

Helping Homeowners Keep Their Homes, and Lenders Keep Their Loans!™

Solutions to the Mortgage Meltdown: From All Sides™ - 2007-2011
HelpHomeowners.Org | Help4ThePeople.Org

Industry & Congressional Debate

- HUD Type Public Education Outreach Booklet – Help4ThePeople.Org – **13 Homeowner Solutions to Default & Foreclosure – with Comments for Congress**
- TID™ - Truly Intelligent Disclosures™ - Suitability Consent & Waiver
- SHILO™ - Safe Harbor Intelligent Loan Options™ - Preset Contractual Safe Harbor Minimum Solutions
- **FMII™ - Foreclosure Mortgage Insurance Investment Funds™ - FHA HUD & FMII Partial Claims**
 - “COMC” – Non-Partisan - Congressional Open Markets Committee/Conference
 - Free But Responsible Open Markets – “FBROM”
 - Equity Building Bailout Funds - “EBBF”
 - **Equity Building Rescue Funds - “EBRF”**

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We all know that the rising threat of defaults and foreclosures facing America is currently harming the economy, causing extreme asset devaluation, and potentially creating a serious social problem for the greatest democracy in the world today (www.marketuncertainty.com). We all know that we must do everything in our collective power to help homeowners stay in their homes, and at the same time help lenders keep their loans. This is good for us all. The solution should not be discussed in terms of divisive politics, nor should it be a ‘bailout’ of one interest over another. Neither bleeding hearts nor cold business greed should guide the solution, but recognition of a few basic American principles must be a precondition. We can, and we must, **‘bailout the economy’** because its wellbeing is dangerously uncertain. We should not tolerate the risk of total free market devastation to the extent of potentially causing millions of lost households and domestic if not worldwide recession, due to “uncertainty” created by failed system safeguards (i.e., the Shadow Banking System). Inherent in saving the economy is **‘saving homeowners’** who are sinking in ‘debt’ while retaining sensitivity to **‘free but responsible open markets’** (FBROM www.fbrom.org). If we don’t we will flirt with ‘actual recession’ or worse. Then we will all suffer.

We must safeguard our economy from risk of destruction but at the same time make laws and industry practices that safeguard a steady growth across the board in new homeownership for decades to come. We must all respect the various interests around the table starting with 5 simple principles:

First, we must aim to help homeowners keep their homes, and lenders keep their loans;

Second, we must aim to enhance sustainable homeownership and the economy at the same time;

Third, it took us all to get into this mess, and it will take us all to get out of it; so no one interest should necessarily suffer more than another;

Fourth, this is exactly the kind of mess that government should help fix and safeguard for the future; including use of private-public solutions;

Fifth, we must aim to avoid boldly adding restrictive non-comprehensive regulations, when we can use intelligent refinement as our regulating barometer.

Interim Loan Solution (ILS): Short Term Loan Workouts! The immediate solution is 'loan workouts' as loan modifications requiring a new Note and Good Faith Estimate (HUD-1).

ILS Extension of Resets & Long-Term Modification of Resets – Helping Homeowners Keep Their Homes, and Lenders Keep Their Loans!™ ---

Immediate “affordability” must be infused into the national subprime loan portfolio or the foreclosure fallout may threaten us with a serious recession. Price must be paid for risk, but voluntarily (or by industry or congressional mandate) lenders, borrowers, and investors must share in the price for this risk. Immediately lenders and servicers with the approval of investors (by industry or congressional authority) should extend the mortgage resets, and/or modify each adjusting loan by maintaining the lower (teaser) interest rate for at least 7-15 years, (or agree on some low market interest rate approximation) and add

a fee to the loan balance (of \$5,000-20,000 (or calculate same by some market percentage) or a fee within Section 32 limits even if not required), which is then re-amortized over the life of the loan, or longer (i.e. 40 or 50 years).

We can't achieve loan workouts if the lender and the homeowner don't communicate and come to a negotiated solution. Borrowers don't want to talk to their lender, servicer or the bank's foreclosure attorney, for reasons varying from embarrassment to conflict of interest. The bank's foreclosure attorney clearly has a potential conflict of interest that the borrower and lender should want to avoid. At present, when the parties do talk, the negotiations are cumbersome, slow and tend to add to the problem, not solve it.

Borrowers have a lack of knowledge, resulting in a lack of bargaining power. Lenders (servicers) are overburdened, inefficient, restricted and too slow. A workout procedure that could take 3-6 weeks takes 4-11 months. To expedite loan workouts, we need **preset safe harbor minimums**, which I call SHILO™ - **Safe Harbor Intelligent Loan Options™** - **Preset Contractual Safe Harbor Minimum Solutions**. We must accept 2 principles to move forward on SHILO™ type Interim Loan Measures (ILM) solutions:

(1) Preset acceptable *minimum* loan workout norms will allow both homeowners and lenders to view and understand the same 'playbook' of options available as solutions, that will protect the interests of all participants;

(2) Neutral specialists are needed to enhance the bargaining power of the weaker party in the negotiation, the homeowner.

The national 800 and HUD numbers work well for credit counseling with respect to 'how to live within a budget', but are simply not setup to supply the necessary *specialized loan workout knowledge* to enhance the homeowner's bargaining position. The author developed **Help4ThePeople™** (www.help4thepeople.org) as a free public educational outreach program for homeowners facing default or foreclosure. As of August 31, some attorney (state) associations have stepped up to train volunteer attorneys to act as

homeowner representatives. The author applauds this recent development, which follows his introduction of the first example of specialized attorney loan workout solutions introduced at the 5th Non-Prime Lending Symposium in May 2007, called HotNeutral™ (www.hotneutral.com). Neutral representatives must be in the middle of the *loan workout-circle*, with *mutual waivers* protecting the homeowner and lender (servicer) from liability related to debt collections law, and for the disclosures, negotiations and resulting terms of the loan workout. This will allow everyone to expedite preset criteria that will result in speedier loan workout solutions. *Effective* loan workouts are the first of many private-public steps needed to resolve this growing problem. The tools must include use of all available Loan Workout devices, and refinement techniques including:

1. HUD Type Public Education Outreach Booklet –
(www.Help4ThePeople.Org) - 13 Homeowner Solutions to Default & Foreclosure
2. TID™ - Truly Intelligent Disclosures™ - Suitability Consent & Waiver
(www.TIDwaiver.com)
3. SHILO™ - Safe Harbor Intelligent Loan Options™ - Preset Contractual Safe Harbor Minimum Solutions
(www.safeharborintelligentloanoptions.com)
4. Automated (Rebuttal) Broker Price Opinions (BPO) on valuation and analytics (and to use with TID™) - numerous vendors stand ready to supply this data instantaneously via the internet, if the market demands it.

