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FORECLOSURE PROBLEMS AND SOLUTIONS: FEDERAL, STATE, AND LOCAL EFFORTS TO ADDRESS THE FORECLOSURE CRISIS IN OHIO

FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON
HOUSING AND COMMUNITY OPPORTUNITY

OF THE

COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

JUNE 16, 2008

Printed for the use of the Committee on Financial Services

Serial No. 110–120

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FORECLOSURE PROBLEMS AND SOLUTIONS: FEDERAL, STATE, AND LOCAL EFFORTS TO ADDRESS THE FORECLOSURE CRISIS IN OHIO

Monday, June 16, 2008

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON HOUSING AND
COMMUNITY OPPORTUNITY,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:30 a.m., at the Joseph E. Cole Center for Continuing Education, Cleveland State University, 3100 Chester Avenue, Cleveland, Ohio, Hon. Maxine Waters [chairwoman of the subcommittee] presiding.

Members present: Representatives Waters and Kaptur.

Also present: Representatives Wilson, Kucinich, Tubbs Jones, and Sutton.

Mrs. TUBBS JONES. I am Stephanie Tubbs Jones. I am the Congresswoman for the 11th Congressional District of Ohio. I would like to welcome you to the 11th Congressional District and please join me in welcoming my colleague from California, our chairwoman, Maxine Waters, and my colleagues from across the State of Ohio for this significant hearing.

We are being hosted today by another alma mater of mine, Cleveland State University. And I would like for you to join me in welcoming the president of Cleveland State University, President Michael Schwartz.

Mr. SCHWARTZ. Thank you, Congresswoman Tubbs Jones, and welcome, Chairwoman Waters. We're glad to have you and all members of this delegation here for a conversation about probably one of the two most pressing problems facing this entire Nation, and I hope that this turns into an important learning experience for all of you who have come here today.

The Maxine Goodman Levin College of Urban Affairs is probably the premiere college of urban affairs that studies issues of housing and matters of predatory lending and so on. And so it's really quite fitting that this hearing be held on a campus so devoted the amelioration and solution of issues like this.

Having said that as the University's president, I will try to do something reasonably intelligent and get out of the way of the real business that you're here for today. Thank you.

Mrs. TUBBS JONES. Thank you. Madam Chairwoman.

Chairwoman WATERS. This hearing of the Subcommittee on Housing and Community Opportunity will come to order.

Good morning, ladies and gentlemen. I would like to start by thanking Dr. Michael Schwartz, president of Cleveland State University for allowing us to use this space for today's hearing on "Foreclosure Problems and Solutions: Federal, State, and Local Efforts to Address the Foreclosure Crisis in Ohio." The University has also kindly allowed us to use some additional rooms to conduct a foreclosure workshop where local housing counselors, Legal Aid groups, and mortgage servicers are available to work with borrowers trying to avoid foreclosure.

I would especially like to thank our Ohio Representatives here today for requesting that I hold a field hearing focused on the foreclosure crisis and responses to it in the State of Ohio. Your Representatives have been a powerful, persuasive voice in Congress on behalf of Ohio's residents and neighborhoods, which have been devastated by subprime lending and the turmoil that has spread through the mortgage markets, and, eventually, the entire economy. In fact, I can attest that every Ohio Member sitting beside me today has played an extraordinarily active role in the Federal response to this crisis.

Representative Kaptur has been a persistent voice in our Democratic caucus for taking bold action on the foreclosure crisis generally, and for holding this field hearing in particular. Representative Kucinich, in his role as chairman of the Domestic Policy Subcommittee of the Government Oversight and Reform Committee has painstakingly examined the causes and characteristics of this growing problem, including holding a joint hearing with my subcommittee less than a month ago which focused on how best to target Federal aid to neighborhoods and communities facing block after block of foreclosed and abandoned properties. The Ohio delegation's efforts to address the crisis have been bipartisan, with Representatives Kucinich, Wilson, Pryce, and LaTourette—who wanted very much to be here today. I hope that Representative Pryce will join us—some did advise us that they would have unavoidable conflicts. They have also worked to contribute key amendments to the bill I introduced, H.R. 5818, the Neighborhood Stabilization Act of 2008. That bill, H.R. 5818, would provide $15 billion in grants and loans, with over $800 million of this amount to the State of Ohio, for the purchase, rehabilitation, and resale or rental of foreclosed and abandoned properties. My Judiciary Committee colleague Representative Sutton joined us in an effort to make sure that bill passed the House. And all of us here are working diligently to see that these critical resources are retained as our chamber negotiates with the Senate on the elements of the foreclosure rescue package that will eventually make it way to the President's desk, and hopefully that will be done by July 4th.

Last, but certainly not least, I want to thank Representative Stephanie Tubbs Jones, not only for the tremendous logistical support her office and her staff have provided to the subcommittee in putting this hearing together, but also for really opening my eyes to the scope of the foreclosure problem here in Ohio almost 2 years ago. I was here working on a campaign, and she asked if I was coming to a town hall meeting that residents had organized who were very angry about the fact that there were so many abandoned houses in their neighborhood. This is long before Members of Con-

gress and others understood what was happening with the foreclosure problem.

I saw residents who were upset that their neighborhoods had so many abandoned homes, the grass was overgrown, and the copper had been stripped out. They were asking for answers, and nobody had answers because no one really understood what this was all about. But it was because of her that I began to pay a lot more attention and I want to thank her for that today. Thank you very much.

Because of the challenges it has faced economically over the past few years, with the loss of manufacturing jobs and population from certain parts of the State, Ohio was truly the "canary in the coal mine" of the foreclosure crisis, vulnerable to subprime lending and its aftereffects much earlier than the rest of the Nation.

Ohio has contended with rising foreclosures since 1995. According to Policy Matters, from whom we will hear today, the number of foreclosures in Ohio has quintupled since that year. Ohio has consistently ranked in the top five States monthly in foreclosure filings during the recent crisis. In May of this year, the State ranked 7th nationally, with 12,295 foreclosure filings, or 1 filing for every 410 households.

As the senior member of the Financial Services Committee from California, which has been ranked first or second in foreclosures for most of the past year, I can certainly confirm that the rest of the Nation is confronting the problems that Ohio has grappled with for some time. Foreclosure filings in May are up 7 percent from April, and fully 48 percent from a year ago. Over 260,000 properties received foreclosure filings last month, or 1 in 483 U.S. households.

