Take this House and Shove it: The Emotional Drivers of Strategic Default

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Abstract:
An increasingly influential view is that strategic defaulters make a rational choice to default because they have substantial negative equity. This article, which is based upon the personal accounts of over 350 individuals, argues that this depiction of strategic defaulters as rational actors is woefully incomplete. Negative equity alone does not drive many strategic defaulters’ decisions to intentionally stop paying their mortgages. Rather, their decisions to default are driven primarily by emotion – typically anxiety and hopelessness about their financial futures and anger at their lenders’ and the government’s unwillingness to help. If the government and the mortgage industry wish to stem the tide of strategic default, they must address these emotions.

Because emotions are primary, however, principal reductions may not be necessary. Rather, many underwater homeowners simply need some reason to feel less apprehensive about the financial consequences of continuing to pay their underwater mortgages. One possible way to provide this comfort would be a “rent-based loan program,” allowing underwater homeowners to refinance their entire balances to an interest rate that would bring their mortgage payment in line with the rental costs of a comparable home. A rent-based approach would relieve many underwater homeowners’ financial anxiety and likely be enough alone to stem the tide of strategic default.

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A growing number of underwater homeowners have decided to intentionally stop paying their mortgages. Such “strategic defaulters” have been derided as irresponsible by some and lauded as financially astute by others. But whether they are portrayed as repugantly immoral or sensibly prudent, these individuals are generally seen as having made a calculated economic decision to let go of their homes. They are thought to have set their emotions aside, added up default’s costs and benefits, and to have acted upon the result. Even those who condemn them for putting their self-interest ahead of the common good generally concede that strategic defaulters have made a sound economic decision.

1 See e.g., Paola Sapienza and Luigi Zingales, The Wave IV, CHICAGO BOOTH/KELLOGG SCHOOL FINANCIAL TRUST INDEX (April 30, 2009) at http://www.financialtrustindex.org/resultswave6.htm (finding that the “percentage of foreclosures that were perceived to be strategic was 31% in March 2010, compared to 22% in March 2009.”); EXPERIAN-OLIVER WYMAN MARKET INTELLIGENCE REPORT, UNDERSTANDING STRATEGIC DEFAULT IN MORTGAGES 1 (2009)(on file with author)(hereinafter “EXPERIAN-OLIVER”) (finding a 128% percent increase in the number of strategic defaults from 2007 to 2008, that from 2005 to 2008, “the number of strategic defaulters went up by 68 times in California and by 46 times in Florida!”); David Streitfeld, No Help in Sight, More Homeowners Walk Away, NEW YORK TIMES, February 2, 2010, http://www.nytimes.com/2010/02/03/business/03walk.html (discussing this trend); and 2010 Predictions from Shiller, Blinder, Rajan and More, The WALL STREET JOURNAL, January 5, 2010 (quoting Robert Shiller as predicting in 2010 that “Strategic default on mortgages will grow substantially over the next year, among prime borrowers, and become identified as a serious problem. The sense that ‘everyone is doing it’ is already growing, and will continue to grow, to the detriment of mortgage holders.”).

2 See e.g., Luigi Zingales, The Menace of Strategic Default, 20(2) CITY JOURNAL (Spring 2010) (arguing that strategic default is morally reprehensible and a social menace); Kenneth Harney, Walking Away from a Mortgage, Wash. Post, Nov. 28, 2009, available at http://www.washingtonpost.com/wp-dyn/content/article/2009/11/25/AR2009112504186.html (quoting Fannie Mae spokesman Brian Faith, “there’s a moral dimension to this as homeowners who simply abandon their homes contribute to the destabilization of their neighborhood and community”); Roger Lowenstein, Walk Away from Your Mortgage, O.Z. TIMES, Jan. 7, 2010, available at http://www.nytimes.com/2010/01/10/magazine/10FOB-www-t.html (arguing that strategic default can be a wise financial choice); and John Geanakoplos and Susan Konik, Matters of Principal, NEW YORK TIMES, March 5, 2009 (arguing that strategic defaulters “are not evil or irresponsible; they are defaulting because … it is the economically prudent thing to do.”).

3 See e.g., Zingales, supra note 2; Harney supra note 2; Lowenstein, supra note 2; Geanakoplos and Konik, supra note 2.

4 See e.g., Liz Pulliam Weston, Are You Foolish to Pay Your Mortgage?, MSN Money, Dec. 9, 2009, available at; http://articles.moneycentral.msn.com/Banking/HomeFinancing/weston-should-
“increasingly influential and empirically-supported view is that homeowners can afford the payment but make a \textit{rational choice} to default, because the value of the mortgage substantially exceeds the value of their home.”

This article, which is based upon the personal accounts of over 350 individuals, argues that this depiction of strategic defaulters as \textit{homo economicus} is woefully incomplete. These accounts suggest that strategic default is not, in many cases, the triumph of rationality over emotion. While strategic default is frequently a rational economic choice for underwater homeowners, if rationality was the driving force, most strategic defaulters would walk away much sooner than they actually do. Instead, most strategic defaulters don’t walk away until they are more than 50% underwater. Moreover, though negative equity plays an important role, many homeowners’ decisions to strategically default – like the decisions of the majority of homeowners to keep paying their underwater mortgages – are driven primarily by emotion.

The fact that strategic default is driven by emotion matters. It matters because if the assumption that strategic defaulters are making purely “economic decisions” is wrong, then dealing with strategic default in purely economic terms is likely to produce mixed, and perhaps unintended, results. If the government and the mortgage industry wish to prevent strategic default, then they need to understand the decision-making process of underwater homeowners who intentionally stop paying their mortgages. As it turns out, strategic defaulters aren’t necessarily more rational than other homeowners, nor are they free, as a class, from guilt or shame about defaulting. Rather, many strategic defaulters feel great anxiety about their financial situation, are overwhelmed by a sense of hopelessness, and are angry that their lenders and the government have refused to help. These emotions drive them to default.

Thus, if the government and the mortgage industry wish to reduce the incidence of strategic default, they must address these

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\texttt{you-walk-away-from-your-home.aspx?page=1} (conceding that strategic default may be rational, but arguing that it is “wrong, wrong, wrong”.)

5 See, \textit{The Responsible Homeowner Reward – A Potential Solution to the Housing Crisis}, White Paper (on file with author) (emphasis in original)(also noting, “Defaulting on their loan is a rational decision: while they forfeit their home, they rid themselves of a mortgage liability of even greater value. The source of the problem is the homeowner’s balance sheet: since he has negative equity in his home, it is not worth keeping it by paying the mortgage.”)

emotions - hopefully in positive ways. Both the mortgage industry and the federal government have, so far, failed to do so. Worse, some lenders’ loan modification processes actually fuel the hopelessness and anger of underwater homeowners, as they seem designed to wear homeowners down and to ensure that no one who might otherwise pay their mortgages gets a loan modification. Similarly, the federal government’s approach of assisting only underwater homeowners “at imminent risk of default” induces anger in those who feel unfairly left out while the “less deserving” get help.

In short, by failing to tend to the emotional drivers of strategic default, both the mortgage industry and the federal government might actually be contributing to, rather than constraining, its growth.

I. Who Strategically Defaults?

In the face of growing concern over strategic default by underwater homeowners, several recent studies have attempted to identify the types of individuals who are most likely to strategically default, as well as the economic conditions that drive them to do so. Some of what has emerged from these studies has been surprising.

For example, these studies have shown that the elderly, the highly-educated, and those with high credit scores are among the most likely to strategically default. This, of course, runs counter to the narrative that people who walk away from their homes

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8 Guiso et al., supra note 7, at 19 (finding that the elderly were 6 percentage points to believe that strategic default is morally acceptable).

9 Id. (finding that the highly-educated were more 8 percentage points to believe that strategic default is morally acceptable).

10 See EXPERIAN-OLIVER, supra note 1.
somewhat failed to internalize the values of personal responsibility and promise-keeping held dearly by prior generations. Nor does it support the notion that people who walk away from their homes don’t understand the value of good credit.

As their personal accounts attest, homeowners who strategically default frequently have excellent credit scores and default despite a very clear understanding that defaulting will significantly damage those scores. Indeed, strategic defaulters often include their pre-default credit scores in their personal accounts – apparently to signal that their newly-damaged credit scores are not a sign of general irresponsibility, as did this incipient defaulter:

What sets us apart from many is that we have always been fiscally responsible. We don't live beyond our means, we carry no credit card debt whatsoever. Credit rating >800. There isn't a lender out there who wouldn't give us a loan.

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11 See e.g., Lowenstein, supra note 2 (“Such voluntary defaults are a new phenomenon. Time was, Americans would do anything to pay their mortgage — forgo a new car or a vacation, even put a younger family member to work.”); and 60 Minutes: The U.S. Mortgage Meltdown (CBS television broadcast May 25, 2008) (with interviewee complaining that “there was a time when people felt really bad about not paying back debt.”)

12 See e.g., Nightline: The Big Cut (ABC Television Jan. 31, 2008), available at http://abcnews.go.com/Video/playerIndex?id=4220208&affil=wxyz (lamenting the failure of homeowners to understand that walking away is a “huge black mark on your credit rating.”).

13 Email from N. K., to Brent T. White (Jan. 13, 2010) (on file with the author).See also, Email from T. N., to Brent T. White (Dec. 08, 2009) (on file with the author). (“I'm the prime, perfect example of who should be helped, I've never missed any payments in my historical credit life span (I'm 30) and my score is 750 middle fico. That said, where has it gotten me? I'd rather have hundreds of thousands of $ than a high credit score...”). Email from N. T., to Brent T. White (Jan. 31, 2010) (on file with the author)(“My quality of life was far more important to me than my stellar 795 credit score.”). Email from B. K., to Brent T. White (Nov. 18, 2009) (on file with the author). (“My credit score was around 730 when I made my last payment and am interested to see what will happen. Of course the mortgage company is trying every threat/tactic they can to keep me in the house and making payments. To no avail.”)

14 Email from N. K., to Brent T. White (Jan. 13, 2010) (on file with the author). Some other examples include the following:

We are in our fifties, married for 30 years, European roots, strong moral values and a fiscally conservative... As a point of reference, our FICO credit score during our entire marriage hovered around the 800+ level and life was great! Email from B. C., to Brent T. White (Jan. 16, 2010) (on file with the author).
In contrast to individuals with good credit scores, studies have found that low-income homeowners with poor credit scores are less likely to strategically default\(^\text{15}\) – despite the fact that they might have the least to lose in terms of damage to their credit scores or the risk of a deficiency judgment by letting go.\(^\text{16}\) One possible explanation for this could be that such individuals treat mortgage payments differently than other financial obligations.\(^\text{17}\) At least some homeowners’ accounts support this explanation: “I have a lot of debts and my credit score is probably in 300’s, however I never failed to pay my house payments. I lost my job 2 years ago and I cashed my 401K, used up all my savings so I can keep up with the payments.”\(^\text{18}\)

\(^{15}\) See Bhutta, et. al., supra note 7 at 21 (2009)(reporting that, “Interestingly, borrowers with the lowest FICO scores (below 620) are not the most “ruthless” defaulters.”)

\(^{16}\) See Id. at 20-21 (arguing that “a high-FICO borrower will see a steeper increase in his borrowing cost after a default than a low-FICO borrower. Alternatively, one’s FICO score is based on their history of repayment and captures, at least to some extent, that person’s commitment to paying back debt. In that sense, it is not surprising that those with higher FICO scores tend to find default more costly.”)

\(^{17}\) See EXPERIAN-OLIVER, supra note 1 (finding that financially distressed borrowers keep paying on their mortgages even after falling behind on other accounts)

\(^{18}\) Email from J. T., to Brent T. White (Jan. 14, 2009) (on file with the author).
A more likely reason for the apparent discrepancy in strategic default levels, however, is that defaults by low income individuals with poor credit scores are rarely classified as strategic, even when they might be. While the line between strategic default and non-strategic default is hazy, this article defines strategic default as any default where the homeowner could come up with money to pay the mortgage, even if at some significant sacrifice, but chooses not to do so. The Experian credit reporting agency defines strategic default, however, as when homeowners go straight from current to 180 days late on their mortgages, “while staying current on all their non-real estate debt obligations,” 6 months after they first went 60 days late on their mortgages.19 They also specifically exclude financially-distressed individuals,20 who by nature of their circumstances are likely to have low credit scores.

But even distressed individuals may be making intentional decisions to stop paying their mortgages while still trying, when possible, to pay off other debts or to spare their savings accounts.21 This article thus uses a broader definition of strategic default, as including any deliberate choice to stop paying one’s mortgage. A non-strategic default, by contrast, would be one in which the homeowner simply doesn’t have the assets, income or credit available to pay their mortgage, no matter the sacrifice.