All loss mitigation and loan workout solutions should include these options and protections.

1. Public Education and Outreach | Help4ThePeople.Org:

The 13 Homeowner Solutions to Avoiding Default & Foreclosure™ Booklet (available on www.help4thepeople.org) is a public education and outreach service for borrowers and should be used by all market participants, and distributed by HUD, VA, FHA, Fannie

Mae, Freddie Mac, FBI, Congress and the industry. If the industry does not mount an unprecedented public educational campaign to change the negative public perception of the possibilities of solving a default or foreclosure, the problem and its inherent risks will continue to grow. Homeowners Public Education Information Hotline is: 800-770-0797 ext.701.

Loan Workout Tools: “13 Homeowner Solutions To Avoid Defaults & Foreclosure” Booklet (TID™ - SHILO™) – www.HelpHomeowners.Org

The tools available for Loan Workouts should include all commonly used devices and methods with the following additional devices and refinement techniques. Each Loan Workout should also include use of *mutual waivers* protecting the homeowner and lender (servicer) from liability related to debt collections law, and for the disclosures, negotiations and resulting terms of the loan workout. Additionally, TID™ - Truly Intelligent Disclosures™ - Suitability Consent & Waiver (www.TIDwaiver.com), SHILO™ - Safe Harbor Intelligent Loan Options™ - Preset Contractual Safe Harbor Minimum Solutions (www.safeharborintelligentloanoptions.com), and Automated (Rebuttal) Broker Price Opinions (BPO) on valuation and analytics should be used. This will allow everyone to expedite preset criteria that will result in speedier loan workout solutions. There is a need for a ‘minimum safe harbor’ set of tools or standards, so the lenders and servicers can act without fear of wrongdoing and liability claims from the borrower, investor, Wall Street investment banker, warehouse, or government. For more detail go to Help4ThePeople.Org (www.help4thepeople.org). The following is a brief categorical list of the safe harbor loan options:

If Refinance Loans Are Available:

1. **Pre-Foreclosure Loan Refinance - SHILO™ Solution -**

Refinance to avoid resets, etc. [August 2007 Market Note A:

Current problems are: (1) the non-agency paper and secondary market is not available or severely limited, causing homeowners to be locked into unaffordable resetting loans, (2) Government help is not addressing non-agency paper, only agency paper, and some plans address only “prime credit” borrowers. The old adage that the free market will correct itself is faulty because the **Shadow Banking System** is riddled with **RahC™** (Randomly Activated Hidden Contingency) and **RahD™** (Randomly Activated Hidden Debt) losses and hidden off balance-sheet liabilities, which the formal banking system cannot efficiently absorb. There is a great need for *subprime and Alt-A* agency and non-agency loans. Currently loan “eligibility” (as based upon the ‘fully indexed interest rate’ and ‘lack of equity’) is restricted to the point that most borrowers can’t comply. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.]

2. Short Refinance - SHILO™ Solution - Refinance to avoid loss through asset devaluation and pending resets, etc. This would allow homeowners to stay in homes, create part of the ‘equity’ that was lost in the massive home devaluation and obtain “eligibility” and “affordability”. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in

their loan documents at loan origination, refinance or at loan workout.

See **Delays and Problems With Short Sales and Short Refinance**

below. For more info, visit www.ShortRefi.Com [Also See August 2007 Market Note A above]

If Resale Market is Available:

3. Pre-Foreclosure Sale – The resale market is limited. It's a buyer's market, but many buyers can't get loans. Houses are not selling at levels expected in a good economy. The real estate market is down to historic levels: inventory is at historic highs, time on market is at historic highs, and prices have dropped, though leveled at this point. As trillions of dollars of ARMS start to reset later this year and next year, the resale market should degenerate further. A little known telltale secret that shows things are getting worse fast is revealed by the Wall Street REOs (real estate owned from foreclosure) owned by investment banks, which are rising at an alarming rate. Notice the chart below indicating the rate of change from January to July, 2006 over 2007 for REOs of Bear Stearns, Citigroup, JP Morgan Chase, Merrill Lynch, Morgan Stanley, and Lehman Brothers. The rate of firms taking back ownership of property has jumped as high as 497%.

For more info, visit: www.LegalForeclosures.Org and

www.buyrightbuylegally.org . [See August 2007 Market Note A above]

Other Market Conditions:

SHILO™ Type Solutions

4A. Extension of adjustable loan Reset Dates or terms- Extending the adjustable loan reset dates will help delay and spread out the coming losses. However, this is not a long term solution. This is an interim loan measure (ILM) only. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

4B. Extension of Resets & Long-Term Modification of Resets – Helping Homeowners Keep Their Homes, and Lenders Keep Their Loans!™ -

Immediate “affordability” must be infused into the national subprime loan portfolio or the foreclosure fallout may threaten us with a serious recession. Price must be paid for risk, but voluntarily (or by industry or congressional mandate) lenders, borrowers, and investors must share in the price for this risk. Immediately lenders and servicers with the approval of investors (by industry or congressional authority) should extend the mortgage resets, and/or modify each adjusting loan by maintaining the lower (teaser) interest rate for at least 7-15 years, (or agree on some low market interest rate approximation) and add a fee to the loan balance (of \$5,000-20,000 (or calculate same by some market percentage) or a fee within Section 32 limits even if not required), which is then re-amortized over the life of the loan, or longer (i.e. 40 or 50 years).