Today, we are here to learn about where things stand in addressing these problems, specifically, the impact of existing and potential Federal, State, and local efforts to prevent further foreclosures and to help stabilize neighborhoods that have already seen too many of them. I am here primarily to learn, so I will turn things over shortly to my Ohio colleagues and the witnesses. I will close, however, by noting that I am particularly interested in two issues. First, I would like to know whether Ohio stakeholders believe that the recent actions taken by the House of Representatives, including passage of the Neighborhood Stabilization Act as well as a broad housing rescue package that proposes a greatly expanded role for the FHA and the GSEs in preventing further foreclosures, might be helpful to them if enacted into law.

Second, I would like to hear specifics about the efforts of the major mortgage servicers in the State to engage in loss mitigation. Unfortunately, the data provided by the voluntary mortgage industry loss mitigation initiative, HOPE NOW, have been incomplete and opaque, and I'm not the only one say that. Treasury Secretary Paulson and, more recently, the Office of the Comptroller of the Currency, have expressed similar concerns. But the figures HOPE NOW does provide, coupled with feedback from constituents facing foreclosure and counselors or attorneys helping them, continue to trouble me. For example, of the 1.5 million loan workouts HOPE NOW members have executed since July 2007, fewer than one third have been loan modifications. The rest are repayment plans, which can often just postpone the day of reckoning on a subprime

adjustable rate mortgage, or so-called "ARM" loan. Indeed, of the over 600,000 subprime ARMs scheduled to reset in the first 4 months of 2008, less than 3 percent received loan modifications from HOPE NOW members of 5 years or longer, the loss mitigation approach recommended by many, including FDIC Chairwoman Sheila Bair, one of the few regulators to sound the alarm early in this crisis. And the stories I have heard from distressed borrowers and their representatives at previous field hearings and town halls in my own district suggest that engagement with members of the HOPE NOW Alliance is neither as smooth nor as productive as the Alliance's press releases and testimony before Congress suggest.

For this reason, I introduced H.R. 5679, the Foreclosure Prevention and Sound Mortgage Servicing Act, which would require mortgage servicers to engage in reasonable loss mitigation. In particular, the bill would force them to focus on providing loss mitigation offers that are affordable to the borrower for the long term, something we don't know with respect to any HOPE NOW loan workout, be it a repayment plan or a loan modification, because the Alliance members don't report the affordability standards they use.

I am looking forward to hearing from the witnesses about mortgage servicers' work here in Ohio, as well as in local and State government efforts to prevent foreclosures and address the foreclosed and abandoned properties problem.

Representative Wilson and I are regular members of the subcommittee present today, but I would like to ask unanimous consent that each of the Members of Congress attending be considered part of the subcommittee for the purpose of today's hearing. Without objection, it is so ordered.

I would like to recognize our subcommittee members for their opening statements. I will be alternating the parties and the subcommittee members. We do not have some of our members here today who serve on the committee, but we will start with Congressman Wilson, who is recognized for 3 minutes.

Mr. WILSON. Thank you, Chairwoman Waters, for convening this field hearing today, especially here in the State of Ohio.

I truly appreciate all that you have done to help put an end, or certainly the beginning of the end, to this foreclosure crisis. I'm happy that you chose to hold a hearing here in my State to get a better view of what is going on, on the ground.

I also want to thank my Ohio colleagues, especially Congresswoman Pryce and Congressman LaTourette who are on the committee with me. I am proud to have worked with them on the housing legislation produced by our committee this year. Together, we were able to bring more money and more help home to Ohio.

Today's hearing is particularly significant. As the Financial Services Committee continues to work on this crisis, it is important to look at our State. Ohio suddenly became one of the Nation's worst home-loan default zones last year with an 88 percent spike in foreclosure proceeding.

Ohio filings included about 90,000 properties, with some of the properties generating multiple court entries as they moved through the foreclosure process in 2007. That represents nearly 2 percent of all Ohio properties. By almost every measure, the outlook for Ohio is bleak.

But there is good news. I would like to take this opportunity to highlight some of the innovative steps that our State has taken to address this issue.

In Governor Strickland's first few months in office, he formed a Foreclosure Prevention Task Force and charged this diverse group with developing recommendations to address various stages of the foreclosure process. Since the release of the recommendations in September, administrative officials and our State legislature have worked diligently to address many of these recommendations. Recently, Governor Strickland and Ohio's Director of Commerce, Kim Zurz, announced that nine mortgage loan servicers agreed to sign the "Compact to Help Ohioans Preserve Homeownership." It is the first agreement of its kind in the Nation. The document is a pledge by servicers that they will work with the State in making every possible attempt to prevent default loans and foreclosures in Ohio.

The principals agreed to include a willingness to engage in a substantial and large-scale loan modification effort for adjustable rate mortgage resets and subprime mortgages. That is something that Congress is working to provide Federal insurers if lenders are willing to take a haircut. The agreement also encourages good-faith attempts to contact at-risk or defaulting borrowers as soon as possible. It also creates an incentive for staff and foreclosure counsel to modify loans rather than foreclose.

These steps taken by the State of Ohio are vitally important, but now they need a boost from Congress. We are working on that. The House has passed a two-part housing package that would first include loans and grants for States to help keep families in their homes in flexible ways that are best for that State also. The second part is a voluntary program that would permit FHA to provide up to $300 billion in new guarantees to help refinance 1.5 million at-risk borrowers. I am happy to have worked on these bills when they came through our committee.

Congresswoman Pryce, Congressman LaTourette and I have worked together to modify the funding formula of the first part of the House package resulting in loans and grants worth millions more for Ohio.

In addition, I was able to include demolition as one of the ways that our State could use these loans and grants. Now States will be able to clean up the blight, help families stay in their homes and rehabilitate long-vacant and decrepit housing. States will be able to stabilize entire neighborhoods that are hurting because of foreclosures.

This was particularly important in Ohio because many foreclosed homes have been empty for a long period of time. Many of them have been stripped of their copper piping and other valuable parts. To rehabilitate such homes is often more expensive than demolishing them. And in fact, in many pockets of my State, we have homes that are no longer needed because of the population decline.

I look forward to hearing from Matthew Stefanak today. He really helped me understand how blight can affect an entire neighborhood. He has been an real asset to us and I appreciate that.

In closing, I would simply like to praise Governor Strickland and his team once again, and encourage Congress to act expediently, and to leave you with one final thought: I believe we need to get

back to our roots and the fundamentals that have been so successful to the people of Ohio in the past.

