

The Secretary,  
Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
[economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Secretary,

Re: Senate Inquiry into "The National Consumer Credit Protection amendment  
(supporting economic recovery) Bill 2021, Submission by Lynton Freeman.

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With reference to the above submission, it is referenced for the supporting information and answered through the House of Representatives Explanatory Information. Alternatives and suggestions to allow the RLO to continue but allow the lending of last resort as subsidised by Government to be viable.

The legislation has been treated as a short-term process governed by Government involvement rather than long term change in lending conditions that will severely affect lending conditions for customers of lenders after the Covit crisis. Bankers through interest only loans are already Australia's' biggest home owners and landlords with automatic rises in rent from interest variation but without rent reduction because of contract interest conditions.

Reduction in RLO conditions will only support the part of banking where recoveries are desired by the lender to reduce legitimate concerns as described herein in lender practices and products.

Yours faithfully,



L. Freeman.

1.2.2021.



## A SUBMISSION TO THE SENATE INQUIRY INTO “The National Consumer Credit Protection Amendment (supporting Economic Recovery) Bill 2020.

From Lynton Freeman.

1. At this time Australia is going through a period of financial displacement beyond easy comprehension. It is one of those times when leadership is necessary beyond the immediate with the intentions of the future explained.

2. The finance industry is part of this situation, bankers rarely miss an opportunity to further their cause with pressure on Government to allow them to control the populous for bankers' gain. So, a hard-won fair system of banking laws to force out of the industry the culture of the bank does what it wants and covers it up, some way, has developed in to the culture of corruption in plain sight<sup>1</sup>.

3. We have just this month seen what could be the first of many incidents of consumer rebellion even if it was not completed, against National Australia Bank LTD<sup>2</sup>. The threat that stopped the bank and caused lockdown was made to a bank chastised for not properly refunding its deceived customers<sup>3</sup>. The introduction of best practice banking responsibility Laws has been the opportunity to stop banking planned deceit of customers'<sup>4</sup> accounts ›

4. The issue a dollar taken from every customer where the customer is duped creates over the bank volume of business a fighting fund sufficient to defend any claim of bad banking practice<sup>5</sup>. With removal of RLO what happens when a bank officer completes the budgets and loan application documentation and takes a blank budget document back to the bank to complete the interest values which he does not have at hand and then adjusts the budget to fit his lending requirements at the time. Or does not explain to the customer the conditions and implications of the facilities such as Commercial Bills and interest settings and fees debited to their overdraft where the facilities obtain interest on the overdraft value and if in debit may increase the interest on the whole value of the account not just the Bills' interest and fees<sup>6</sup>.

5. There are many examples of customer legal representation being snuffed out by early judgments handing bank costs orders causing customer bankruptcy but politicians are now so blindfolded by banker's rhetoric that they consider it is time to put aside years of policy and safe guards to allow banks to blame the customer for any mistake or bad banking practice<sup>7</sup>.

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<sup>1</sup> Financial Services Royal Commission - Home [financialservices.royalcommission.gov.au](http://financialservices.royalcommission.gov.au)

<sup>2</sup> . threat [www.smh.com.au](http://www.smh.com.au) › ... › (Banking & finance › Big four) (National Australia Bank National Australia Bank to reopen after hoax bomb threat).

<sup>3</sup> . (NAB bosses come in for special criticism from banking royal ... [www.abc.net.au](http://www.abc.net.au) › news › nab-bosses-singled-out-bank)

<sup>4</sup> Responsible lending | ASIC - Australian Securities and ... [asic.gov.au](http://asic.gov.au) › regulatory-resources › credit ›

<sup>5</sup> (NAB takes another billion-dollar hit as royal commission ... – ABC [www.abc.net.au](http://www.abc.net.au) › news › nab-takes-another-billion-doll.). (NAB takes another billion-dollar hit as royal commission ... – ABC [www.abc.net.au](http://www.abc.net.au) › news › nab-takes-another-billion-doll.).

<sup>6</sup> Bringham and Ehrhardt" Financial Management Theory and Practice Option Reset Adjustable Rate Mortgages South Western Cengage learning. Copy attached.

<sup>7</sup> (NAB takes another billion-dollar hit as royal commission ... – ABC [www.abc.net.au](http://www.abc.net.au) › news › nab-takes-another-billion-doll.).



