barney Frank, D-Mass. There was little support for a new agency among experts, and even lawmakers who support the idea were quick to note that modifications are being proposed.

Todd Zywicki, a George Mason University law professor, told the panel that "there is no evidence that consumer ignorance was a substantial cause of the crisis or that the existence of a CFPA could have prevented the problems that occurred."

Instead, according to Zywicki, the "foolish" loans that were issued were not bad because customers didn't have adequate financial savvy to appreciate what they were getting themselves into. Instead, the blame lies at the feet of the lenders, he said. "They were foolish because lenders failed to appreciate the incentives that rational, fully-informed consumers would have to default on these loans if circumstances changed."

That changed circumstance was the bursting of the housing bubble, making it smarter for some buyers to walk away from loans that far exceeded the current value of the homes.

Michael Menzies, president and CEO of Easton Bank & Trust, who represented the interests of independent bankers at the hearing, said since large lending companies were able to sell the mortgages, therefore eliminating their own risks, it made all lenders look bad.

He urged lawmakers not to go overboard in creating legislation that would lump all lenders together and harm small companies that endeavor to tailor loans to the needs of their customers. He told lawmakers to instead focus on forcing companies to remain liable for the bad loans they make. "Risk retention is an important part of the whole system," Menzies said.

Hearings on financial reform are expected to continue through the week as lawmakers prepare to leave town for the August recess.

###

David Lawder *Obama Bill Seeks to Shine Spotlight on Hedge Funds*, Reuters, July 15, 2009.

WASHINGTON (Reuters)-The Obama administration on Wednesday [July 15] will propose that hedge fund managers submit to new registration and disclosure rules to boost transparency and limit any risks they pose to the financial system, a senior U.S. Treasury official said.

The administration is sending legislative language to Congress that would require investment advisers with more than $30 million in assets under management register with the Securities and Exchange Commission and disclose key information to regulators and investors, said Michael Barr, U.S. Treasury assistant secretary for financial institutions.

The bill, if approved by Congress, would give regulators a powerful microscope to peer into the secretive hedge fund industry to identify potential threats to the financial system.

Mr. Barr, previewing the bill in a speech to a business group on Wednesday, said it aimed to discourage risk taking among the biggest financial players.

Hedge funds found by regulators to be "so large, leveraged or interconnected that they pose a threat to financial stability" will be regulated as "Tier 1" financial holding companies and will be subject to more stringent requirements for capital, liquidity and risk management, Mr. Barr said.

"Our proposal would require more exacting forms of prudential supervision, including higher capital requirements for those firms and higher capital still for conduct within those firms that poses the most risk to the system," he said.

The plan aimed to "counteract any incentive for the largest firms gambling with their size," he added.

However, there is no size threshold for a firm to be classified as a Tier 1 institution, Mr. Barr said, adding that leverage, interconnections to the financial system and risk profiles also will be factors in making such determinations.

New disclosures to be made by hedge funds would include asset size, borrowings and off-balance-sheet exposures, among other information. Hedge funds would be subject to periodic reporting requirements and regulators also would have authority under the bill to gain access to information to determine potential systemic risks that they may pose.

Unknown Risks

Mr. Barr said hedge funds do not appear to have been at the center of the current financial crisis, but their de-leveraging contributed to strains in financial markets, while lack of transparency contributed to market uncertainty and instability.

"These firms continue to present unknown risks, and that lack of transparency is no longer tenable," Mr. Barr said. "We need a system that's flexible enough to adapt to the emergence of other institutions that could pose a risk to the system. And we need a system that lets regulators see risks as they emerge across the financial system."

Mr. Barr also said the Obama administration's goal in revamping regulation was not to limit the activities of financial firms, but to limit risks posed by those activities.

"Higher capital charges can insulate the system from the build-up of risk without limiting activities in the markets," Mr. Barr said. "That's why we have launched a review of the capital regime and have proposed raising capital standards across the board, including higher standards for financial holding companies, and even higher standards for Tier 1 financial holding companies."

###

Ronald D. Orol, *Obama wants SEC to look at hedge fund books*, MarketWatch, July 15, 2009 5:04 PM ET.

WASHINGTON (MarketWatch) - The Obama administration on Wednesday sent a proposal to Capitol Hill that would require hedge fund managers and private equity managers and venture capital funds with more than $30 million in assets under management to register with the Securities and Exchange Commission and open their books to periodic examinations.

The proposal also seeks to have hedge fund managers set up a comprehensive compliance program, according to a statement from the Treasury.

"These firms continue to present unknown risks, and that lack of transparency is no longer tenable," said Michael Barr, Assistant Treasury Secretary for Financial Institutions. "We need a system that lets regulators see risks as they emerge across the financial system."

Key lawmakers on Capitol Hill, such as House Financial Services Committee Chairman Barney Frank, D-Mass., have said they already plan to introduce legislation putting hedge funds under more regulation.

A large number of hedge fund managers already register with the SEC voluntarily, in part, to make their funds eligible to receive funds from many institutional investors such as public pension funds. Typically, investment fund managers with less than $30 million are regulated by state regulators.

The White House proposal, which is backed by the Treasury Department, will also require hedge fund managers to disclose to regulators and investors more information about the characteristics of their hedge funds. Fund managers will need to keep more records and provide the agency with additional details about their asset size, borrowings and any off-balance sheet exposure.

Fund managers will need to report these new details not only to the SEC, but also to investors, creditors and counterparties. Based on the proposal, the SEC would have new authority to keep records based on the information provided by fund managers.

Hedge funds: too big to fail?

The proposal also will seek to allow regulators to gain additional information to assess "systemic risk" posed to the financial markets.

The proposal makes clear that regulators could require certain hedge funds that are so large, interconnected or have high leverage levels to be regulated as systemically risky entities. The White House already put out a proposal that would require some large financial institutions such as certain investment banks to be regulated as "too big to fail" institutions, however it was unclear whether hedge funds and private equity firms could qualify for that categorization.

"These firms will face appropriate requirements regarding capital liquidity and risk management," Barr said.

Managers of the funds must have 10% of its securities owned by U.S. individuals, according to the proposal. The proposal seeks to have fund managers set up compliance programs.

###

Victoria McGrane, *Consumer groups ready for fight*, Politico.com, July 15, 2009 4:38 AM ET.

As Congress works toward rewriting the nation's financial rules, one of the biggest battles is over the administration's proposal to create a new agency dedicated to protecting consumers from shoddy financial products and practices.

And consumer groups, labor unions and civil rights organizations that back the proposal say they're ready for the fight.

"We're serious," said Ed Mierzwinski, federal consumer program director for U.S. PIRG. "We have never been so organized as we are now, because we recognize if we're going to have an impact here, we have to speak louder, through a bigger megaphone both inside and outside the Beltway."

That's because the financial industry, which opposes the new consumer protection agency, is "bloodied, but they're not out of the game," Mierzwinski said.

About 200 consumer, labor and civil rights groups have joined together to form a coalition they're calling Americans for Financial Reform.

It's the first time the group of allies, which has worked together on other consumer financial issues such as credit card reform, has formalized its alliance, said Mierzwinski. The coalition has several paid staff members and plans to spend about $5 million on its campaign to support the new agency and other pro-consumer regulatory changes.

Of course, that's nothing compared with the big bucks its adversaries have at their disposal. The financial sector is one of the top campaign contributors and lobbying spenders on the Hill. Financial and insurance firms spent a total of $373 million on lobbying last year, according to the Center for Responsive Politics.

But the consumer coalition says public opinion is on its side, and it's doing what it can to stoke it in hopes that it will blunt the industry's financial advantage.

"We're going to do what we can to disrupt business as usual on Capitol Hill - which is that money and influence-peddling rules over the public interest," said Mierzwinski.

On Tuesday, the coalition held more than a dozen protests at banks and local chambers of commerce across the country to show support for the proposed Consumer Financial Protection Agency and to publicly scold the firms and the U.S. Chamber of Commerce for waging their own public relations and lobbying campaign against the proposal.

"For too long, the rules have been written and enforced for Wall Street, by Wall Street. Now, groups funded by [American International Group] and others are spending billions of dollars on a massive public relations and media campaign to keep things exactly the way they are," Heather Booth, campaign director for the Americans for Financial Reform coalition, said in a statement.

Attacking Wall Street for lobbying against an agency dedicated to consumer protection is a major theme of the consumer campaign, and it could be an effective tactic if it succeeds in tapping into public distaste for lobbyists - so effectively used by Barack Obama during the presidential campaign - and combines that with popular anger at Wall Street's role in the financial crisis.

"It's the height of gall that the American taxpayer would bail out these institutions in the amount of trillions of dollars and that they would turn around and use money to actually prevent consumers, taxpayers from being protected," said John Taylor, president and CEO of the National Community Reinvestment Coalition, another member of the coalition.

Beyond President Obama, supporters of the consumer agency also have key lawmakers on their side, including Senate banking committee Chairman Chris Dodd (D-Conn.) and House Financial Services Committee Chairman Barney Frank (D-Mass.).

Stronger consumer protection could have prevented the current crisis, Dodd said at a Tuesday hearing on the proposed agency.

"For 14 years, despite a clear directive from the United States Congress, the Federal Reserve Board took no action to ban abusive home mortgages ... [and] allowed mortgage brokers and bankers to make and sell predatory loans to Wall Street that turned into toxic securities that brought our economy to its knees," Dodd said, asserting that the lack of action by existing regulators to protect consumers underscored the need for a separate, independent consumer agency.

Assistant Treasury Secretary for Financial Institutions Michael Barr made a forceful case for the new consumer agency at the hearing, calling the current system for consumer protection "broken" and "structurally flawed," with the only solution being the creation of a separate agency.

"The present system of consumer protection is not designed to be independent or accountable, effective or balanced. It is designed to fail. It is simply incapable of earning and keeping the trust of the American people," he said.

Barr dismissed industry pushback as a typical knee-jerk fear of change; industry officials also are concerned about the loss of benefits, he said, citing their ability to shop around for the least-restrictive regulator and to continue "financial practices that were lucrative for a time but that ultimately proved so damaging to households and our economy."

The financial industry and other business opponents say the consumer protection agency would add a clunky, additional regulatory burden that will hurt consumers rather than protect them.

"This proposal will chill efforts to innovate and respond to consumer demand for beneficial products and services," American Bankers Association President Ed Yingling testified Tuesday.

The agency's supporters take the industry's opposition seriously; they know that even the support of powerful legislation writers doesn't ensure success.

"I'm always worried," said Rep. Brad Miller (D-N.C.), a strong ally of consumer groups on the House Financial Services Committee. "The power of the industry, despite how discredited they are in the eyes of the American people, is not something I underestimate."

"Lots of money is always real," said NCRC's Taylor.

The industry doesn't have to block the creation of the new agency altogether in order to win this fight, consumer advocates said. In fact, some industry lobbyists concede that the creation of some sort of consumer agency is inevitable. Rather, their goal is to make sure the new agency is the least bad option for their clients.

The consumer coalition, for instance, sees potential problems in industry suggestions that the new agency have the power to write rules but not enforce them, or a proposal to put it under the Federal Reserve.

"The ability to have what sound like harmless modifications that destroy the effectiveness of the bill worries me greatly," said Miller. "I know the American people want us to come down hard on the kind of financial practices we've seen in the last few years, but it is very possible to fuzz it up so that the American people aren't going to be able to tell who's really been on their side and who's not."

###

Sean Lengell, *SEC chief outlines plan to build investor confidence*, The Washington Times, July 15, 2009.

The head of the Securities and Exchange Commission told a congressional panel Tuesday that her much-maligned agency is engineering a comprehensive overhaul intended to better protect investors and to assure market stability.

The SEC, the federal government's regulatory arm of the securities industry, has been criticized for failing to prevent the near collapse of Wall Street last year. The agency also has been scorned for being caught off guard in the Bernard Madoff fraud scandal - believed to be the largest Ponzi scheme in history - despite years of red flags.

But SEC Chairman Mary Schapiro said that since taking over the agency in January, "we have been singularly focused on rebuilding investor confidence in the capital markets and in the SEC itself."

"There is an invigorating sense of urgency among the staff of the agency to demonstrate that we are up to the job," she said at a House Financial Services Committee hearing. "I understood when I arrived that we could not wait to begin making significant changes."

Lawmakers and investors have clamored for limits on moves they say worsened the market's downturn. So the agency is streamlining its enforcement procedures, such as allowing enforcement staff to issue subpoenas and negotiate corporate penalties without first getting full commission approval, Ms. Schapiro said.

Specialized units within the agency's enforcement division are being created, including one that will focus on Ponzi schemes.

"The Madoff fraud is one that the agency tragically did not detect," Ms. Schapiro said. "Not a day goes by that we do not regret that."

And in order to make the best use of the SEC's limited staff, Ms. Schapiro said its enforcement focus "has shifted to higher-impact cases brought in a timely way."

The agency also has proposed rules to strengthen controls over the custody of client assets held by investment advisers or their affiliates. Such safeguards would encourage investment firms to place these assets in the care of "truly independent custodians." Noncompliant firms would be required to obtain a special custody controls report from an independent audit firm.

Another key potential change is a plan to restrict short-selling, the controversial trading practice that involves borrowing a company's shares, selling them, then buying them back when the stock falls and returning them to the lender. The short seller pockets the difference.

The Obama administration last week proposed legislation to increase oversight of the nation's financial industries by consolidating regulatory duties that are spread out over several agencies. The proposals calls for a new regulatory agency that would have some interaction with the SEC and other financial oversight agencies.

The proposal was debated Tuesday during a Senate hearing, when Assistant Treasury Secretary Michael Barr testified that current federal oversight of the financial services industry is "a fractured system where everybody can point fingers and nothing gets done."

Several Republicans said they fear the proposed new agency and its tighter rules would stifle innovation and add another layer of unnecessary government bureaucracy.

"What you're really saying is you don't trust consumers to make decisions for themselves," said Alabama Sen. Richard C. Shelby, the top Republican on the Senate Banking, Housing and Urban Affairs Committee.

Sen. Bob Corker, Tennessee Republican, called the proposal "an example of this administration being big brother."

But Sen. Charles E. Schumer, New York Democrat, pushed back, saying that the only innovation the new rules would stifle would be financial scams that dupe consumers.

"It's amazing to me that people say they don't want stronger protection," said Mr. Schumer, vice chairman of Congress' Joint Economic Committee.

###

Charlene Carter, *Senate Banking GOP Members Lining Up Against Proposed Consumer Financial Protection Agency*, CongressNow, July 14, 2009.

Republicans on the Senate Banking, Housing and Urban Affairs Committee expressed concern at a hearing today over the Obama administration's proposal to create a Consumer Financial Protection Agency that would have broad authority to ban certain financial products.

Ranking member Richard Shelby (R-Ala.) criticized the proposal as a sharp departure from the classic regulatory model and said he was concerned that the administration's proposal is seeking to eliminate risk from the financial marketplace.

The proposed agency would take over consumer protection authority from prudential banking regulators and oversee financial products such as mortgages and credit cards. It could also require firms to offer less risky "plain vanilla" products to consumers.

"While I can accept the view that in some cases consumers do not have the necessary information or understanding to make sound financial decisions, I do not accept the premise that the remedy is to deny consumers decision-making power altogether," Shelby said.

Michael Barr, assistant secretary for financial institutions at the Treasury Department, defended the proposal and argued that risk and innovation are central to the financial system.