Many years ago, when I was on a bank board, you loaned to those who would be able to pay the loan back. You kept an eye on those in trouble and you reached out when it looked like they needed help. I believe that many in Ohio have kept to those standards. But I also believe that many need to get back to those standards.

I look forward to hearing the testimony from our panelists today. Thank you.

Chairwoman WATERS. Thank you very much. Congresswoman Kaptur.

Ms. KAPTUR. Thank you very much, Chairwoman Waters. On behalf of our entire Ohio delegation, thank you for accepting our invitation to come to Ohio to conduct one of the most important hearings your committee has held outside of the Nation's capital. It's a joy to be with our colleagues as well and we selected Cleveland because we know it is it Ground Zero in mortgage foreclosure challenges facing our great Buckeye State.

Our State provides a telling picture of what is a recurring problem in our Nation, the largest washout of private savings in the form of home equity in half a century. Pew Charitable Trusts estimate that just in the next 2 years, the loss in property values will total over $356 billion, and that the cost of this is really well over $1 trillion in the washout coast to coast. Nationally, 9 million homeowners now owe more on their mortgage than their home is worth, the largest share since the Great Depression. In fact, for the first time since World War II, net home equity is now negative, that is below 50 percent. That is to say that as a whole, Americans now owe more on their homes than they are worth. This is an enormous loss of real wealth that affects not just the homeowners, but our Nation as a whole. For the first time ever, the securitization of these mortgages into the international capital market both fueled and masked this risky process.

The effect has been to make our Nation and its banks more dependent than ever on foreign borrowing and infusions of foreign capital. America is now is now a debtor Nation both publicly and privately.

When a homeowner can't make ends meet they lose their homes. But when a giant firm like Bear Stearns can't make ends meet due to this crisis, the Chairman of the Federal Reserve and the Secretary of the U.S. Treasury get involved. Billions of dollars of capital from foreign places such as Abu Dhabi are found to fill the gap, mergers of banks expeditiously and the Fed opens its New York window with our taxpayers becoming the insurance company of last resort pledging the full fees and credit of the United States not just to the big banks, but for the first time, to brokerages as well.

Will ordinary homeowners in our Nation ever be afforded equal attention by the Fed and the Treasury? It does not appear to be so with the rate of foreclosures and bankruptcies rising every month.

I want to thank all of those who are working so hard to pick up the pieces, but we will note that large shares of the cost of this crisis are being shifted to the public sector, to the taxpayers. And I would like to enter this opinion for the record and provide addi-

tional material as attachments. Congress must get tougher in its own investigations of what brought America's financial system to this predicament. An equity washout of this magnitude does not happen by spontaneous combustion. It was willed to happen.

Specific people in specific places set the pieces in place to allow this to proceed. Many of them have been handsomely rewarded. America needs to know who they were and are; I believe Congress should authorize a full independent investigation into the roots of this crisis and trace back the unstable period following the savings and loan crisis in the late 1980's. The development of the international mortgage securitization instrument itself deserves more attention. In effect, this became a clever and high-risk credit device with little transparency that acted like a bank. It created money or at least the illusion of it in a Ponzi-like scheme or manner and it did so without the normal regulatory restraint of full accounting and proper examination. How could the national regulators let that happen?

Well, the first institution to embark on subprime lending was Superior Bank of Hinsdale, Illinois, ultimately bought by Charter Bank here in Ohio. Superior Bank was created out of the Resolution Trust Corporation. By the late 1990's, Superior's return on assets was 7.5 times the industry average. It held a very different portfolio. It had a CAMEL rating of 2, yet its executives were financially rewarded for presiding over ruin. No Federal regulator stepped in to properly examine the institution. Why? Where was the Office of Thrift Supervision? What happened to appraisal and underwriting standards? Assuming many of these loans were moved to market through Freddie Mac and Fannie Mae, why is it their standard and HUD's regulatory oversight fall short? How were their boards and executives compensated during those years when risky practices proliferated? Which board members and which financial institutions and brokerages, regulators, and secondary market bodies allowed these risky and predatory policies that escalated this equity draw down?

Do we have any evidence that any of those board members personally benefitted from their board decisions? Through which domestic and international institutions were the original securitizations approved? Which persons did it? Which regulatory agencies sanctioned the process? What role did the U.S. Secretary of the Treasury, the Securities and Exchange Commission, and the Federal Reserve play in allowing these practices to flourish?

I find it troubling, for instance, that even when it became known that firms like Countrywide had done great damage to the mortgage market, the Federal Reserve maintained them as one of a handful of primary Treasury security dealers. Who and which firms created the very first subprime loan and rolled it into an international mortgage securitization instrument? What set of individuals were involved in moving it and clearing it to market? Frankly, Congress doesn't know.

Where are the audit trails for the thousands of those subprime loan transactions that international securitizations? Congress doesn't know.

In 2001, the Federal Deposit Insurance Corporation placed the largest fine in American history, $450 million, on Superior Bank.

Though we know—and I'll be ending here, Madam Chairwoman, with two sentences, though we know what Superior and what Merrill Lynch were involved in, in moving securities paper, we do not know which third parties were involved in packaging it, their fees, and how that paper was moved into the international market. For a crisis of this proportion, the American people have a right to know the whole story.

I'm here to learn from the witnesses today what Congress can do to help remedy the current crisis, but also trace its roots to avoid a further raid on the private savings of America's homeowners.

Chairwoman WATERS. Representative Kucinich.

Mr. KUCINICH. I wanted to thank Congresswoman Kaptur for that very wise and perceptive commentary on this situation. And you, Madam Chairwoman, for your work which has been exemplary and enormously helpful on behalf of every American, your experience as a community organizer, as someone who has come through the political process. And I want to thank you for bringing us together here in Cleveland, Ohio.

I have here, without objection, Madam Chairwoman, a statement for the record from Congressman LaTourette. Congressman LaTourette is scheduled for a tour of Ashtabula Harbor with the Commandant of the Coast Guard and he is with the Commandant right now and he asks that this statement be entered.

Chairwoman WATERS. Without objection, it is so ordered.

Mr. KUCINICH. Thank you, Madam Chairwoman. Mr. Delfin, who is our staff attorney, is going to be assisting us as I go through these maps which will tell the story.

Cleveland is at the epicenter of the national problem of foreclosure. Last year, the Center for Responsible Lending projected that one out of five subprime mortgages originated during the previous 2 years will end in foreclosure. These foreclosures will cost, at a nationwide estimate, homeowners as much as $164 billion. This is a massive transfer of wealth.