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Because the Commonwealth Government says they will guarantee partially certain loans and want to avoid the liability I can understand why, even though the situation is so short sighted and detrimental to credit flooded Australians<sup>8</sup>.

6. In 1990 then Prime Minister Keating introduced a Rural Productivity package and axed the Commonwealth Development Bank satisfying the claim by the major banks they could do the Development Bank chartered, work<sup>9</sup> › The package included interest subsidies the banks made such a welter of the system that in 2008 when the Productivity Commission investigated the situation it was acknowledged that the States had various systems that bypassed the Federal laws and Ministers Guidelines and created a system of inequity based on banking desires to use the system to its demands irrespective of the law.<sup>10</sup>

7. This was upheld because lawyers and judges did not understand the situation as defined, was for the benefit of the customer as shown, by the Productivity Commission.

The risk without bank irresponsibility laws the Commonwealth may find themselves in the same situation again. It is easy for Government to overlook the power imbalance between bankers partly funded by Government and the individual trying to navigate a system where they are accused and condemned without trial.<sup>11</sup> We are going back to the Usury days where corruption of trials was condoned by all except the duped borrower who was often jailed for trusting a lender and in this case the duped government guarantee.<sup>12</sup>

### Sep 30, 2020 — a maximum annual interest rate of 48%)

8. The important issue in Australia is the statistics say 80% of new businesses that borrow funds will go out of business within 5 years.<sup>13</sup>

Do you really believe this is all the fault of the business persons or do the banks have a hand in making the business a joint venture value interest return, on their funding for 5 years? In Australia there is a secret process known as Securitisation WHERE THE MORTGAGOR does not know that his or her original mortgage holder has sold their mortgage to a third party who funds the purchase by selling a group of mortgages to bond holders in a trust known as a securitisation vehicle.<sup>14</sup>

9. By not always registering these sales the original mortgage holder could lose some traction in law. The next part is crucial the bank then sells the customer funding under various names depending on the bank short term finance for long term use mostly by Bills,

<sup>8</sup> Cash-strapped Aussies have less than \$1000 in savings ...[www.qt.com.au](http://www.qt.com.au) › news › cash-strapped-aussies-have-less-t.

<sup>9</sup> (Who Remembers the Commonwealth Development Bank? [bankvictims.com.au](http://bankvictims.com.au) › index.php › dr-evan-jones ›

<sup>10</sup> Inquiry report - Productivity Commission [www.pc.gov.au](http://www.pc.gov.au) › ... › Government Drought Support)

<sup>11</sup> Responsible lending laws, if axed, will engulf many ... - Choice [www.choice.com.au](http://www.choice.com.au) › everyday-banking › articles

<sup>12</sup> Loans and credit cards | ASIC - Australian Securities and ...[asic.gov.au](http://asic.gov.au) › for-consumers › loans-and-credit-cards Sep 30, 2020 — a maximum annual interest rate of 48%

<sup>13</sup> (Why most small businesses fail within the first three years ...[insidesmallbusiness.com.au](http://insidesmallbusiness.com.au) › Finance › Cashflow

<sup>14</sup> Structured finance and securitisation in Australia: overview ...[uk.practicallaw.thomsonreuters.com](http://uk.practicallaw.thomsonreuters.com) ›



## A SUBMISSION TO THE SENATE INQUIRY INTO “The National Consumer Credit Protection Amendment (supporting Economic Recovery) Bill 2020.

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when these instruments are a security in their own right and so the bank does not need to use the mortgage conditions to recover from the client<sup>15</sup>

10.Thousands of small business people and farmers can attest to these facts. So, the banks control the security of their customer funding and realise the value in the customers mortgage at the same time. Forcing security sales when required by the actual lending contract not the mortgage conditions.