"The proposed legislation is not about making sure people don't make mistakes. It just makes it easier for them to avoid mistakes," Barr said.

Barr said that the current jurisdiction over financial products and authority for consumer protections is spread among several regulators, which has made federal actions less effective.

"I just don't think we can afford that experiment any longer," Barr said.

Barr said the solution to dealing with a flawed and broken regulatory system is to create an agency with a focused consumer protection mission, comprehensive jurisdiction over all financial service providers, both banks and non-banks, and the full range of regulatory enforcement and supervisory authorities.

Sen. Bob Corker (R-Tenn.) said the proposed language amounts to the federal government acting like "big brother" and is "a tremendous overreach" that would limit what companies could sell and what consumers could buy.

Shelby conveyed similar sentiment.

"First, I believe that we must clearly acknowledge and accept that risk cannot be eliminated from our financial markets," Shelby said. "It is risk-taking that generates returns. It would be both false and irresponsible to lead the American people to believe that an enhanced regulator can provide them with risk-free opportunities."

Chairman Chris Dodd (D-Conn.) said none of the panel's members - Democrat or Republican - wants to stifle product innovation, limit consumer choice or create regulation that is unnecessary or unduly burdensome."

"We all want financial services companies to thrive and succeed, but they will have to make their money the old-fashioned way - by developing innovative products, pricing competitively, providing excellent customer service and engaging in fair competition on the open market," Dodd said. "The days of profiting from misleading or predatory practices need to be over completely."

Dodd has said a comprehensive financial regulatory overhaul package, including the Consumer Financial Protection Agency, would likely move in the Senate during the fall. He said he would work with Shelby on the proposal.

"We're not going to bring a lot of ideology to this debate but what works," Dodd said.

House Financial Services Chairman Barney Frank (D-Mass.) is preparing his panel to mark up the proposal next week but has said that ultimately it would be packaged with several other changes to the financial sector's regulatory structure.

###

Roxana Tiron and Silla Brush, *Obama pens threat of veto over additional fighter jets*, The Hill, July 14, 2009.

In an unusual move, President Obama on Monday personally informed senators debating a major defense policy measure that he would veto any bill that pays for additional F-22 fighter jets. Obama said in a letter to Sens. Carl Levin (D-Mich.) and John McCain (R-Ariz.), the chairman and ranking member on the Senate Armed Services Committee, that he wants the program capped at 187 planes and will veto any bill that goes beyond that number.

Senators narrowly voted to add $1.75 billion to the fiscal 2010 defense authorization bill last month to buy an additional seven planes. After the markup of the defense bill, the White House issued a statement of administration policy that included a veto threat over the amendment. But the personal letter from Obama shows he is committed to the veto and willing to absorb the risk. "I will veto any bill that supports acquisition of F-22s beyond the 187 already funded by Congress," Obama wrote on Monday. "To continue to procure additional F-22s would be to waste valuable resources that should be more usefully employed to provide our troops with the weapons that they actually do need." In a separate letter, Defense Secretary Robert Gates and Chairman of the Joint Chiefs of Staff Adm. Mike Mullen said they would "strongly recommend" a veto. Levin and McCain are strongly opposed to including additional money and introduced an amendment on Monday to cut money for the seven planes. The committee, over the objections of Levin and McCain, voted 13-11 last month during a closed-door markup to provide more money for the plane. The vote was a victory for Sen. Saxby Chambliss (R-Ga.), who represents a state where LockheedMartin builds the radar-evading planes. The floor vote this week on the Levin-McCain amendment becomes a test for the two senators, who three years ago opposed another Chambliss amendment seeking authority for a multiyear contract for the Lockheed plane. They were dealt a blow when the Senate overwhelmingly voted in favor of Chambliss's amendment. Levin predicted an extremely close vote this week. In an interesting twist, Lockheed did not lobby for more F-22s and came out earlier this year in support of Obama's decision to cap production at 187. But the defense giant's presence in states across the country and the thousands of jobs at risk have turned some lawmakers into lobbyists for the program. Meanwhile, funding for long-range missile defense will also likely be a matter of debate. Another issue that could garner significant attention during the defense authorization debate is the 1993 "Don't ask, don't tell" law, which bans gay people from serving openly in the military. Sen. Kirsten Gillibrand (D-N.Y.) has been working with Sen. Edward Kennedy (D-Mass.) on legislation to repeal the ban and may introduce an amendment to the defense authorization bill challenging the existing law. According to a spokeswoman, Gillibrand is still gauging support for such an amendment and it's yet unclear when she would introduce it. Far from center stage, House and Senate lawmakers will dig further into the specifics of the Obama administration's plan to overhaul the financial system as federal officials continue to release more details of the revamp. Treasury Secretary Timothy Geithner on Friday testified before Congress on the need to regulate all over-the-counter derivatives, but many specifics and details remain unresolved. The most basic issue is the ongoing debate about the difference between a derivative that is standardized enough to be moved onto a regulated exchange and those that are customized so much that they would continue to be traded between two parties. Banks and non-financial companies are lobbying heavily on the need to preserve flexibility in the customized derivatives market. Also on Friday, the administration unveiled legislation for the second part of the overhaul plan that aims to give the Securities and Exchange Commission (SEC) greater oversight of sales practices, compensation and conflicts of interest. The proposal aims to regulate investment advisers and broker dealers in the same way and ensure that they both have a fiduciary responsibility when they provide advice. "The SEC will determine appropriate rules so that the fiduciary duty is implemented in the right way for the right context. That will take some significant rulemaking," said Michael Barr, assistant Treasury secretary for financial institutions. A House Financial Services subcommittee will consider the SEC measure on Tuesday. Also on Tuesday, the Senate Banking Committee will hold a hearing with Barr on the administration's proposal to set up a Consumer Financial Protection Agency. The proposal has run into stiff criticism from industry groups. House Financial Services Committee Chairman Barney Frank (D-Mass.) intends to pass legislation through his committee by the August recess that would set up the agency. On Wednesday and Thursday, Frank's committee will hear from a wide range of industry and consumer advocacy groups on the broad administration plan. Many eyes will turn to Thursday's House Oversight committee hearing with former Treasury Secretary Henry Paulson. Congressional investigators have been looking into whether Paulson, Federal Reserve Bank Chairman Ben Bernanke and other federal officials pressured Bank of America to complete its purchase of Merrill Lynch. Bernanke has denied making any threats to oust the bank management if BoA did not complete the deal, but lawmakers are continuing to raise questions about the government's role. The questions come as the administration aims to empower the Fed with oversight over "systemic risk."

###

Bill Swindell, *Dodd, Shelby Split Over Consumer Agency*, National Journal’s CongressDaily, July 14, 2009.

Senate Banking ChairmanChristopher Doddand ranking memberRichard Shelbybickered today over the proposed Consumer Financial Protection Agency, a harbinger that a revamp of the nation's regulatory financial system will be a drawn-out process that will not be finished this year.

During a hearing on the agency, Shelby challenged Assistant Treasury Secretary Michael Barr on the proposal, claiming that it would place bureaucrats in charge of what financial products could be offered in a futile attempt to eliminate risk.

Shelby then read part of a 2008 study Barr authored for the New America Foundation that advocated a behavioral economic framework -- the interaction between individual psychology and market competition -- for such regulation, as opposed to the more classical model that emphasizes the balance between rational choice and market pressures.

"This is a radical departure from the way we have regulated things before," Shelby said. "There are a lot of flaws in this proposal. ... What we would ultimately do probably is really ration credit to people who need it the most."

Dodd took issue with that and noted the issue is about helping families who have been harmed as a result of predatory mortgages and abusive credit card policies.

"We are facing a radical situation in this country. It is unprecedented. The classical model has fallen apart, and the people who have paid the price for that are consumers," Dodd said.

The spat highlights part of the difficulty congressional Democrats and the Obama administration will face in trying to pass an overhaul.

The proposed agency is a top priority for President Obama and Democrats, but Dodd needs to get Shelby on board to get the bill out of the Senate.

While Shelby is dubious of the proposed agency, he has been especially critical of expanding the Federal Reserve's role as the top regulator to monitor systemic risk -- a pressing issue for Treasury Secretary Geithner that has a lot less support on Capitol Hill.

Dodd also will have to assuage some panel Democrats that the agency would not be a burden on small banks and credit unions, which have a strong lobbying presence. Both Sens.Tim Johnsonof South Dakota andJon Testerof Montana raised such concerns.

Barr said those institutions should benefit because they have had to endure a system where they were competing against less-regulated nonbank mortgage companies that offered questionable products that contributed to the housing downfall.

"They were forced because of market pressure to offer products and services ... they would rather not have offered," said Barr, who cited payment-option adjustable rate mortgages as one example.

Republicans on the panel were skeptical of the agency's mandate such as requiring that firms offer "plain vanilla" products to more exotic offerings. "In essence, you all are advocating that you design products for the financial industry. That is a major departure," said Sen.Bob Corker, R-Tenn.

Barr said the agency would not dictate all products and services and only offer comparison shopping for such major items as mortgages.

Edward Yingling of the American Bankers Association offered a compromise that would give all federal regulators the authority to go after questionable products under the Unfair and Deceptive Acts and Practices Act.

But proponents argue that only a new agency devoted to consumer protection could offer sufficient safeguards. "It's not in my mind the type of reform we will need," Sen.Robert Menendez, D-N.J., told Yingling.

###

Kevin G. Hall, *Obama proposes investor protections in wake of Madoff scandal*, McClatchy Newspapers, July 12, 2009.

Jul. 12--WASHINGTON -- Fresh on the heels of new proposals to regulate mortgages and other consumer credit products, the Obama administration on Friday sent Congress proposed legislation designed to head off another Bernard Madoff-style fraud.

The Treasury Department plan would allow the Securities and Exchange Commission to impose more consistent standards and greater accountability for those who provide advice to average investors. It also would require simpler, consumer-friendly disclosures to the buyers of stocks, bonds, mutual funds and other types of financial instruments.

One of the proposal's more controversial elements would give the SEC authority to pay rewards to whistleblowers whose tips lead to uncovering significant wrongdoing. Money for the rewards would come from fines the SEC levies.

The Obama administration also proposed a clampdown on broker-dealers, companies that can carry out trades on behalf of clients or for their own benefit. Currently, an investment adviser that's barred from practicing for financial misconduct can still become a broker-dealer. The proposed legislation would allow the SEC to bar those found guilty of misconduct from trading securities in any capacity.

The legislation also would declare that broker-dealers have a fiduciary responsibility to investors. Presently, they aren't explicitly charged with having investors' best interests at heart.

The Treasury Department's assistant secretary for financial institutions, Michael Barr, said in a conference call that many of the proposed changes stemmed from failures that allowed Madoff to go undetected for so long. Madoff was sentenced last week to 150 years in prison for carrying out a years-long Ponzi scheme that cost investors $50 billion.

"The SEC is taking some steps under its existing authority already, and in addition to that, today's (proposed) standards with respect to broker-dealers and investment advisers could have helped in that context, and expanded protection for whistleblowers could have helped in that context potentially," Barr said.

In a statement, SEC Chairman Mary Schapiro said that her agency, whose mission is protecting investors, was on board with the Treasury's proposals.

"The measures included in the legislative package are consistent with ideas we have publicly promoted. In particular, I believe compensating whistleblowers, strengthening the SEC's enforcement capabilities and applying tough standards that require financial professionals to put investors first will provide us with needed tools to better safeguard investors," Schapiro said.

The SEC failed to detect Madoff's crimes or even to investigate his company, despite its seeming ability to pay generous returns in both good times and bad. As it turned out, Madoff wasn't investing, but using the money from new clients to pay "dividends" to old ones.

New investor-protection proposals from the Obama administration follow last month's plans to create a Consumer Financial Protection Agency, which would have broad powers to regulate mortgages, credit cards, payday lenders and a host of other types of credit products extended to consumers.

Both sets of proposals aim to reverse more than a decade of moves away from regulation, which encouraged self-policing by the financial sector.

###

Ronald D. Orol, *White House seeks to empower SEC to help investors*, MarketWatch, July 10, 2009 3:49 PM ET.

WASHINGTON (MarketWatch) - Seeking to respond, in part, to the $50 billion Ponzi scheme perpetrated by Bernard Madoff, the White House on Friday proposed to strengthen the Securities and Exchange Commission's authority to protect investors.

The proposal includes a measure that would empower the agency to examine and ban forms of compensation that encourage financial intermediaries to steer investors into products that are profitable to the intermediary, such as a broker-dealer, but are not in the investor's best interest.

"This proposal seeks to improve disclosure and promote fairness and ensure accountability and further investor engagement," said Michael Barr, Assistant Treasury Secretary for Financial Institutions.

The proposal is part of a larger regulatory reform initiative being urged by the Obama administration, which includes reform to the Federal Reserve and other bank regulators. The larger effort also seeks to create a Consumer Financial Protection Agency, which would examine mortgage and credit card products sold to individuals.

Legislation to create the consumer protection agency was formally introduced in the House this week, but lawmakers are still discussing the administration's other financial reform proposals, and have not yet introduced specific legislation.

The White House proposal also seeks to give the SEC authority to prohibit or limit mandatory arbitration, which the Treasury argues could undermine investor interests.

The Treasury also seeks to empower the SEC to give investors better disclosures. The proposal seeks give the SEC authority to regulate the quality and timing of disclosures to investors about the costs of a particular mutual fund compared to other similar funds. Such disclosures would have to be made prior to the completion of a sale of the fund, according to the proposal.

"It would improve an investor's ability to make informed judgments and comparable judgments about investing in mutual funds," Barr said.

It would also set up a fund to pay whistleblowers for information that leads to enforcement actions that result in financial awards, and would also make permanent an investor advisory committee, which provides advice to the SEC on behalf of investors.

Compensation conflicts of interest

Broker-dealers already have a fiduciary responsibility to consider the best interests of investors they are providing advice. For example, broker dealers are generally prohibited from being given special compensation to sell an in-house product.

However, Barr said the SEC is seeking more tools to ban broker-dealer compensation practices it deems problematic.

Barr added that the Treasury seeks to give the SEC the authority to look at "side payments" going to broker-dealers that exist in various contexts in the securities world.

"They [certain payments to broker dealers] are difficult for regulators to police," Barr said. "The SEC needs broad authority so that sales practices do not interfere with ability of securities professional to provide the service investors expect."

Barr said broker-dealer should give advice irrespective of any compensation arrangement. "There are likely to be many contexts in which the decision about a particular form of compensation could impair the ability of a broker or investment advisor to provide the kind of advice that is consistent with their fiduciary duty," he said.

More to come

The Treasury is expected to provide more details about its regulatory reform proposal in the coming weeks, with a focus on the Commodities Futures Trading Commission and SEC, Barr said.

"We will unveil additional pieces of legislation in the days ahead," Barr said.

Barr added that many of the reforms outlined in the proposal were made in response to the $50 billion Bernard Madoff Ponzi scheme.

"Expanded protection for whistleblowers and other changes we are recommending could have helped in that context," said

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Stacy Kaper, *FTC to Hill: Thanks, But No Thanks*, American Banker, July 9, 2009.

WASHINGTON - Creating a new government agency always leads to battles over turf, but it's usually the regulators doing the fighting.