Here in Cleveland, we can already see the damage. This series of maps illustrates the problem here in Cuyahoga County.

Look at the first map. This is where depository banks made loans in 2005. You see the sideways "V" highlighted in light green. Let me tell you what that geographical area represents. It is the area in the City where the depository banks made very few prime loans.

Now look at the next map of subprime loans made in 2005. It is highlighted in reds and oranges. These are subprime loans. Look at the "V." This is where the highest number of subprime mortgage loans were made during the same year.

Now look at the next map. Again, you see the same "V" pattern and the same place. Here, the red dots indicate the number of foreclosures in the first 10 months of 2006. These maps tell you that there is a clear and self-reinforcing correlation between the low number of prime loans, the high number of subprime loans, and the high number of foreclosures.

Now look at this next map. Again, the familiar sideways-lying "V" shape. But here the foreclosures, indicated by blue dots, are superimposed on the neighborhoods. Red indicates predominantly African-American neighborhoods. Again, we see a perfect match.

The next map shows the relationship among high-cost mortgage loans made to investors in 2006, increases in vacant homes in 2007 and 2008, and high minority population based on the 2000 census. Again, we see the sideways "V," but we also see increases in high-cost loans and vacant properties in the outer suburbs and outlying counties.

The last map highlights only the census tracts with all three factors: the highest cost mortgages, the greatest increase in vacant properties, and the highest minority populations. We still see the sideways "V," but where previously the phenomenon was mainly in African-American census tracts in eastern Cuyahoga County, we see the problem spreading west to census tracts with larger Hispanic and Arab populations. Now, it looks more like a diagonal "T," spreading in every direction it can spread in Cleveland—east, south, and now west.

Lack of access to prime loans, a high frequency of subprime loans, and a high rate of foreclosures are by no means specific to any racial group, but the pattern with respect to the African-American community certainly carries a whiff of America's bleak past.

Now how did our City get to this point?

The Domestic Policy Subcommittee, which I chair, has initiated a broad-reaching examination of the predatory mortgage and subprime lending industries, and the Federal regulators overseeing the Nation's banking industry. As part of that effort, the Domestic Policy Subcommittee intervened in a major bank merger in Ohio between Huntington Bank and Sky Financial. We asked the Federal Reserve Bank of Cleveland, which is the primary regulator, to expand the public comment period and to hold a public hearing. Instead of giving the merger greater scrutiny in light of the mortgage crisis and particularly this phenomenon in Cuyahoga County, the Federal Reserve and the Office of the Comptroller of the Currency rubber-stamped the merger based on the banks' self reporting of Community Reinvestment Act compliance.

As a result of that merger, we see more depository bank closures in low- to moderate-income communities, including Euclid and Cleveland here in Cuyahoga County, as well as Canton, Grandview, Lima, New Philadelphia, and Revanna. And as we can see from the newest data, the problem is getting worse.

Madam Chairwoman, because of the Waters Amendment which you drafted to the Banking and Branching Efficiency Act of 1994, the City of Lima, Ohio, held a meeting to determine what actions must be taken due to the Huntington bank branch closing there. Last week, a similar meeting was held in Cleveland due to the Huntington branch closings in Cleveland and Euclid. We don't know what, if any, result will come of these meetings with the Federal Reserve, the Office of the Comptroller of the Currency, and the Nation's and State's other bank regulators, banks, and community representatives. However, with your leadership and understanding of the problems facing our cities nationwide, and particularly here in Ohio, the Waters Amendment was able to be invoked so we can pay attention to its effectiveness where more depository bank branches have been closed in low- to moderate-income communities. It is now up to us to listen carefully to what the witnesses today say about the crisis in Ohio and to find ways to supplement

the mandate of our Nation's regulatory agencies where necessary to get out of the current crisis and avoid similar ones in the future.

Again, I want to thank you, Madam Chairwoman, and I do want to say that I know that your whole life is about fairness and equity. We have to find a way to bring about some kind of equity for good people who had everything they worked their lifetime for stolen from them by unscrupulous lending and sharp mortgage practices. I think if this committee can do anything, we need to delve very deeply into who precipitated, who made the money, and to see if there's any way that we can find remedies for people who have been cheated out of their dream of a lifetime.

I thank the Chair again, and I look forward to hearing the testimony.

Chairwoman WATERS. Thank you very much.

Congresswoman Tubbs Jones.

Mrs. TUBBS JONES. Good morning, again, and thank you, Madam Chairwoman. When I first came to Congress, I served on the Financial Services Committee, and she was the ranking member on the Housing Subcommittee at the time. Now she chairs that subcommittee and we continue to move forward to try to accomplish things within our community.

Before I go any further, I am joined by a number of my elected official colleagues from across my Congressional District. I am going to ask those who are here to kindly stand because their communities need to know the fact that you are here in support. Zach Reed from the City of Cleveland, I see Council Member Brian Cummins, West Side, City of Cleveland. I see the Mayor of the City of South Euclid, Georgine Welo. I see the President of the City Council of East Cleveland, Gary Norton. I see the Councilman from Ward 18, Jay Westbrook. Thank you all for joining us this morning. This is an issue that we have been paying attention to throughout Cuyahoga County.

I know that there are other people who are represented here from the AGs Office, Ed Krause and Nancy Rogers on behalf of AG Nancy Rogers. And the list goes on. I thank you very much for being with us today.

I want to say that in the City of Cleveland, we have been paying attention to predatory lending for a long time, but no one was hearing us. In 2001, I introduced a piece of legislation called the Predatory Lending Reduction Act of 2001, trying to focus in on brokers who were not telling people that they represented a company and got a commission, and brokering these foreclosures. I knew that if I shamed the financial district, then people would start paying attention to predatory lending.

I also recall in yesterday's Plain Dealer an article about the impact and I want to celebrate my colleague, Jim Rokakis, the Treasurer of Cuyahoga County. We know that school systems are going to suffer as a result of reduction in dollars coming into, captured as a result of —

We also know that next generations are going to suffer because working class families pass homes from one generation to the next to give their kids a start. These days there won't be homes to transfer from one generation to the next.

I could go on, but I have a statement, Madam Chairwoman, that I seek unanimous consent to have placed in the record. I am just so thankful that you came up here.

There are a lot of organizations that have been working consistently around this issue such as the Ohio Credit Union, and the Eastside Organizing Project Housing Advocates.