Whatever strategic default’s definition, homeowners almost never default at less than 10 percent negative equity absent a severe loss of income,22 but “the percentage of households willing to default strategically increases to 5% if the shortfall is between 10 and 20% of the value of the house and reaches 17% when the shortfall reaches 50%.” Indeed, at 50% negative equity, half of all defaults are strategic.23 One would, of course, logically expect that the propensity to default would increase along with negative equity. But studies showing negative equity’s importance in the default decision have shattered long-held beliefs that homeowners

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19 See EXPERIAN-OLIVER, supra note 1 at 8 (emphasis in original).
20 Id. See also, Brent White and Luigi Zingales, Is Strategic Default a Menace?, City Journal, April 27, 2010 (with Zingales defining “strategic defaults” as only those defaults where homeowners could easily afford to make their payments and defining all other defaults as “standard defaults”).
21 For support for this possibility, see Cohen-Cole, et. al., supra note 7 (finding that 74% of households who became delinquent on their mortgage were current on their credit cards.).
22 Bhutta, et. al., supra note 7, at 4 (finding that strategic default is a non-issue at less than 10% negative equity) and Guiso, et al, supra note 7 (finding that no borrower reported they would default at less than 10% negative equity).
23 Bhutta, et. al., supra note 7, at 4.
will not default as long as they can afford their mortgage payments.\textsuperscript{24}

In addition, homeowners who are personally acquainted with someone who has strategically defaulted are much more likely to default than those who are not.\textsuperscript{25} Finally, and unsurprisingly, homeowners who don’t think it’s immoral to default are significantly more likely to default than those who do.\textsuperscript{26} Importantly, however, even individuals who don’t think default is immoral are still much less likely to strategically default than to pay their mortgages, even with $100,000 in negative equity.\textsuperscript{27} Indeed, the evidence remains strong that most homeowners – whether they believe they have moral obligation to pay or not – don’t strategically default even with very significant negative equity.\textsuperscript{28}

Despite this fact, there has been a recent increase in the percentage of defaults that are apparently “strategic,” and there is some indication that this trend is likely to continue.\textsuperscript{29} To the extent that policy makers or lenders would like to temper this trend, it would be helpful to know more about strategic defaulters’ decision-making processes. Other than some broad demographic generalities, however, we know little about strategic defaulters and no study to date has looked at their decision-making process.

Part of the reason for the lack of such a study is that, due to the social stigma involved, people rarely openly identify themselves as strategic defaulters and frequently try to hide the fact that they strategically defaulted by proffering more socially-

\textsuperscript{24} Guiso et al., \textit{supra} note 7, at 21.
\textsuperscript{25} Id.
\textsuperscript{26} Id.
\textsuperscript{27} Id. at 17 (finding that 59% of “amoral” individuals would not strategically default at $100,000 in negative equity, and 41% would not default at $200,000)
\textsuperscript{28} See Bhutta, supra note 7 at 1, 4 (finding that “many homeowners require considerable negative equity before defaulting,” with $138,000 being the median negative equity among strategic defaulters.”)
\textsuperscript{29} See e.g., 2010 \textit{Predictions from Shiller, Blinder, Rajan and More}, \textit{The WALL STREET JOURNAL}, January 5, 2010 (quoting Robert Shiller as predicting in 2010 that “Strategic default on mortgages will grow substantially over the next year, among prime borrowers, and become identified as a serious problem. The sense that ‘everyone is doing it’ is already growing, and will continue to grow, to the detriment of mortgage holders.”); Sapienza and Zingales, \textit{supra} note 1 (finding a sharp increase in strategic default from 22% of foreclosures to 33% in just one year); \textit{Homeowners Walking Away from Underwater Mortgages, MIAMI HERALD}, October 24, 2009, available at http://www.miamiherald.com/251/story/1298873.html; EXPERIAN-Oliver, \textit{supra} note 1 (find that the percentage of defaults that are strategic increased from 3% in 2004 to 18% in 2009) and David Streitfeld, \textit{No Help in Sight, More Homeowners Walk Away}, \textit{NEW YORK TIMES}, February 2, 2010, http://www.nytimes.com/2010/02/03/business/03walk.html (discussing this trend).
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acceptable explanations for losing their homes to foreclosure. By consequence of having written a widely-publicized article on the emotional constraints to default, however, I have received over 350 personal accounts from homeowners who, by their own admission, have either already strategically defaulted on their mortgages or are considering doing so. These narratives frequently go into great detail as to the circumstances and the process that led the homeowners to decide to stop paying their mortgages.

This article is based upon these narratives, which were categorized and coded according the factual circumstances leading to the default decision and the emotions accompanying it. This sorting revealed a picture of the incipient strategic defaulter as deeply underwater, terribly anxious, hopeless, and frequently angry – subject, of course, to individual variation in intensity and sequence. This picture stands in contrast to the popular image of strategic defaulters as greedy, dismissive of the consequences of their actions to others, calculating and cold. This is not to say that there are not strategic defaulters out there who fit this popular caricature, but they were not represented in the accounts reviewed for this article.

One must be careful of course about drawing conclusions about strategic defaulters in general based upon a self-selected sample, who – like all individuals – would tend to represent themselves in the most sympathetic light. As such, unflattering emotions such as greed, envy, and vengefulness are likely to be underrepresented and hidden in these accounts. There are also possible selection bias issues, as the people who wrote may or may not be completely representative of strategic defaulters in general.

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30 Guiso, et al, supra note 7. Another possible reason that no one has studied the emotions associated with strategic default is that economists and other researchers interested in strategic default have not seen the emotional process of default as important enough to study. In fact, “most mortgage default risk modeling fundamentally fails to appreciate the primacy of emotion in driving human behavior and decision-making.” See White, supra note 6, at 18 (explaining that emotion “may not matter if the goal is to merely describe or model observable human behavior, but it does matter to the extent that policymakers and others are interested in encouraging individuals to make different choices – or to continue to make the same choices for that matter.”)

31 White, supra note 6.

32 My sense, informed by numerous conversations over time with professionals who work with homeowners considering strategic default, is that these accounts are in fact quite representative. I could be wrong, however. The sample may, for example, be more educated (e.g., they heard about my previous work), more sophisticated, and perhaps wealthier. They may also be less likely to be ashamed of strategically defaulting (or, conversely, they may feel more shame and thus wrote seeking to be validated by someone seemingly sympathetic to their plight). Paraphrasing Eric Posner, Email to Brent T. White (May 10, 2010) (on file with author). The sample may also be more or less
Nevertheless, the accounts of these 356 homeowners offer a useful window into the decision-making process – and personal justifications - of at least some underwater homeowners who strategically default. Additionally, while filling in many gaps and adding emotional texture, these accounts are largely consistent with recent quantitative studies on strategic default. The accounts’ consistency with the quantitative research on strategic default gives comfort that they are not unrepresentative - as does their significant number.

Moreover, the chief limitation of these accounts is also their strength: because homeowners sent their stories without invitation, they were not guided by survey questions, influenced by an interviewer’s cues, or even aware in advance that their accounts would become part of a greater project related to understanding strategic default’s emotional drivers.\textsuperscript{33} This article is based upon homeowners speaking freely in their own voice – a voice to which policy makers and the mortgage industry might do well to listen.\textsuperscript{34}

II. A Prelude: Not Shameless

Before turning to the emotions that drive strategic default, it’s important to address one popular misconception about the cause of the apparent trend toward increasing strategic default: namely, that the social and moral constraints against defaulting on anxious and angry than the average defaulter. Given their sophistication, they might also be prone to make more informed decisions than the average person. Or, as my informed gut tells me, they might be pretty typical of strategic defaulters as a class. Without further quantitative study, it’s impossible to know for sure. Regardless, it is unlikely that walking away from one’s home is an unemotional event for very many people. Even if there are homeowners who are making purely rational economic decisions to walk away, we should not ignore those homeowners for whom the decision is a lot more complicated, and a lot more emotional.

\textsuperscript{33} The accounts and quotes contained in this article have been modified only to the extent necessary to protect the identities of those who shared their stories. To that end, typographical and grammatical errors have been left as is, but the names of the individuals have been omitted and initials in the citations are not actual initials. In addition, names of cities have been sometimes been changed to similar cities, or omitted altogether. Dates have also been changed but in a manner that preserves time periods (as in the number of days, months or years involved). The names of lenders, however, have been left as contained in the stories of the homeowners. The accounts of homeowners have not been verified; and are presented here not as statements of factual truth, but for their emotional content and what they reveal about the decision-making process of strategic defaulters. They are intended to be read as such.

one’s mortgage have begun to give way and thus people no longer feel guilt or shame when defaulting.\textsuperscript{35}

As an initial matter, the suggestion that the social norm against defaulting on one’s mortgage has weakened is belied by surveys showing that it remains strong and, if anything, may be getting stronger. A study by Guiso, Sapienza, and Zingales found in 2009 that 81\% of Americans believed that it was morally wrong to default on one’s mortgage.\textsuperscript{36} A similar study by Fannie Mae in 2010 found that 88\% percent of Americans believe that it is morally wrong to default, and 85\% believe it is morally wrong even if one is facing financial difficulties such as unemployment that make it difficult to pay one’s mortgage.\textsuperscript{37} The stigma against default apparently remains robust; and indeed, homeowners who strategically default sometimes report being shunned by others:

I am retired and I was forced to walk away from my home and an investment condo… My husband and I were shunned in our condo development. In essence, my neighbors are blaming me for a global real estate meltdown.\textsuperscript{38}

More critically, however, the Fannie Mae survey found that 7 out of 10 individuals who defaulted on their own mortgages do not believe it is acceptable for people to stop making payments on an underwater mortgage.\textsuperscript{39} The Fannie Mae survey does not distinguish, however, between strategic defaults and non-strategic defaults – and no survey has ever been conducted of strategic

\textsuperscript{35} See Suzanne Kapner, \textit{More People Walk Away From Mortgages}, \textit{FINANCIAL TIMES}, April 30, 2010 (reporting that “the moral stigma attached to walking away [has] started to dissipate” and quoting Jon Maddux, the chief executive of You Walk Away: “People are starting to change their way of thinking. It’s almost become trendy to walk away from your home.”); See also, Guiso et al., \textit{supra} note 7, at 22 (expressing concern that the “social pressure not to default will weaken” to the point homeowners will begin to walk away in large numbers).

\textsuperscript{36} Guiso et al., \textit{supra} note 7, at 21.


\textsuperscript{38} Email from K. T., to Brent T. White (Feb. 01, 2010) (on file with the author). See also Email from C. B., to Brent T. White (Nov. 05, 2009) (on file with the author). (“I am tired of talking to people (sometimes friends, sometimes strangers) who view me as being immoral due to my decisions. They can't grasp the fact that the lenders have to share the blame and the risk.”)

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defaulters in particular to determine the level of shame or guilt that they actually feel about their decisions.

Even were an empirical study conducted, however, there would be no baseline for comparison. Do people who strategically default because they feel less guilt and shame about defaulting than they would have at some earlier point in time; or are those who strategically default just individuals who never thought it was immoral or shameful to default in the first place? The only way to know this for sure would have been to survey a group of homeowners at the housing crisis’s start about their attitudes toward default, monitor them over time to see if any of them defaulted, and then survey them again. It’s too late for that.

Actual strategic defaulters’ accounts suggest, however, that at least some people who strategically default do so despite very strong feelings of guilt and shame:

I am a single mother and have been saddled with a home that I just can’t afford. It's been taking almost all of my paycheck to cover the 1st and 2nd mortgages- having to use the credit card to cover all other expenses. I have done everything to hold on to avoid the shame of foreclosure…. I have racked up over twenty thousand dollars in debt trying to keep things afloat, hoping I could eventually sell the home and pay off my credit debt-and break even. What a foolish thing for me to do. The house is appraising less and less every year- and nothing is moving in the neighborhood….I was advised to allow the house to go into foreclosure - which I have reluctantly began to do (I have never missed or been late on any payment ever).

40 Email from N. L., to Brent T. White (Dec. 01, 2009) (on file with the author). Other expressions of shame and guilt include the following:

I[t] has been especially hard since I am a commissioned officer, and guilt, fear, and duty weigh heavily on my mind. Email from C. G., to Brent T. White (Dec. 20, 2009) (on file with the author).

It is a common argument, (a manager at my local bank "tossed" this line of thinking my way) that when people default in this manner, they are doing their fellow citizens an extreme disservice making it harder on those who are applying for and paying on other for loans, because the bank is at a disadvantage due to the non-pay of their patrons. Though, in my mind and heart, my main desire and goal is to do what's best for my family, this type of argument causes me to reel in the shame of causing/creating a negative situation for my
In other words, as the Fannie Mae survey suggests, many people may strategically default not because they’re shameless, but because circumstances overwhelm their shame, driving them to make decisions that they would not have otherwise have made:

We are not proud of our circumstances. We always had excellent credit and have honored our financial obligations on all of our other homes, cars and credit card companies. But this is what we must do, as scary as it is.  

We did not default without numerous conversations, discussions, and soul searching beyond belief. The hardest part to justify is the loss we may have caused our neighbors. They weren’t paying our bills though. Email from Q. B. to Brent T. White (April 30, 2009) (on file with the author).

I walked… I know there are a lot of people struggling with internal conflict, integrity and the socially acceptable thing to do… It can be a very lonely, isolating and psychologically challenging process… a need for sharing is now as so many are suffering in silence. Email from L. S., to Brent T. White (Dec. 12, 2009) (on file with the author).

I fit the bill of feeling it wouldn’t be the right thing to do, but do feel a responsibility to pay… I have contacted Wells Fargo Home mortgage for getting my principal lowered so I can make payments and keep my home. Of course they have been giving me the run around for months. I am seriously thinking of walking. Email from H. Z., to Brent T. White (Jan. 31, 2009) (on file with the author).

[My elderly father] has made the very difficult decision (he feels MUCH guilt) to essentially walk away from his home. Email from M. N. to Brent T. White (April 30, 2009) (on file with the author).

My husband and I … want to look at this situation from a business perspective, my question for you is how does one determine if you should walk away?... Any thoughts would be greatly appreciated as we wrestle with our consciou ses. Email from M. R., to Brent T. White (Feb. 01, 2009) (on file with the author).

For a detailed discussion of the role of shame and guilt in constraining strategic default, see White, supra note 6.