At a hearing Wednesday on the Obama administration's plan to consolidate authority for protecting consumers of financial products into a new agency, members of the House Energy and Commerce Committee went to bat for the Federal Trade Commission, arguing it should keep its existing financial protection powers.

Their arguments, however, were undercut by none other than the agency's head, Chairman Jon Leibowitz.

"The president's goal of streamlining the overall system for protecting consumers from financial [entities] is more than commendable... and eliminating balkanization of consumer protection oversight of banks and nonbanks is laudable and very, very pertinent," Leibowitz testified before the panel's consumer protection subcommittee.

But lawmakers may be less concerned about protecting the FTC than about guarding their own jurisdiction.

Energy and Commerce lost a big chunk of its power in 2000, when the then House Banking Committee absorbed much of its oversight responsibilities over financial matters and was renamed the Financial Services Committee. Since that time the two panels have clashed over matters that fall into a gray area between the committees' jurisdiction, including the FTC.

In nearly an hour of opening statements, lawmakers on both sides of the aisle gave a lukewarm reception to the Obama proposal, arguing that the FTC, which currently has authority over mortgage lenders and other nonbanks, should keep its responsibilities. Banking regulators have also lobbied to keep their power over financial institutions. (See story on page 16.)

"I believe that the FTC should remain intact as it is currently constituted, and that this committee and subcommittee should continue to oversee and authorize the FTC," said Rep. Bobby Rush, the chairman of the commerce, trade and consumer protection subcommittee. "Importantly this 'push and pull' between our respective committees has pressured the providers of financial services and products, including banks and depository institutions, to balance the allure of profits and determinations of safety and soundness against the needs of consumers."

Despite repeated attempts by members to goad Leibowitz to fight for keeping the FTC's existing authority over financial services, he would not take the bait.

Rep. George Radanovich of California, the senior Republican on the subcommittee, questioned the FTC's position outright.

"I gotta think you are doing a bit of a dance because you stand to lose some jurisdiction in the FTC," hesaid. "It seems to me at least under the proposal you are getting more money and authority to do less."

But Leibowitz said the issue was not about turf, but what is best for consumers.

"From my perspective, if you create this new agency and you also give us more resources and authority from the perspective of consumers, they will be getting a better deal," he said. "We will continue to have a backstop authority with respect to financial matters and we are going to be able to concentrate and do more for consumers."

Under the plan, the FTC and federal banking agencies would lose oversight of consumer protection issues related to financial products to the new agency but would still be able to refer cases if they spotted problems.

If the consumer protection agency did not act within 120 days on those referrals, the FTC or banking agencies could pursue their own action against a financial firm. The FTC would keep its role to police anticompetitive practices among businesses, and still have the power to write rules defining unfair and deceptive practices.

Michael Barr, the Treasury assistant secretary for financial institutions, also testified about the need for a new agency solely focused on protecting consumers, arguing the issue was personally important to President Obama.

"The president feels very strongly about the need to protect consumers," Barr said. "He feels very strongly that we need a fundamental change from the past and we need to lay a new foundation with a consumer financial protection agency that covers the financial services sector and creates high and consistent standards to protect consumers. It is a very,very top priority to the president."

Asked by reporters after the hearing if he was concerned about a turf battle between congressional committees, Barr said he was confident any issue could be worked out.

"The committee and the Congress and the leadership are all going to work together to get the entire financial regulatory reform plan done and I don't think we as a country can afford and consumers cannot afford to let concerns about that dissuade us from getting the job done," he said. "The FTC does after-the-fact enforcement on a small part of the problem. It has a very small staff. It hasn't brought safety into the areas we need it."

Indeed, some observers noted that Energy and Commerce Committee Chairman Henry Waxman avoided taking a hard stance. Instead he raised general concerns about ensuring the FTC had sufficient power to accomplish its mandate and appeared to leave the door open to also supporting a new agency.

"It only makes sense to create a new agency if that new agency will become a strong, authoritative voice for consumers," the California Democrat said. "We must ensure the Federal Trade Commission is strengthened not weakened, by any changes. Unlike the banking agencies, FTC has consumer protection as its core mission. ... It is not clear what impact these proposals would have on FTC or its ability to its perform consumer protection mission."

While the FTC backs the Obama plan, the banking agencies are not ready to give up their authority.

Supported by the industry, the banking regulators have argued that consumer protection can not be separated from prudential oversight of banks and thrifts. The agencies have not had a chance to testify before Congress on the issue. Some analysts said turf considerations could slow passage of a bill creating the agency, which the House Financial Services Committee is hoping to vote on this month.

Jaret Seiberg, an analyst with Stanford Research Group, a division of Concept Capital, said the concerns among members of the Energy and Commerce Committee are going to have to be addressed in some way.

"The turf battle here is another complication that the administration has to overcome it to get its consumer financial protection agency," he said. "They are going to have to be accommodated."

###

Sean Lengell, *Democrats iffy on new watchdog; Consumer agency proposed*, The Washington Times, July 9, 2009.

The Obama administration's push for a new regulatory agency to protect consumers and investors from financial scams was met with surprise reluctance from some key House Democrats on Capitol Hill.

Michigan Democrat Rep. John D. Dingell said he was skeptical of the plan to weaken the Federal Trade Commission's powers by consolidating regulatory duties now spread over several agencies.

"I am not of the view that maybe we want FTC to lose that [consumer protection] jurisdiction," he said. "Maybe we want FTC to be around to provide minor dampening of the rascality that's going to continue to occur in the financial services industry."

Assistant Treasury Secretary Michael Barr delivered the administration's pitch for the agency Wednesday before the House Energy and Commerce's subcommittee on commerce, trade and consumer protection, saying it would streamline regulation and make the financial industry more accountable for its products and actions.

"It is time to put consumer protection responsibility in an agency with a focused mission and comprehensive jurisdiction over all financial services providers - banks and nonbanks," Mr. Barr said.

The administration says the proposed Consumer Financial Protection Agency would offer greater consumer protections for such financial products as mortgages, credit cards and loans by establishing simpler and more transparent rules and regulations.

But subcommittee Chairman Bobby L. Rush said he wasn't sure tinkering with the FTC was smart.

"Looking at all reliable indicators, the commission has performed commendably with a small and scrappy staff and abridged powers," the Illinois Democrat said.

Mr. Barr called the current regulatory system a "fragmented system of regulation designed for failure." Banks and other financial institutions routinely compete in the same consumer markets yet are subject to different and uncoordinated federal regulators.

The current regulatory system also contains loopholes that allow some financial institutions to shop for the supervisory agency that will be the least restrictive, Mr. Barr said.

"Fragmentation of the supervision of banks and thrifts only makes this problem worse," he said.

FTC Chairman Jon Leibowitz told the subcommittee that he supports the plan in principle, but has some concerns, including a provision that he said could lead to delays in prosecuting fraud cases.

Mr. Leibowitz added that any new agency must work in concert with existing regulatory agencies, not unilaterally.

"Bad guys do not always act in silos," he said.

The potential new agency has a key supporter in House Financial Services Committee Chairman Barney Frank, who was expected to introduce legislation Wednesday calling for its creation.

The administration's proposal has been meet with predictable reluctance from Republicans, who say a new agency is unnecessary and only would add to a bloated federal bureaucracy.

"With regards to the FTC, it seems like we are throwing out the baby with the bath water by stripping [its] authority," said the subcommittee's top Republican, Rep. George Radanovich of California. "I am far from convinced that the market problems require the creation of a new federal regulator."

Financial institutions also have argued that tighter controls and more regulations would stifle credit and innovation in the financial world and possibly slow down the flow of capital through the markets - a scenario blamed for last year's Wall Street meltdown.

###

Cecile Kohrs Lindell, *FTC chief supports new consumer agency*, The Deal, July 8, 2009.

Federal Trade Commission Chairman Jon Leibowitz told a skeptical panel of lawmakers Wednesday that creating a regulatory agency to oversee consumer protection for financial products would "make life better for consumers."

Even though primary responsibility for many financial consumer protections would be transferred from the FTC to the new agency, Leibowitz said the move would be a win for consumers as long as the FTC retained strong backup authority.

At a hearing before a subcommittee of the House Commerce Committee, which has oversight authority for the FTC but would not have jurisdiction over the proposed Consumer Financial Protection Agency, Leibowitz said the widespread consumer abuses that contributed to the current financial crisis demonstrates that the regulatory status quo has been "a dismal failure."

The FTC has authority for prosecuting only nondepository institutions, but not banks or other federally insured depository institutions. Historically, the agency has pursued some credit card issuers that used deceptive language or were predatory lenders. But today cards are typically issued by companies that take deposits, which are outside the FTC's jurisdiction.

Such problems, Leibowitz said, would be avoided if a sole agency could make and enforce rules aimed at protecting consumers from predatory lending, and other mortgage-related problems that have contributed to the financial crisis.

Michael Barr, Treasury Department assistant secretary for financial institutions, amplified those comments. Barr also highlighted the urgency of acting quickly on President Obama's broader plan to overhaul financial regulation, of which creating the consumer agency is a component.

Barr acknowledged the political difficulty of asking the Commerce Committee to cede some of its oversight powers - the House Financial Services Committee would oversee CFPA in Congress. But he said acting quickly would help alleviate "the deep financial crisis that we are still in."

Most troubled by the loss of Commerce Committee oversight was the former committee chairman, Rep. John Dingell, D-Mich., who blamed the crisis on the deregulatory Gramm-Leach-Bliley Act of 1999 and the transfer of much of the Commerce Committee's jurisdiction over finance to the House Financial Services Committee in 2001.

While creation of the CFPA would let a single agency monitor all financial players rather than continue the piecemeal approach, Barr did not dismiss the FTC's efforts to date. He said the FTC would retain much of its authority, though in a backup capacity.

"It's a good agency. It's long past time for a stronger FTC," he said, referring to provisions in the president's plan that would beef up agency staffing for its non-financial consumer protection duties. Strengthening the consumer protection authority for the FTC would include a bigger budget for personnel, amending and streamlining the rule-making process the agency must use, and giving the agency authority to extract civil penalties for a broader range of violations. The FTC's sanctions have frequently been limited to cease and desist orders, without real financial hardship for the companies that violate the law.

Both Leibowitz and Barr faced tough questions from lawmakers, but stuck to the administration line that the changes would restore trust in the financial sector and improve things for consumers despite the unknown cost of the new agency.

Rep. George Radanovich of California, the ranking Republican on the Commerce, Trade and Consumer Protection Subcommittee, told Leibowitz that the proposal seems to give the FTC more resources while asking it to do less for consumers in financial markets, since the authority it will retain is generally described as "backstop authority" to the CFPA.

But Leibowitz said the increase in resources will enable the agency to do more in a broad range of consumer protection areas, "and there is plenty to do." Issues such as data security and identity theft would generally stay with the FTC, though some privacy matters relating to financial services would be transferred to the new agency.

Leibowitz has been working with Treasury officials to move the administration plan forward. FTC staffers said there have been recent personnel changes in the Bureau of Consumer Protection, such as moving experienced lawyers who have worked in the financial sector from the FTC to the Treasury Department. Leibowitz confirmed this, saying the agency has "already lost personnel."

But he was not endorsing the proposed legislation without modification. Leibowitz asked Congress to alter a provision that would require the FTC to wait 120 days before taking action that the CFPA could do. Such a long delay, he said, could harm consumers.

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Bill Swindell, *Consumer Protection Agency Plan Questioned*, National journal's CongressDaily, July 8, 2009.

Facing skeptical House Energy and Commerce members concerned over losing jurisdictional turf, Obama administration officials said today a proposed Consumer Financial Protection Agency would not seriously impact the FTC and would ultimately provide a greater benefit to consumers who have been targeted for predatory loans and abusive credit card practices.

Assistant Treasury Secretary Michael Barr and FTC Chairman Jon Leibowitz both made their pitch to the Energy and Commerce Commerce, Trade, and Consumer Protection Subcommittee today, arguing the FTC would gain new authority, such as streamlined rulemaking and the ability to impose civil penalties for unfair and deceptive practices, even though it would also have to give up some power to the new agency over supervising financial firms.

"The FTC is a good agency. The chairman ... and I are good friends. Our legislation does not affect the jurisdiction of the FTC over the vast array of nonfinancial markets and actually strengthens its ability to police those markets," Barr said.

Leibowitz said consumers would "be getting a better deal" under the Obama draft bill because the FTC does not have authority over banks -- which resides with banking regulators -- while the proposed agency would.

Their testimony comes as House Financial Services ChairmanBarney Frankplans to file a bill today to create the agency, which is strongly supported by consumer groups but is ardently opposed by financial lobbying groups.

Looking for more? For additional information on the implementation of the stimulus law, and on auto company restructuring, housing and TARP, see our Economic Crisis page.

Frank also will have to avoid turf battles with the Energy and Commerce Committee, which were more common under the panel's previous chairman, Rep.John Dingell, D-Mich.

Although the administration testimony was met with skepticism among most Republicans and some Democrats, Energy and Commerce ChairmanHenry Waxmansaid he would support the plan as long as the FTC "is strengthened, not weakened by any changes."

Energy and Commerce Commerce, Trade, and Consumer Protection Subcommittee ranking memberGeorge Radanovich, R-Calif., pressed Leibowitz, noting that his agency would be giving up some turf in the proposal even with the proposed sweeteners. "It seems to me you are getting ... more money and authority to do less," Radanovich said.

Leibowitz countered his agency would still retain backstop authority on financial matters, but that consumers would ultimately benefit because the new agency would have expanded powers over mortgage lending, credit insurance and credit cards.

"We're going to be able to do more for consumers," Leibowitz said.

But Leibowitz did call for some revisions to the Treasury draft such as shortening the review period that the FTC would have under its backstop authority to take action and clarifying terms such as "credit" and "financial activity" in the draft.

He said the latter were broad and could lead to uncertainty over whether his agency or the new entity would take action in cases such as illegal telemarketing for financial products.

###

Cheyenne Hopkins, *Arguments for Keeping Thrifts May Be Fading*, American Banker, July 7, 2009.

WASHINGTON — Though the banking industry has a strong chance of defeating the Obama administration's call to eliminate the thrift charter, its arguments for defending it appear weaker than ever.

Two of the primary reasons for preserving the charter — stronger preemption powers and broader interstate branching rights — appear headed for the chopping block, and the third — a focus on mortgage lending — is now increasingly suspect. Many observers doubt the wisdom of keeping a charter that focuses primarily on real estate lending, arguing that thrifts caused the savings and loan crisis and helped fuel the current crisis.

"Why do you need it?" said Chuck Muckenfuss, a partner at Gibson, Dunn & Crutcher LLP. "It has certain restrictions in it, and so why not just make it one better charter in which you can do whatever you want to do? That's pretty compelling."

At issue is the Obama administration's regulatory reform proposal, which calls for the elimination of the thrift charter and its regulator, the Office of Thrift Supervision. Though most observers see the agency's elimination as a given, the banking industry is ready to fight tooth and nail to preserve the thrift charter itself.

To that end, bankers have a powerful ally in House Financial Services Committee Chairman Barney Frank, who said in an interview that problems in the thrift charter can be addressed by merging the OTS with the Office of the Comptroller of the Currency and strengthening regulatory oversight. "It is true that the thrift charter has been abused, because people have used a thrift charter to do all kinds of other things, but I think it's a mistake to abolish it altogether," Frank said. "There is a sort of housing and community savings emphasis there. What we should do instead is to amend the law creating a thrift charter so it can't be used as a fig leaf to go into other things. If people want to run a thrift as a thrift, I would keep that charter."