Cleveland Housing, I just thank you for your diligence. The Legal Aid Society, all of you. We have to continue fighting on behalf of the people that we represent and get this fixed. I am pleased to say that a little piece of that 2001 predatory lending legislation I introduced got included in recent legislation that was introduced by my colleague, Maxine Waters, and the chairman of the Financial Services Committee, Barney Frank. We have to be consistent. We have to make our communities stay in place.

Thank you, Madam Chairwoman. Thank you for bringing this home to us and focusing in on the State of Ohio and all my colleagues. It is nice to see all of these Members of Congress right here.

Thank you.

Chairwoman WATERS. Congresswoman Betty Sutton.

Ms. SUTTON. Thank you very much. Thank you for inviting me to participate here today and I would like to recognize the strong leadership of Chairwoman Maxine Waters on this issue. Chairwoman Waters has been a tremendous advocate during her whole career for working families, and with the crisis that we face, this has been no exception. She has been stellar.

I also want to thank my other colleague, Representative Tubbs Jones, for hosting this event and Cleveland State as well.

The foreclosure crisis has been devastating for Americans all across the country, from all walks of life. Just recently, one of my staff members told me of an experience he had right in our office building. When he entered into an elevator, and as they rode on the elevator between the floors, there was a woman who got on and she started to sob and my staff member, being the great caseworker that he is, he reached out and asked her if he could be of assistance and asked her what was wrong. She conveyed to him that she was on her way to sell her wedding ring to try and make the house payment to save her house from foreclosure. And then not long after that, I received an e-mail from a person whom I had come to know who has been actively involved in the community, a woman who had a job, but lost her job, and is actively trying to find a job that will help her make ends meet. The e-mail said that she had done some art work in her spare time, paintings, and didn't really want to sell them, but she was going to try to find some people who might be interested in buying them. So people are trying and I am the proud owner of some of her artwork, by the way.

Statistically speaking, in recent months, this crisis of historical portions, the Mortgage Bankers Association recently released numbers showing that more than a million homes are in foreclosure, which is the highest number reported since they began collecting those statistics in 1979.

RealtyTrac on Friday released numbers showing that for 29 straight months, foreclosure rates have seen a year-over-year in-

crease nationwide. And yet economic experts predict sadly that we haven't seen the worst of it yet.

Ohio has consistently been at the forefront of this crisis, as the chairwoman rightfully points out. We are the canary in the coal mines. We see a massive exodus of manufacturing jobs that have long been the backbone of this State's economy. Food prices and fuel prices keep going up and families who were already struggling to make ends meet are now at that breaking point. The credit crisis which has been discussed here has made it difficult for families to purchase new homes or to refinance old loans. And all of these factors can compound the problem and create a spiral effect that's difficult to break out of.

Although the figures from RealtyTrac released last Friday show that the number of foreclosure filings in Ohio have declined by 7 percent, the State still has the dubious distinction of ranking 9th in the area nationally; 50 to 60 percent of homeowners who received a foreclosure filing will eventually lose their home. That has to change. That translates into a staggering human and economic cost.

In many respects we are still in unchartered territory and the types of actions necessary to mitigate the crisis will require solutions that move beyond what we have now come to know and embrace.

Too often Federal, State, and local governments operate in their own spheres. What we are facing is unlike anything we have ever faced before and it will require innovative new ways to address the problems of those we represent. That is why I am so happy to see so many people from various levels of our government here today to help become part of the solution, a part of this charge that will overcome this challenge, including the housing advocates and the advocates who are out there being stricken so hard by the consequences of our plight.

We're fortunate to come from a State where we have leaders who are willing to face this head on. The Ohio Foreclosure Task Force that the Governor set up generated a number of excellent recommendations, one of which was the basis for an amendment that I was able to include in H.R. 3915, which passed, as you have heard, last December.

I am also proud that the Ohio legislature quickly acted to curb the predatory lending practices that played such a major role in precipitating this crisis. And as you have heard, we're also working on solutions at the Federal level and we have to do more. The need is great, the challenge is enormous. We have to do everything we can to overcome this crisis because the wellbeing of so many families in all of our communities, and frankly, the health of our Nation depends on it. In the House, we have passed a number of mortgage foreclosure related bills such as the Neighborhood Stabilization Act, FHA Stabilization, and the Homeownership Retention Act. And these bills provide funds to cities and States to purchase and rehabilitate vacant homes and provide new refinancing mechanisms through the Federal Housing Administration, both of which are critical in northeast Ohio.

We still have significant challenges and I know I'm not telling you anything new for those of you who are in this room. These

challenges lie ahead and that is why today's hearing is so important.

Again, I thank the distinguished committee and I thank the distinguished witnesses for being here today and all of you gathered because I know you are here because we're looking for solutions.

Thank you.

Chairwoman WATERS. Thank you. At this time, I would like to introduce our first panel: Mr. Engram Lloyd, Director, Philadelphia Homeownership Center, U.S. Department of Housing and Urban Development; Ms. Kim Zurz, director, Department of Commerce, State of Ohio; Mr. Chris Warren, chief of regional development, Office of the Mayor of Cleveland, Ohio; Mr. Antony Brancatelli, councilman, City of Cleveland; Ms. Tina Skeldon Wozniak, president, Lucas County Commissioners; Mr. Matthew Stefanak, commissioner, Mahoning County Health Department; and Ms. Patricia Kidd, executive director, Lake County Fair Housing Resource Center.

I thank you all for appearing before the subcommittee today and without objection, your written statements will be made a part of the record. You will now be recognized for a 5-minute summary of your testimony, and we will start with Mr. Lloyd.

STATEMENT OF ENGRAM LLOYD, DIRECTOR, PHILADELPHIA HOMEOWNERSHIP CENTER, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. LLOYD. Thank you, Chairwoman Waters. I appreciate the opportunity to speak to you today on behalf of Steven Preston, the Secretary of the U.S. Department of Housing and Urban Development. I am Engram Lloyd, Director of the Philadelphia Homeownership Center.

The significant effects of foreclosure on our national economy and on world markets bring us here today. Congress and the Administration have for some time been looking at legislative and regulatory options for minimizing foreclosures. At HUD, I can report that we are working on both in our efforts to mitigate the adverse effects of this market correction on borrowers.