5. Cash payment Loan Reinstatement - This is a typical loan workout or loss mitigation solution. It requires the borrower to have available “cash” to makeup past arrears and associated costs. This is not a solution for most borrowers after they are in trouble, or after loan resets. Many borrowers in

trouble, without sufficient knowledge or bargaining power, will borrow from family members to get the makeup payment, make the deal, only to renege because they truly can not afford to carry that loan burden. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

6. Repayment Installment Plan - Perhaps the most common solution is to agree to repay the amounts in default over time or in installments while you also pay your regularly scheduled payments. This is commonly called a Repayment Plan Agreement. REASONING: Past Short-Term Hardship/Hardship is Now Over: The lender will not agree to this if your financial situation is unstable or reveals that you can't afford to make such payments. You will need to show the lender the reasons why you got into short-term financial trouble, and why you are no longer in financial trouble. You will need to show the lender that your financial situation is such that you can afford to pay the amounts due under this agreement. The lender may agree that: (1) 20-50% of past due amounts be paid upon signing of the agreement, and (2) the remaining past due amounts be paid over a time that matches your current ability to pay, for example, over 6-24 months, and (3) the regularly scheduled payments also be paid in a timely manner. This is an interim loan measure (ILM) only. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

7. Loan Modification - The borrower can currently afford to make regularly scheduled payments but can't afford past due amounts. REASONING: CAN AFFORD PAYMENTS/CAN'T AFFORD PAST DUE AMOUNTS: Loan

modifications are all about negotiations, especially in this troubling real estate climate (2007-2010). The borrower should seek to have the lender add all past due payments, interest and associated costs and fee amounts to the principal balance of the loan, and reset same to a **new “affordable” amortization schedule**. You may find it advantageous to negotiate the longest amortization period possible to lower your monthly payments. For example, *Amortization Term*: (i.e. 30, 40, 50 years); *Interest Only* (Fixed for at least 5-10 years); *Graduated Payment Plan* (GPP) (agreeing to pay no or low payments in the early months, rising in direct relationship to what the borrower can “afford” in later periods). The borrower should expect to execute a new loan note and related loan documents, and receive a positive or neutral credit reporting of the current or prior loan and note agreement, resulting in a new loan note and agreement. When in doubt, make sure of this in writing in plain language. For example, confirm that no negative mark will be recorded on your “credit report”. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout. See above: **4B. Extension of Resets & Long-Term Modification of Resets.**

8. Loan Forbearance - Forbearance means time-out! Stop the lawsuits!

Stop the foreclosure sale! Stop my payments! REASONING: Buy Time/Regroup: **Lenders will consider a forbearance agreement to give the borrower a time-out from making payments or full payments for a limited time period allowing him or her to regroup.** The borrower will have to agree to another option to bring the loan current when that **forbearance period expires.** *Repayment or Reinstatement* may be the

agreed option to resolve the situation. Borrower should only negotiate and agree to a plan that is doable, workable and affordable. If a hardship will result in a temporary or short term payment problem, the borrower will need to prove to the lender the reasons for such hardship and the reasons for recovery from such short term hardship. Lenders may agree to combine the **Forbearance** with other solution options as well. For example, it is common to use the forbearance agreement with a **Reinstatement** or a **Repayment Plan**. The question is always:

CAN YOU BRING THE ACCOUNT FULLY CURRENT, WHEN, WHY & HOW? In the current climate, the borrower will need to ask for what is needed, not for what they think the lender will allow. If one needs Forbearance for certain reasons with an exit option other than Reinstatement or Repayment Plan, then it should be sought and negotiated. Borrowers should only negotiate and agree on a plan that is doable, workable, and “affordable”! Otherwise, a very capable foreclosure and litigating attorney will be at the borrower’s doorstep. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

9. FHA HUD Partial Claim – (SHILO™: FHA HUD – FMII™ Partial Claims) - Some types of loans have certain prescribed procedures that may help or hinder your success. For example, if you have an FHA insured loan, you may be entitled to money for payments from HUD (Department of Housing and Urban Development). This program is called the **FHA HUD Partial Claim Program**. This program will afford the borrower with a payment from the FHA Insurance Fund.

HUD REQUIREMENTS: You must be

- A. at least 4 months but no more than 12 months delinquent on your regularly scheduled loan payments,
- B. be financially stable and able to make fully amortized payments thereafter,
- C. you must execute a new HUD promissory note and you must accept a lien against your home of such amounts as a HUD loan, without interest and due when you transfer, sell, or cease to use as your home.

This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout regardless of whether it is a federally backed mortgage or not. **FMII™ - Foreclosure Mortgage Insurance Investment Funds™** can act alone or in partnership with government funds.

10. “Pre-Foreclosure Short Sale” for less than mortgage amount due – SHILO™ - In the event the borrower wants to move out, and has found a third party buyer that will offer only an amount less than the amount of the loan balance, a Short Sale may be the answer. The borrower will have to make a series of written representations to the lender in a Short Sale Package, including a Financial, Medical or Legal Excuse Hardship Letter with supporting documentation on (1) the borrower, (2) the home and (3) the real estate market, including: bank statements, repair estimates, evidence of three to four months failed listing results (from the “multiple listing service”), rebuttal price opinions, purchase contracts, HUD-1 or settlement statement, proof of funds or prequalification letter from the buyer’s bank, etc. The

lender will also attempt to establish a fair market price for the house. The price the lender will propose is called the Broker's Price Opinion (BPO). It will usually differ greatly from the price that the borrower expects to sell the home for, based upon the seller's experience of at least 3 months of failed sales. This reconciliation of the fair market price will cause great delays and drag the process on for months (and months). Notwithstanding, this scenario will lend itself to buying a 'short sale' at a price below the amount due on the mortgages and usually 20-40% below market. This will also require the lender(s) to agree to take less than the amounts due, which will require 1-4 months of negotiations. However, it is critical to understand that, although laws are pending in Congress, the homeowner presently may be subject to **income tax on the amount of forgiveness of debt**, or in some states, the amount of the non-purchase money mortgage (refinanced mortgage) **deficiencies**. It behooves both the buyer and the short seller to **negotiate a waiver** of the deficiency judgment and/or income tax (1099 reporting) liability. An attorney should be consulted by the buyer and the seller to avoid unwanted results. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout. See **Delays and Problems With Short Sales and Short Refinance** below. For more info, visit: www.ShortSale4You.Com . [Also See August 2007 Market Note A above]