A dedicated charter focused on real estate lending remains the most compelling argument for keeping the charter. The charter "benefits consumers by ensuring that thrift institutions provide home mortgages and other consumer retail lending services, thereby meeting America's financial services needs," John Bowman, the OTS' acting director, said in a statement to *American Banker*.

But many have begun to argue that having a concentration in an area that was once thought risk-free but that has proven otherwise in the current crisis is a mistake. The focus on real estate lending left thrifts more vulnerable in the savings and loan crisis and the recent housing crisis because they were not able to diversify as much as commercial banks.

"The concentration in housing lending, like any other required concentration, can introduce additional risk," said David Nason, a former Treasury official who helped craft the Bush administration's regulatory blueprint released last year. That proposal also would have eliminated the thrift charter.

Some observers contend that focusing on regulation of thrifts is missing the point. The industry has twice had a regulator dedicated to its oversight — the Federal Home Loan Bank Board and the OTS — and both times it missed key problems. "Do you want a regulator with a unique specialty on mortgage lending?" said Mark Calabria, director of financial regulations studies at the Cato Institute. "You could have a regulator with that expertise, but they can still miss the ball."

Ellen Seidman, a former OTS director, also questions whether there is a more effective way to promote real estate lending than through a specialized charter.

"If we go about supporting residential lending, it's not at all clear that pushing institutions into an overall reliance on real estate lending is how we ought to be supporting homeownership in the United States," said Seidman, now the director of the Financial Services and Education Project at the New America Foundation. "We need to think about how unsubsidized residential real estate lending at the originator level for both single and multifamily — what degree of support do we want to give this, how supportive should this be, can we do it purely as a private function? I think that is a debate we need to have. The thrift charter may be a way of having that debate."

Recent data also suggests that commercial banks are increasingly doing more mortgage lending. Of the top 20 largest residential mortgage loan portfolios as of March 31, only three were held by thrifts. And as of June 11, thrifts had $631 billion of assets in mortgage loans, compared to $1.227 trillion in mortgage assets held by commercial banks.

The data raises a question that has dogged the thrift industry during the past decade: are thrifts any different from banks anymore? Before the savings and loan crisis, the answer was a definitive yes, but in recent years the differences have become blurred.

"What's happened over time is the thrifts have become more like banks, and the banks, in the sense that they are making mortgage loans, have become more like thrifts," said Bob Clarke, a senior partner at Bracewell & Giuliani LLP and a former comptroller of the currency.

The growing similarities between the two are a key reason the Obama and Bush administration suggested eliminating the thrift charter. They say a specialized mortgage charter is no longer necessary. "The historical distinctions between the bank charter and the thrift charter have long ago dissipated," said Michael Barr, Treasury assistant secretary for financial institutions. "What remains doesn't make any sense. … There's no continuing meaningful justification for having a separate charter with the opportunity to arbitrage between a bank charter and a thrift charter."

Barr argued that keeping a separate charter allowed institutions to shop for a more lenient regulator. While all commercial bank holding companies are regulated by the Fed, thrift holding companies are overseen by the OTS. "Our system of bank regulation was filled with loopholes," Barr said. "We need to say anybody who owns a bank is a bank holding company and is going to get meaningful significant supervision as a consolidated entity at the holding company level by the person in charge of doing that, which in our proposal is the Federal Reserve, and all the other games people have played in the past are over."

Other companies are also filling the role that thrifts traditionally did. "The administration states that the government-sponsored enterprises are doing a lot of securitization for housing lending, which has lessened the need for a charter dedicated to housing," said Nason, who is now at Promontory Financial Group.

Many thrift charter supporters point to two remaining differences from the national bank charter: greater preemption and branching powers. While national bank preemption is under fire from state regulators and the court system, thrift preemption has largely gone unchallenged because it has rested on more solid legal footing.

But the Obama plan would eliminate both those advantages even if the charter itself does not go away. The administration has proposed effectively doing away with preemption for all banks and thrifts, and so far appears to have significant support in Congress for such a move (which the banking industry also opposes).

Thrift branching powers, meanwhile, which include the ability for de novos to branch across state lines, are likely to be granted to all institutions. The Obama plan argued for removing any restrictions on interstate branching, and that provision appears to have a very likely chance of enactment.

Without preemption and interstate branching, it's unclear why the industry would want to keep the thrift charter, observers said.

"It looks to me like if they are trying to preserve the benefits of the thrift charter in the new charter then there isn't much of a benefit in preserving it," said Clarke.

But the banking industry and many thrift executives argue the administration has it wrong. Curtis Hage, chairman, president and chief executive of the $1.17 billion-asset Home Federal Bank in Sioux Falls, S.D., said that even though banks have increasingly engaged in mortgage lending, they are just following thrifts' lead.

"The reason more banks are making loans is simply there are more banks than thrifts today but they are doing it within the framework and system and structure the thrift industry has created," Hage said. "I don't know if bankers have in their philosophy to keep developing the home mortgage market. They are doing it as a competitive response."

Hage also argued that eliminating the thrift charter did not solve any immediate problems.

"If there is an inherent problem in mortgage finance that will reside with whoever does mortgage finance, even if you move it to the banking charter," he said.

Kevin Jacques, associate professor of finance at Baldwin-Wallace College, agreed that even if the thrift charter was eliminated, it would not make much difference.

"If you wipe out the thrift charter, you will see former thrifts say, 'My expertise is in home lending, so I'm not going to change how I do business,' " Jacques said. "Most thrifts are not going to change how they do business if you take the thrift charter away."

Diane Casey-Landry, the chief operating officer of the American Bankers Association, says the administration is fighting the last crisis, not this one.

"It's the remnant of the savings and loan crisis and viewed as the low-hanging fruit and not recognizing that the thrifts that survived didn't cause the crisis," she said.

But thrift failures have helped propel the housing downturn. Since last year, 9 thrifts have failed, including the largest savings and loans. Washington Mutual Inc., IndyMac and BankUnited were all large thrifts undone by the crisis, while others, like Countrywide Financial, were purchased before they could collapse.

Some said that issue can be addressed by merging the OCC and OTS, as Obama has proposed. "Let's create one strong entity," Jacques said. "At the end of the day, the biggest issue isn't the charter itself, it's the fact that the OTS is a weak supervisory agency."

But others said there is little point in eliminating the OTS without taking away the charter.

"The charter and OTS go hand in hand," said Kip Weissman, a partner at Luse Gorman. "Keeping the charter and putting it into the bank regulator is pretty close to window dressing."

Then there are practical issues the administration has not addressed. If the thrift charter were eliminated, it is unclear what would become of the 247 federally chartered mutuals, which would theoretically need to convert to a commercial banking charter.

"There is no way to convert a mutual charter into a bank unless you create a whole nother charter," said Chip MacDonald, a partner at Jones Day.

Forcing large insurance companies and other nonbanks that own thrifts to convert or divest could raise additional problems.

"What you are doing is you are going to cut off the ability of these people to do sales and do financing in the system," MacDonald said. "Many of the institutions that have a thrift aren't eligible to be a bank holding company."

One thing is clear: if the administration wants to eliminate the thrift charter, it has some heavy lifting to do. With Frank already opposed to that part of the plan, and most other lawmakers silent, observers said it would take a concerted push by Obama to make it happen. "I wouldn't underestimate the thrift industry and housing industry lobbying against this," said Calabria, a former top aide to Sen. Richard Shelby, R-Ala. "The politics don't favor it."

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Tim Fernholz, *Gearing Up for the Consumer Protection Fights*, Tapped, July 7, 2009 9:55 AM ET.

Get ready, here comes a battle. Representative Barney Frank will be marking up legislation to create a Consumer Financial Protection Agency this July as part of the President's financial regulatory reform. The agency would be a central clearinghouse for all consumer products, from mortgages and credit cards to pay-day loans and checking accounts, with the power to write industry-wide rules.

In one corner, Michael Barr, Treasury assistant secretary for financial institutions, told ABA members the current regulatory system "has failed to protect the American people and needs to be fixed in a fundamental way," said one person who heard the call.

In the other corner, A knowledgeable industry source confirmed yesterday that, as part of their efforts to roll back the Obama proposal for a consumer financial products regulator, several lobbying organizations representing banks are developing a "Harry and Louise"-style ad campaign, after the commercials that targeted the Clinton healthcare plan in the early '90s. The ads will emphasize the intrusiveness of the proposal--of the government "telling you what you can and can't buy," according to the source.

This fight has been brewing for a few weeks after it became clear that the CFPA threatens many of the industry's most cherished pernicious pratices, from risky mortgages to blistering fees. There has been a lot of concern on the Hill and among progressive and consumer rights groups in D.C. that the administration would not fight hard on this portion of their regulatory reform plan, which is by far the best part of the plan, but Treasury officials have been making the right signals about toughening up on the banks. They've managed to convince some trade associations to back off

The National Association of Realtors attended an early brainstorming session, but will not join a coalition opposing the consumer agency, a spokeswoman said.
"We did attend the meeting ... However we declined to contribute or participate in their campaign," said Mary Trupo. "It is our belief that (the agency) needs to move cautiously forward in creating its mission."
I'll have a longer reported piece on the whole thing tomorrow, but expect this fight to grow in the coming weeks.

###

Brady Dennis, *Industry Takes Aim at Plan to Create Financial Protection Agency*, The Washington Post, July 7, 2009.

Business and trade-group lobbyists are beating a path to Capitol Hill this week for the first major battle over the Obama administration's efforts to overhaul the financial regulatory system.

A coalition of business representatives, who are skeptical about a proposed Consumer Financial Protection Agency, has met repeatedly in recent weeks to hone their argument that a new regulator could cause more harm than good and to strategize about which members of Congress might be sympathetic to their cause.

These opponents of a new agency have begun visiting members of the House Financial Services Committee, which plans to take up the proposal in the coming weeks, and are putting a top priority on centrist Democrats, according to people familiar with the meetings.

"It's your basic shoe-leather lobbying," said Bill Himpler, executive vice president for government affairs of the American Financial Services Association, the trade group for the consumer credit industry. "This has become front burner -- the number-one issue of our association, at least for the foreseeable future."

In addition to AFSA, the recent discussions have involved the American Bankers Association, National Auto Dealers Association, U.S. Chamber of Commerce, Mortgage Bankers Association and other lobbyists. They are also courting other organizations, such as those representing home builders, lobbyists said.

Though the groups represent different industries with often divergent interests, they share concerns that the new agency proposed by the administration could intervene in business activities in overbearing and unproductive ways.

This coalition has solicited pitches from several public relations firms, including Powell Tate and Direct Impact, to help make their case through advertising and grass-roots political outreach. There have been discussions about launching a television campaign similar to the "Harry and Louise" ads that helped torpedo President Clinton's health-care plan in the early 1990s, said two people familiar with the meetings.

The Obama administration is seeking to give the proposed agency broad powers to oversee a range of financial products, from mortgages to credit cards and checking and savings accounts. Advocates of creating such an agency, who have formed a large coalition of their own, say that it would guard Americans from the abusive lending practices that contributed to the financial crisis, such as undocumented mortgage applications, the poor disclosure of loan terms, predatory credit card interest rates and deceptive ads.

Rep. Barney Frank (D-Mass.), chairman of the House Financial Services Committee, says he plans to have the panel vote on a bill before Congress's summer recess, scheduled to begin Aug. 3. He has called the creation of the new agency "one of our highest priorities."

Steve Adamske, a spokesman for the House Financial Services Committee, acknowledged that lobbyists and industry groups "are coming in and making their pitch." But he said that Frank is determined to create the new agency, and he dismissed criticism from opponents that policymakers are moving too quickly in creating legislation.

"The need is there," Adamske said, adding that consumer protection "is at the heart of this financial crisis. It's something we will be working on judiciously."

Opponents of the agency have been repeating several arguments in meetings with lawmakers and in media interviews. Business groups warn that another layer of regulation could increase costs, stifle innovation and curtail choices for consumers. They complain that an agency responsible solely for examining consumer financial products would not be concerned about the health of the firms providing them. They say the proposal would exacerbate the patchwork nature of current regulation by setting minimum federal standards that individual states could exceed.

Few lobbyists predict they can actually prevent the creation of a new agency given the severity of the financial crisis and the momentum in Congress for overhauling regulation.

"Politically, it would be difficult to kill it outright," said Scott E. Talbott, senior vice president of government affairs at the Financial Services Roundtable, which represents the nation's largest financial firms. "Our goal is to change the agency, change the proposal, to where the benefits outweigh the costs. Right now, we believe it's the other way around."

In addition, opponents, like many lawmakers, are wary of being perceived as anti-consumer.

"We're not for the status quo," Talbott said. "We're for protecting consumers. The question is, what's the best way to do it?"

Administration officials and others who support a new agency say they hold the upper hand in the current debate.

"I don't think it's a surprise that big banks and institutions that benefited from the status quo want to keep it that way," Michael Barr, the assistant Treasury secretary for financial institutions, said last week. "I think it's a horrible position for them to be in. I don't envy them."

The wave of lobbying efforts this week is the opening round in what promises to be a long fight. Even if a bill emerges from the House committee in the coming weeks, the full House would only take up the legislation after it reconvenes in September. Later in the year, the debate is expected to move to the Senate, where financial lobbyists predict that they have a better chance of finding allies and winning concessions.

But just because a bigger battle is yet to come, it doesn't mean business lobbyists are writing off this one.

"A lot of intellectual markers will be laid down in the next 30 days," said Steve O'Connor, senior vice president of government affairs at the Mortgage Bankers Association. "Momentum will start to form behind different ideas. You want to engage in the education process early on. It's important to be part of the discussion."

###

Mary Umberger, *Morality begins at home, except . . . ; Most people says it's wrong to purposely renege on mortgage, unless it's drastically underwater*, The Chicago Tribune, July 5, 2009.

Is it immoral to walk away from your mortgage -- to say "sorry, but bye-bye" because the house now is worth less than the loan that helped you to buy it?

Apparently, most people think, yes, doing that would be wrong.

But plenty of them say they'd do it anyway, under certain conditions.

That's one of the conclusions of a new study from Chicago researchers who looked into the phenomenon of "jingle mail" -- sending the keys back to the lender because declining home values (and not necessarily personal financial hardship) have turned the mortgage into a lost cause.

Various analysts estimate that 20 to 30 percent of homes are now "underwater" -- worth less than the loan. And the Chicago researchers say significant numbers of foreclosures fit that "walkaway" mold, pushing us into new moral territory.

Paola Sapienza, associate professor of finance at Northwestern University's Kellogg School of Management, and two colleagues surveyed 1,000 Americans on how they viewed walkaways who could make mortgage payments but chose not to, and 80 percent clearly had a problem with it.

Then the researchers threw in some variables: Do you know somebody who's in default? Are there lots of foreclosures in your neighborhood? What if the value of your house has sagged by $100,000?

Then, the researchers found, even the folks who thought it immoral to "strategically default" (as they termed the behavior) started to find it less troublesome.

Attitudes change, they said, as foreclosure stops being "somebody else's problem," with friends grappling with it and whole neighborhoods wearing it like a pox.