One of the strongest tools we have to protect both borrowers and markets is the Federal Housing Administration. As you may know, FHA helps individuals secure credit by providing mortgage insurance through a private sector distribution network that makes owning a home more affordable and safe and, therefore, a reality for many borrowers that might otherwise go unserved.

Several times in testimony before Congress last year, HUD witnesses stated that many of those who ultimately entered the subprime market would have been better off with an FHA-insured loan. Many may still be eligible to refinance today. Although we cannot go back in time to ensure that each borrower made the best decision when obtaining a mortgage, we can provide refinancing options when obtaining a mortgage for many subprime borrowers. And we can do more to help people make better decisions and we can provide new financing options to many subprime borrowers and we can do more to help people make better decisions going forward through both innovative products and counseling support.

The Administration has taken decisive action to help responsible homeowners stay in their homes. Last fall, the Administration launched the FHASecure initiative and facilitated the creation of the HOPE NOW Alliance, which together has helped more than a million struggling homeowners.

FHASecure is a refinance option designed specifically for conventional and subprime borrowers who default on their mortgages solely because they can no longer afford the payments on their adjustable rate mortgages after the interest resets to a higher rate.

On April 9, 2008, the Department announced a dramatic expansion of the FHASecure program to help additional borrowers stuck in subprime mortgages, some of whom may owe more on their mortgage than their home is worth. Under the original FHASecure program, FHA modified its refinancing program to help credit worthy homeowners who missed payments after their teaser rate reset. Now, FHASecure has expanded its eligibility standards to cover borrowers with adjustable rate mortgages who were late on as many as 3 monthly mortgage payments over the previous 12 months.

FHA has already helped about 250,000 people refinance into safer mortgages and with these additional changes, FHA is expected to help approximately 500,000 homeowners refinance by the end of the year.

One of the goals of the HOPE NOW Alliance was to develop and fund a nationwide advertising campaign to encourage delinquent borrowers to seek help through the 888–995–HOPE network of HUD-approved housing counselors. HOPE NOW is an alliance among counselors, servicers, investors, and other mortgage market participants. The Alliance maximizes the outreach efforts to homeowners in distress to help them stay in their homes. Its purpose is to reach and support as many homeowners as possible. The members of this Alliance recognize that by working together, they will be more effective than by working independently.

In the fall of 2007, HUD released informational video footage containing foreclosure prevention tips and information for homeowners who are struggling to pay their mortgage. Among other things, the video includes a list of 10 tips on how to avoid foreclosure. I suggest anyone who owns a home or who is in the market to buy a home visit HUD's Web site at www.hud.gov for more information.

Throughout this year, HUD staff and senior officials have sponsored or participated in more than 92 separate homeownership retention events in Ohio including clinics, fairs, targeted mailings, advertising, and joint task forces that reached a combined audience of over one million people. The Philadelphia Homeownership Center, in cooperation with the Ohio congressional delegation, the State of Ohio, and HUD's field offices have conducted housing preservation clinics and foreclosure summits to spread the word about foreclosure prevention alternatives. Participants besides HUD include Fannie Mae and Freddie Mac, various agencies within the State of Ohio, local governments, congressional representatives, housing counseling agencies, lenders, and Realtors. Of these, the most effective have been our Homeownership Preservation Clinics in Cleveland and Columbus, which enabled homeowners to meet

face-to-face with participating lenders, including Wells Fargo, Countrywide, and National City, and were attended by over 1,000 participants. These clinics also enabled on-the-spot counseling sessions with an approved counseling agency.

In addition to these Homeownership Preservation Clinics, staff from the Philadelphia HUD has attended several banking and Realtor conventions.

As you can see, the Department has taken several steps to address foreclosures, but there is much more work to do. Thank you, and I look forward to your questions.

[The prepared statement of Mr. Lloyd can be found on page 397 of the appendix.]

Chairwoman WATERS. Thank you very much. We will now hear from Kimberly Zurz.

STATEMENT OF KIMBERLY A. ZURZ, DIRECTOR, DEPARTMENT OF COMMERCE, STATE OF OHIO

Ms. ZURZ. Thank you, Chairwoman Waters. I appreciate the opportunity to be here on behalf of Governor Strickland and the Ohio delegation to be able to speak to you today about the impact of foreclosures on our State.

The mortgage foreclosure crisis has touched all corners of Ohio. Virtually every county has recorded an increase in foreclosure filings from 2005 to 2008, and has reached the highest level statewide in over 13 years.

We are making concerted efforts here in Ohio to help our citizens, and I would like to tell you a little bit about that today.

We have collaborative efforts crossing all of our branches of government and expanding into the private sector as well. Today, as I explain Ohio's crisis and our innovative efforts to combat foreclosures, I hope you share my perspective, and also that of Ohio's community.

The Supreme Court reported, as you know, 83,230 new foreclosure court filings in Ohio in 2007. That's a high record of over 5 percent over 2006. While we consider the numbers rise and the trends are equally alarming across-the-board according to the reports of the Association of Realtors. We also recognize that we are taking every effort we can to help our citizens stay in their homes.

When we listen to the statistics, we realize the sobering reality of them, but they aren't speaking to the human stories behind each of those mortgage foreclosures and they don't speak to the uniqueness that Ohio has on this issue.

I have attached to our report some of the statistics since 1994 for your review to show that Ohio has been facing this issue for many, many years.

In the last couple of years, some States have just begun their fight. Obviously, Ohio has had its share of economic problems which has contributed to the trend. However, we have also been accounted for in the unscrupulous lending until the passage of Senate Bill 185, the Homeowner Protection Act.

I hope you don't lose sight of the fact that Ohio has been facing this issue for a number of years as Congress continues to work toward legislation to address these issues.

In Ohio, the impact of vacant and abandoned properties varies from one locality to another, from neighborhood to neighborhood, but the impact is just as devastating no matter where it might be. The scale and impact of the problem is some things considered on the level of a natural disaster where emergency assistance from the State and Federal Government that some have compared to that of Katrina. As you visit our neighborhoods, you can see the devastation that we're talking about.

Our cities are trying to do the best that they can to combat the problem. More needs to be done to assist them. Ohio desperately needs the Federal and State actions to help to reduce the impact of the vacant and abandoned properties.

Ohio's response has been vast. On March 7, 2007, shortly after becoming Governor, Governor Strickland established the Foreclosure Prevention Task Force of which I was appointed chairwoman. This is a group that was brought together to provide a unified coordinated statewide effort that would respond to our citizens with the goal of keeping as many people in their homes as possible. We brought together local, State, and Federal government, and housing agency organizations and associations, many of which are here today. We asked them to put their personal agendas on the table and to put their feelings aside and try to work for an overall solution that everyone could live with. This is a group that had to come up with solutions.