Email from L. B., to Brent T. White (Nov. 30, 2009) (on file with the author).
Of course, this doesn’t mean that the social stigma against default hasn’t weakened in some neighborhoods. There does seem to be a contagion effect: once one home in a neighborhood goes into foreclosure, others tend to follow.\textsuperscript{42} This is likely true in part because it’s less embarrassing – and less frightening – to be the second or third person in the neighborhood to be foreclosed upon than the first. Additionally, people are much more likely to default strategically if they know someone else who has done so.\textsuperscript{43} As strategic defaulters’ personal accounts seem to confirm, once one individual within a close social circle defaults, others within the circle sometimes follow:

Most of my friends are in similar situations as myself - we all bought in our late 20’s, at the height of the boom. Since then, we have done nothing but bitch about how much inequity we have in our houses…Some have started to not make payments; others are playing “wait and see” with my situation. I have no doubt I will come out on top and they will be encouraged to do the same.\textsuperscript{44}

But the existence of a contagion effect doesn’t mean that strategic default has become more socially acceptable in general. Nor does it mean that strategically defaulting has lost its stigma to those who do it. Indeed, even strategic defaulters who are comfortable disclosing their default to similarly-situated neighbors or friends are generally not comfortable doing so outside of these small circles. As one strategic defaulter explained, “I have only told two friends about this. It is going to be difficult to tell other friends and our neighbors. Fortunately, my parents live in

\textsuperscript{42} Guiso et al., supra note 7, at 20; John Harding, Eric Rosenblatt, & Vincent S. Yao, The Contagion Effect of Foreclosed Properties, K. OF URB. ECON. 21 (2008), available at \url{http://ssrn.com/abstract=1160354}. This phenomenon is nicely illustrated by the following account:

Many of my great neighbors in [ ] have already made the smart financial decision to leave. I may too. We bought for $383K and Zillow.com estimates our home value at $176L. Our lender - Wells Fargo is dragging its feet. My next door neighbor is short selling. They lost 60% of their income and Wells Fargo’s modification offer was only $100 less per month! Email from K.I., to Brent T. White (Feb. 02, 2010) (on file with the author).

\textsuperscript{43} Guiso et al., supra note 7, at 6 (finding that people who know someone who has strategically defaulted are 82% more likely to declare their own intention to do so.)

\textsuperscript{44} Email from D. E., to Brent T. White (Feb. 02, 2010) (on file with the author).
the mid-west and at sometime this year I will simply write to them and tell them that we are selling our house. I think they would be completely opposed to this.” In other words, it doesn’t seem that the increase in strategic default is the result of a large scale change in social norms, or shamelessness among individual strategic defaulters.

Indeed, even the contagion effect seems to be less about changing social norms than about decreased property values caused by other foreclosures. A single foreclosure in a neighborhood can substantially reduce the value of other homes in the neighborhood. As property values decrease, people who were already underwater on their mortgages become more so, pushing some over their individual tipping point. This leads to still more foreclosures and further declines in property values, pushing still more people over their tipping point:

Nearly all my neighbors bought at the height of the real estate boom and paid as much as 100K more than I. Most are moving out and allowing the banks to foreclose. As I watch this I have become concerned as well…I am current but no longer willing to keep on paying for a house in a declining market. If my neighborhood weren’t as empty I may have been willing to keep paying the mortgage.

III. Anxiety and Fear

The role of decreasing property values and negative equity in driving strategic default has been well-documented in recent

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45 Email from K. T., to Brent T. White (Jan. 19, 2010) (on file with the author). Another explained, “Also, while I am not ashamed about our decision, the converse of not being ashamed does not equal being proud of it….I am sensitive to the unfair media biases and societal humiliations that exist...”. Email from B. C., to Brent T. White (Jan. 16, 2010) (on file with the author).

46 See e.g., Bhutta, et. al., supra note 7; and Bajari, et. al., supra note 7.

47 See Harding, et. al., supra note 42 (noting that “nearby distressed property has a significant, negative effect on the prices of nearby homes over and above the overall trend in market prices”).

48 Email from E. T., to Brent T. White (April 25, 2010) (on file with the author). Another couple explained as follows, “our neighborhood has suffered from multiple foreclosures which has driven prices down even lower. By our calculations, we will not live long enough to recoup our losses so its time to get out of Dodge and once we pull the trigger we will not look back. Email from N. K., to Brent T. White (Jan. 13, 2010) (on file with the author). Another explained that “they didn't want to be the last ones left on block with a huge mortgage.” Email from D. E., to Brent T. White (Feb. 02, 2010) (on file with the author).
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quantitative studies. But homeowner accounts suggest that decreasing property values and negative equity alone may not cause strategic default. Rather, they evoke emotions, namely financial anxiety and fear, and these emotions, when strong enough, can lead some homeowners to begin to contemplate strategic default. But strategic default might never cross the minds of other equally-underwater homeowners who, for whatever reason, feel less anxious about their situations.

To understand anxiety’s particular role in strategic defaulters’ decision-making processes, it’s first necessary to understand their circumstances. Initially, the average strategic defaulter is deeply underwater on their mortgage – usually over $100,000 and frequently much more.\(^\text{50}\)

\(^{49}\) See e.g., Bhutta, et. al., supra note 7 (finding that 50% of defaults are strategic once negative equity reaches 50%) and Bajari, et. al., supra note 7 (finding that a default probability increases by 15% with a 20% decline in house prices).

\(^{50}\) See Bhutta, et. al., supra note 7, at 7 (finding that the median strategic defaulter is 62%, or $138,000 underwater). Typical examples of the situations of those who choose to strategically default include the following:

I live in E.D.-area, have a nasty loan from Countrywide and now find myself owing $320,000 more then what the house is currently worth. Email from K. E., to Brent T. White (Jan. 06, 2010) (on file with the author).

However, what do you do when you have $50,000 sunk into a previously $250,000 home that is now about $130. Email from K. G., to Brent T. White (Nov. 30, 2009) (on file with the author).

Our house has lost more than 50% of its value, based on reasonable estimates. Email from T. D., to Brent T. White (Jan. 27, 2009) (on file with the author).

My wife and I are a senior age couple with a home in [ ] in which we have $262,000 invested with a current value of $115000-135000. Email from K. T., to Brent T. White (Jan. 31, 2009) (on file with the author).

My wife and I purchased a home in [ ] formerly the fastest growing town in America, in 2006 for $520,000. We put nearly $100,000 down. We attempted a short sale and the appraised price, which is unreasonably high, came in at $270,000. We currently owe nearly $490,000…. Email from E. N., to Brent T. White (Nov. 30, 2009) (on file with the author).

As an underwater homeowner in [ ], CA who bought in 2004 at $755k with the standard 10% down and a 800 credit rating, my house today is worth about $525k. Email from Q. T., to Brent T. White (Feb. 18, 2010) (on file with the author).
Homeowners who are so underwater might be expected to worry about recovering their lost equity. Strategic defaulters, however, seem to be especially pessimistic, and to lack many homeowners’ confidence that housing prices will recover in the near future, as the following anecdote illustrates: “I own three houses, two of which (one 80%) are underwater. The problem is I'm just running out of money and simply see no rebound, anytime in the next 5-7 years.”

In addition to being pessimistic about a housing recovery, the strategic defaulters who shared their stories were not so wealthy that walking away from their mortgage was a mere financial exigency. Again, this doesn’t mean that there aren’t these stories are consistent with what we know about price declines in the hardest hit markets. For example, the median sale price of a Las Vegas home was approximately $280,000 in 2006 and $130,000 in early 2010. www.Zillow.com, Las Vegas Home Prices and Home Values, http://www.zillow.com/local-info/NV-Las-Vegas-home-value/r_18959 (last visited Apr. 13, 2010). In Phoenix, the median sale price was $245,000 in late 2007 and $125,000 in early 2010. www.Zillow.com, Phoenix Home Prices and Home Values, http://www.zillow.com/local-info/AZ-Phoenix-home-value/r_40326 (last visited Apr. 13, 2010). And, in Salinas, CA, the median sale price peaked at over $600,000 in 2006, but stood at just $225,000 in early 2010. www.Zillow.com, Salinas Home Prices and Home Values, http://www.zillow.com/local-info/CA-Salinas-home-value/r_54288 (last visited Apr. 13, 2010).

Most homeowners tend to be optimistically overconfident about both the actual value of their homes and chances that home prices will bounce back in a few years. See Peter Ubel, Human Nature and the Financial Crisis, FORBES, Feb. 22, 2009, http://www.forbes.com/2009/02/20/behavioral-economics-mortgage-opinions-contributors_financial_crisis.html (discussing the human susceptibility to “unrealistic optimism”); and Housing Over-Confidence, INVESTORS CHRON., Apr. 27, 2009 (discussing the fact that homeowners tend to underestimate price declines: If your biggest exposure to housing market economics came when you bought during a boom – and of course, many more people buy in booms than slumps – rapid house price appreciation will loom large in your mind. This will cause you to over-estimate its size and frequency, and so over-estimate your own house price.”); and Lauren Ross, The Internal Costs of Foreclosure 38, August 31, 2009 (unpublished thesis) (on file with author) (noting that “[m]any individuals are reluctant to acknowledge that the housing and mortgage markets have significantly changed and are no longer wholly sustainable or lucrative investments.”).

52 Email from K. H., to Brent T. White (Nov. 29, 2009) (on file with the author); see also Email from E. C., to Brent T. White (Feb. 04, 2010) (on file with the author)(“If and only if, the market came back and earned an average of 2.5% per year, it would take me about 10.3 years just to break even! Not only that, during that time, I'm going to spend over 106K in mortgage payments to recoup my 70K deficit.”); and Email from D. H., to Brent T. White (Jan. 21, 2010) (on file with the author)(“My wife feels we can regain our lost equity in time, but I truly believe it won't happen fast enough to save our home.”)

53 Indeed, the strategic defaulters who shared their stories seem to be predominantly members of the middle class:
individuals out there who strategically default purely out of greed. But that many homeowners who strategic default must make a choice between paying for their mortgage and satisfying some other real or perceived financial imperative. In other words, they could pay their mortgage, but only at some significant cost.

For underwater homeowners who have lost their jobs, paying the mortgage frequently means cleaning out their bank accounts and using up their savings. Indeed, many homeowners who eventually choose strategic default don’t seem to even consider it until they have greatly depleted or exhausted their reserves:

My husband and I were laid off of almost a year ago

Well, I am underwater. I am married to an unemployed husband and we have 2 young children. While my job (community college professor) is stable, we are facing possible pay cut and/or increasing health care fees. For the past 2 months, I have been spending more money than is coming in.

My wife and I are both teachers - in other words, we don't make a ton of money but are happy with our jobs. But, we feel like we are being taken for a ride. Email from S. O., to Brent T. White (April 25, 2010) (on file with the author).

We own part of a home in Phoenix that our son lived in until he relocated to another state, and since then have tried to rent the house, but we cannot rent the home for anywhere near enough to make the payment, so each month we are paying money out that we could use to help live on. We are both retired public school teachers living in Phoenix, and the money we are paying out could be used by us.” Email from E. C., to Brent T. White (Jan. 18, 2010) (on file with the author).

As I am considering my options (am $100k underwater in a house I paid $300k for in December, 2006) … I have decent income, plenty to cover my mortgage, but due to other debts live paycheck to paycheck and have no savings or assets to speak of. Email from N.C., to Brent T. White (Jan. 27, 2010) (on file with the author).

Here's my situation...I owe approx. $600,000 to my mortgage, second mortgage and credit card. My condo in San Francisco is worth approx. $500,000. I'm struggling right now to meet my monthly minimums for all my bills and am faced with a ballooning mortgage in a couple of months and am looking for a solution. While I don't feel 100% comfortable walking away from my debt I do feel that it's in my best interest.” Email from Q. I., to Brent T. White (Mar. 18, 2010) (on file with the author).
now. We are up to date on our mortgage payments and bills but our savings are now gone along with most of our retirement account that we cashed in to keep afloat. We are upside down on our home and have a second mortgage so selling it isn't an option. I looked into a Short Sale but I don't think we can keep up with the payments for the months it would take for that to go through... if it would at all. We are considering just walking away from our home or filing bankruptcy.\textsuperscript{54}

Others begin to consider strategic default only once paying the mortgage threatens their retirement security, or their very ability to retire at all. These individuals, like many homeowners, typically bought their homes as part of their investment strategy for retirement:

We bought our house with the expectation that it would be a fair investment and we could at least

\textsuperscript{54} Email from K. S., to Brent T. White (Dec. 05, 2009) (on file with the author). Similar stories include the following:

My husband and I are in the precarious position of being current with our mortgage but our income has dropped over 40% and the house value has also dropped 20-30 percent and we cannot get our interest only loan modification out of its temporary status. We have sacrificed for months, our savings is gone, our credit is jeopardized. Email from M. R., to Brent T. White (Feb. 01, 2009) (on file with the author).

We have never missed a payment, but in turn we depleted our savings and other equity $$ we had in our primary home. Email from N. E., to Brent T. White (Dec. 03, 2009) (on file with the author).

I lost my job 2 years ago and I cashed my 401K, used up all my savings so I can keep up with the payments. Email from J. T., to Brent T. White (Jan. 14, 2009) (on file with the author).