"The stigma starts to go down," Sapienza said. "You're sitting in your home and you know a lot of neighbors in foreclosure. It's starting to become more 'normal,' in a way, maybe even acceptable."

The other moral tipping point was declining home values. Few homeowners said they'd walk away if their homes were 10 percent underwater.

But if home values had dropped by half -- not unusual in some parts of the country -- well, that would be different. In that case, one in six said they'd walk away.

Sapienza (who collaborated with University of Chicago professor Luigi Zingales and Luigi Guiso, an economics professor at the European University Institute in Florence, Italy) concluded that as many as one-quarter of all mortgage defaults these days are in this "strategic" category -- not brought on because job loss or illness have made it impossible to make the monthly payment, but out of sheer bottom-lining.

Some, however, question whether jingle mail is merely a media myth. Michael Barr, the Treasury Department official who designed the Obama administration's Making Home Affordable mortgage-modification program, recently told CNBC that strategic defaults are few.

"We don't see in the data borrowers who are walking away because they can or because their homes are underwater," Barr said. "The kinds of crises that families are experiencing that normally lead to default and foreclosure are the kinds of event that seem to be occurring today."

But Sapienza said existing data from traditional sources aren't designed to glean defaulters' real motivations -- what defaulter, after all, would admit they really could afford to pay?

"Basically, we were really asking [in the survey], would you lie to your bank?" she said.

The interesting question she said, is how walkaways may affect the next generation. Sapienza has long studied how cultural and moral considerations affect financial decisions, and she wonders what the parents' behavior will teach children.

"Definitely, there's some transmission of habit that goes with the current times," she said. "In our survey, one striking thing is that the young people think it's less of a problem to walk away than others do."

\ While we're at it...

The idea that many homeowners are indeed underwater appears to be dawning on the federal government, which on Wednesday broadened its guidelines on eligibility for the Making Home Affordable program.

Until lastweek, homeowners were eligible for the federal mortgage-refinance program only if their loans didn't exceed 105 percent of the current market value of the home. For example, if the property is now worth $200,000, the borrower must owe $210,000 or less. The new guideline allows participation in MHA if the homeowner is 125 percent underwater; in addition, the loan in question must be owned or guaranteed by either Fannie Mae or Freddie Mac.

###

Cheyenne Hopkins, *Banking Industry Is Underdog in Fight Over new Agency*, American Banker, July 1, 2010.

WASHINGTON — The banking industry is officially gearing up for full-scale combat against the Obama administration's plan to create a new consumer protection agency, but privately many lobbyists concede they may have already lost the fight.

The Treasury Department on Tuesday submitted to lawmakers a 152-page legislative proposal containing new details about how the agency would function, including its corporate governance, funding and scope of authority. House Financial Services Committee Chairman Barney Frank immediately hailed the language, and said it would serve as the basis for a bill he planned to pass out of his panel by the end of the month.

Officials at the administration appeared confident it had the political will to enact the bill and said a Supreme Court decision this week giving states limited ability to enforce certain laws against national banks has strengthened their hand.

"The Supreme Court's opinion yesterday is directionally consistent with the approach that we lay out in the legislation," Michael Barr, Treasury assistant secretary for financial institutions, said at a news conference. "It is harder for those that think the current approach, which has been rather dismissive of states, should continue. It's harder for that position to be maintained in the wake of the Supreme Court's judgment."

Observers and several lobbyists agreed the high court decision damaged the industry's ability to fight the new agency. Many industry representatives said that if they could not win outright, they would focus on changing details of the new agency to make it more palatable.

"There's a political wind to create this agency," said Scott Talbott, senior vice president of government affairs at the Financial Services Roundtable. "Our goal will be to kill it, or make it the least-worst way to do the wrong thing."

Though the banking industry still has a powerful lobby — it helped defeat a bill earlier this year to allow judges to rework mortgages in bankruptcy — it is weakest on consumer protection issues, observers said. Though the consumer protection agency does not yet have the support of some moderate Democrats, most observers expect that to change as they become more focused on the issue.

"The industry is in the wrong place if they sit back and just say no," said John Irons, research and policy director at the Economic Policy Institute.

"They have to be constructive and help craft something. I think the general thrust of having a single consumer protection agency is going to stay. I think it's a case where the agency is going to have to be given some authority."

Barr said the administration was not concerned about the industry's opposition.

"I don't think it's a surprise that big banks and institutions that benefited from the status quo want to keep it that way," he said. "It's unacceptable to us. It's a very hard argument for a big bank to make that the status quo on consumer protection was enough, that consumers were protected enough during the financial crisis. I think that's a horrible position for them to be in. I don't envy them for that position to have to argue."

Still, the bill has a long process before enactment.

Though Frank likely has the necessary support to pass a tough bill out of the House this year, the Senate remains more closely divided and is moving at a slower pace. Some moderates, including Sen. Mark Warner, D-Va., a member of the Banking Committee, have also expressed resistance to the idea.

But many said the idea is likely to pick up political support, and would pass next year if this year proves too difficult.

"Some version of this is inevitable," Irons said.

If anything, the legislative language made the industry dislike the plan even more.

The new agency would be funded largely by fees or assessments from banks and all other institutions it supervises, which would include all mortgage lenders and brokers, among others. Administration officials said extra funding could also come from an appropriation from Congress. The exact details of how fees would be charged have been left to the new agency itself, the Consumer Financial Protection Agency.

Industry lobbyists were concerned that if left unchanged, banks could face a potentially crippling tax on top of existing exam fees from federal regulators.

The agency's purview is wide: it would be able to write, supervise and enforce consumer protection regulations on all financial products, including mortgages, credit and stored-value cards and overdraft programs. Securities and insurance products — except certain credit insurance, mortgage insurance and title insurance — would largely be excluded, however.

The bill also would allow the agency to write compensation rules for an employee, agent or contractor of a company that deals with the consumers, such as mortgage brokers or bank loan officers. The provision would allow the agency to write rules governing the compensation structure but prohibit it from setting a specific ceiling on compensation.

The agency would be overseen by a five-member board that would include the director of the proposed National Bank Supervisor (the successor to the Office of the Comptroller of the Currency). It would be required to report regularly to Congress on risks to consumers and the success of new products.

The bill explicitly directs the new agency to write new disclosure standards, including harmonizing mortgage disclosures under the Real Estate and Settlement Procedures Act and the Truth-in-Lending Act.

As expected, the legislative language would eliminate preemption of state consumer protection laws.

It would allow the new agency to write rules that would be a minimum federal standard that individual states could exceed. State regulators could enforce not only their own laws but federal statutes as well against national and state banks.

While the industry recoils at the very concept of the bill, arguing that consumer protection should be left to banking regulators, it is likely to focus much of its ire on the preemption provisions.

"There will be a lot of fire directed particularly at the preemption part," said Doug Elliott, a fellow at the Brookings Institution.

Many said the industry's ability to combat the preemption provision was undercut by the Supreme Court decision on Monday, because it for the first time said states could have at least some oversight of national banks.

"I think we're seeing a recognition of the limitations of a purely federal system," said John Ryan, executive vice president of the Conference of State Bank Supervisors.

V. Gerard Comizio, a partner at the corporate department at Paul, Hastings, Janofsky & Walker LLP, said that the high court decision "makes it easier for the administration to argue this is not heading off in a new direction but rather is consistent with the Supreme Court's view."

###

Michael O'Brien, *Treasury Dept. defends new consumer protection agency*, The Hill, July 1, 2009.

Draft legislation to create a new federal agency to ensure consumer protections in the financial services sector will help establish a more uniform regulatory regime for U.S. firms, Treasury Department officials said Tuesday. In a briefing with reporters, Assistant Treasury Secretary for Financial Institutions Michael Barr asserted that legislation unveiled by the Treasury on Tuesday morning would simplify rules for community banks and credit unions while bringing larger financial institutions under a fairer regulatory umbrella. "Consumer protection will be uniform, across the board, for all financial institutions," Barr said. "This is going to be a good thing, not a bad thing, for most financial institutions."

Financial services firms have complained that the proposed regulatory regime would add another layer of bureaucracy, increase their costs and restrict the availability of credit to consumers. At the heart of the proposed legislation sent to Congress Tuesday morning would be the establishment of a new Consumer Financial Protection Agency to oversee different elements of the American financial services sector. The agency would focus on issuing rules and regulations for consumer-oriented products such as mortgages and credit cards, but also things like payday loans and banks' overdraft policies and fees. Barr said that the administration would work "very closely" with congressional leadership to pass the bill. "It's our expectation that Congress will move quickly on this legislation," he said, adding that they believe the House and Senate will take it up at different times. The chairmen of the two congressional committees set to take up the draft bill voiced early support for the Treasury's draft. "Creating an independent agency whose sole focus is protecting consumers - be it credit cardholders, anyone with a bank account or families with mortgages or student loans - is really the key to creating the foundations for a stronger economy," Senate Banking Committee Chairman Chris Dodd (D-Conn.) said in a statement. Rep. Barney Frank (D-Mass.), chairman of the House Financial Services Committee, signaled that the draft would help move a bill through his committee before the August recess.

"The administration's release of its recommended language is very welcome because it removes any obstacle to the House Financial Services Committee reporting out legislation creating such an agency in July," Frank said. "While the committee will, of course, exercise its own judgment on the specifics and we have already had a thorough hearing on the matter, it is helpful to have the administration's proposals as well because I believe there is a great deal of common ground between us." The consumer protection agency has been promoted as a key prong of the Obama administration's overall initiative to reform American financial regulations. Obama said in mid-

June he would seek to increase transparency and reporting requirements, establish clearer authority to wind down struggling firms and push other countries to strengthen their own regulatory regimes. Establishing a more uniform global regulatory infrastructure is expected to be a major topic of discussion at the meeting of G-20 nations in Pittsburgh this September. Barr characterized the new agency as a way to bring existing rules and regulations under a single authority, essentially reducing bureaucracy, while extending the government's reach to oversee sectors previously untouched by U.S. regulation. Business groups like the Chamber of Commerce had criticized the consumer protection element of the Obama administration's overall initiative to reform American financial regulations as needlessly adding to the bureaucracy faced by businesses. Those groups had favored a more rigorous and streamlined enforcement of existing regulation. The Financial Services Roundtable, which represents the 100 largest integrated financial services companies, was quick to oppose the proposed agency in a statement.

"The Consumer Financial Protection Agency would actually harm consumers by increasing the cost of financial products and reducing the availability of credit and consumer choices," said Steve Bartlett, president and CEO for the Roundtable. "This would further create a patchwork of 50 state regimes, which will stifle innovation and increase confusion to the consumer." "This proposal is alarming in numerous ways. It continues the patchwork of regulations that got us into this financial mess, it is costly, and it would take away privacy rights of individuals and businesses," said Tom Quaadman, executive director of the U.S. Chamber of Commerce's Center for Capital Markets. "This isn't only bad government but Big Brother lurking at everyone's doorstep." Public Citizen, meanwhile, tentatively praised the draft legislation, while warning that moves must be made to ensure the new agency isn't too cozy with the financial services industry.

"The president's proposal to create a new Consumer Financial Protection Agency will add much-needed oversight of an industry that has run wild at great expense to consumers and homeowners," the group's Congress Watch director, David Arkush, said. "Congress must give it the resources it needs to be successful and must ensure that it is independent of the industry it will regulate." Barr defended the Treasury proposal on Tuesday and knocked large financial institutions for defending existing rules. "I don't think it's a surprise that big banks and financial institutions that benefited from the status quo want to keep it that way," he told reporters.

###

Kristina Sherry, *Congress gets consumer bill; Obama's plan would create a financial protection agency and overhaul regulation. But it faces a fight.* The Los Angeles Times, July 1, 2009.

President Obama, pushing a key part of his overhaul of financial regulations, sent to Congress a draft bill that would create the Consumer Financial Protection Agency, which he said would better protect Americans from unscrupulous practices and make financial products easier to understand.

Under the 152-page bill released Tuesday, the new agency would bring together what the administration called the "fragmented" system of responsibility for consumer protection.

It would improve transparency, simplify financial documents for consumers, examine the operations of previously unregulated financial services and create a level playing field among competitors, making banks and non-banks subject to one set of rules and enforcement practices, the administration said.

"We won't have situations of banks being unable to compete against companies that offer mortgages consumers can't understand," said Michael Barr, the Treasury Department's assistant secretary for financial institutions.

Some Republicans and business groups oppose the idea, saying it would create a new layer of bureaucracy, making regulation more cumbersome, and would be a threat to economic freedom.

"We need smarter regulation, not just more regulation," said Rep. Jeb Hensarling (R-Texas).

Barr countered that the mortgage crisis was fueled by the industry's "bad practices" and the "less supervised, less regulated" nature of the sector. The consumer agency would allow for regulation of mortgages, credit cards, pay-day lending and overdraft fees and would set consistent rules among different kinds of products, he said.

The agency also would consolidate responsibility for consumer issues, Barr said. For example, consumers purchasing homes currently receive two kinds of disclosures: one a truth-in-lending statement required by the Federal Reserve and the other a statement under the Real Estate Settlement Procedures Act, administered by the Department of Housing and Urban Development.

Consolidation would allow for fewer, simpler disclosure forms and would allow regulators to act more quickly, the administration said.

A single agency, responsible for the entire sector, would also deter companies from organizing and reorganizing themselves -- from thrifts to banks and to mortgage companies -- to evade certain types of regulations.

"Under this system you can't escape the appropriate regulation," Barr said.

The Treasury Department also said the consumer agency would establish a "floor, not a ceiling" for state regulatory agencies and would encourage states to have a strong role in financial regulatory enforcement.

The proposal has drawn opposition from some lawmakers who fear the agency would pose a threat to economic liberty and consumer choice.

"The legislation essentially says that when it comes to financial products, if we will only yield our freedoms, if we will only yield our consumer choices, if we will only yield our market-driven innovations to a group of unelected philosopher kings, they will undoubtedly rule us with wisdom and justice. Forgive me, I do not buy it," said Hensarling, the top Republican on a House subcommittee on financial institutions and consumer credit.

Banks and financial services groups also attacked the bill.

"We're for consumer protection, but this is not the most effective way to accomplish that," said Scott Talbott of the Financial Services Roundtable.

Talbott said the group's fundamental objection to the new agency is that it would separate the regulation of banks from the regulation of products, creating a new layer of regulation that would make the system less streamlined. A better solution would be to strengthen the existing regulatory system, he said.

He also said that encouraging tougher enforcement within each state would be burdensome for banks, increase costs and be confusing for consumers, especially those who move from one state to another.

"Instead of complying with one consumer-protection regime, we now have to comply with 51," Talbott said.

###

Edmund L. Andrews, *Banks Balk at Agency Meant to Aid Consumers*, The New York Times, July 1, 2009.

Banks and mortgage lenders are placing top priority on killing President Obama's proposal to create a new consumer protection agency that would regulate home loans, credit card fees, payday loans and other forms of consumer finance.

The Obama administration fired an opening shot on Tuesday, sending Congress a detailed, 150-page proposal for an agency that would set new standards for ordinary mortgages, restrict or prohibit risky loans, investigate financial institutions and enforce new laws aimed at protecting credit card customers.

"This agency will have only one mission -- to protect consumers," said Timothy F. Geithner, the Treasury secretary, in a written statement on Tuesday.

But industry executives vowed on Tuesday to fight Mr. Obama's plan with everything they have, even though banks are still heavily dependent on many taxpayer-supported loans and loan guarantees to get through the crisis.