11. Deed In Lieu of Foreclosure – HAND IN KEYS EARLY: WALK AWAY CLEAN: STOP FORECLOSURE PROCEEDINGS: CAN'T MAKE PAYMENTS: CAN'T SELL BUT TRIED: WANT OUT: WANT TO SAVE CREDIT SOMEWHAT: EARLY BIRD PRE-FORECLOSURE

SOLUTION! If you can't afford the payments on the loan and need to get out, contact the lender and offer a deed in lieu of foreclosure. The borrower is seeking an immediate release from the loan and all indebtedness, and cessation of foreclosure proceedings. This potentially can save the lender much money, time and hassle from pursuing the foreclosure remedy against the borrower. Credit will typically show a negative mark from this situation, but much less serious than a foreclosure. As in a short sale, the borrower will have to show that he/she attempted to sell the home but could not. Unlike the short sale, he/she might only have to try for 30 days or so. Different lenders will have different requirements, as for example requiring you to offer the deed in lieu 30-60 days prior to the foreclosure sale date, and requiring that the property be vacant, and that an exterior and interior appraisal meets their approval. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

12. Reverse Mortgage (for Seniors) – Seniors need to understand that they may seek a reverse mortgage that would replace their current loan requiring monthly current payments with a Reverse Mortgage that would NOT require current monthly payments. The reverse mortgage is paid off when the property is transferred or sold, or at death. Reverse mortgages are generally legitimate and should be considered by seniors with all of the other factors unique to each borrower, and his or her estate, succession and life insurance plans. This solution should be preset by contract as a safe harbor intelligent loan option (**SHILO™**) afforded all borrowers in their loan documents at loan origination, refinance or at loan workout.

13. Defenses against foreclosure and bankruptcy - FAIR NOTICE AND DEFENSES TO FORECLOSURE: HIRE AN ATTORNEY! Borrowers have legal rights independent of the solutions offered herein. Borrowers must obtain a 'written' agreement to Take & Toll Foreclosure Sale or file answers, objections, oppositions or lawsuits in writing to protect their rights.

Borrowers are always advised to contact their own attorney experienced in this area of the law. Borrowers may resort to bankruptcy protections, which may or may not save the home. Borrowers may also have legal claims against lenders, servicers, brokers, or Wall Street firms for predatory lending, fraud, RICO, misrepresentation, negligent product development, breach of good faith duties, breach of warranty of fitness for a particular purpose, breach of Federal or State laws, among many other causes of action. Each and all of these may or may not have merit for a particular borrower.

i. THIRD PARTY HELP: Public Education and Outreach -- The HOMEOWNERS GUIDE TO AVOIDING DEFAULT & FORECLOSURE™ is available on www.help4thepeople.org. If the industry does not mount an unprecedented public educational campaign to change the public negative perception of the possibilities of resolving a default or foreclosure, the problem and its inherent risks will continue to grow. There are also third party organizations that help homeowners such as Neighbor Works™ (<http://www.nw.org/network/home.asp>), HUD (U.S. Department of Housing and Urban Development (HUD) (<http://www.hud.gov>), Standards (www.homeownershipstandards.com), Help4ThePeople.Org at www.help4thepeople.org , Attorney and Lender Neutral Help at www.hotneutral.com, etc.

DELAYS & PROBLEMS WITH 'SHORT SALES' & 'SHORT REFINANCE'

1. Special Problems & Issues:

The current loan workout system is riddled with delays and inefficiency. Something that could take a few weeks usually takes months (4-9 or more). Examples of the delays include, but are not limited to:

- A. **Broker's Price Opinion (BPO):** The lender will attempt to establish a fair market price for the house. The price the lender will propose is called the Broker's Price Opinion (BPO). It will usually differ greatly from the price for which the borrower expects to sell the home. **Automated** (Rebuttal) Broker Price Opinions (BPO) on Valuation or AVN (Automated Valuation Networks) should be used. This will allow everyone to expedite preset criteria that will result in speedier loan workout solutions.
- B. **Lender Intake Systems Are Overloaded:** Lenders and servicers must upgrade their automated computer intake systems to 'track' each case and its file materials more efficiently. All documents received by any clerk at any time should be found on the computer system at all times. Presently, lenders usually say the file was 'assigned' to a particular clerk, but in reality, every time you call them, you are handed off to another person, and then 'reassigned' to another clerk, who can't find your file materials. This *game of tag* goes on for 1-2 months alone, and then the 2-4 month deal period begins.
- C. **Workout Deal Terms Disingenuous/Against Public Policy:** Lenders want it both ways. They want all options open, even when committing to a particular deal. Lenders overreach and it creates **impractical or 'unconscionable'** deal terms. For example:
 - a. **Deficiency Liability: Law & Contracts Must Be Amended:** When a borrower can't afford to pay the mortgage in a timely manner, why

would the lender believe he/she can pay the loan balance deficiency?
Of course the borrower in this circumstance cannot afford the forgiven loan balance amount; if he or she could the loan would have been 'reinstated' and 'modified' to become "cash-affordable". Many lenders will agree to a 'short sale' with the 'condition' that "*Lender will retain the note on this loan. The customer shall be responsible for the deficiency remaining on the balance. All terms of the original note shall remain in force.*" In this situation the borrower is compelled to accept the offer due to his or her circumstance, and accept the 'threat' that the lender may (or may not) come after him/her within one year for the deficiency amount, usually by filing a lawsuit seeking to obtain a 'deficiency judgment'. The threat of this 'contingent liability' precludes the borrower from moving on with his or her life and providing for his/her family. This type of deal making is '**unconscionable' in terms of 'public policy'**'.

i. **At-Law Solution To Enforce Public Policy & Contract**

Principles: If lenders are to accept a lesser sum than due on a mortgage (for mutually beneficial purposes), then the lender should not be allowed – at law – to condition the agreement (at its very heart) by requiring that the borrower remain liable for the *very same thing* disposed of in the deal (the deficiency liability).