My wife and I have recently retired from public school teaching, and during this time I became disabled. We have been rapidly spending every dollar we have trying to stay in our house, but the time has come for us to walk, as our savings and one annuity are depleted. The current market value of our house is about $150,000 under our mortgages.... Our mortgage payment is set to almost double next summer, and we have worked arduously to get something workable in advance of that avalanche. Email from B. S., to Brent T. White (Nov. 29, 2009) (on file with the author).
break even in about 10 years when we retire. At this point, we won't be able to retire until our late 80s.\textsuperscript{55}

For still others, continuing to pay to mortgage creates tensions with the countervailing obligation to provide for their children’s future, including paying for college:

Not to mention that I have two daughters in college whose education we are funding mainly with loans because we have not been able to save or have any extra funds to assist them in obtaining an education.\textsuperscript{56}

\textsuperscript{55} Email from K. T., to Brent T. White (Jan. 19, 2010) (on file with the author) Indeed, concerns about retirement were on the minds of a significant majority of strategic defaulters who shared their stories:

We struggle over what to do, at 50 years old we can't continue to throw away what little money we have on this house. Email from Q. T., to Brent T. White (Dec. 10, 2009) (on file with the author).

I live in Chicago-area, have a nasty loan from Countrywide and now find myself owing $320,000 more then what the house is currently worth. We are in our late forties - finally got a loan mod from Countrywide, we can keep the house if we pay on an interest-only until we are 80. Email from K. E., to Brent T. White (Jan. 06, 2010) (on file with the author).

My wife and I own 2 homes. One a primary residence and the other a personal vacation property. Both homes were refinanced three years ago with a 5 year interest only arm. However, two years ago, I needed to take early retirement as a Middle School Principal due to health concerns….As the early retirement came unexpectedly, the carrying of the second mortgage is now dipping into retirement accounts each month. The house is has been on the market for the past year, however, it is not looking good at this point. Email from E. H., to Brent T. White (Mar. 02, 2010) (on file with the author).

I am a successful professional in California who has always maintained great credit. But I currently own nine rental properties that are regularly vacant or need work, upside down and eating away at my retirement portfolio. … I'm at a point now where I'm at a loss for what to do. Email from S. H., to Brent T. White (Feb. 16, 2010) (on file with the author).

\textsuperscript{56} Email from N. S., to Brent T. White (Feb. 01, 2010) (on file with the author). See also, Email from E. T., to Brent T. White (Dec. 10, 2009) (on file with the author).("…With a baby boy on the way, it is our duty to make financially sound decisions in this upcoming year and plan to be very savvy on our future endeavors as well."); Email from N. E., to Brent T. White (Dec. 03,
The most financially stretched, however, are frequently faced with the choice of defaulting on their mortgages or having to use credit cards to stay afloat and to purchase basic necessities such as food and clothing:

We have drained out our savings paying our mortgage because of the fear of being late. I just made November’s payment on the 30th and don’t know how we’re going to pay December. Our mortgage servicer offers no extensions. We’ve spent everything we have to keep our credit intact. We now have a kid’s bedroom stopped in the middle of a remodel, a gaping hole in the kitchen from a major leak and no money to finish or fix either of them. We do have a Discover card with a $9,000 limit and no balance but really don't want to put ourselves in more of a hole. We could use the blank checks from it to pay the mortgage and hope I find the job I deserve and have the funds to pay it back, but I know it's unwise to pay for an interest bearing debt with funds from another. At which point in time does it become OK to stop paying the mortgage? It sounds so beneficial to save a couple hundred dollars a month right now, that’s money for food, gas, clothing and so on.57

Faced with such difficult choices, homeowners considering strategic default report feeling “stressed,”58 “agonized,”59 “overwhelmed,”60 and trapped.61 They also describe feeling as

2009) (on file with the author) (defaulting because “we have two little boys ages 10 and 12” and must think about their futures).
57 Email from O. N., to Brent T. White (Dec. 03, 2009) (on file with the author). See also Email from E. I., to Brent T. White (Dec. 05, 2009) (on file with the author) (“In addition to my mortgages, I graduated law school with around $70,000 in student loans, and my wife owed around $120,000. We have also utilized 0% credit cards in an effort to stay afloat after I lost my job, and we currently owe around $36,000 on various 0% credit cards (some of the promotional rates expire in March 2010, two others in May 2010 and one other in July 2010).”)
58 Email from N. E., to Brent T. White (Dec. 03, 2009) (on file with the author) (relaying that, “The stress level at home is at an all time high.”)
59 Email from J. N., to Brent T. White (Dec. 21, 2009) (on file with the author) (My husband and I had agonized for about a year of what to do with our underwater situation -- we pulled the trigger a couple of months ago, and yes, one of the many variables that we had to overcome was the fear of the effect on our great credit and our prospects for future employment.)
60 Email from N. W., to Brent T. White (Feb. 12, 2010) (on file with the author) (“the fear…is overwhelming…We cannot continue to support two

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though they are “fighting a losing battle,”62 “sinking lower and lower,”63 throwing their money down a hole,64 and fighting for their lives.65 Moreover, the strategic defaulters who shared their stories struggled with these feelings for quite some time before making the decision to stop paying their mortgages.66

IV. Hopelessness

The reason that many strategic defaulters struggle so long before deciding to default is that fear and anxiety are not typically enough in isolation to cause them to stop making payments. Rather such anxiety more frequently serves as a call to action, driving homeowners to try to do something about their situation – such as contacting their lender to try to work out a loan modification or a short sale. In fact, not a single strategic defaulter in the 356 accounts reviewed for this article reported having stopped paying their mortgages without first contacting their houses. We moved several states away in October 2008.”)

61 Email from E. T., to Brent T. White (Dec. 01, 2009) (on file with the author) (“We have excellent credit, can afford our home - technically, but are underwater over $100k and really don't like living in the area we live anymore. Our house purchase was only supposed to be for a couple of years but no we have little choice.”)

62 Email from K. N., to Brent T. White (Jan. 23, 2010) (on file with the author) (“We bought a home in [ ], CA in 2005 for $886k with an interest only loan and a home equity line. Comparables in the area are going for about $650k or $700k. We can barely make the payments and have had to relocate for my husband's work and are now renting the house for about 60% of the mortgage. We wanted to 'do the right thing' and make it work, but it increasingly seems like a waste of money. If it had its original value it wouldn't seem like such a losing battle, but its not.”)

63 Email from N. H., to Brent T. White (Jan. 14, 2010) (on file with the author) (describing “the past two plus years of sinking lower and lower in financial standing”).

64 Email from E. C., to Brent T. White (Jan. 18, 2010) (on file with the author)(“ At this point, we are pouring $600 each month down a rat hole, money which we will most likely never get back, and all things considered, walking away sounds pretty good.”)

65 Email from K. H., to Brent T. White (Nov. 29, 2009) (on file with the author)( I’m underwater and must give up my properties, literally to save my life.”)

66 See e.g., Email from J. N., to Brent T. White (Dec. 21, 2009) (on file with the author)(“My husband and I had agonized for about a year of what to do with our underwater situation -- we pulled the trigger a couple of months ago…”.) Email from N.I., to Brent T. White (April 30, 2010) (on file with the author)(“Underwater homeowners who obtained their mortgages based on good credit and salary history, including me, have been up against impossible odds, particularly if sudden job loss occurs and it becomes impossible to sell the home in an overinflated market. I arduously tried to sell my home for 10 months after losing my job in 2005, fixing it up in the process, but finally just walked away in 2006.”)
lender. To the contrary, accounts such as these were common:

Toward the end of 2008, I began taking a good, hard, long look at my financial situation, and realized I was in trouble. I was in an interest only loan on my 1st, and had a 30k balance on my 2nd. In January, 2009, I began a proactive campaign to get my 1st mortgage modified.67

Many underwater homeowners who seek help from their lenders, however, are turned away at the door.68 As one homeowner explains, “I called my lender and ask if I could discuss a loan modification and they said absolutely not.” Lenders give numerous reasons for this, most commonly that homeowners are current on their mortgages.69

67 Email from N. T., to Brent T. White (Jan. 31, 2010) (on file with the author). See also, Email from Q. D., to Brent T. White (Feb. 05, 2010) (on file with the author)(Due to all these events, I approached Wells Fargo and asked about a loan modification for this condo loan in May 2009.); and Email from E. T., to Brent T. White (Dec. 10, 2009) (on file with the author) (“Of course we will not be able to pay it off by then and our attempts to be proactive with Wells Fargo and BOA is going awful as they don't want to do anything with us until we start defaulting on our loan. We are upside down by about 50% (paid 425k in Dec. 2005 and just got it appraised at 222k earlier this year and still dropping”).

68 Email from K.E., to Brent T. White (April 26, 2010) (on file with the author); also Email from E. T., to Brent T. White (Dec. 10, 2009) (on file with the author). (“…it's absolutely amazing that the banks WILL NOT work with us. With a baby boy on the way, it is our duty to make financially sound decisions in this upcoming year and plan to be very savvy on our future endeavors as well.”); Email from N. T., to Brent T. White (Feb. 19, 2010) (on file with the author). (“I have two friends who are TRYING to work with their lenders to modify and/or short sale and of the three of us we have all come up empty. Email from S. S., to Brent T. White (Nov. 29, 2009) (on file with the author). (“My daughter recently lost her job at [] and her husband is a teacher at [ ] High School. They have a two year old daughter. They have contacted Wells Fargo Bank on two occasions pleading for a reduced payment schedule and where flatly told - NO!”).

69 E.g., Email from E. T., to Brent T. White (Dec. 01, 2009) (on file with the author)( Our bank said we make to much money and are current on our payments to we don't qualify for assistance. It is mostly fear that keeps us from sending them the keys.); Email from M. I., to Brent T. White (Dec. 02, 2009) (on file with the author)(We have an investment home in Arizona that is completely under water and have decided to walk away from it. We've also called the bank to ask for a modification but like many others, because we have always paid on time, they are of no help.”); Email from K. I., to Brent T. White (Dec. 05, 2009) (on file with the author)(“I then attempted a loan modification but the lender would not agree to it unless I was 90 days late on payments - which I believed was morally wrong. …I finally settled in on a path to short sale, and was forced to be 90 days late before the lender would accept a short sale offer. … my preference on short sale is that it seems like a good balance between release and responsibility.”); and Email from S. T., to Brent T. White
This is because most lenders don’t modify mortgages or agree to short sales for homeowners who might continue making their payments absent such accommodation. The best predictor that a homeowner will continue making payments is a good credit score and a past history of making their payments. Homeowners with such characteristics thus have little chance of getting help unless they first miss some payments, and they are frequently told this by the loan servicing personnel who take their calls: “My husband and I are underwater and still paying. We have been trying to work out a modification or a refi with our bank for a year and a half. No success. Like so many others, it was implied that we would need to miss some payments first.”

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70 See Foote, et. al., supra note 69. (Noting that, “Investors also lose money when they modify mortgages for borrowers who would have repaid, anyway, especially if modifications are done en masse, as proponents insist they should be.”).


72 Email from D. L., to Brent T. White (Dec. 02, 2009) (on file with the author). Many others also report being told they would have to miss payments before qualifying for help:

I want to consider walking away from my house. I did speak to my bank but they really have no interest in helping me as long as I continue to make payments. Email from T. D., to Brent T. White (Jan. 27, 2009) (on file with the author).

I am one of the unfortunate people who have had tried to work with my mortgage company, only to find that they wont help you if your not already in a distressed situation. Email from S. S., to Brent T. White (Nov. 29, 2009) (on file with the author).

I am about to be moved by my employer, the federal government, and Bank of America refuses to negotiate on any level with me. --Of course, because I am current and pay my mortgage on time. Email from D. S., to Brent T. White (Dec. 07, 2009) (on file with the author).
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Homeowners are often unprepared for this fact, feeling that faithfully making their payments should have earned them their lender’s good will and should make their lenders more likely to work with them:

So many of us are upside down in our homes and have no recourse unless we deliberately fall behind on our mortgage, there’s no help from the mortgage company. So many times, I have called my mortgage company to say that I have been a good paying customer who despite these difficult economic times, have continued to pay on time. I am told over and over again that they cannot do anything for me.”

The fact being a “responsible” borrower is the surest way not to get a loan modification can be a rude awakening for many homeowners. It can also be a first push toward strategic default:

We have contacted the bank several times to discuss this and they are not interested in negotiating anything different. This is really strange to me because we have excellent credit scores and a good income. But instead of renegotiating the terms of the deal, they will have to do all of the foreclosure paperwork, let the house stand empty, go to the expense of finding a new buyer, sell the house for $200,000 less than we owed to folks who may or

I was informed by Bank of America that the only way I would be able to refinance it would be by not making my payments and qualifying for Obama's mortgage assistance program. Email from K. T., to Brent T. White (Dec. 08, 2010) (on file with the author).

I have a person one day telling me not to pay my mortgage payment or else they won't modify the loan and then the very next day the same person telling me that she would “never” have said that and that if I don't want to lose my house I better send in my payment. Email from Q. B., to Brent T. White (Feb. 16, 2010) (on file with the author).

Email from N.S., to Brent T. White (Feb. 01, 2010) (on file with the author)

See Foote, et. al., supra note 69 (noting, “Investors also lose money when they modify mortgages for borrowers who would have repaid anyway, especially if modifications are done en masse, as proponents insist they should be.”), and Adelino, et. al., supra note 71 (explaining the economic disincentives for lenders to modify mortgage payments for borrowers who are current on their mortgages).

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may not be as good credit risks as we are. This doesn’t seem like a wise business decision to me but it is their decision…I feel like I have been hit in the stomach...\textsuperscript{75}

Another category of homeowners who rarely get help are those whose mortgage payments are 31\% or less of their gross income. This is because the federal government has limited participation in most government-sponsored loan modification programs, such as Making Home Affordable (HAMP) and Hope for Homeowners, to individuals whose payments exceed this percentage.\textsuperscript{76} Moreover, these programs are generally designed to bring the borrowers monthly payments down to this 31\% threshold and no less.\textsuperscript{77} This cut-off is purportedly based upon “the generally accepted definition of affordability,”\textsuperscript{78} but does not sit well with many struggling homeowners who are denied relief as a result:

Tried to get the Home Loan Mod done thru our lender to no avail. Our small income of $33,000 gross combined (I lost my $36,000 yr. sales job earlier this year to lay-off) means to our lender we can afford an $850 mortgage. So we don't qualify. The payment is $800. Doesn't matter that I have 3 children from a previous I'm supporting, which could almost cover the mortgage. Doesn't matter that electric and gas prices are up. Nothing matters but the bottom line, 31\%.\textsuperscript{79}

\textsuperscript{75} See e.g., Email from K. T., to Brent T. White (Jan. 19, 2010) (on file with the author)


\textsuperscript{77} See id.