"It's going to be a huge fight," said Edward L. Yingling, president of the American Bankers Association. "This agency would have broad powers that go beyond every consumer law that has ever been enacted."

The industry's heated reaction presages an intense lobbying battle that is already beginning. Opponents include JPMorgan Chase and Wells Fargo as well as thousands of regional and local banks that have close ties to lawmakers in every part of the country. But the opposition could also include countless mortgage lenders and independent mortgage brokers.

House and Senate Democrats, as well as many consumer groups, strongly support the proposal. The House Financial Services Committee hopes to complete work on a bill by the end of July, and House Democrats hope to send the measure to the Senate in September.

"I'm very much in favor of it," said Representative Barney Frank, Democrat of Massachusetts and chairman of the House Financial Services Committee. "Anyone who thinks we're not going to create this agency is mistaken. The American public wants it."

Bank executives said they knew they faced a difficult political fight, given the soaring number of homeowners facing foreclosure.

"We know the optics are bad," said Scott Talbott, vice president for government affairs for the Financial Services Roundtable, a trade association in Washington. "If you are against a consumer regulatory agency, then everybody will say you're against consumer regulation."

The proposal would strip away all the consumer responsibilities that are currently assigned to existing bank regulators, like the Federal Reserve, the Federal Deposit Insurance Corporation and the Comptroller of the Currency.

It would give the new agency marching orders to set standards for traditional mortgages, and the agency would have the authority to demand that lenders offer those kinds of loans or give consumers the chance to opt out of riskier products.

It would also give the new agency the power to restrict or prohibit mortgages that come with hidden fees and steep penalties for borrowers who pay the loan off early. It would also be empowered to interpret and enforce the new credit card law that Congress passed last month, aimed at restricting banks from arbitrarily raising interest rates.

It would also have examiners, much like existing bank regulatory agencies, who would have the authority to go into specific institutions, issue subpoenas and scrutinize their practices, demand changes and seek penalties.

Administration officials said the proposal would create a "level playing field" and provide the same regulation for particular consumer products regardless of what kind of financial institution was selling them.

By contrast, existing regulators have authority over only particular kinds of financial institutions. The office of the Comptroller of the Currency regulates national banks, while the Fed supervises bank holding companies.

"The agency will be able to get to the root of the mortgage crisis that we saw in the past," said Michael Barr, assistant Treasury secretary for financial institutions. "It will be able to go in to examine, supervise the operations of previously unregulated parts of the sector."

The plan's supporters, which includes consumer groups, argue that a dedicated, standalone agency is crucial to reining in risky and deceptive financial practices.

"It's obvious from the history of the last 20 years that the regulators never understood that protecting consumers is also a way of ensuring the safety and soundness of financial institutions," said John Taylor, president of the National Community Reinvestment Coalition.

Administration officials acknowledged that their proposal would give the new agency broader powers than bank regulators have under existing laws.

But they said the proposal included safeguards to prevent overzealous restrictions that stifle innovation and limit consumer choice. The agency's mandate would include supporting growth and innovation, and it would be required to consider the costs of proposed regulations to both consumers and to financial institutions.

###

David Cho and Michael D. Shear, *Obama Presents Bill to Created Consumer-Finance Watchdog; New Agency's Broad Scope Draws Stiff Industry Resistance*, The Washington Post.

The Obama administration sent a detailed proposal to Congress yesterday for creating an agency to oversee nearly all facets of consumer lending, but the breadth of its powers is setting the stage for a fierce clash on Capitol Hill.

The bill aims to establish a Consumer Financial Protection Agency to guard Americans from the abusive lending practices that contributed to the financial crisis, such as undocumented mortgage applications, the poor disclosure of loan terms and deceptive ads.

Administration officials proposed that the new regulator have a broad mandate to cover the spectrum of consumer financial products and to fill gaps in current regulations. The agency would have the power to probe any lender, impose penalties of up to $1 million a day in cases of wrongdoing, limit the compensation even of loan officers and mortgage brokers, and check if banks have been acting discriminatorily by forcing them to disclose the race, age and gender of their customers.

An intense lobbying effort has already begun to win over the few undecided lawmakers who will be critical in deciding which details will be included in the final bill. Industry groups say they are forming a coalition to persuade members of Congress to scale back the bill.

"I think when people read this, they will be shocked about the incredibly broad delegation of power," said Edward L. Yingling, chief executive of the American Bankers Association. "It basically can do almost anything it wants. . . . I think there will be opposition simply on the breadth of it, on the balance of power between Congress and an agency."

Some critics warn that lawmakers may be afraid to oppose parts of the bill because of appearances. "If you argue against the agency, then you could be incorrectly painted as arguing against consumer protection," said Scott Talbot, senior vice president of government affairs at the Financial Services Roundtable.

Industry representatives say they are particularly concerned that the agency could intervene in the daily business practices of lenders -- for instance, how they design loans, or how much they pay employees. An official at one of Wall Street's largest banks said the new agency, for example, could compel lenders to offer loans to poor consumers who have shaky credit histories even if this could jeopardize the firms' health.

In a briefing with reporters, Michael Barr, assistant secretary for financial institutions at the Treasury Department, said yesterday that the bill represents a return to deeper regulation of a sector that had shed much federal oversight in recent years. He added that the new rules will "level the playing field" by standardizing regulations that apply to different loan products.

"I don't think that it's a surprise that big banks . . . that benefited from the status quo want to keep it that way," he said. "It's a very hard argument for a big bank to make that the status quo on consumer protection was enough. . . . We have the view that the market, left to its own devices, isn't always going to result in an optimal result for consumers."

Rep. Barney Frank (D-Mass.), chair of the House Financial Services Committee, said that he would take quick action and that he aims to approve the committee's version of the bill before Congress's summer recess begins on Aug. 3.

"The federal regulatory system has clearly failed to provide adequate protection for consumers and that failure contributed to the broader economic crisis," he said. "That is why I have made the creation of the agency one of our highest priorities."

But Frank would have to overcome resistance from the other side of the aisle.

"The proposed CFPA appears to be premised on the idea that Washington is better at making financial decisions for all Americans than leaving that choice up to individual Americans," said Rep. Spencer Bachus (R-Ala.), the ranking member on the committee. "The best way to protect consumers is not through the creation of another bureaucracy accountable to no one but by consolidating the regulatory system and holding regulators accountable."

Some consumer groups said the bill does not go far enough.

John Taylor, chief executive of the National Community Reinvestment Coalition, which advocates for affordable housing, said he generally supported the measure, particularly disclosure requirements that force small-business lenders to reveal whether they have been holding back credit from minority- or women-owned businesses. But Taylor said he has lobbied the White House to give the agency the authority to approve or deny mergers of financial firms based on whether these would benefit consumers.

Some matters have yet to be resolved. The administration did not specify how the agency will be funded, other than stating that some money will come from the financial services industry. In addition, the measure says the president can appoint four commissioners but does not detail what criteria he should use. The fifth and final commissioner would be the head of a new banking regulatory agency.

###

Charlene Carter, *White House Unveils Plans for Consumer Financial Protection Agency*, CongressNow, June 30, 2009.

The White House today sent to Congress draft legislative plans for a consumer financial product safety agency that senior Treasury Department officials say would bring together the fragmented responsibilities of federal financial regulators.

"This agency should have strong powers not just to set rules but to supervise institutions," said Michael Barr, assistant Treasury secretary for financial institutions. "This is going to be a good thing not a bad thing for consumer protections."

Earlier this month, the White House released details of its comprehensive financial regulatory overhaul plan, including the creation of a Consumer Financial Protection Agency. The new agency would take over consumer protection authority from prudential banking regulators and oversee financial products, such as mortgages and credit cards.

The idea is similar to legislation (H.R. 1705) sponsored by Rep. Bill Delahunt (D-Mass.) that was originally pushed by Elizabeth Warren, chairwoman of the Congressional Oversight Panel, which oversees the Troubled Asset Relief Program. Delahunt told the panel that his bill is aimed at shielding consumers from unreasonable risk by reviewing financial products for safety and modifying dangerous products before they hit the marketplace. Democratic Sens. Dick Durbin (Ill.), Edward Kennedy (Mass.) and Charles Schumer (\N.Y.) introduced companion legislation (S. 566) in the Senate.

Banking and business lobby groups have questioned the effectiveness of a stand-alone consumer protection agency.

"While the administration has made several positive recommendations, we're concerned that overall, the proposal simply adds to the layering of the system without addressing the underlying and fundamental problems," David Hirschmann, president and CEO of the U.S. Chamber of Commerce's Center for Capital Markets, said in a statement when the administration released its plan earlier this month. "We can't simply insert new regulatory agencies and hope that we've covered our bases."

Barr said it was not surprising that those who benefited from the status quo want to keep it that way.

"We need to have regulation that sets a level playing field," Barr said. "We don't have a heavy hand of regulation in this bill. We have a balanced approach."

Barr said that the Treasury Department would work with Congressional leaders on the language and that he expects Congress to move quickly on the measure.

House Financial Services Chairman Barney Frank (D-Mass.) has said his panel would mark up legislation to create the agency next month, but said that ultimately it would be packaged with several other changes to the financial sector's regulatory structure. Senate Banking, Housing and Urban Affairs Chairman Chris Dodd (D-Conn.) said a financial regulatory overhaul package would likely move in the Senate during the fall.

"Creating an independent agency whose sole focus is protecting consumers - be it credit card holders, anyone with a bank account, or families with mortgages or student loans - is really the key to creating the foundations for a stronger economy," Dodd said in a statement. "It is unbelievable that some of the same irresponsible actors that helped create the current financial mess would argue that we are doing too much for consumers."

###

Bill McCinnell, *Treasury bill tees up debate on consumer agency*, The Deal, June 30, 2009.

The Obama administration proposed legislation Tuesday to create a federal agency charged with protecting consumers in their borrowing and other financial dealings.

As part of his sweeping overhaul of financial services regulation, President Obama on June 17 outlined plans for the Consumer Financial Protection Agency, which would assume much of the consumer protection duties now assigned to federal banking regulators, the Federal Trade Commission and other government agencies.

House Financial Services Committee Chairman Barney Frank, D-Mass., said he will schedule a committee vote on the consumer protection component of Obama's financial overhaul plan in July after Congress returns from the Independence Day break. Frank stressed Tuesday that the committee will draft its own legislation and won't rely on the administration's. "It is helpful to have the administration's proposals as well because I believe there is a great deal of common ground between us," he said in a statement. "With their text in hand we can now proceed to draft and approve a bill in committee before the August recess."

The committee will vote on other major provisions of Obama's plan separately, Frank said. Those components include designating the Federal Reserve Board the systemic regulator of the financial system and creating government resolution power for nonbank financial conglomerates. The separate House bills are expected to ultimately go to the Senate as one package.

The creation of the Consumer Financial Protection Agency is opposed by Republicans and the financial industry for adding a new layer of regulation that could possibly conflict with decisions of existing banking and financial services regulators.

One of the key questions before Congress is whether the proposed federal office would require financial institutions to offer specific "plain-vanilla" financial products with clear disclosures and easy-to-calculate interest rates and fees or whether it would just provide a seal of approval for these types of products. These standardized products would be designed to have terms and other features transparent to consumers, pose lower risks and be easy to compare to alternative products in terms of benefits and costs to consumers.

The White House plan wouldn't immediately empower the agency to mandate specific products.

The agency would be forbidden from requiring institutions to offer standardized products or services until it has conducted a complete rulemaking procedure with opportunity for public notice and comment.

The agency, however, could issue guidance urging financial institutions to offer such standard consumer financial products or services and could require warnings to consumers about the heightened risks of alternative consumer financial products or services. It could also require that consumers receive a "meaningful opportunity" to decline to obtain a standardized product or service before contacting for an alternative.

Elizabeth Warren, head of the Congressional Oversight Panel overseeing the Treasury Department's financial bailout and among the first in Washington to push the notion of a consumer financial protection agency, said at a congressional hearing two weeks ago she does not necessarily think mandated products are necessary. Instead, she said institutions could get a safe harbor from government sanctions or consumer lawsuits against products that meet the one-page disclosure requirements and terms the new agency deems as fair to consumers.

Bankers oppose mandating specific products. "We think that goes too far," Edward Yingling, president of the American Bankers Association, told Congress.

Michael Barr, assistant secretary of Treasury for financial institutions, said the industry's overall opposition of the agency is misguided. "It should be obvious to anyone who's gone through the financial crisis ... that we didn't sufficiently protect consumers," Barr said during a press briefing. "That's a very hard argument for the big banks to make - that the status quo on protection is enough. I don't envy their position to argue. The market left to its own devices isn't always going to lead to an optimal outcome for consumers."

Barr also argued that placing all financial consumer protections under the gaze of a single regulator, including services offered by mortgage brokers and other poorly regulated operations, would benefit banks and other institutions already subject to heavy oversight.

"Consumer protection will be uniform across the board for all financial institutions," Barr said. "It will be a good thing, not a bad thing for most financial institutions."

He also said some regulatory burdens could be lightened, particularly disclosure requirements, because current practice often requires banks to present consumers with disclosures designed by separate agencies even though they cover the same topic.

###

Kevin G. Hall, *Treasury details new consumer agency; banks cry foul*, McClatchy Newspapers, June 30, 2009.

WASHINGTON _ The Obama administration on Tuesday sent Congress a detailed plan to create one of the most ambitious parts of the president's proposed overhaul of financial regulation, a Consumer Financial Protection Agency.

The Treasury Department's proposal would gather consumer protection powers that now are spread among many bank regulators and place them under a single roof. If it's enacted, this would be a huge step by government into private banking after a hands-off approach for the past two decades.

For ordinary Americans, the most important feature is that the agency would have the sole mission of consumer protection. One lesson of the financial crisis is that the several agencies that shared that responsibility made it a lower priority than their other missions and failed to protect consumers.

President Barack Obama proposed the agency in response to the nation's deep financial crisis, which is rooted largely in shoddy mortgage-lending practices that exploded in the first half of this decade thanks to regulatory gaps and weak enforcement of consumer protection rules.

The proposed legislation would give the new agency powers to set and enforce standards for things such as mortgage and credit-card disclosure statements. It also would cover payday lending and other forms of consumer credit, even stored-value gift cards from retailers. Its reach would span at least 16 existing consumer-protection laws and numerous federal agencies.

"We have the view that the market, left to its own devices, isn't always going to lead to an optimal outcome for consumers," Michael Barr, the assistant treasury secretary for financial institutions, said in a news briefing.

Financial institutions said the move went beyond a step back to regulation.

"This is going in headfirst," said Scott Talbott, the senior vice president of government affairs for the Financial Services Roundtable, the lobby for the nation's biggest financial firms. "This could take us back to the 1950s."

While denying that the legislation is heavy-handed, Barr acknowledged that it would open a new era of financial regulation.

"I don't think it's a surprise that big banks and institutions that benefited from the status quo want to keep it that way. It's unacceptable to us," he said.

In a nod to concerns raised by financial institutions, the new agency would be required to weigh beforehand the potential costs and benefits of any actions it might take, and to monitor how those actions worked to ensure that they weren't proving burdensome to commercial activity.

Although financial firms have voiced support for the concept of greater regulation, this proposal could get in their way significantly. For example, the new agency would have the power to restrict certain kinds of mortgages or credit card terms. That might protect consumers, but financial firms fear that it also might inhibit legitimate business practices.