- b. **Income Tax Liability: IRS Law Must Be Amended.** When a borrower can't afford to pay the mortgage in a timely manner, why would the lender **and the IRS** believe he/she can afford to pay the *phantom* income tax due on the **forgiveness of debt** based in part on

the loan balance deficiency amount? Of course the borrower in this circumstance cannot afford the income tax due on the **forgiveness of debt**; if he or she could this resource would have been used to 'reinstate' and 'modify' the loan to "cash-affordable" terms. Many lenders will agree to a 'short sale' with the 'condition' that the lender will send out a 1099 tax notice to the IRS. Now the borrower is compelled to accept the offer due to his or her circumstance, and accept the 'threat' that the IRS will come after him or her for income taxes due (if any) on forgiveness of debt, based in part on the very thing disposed of in the short sale, the deficiency loan balance. The threat and reality of this 'IRS contingent liability' precludes the borrower from moving on with his or her life and providing for his/her family. This type of deal making is **'unconscionable' in terms of 'public policy'**.

i. **The Internal Revenue Code must be amended.**

- c. **Lender Overreaching: We agree but, if we Screw Up, You're Liable, Not Us:** Many lenders agree to a short sale with the condition that *"In the event the above property should go through foreclosure sale prior to our offer date stated above, this agreement will become null and void, thus the offer will be rescinded."* This really means, we agree to this short sale agreement, but if we can't correct our internal system and stop the foreclosure attorneys, then you lose, because we do not want to be responsible for our duties under this short sale agreement.

i. **Congress should preclude such conditions as against public policy.**

d. **Avoid Delays with SHILO™ - Investor and/or Insurers**

Agreement: Many lenders agree to short sales (and other loan workout devices) but condition or delay such agreements based upon the legal need to obtain agreement from their investors and/or the mortgage insurers, if any. This creates more uncertainty in the system as a whole and causes delays. Investors and or insurers *should be compelled to preset conditions for approved loan workout terms upfront* in their investor agreements and or insurance agreements.

- i. **SHILO™** - Safe Harbor Intelligent Loan Options™ - are preset and upfront contractual Safe Harbor Minimum Intelligent Loan Options. SHILO™ is “contractual safe harbor” loan option provisions placed in the loan origination, refinance and loan workout documents up front. It removes delay and “uncertainty” in the marketplace. SHILO should be included in junior liens and loan documents as well.

1. Congress should require preset conditions of loan workout devices and safe harbors in all residential loan documents.

e. **Lender Overreaching: Must “List” House With Realtor: But**

Realtor Can’t Be Paid: Lenders agree to loan workouts and short sales and short refinances, but condition the deal upon the requirement that the property be listed by a realtor on the market for at least 3-4 months. However, once the deal is accepted, the ‘short’ contract states “*Realtors commission not to exceed \$0.*” So the

borrower has the impossible task of 'listing' the home with a realtor, but getting the realtor to waive all commission. Try calling 10 multiple listing realtors and see how many will agree to that!

i. Congress must make laws to allow payment to realtors of up to 3% or some other percentage or amount so that the system can work.

f. **Lender Overreaching - Fictional Legal Loophole re Relocation**

Money:

RE: SHORT SALES AND FORECLOSURE PROCEEDS

I know. Well, the reality is the seller is broke. The seller needs money to move and start over. Many times there are children left without a roof over their head. This will cause societal problems which will harm the economy as well. The lenders prohibit the seller from receiving any monies in the transaction. So what happens? The system creates and relies upon a *fictional legal loophole*: The Buyer pays the Seller by purchasing artwork, stoves and heirlooms for usually \$1,000-\$15,000, documented by a *Bill of Sale*. Stop the fiction. Stop forcing people to take vulnerable legal positions in order to protect the lender's interest, and legal uncertainty.

i. Congress should pass a law allowing the Seller to receive money from the proceeds of the deal for (1) relocation and fresh start, and (2) partial equity reimbursement, in certain circumstances (i.e. predatory causes). Amounts for relocation might be for "necessary or appropriate moving, relocating, and living expenses", and an amount for "partial equity reimbursement" might be a (very low)

percentage of the excess sale proceeds received, if any, in certain circumstances to reimburse the seller for material contributions to improve the condition, value and salability of the home. These methods will (1) allow a mechanism to pay the seller *legally* so he/she can start anew in society, and (2) motivate sellers to keep their homes in top shape; that will help the sales valuations generally and help to resist deep discount pricing, which hurts everyone, ultimately.

2. **TID™ - Truly Intelligent Disclosures™** -

TID™ is a suitability disclosure with a waiver (plus). It protects the banks as well as the borrowers (and investors). TID™ is a numeric summary sign-off sheet with a recap of the present offered loan deal, with easy to read summary payment scenario forecasts for the pre-reset date, the reset date, and/or at 3, 5, 10 years, and balloon periods, as appropriate. The form also lays out the choice between PMI insurance vs. the 80/20 Piggy Back options with tax assumptions as well. It also discloses the minimum approved interest rate against the broker yield-spread rate – charged to the borrower. It amends the HUD-1 and Good Faith Estimate form and process. TID™ was created by Attorney Rydstrom and published by the 110th Congress on the problems and solutions facing middle class homeownership and retirement. We don't need more disclosures for disclosure's sake. We don't need new restrictive laws. We need less of both. However, we do need truly intelligent disclosures. Accepting TID™ is a defining moment in the industry. Click <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=5617> for more on TID.

3. **SHILO™ - Safe Harbor Intelligent Loan Options™ -**

SHILO™ - Safe Harbor Intelligent Loan Options™ - are preset and up-front contractual Safe Harbor Minimum Intelligent Loan Options. SHILO™ is “contractual safe harbor” loan option provisions placed in the loan origination, refinance and loan workout documents up front. It removes “uncertainty” in the marketplace. It enhances the borrower’s bargaining position. It protects the lenders, banks, investors and the borrowers. It will remove a margin of “extremes” in the foreclosure marketplace and result in more stable market prices – with a lessening of extreme asset devaluation. SHILO™ was created by Attorney Rydstrom and published by the 110th Congress on the problems and solutions facing middle class homeownership and retirement. We don’t need more laws when we can use SHILO™ - which will reduce defaults and foreclosures “contractually”! This will protect the lender and the industry as well as the borrower. Click <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=5617> for more on SHILO.