11.The courts agree with this situation so the only chance of redress for the duped Aussie is the responsibility placed on the bank or original mortgage holder by Act of Parliament and if they lose that then the problems will become acute. In the last week we have seen the NAB have to close its doors because of a threat of bombing.<sup>16</sup>

12.In Queensland one Government sub-department responsible for making payments to insured persons where the sub-department was given the responsibility to investigate the veracity of the claim. This over time just like NAB led to the misuse of the organisations power and misguided credibility. Every claim was denied until proven worthy. There were so many false bombing claims that Police virtually lived on the main office premises. The government scrapped the system and made a new department and then claims were treated as genuine unless proven otherwise and a new culture developed where if a claimant had a claim that would result in projected long -term difficulty for the claimant then an offer at a reasonably early stage would be made.<sup>17</sup>

13.This had the result of stopping the bomb threats and the loss of process and increased productivity so all involved benefitted. NAB as with some other banks have a culture as defined by the Australian Prudential and Regulation Authority of doing what the bank wants and covering it up the best way they can. Consequently, no process or act is off the table to secure bank profit or will.<sup>18</sup>

14.The only process stopping very bad banking behaviour is the threat of customer action under the irresponsible lending process and liability against the originating mortgage holder as even when the bank is required to define securitisation vehicles and if the mortgage is sold the Banks do not register the fact on the customer's title.( ASIC RG 165.23-31) The amount of registering sale stamp duty involved could rival the Commonwealth Guarantee to banks under the Covit Virus, Commonwealth Guaranteed lending conditions at 50% guarantee of covet loans to small business.

15.The removal of the RLO will continue the already existing conditions with immunity. The facts are the banks have been lending despite the RLO lending to small business and farmers

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<sup>15</sup> Competition Policy (NCP) review of the Bills of Exchange Act 1909 (Bills of ... The Bills of Exchange Act was to supersede all State enactments on the subject.)

<sup>16</sup> (7news.com.au › business › finance › nab-branches-to-reo..)

<sup>17</sup> Workcover Queensland Act 1996 www.tved.net.au › PublicPapers › July\_1997,..  
Jul 1, 1997 — Queensland's system of workers' compensation has been radically reformed with the passing of the WorkCover Queensland Act 1996 )

<sup>18</sup> corporate culture leadership and fraud: the case of the ...dro.deakin.edu.au › eserv › dellaportas-leadershipcultur...)



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at unacceptable rates under good risk practices and under circumstances where asset rich cash poor businesses have their assets converted to cash available to the bank concerned at recovery. The process involves lending without loan redemption and this was carried out by using Bills across the industry. The Commonwealth Bank (CBA) being the glaring example where farmers were not offered an option for Principal and Interest Loans until after it was shown as fact that CBA was acting unconscionably in some instances and irresponsibly in many others.

**16. The industry facts of operation are Australian Banks employees’ job is to get the lenders funds out and at some time get the funds back.** This system of operation is very broad and the only way of stopping bad practices where products are misused to advantage the lenders in business loans is to regulate their activities so that the social implications where people are not worked out of their assets particularly land by using accumulated interest at the point of recovery and as the trigger to force the customers out of their properties.

17. What is shown here are the financial effects of removing RLO as it stands not admitted or advanced under financial impact at Schedule I of the general outline and financial impact. The reality is Australia does not operate under a system where bankers make mistakes in lending and the customer is automatically forgiven much legislation is directed to financier recoveries and this change in RLO is also aimed at that situation. If the government wants to increase lending to SME and Rural sectors it can mandate more than one tier of recoveries and give more options than recoveries when loan conditions are breached by not compliant non-monetary conditions and ensure the automatic extension of facilities where they are now wound up to satisfy bank illegality.<sup>19</sup>

18. It is vital in these circumstances that the Government consider the situation where legislation encourages bad practices and bad practices encourages acts that affect public safety such as bomb threats and acts of property damage and other bank customers lives. All of these situations have occurred around bank victimisation in credit control and distribution. A perfect example involving bank practices occurred in Qld and has been investigated by the Commonwealth Parliament where RLO would have saved the Commonwealth and Qld Government many millions. The banks had a system where they made mistakes in accounts and did not refund the customers this was shown in Interest subsidy cases but no refund was made to the Governments the overall payment to customers was stated to exceed \$1bn. The customer that exposed this situation irrespective of his claims was unpaid because of false evidence by the bank concerned issuing 5 sets of bank statements for the same account to cover up each circumstance shown in the courts. The bank concerned made payments in a way to avoid claims of all customers including those that left the bank before notification and admission by the bank concerned. The customer was charged criminally and after the false evidence was shown the vindictiveness became obvious when \$32.2m was paid to the Qld. Government through subsidy donations for the same value as that bank’s corruption of the Interest subsidy program. RLO would have meant the customer would have received his payments from the Interest subsidy program and the Commonwealth

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<sup>19</sup> ASIC v NAB and ANZ, admitted fraud and unconscionable conduct in BBSW manipulation.