\textsuperscript{78} See HUD, Affordable Housing, \url{http://www.hud.gov/offices/cpd/affordablehousing/index.cfm} (last visited Oct. 6, 2009) (stating, “The generally accepted definition of affordability is for a household to pay no more than 30 percent of its annual income on housing.”). There are obvious problems with this definition of affordability, including that the 31\% cut-off is largely arbitrary. Paying 31\% of gross monthly income to a mortgage leaves many middle-to-low-income individuals with little to spare, especially to the extent that individuals have other significant financial obligations such as child care expenses, credit card obligations, and medical bills.

\textsuperscript{79} Email from O. N., to Brent T. White (Dec. 03, 2009) (on file with the author). See also Email from E.D., to Brent T. White (April 27, 2010) (on file
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A narrow exception to the 31% rule is the “Making Home Affordable Refinancing Program,” which is supposed to allow underwater homeowners to refinance up to 125% of their home’s current value at “today’s lower interest rates,” if they are current on their mortgage and their loan is held by Freddie Mac or Fannie Mae. \(^{80}\) Aside from the fact that refinancing at today’s rates may have only a negligible effect on an underwater homeowner’s mortgage payment, many underwater homeowners have loan-to-values that are much higher than 125%. \(^{81}\) Indeed, the 125% cut-off means that the very homeowners who are the most likely to be distraught about their negative equity’s extent are the least likely to get help. \(^{82}\) Rather, they are rejected at the outset due to high loan-to-value ratios:

I have also contacted Making Home affordable.gov website and a counselor told me that as I am over 125% underwater due to severe decline in Los Angeles market, I am not eligible for any assistance

the mortgage servicer was uninterested in talking to me as long as i didn't have a job. i laugh at obama's proposal to have unemployment considered as income. i am getting 2K/month. 31% of that is a very small fraction of my former mortgage payment. what lender would ever agree to that?

Email from N.E., to Brent T. White (April 30, 2010) (on file with the author)(“[After 6 months of making trial payments], I received a letter from Citimortgage, dated [], informing me that I was at risk of losing my eligibility under the program because Citimortgage had concluded that my monthly housing costs were less than 31% of my gross monthly income.”) An opposing variant of this 31% problem are homeowners who are denied modifications under HAMP because 31% of their income is not enough to make a modification worthwhile (though lenders are required to reduce payments to that amount under HAMP):


81 In the Fourth Quarter of 2009, over 10% of all homeowners with a mortgage owed more than 25% of what their homes were worth. First American Core Logic, Negative Equity Report (Feb. 23, 2010), available at http://www.loanperformance.com/infocenter/library/Q4_2009_Negative_Equity_Final.pdf. In Nevada, over half of homeowners were more than 25% underwater, approximately 30% were underwater in Arizona and Florida, and approximately 20% were underwater in California. Id. Nationally, the Fourth Quarter 2009 value of all negative equity totaled $801 billion, with $660 billion of this concentrated in homes with at least 25% negative equity. Id.

82 See Bhutta, et. al., supra note 7, at 7 (finding that the average strategic defaulter has 62% negative equity)
and I should contact Chase directly, which I have already done and was refused.\textsuperscript{83}

Underwater homeowners who are not refused from the start are typically invited to submit applications for loan modifications, often with the suggestion that they may qualify for either HAMP or Hope for Homeowners.\textsuperscript{84} The loan modification process turns out, however, to be immensely frustrating and ultimately unsuccessful for many homeowners.\textsuperscript{85}

First, homeowners are frequently unable to reach anyone to discuss their applications’ status:

I submitted my first modification request/proposal (which included a principal reduction to the then-current local market value) in January, followed by an addendum to that request in February. I called...and called...and called, trying to follow up, all to no avail. I continued making my payments, on both loans through April, and submitted another package, all the while telling both lenders that, after the April payments, I would have no money left. I

\textsuperscript{83} E.g., Email from N. Z., to Brent T. White (Dec. 07, 2010) (on file with the author); Email from B. L., to Brent T. White (Nov. 30, 2009) (on file with the author)(I’ve probably gone through the process of trying to refinance once every 6 months for the past 2 years, but have always been told my property doesn’t appraise at a high enough value to qualify for any loan programs. I’ve also asked both of my current mortgage holders if they would be willing to reduce the interest rate on my loan without any success); Email from O. M, to Brent T. White (Jan. 14, 2010) (on file with the author)(“I requested…an amortizing loan. It was either refinance or I would walk. The first thing they mentioned was that it would kill my perfect credit score. After reviewing my income and debt, they said I didn’t qualify for any TARP funds because my income was too high compared to my mortgage payment and I couldn’t refinance because my loan balance exceeded the value of my house by more than 125.”); and Email from Q. T., to Brent T. White (Dec. 10, 2009) (on file with the author)(“We bought a home in 2006 for $415k, putting down $100k. We recently tried to refinance to lower our fixed rate from 5.75 to 4.35 but were denied as the appraisal came in at only $220k. Ridiculously low. They want us to bring in $137k cash to refinance.”)

\textsuperscript{84} E.g. Email from N. T., to Brent T. White (Jan. 31, 2010) (on file with the author). (“She told me that I didn’t qualify for any modifications currently available, but to submit a new package, which I did.”)

\textsuperscript{85} The problems with the HAMP and Hope for Homeowners loan modification process have been documented by other academics, but it is helpful to hear about them in homeowners’ own words in order to truly get a sense of the emotions the loan modification process engenders. For an excellent discussion of the various problems with HAMP see Jean Braucher, \textit{Fixing the Home Affordable Modification Program to Mitigate the Foreclosure Crisis} (Arizona Legal Studies, Discussion Paper No. 09-37, Dec. 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1518098.
received no response at all until I became delinquent for the May payments.\textsuperscript{86}

Their paperwork is “lost” repeatedly:

After losing my job in Jan last year, I set up an appt and application with HOPE in late April - and have yet to receive a decision from Chase about my home modification request. They've lost my info 5 times and are the most unprofessional, unqualified group I've had to deal with.\textsuperscript{87}

They are treated rudely and lied to:

I cannot count the number of times I have called BOA and been treated rudely, lied do, disconnected, sent to wrong extensions, etc…Consequently, you can imagine the frustration I am feeling. I rue the day I even considered modification.\textsuperscript{88}

They are threatened:

\textsuperscript{86} Email from N. T., to Brent T. White (Jan. 31, 2010) (on file with the author). Others share similar experiences:

I have tried to work with my lender (Citimortgage) to attempt to get a reduction in the interest rate however they are impossible to get a hold of much less work with. I have seriously contemplated purchasing another apartment in the same complex where I own mine and default on this one because I am not able to refinance and they will not reduce interest. Email from H. I., to Brent T. White (Dec. 14, 2009) (on file with the author).

I've contacted the bank many times to discuss a modification to no avail. It’s more like person reading a script than any true thinking. Email from K. T., to Brent T. White (Jan. 19, 2010) (on file with the author).

\textsuperscript{87} Email from T. N., to Brent T. White (Dec. 08, 2009) (on file with the author). See also, Email from Sue Garbark, to Brent T. White, Associate Professor of Law, James F. Rogers College of Law at the University of Arizona (Nov. 28, 2009) (on file with the author) (“After dealing with a balloon mortgage myself and having the bank "lose" my modification paperwork 3 times, I became wise to their game.”)

\textsuperscript{88} Email from M. C., to Brent T. White (Feb. 03 2010) (on file with the author). See also, Email from K.I., to Brent T. White, Associate Professor of Law, James F. Rogers College of Law at the University of Arizona (Nov. 30, 2009) (on file with the author) (“My loan servicer routinely, regularly and knowingly lied to me about the legal and tax consequences of my own default in their attempts to get me to pay in full in spite of being 800,000.00 upside down.”)
All this time, I was trying to work with someone...anyone...to figure something out so I could stay in my house, however, it became painfully obvious to me that the lenders just weren't interested in working with me, other than to make threatening phone calls.  

And they are forced to wait for months for an answer.  

Worse, after months of frustration, most homeowners learn that their lender is not willing to work with them after all:  

In summation, I began this process with the hope of being able to keep my home by lowering my monthly mortgage payment. At that time, I was told that the worst case scenario was that I would be rejected and would be in no worse financial standing than when I began the process. As it stands right now, eleven months later: I am listed as being delinquent on my mortgage; my credit history has been damaged; I have lost access to several thousand dollars in unsecured debt; none of my phone calls to Citimortgage attempting to resolve these issues have been returned; I have instead only received letters threatening acceleration and foreclosure; and now I have been supposedly rejected from HAMP based on grossly inaccurate information.  

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89 Email from N. S. to Brent T. White (Jan. 31, 2010) (on file with the author); also Email from T. L., to Brent T. White (Feb. 16, 2010) (on file with the author) ("Their collections department continues to threaten actions towards foreclosure despite the fact that I am told I am in the trial period.");  
90 E.g., Email from Q. D., to Brent T. White (Feb. 05, 2010) (on file with the author) ("I started their painful "process" on March 27, 2009. It is now February 2010 and we have still not received the help of a modification."); Email from M, to Brent T. White (Nov. 30, 2009) (on file with the author) ("Meanwhile, six months later, my agent was still unsuccessful in getting Countrywide to move off first base with a short sale, and he walked away from the matter. I allowed the home to go into foreclosure at that point since I could not do a deed in lieu to Countrywide because of the second mortgage on the house."); Email from S. S., to Brent T. White (Nov. 29, 2009) (on file with the author) ("We tried to short sale our house and had 2 offers at the amount the mortgage company wanted. After 6 months of waiting for there approval, they sold our loan to an even more terrible company[]. Needless to say we have walked away from the house and are now renting one. We tried to save our house and our credit since Aug 2008, but like you already know, the mortgage companies have other agendas.");  
91 Email from E.D., to Brent T. White (April 25, 2010) (on file with the author). This homeowner account is far from atypical:
Those who are offered loan modifications, on the other hand, are frequently offered ones that don’t make any financial sense in that they barely reduce the monthly payment and/or increase the homeowner’s negative equity.\footnote{92}

I have been trying to work with my former servicer and most recently Bank of America (my mortgage servicer sold it to them last year) for almost two years now, ever since my husband lost his construction job in the very beginning of the recession. I was stonewalled by all the usual excuses you’ve heard (lost paperwork, wrong paperwork, not enough people, new rules, new programs etc ad nauseum) and lied to, patronized, castigated, hung up on, transferred endlessly, shamed and ignored finally. I could never escalate my case beyond CS reps in India. Email from K. D., to Brent T. White, Associate Professor of Law, James F. Rogers College of Law at the University of Arizona (Dec. 01, 2009) (on file with the author).

My Lender Chase is giving me a very hard time for more than year now, although I meet all the guidelines for loan modification set forth by the Federal government. I have completed all of their required paperwork and submitted every document they asked, but still Chase refused because I am current on my monthly mortgage payments. Chase has offered me no alternative plan or suggestions to assist me in anyway”. See also, Email from N. Z., to Brent T. White (Dec. 07, 2010) (on file with the author)

I am in the final stages of attempted negotiations with Wells Fargo for a house in [ ] that is over 50% underwater. … All I have asked for is a fixed rate loan--no modification to the mortgage value--and still the answer remains steadfastly "NP." Email from C. G., to Brent T. White (Dec. 20, 2009) (on file with the author)

I started to attempt to negotiate a re-finance to a straight 30 year amortised note. Since Feb. I have had numerous conversations with the mortgage company and in late Sep. after getting nowhere, I decided to walk away.” Email from C. G., to Brent T. White (Dec. 20, 2009) (on file with the author)

These stories are consistent with what the statistics tell us about likelihood of a lender modifying a mortgage. See Adelino, et. al., supra note 71 at 3 (noting that “lenders rarely renegotiate” and that only 3% of seriously delinquent mortgages in their study had received “concessionary modifications” in the previous year).

\footnote{92} See October Oversight Report: An Assessment of Foreclosure Mitigation Efforts after Six Months, Congressional Oversight Panel 25 (October 9, 2009)(finding that the average loan modification increases the homeowner’s negative equity).
I tried to get Citi to modify my loan due to unemployment, an interest only loan, and an upside down house to the tune of $300,000.00. After being lied to, manipulated, making trial payments that they said were the precursor to the permanent loan and then having them cancel that program, I managed to get them to lower our payment $160.00 per month. They tacked on $35,000.00 to the backend of the loan in the process. I did the math and it is gonna cost us another $175,000.00 in interest in addition to the previous debt (if we pay it off) to save $9600.00 over ten years....We are walking.  

The few homeowners who are offered financially meaningful “trial modifications,” are usually dismayed to learn

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93 Email from Q. B., to Brent T. White (Feb. 16, 2010) (on file with the author). Others report receiving similarly disappointing offers:

I have been working with the bank since Feb to refinance or restructure the loans, specifically since our businesses have been struggling) and finally just got the payment reduced $173/month. If we default, we have to default on both homes, right? Email from T. W., to Brent T. White (Dec. 07, 2009) (on file with the author).