4. **FMII™ - Foreclosure Mortgage Insurance Investment Funds™ -**

Long-Term Solution: To Avoid Repeat of Mortgage Meltdown:

FMII™ - Foreclosure Mortgage Insurance Investment Funds™ - FMII™ (DMII™ - Default Mortgage Insurance Investment Funds, BMII™ - Bankruptcy Mortgage Insurance Investment Funds, IMII™ - Investors Mortgage Insurance Investment Funds) was created by Attorney Rydstrom and published by the 110th Congress on the problems and solutions facing middle class homeownership and retirement. **“We must pay for risk** or the price risk formula will be corrupt. There should be no free lunches, but that doesn’t have to mean the price for extra risk can’t be paid by an insured investment fund that trades that risk-benefit on Wall Street, potentially building billions if not trillions in “certainty” equity, now missing from the Shadow Banking System. This is how we can reduce “market uncertainty” and “avoid market and loss extremes” while at the same time saving millions of homeowners from being thrown out on the streets. Yes, it is

simply silly to expect someone who can't afford something to pay extra with "monthly cash" that they don't have. My experiences working on Wall Street taught me that **"price" can be paid with 'non-cash' items, or "cash-equivalents"** and "non-cash" risk mitigation devices or insured investment traded funds. Hedge funds and private equity are uniquely poised to "help" us solve this problem, if we call on them. See **FHA HUD Partial Claim – (SHILO™; FHA HUD – FMII™ Partial Claims)** above. Click for more on <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=5617> for FMI, DMI, BMI, etc.

5. COMC | CCOOM.ORG | CongressionalConferenceOnOpenMarkets.Org | CongressionalOpenMarketCommittee.Org:

We need a more refined and comprehensive approach to safeguarding our markets, not necessarily more non-comprehensive regulations. Some on Wall Street say the Fed was asleep at the wheel; that it should have acted sooner to shore up the markets. The Federal Reserve Board has the FOMC (Federal Open Market Committee) to oversee and recommend monetary policy, including increasing or decreasing the Federal Funds Interest Rate or the Discount Window Interest Rate. Congress should form COMC and CCOOM (The Congressional Open Market Committee), starting with the first debate entitled: the Congressional Conference on Open Markets. One immediate 2007-2010 focus must be 'helping homeowners keep their homes, and lenders keep their loans.' Numerous Congressional bills are pending, all coming from different and unique positions, aiming at similar or different problems, leaving holes in the needed solutions. This is one reason why big business, Wall Street and the public perceive government as not effective. **We need a 'clearing house' to inject a comprehensive non-partisan point of view.** COMO and CCOOM would require participation with:

- (1) Comprehensive analysis,
- (2) Documentation of polarizing positions, and
- (3) Recommendations of common ground solutions.

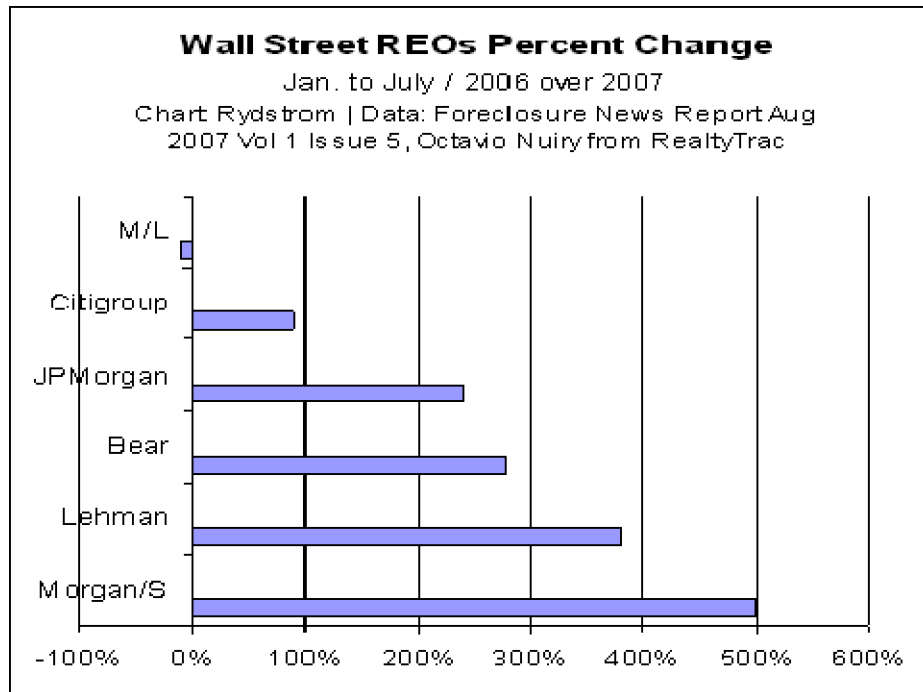
(4) “FBROM” – Free But Responsible Open Market principles
(www.fbrom.org)

The markets are re-pricing risk. Moody chief, Mark Zandi, predicts things will get worse. Defaults will rise to 2.5 million over the next two years and 10 percent of subprime homeowners will be in foreclosure by mid 2008, up four percent. On July 24, Countrywide confirmed that delinquencies have soared in the prime markets as well, from 1.8 percent to 4.6 percent as of June 2007. For starters, the mortgage meltdown means that fewer subprime (and potentially prime) borrowers can buy a new home or refinance their current loan. There are three reasons: (1) extreme credit tightening with more restrictive eligibility requirements; (2) affordability is now tested at the fully indexed rate (not the lower teaser rate); and (3) property values have fallen to the point where homeowners have insufficient equity to refinance or sell profitably. In other words, most borrowers are locked into their property and loan as adjustable rate mortgages (ARMs) are resetting to higher rates, resulting in unaffordable monthly payments. \$1.1 trillion in loans are pending reset, some increasing monthly payments by 100 percent (Weiss Research, Mike Larson, 7/19/07). The 2006 so-called 2/28 ARMS will reset in 2008. Still more shocking is the 2004-2006 resets pending fallout.