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could recover against the bank concerned. Many other examples of the Commonwealth losing funding through bank corruption of accounts are available at the hands of Australia's Banks.

19. Under the Summary of Regulation impact statement flexibility in lending can be better served by investigating the breadth of products offered to customers where the banks limit the products to maximise bank profits not good lending practices. Timing and costs of lending can not change and these changes will give more opportunity for bankers to corrupt application practices one without consequences. Whilst the Government is aiming at circumstances where commercial banks take over the last resource lending position lowering all lending conditions is not the answer. It would be more appropriate to isolate low doc loans and inadequate responsible lending to be identified under APRA Guideline 200 and 220 with special recovery conditions attached such as mortgage insurance being identified where RLO conditions and Securitisation are both involved in a credit application.

20. This is one area where risk under these new conditions can be directly held by the lender irrespective of the APRA Guidelines. As for ASIC Regulation Guide 209 the conditions it states are not carried out by lenders in any case starting with notification to Borrowers of securitisation not being made by securitising lenders. In that situation RLO is really the only available process to involve lenders. Especially where in Equity bankers will then deny liability. The only way liability can be identified for bad mortgage lending in any way can be identified is by forcing identification of securitising bodies under complaint to the lender by customers or their representatives.

21. The reality is the industry is too big to rely on ASIC and APRA control the compliance with APRA Guidelines is of no value as any complaint against banks is refused to be investigated irrespective of the circumstances. It is noted APRA adjusts its processes and Guidelines to the advances made by banks and gives very little credence to protective consumer issues unless it investigates banks code of practice and that is not followed up after consumer complaint and acts of guideline and code of practice complaints under the APRA report of Code of Practice.

22. At 2.12 the Credit of the Consumer Protection Amendment the explanatory memorandum reiterates the provision of lenders credit reports to customers. In the experience of the writer this does not happen and customers are refused copies and to get even basic information need to resort to the Information Commissioner for support to obtain copies. This is an example of how the RLO conditions were not followed by some credit providers rather than the legislation unworkable it is the refusal by major lenders not to participate in all types of appropriate lending. In particular RLO conditions supported lending in a practical way when borrowers misstate their financial position. The interpretation of 2.23; Page 33 of the Explanatory Memorandum describes the facts that the Royal Commission into the finance industry stated the current law needs to be properly enforced. At page 34 the facts of variation in borrowers loan rates where older loans pay more is not because of RLO being obstructive but because of the lending market and the RLO determine verified information a risk avoiding follow up at application process. There is a large group of small business people and particularly farmers not familiar with standard



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financial formulae used to verify the cost of finance and it is these figures bankers know and do not advise the customers. A useful example is a farming business where the interest ratio to gross earnings is less than 2 so the customer is never insulated for interest by more than one year and secondly the interest proportion of the customers income is more than 50% of the customers annual income and Loan to Valuation is less than a realistic value at 42% of gross Balance Sheet but 65% of land value in the Balance Sheet. The vulnerability of that farmer is obvious but the bank lent him \$7.8m and then forced him to sell after 5 years of Bills which built the debt up by about \$2.6 m. In this instance the farmer in approximate figures lost \$25.2m and the bank made \$4.5m after security sale. The bank, forcing the sale of the property under farmer scheme mediation and later when it suited the bank a further deed denying any rights to prosecute the bank after the bank knew it would be convicted on admission of fraud and unconscionable conduct in the same customer facilities processes.

23. Whilst the ADIs complain and the Government recognises a broad system of credit control by APRA and a specific method with farmers and SME controlled by the ADI's themselves where the ADI bears a responsibility to the customer. RLO's not only keep the customer honest they also do with the ADI's involved. However, there is still enough room in regulatory control for ADI's to force customers to accept the wrong product for them and this is sanctioned by the APRA Guidelines and in some situations encouraged by APRA.