"It allows the agency to set the terms of a financial product, and that could have a chilling effect on creativity and innovation of products," Talbott said.

He also worried that the agency would set not a ceiling but a floor for consumer protection rules. "States are encouraged to go further to provide additional consumer protections, which will create a patchwork of 50 state regimes. The result of that will be to raise the cost of doing business," Talbott said.

One of the agency's main powers would be enforcing the credit card legislation that Congress passed earlier this year. It aims to end unfair rate increases and will impose new rules on late-payment fees to prevent nasty surprises to consumers.

"When a customer can't read the papers at a mortgage closing or make a quick comparison of credit cards to see which ones have hidden terms, the credit market is broken," said Elizabeth Warren, a Harvard University professor who's the head of a congressional watchdog panel that's overseeing the spending of Wall Street bailout money.

The idea of a Consumer Financial Protection Agency is widely credited to Warren, a longtime consumer advocate. She said it "will stop tricks-and-traps pricing and give customers the chance to make real comparisons among financial products. The market can work for customers and for the small banks and credit unions that want to serve those customers with good products."

Importantly, the legislation would require mortgage brokers to find the best available deals for prospective homebuyers. The lack of any such requirement was a key element of the sub-prime mortgage crisis. Many homeowners were pushed into exploitive mortgages, wrongly assuming that mortgage brokers, who help arrange financing from underwriters, had their best interests at heart.

In fact, mortgage brokers had no fiduciary responsibility to homebuyers. Many received legal kickbacks from lenders called "yield spread premiums," which were essentially bonuses, when they got homeowners into loans with interest rates higher than they'd qualified for. The Obama legislation would ban these payments.

The legislation will move first through the House Financial Services Committee. Chairman Barney Frank, D-Mass., has said he hopes to move the measure through his panel by the end of July.

Senate Banking Committee Chairman Christopher Dodd, D-Conn., said Tuesday that a Consumer Financial Protection Agency was long overdue.

"Creating an independent agency whose sole focus is protecting consumers _ be it credit card holders, anyone with a bank account or families with mortgages or student loans _ is really the key to creating the foundations for a stronger economy," Dodd said in a statement. "It is unbelievable that some of the same irresponsible actors that helped create the current financial mess would argue that we are doing too much for consumers. Don't they realize that they need a healthy customer base if they want to continue to be successful?"

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ON THE WEB

Treasury's proposed bill:

http://www.financialstability.gov/docs/CFPA-Act.pdf

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Ruth Mantell, *Obama pushes for more consumer financial safety*, MarketWatch, June 30, 2009 4:13 PM ET.

WASHINGTON (MarketWatch) -- The Obama administration is pushing to create an agency charged with protecting consumers from unsafe and confusing financial products and services, and sent proposed legislation to Congress on Tuesday.

President Barack Obama's proposal would create the Consumer Financial Protection Agency, which would have far-reaching powers to regulate all providers of consumer financial products, covering mortgages and credit cards to pay-day lending and overdraft services, among other products and services.

"This agency will have the power to set standards so that companies compete by offering innovative products that consumers actually want -- and actually understand," Obama said in a statement. "Those ridiculous contracts with pages of fine print that no one can figure out -- those things will be a thing of the past. And enforcement will be the rule, not the exception."

The CFPA would be a cornerstone for fundamental financial regulation reform, and the president wants to sign off on legislation this year. The House Financial Services Committee is looking to mark up a bill in July, and senators are also considering a proposal.

The administration's proposal calls for the CFPA to take major actions such as:

For mortgages, a product that will likely be a top focus for the CFPA, the agency may takes steps such as creating guidelines for "plain vanilla" products and banning controversial yield spread premiums, which are payments from lenders that can encourage brokers to offer consumers highly priced loans.

Centralization is key

In the wake of widespread regulatory lapses, the administration sees centralizing consumer protection as key. Financial institutions will be unable to "arbitrage" their level of consumer protection by choosing an organizational form with less stringent regulations, said Michael Barr, Treasury's assistant secretary for financial institutions, at a Tuesday meeting with reporters.

"You can't escape the appropriate consumer regulations," Barr said.

Centralizing will also aid in clearer rules, said Treasury Secretary Timothy Geithner in a statement.

"By consolidating accountability in one place, we will reduce gaps in federal supervision and enforcement, drive greater clarity in the information consumers receive around products they are sold, set higher standards for those who sell those products and promote consistent regulation across the system," Geithner said.

Would CFPA help consumers?

Critics argue that an agency such as the CFPA would divorce the goal of consumer protection from the goal of safety and soundness for financial institutions -- a separation that could unintentionally hurt consumers.

"Consumer protection is not just about the financial product, it is also about the financial integrity of the company offering the product," said Edward Yingling, president of the American Bankers Association, at a House hearing last week. "It is a mistake to separate the regulation of an institution from the regulation of its products."

Also, the administration's CFPA proposal would "stifle innovation," said Rep. Jeb Hensarling of Texas, the top Republican on the House Financial Services Subcommittee on Financial Institutions and Consumer Credit.

"The success or failure of a financial product should be determined by the willingness of the financial markets to use it, not the government's desire to outlaw it," Hensarling said in a statement.

However, administration representatives say the CFPA could end up streamlining rules in some areas. For example, the agency could work with the Federal Reserve and the Department of Housing and Urban Development to create a single federal mortgage disclosure, eliminating some current paperwork that can be confusing for homeowners.

And, Treasury's Barr said Tuesday, the CFPA could use a "light touch" for some consumer-friendly rules. Certain rules would call for enabling consumers to opt into services, rather than imposing heavy new regulations on firms.

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Ill Swindell, *Administration Pitches Consumer Protection Overhaul,* National Journal's Congress Daily, June 30, 2009.

The Obama administration today sent legislation to Congress to create a Consumer Financial Protection Agency that would oversee consumer bank and credit products, taking away such power from the banking regulators who have been criticized for failing to prevent abuses in the mortgage and credit card markets.

The 152-page draft bill largely hews to the outline that Treasury Secretary Geithner unveiled this month to overhaul the nation's financial regulatory system, creating an agency modeled on the Consumer Product Safety Commission for many financial products.

"This agency should have strong powers not to just set rules, but also to supervise institutions and to examine institutions and enforce with respect to institutions," said Michael Barr, Treasury assistant secretary for financial institutions.

The agency would have the power to impose fines and refer for criminal prosecution those who engage in unfair, deceptive or abusive acts. It would be able to act when it reasonably concludes the product in question would likely cause "substantial injury" to consumers. But the draft bill would exclude securities products such as mutual funds and keep such enforcement under the SEC, while futures would fall under the jurisdiction of the Commodity Futures Trading Commission.

The draft did not include any language on regulating the property and casualty insurance market, where states have jurisdiction. The federal standards would be a floor where states could enact even tougher measures and state attorneys general could enforce. But the new agency would not be allowed to impose usury limits under the draft bill.

As for mortgage regulation, the agency would have to propose within one year a mortgage disclosure form that would combine requirements under the Truth In Lending and Real Estate Settlement Procedures acts, which banking regulators and HUD have struggled for years to do.

In addition, the agency could ban mandatory arbitration in financial contracts, a win for the trial lawyer lobby, which has been pushing Congress to roll back such contracts that have become more ubiquitous for consumer purchases.

The draft bill would establish a framework under which employees from the Federal Reserve and other banking regulators would be transferred into the agency to ramp up its efforts. But it does not detail how the agency would be funded.

The House Financial Services Committee is slated to mark up its Consumer Financial Protection Agency legislation before the August recess, while the Senate Banking Committee plans to incorporate its bill into a larger overhaul measure this fall.

"While the committee will, of course, exercise its own judgment on the specifics ... it is helpful to have the administration's proposals as well because I believe there is a great deal of common ground between us," said House Financial Services Chairman Barney Frank.

House Republicans are against the proposal, arguing that such enforcement should remain with frontline regulators who know the issue better. "A consumer financial protection agency would be the creation of yet another regulator, with human error encouraged by separating regulatory decisions from the already limited expertise found at prudential regulatory agencies," said House Financial Services Capital Markets Subcommittee ranking member Scott Garrett, R-N.J.

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Jennifer Liberto, *Battle lines over Obama consumer agency*, CNNMoney.com, June 20, 2009 4:24 AM ET.

In the debate over how to prevent the next financial crisis, the first fight has already erupted -- and it's over a proposal to create a new agency to protect consumers.

On Tuesday, the Treasury Department sent to Congress a 150-page draft of a bill with new details about its plan for a regulator for mortgages, credit cards and other financial products. The Consumer Financial Protection Agency would be run by a presidentially-appointed, five-member board and wield subpoena power and wide-ranging investigative clout.

The proposal has the support of consumer groups and populist fervor at its back.

When it was proposed by President Obama earlier this month, Senate Banking Committee Chairman Chris Dodd, D-Conn., very publicly asked industry groups, such as the U.S. Chamber of Commerce, that were blasting the idea: "What planet are you living on?"

However, as a House panel last week started to look at the best ways to create such an agency, the questioning from lawmakers of both parties suggested that establishing the agency won't be an easy slam dunk for White House.

Top Republicans are criticizing the proposal as more bureaucracy, saying that regulators failed to enforce current rules. And a few Democrats voiced concerns about the kinds of powers the regulator should get.

"I think there's a high probability that this ends up going into law, but the fights will be over how it's being done, who's being covered and how wide the net should be cast," said Douglas Elliott, an economist and former investment banker at the Brookings Institution in Washington.

New details released

Obama had already announced that the new agency would be tasked with making it easier for consumers to understand mortgages, credit cards and other financial products.

One of its jobs would be to enforce a set of recently enacted credit card protections aimed at preventing banks and card-issuers from hiking fees and interest rates, according to the legislation released Tuesday.

The bill also proposes an even broader swath of industry players that could fall under the regulator's realm. These include title insurers, payday lenders and some smaller investment advisers not already registered with other regulators.

Also, the bill suggests that the agency would be paid for through fees levied on the companies it regulates as well as congressional appropriations. But that means industries would have to dig into their pockets.

One powerful lobbying group, the Financial Services Roundtable, which represents big banks, came out swinging.

The proposed regulator "would actually harm consumers by increasing the cost of financial products, and reducing the availability of credit and consumer choices," Steve Bartlett, the group's chief executive, said in a statement Tuesday.

For their part, Treasury officials sounded confident that opposition by banks will be a tough sell.

"That's a very hard argument for a bank to make: that the status quo was protective enough," Michael Barr, an assistant Treasury secretary, told reporters Tuesday. "I don't envy them that position to have to argue."

Points of contention

Yet lawmakers are likely to scrutinize the Obama proposal.

The House Financial Services Committee last week heard from a panel of experts, including Elizabeth Warren, a Harvard University Law professor considered the author of the idea for the new agency.

Republicans openly blasted the idea.

"What's troubling is that ... a panel of consumer experts couldn't even agree amongst themselves what financial products rose to the level of being anti-consumer," Rep. Jeb Hensarling, R-Texas, said in a statement Tuesday. "How then, do they propose to come to a consensus on what to regulate in the open market?"

However, there will be some differences of opinions among Democrats, as well.

House Financial Services Chairman Barney Frank, D-Mass., suggested that he agreed with consumer advocates who don't like the proposal's plan to give the the new regulator power to enforce the Community Reinvestment Act, which pushes banks to make loans to low-income households.

And Rep. Brad Sherman, D-Calif., warned last week that he was concerned that Congress would cede some of its consumer law-making power to the executive branch if it established the agency.

"Is the goal here to create a law enforcement executive branch agency, or to create a law making agency that would decide all the issues that I spent 13 years on this committee arguing about?" Sherman asked on Thursday.

###

Jane J. Kim, *Plain-Vanilla Financing Could Melt Bank Profits*, The Wall Street Journal, June 29, 2009.

The Obama administration's plan to protect consumers from bad deals on mortgages, credit cards and other financial products is an attempt to take the industry back in time and could put a dent in bank profits.

The plain-vanilla guidelines are part of an ambitious effort by the Obama administration to force banks to offer mortgages and credit cards with simpler standard terms.

"That was a market that used to be pretty strongly anchored on plain-vanilla products," said Michael Barr, the Treasury Department's assistant secretary for financial institutions.

The coming guidelines, part of a broader proposed overhaul of the financial-services sector, are likely to start with mortgages and eventually cover credit cards, car loans, payday loans and bank-overdraft programs.

A plain-vanilla credit card, for example, isn't likely to have a lower introductory "teaser" rate. Card issuers wouldn't be allowed to "change the rules of the game" on consumers, as in cases where a 0% rate is applied to only part of their balances.

The complex loans of recent years didn't just confuse consumers. The bankers themselves ultimately misjudged whether customers would repay them. And the resulting credit crunch has forced lenders to drop many of their most risky products.

Some 95% of mortgage applications today are fixed-rate, says the Mortgage Bankers Association.

"We're pretty plain vanilla today," says John Courson, president and chief executive of the group. Mr. Courson says he has no problems with the Obama administration's push to show consumers plain-vanilla mortgages but adds, "We don't want to create a barrier that makes it difficult for a borrower to have an opportunity to look at other products that better suit their financial needs."

Mandating plain-vanilla products would inevitably cut into banks' profitability, said Joseph Longino, a principal at Sandler O'Neill + Partners LP. "It would also make it a lot riskier to depart from the menu of plain-vanilla products," said Mr. Longino, who expects the industry to move to a bifurcation of products. "You'd see the plain-vanilla 'Good Housekeeping Federal Seal of Approval' on products for lower-income consumers...and more innovative products offered to wealthier, sophisticated consumers."

Mr. Barr, who is leading the consumer-protection efforts, said the "plain-vanilla" financial products have their roots in behavioral economics and psychology. It isn't enough to provide consumers with more disclosure and more information, since people often get easily overwhelmed and make mistakes, said Mr. Barr, a former academic who studied the financial markets.

Most people, for example, don't understand the effects of compounding of interest -- which leads them to undersave and to overborrow -- a basic human failing that some financial institutions have an incentive to exploit.

The guidelines would come from a proposed Consumer Financial Protection Agency modeled in part on the U.S. Consumer Product Safety Commission, an independent regulatory agency charged with protecting the public from risks of death and injury from consumer household products. The commission develops voluntary safety standards with industry, enforces mandatory standards and bans products that pose unreasonable risks.

In a similar way, the Consumer Financial Protection Agency could compel lenders offering alternative products to provide more disclosure and take on more liability risk.

According to the administration's "white paper" on the proposal, the agency "could impose a strong warning label on all alternative products; require providers to have applicants fill out financial experience questionnaires; or require providers to obtain the applicant's written 'opt-in' to such products."

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Sudeep Reddy, *A Personal-Finance Workout*, The Wall Street Journal, June 23, 2009.

The central idea behind the Obama administration's effort to protect the personal finances of Americans boils down to this: put laziness to work.

Tell people to set aside part of their paychecks every month and they'll usually ignore the advice. But start the saving process for them -- automatically siphoning off a raise from a paycheck into a bank account -- and perhaps that will help them avoid the financial trauma that has affected millions of Americans in this recession.

As part of its financial-regulation overhaul, the Obama team is encouraging more responsible use of credit cards, savings and even mortgages. Using tactics ranging from a light nudge to a hard shove, officials are turning theories about behavioral economics into practice to reshape how Americans make personal-finance decisions.