Minimally, other private-public solutions offered include: (1) government bailouts or foreclosure moratoriums; (2) the Federal Reserve cutting interest rates (Bill Gross, PIMCO), 200 basis points over next six months (Economist, Peter Yastrow); (3) Freddie Mac/Fannie Mae approvals for loan buyouts (acting as loan “warehouse”) (Jim Cramer, MadMoney); and (4) new bailout “Private Equity Rescue Funds” (Ron Insana, CNBC). We need higher limits on agency-paper and non-agency paper (loans). Many states like California, Nevada, Texas, Florida, etc. have a large amount of homes priced at over the \$417,000 GSE cap amount. We need ‘agency and non-agency loan coverage’ for loans above \$417,000 to probably \$1,500,000.

In addition to great losses, two bankrupt Bear Stearns Funds, over 137 lenders out of business, or in a very limited line of business, a credit crunch and a liquidity crisis, REOs

owned by Wall Street investment banks are rising at an alarming rate. Notice the chart indicating the rate of change from 2006 to 2007 for REOs of Bear Stearns, Citigroup, JP Morgan Chase, Merrill Lynch, Morgan Stanley, and Lehman Brothers. The rate of firms taking back ownership of property has jumped as high as 497%.



6. Shadow Banking System (SBS)

Since the dotcom bust of 2000, the *flight for survival and profits* went into real estate. As a result the real estate market soared to all time highs. Over these last 7 years, the lending industry endured growing pains. The 80/20 ‘piggy back’ went into high gear, followed by teaser adjustable rate mortgages (ARMs). The banking system underwent primal and systemic changes. The mortgage lender’s model went from one of originating a mortgage with retained servicing, to one of using warehouse lines to fund a loan (often pre-sold on forward contracts) to Wall Street investment bankers waiting to deliver the ‘securitization’ of a pool of loans to third party investors. There is nothing wrong with a

more profitable mortgage banking model per se; however, refinements and safeguards should be in place so that less extreme asset devaluations tend to occur, and society is fairly treated, protected, and participates in the success of such a model. The fact that this new model is not federally insured, nor able to use the Federal Discount Window, makes it vulnerable to market extremes, to levels not yet known or understood. Japan and China as buyers own the majority share of the USA subprime high-risk high-yield mortgages. This will now create international issues, and potentially weaker world markets or confidence. The greatest capitalists in the world should and can do better than they did this last round of historic homeownership growth.

During the years from 2000-2007, the banks took in securitization products including mortgages (worth over \$1 trillion) and issued commercial paper. The banks created a great number of **off balance-sheet** conduits and structures. As such, these structures **fail to report full liabilities on the bank's balance sheets**. This is what I call **RahC™** (Randomly Activated Hidden Contingency) and **RahD™** (Randomly Activated Hidden Debt). The industry created a Shadow Banking System (SBS) [phrase coined by Paul McCulley, PIMCO].

Yes, you've seen this movie before. **Remember Enron?** Enron, apparently through a series of related entities, accumulated a massive *off-balance sheet contingency* that exposed the company to risks and liabilities in untold and unknown amounts, not respected by its investors, the government or society. With off-balance sheet liability and exposure related to hedge funds, commercial paper and derivatives, our formal banking system is now trying to absorb the assets burdened with unknown quantities and qualities of RahC and RahD losses and liabilities now exposed in our Shadow Banking System. Moreover, the SBS is not backed by Federal Deposit Insurance, nor does this system have access to the Federal Discount Window for liquidity. Not to rub salt in this wound, but my 'free market purist' friends should now recognize some need for 'refined free market industry and government regulations.' How many times must we see this movie of 'extremes'? Literally, untold exposure is etched in the fabric of off-balance-sheet contingencies. **We must safeguard our economy from this type of market destruction**

but at the same time make laws and industry practices that see a steady growth across the board in new homeownership for decades to come.

7. Extremes Caused By ‘Asset Devaluation’ Are the Unnecessary Enemy

A Red Flag Warning Re Homeownership Asset Devaluation!
(www.marketuncertainty.com)

When distressed homeowners sell homes ‘short’ (as a short sale, sold below the mortgage balance due) and 5-40% **below market**, or let the homes sell at foreclosure, the local real estate market devalues significantly. Since appraisals are based upon recent local market sales, all local real estate suffers asset devaluation. The markets feed off of this phantom devaluation and prices fall to extremes. Even though falling prices of ‘homes’ do not automatically trigger ‘margin calls’ as in stock markets, this devaluation erodes ‘equity’ and limits or precludes homeowners from refinancing, or using their home to finance growth in the general economy; not to mention the expected loss of 2.2 million homes for those families.

Stable market valuations are key in avoiding extreme market swings. In July and August, 2007, as a result of the mortgage default and foreclosure meltdown, the stock market has experienced volatility extremes not seen since the dotcom bust. Non-agency paper and commercial paper markets all but disappeared resulting in periods of “no bids”. The credit crunch and liquidity meltdown went into full swing and is now continuing. This is a yet another warning that all markets are connected, worldwide, and that ‘refined market sensitive regulation’ is necessary.

The fact that shortly before the recent July and August 2007 stock market meltdown the exchange took away the “UP TICK RULE,” is nothing less than shocking. Normally, the down tick rule will not allow traders to ‘bet on the down’ or ‘go short’ when the market is ticking downward. One could only bet on the down when the market was in an ‘UPTICK’ position. The recent extreme volatility and losses in the market were exacerbated by the removal of the ‘up tick rule’ during the recent market sell off. This caused greater losses in market valuations, triggering margin calls and further harming the stock market and the credit and real estate markets.

The financial debate in the USA during July and August 2007, whether a “secondary mortgage market, non-agency paper market, and/or the commercial paper market exists or whether it is currently functioning or not”, should be compelling evidence that the solutions, short and long term, must include reducing market(s) uncertainty. The fact that there have been times of "no bids" on these markets during such time compels us all to search for safeguards from extremes and mandates congressional action to supply “market certainty.”

Wall Street learned its lesson from the dotcom bust. Valuations fell. Margin calls begot margin calls. Before anyone could think sensibly, the market structure itself acted to co-create intolerable market devastation. However, Wall Street implemented a new series of market structure reforms; a system of refined checks and balances, **a preset and predetermined contractual and systemic remedy that limits market extremes and devastation**. The exchange will automatically shut down if markets move downward in preset excessive amounts. It works. At least it’s better. The financial markets have maintained stability even in the face of terrorism. These preset provisions reduce extremes in market devaluation.