24. The change in legislation forgets the fact banks are in business to make money and are controlled by financial aware persons with the knowledge to make the most from their financial resources. This comes forward in their policies e.g. The CBA did not offer Principal and Interest lending to farmers only interest only until last year. An unquestionable process of irresponsible lending where Principal and Interest would save customers and Bills as interest only increase their debt merely by the operation of the banks accounting practices. These methods of operation chew up the customers' equity, a fact known to the bankers and should be disclosed to the customer by law but is not disclosed so the bank benefits from its own legal failure by hiding the bank lending reports.<sup>20</sup>

25. In fact, a properly run bank would supply the customer automatically with its credit reports and so bring to the customers attention the viability of his fulfilling a contract and not lose his assets. However, the reason RLO was introduced because bankers set up situations where borrowers can not afford payments is still alive and well in the Australian Banking Industry. I do not see any alternative proposal to RLO only a possible reduction in costs to the industry which is well justified through better operations management.

26. At 2.30 the only examples are home loans but the legislation is claimed to effect SME's and farmers. If at 2.32 supervision is a disadvantage to lending because information has to be verified then it most probably means the funds should not have been lent in the first place. The fact consumers are disengaged from financial products verifies the above point. Banks are not easy to get away from for SME's and farmers as they hold the titles and may

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<sup>20</sup> Bringham and Ehrhardt "Financial Management Theory and Practice Option Reset Adjustable Rate Mortgages South Western Cengage learning. Copy attached



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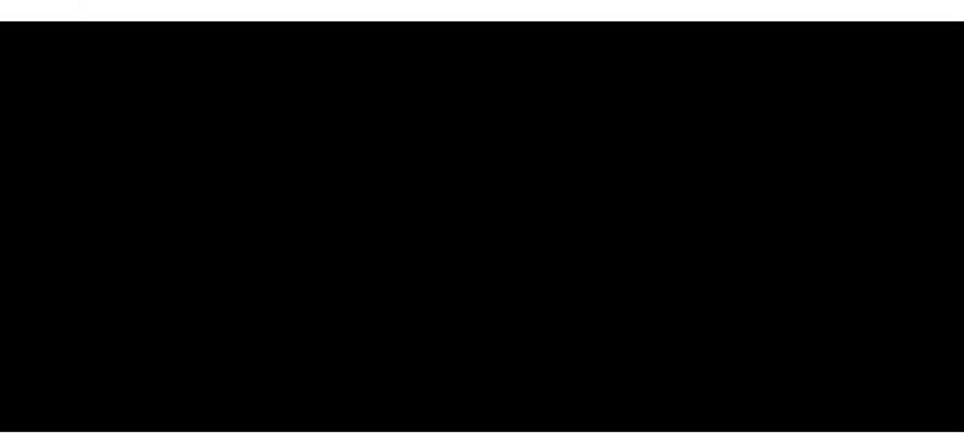
have them securitised so have a vested interest in retaining the customer and will not willingly agree to a customer moving on.

27.At 2.39 the Government claims the exit of RLO’s will support further lending but fails to give a suitable alternative to ensure lenders promote the correct product to SME’s and farmers, not the one that promotes the most profit for the bank and through the banks securities, gradually liquidates the customers assets to the bank, by excessive lending costs and transfers between interest bearing accounts to the most returning value for the lender. How does the government propose to address this problem which RLO’s has virtually made impossible in housing?

28.Claims and facts at 2.41 by lenders at this time of extreme circumstances is the best way because it worked during the pandemic. Clearly this is not a period of normal growth or trading so the exceptional circumstances were justified, however there is no description of the facilities and how they will continue to be serviced as servicing is not of interest if RLO is removed. Of course, without financial responsibility the lenders will lend the funds out and get them back sometime without fear.

29.At 2.42 the objectives of the legislation are defined but places a false sense of integrity on both borrowers and lender and ignores the fact lenders make their profit from lending money and many borrowers are desperate and at risk of failure because of the practices of their lenders. E.g., Westpac refused funding in Rural industry in about 2010 what happened to most farmers and did the Government step in to provide a resolution or just ignore the problem for the individuals with renewal of facilities blocked. Government does not have a good record in facing finance problems when they emerge for customers only for bankers. Repayment for a lender does not mean repayment during the life of the loan, it can be repaid in many ways including recoveries and the sale of the customers only asset and home. Which is the main bankers’ objection to RLO.