Well, things happened and wasn't able to refinance so we tried to remodify and the lender made things even worse for us. First Franklin put us in a interest only loan for 30 years at a 13.4 % and now our payment is $2500.00 for a 200,00.00 loan. We really had no choice but to walk away since the company really won't work with us and we are around $60,000.00 underwater. Email from C. D., to Brent T. White (Jan. 23, 2010) (on file with the author).

The amount of money piling up to be added on the "back of my loan?" or paid immediately is now reaching $6,000.00. With the additional $6,000.00 to my mortgage my loan if now for $159,000.00. Email from T. L., to Brent T. White (Feb. 16, 2010) (on file with the author).

Can you help me understand why people in desperate need of help are being sent documents that they will feel compelled to sign that doesn't address the basic questions of their serious problem. Email from N. T., to Brent T. White (Feb. 19, 2010) (on file with the author).

We tried for nearly 8 months to negotiate a principal reduction, only to be told that Freddie Mac NEVER reduces the principal. Email from E. N., to Brent T. White (Nov. 30, 2009) (on file with the author).
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that their lender will report them as delinquent during the trial period.\textsuperscript{94}

The program they have given us is called the Freddie Mac "Making Home Affordable" program and as of 6/02/2009 we were awarded the trial period of this loan modification program. I was very upset when I received the paperwork describing this program. It is a 6 page document that describes the program—[One] section entitled "Credit Reporting" reads: "During the trial period, we will report your loan as delinquent to the credit reporting agencies even if you make your trial period payments on time. However, after your loan is modified, we will only report the loan as delinquent if the modified payment is not received in a timely manner." This seemed very unfair to me. My son has been making all the payments on this loan since it's inception, both of our FICO credit scores were high (mine being 840). Because of this statement in the paperwork sent to us, I started making the original $1000 payment, while my son made the "trial period" payment of $400. Both payments were made from June 2009 to October 2009. I am now unable to make the original $1000 payment because I still have not been able to get a job.\textsuperscript{95}

\textsuperscript{94} See Joseph Bove, \textit{Fed's mortgage modification program: Keep your house, lose your credit}, THE COLORADO INDEPENDENT, April 8, 2010 (reporting that "Although the program, known as HAMP, works to reduce monthly mortgage payments by half or one-third of monthly income, the program can also ruin participants' credit for years to come" because lenders report borrowers as delinquent during the trial modification period)

\textsuperscript{95} Email from Q. D., to Brent T. White (Feb. 05, 2010) (on file with the author). Some report having their loans reported delinquent during the trial period even after being promised they would not be:

I investigated my credit report and discovered that a [large] delinquency had been placed on my account by Citimortgage. Under the HAM Program, on the Making Home Affordable website (www.makinghomeaffordable.gov), it is clearly stated that "If you are current with your mortgage payments prior to the trial period and make each trial period payment on time, your servicer must report you as current and also identify the loan as modified under federal government plan." ...The Equifax report does not show that Citimortgage identified "the loan as modified under federal government plan" as required by the HAM Program. I have never been told by Citimortgage as to when or why Citimortgage did this to my credit report. As a result of Citimortgage’s action, my credit has been negatively affected which is a direct contradiction of what was
Being reported late during the trial period defeats a primary purpose of a loan modification for many underwater homeowners – namely, preserving their credit. Learning that accepting a trial loan modification will ruin their credit thus compels some to give up the idea of a loan modification altogether:

What many people don’t know when they apply for this type of modification, is that the banks cash your mortgage checks and place these funds in a separate file. The monies are not applied to your account. Therefore, in the months that pass by, your account is reported as delinquent to the credit bureaus. . . . . . . an acquaintance learned the hard way. When I heard this information, I feared my credit would be ruined as well, and cancelled my modification request.  

Those who nevertheless accept trial modifications find that they get stuck in them for months with no indication from the lender as to when, if ever, they will become permanent:

I have been waiting for a home modification to go through, and have made (13) Trial Payments since January of 09. During that timeframe, it has been as if my loan has been under a shroud of secrecy where I am totally at the mercy of the lender. The trail was supposed to only last three months, and, here I am, 13 months later, with what feels like "no end in sight". Yes, I am willing to go through the pain, stress, and the secrecy, since the carrot BofA dangles in front of me is the hope of a reduced mortgage payment, but they, even now, they benefit by dragging things out, to the point where they are oblivious to what being in limbo for over a year can do to a person---or are they?

96 Email from M. C., to Brent T. White (Feb. 03 2010) (on file with the author).

97 Email from N. H., to Brent T. White (April 30, 2010) (on file with the author). Others report similar experiences:
Most trial modifications never do become permanent.\footnote{See e.g., Renae Merle, \textit{Geithner tells panel that more has to be done to help homeowners avoid foreclosure}, \textit{Washington Post}, April 30, 2010, available at: \url{http://www.washingtonpost.com/wp-dyn/content/article/2010/04/29/AR2010042904769.html} (reporting that, “So far, the federal program, known as Making Home Affordable, has helped about 200,000 borrowers get a permanent loan modification. But the government is far short of helping the 3 million to 4 million homeowners it initially targeted. In the meantime, millions of homeowners are expected to fall into foreclosure over the next few years.”); see also Email from N. H., to Brent T. White (Jan. 14, 2010) (on file with the author)(“I am presently part of the Making Home Affordable Program (so I am not walking away), and while it is looking promising that our loan will be modified, reports are that only 1 to 2 percent of modifications actually do go through, which, at the same time does not allow me to become too optimistic.”)}

The emotional impact of being flatly refused help, or learning after months of waiting that the initial hope was false, is enough to push many underwater homeowners from a state of anxiety to a state of despair.\footnote{E.g., Email from Q. T., to Brent T. White (Jan. 14, 2010) (on file with the author)( I have lost hope and am extremely depressed ...); Email from H.I., to Brent T. White (April 30, 2010) (on file with the author)(“at this point feel like I'm dying a bit inside.”); Email from N. Z., to Brent T. White (Dec. 07, 2010) (on file with the author).(describing “losing hope from every side.”); Email from N. L., to Brent T. White (Dec. 01, 2009) (on file with the author)(“ I}

I made my initial 3 trial payments last year, and was initially due to receive new loan docs by October 09. Well, here it is the end of January, and I am still making trial payments with still no assurance that my modification is going to go through. Email from I. H., to Brent T. White (Jan. 14, 2010) (on file with the author).

Even now, something inside of me is thinking the modification will not really help me (the terms, after 8 months worth of trial payments, are still a mystery to me they are just telling me to “keep doing what I am doing”) and that in the end I might be forced to, or should even now consider “walking away” anyway. Email from G. V., to Brent T. White (Feb. 18, 2010) (on file with the author).

I am now 10 months into a request for a loan modification under the President’s "Making Homes Affordable" program and I fear that no matter what steps I take I will still loose my home and my ability to ever be out of debt. I have been paying my "Trial Payment" since August of 2009. Email from T. L., to Brent T. White (Feb. 16, 2010) (on file with the author).

We are still in the trial period and don’t know how much longer this process is going to take. I don’t want to walk away from this loan but I am tempted. Email from Q. D., to Brent T. White (Feb. 05, 2010) (on file with the author).
program “Hope for Homeowners” wisely reflects an understanding that, to hold on, homeowners must have hope. The cruel irony for many underwater homeowners, however, is that signs of hope are few and far between.

V. Anger

Hopelessness and despair, however, don’t tend to motivate action. While they might cause some homeowners to just give up and stop making payments, most homeowners need something more to get them over the guilt, shame and fear that keeps them from walking away. That something more for many strategic defaulters is anger.

just do not know what to do.”) See also Streitfeld, No Help in Sight, More Homeowners Walk Away, NEW YORK TIMES, February 2, 2010, supra note 1 (Reporting on the increase in homeowners walking away, and quoting one mortgage broker as explaining, “Everyone has lost hope. They don’t qualify for modifications, and being on the hamster wheel of paying for a property that is not worth it gets so old.”).

100 See White supra note 6. While the role of shame and guilt in constraining default were discussed above, the following accounts give some sense of the fear involved:

Our bank said we make too much money and are current on our payments to we don't qualify for assistance. It is mostly fear that keeps us from sending them the keys. Fear of damaged credit, fear of the bank coming after us, and fear of excess income taxes should we make that move. Email from E. T., to Brent T. White (Dec. 01, 2009) (on file with the author).

I have 2 properties in the northwest Las Vegas area. They are both rented. The values on each are around $85,000 and the loan on one is around $195,000 and the other $175,000. So they are both seriously underwater. I would walk away in a second, but as I understand Nevada law, it is a recourse state. Email from K. T., to Brent T. White (Jan. 27, 2010) (on file with the author).

My husband and I had agonized for about a year of what to do with our underwater situation -- we pulled the trigger a couple of months ago, and yes, one of the many variables that we had to overcome was the fear of the effect on our great credit and our prospects for future employment. Email from J. N., to Brent T. White (Dec. 21, 2009) (on file with the author).

I live in [] and have not walked away from my property for fear of the legal consequences…My main concerns are that I have a secure job and a high income. I worry that the banks would identify me as someone with means to continue making payments and pursue further action against me. Email from B. N., to Brent T. White (Dec. 24, 2009) (on file with the author).
Homeowners who are deeply underwater with no apparent way out frequently become resentful and angry about their predicaments. While they may blame themselves for buying their homes at the wrong time, strategic defaulters tend to direct most of the blame, and thus their anger, toward financial institutions and the government for causing, or allowing, the housing meltdown. This anger is only compounded by the sense that their lenders are giving them the run-around, being callous and uncaring, looking out only for their own economic self-interest, and refusing to help despite being bailed out by

101 E.g., Email from L. T., to Brent T. White (Dec. 07, 2010) (on file with the author) (“We made this foolish decision when the real estate market was strong. Needless to say, we got caught in the quite abrupt transition of good market to bad market.”).

102 See, Email from H.H., to Brent T. White (Dec. 02, 2009) (on file with the author) (“We were not stretching for our home and we knew that the market may not stay as healthy back in 2005. But no one except insiders knew that this market was going to collapse to the degree it did. So to pass the blame of the mortgage crisis on all homeowners and act like 100% of them were on adjustable loans with little down payments is crazy and insulting.”); Email from Q. T., to Brent T. White (Jan. 14, 2010) (on file with the author) (“I think you can imagine the four letter words I often use to describe my feelings toward the bankers who artificially pumped up housing prices for the past 5-10 years.”); and Email from K. I., to Brent T. White (Jan. 27, 2010) (on file with the author) (“The United States Government has allowed this banking atrocity to unfold and are still not willing to cleanse the system of the wrong it perpetrated and gained from. The banks allowed for loans to be made, they sold them and profited, they have been saved from there due burden in the crisis and they continue to manipulate the finance market while at the same time have been allowed to ruin the credit of the very people who can and will eventually, save the housing industry. How can our Government not see this.”) Email from N.S., to Brent T. White (Feb. 01, 2010) (on file with the author) (“We all bought our homes as we are told that this is the “American Dream” and “the single most investment we will ever make in our adult lives”. We all expect our homes to appreciate but due to the irresponsible behaviors or the bankers, Wall Street, greedy real estate brokers and agents, our single most important investment has turned into a nightmare.”)

103 E.g., Email from S. S., to Brent T. White, Associate Professor of Law, James F. Rogers College of Law at the University of Arizona (Dec. 02, 2009) (on file with the author) (“My husband and I are middle class hard working people that got caught up in the mortgage melt down. We bought our first home 3+ years ago 100% financing 3/1 IO for $560,000.00. We paid our payment 3 years on time even when the value went down to $260k still owing $560k. When our rate adjusted and went up we reached out to our Mortgage lender asking for a modification and after 6 months of the “run” around we were turned down… If they choose not to help my family and work out an agreement for all parties involved, they can have the home!!!”).

104 E.g., Email from E. N., to Brent T. White (Dec. 11, 2009) (on file with the author) (“I have no moral connection to them as they don’t care for me or my family.”)

105 E.g., Email from R. H., to Brent T. White (Nov. 30, 2009) (on file with the author) (“Everything they do is a business decision, as was my decision
This anger turns out to be cathartic for many strategic defaulters, relieving their guilt and justifying a tit-for-tat response to banks for their profit-driven behavior:

I also have [Citi] laying out the terms of the loan mod, my canceled checks and receipts to show I followed their instructions right down the line, and then them cancelling the deal after they got the three trial payments cause the "investor" didn't participate in the program- this was discovered after they got the money and after they cashed the checks of course. As it turned out the mysterious "investor" was actually Citi. They didn't know that they couldn't participate and they were the participants. What a total screw job. So yes they can eat their house being upside down with no guilt from us.  

Many others revealed similar sentiments:

Lenders are not living up to any implied sense of personal/social/moral responsibility, so I certainly wouldn’t have any qualms about screwing over Wells Fargo knowing full well that if I don’t screw them, they will screw me. Email from E.I., to Brent T. White (Dec. 05, 2009) (on file with the author).

