

Representative Brad Miller of North Carolina has introduced a bill, the Mortgage Servicing Conflict of Interest Elimination Act. The bill would prohibit a company that services a loan it does not own from holding any other mortgage on that property. The proposed legislation would eliminate a built-in conflict of interest that has hampered effective administration of the government's Home Affordable Modification Program ("HAMP").

Loan modifications are too often held up or blocked due to the competing interests of those holding mortgages on a property. Representative Miller's bill would eliminate that inherent conflict of interest by providing that a company cannot be the mortgage servicer with respect to a loan on which the company also owns a second mortgage or home equity line of credit on the same property. Roughly two-thirds of primary mortgages are serviced by banks which do not own them, but hold a second mortgage on the property. The nation's top four banks, Bank of America, JPMorgan Chase, Wells Fargo, and CitiBank, hold approximately \$450 billion in second liens.

Those second mortgages are supposed to fall behind the interest of investors who hold the primary mortgages. But, because the big banks also service loans, they are in a position to put their interest arising from the second mortgages first. When a borrower has trouble meeting payments on both a first and second mortgage, a servicer has an interest in making sure that payments on the second mortgage, which it owns, continue to be paid. This is so, even if the primary mortgage, in which it has no interest, falls into delinquency. The servicers which hold the second liens have an interest in making sure the borrowers continue to make payments on the second lien even if the borrower and primary mortgage holder would benefit from a modification of the first mortgage.

The Mortgage Servicing Conflict of Interest Elimination Act would prohibit a loan servicer from holding any other mortgage interest in property secured by that first mortgage. Eliminating that conflict of interest would help clear the log jam of delinquent loans that should be modified.