30.The Government can if required legislate all loans with government security under the economic recovery conditions can avoid RLO and leave other lending as already exists. In that short cut any changes that would naturally occur when conditions return to pre recovery lending.



Lynton Freeman MBA (Adv), MIL, Dip Agric, RBM., GLPC, CPAg.

31.1.2021



## THE GLOBAL ECONOMIC CRISIS

## An Accident Waiting to Happen: Option Reset Adjustable Rate Mortgages

Option reset adjustable rate mortgages (ARMs) give the borrower some choices regarding the initial monthly payment. One popular option ARM allowed borrowers to make a monthly payment equal to only half of the interest due in the first month. Because the monthly payment was less than the interest charge, the loan balance grew each month. When the loan balance exceeded 110% of the original principal, the monthly payment was reset to fully amortize the now-larger loan at the prevailing market interest rates.

Here's an example. Someone borrows \$325,000 for 30 years at an initial rate of 7%. The interest accruing in the first month is  $(7\%/12)(\$325,000) = \$1,895.83$ . Therefore, the initial monthly payment is  $50\%(\$1,895.83) = \$947.92$ . Another \$947.92 of deferred interest is added to the loan balance, taking it up to  $\$325,000 + \$947.92 = \$325,947.82$ . Because the loan is now larger, interest in the second month is higher, and both interest and the loan balance will continue to rise each month. The first month after the loan balance exceeds  $110\%(\$325,000) = \$357,500$ , the contract calls for the payment to be reset so as to fully amortize the loan at the then-prevailing interest rate.

First, how long would it take for the balance to exceed \$357,500? Consider this from the lender's perspective: the lender initially pays out \$325,000, receives \$947.92 each month, and then would receive a payment of \$357,500 if the loan were payable when the balance hit that amount, with interest accruing at a 7% annual rate and with monthly compounding. We enter these values into a financial calculator:  $I = 7\%/12$ ,

$PV = -\$325,000$ ,  $PMT = 947.92$ , and  $FV = \$357,500$ . We solve for  $N = 31.3$  months, rounded up to 32 months. Thus, the borrower will make 32 payments of \$947.92 before the ARM resets.

The payment after the reset depends upon the terms of the original loan and the market interest rate at the time of the reset. For many borrowers, the initial rate was a lower-than-market "teaser" rate, so a higher-than-market rate would be applied to the remaining balance. For this example, we will assume that the original rate wasn't a teaser and that the rate remains at 7%. Keep in mind, though, that for many borrowers the reset rate was higher than the initial rate. The balance after the 32nd payment can be found as the future value of the original loan and the 32 monthly payments, so we enter these values in the financial calculator:  $N = 32$ ,  $I = 7\%/12$ ,  $PMT = 947.92$ ,  $PV = -\$325,000$ , and then solve for  $FV = \$358,242.84$ . The number of remaining payments to amortize the \$358,242.84 loan balance is  $360 - 32 = 328$ , so the amount of each payment is found by setting up the calculator as:  $N = 328$ ,  $I = 7\%/12$ ,  $PV = 358,242.84$  and  $FV = 0$ . Solving, we find that  $PMT = \$2,453.94$ .

Even if interest rates don't change, the monthly payment jumps from \$947.92 to \$2,453.94 and would increase even more if interest rates were higher at the reset. This is exactly what happened to millions of American homeowners who took out option reset ARMs in the early 2000s. When large numbers of resets began in 2007, defaults ballooned. The accident caused by option reset ARMs didn't wait very long to happen!

adjusted for inflation, and use it for I/YR when finding the payment for an annuity due. (3) Use a relatively complicated and obtuse formula to find this same amount.<sup>23</sup> We will focus on the first two approaches.

<sup>23</sup>For example, the formula used to find the payment of a growing annuity due is shown below. If  $g$  = annuity growth rate and  $r$  = nominal rate of return on investment, then

$$PVIF \text{ of a growing annuity due} = PVIFGA_{DUE} = \{1 - [(1 + g)/(1 + r)]^N\}[(1 + r)/(r - g)]$$

$$PMT = PV/PVIFGA_{DUE}$$

where PVIF denotes "present value interest factor." Similar formulas are available for growing ordinary annuities.