We held 11 meetings. We had 22 subcommittee meetings and we had about 6 months to complete our report. We worked on a very short timeline with a great deal of information.

After we had those meetings, and listened to a lot of the testimony, we reported to the Governor on September 10, 2007, with report recommendations of the best ideas and the best approaches we felt Ohio could use to move forward to address the foreclosure problem. We had 27 recommendations and we moved forward on each of those recommendations and took action on each one of those recommendations to date.

The most important piece that the country is talking about and has been recommended and talked about a little bit today was the Compact. The Compact that would help Ohioans preserve their homeownership was signed earlier this year, and we are hoping that the Compact will be something that we will be able to continue to use to help our families be able to work with their mortgage servicers and come to some type of workout of loan assistance as they move forward.

Under the Compact, servicers were asked to take all kinds of measures. They were asked to increase the loan workouts, including adjusting their staff and resources to include major improvement, preventive efforts, and loss of litigation. We have asked that they report to the Department of Commerce on a regular basis. We have asked that they do loan modifications and that they work very diligently to actually contact the borrower. We recognize that the contact piece is the most difficult piece, and many of them tried, but we want to make sure that they understand that it is imperative that they make that extra effort.

In December of this year, I met with servicers and their trade associations to discuss this proposed Compact. We finally agreed on

six principles on which we based the final product. It substantially matched the spirit of our original conversations with the servicers and will help us move forward to come to fruition of the Compact that was actually signed April 7, 2008, by Governor Strickland, myself, and nine of the loan servicers. We will continue to look forward to try to get more folks to join us in that Compact in Ohio. We are seeing that it is having an impact on our citizens and we hope that it is something we will be able to use as an example for others to follow.

We encourage the servicers to join with us to try to help those that are not part of the Compact at this time to join along with us. The more folks we have following our effort, the more helpful it is to our citizens and the more that we can do as we reach out across the State.

We also kicked off what is called Save the Dream. Save the Dream is our new effort for the State that tells you how to contact the State and the State will then help you to get an attorney or a housing counselor and put you in direct contact with your servicer. All the efforts we are making on the State's end are what we can do, but we also need your help.

We need Congress' help on many of the things that you have before you today. Many of the pieces that you talked about are the challenges that we face and if you will be able to move forward with some of those pieces regarding housing counseling, it would greatly impact what we can do here. Our citizens have watched Wall Street be bailed out. They most desperately need to be bailed out. There needs to be help for the citizens of Main Street, not just those on Wall Street.

I thank you for coming here and taking the time to learn about Ohio. Thank you.

[The prepared statement of Ms. Zurz can be found on page 450 of the appendix.]

Chairwoman WATERS. Thank you very much.

Next, we have Chris Warren, chief of regional development, Office of the Mayor of Cleveland.

STATEMENT OF CHRIS WARREN, CHIEF OF REGIONAL DEVELOPMENT, OFFICE OF THE MAYOR OF CLEVELAND, OHIO

Mr. WARREN. Good morning. Thank you, Chairwoman Waters, for bringing this hearing to Cleveland. You're not only welcomed, you are desperately needed because Cuyahoga County, and the State of Ohio is trying to recover from the devastation caused by unchecked predatory lending practices. This has been a murderous unnatural disaster, one that has wiped out decades of patient community development work, threatened our futures, and left thousands of homeowners and renters in the lurch. Call it Hurricane Greed.

Consider the wreckage: 15,000 foreclosures in Cleveland filed in 2006 and 2007 and it will hit 8,000 this year; 80 percent of those are tied to subprime loans. Wreckage: 3,500 certified tax delinquencies as of March of 2008, a 5-fold increase since 2005—5-fold—9,500 vacant residential structures and growing as of December in our City, 3 times the number in 2005.

Last year, our City spent out of our general funds, not our block grant funds, but out of our general funds, $12.5 million on public nuisance abatement, tearing down vacant structures that cannot be lived in again, cutting the grass of vacant properties. As reported in the Plain Dealer yesterday, sending our fire trucks out to arsons at abandoned properties.

Cleveland Tenants Organization, a very good group in Cleveland, reports a sharp increase in evictions. We're talking about foreclosures. Why evictions? Because their landlords, many of whom are as unscrupulous as the lenders, use predatory loans to buy hundreds of properties, turn them into rental properties, and once the interest kicked in, they're gone. And even though these tenants have paid their rent, they're out. They're evicted. Wreckage.

Our cities are bracing from declines in property tax valuations and the consequent loss of sorely needed funds for public schools, city services, our inside millage for borrowing for public properties and infrastructure is in shambles.

As Congressman Kucinich indicated, the devastation does not stop at our City boundaries. Double the foreclosure, abandonment, and public service cost I cited for Cleveland, and you have a fair idea of the impacts on Cuyahoga County.

Who are the plunderers? It's a long list, but the main culprits we know, subprime lenders and brokers who substantiated loan after loan, underwater loans with bogus appraisals while maximizing their fee income through questionable assembly line underwriting practices. The real estate scam artists whom I mentioned who purchased hundreds of properties, low-valued properties in poor neighborhoods with subprime loans often in cahoots with the lenders and converted them to high-cost rentals, no money put into repairs, and once the resets came, they were gone.

Wall Street. We now know that tens of thousands of mortgages originated in Cleveland since 2003 were snapped up by some very large financial institutions, all of whom trafficked in high risk mortgage-backed securities. And in fact, for firms like Deutsche Bank, Merrill Lynch, Wells Fargo, Goldman Sachs, and others, it appears the only home mortgage business they did in Cleveland during that timeframe involved the acquisition of subprime loans, the assignment of this paper.

The default rate on these loans backed by the titans of finance? Better than 60 percent.

What can we do? Drawing on the work of Cleveland's Vacant and Abandoned Property Action Council, here's a summary.

For people: place a moratorium on the foreclosure of occupied properties that would give defendants the chance to utilize court-supervised mediation in an effort to restructure their loans.

For people: building on the work already going on that has Federal, State, and local governments using every available means to compel, not just encourage, lender workouts and loan restructuring commitments coordinated with local financial counseling efforts.

For people: as is called for in a number of bills before Congress now, increase the amount of FHA mortgage insurance available for refinancing restructured subprime loans.