8. Equity Building Rescue Funds (EBRF) | Bailouts! Rescue Funds or Handouts!

Market Equity Funds:

FMII™ - Foreclosure Mortgage Insurance Investment Funds™

DMII™ - Default Mortgage Insurance Investment Funds™

BMII™ - Bankruptcy Mortgage Insurance Investment Funds™

IMII™ - Investors Mortgage Insurance Investment Funds™

In a \$10 trillion mortgage market, the subprime market is about 15%. Assuming a loss ratio of some 10%, a loss bailout would be in the area of \$150 billion. A \$100 to \$300 million blanket will not be sufficient. \$1 billion is a good start, but we will need much more. Are we talking a **Bailout of the Economy** or a **Bailout of Homeowners**? Are we recommending blind **bailouts** or **borrower handouts**, **Wall Street Bailouts**, **China or Japan Bailouts**? We should be talking about a **comprehensive rescue of our economy**

and its participants and safeguards, including the homeowners who may be thrown to the streets. We need a total market refined working solution. One way to solve this shortfall is to implement tradable FMII™ type insured mortgage investment funds. Click <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=5617>. These funds would build up huge excess equity and profits, as the high-risk high-yield subprime and Alt-A mortgage markets have proven to be at least an 80% good bet. The short and long term solution must include a mechanism to safeguard against extreme market devaluation and the defaulting 13-20%. **FMII™** is an **‘EQUITY BUILDING BAILOUT FUND’ (EBBF)** that supports the narrowly defined risks associated with the mortgage industry, especially subprime and Alt-A borrowers. **FMII™ - Foreclosure Mortgage Insurance Investment Funds™** will supply the “certainty” and money necessary to pay for such events of foreclosure as predefined in the loan and fund agreements. This is key, because it will maintain a “money flow” to pay for the asset (home) loan burdens, maintenance and upkeep, employing thousands of independent contractors, and critically supporting asset (home) valuations by eliminating the downward pressure appraisal frenzy that occurs when homes are ‘sold short’ or in foreclosure for 20-40% below market price. Since FMII™ automatically “covers” this event, there is no reason for homes to sell at such deep discounts, forcing other homes to devalue immediately since home appraisals are based upon the last six months of “actual sales” in the local area. **DMII™ - Default Mortgage Insurance Investment Funds** will cover the default risks and circumstances, **BMII™ - Bankruptcy Mortgage Insurance Investment Funds** will cover its related risks and circumstances and **IMII™ - Investors Mortgage Insurance Investment Funds** will allow investors to cease over-pricing the second loans, rendering them “unaffordable”, by paying for that extra risk that must be paid but not necessarily by overburdened borrowers. This will help reduce adding RahC and RahD into the price-risk formula. For more info go to: www.equitybuildingbailoutfunds.org; www.equitybuildingrescuefunds.org;

Can We Expand Homeownership? Yes we can. Look at the statistics. If “one in five (20%) subprime loans (“made in the last 2 years”) result in foreclosure” (*Ron Nixon, New York Times, Center for Responsible Lending*), then 80% of that revenue stream was a

good risk after all. If 80% of subprime loans are performing, expanding homeownership through weaker buyers has worked. Homeownership adds a significant tax revenue base and equity wealth to borrowers, local towns, and strengthens the national economy as a whole. To achieve a better success rate, we must support policy that:

(1) Expands homeownership across the board, and

(2) Fashions incentives or controls necessary to lower the expected 20% subprime foreclosure rate by refining the market risk-pricing structure, and adding intelligent refinements and risk mitigation devices and techniques to the bargain, such as TID, SHILO and FMII.

Should We Expand Homeownership? Yes we should. The argument against such expansion includes the idea that not all Americans can afford homeownership, and we are entering a period of continued deficits and mounting baby boomer entitlement costs that preclude America from engaging in such growth. Both arguments fail. The former fails because the 80% subprime success rate proves it can work, but is in want of refinements as discussed in this report. The latter argument fails because the authoritative study quoted by Chairman Bernanke (*COB Budget Outlook 2005*), testifying at the Committee on the Budget, U.S. Senate January 18, 2007, concerning the risk of weakness in the U.S. economy over the next decade or two, fails to take into account “new immigrant and increased subprime homeownership” - and its positive effect on the economy. Frankly, the study, hypothetically dealing with the relationship of both increasing immigration from 1 million to 2 million (per year) and entitlement costs, must be revisited with offsetting economics from both homeownership from new and existing immigrant family members, and increased subprime homeownership.

Housing creates jobs and tax revenues. We must remember that about 20% of GDP is related to housing. In 1998, some 50% of all homeowners held 50% of their net worth in home equity. (The State of the Nation’s Housing, Harvard “JtCtr” 2002) Every 1000 homes built create 2,448 jobs, \$79.4 million in wages and \$42.5 million in federal, state and local tax revenues and fees. (JtCtr, citing National Association of Home Builders

2002 (NAHB)) Twenty percent (20%) of all consumer spending is linked to household wealth. Every \$1,000 gain realized from a home sale boosts spending by some \$150, compared to \$30-50 from stocks. (JtCtr citing Federal Reserve Board) We can add 15.61 million homeowners over the next 14 years (prox. 1.2 million per year). Demand may require 1.7 million new homes and apartments per year (JtCtr), which could pour billions into the tax and wage base. Homeownership creates a backbone of wealth throughout America like no other financial product to date. “The American Dream” begets hope, confidence and success. Greater homeownership can help balance the budget. On January 20, 2001, President Bush indicated that poverty was unworthy of our citizens, and that we all have a duty to help eradicate it. Now let’s work on lowering that 20% figure.

We must safeguard our economy from market destruction but at the same time make laws and industry practices that see a steady growth across the board in new homeownership for decades to come. For more info, go to:

www.freebutresponsibleopenmarkets.org, www.fbrom.org, www.ccoom.org,
www.help4thepeople.org, or www.helphomeowners.org.

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