The banks, lending institutions, and realty and mortgage brokers have demonstrated nothing but egregious self interest in pursuing profits at all costs to the consumer in this country. I took a hike from a mortgage that turned out to be a nightmare for me - they can take a hike now. Email from S. S., to Brent T. White (Nov. 29, 2009 (on file with the author).
One way to understand the emotional process is that blaming someone or something else helps many strategic defaulters manage the troublesome emotions such as guilt, shame and a sense of failure that are associated with default. It is, in a sense, a dissociative move -- blame their lender, "Wall Street," or the "government". All of these may in fact be to blame, but the appeal may be less about rational analysis than managing emotions. To spare themselves, strategic defaulters "turn the gun outward."\(^{108}\)

In addition to becoming angry about their unfair situations, some strategic defaulters become angry because they feel that everyone else is getting help but them:

...frankly, we are tired of getting the short end of the stick while the government seems to rescue everyone but us.\(^{109}\)

Congress and the new transparent Administration needs to raise its moral compass and quit bowing to the special interest groups and making sweet deals that propel their career on the backs of hardworking Americans. I am fed up.\(^{110}\)

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\(^{108}\) Quoting and paraphrasing Toni M. Massaro, Email to Brent T. White, May 9, 2010 (on file with author). Other homeowners likely blame themselves too much – unable to see that they are not alone at fault. These homeowners "turn the gun inward" and may be less likely to walk away. Id.

\(^{109}\) Email from N. K., to Brent T. White (Jan. 13, 2010) (on file with the author).

\(^{110}\) Email from Q. T., to Brent T. White (Dec. 10, 2009) (on file with the author). See also email from W. D., to Brent T. White (May 3, 2010) (on file with the author)(“If you bail out financial institutions, then certainly there should be an obligation to bail out the people that the financial institutions used and the people whose money you used for the bailout.”); Email from B. K., to Brent T. White (Nov. 18, 2009) (on file with the author)(“the housing crash is being unfairly put upon the backs of home owners… in my case the medias constant reporting of the billions given to bailout banks, Investment corps, et al. made a huge impact on my decision); Email from J. N., to Brent T. White (Dec. 21, 2009) (on file with the author)(“Finally, though I support my President, he needs to get a clue (of course, I mean policy makers, in general). The lame attempts to have banks modify loans are just a drop in the bucket.”); Email from E. M, to Brent T. White (Nov. 30, 2009) (on file with the author)(“We voted for Obama based on his support for the cramdown legislation. However, once
The outrage at being left out is heightened for some by their perception that they, as “responsible” homeowners, get nothing, while “irresponsible” homeowners get undeserved assistance:

All the help seems to be for those who got crazy loans or kept getting equity out of their home. What about those of us who put MORE than 20% down and got conventional loans without refinancing ever. I feel as if I've been stolen from!! People just tell me I was dumb for putting so much money down - well shame on me for not getting an interest only loan! I can afford my payments but I am PISSED! Any suggestion on what people like me can do? One of my coworkers who got a "Funny loan" received a letter from her 2nd mortgage saying they were taking thousands of dollars off of her principle without her even asking!! Where is MY principle reduction!! I like my home but I'm so pissed that people like me (and I know there is more than me out there) are getting screwed!111

But whether they direct their anger at the government for helping out others and not them, or their lender for refusing to negotiate, anger at the perceived injustice of their situation drives many underwater homeowners to feel justified in walking away:

I have tried in every way possible to do the “right” thing, but have been rebuffed at every turn. THAT is why I am walking away. It is purely a business decision on my part now. How can we be expected to “honor our obligations” when, even when we try to and want to, our efforts are denied? Just because it is “better business” for them to foreclose? How about that for a double standard?112

111 Email from T. N., to Brent T. White (Mar. 17, 2010) (on file with the author); also Email from M. C., to Brent T. White (Feb. 03 2010) (on file with the author)(“This home modification promise is full of holes and wreaks havoc on our citizens......somebody has to stop this. Somebody in our administration must investigate this. I have written to Channel 3 and Channel 5, as well as Senator John McCain. I have yet to receive a response.”)
112 Email from K.D., to Brent T. White (Dec. 01, 2009) (on file with the author). It should be noted that the study by Guiso, Sapienza & Zingales found no correlation between homeowner’s anger about the economy and their attitudes about default. Guiso et al., supra note 7, at 20. However, the accounts of homeowners discussed in this article suggest that the study asked the wrong question. The study asked, “On a scale from 1 to 5 with 1 being ‘not angry at all
VI. Relief and a Sense of Empowerment

After all the guilt, anxiety, despair, and anger, the actual act of strategic default brings many underwater homeowners a sense of empowerment:

So the decision has been made, my last payment was in December. I called and told them I wasn't paying anymore and this time requested an $80k principal reduction and an amortizing loan. Of course I didn't hear from them until I was 30 days delinquent. When they called to collect, the script was predictable: she threatened my credit would be negatively affected, I would have to repay missed payments with penalties and interest, they would take my home, and I would risk losing other assets. I sensed her frustration when I told her to go ahead and begin the process if they weren't going to restructure. It felt great to take away their leverage.

Moreover, strategic defaulters frequently report feeling relieved once the process is finally over. As one homeowner and 5 being ‘very angry,’ how angry are you about the current economic situation?” Guiso et al., supra note 7, at 13. A better question would have been: “How angry are you about the way the government has dealt with homeowners like you who are underwater on their mortgages?” It is not general anger about the economy than drives people to default, it is anger about the way that they personally have been treated – or left to fend for themselves while others get bailed out – that drives some homeowners to default. Email from O. N., to Brent T. White (Jan. 14, 2010) (on file with the author). See also:

When I tell them that I have already secured another house [ ] and that my wife has an 820 credit rating (the mortgages were in my name only), they just sputter and try the moral high ground story. I tell them the house is in very good shape and ready for foreclosure, and to please hurry up and get on with it. That really frustrates them to no end. It is very, very good to have options. Email from C. G., to Brent T. White (April 29, 2010) (on file with the author).

The process of strategically defaulting itself can be extremely difficult psychologically. E.g., Email from E. L. to Brent T. White (Nov. 30, 2009) (on file with the author) (“I can tell you first hand, that defaulting personally is nothing less than extraordinarily emotionally distressing even in spite of my occupationally advanced understanding of my own legal rights as a borrower”); Email from L.S., to Brent T. White (Dec. 12, 2009) (on file with the author) (“It can be a very lonely, isolating and psychologically challenging
explained, “Choosing to walk away was the hardest thing I think I’ve ever battled with. After walking away, I have felt nothing but relief.”

This relief is especially powerful to the extent that homeowners have already psychologically let go of their emotional attachment to their homes and feel trapped in a hole from which they’d like to escape. Like a person who finally leaves an unhealthy relationship after years of wanting to do so — or as one homeowner described it, “our abusive husband, our mortgage company” — they report feeling free again and hopeful about the future.

Understanding this relief helps explain why the self-cure rate for those who become delinquent on their mortgages has dropped from 45% in the early part of the decade to 6.6% today. Having been pushed to make the psychological break from all the shame, guilt and fear that kept them from defaulting on their mortgages, most strategic defaulters have no desire to go back. Indeed, having already lost their good credit score, they have little to gain by doing so:

Given the damage already done to my credit rating, the pain of going through further negotiations, and a
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deployment for 9 months to Afghanistan, I just don't have the time or energy to see if anything can be worked out--especially since I am not financially destitute.\textsuperscript{119}

Instead, they frequently look forward to the prospect of a brighter financial future:

I am absolutely thrilled about my future positive net-worth... My wife and I are extremely excited to finally have the answers we desperately needed to get out from under our lender’s chokehold and secure a financially sound future for our family, more importantly our son.\textsuperscript{120}

VII. Policy Implications

The policy implications of this window into the emotional process of strategic default depend in part on answers to other questions, such as whether more strategic defaults would ultimately be good or bad for the economy and whether strategic default is immoral or an acceptable response to the housing collapse. I have addressed these issues elsewhere.\textsuperscript{121}

Assuming, however, that the government and lenders continue to wish to limit strategic default, several lessons can be drawn. First, deeply-anxious underwater homeowners should be given real reasons to feel less apprehensive about their financial future if the government or lenders wish to induce them to continue making their payments. This might include, for example, the promise of a large incentive payment after a number of

\textsuperscript{119} Email from C.G., to Brent T. White (April 29, 2010) (on file with the author). See also, Email from B. C., to Brent T. White (Jan. 16, 2010) (on file with the author)(“Our credit rating is now in the tank so we really have nothing else to lose and life will go on!”)

\textsuperscript{120} Email from O. N., to Brent T. White (Jan. 14, 2010) (on file with the author); See also, Email from B.T., to Brent T. White (April 26, 2010) (on file with the author)(“We live in Los Angeles now - let our AZ place go. Bought a great new place that may someday make back the $250k we sunk into the last one.”)

\textsuperscript{121} See White, supra note 6 at 47-52 (arguing that an increase in the number of strategic defaults could be economically beneficial and deter undue risk-taking by lenders in the future); and Brent T. White, Beyond Guilt in the Housing Crisis: The Morality of Strategic Default, Arizona Legal Studies, Discussion Paper (2010) available at: http://ssrn.com/abstract=1597835 (arguing that strategic default can be the most moral and responsible course of action when necessary to protect the financial stability of one’s family).
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years,\textsuperscript{122} or lenders agreeing to divert some nontrivial portion of borrowers’ mortgage payments into a retirement account.\textsuperscript{123}

Second, many lenders’ Kafkaesque loan modification processes backfire in a significant number of cases and may be a

\textsuperscript{122} One such incentive program, designed by the Loan Value Group, has already been launched by one anonymous major investor in mortgages. The program called the “responsible homeowner reward program” would give homeowners financial rewards for paying off their mortgages. See, Press Release, Loan Value Group Launches RH Reward Program for Responsible Homeowners, February 8, 2010 \url{http://www.marketwire.com/press-release/Loan-Value-Group-Launches-RH-Reward-Program-Responsible-Homeowners-Major-US-Investor-1114113.htm} While there are in theory some great plusses to the incentive approach, the Loan Value Group program highlights a major concern as well: such programs are likely to be designed to play upon people's cognitive biases to keep them from defaulting when it may be financially wiser to default. See, The Responsible Homeowner Reward, supra note 5. The Loan Value Group white paper discusses, for example, how homeowners’ cognitive biases, such as the tendency to evaluate gains and losses separately and the endowment effect, can be used to make them likely to accept a lesser “reward” than they would accept as a principal reduction, and then to hang on longer even when default is inevitable by any objective measure. Id. The Loan Value Group also provides a formula for calculating the smallest possible reward to maximize investor return. Id. Despite these flaws, however, the Loan Value Group program is commendable in that it is an innovative, reward-based, rather than shame or fear-based, attempt to prevent strategic default.

\textsuperscript{123} A less benevolent approach has been at least been hinted at by some economists: namely, lenders could increase the expected cost of default by pursuing more borrowers for deficiency judgments. See Sapienza and Zingales, supra note 1 (predicting that “With more and more homeowners believing that lenders are failing to pursue those who default on their mortgages, there is a risk that a growing number of homeowners will walk away from their homes even if they can afford monthly payments.”); and Bhutta, et. al, supra note 7 at 24 (concluding that, “As the number of defaults and foreclosures reach record high levels, lenders may find it worthwhile to go after borrowers who default on their mortgages. If such changes in lender behavior happen, then the underlying distribution of default cost faced by borrowers will likely change in response.”).

Responding to strategic default by pursuing more borrowers for deficiency judgments would, in essence, lock borrowers into a Catch-22 where they are fearful for their financial future if they default and fearful if they do not. The success of this approach would depend on making borrowers more afraid for their financial future if they defaulted than if they stayed in their deeply underwater homes. Not only could such a hardball approach be criticized for being unduly ruthless, it’s also based upon a fundamental lack of understanding of strategic default’s emotional context – as it assumes that borrowers engage in a simple cost-benefit analysis. Thus, the reasoning goes, increase the cost of default and decrease its incidence. Such an approach also presupposes that borrowers default because they know that lenders are unlikely to pursue them for deficiency judgments and are thus not sufficiently fearful of default’s consequences. To the contrary, the accounts of actual strategic defaulters demonstrate that they default \textit{despite being very fearful} of the consequences, particularly in recourse states. See supra note 96. More critically, while such an approach might work in with some homeowners, it’s likely to backfire with others, especially to the extent that it increases their hopelessness and anger – which, as discussed above, are powerful drivers of default.
contributing cause of the increase in strategic default. Moreover, once individuals actually make the psychological break to strategically default on their mortgage, there is little chance that they will self-cure. They also require considerably more in terms of lender concessions to induce them to resume some type of mortgage payment than it would have taken to convince them to continue to pay on the front end.\textsuperscript{124}

Lenders might thus be better served by making early concessions to underwater homeowners. While early concessions would result in some homeowners getting relief who could have been induced to continuing making payments, it might also sharply reduce the number of strategic defaults and foreclosures, which are extremely costly to lenders.\textsuperscript{125} Though the cost-benefit analysis for lenders has typically been that it is better to take a small number of big loses on the back end than modify a large number of mortgages on the front end, this equation may begin to change (if it has not done so already) as more homeowners decide to strategically default.

Third, the government’s policy of helping only homeowners who are at “imminent risk of default” absent some intervention sends the wrong message to other underwater

\textsuperscript{124} E.g., Email from N. M., to Brent T. White (Jan. 14, 2010) (on file with the author)(“After not paying my mortgage since last June, Wells Fargo actually got serious about settling the second mortgage for far less than the actual amount owed. They offered to settle for 50%, then after more time I was offered a 20% settlement. I didn't agree to any of the offers. It is always fun to remind the agents calling that I offered to pay the entire debt had they given me a fixed rate loan. That must look like a really good offer about now, and it always leaves the agents without a canned reply.”)