Some of them may prove controversial as the government brings a heavier hand to personal finance. To help people who don't save, for instance, the government would create accounts -- unless they opt out -- to redirect part of their salary or tax refund into savings.

The fundamental premise behind the approach: design lending policies and government programs based on how consumers actually behave.

"Very strong market incentives exist in the system to take advantage of human failing," said Michael Barr, an assistant Treasury secretary and one of the leading proponents of behaviorally informed regulation. "We're trying to figure out the right regulatory tools to realign the incentives and make abuse in the marketplace less likely."

The financial regulation plan unveiled by the Obama administration last week entrusts a new regulator, the Consumer Financial Protection Agency, with implementing simpler rules and standardized options for consumer loans.

One key reason for the heavy dose of behavioral economics: Senior administration officials -- from Mr. Barr at Treasury to White House economist Austan Goolsbee to Peter Orszag, Cass Sunstein and others in the Office of Management and Budget -- all spent years studying how to tweak regulations to force consumers to consider their decisions more carefully.

Opponents of greater government involvement in personal finance call it a slippery slope toward paternalism. Behavioral economists "assume that market participants make systematic errors all the time but bureaucrats don't," said Mark Calabria, director of financial-regulation studies at the Cato Institute, the libertarian think tank.

Behaviorally informed regulation, as opposed to the perennial calls for more disclosures, starts with presenting information and choices to get consumers to make decisions that the government thinks are in their interest.

The Obama budget proposal includes plans to require employers who don't offer a 401(k) or similar retirement savings account to automatically enroll workers in individual retirement accounts, siphoning deposits directly from their paychecks. The program is aimed at the half of all working Americans -- roughly 75 million people -- who don't have a retirement plan other than Social Security.

Workers would be allowed to opt out of the auto-IRAs. But that would force them to make a clear decision not to save this way, perhaps driving them to think more about their retirement needs. When the government this decade changed the law to encourage employers to automatically enroll their workers in 401(k) accounts, unless they opted out, employee participation shot up.

The Treasury is now considering proposals to direct tax refunds into a bank account automatically -- rather than sending refunds through checks -- to encourage people without a savings account to save more. Taxpayers would have the right to opt out if they decided the current approach worked better for them.

On the housing front, behavioral economists have a solution to keep home buyers from taking on risky mortgages they don't understand: Offer a plain-vanilla loan -- a 30-year fixed mortgage -- thereby forcing consumers to act if they want a more creative mortgage instead.

The credit-card legislation that sailed through Congress last month became behavioral economists' first major win in the Obama administration. When the law takes effect next year, it will give borrowers a wake-up call: plain-English warnings and a prominent warning of how long cardholders would take to pay off their debt by sending only the minimum payment each month, and how much interest they'd rack up.

Critics such as Mr. Calabria say the administration is simply banning practices it can get away with, and in instances where it can't ban them, it is stacking the deck of choices. Case in point: The credit-card law prohibits card issuers from offering plastic to some people under 21, even if they are adults who can make their own decisions. "It just seems like a weakened authoritarianism," he said.

Behavioral economists say they simply want to flip the current approach to regulation.

"Anywhere you look, the government is setting up a lot of defaults for people who don't do anything. If I fail to write my will, there is a default set of laws that go into effect about my children's inheritance," said Eldar Shafir, a Princeton University professor of psychology and public affairs who studies behavioral economics.

The key concern for opponents of the changes will be maintaining the element of choice in financial decision making, and ensuring consumers aren't nudged too far in one direction. Even proponents say any changes must be easily reversible.

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Michael Hirsh, *The Insurgents: The Secret Battle to Save Capitalism*, Newsweek, June 22, 2009.

Maria Cantwell sat aghast in front of the TV in her Senate office last fall, watching Wall Street crash. Not long after her arrival in D.C. in 2001, Enron imploded. Energy speculators wielding complex derivatives had gouged her constituents in Washington state out of $1 billion. The federal government, she thought, had done little since then to prevent fraud and manipulation. So last September, after Fannie Mae and Freddie Mac nearly failed, Lehman Brothers went under and the stock market plummeted, she decided she'd had enough. "I have seen this movie, and I know how it turns out," Cantwell said.

Cantwell knew something about business--she had made millions as an executive at RealNetworks during the dotcom boom. And she was concerned that the administration, filled with men who had supported financial deregulation during the Clinton administration, didn't have the stomach to impose the kind of tough reform she thought Wall Street required. So, along with a small group of insurgent Democrats in the Senate, she began pushing for a meeting with President Obama to make her case.

Finally in late March, Cantwell and her confederates--Carl Levin of Michigan, Byron Dorgan of North Dakota, Dianne Feinstein of California, Jim Webb of Virginia and Vermont's Bernard Sanders--met with Obama and members of his economic team in the White House. "I told the president I was concerned that the administration had people in charge who had missed all this before," she says. It was an awkward moment: two of the officials that Cantwell and her allies came to complain about--Obama's chief economic adviser, Larry Summers, and Treasury Secretary Tim Geithner--were sitting right there.

Yet one by one, the other senators echoed Cantwell's concerns. Obama's appointed officials and nominees were products of the system that had brought us this economic grief; they would tinker but in the end leave Wall Street mostly intact. "Some of the people around the president needed to be given a push," says Levin.

For their part, administration officials reject this view. "Nobody has been more aggressive than Tim Geithner and Larry Summers on this issue," says Michael Barr, an assistant Treasury secretary working on regulatory issues. "From the start, they've been firm about the need for fundamental reform in the system." Summers acknowledges his views on regulation have evolved since the '90s, and he says the back and forth is helpful. "The president always wants access to the best thinking and widest range of views on any subject," Summers told NEWSWEEK.

The internecine war of wills between the insurgents and the White House economic team has occurred mostly out of sight. But it is part of a larger battle for the future of the financial system--and in some ways capitalism itself. At issue is whether the financial landscape--the size of Wall Street firms, who regulates them and the kinds of things they will be allowed to trade--will look much different once the crisis passes. These senators fear it won't unless they are vigilant.

The insurgents have their own agendas. Dorgan warned in 1999 that "massive taxpayer bailouts" would result from the repeal of the Glass-Steagall Act, a move that allowed investment and commercial banks to merge. Both Dorgan and Cantwell are worried about loopholes that will permit firms to keep trillions of dollars of derivative trades in the shadows, escaping regulation. Levin, for his part, wants to rescind many of the Clinton-era laws that led to deregulation, including the 2000 Commodity Futures Modernization Act, which exempted credit default swaps from regulation. Unless giant financial firms like Citigroup and AIG are broken up, Sanders says, they'll have to be bailed out again someday. Yet the six senators have united to play old-fashioned power politics: Cantwell and Sanders placed a hold on the nomination of Gary Gensler, the president's pick to chair the Commodity Futures Trading Commission. This was the key regulatory body that in 1998 had fought unsuccessfully under Brooksley Born to rein in derivatives trading. Born's efforts were beaten back by the Democratic administration under Bill Clinton, including Gensler, who as Treasury undersecretary had opposed regulation of credit default swaps. Those are the financial instruments that later brought AIG--and much of the financial system--to the brink of meltdown.

The Senate pressure seems to have paid off. In the last several weeks, Summers has engaged Cantwell in a series of phone calls about derivatives regulation. Cantwell and her supporters say that Summers listened to her eagerly and that the regulatory framework for derivatives laid out by Geithner a week after the calls bore her stamp. She was given assurances, for instance, that the administration would keep big firms from speculating by placing "aggregate," or total, limits on the derivative positions they could take.

Administration officials say they were already working on the changes, though Cantwell's advice was a valuable part of the process. This week, Geithner is expected to unveil his broadest proposals yet aimed at preventing interconnected financial firms from growing too big.

Even Gensler seems newly sympathetic to Cantwell and the insurgents. He says he is not opposed to tighter regulation. Gensler, a former Goldman Sachs executive, now concedes that he should have fought harder for aggressive regulation in the '90s. He also agrees that the dispute over his nomination probably pushed the administration to focus on regulation. Gensler described the senators who held up his nomination in diplomatic terms--Cantwell and Sanders finally let his confirmation vote go forward in May--as "allies in trying to bring reform to the over-the-counter derivatives marketplace."

Typically, Obama has also shown himself open to other views, and Levin and his allies say they believe the president is pushing his own economic team to crack down harder on Wall Street. "I think the president was always where we were on this issue," Levin says. (White House spokeswoman Jennifer Psaki says Obama gave a speech almost two years ago calling for major regulatory reform, and since he took office has "asked his economic team to seek input from all sides.") In late April, Obama gathered some of his chief outside economic critics--including two of the most vociferous, Nobelists Joseph Stiglitz and Paul Krugman--for a cozy dinner in the old family dining room of the White House. At one point during the two-hour meal, Stiglitz and

Summers began arguing whether hedge funds might amass a windfall profit by purchasing the long-term bonds of bailed-out banks. Obama impatiently moved the discussion forward, saying the numbers weren't the point, solutions were, according to two participants who would relate the president's comments only on condition of anonymity.

Much remains unaddressed, say Cantwell and other critics. Now that the financial markets are beginning to stabilize and the big Wall Street players pledge to pay back their bailout billions, they are digging in against fundamental change. Recently, a group of big banks including Citigroup, JPMorgan and Goldman Sachs formed a new lobby to fight controls on over-the-counter derivatives. Cantwell is skeptical that the Obama team will hold the line against the Wall Street lobby. "Do I think they've become true believers? No, I don't." She says Gensler is already "whining" about how hard it is going to be to get new regulation past Wall Street. Gensler insists he and the Obama administration are determined to rein in the financial industry once and for all. "We need to regulate all derivatives, standard or customized, by regulating the dealers," he said. Gensler is clearly under a lot of pressure. The question is, who is he more worried about: Wall Street or fellow Democrats like Maria Cantwell?

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Ellen E. Schultz, *Closing the Benefits Loophole*, The Wall Street Journal, May 30, 2009.

A bipartisan group of legislators is pressing the Treasury Department to close a loophole that has allowed banks to seize Social Security and disability benefits from customers' accounts despite federal rules intended to protect these benefits from creditors.

The loophole also has enabled some banks to seize from customers their recent $250 Economic Recovery Payments, payments to disabled veterans, and supplemental benefits to impoverished individuals from the Social Security Administration.

Federal law says creditors can't take Social Security, disability, veterans' and children's survivor benefits to pay a debt. But the federal law doesn't say how money deposited directly into bank accounts is to be protected -- a gap that has given banks the ability to seize such funds.

And when banks receive garnishment orders from debt collectors, they freeze customers' accounts and collect fees, including a charge to freeze the account, as well as overdraft and other charges -- all of which can be taken from Social Security benefits.

The Treasury and Social Security Administration, along with banking regulators, developed proposed regulations early this year that close the loophole. But the regulations are in limbo.

In separate letters in May to Treasury Secretary Timothy Geithner, members of the Senate Special Committee on Aging as well as House members including Barney Frank urged that the Treasury issue regulations to stop banks from freezing benefits and seizing fees.

In a recent hearing before being confirmed as the Treasury's assistant secretary for financial institutions, Michael Barr said one of his first priorities will be to issue "a joint regulation to solve the problem of account freezes and garnishment of exempt funds." Mr. Geithner wasn't immediately available for comment.

Some customers whose accounts are frozen often don't know their benefit money isn't supposed to be snatched.

Bank of America Corp. froze the accounts of Ellistine and Roosevelt Thompson, a disabled couple in their 60s in Macon, Ga., whose only source of income is from Social Security.

Because the Thompsons had no access to their money, they couldn't retain a lawyer. Bank of America turned over all the benefits, some of which they set aside for their burial, to a debt collector pursuing a debt from the mid-1990s.

The couple learned from a TV news program that creditors can't take Social Security benefits. They contacted Georgia Legal Services Program, which last year sued the bank seeking the return of the couples' money.

A Bank of America spokeswoman declined to comment on the case, saying the court had placed a confidentiality order on it, adding: "Banks are required by law to honor garnishment orders or risk being held in contempt. We freeze accounts because the law says we must when we receive an order to do so."

In a related matter involving Bank of America, the California Supreme Court was expected to rule as early as Monday on a case involving whether banks can take Social Security benefits to pay overdraft and other fees, not related to garnishments. The case, filed on behalf of elderly and disabled Californians receiving direct deposit of Social Security, accuses the bank of violating a state law that bars banks from tapping Social Security benefits; the bank argued that federal law pre-empts the state law.

Bank fees for handling garnishment orders and freezing accounts can total hundreds of dollars, leaving the person in debt to the bank.

In April, for instance, U.S. Bancorp seized the Social Security survivor benefits of two children in Kalispell, Mont., when a creditor garnished the account for the children's unpaid medical bills (the family has no health insurance). The benefits are the family's primary source of income, following the death of the children's father in 2007.

Unaware that the account was frozen, the children's mother, Nicole Murphy, 32, used a debit card to pay for gas and groceries for Easter. Each purchase triggered an insufficient-fund fee of $37.50. When the children's account fell below zero, the bank debited a negative balance fee of $8 a day.

A lawyer with Montana Legal Services Association helped Mrs. Murphy unfreeze her account. But the bank again froze the account. On May 7, the U.S. Treasury deposited into the account a $250 Economic Stimulus payment, which the government sent to low-income households. But the payment was unavailable to the family because the account was frozen, and because the bank's fees had created a negative balance.

A U.S. Bancorp spokeswoman says the bank is legally required to honor garnishment orders; it's up to the customer to work it out with the creditor and the court. If money is determined to be exempt, the bank releases it and refunds overdraft fees, she says. After being contacted by The Wall Street Journal, U.S. Bancorp credited $674 in overdraft charges back into the Murphys' account.

Under the proposed Treasury regulations, banks would be forbidden from freezing accounts that contain direct deposits of exempt funds, and couldn't take fees from exempt funds if the fees are a result of a garnishment, according to a person familiar with the matter. If the funds are commingled with nonexempt funds, the banks would have to apply a formula to exclude the protected amounts. The rules would protect banks from lawsuits from debt collectors and account holders.

But the Treasury hasn't released the proposals. Now, legal-aid lawyers say Social Security recipients are bailing out of the direct-deposit program to protect their benefits from the banks.

Allene Bellendier, a disabled 70-year-old widow, used to have her Social Security benefit deposited directly into her SunTrust Banks Inc. account.

But she closed her account last year after the bank froze it twice. Though she was able each time to get the account released with the help of a legal-aid lawyer, the process took weeks, leaving her without money for food, medicine or mortgage payments. When her food ran out, she says, she searched the house for loose change and found a few dollars in a piggy bank she was saving for Christmas presents.

She had a heart attack and says she lost nearly $600 in penalties and fees to companies where she had bounced checks as a result of the hold. Mrs. Bellendier now has her granddaughter cash the check at Wal-Mart; Mrs. Bellendier buys money orders to pay her monthly bills.

SunTrust declined comment.

In May, legislators introduced a bill to withhold funding to promote banks' direct-deposit program until the Treasury takes steps to protect Social Security benefits.

"Until adequate protections are in place, the Treasury should not be promoting a payout system that puts seniors' and veterans' benefits at risk," says Sen. Herb Kohl (D., Wis.), one of the bill's sponsors.

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