\textsuperscript{125}See MORTGAGE BANKER’S ASSOCIATION, LENDER’S COST OF FORECLOSURE, (2008), available at http://www.nga.org/Files/pdf/0805FORECLOSUREMORTGAGF.PDF. The losses that lenders take by pushing homeowners to default are typified by the following account:

[We] were FORCED to walk away from our home and dreams. It has been 1 1/2 years since we left our home and the house still sits vacant. It never ceases to amaze me that the bank would rather take our home then work with us to keep our family in it and continue to get some kind of payment each month. If they would have lowered our rate and done some kind of principle reduction we would be there continuing to make our payment to them. Because of the choice they made to turn us down for modification and short sale they will lose an estimated $250,000 not including legal fees and vacancy loss. Email from D., to Brent T. White (April 30, 2010) (on file with the author).
Indeed, rather than preventing a moral hazard, it arguably creates one. Most government programs, for example, only provide assistance to homeowners whose mortgages exceed 31% of their gross income. This includes both those whose mortgages were originally less than this amount but have now suffered income losses and those whose mortgages exceeded 31% of their income at origination. Those who took out more modest mortgages within affordability guidelines and have not suffered a decrease in income, however, are out of luck. Such an approach feels profoundly unfair to homeowners who believe that they “responsibly” bought less expensive and smaller houses than they might have liked, and in which they are now stuck due to the housing market collapse.

Moreover, if avoiding the creation of a moral hazard is a concern, then bailing out primarily underwater homeowners who took out mortgages disproportionate to their incomes, or who have already defaulted on their mortgages, would appear a misguided approach. This approach, combined with talk of personal responsibility, is felt as hypocrisy and induces anger in many incipient defaulters who do not fall in these categories. This anger serves to relieve, or at least counteract, the guilt that might otherwise prevent some strategic defaulters from defaulting on their mortgages.

To defuse the anger and anxiety, the federal government should consider a broader approach to the negative equity crisis. Several broad proposals have already been suggested by others,


127 In actuality, the government’s approach appears to have little to do with helping homeowners who deserve it as opposed to those who do not – though it’s frequently framed that way. The moral hazard talk is mostly a distraction. The program is designed to minimize foreclosures. In practice, this means helping only people who are “at risk of imminent default” – regardless of fault – and leaving the rest to fend for themselves. See Press Release, Dep’t Treasury, Making Home Affordable: Updated Detailed Program Description (Mar. 4, 2009) available at http://www.treas.gov/press/releases/reports/housing_fact_sheet.pdf.

128 See, Guiso et al., supra note 7, at 3 (suggesting that “a policy aimed at helping people in arrears with their mortgage could have devastating effects on the incentives to strategically default of people who can afford to pay their mortgage if it is perceived to bail out people unjustly and thus undermine the moral commitment to pay.”) Additionally, to the extent that homeowners feel that the government should help them, and it does not, they are likely to feel angrier and be more likely to strategically default. See Id. at 19 (reporting “respondent view on whether the government should help homeowners becomes highly statistically significant. People who answer yes to that question are nine percentage points (35% of the sample mean) more likely to declare they want to do a strategic default when their negative equity equals 100K.”)
most of which involve principal reduction in some form.\textsuperscript{129} These proposals arise out of a growing consensus among academics that “negative equity alone” can trigger strategic defaults and thus principal reductions are necessary to stem their tide.\textsuperscript{130} This consensus has been derived, however, from studies that have not adequately considered strategic default’s emotional context. Understanding this context suggests that the academic consensus may be wrong and that lenders may have gotten at least one thing right: principal reductions may not be necessary.

If the accounts in this article are representative, homeowners don’t default just because they have negative equity. They default because they feel anxious and hopeless about their situations – which frequently include not only having hundreds of thousands in negative equity, but also paying two or three times more as a mortgage payment than they would for rent, having little to no money to spare for savings, and sometimes needing to use credit cards just to stay afloat. These homeowners understandably feel that they are throwing money away on their underwater homes.\textsuperscript{131} After being rebuffed by their lenders, they also

\textsuperscript{129} See e.g., Rebel A. Cole, The Housing-Asset Relief Program: A Plan for Stabilizing the Housing and Securities Markets (April 22, 2009), available at SSRN: \url{http://ssrn.com/abstract=1338883} (proposing that “$300 billion in TARP or stimulus funds” be “used to write down the principals on underwater mortgages.”); and Adam Levitin, Resolving the Foreclosure Crisis: Modification of Mortgages in Bankruptcy, (April 24, 2009) Available at SSRN: \url{http://ssrn.com/abstract=1071931} (arguing for modification of home-mortgage debt in bankruptcy proceedings); and Eric A. Posner & Luigi Zingales, The Housing Crisis and Bankruptcy Reform: The Prepackaged Chapter 13 Approach 21 (School of Business Research Paper No. 09-11; U of Chicago Law & Economics, Olin Working Paper No. 459, February 25, 2009), available at \url{http://ssrn.com/abstract=1349364} (proposing that the government force lenders to give underwater homeowners the option of resetting their mortgages to the current value of their houses in exchange for giving the lender 50 percent of the house’s future appreciation).

\textsuperscript{130} See e.g., Bhutta, et. al., supra note 7 (arguing that “negative equity alone can trigger mortgage defaults”); The Responsible Homeowner Reward, supra note 5 (suggesting that, “The source of the problem is the homeowner’s balance sheet: since he has negative equity in his home, it is not worth keeping it by paying the mortgage.”); Guiso, et. al., supra note 7 at 7. (suggesting that “people default because of the size of their negative equity, not just because they cannot afford to pay.”); Foote, et. al., supra note 60 (arguing that negative equity is a principal driver of default); Cole, supra note 129 (proposing principal write-downs); Adam Levitin, supra note 129 (arguing for reduction of principal balances in bankruptcy proceedings); Posner & Zingales, supra note 129 (proposing forced principal cram downs as necessary to curb strategic default); and Brent T. White, Is Strategic Default a Menace?, supra note 2 (supporting Zingales and Posner’s proposal for forced principal reductions).

\textsuperscript{131} See e.g., Email from E. C., to Brent T. White (Jan. 18, 2010) (on file with the author) (“we cannot rent the home for anywhere near enough to make the payment, so each month we are paying money out that we could use to help live on. We are both retired public school teachers [ ] and the money we are
frequently feel as though they are staring into a dark abyss. All most would need to hang on, however, is some real hope that it’s all going to be okay in the long run.

One possible way to provide this hope would be a “rent-based loan program.” Such a program would give all underwater homeowners the option of refinancing their entire balance – regardless of loan-to-value – to an interest rate that would bring their payments in line with the rental cost for a comparable home.

A rent-based loan program would likely address the primary emotions associated with strategic default for many underwater homeowners because, as long as their mortgage payments did not exceed the rent for a comparable home, they would not be “throwing their money away.” They would be paying a fair price for a place to live. This would feel better. It would also address the major financial anxiety that drives many underwater homeowners to begin to contemplate default: the sense that they are squandering their financial resources by paying large mortgage payments instead of paying much less to rent.

paying out could be used by us. At this point, we are pouring $600 each month down a rat hole, money which we will most likely never get back, and all things considered, walking away sounds pretty good.”

This article’s primary purpose is to describe the emotional process of default, and not to advocate for any particular response. There are surely many ways to address the emotions that drive default. A “rent-based loan program” is just one possible response – though, as I am about to explain, one with great promise.

Due to the perceived unfairness of subsidizing individuals who took out home equity loans to cover other expenses or to purchase other luxury items, the rent-based loan program could conceivably be limited to purchase money mortgages and non-cash out refinances. Modifying such mortgages would avoid this perception of unfairness because it would simply recognize that many underwater homeowners bought their homes at the wrong time - and were caught by an unprecedented housing collapse that was unforeseen by most of the nation’s top economists, financial institutions, and government officials. See Michael J. Burry, *I Foresaw the Crisis, Why Didn’t the Fed?*, N.Y. Times, Apr. 3, 2010, *available at* [http://www.nytimes.com/2010/04/04/opinion/04burry.html](http://www.nytimes.com/2010/04/04/opinion/04burry.html) (noting that Former Federal Reserve Chairman Alan Greenspan recently proclaimed that no one could have predicted the housing bubble. “Everybody missed it,” he said, “academia, the Federal Reserve, all regulators.”). Because of this fact, modifying purchase money mortgages and non-cash out refinances runs little risk of creating a moral hazard and would not likely be seen as unfair to most people. Indeed, it may see a more equitable approach to the public than expecting “responsible” underwater homeowners alone to carry the weight of the housing collapse on their shoulders.

Calculating comparable rent would be much like appraising a home - imprecise and within a range. But, because the anxiety of underwater homeowners is that they are grossly overpaying, anywhere close to comparable rent would be enough to relieve the sense of most incipient defaulters that they are throwing their money away. See e.g., Email from S.Y., to Brent T. White (Nov. 21, 2009) (on file with the author) (“We have outstanding credit and owe
As long as homeownership felt like a good investment, many homeowners didn't mind paying much more in mortgage payments than they would to rent the same home. The difference was seen as forced savings. Indeed, the notion that homeownership was a good investment convinced many individuals to stretch to purchase homes during the housing boom in the first place. But once a homeowner is deeply underwater and feels a recovery is unlikely in the foreseeable future, paying extra for the mortgage no longer feels like an investment strategy - it feels like financial suicide.\footnote{And, indeed, it might be financial suicide. The point is not that the feelings or actions of strategic defaulters are irrational. Anxious – and angry - people can make rational decisions. Acting to ameliorate unpleasant emotions can itself be rational. The point is that reducing strategic defaulters to emotionless rational actors misses the complexity of their decision making processes – and may result in missing solutions to strategic default that are equally as effective and more palatable to lenders than large scale principal reductions.}

A rent-based loan program would eliminate this anxiety and, to the extent that the new mortgage was fully-amortizing, put the homeowner in at least as good a position – if not better - than if they were renting.\footnote{As a simple economic matter, this should eliminate the incentive to default. A “textbook premise of economics is that the value of a home - even an owner-occupied one - is “the current value of the rent payments that could be earned from renting the property at market prices.” HYE JIN RHO, ET. AL., CHANGING PROSPECTS FOR BUILDING HOME EQUITY 3, (2008), available at http://www.cepr.net/documents/publications/Changing_Prospects_for_Building_Home_Equity_2008_10.pdf. Moreover, “the calculation for a rational homeowner in deciding whether to strategically default on a home mortgage is … the cost of renting versus the cost of continuing to own.” See White, supra note 6, at 8.} Additionally, even if a homeowner needed to relocate, the homeowner could rent his home for an amount that would cover his mortgage, thus relieving him of the anxiety that comes with losing money every month on a property that is already deeply underwater. In other words, a rent-based loan program would eliminate both the economic and the emotional incentive to default for, at the least, the types of strategic defaulters describe in this article.\footnote{Whether there are other types of strategic defaulters who would not be sufficiently satisfied by this approach needs further study. It’s possible that some homeowners default simply because they have negative equity, but doubtful that many – if any - would do so. Quantitative studies finding that negative equity alone can cause strategic default may have missed the connection between mortgage payments and comparable rent because they did not asked the question. For example, Bhutta, Doko, and Shan found that “negative equity alone can trigger mortgage defaults” but apparently without considering rent-to-mortgage payment ratios. See Bhutta, et. al, supra note 7 at
did not generally demand principal reductions from their lenders and asked instead for reductions to their monthly payments. A rent-based loan program might also be preferable to the current emphasis on short sales, as it would end the continued dumping of houses on the market at fire-sale prices, and incentivize homeowners to hold on to their houses for the long-term. Indeed, because the new loans would not involve principal reductions, underwater homeowners would not have the option of dumping their houses on the market. Instead, they would have to hold on until the market recovered, or until they paid down their loans. From many underwater homeowners’ perspective, having to hold on isn’t such a bad thing though - as long as it doesn’t risk financial ruin and there’s a light at the end of the tunnel.

VIII. Conclusion

Regardless of how one feels about strategic default, homeowners who intentionally stop paying their mortgages are driven by the same basic emotions as everyone else. They aren’t hyper-rational and they aren’t immune from shame or guilt. Many are simply anxious and overwhelmed by a sense of hopelessness. They are also frequently angry at the perceived unfairness of their lenders’ and the government’s unwillingness to help. It doesn’t matter whether these emotions are justified or not, they are deeply felt and they are contributing factors in many underwater homeowners’ decisions to intentionally default. Taking these emotions into account could not only suggest new directions for further quantitative research on strategic default, it could also lead

23. Similarly, Guiso, Sapienza & Zingales asked homeowners whether they would default if they were $50,000, $100,000 or $200,000 underwater – but did not ask those who said yes if they would make the same decision to default if their monthly mortgage payments were still less, or were reduced to less, than it would cost to rent a comparable home. See Guiso, supra note 7. This is not to criticize these excellent and informative studies, but to suggest a direction for further quantitative research.

138 E.g., Email from C. D., to Brent T. White (Dec. 20, 2009) (on file with the author) (“All I have asked for is a fixed rate loan--no modification to the mortgage value--and still the answer remains steadfastly "NO.")); Email from Q. T., to Brent T. White, (Dec. 10, 2009) (on file with the author) (“We bought a home in 2006 for $415k, putting down $100k. We recently tried to refinance to lower our fixed rate from 5.75 to 4.35 but were denied as the appraisal came in at only $220k.”); Email from B. L., to Brent T. White (Nov. 30, 2009) (on file with the author) (“I've... asked both of my current mortgage holders if they would be willing to reduce the interest rate on my loan without any success). Email from B. Y., to Brent T. White (Nov. 29, 2009) (on file with the author) (“We have attempted to have our lender (WAMU, then Chase) modify our loan (1stand 2nd both with Chase), to no avail. Our mortgage payment is set to almost double next summer, and we have worked arduously to get something workable in advance of that avalanche.”)
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to better economic understandings of strategic default and inform the development more effective policies to stem its tide.