For people: institute a strict policy by regulatory agencies of policing mortgage brokers, appraisers, and the secondary market.

And as Representative Kaptur said, aggressively investigate and prosecute fraud through actions by the Justice Department, our regulatory agencies, and anybody else we can find to do the job, including Congress.

Maintain high levels of funding. We need it for the long haul for financing literacy and counseling programs.

Now for communities: hold Wall Street accountable. In January, the City of Cleveland, through the leadership of Mayor Jackson, filed a lawsuit against 21 Wall Street firms. The complaint, based on Ohio's public nuisance statute, asserts the defendants could have and should have foreseen massive numbers of foreclosures when they purchased thousands of unsafe and unsound subprime loans from 2003 through 2007. These 21 defendants have filed more than 16,000 foreclosure actions in Cleveland and Cuyahoga County since 2003. We are spending through the nose through public service expenses that are the result, money that should go to police, fire, basic city services, our suit seeks to recover in this damage.

So, in addition, we need emergency relief. This is a hurricane, Federal relief. Congresswoman Waters, whose leadership in introducing the security package in the House of H.R. 5818 is a huge step in the right direction. And we have a game plan here in Cleveland. Cooperation with community-based development corporations, national and local foundations we have launched in the State of Ohio, we have launched a "Reclaiming Foreclosed Properties" program led by Neighborhood Progress, Inc., Cleveland Housing Network, some very experienced community development corporations. This initiative will target six city neighborhoods for intensive preforeclosure workouts, systematic "property banking" of tax-foreclosed and bank-foreclosed properties, clearance of all vacant properties that are unsafe and beyond repair, and the redevelopment of homes on terms affordable for low- and moderate-income buyers. We have a plan, our county treasurer is leading, Jim Rokakis is leading really an incredible effort to establish a countywide land reutilization authority or land bank that would make it possible to establish and finance a countywide entity capable of holding, maintaining, and redeveloping abandoned and foreclosed properties.

These programs constitute a solid framework for converting and recovering from Hurricane Greed, the successful and meaningful saleable level, meaning resources, and we need it fast. We need resources that the Federal Government can provide.

Last March, the City of Cleveland hosted a half-day forum on the foreclosure crisis problem. One of the participants summed up the situation well. She said, "With the help of the Federal Government, including the regulatory agencies, we might recover in 5 to 10 years. Without their help, it will take a century."

Thank you.

[The prepared statement of Mr. Warren can be found on page 439 of the appendix.]

Chairwoman WATERS. Thank you.

Councilman Brancatelli.

STATEMENT OF ANTONY BRANCATELLI, COUNCILMAN, CITY OF CLEVELAND

Mr. BRANCATELLI. Thank you, Madam Chairwoman, and members of the subcommittee for this hearing today. Certainly, having been a young, freshman Councilman, I get to sit in the middle of these two tables and also have a bottle of water. The distinguished chief is here and I'll kind of follow his lead.

My name is Antony Brancatelli, and I have had the pleasure of representing our ward for the past 3 years. Prior to becoming a Councilman, I served 17 years as the executive director of Slavic Village Development Corporation, one of the most successful community-based nonprofits in our city and now led by an outstanding executive director, Marie Kittredge.

Madam Chairwoman mentioned earlier that we want to know how it's working. I think I included in your packets at your desk you'll see a piece, Fight Foreclosures and Abandoned forum, breaking the cycle of abandonment. It was a forum that was initiated by Martin Sweeney who supported Jay Westbrook. And it's really a highlight of all the organizations and officials that are working hard at stopping this abandonment.

I think if you look at this piece you'll see some of the things that we're talking about and breaking the cycle of abandonment. Those are detection, prevention, maintenance, and redevelopment. You'll see ways that we are trying to change the face of our neighborhoods and trying to recover from this crisis.

While tracking this crisis across our City, I have seen a record number of negative reassessments and as the chief pointed out, the impact has been devastating for our neighborhoods and our residents and our county treasurer estimates that if our property values drop 10 percent, Cleveland stands to lose $10 million. The Cleveland Municipal School District will lose $3 million if it drops 10 percent.

I'm also providing you with a report entitled, "Foreclosure and Beyond" which is a detailed report on ownership following the sheriff's sale to Cleveland. This report was commissioned by Case University and researched by Michael Schramm, Kristen Mikelbank, Claudia Coulton and contains a detailed study of the impact of foreclosures. This "Foreclosure and Beyond" really identifies the corporate base in our community and the changes that will be impacted by the sheriff's sales and it will give you an identifying number that you can see what will happen when this occurs.

Across the City, we have points of blight. You see over 10,000 vacant and abandoned homes in our community and as the chief pointed out, we're spending millions and millions of dollars maintaining these homes. Council members have spent hundreds of thousands of dollars of their own precious EBG dollars and many of you know how previous those dollars are. Just to cut lots and maintain some of the vacant homes and keep them secured, keep our residents from having to deal with this crisis. And we found our weapons of mass destruction in the form of Deutsche Bank, and JP Morgan just to name a few, but used the Wall Street gold to destroy our community. Wells Fargo officials openly admit their dependence on Federal dollars to bail them out. Many panelists

will talk about how to recover from this, but first I want to talk about the impact of the crisis in our local community.

Our community has been the victim of a perfect storm. This is not a community with adequate banking presence. We have some of the highest quality banks in the region. We have great shopping, retail dining, and recreation opportunities in our communities. We also have a wonderful employment base with quality manufacturers, industry, and service providers.

What we don't have is an adequate protection from predatory mortgage companies, corrupt mortgage brokers, and title companies who openly participate in the destruction of our company.

There were a questionable number of mortgages given by a handful of mortgage brokers and appraisals which resulted in millions of dollars of foreclosures, yet these brokers and appraisers are still licensed today. As you go through that document, you can see those firsthand. We have residents like Barbara Anderson in our community who are working hard to identify this fraud and that report clearly puts it in perspective. This is not a neighborhood that was not hit with hard economic times and market conditions that people would believe it was hit hard with predatory lending. This neighborhood averages two foreclosures a day. In the last 3 years, we lost 10 percent of our population and currently have 1,000 vacant homes.

Hundreds of homes are condemned and waiting for the wrecking ball. Houses are being stripped at an incredible rate, and scrap prices are at an all-time high. This was not unforeseen.

We need to develop a Federal housing policy and legislation that provides for the continuation of existing leases a minimum of 90 days as a determination of the tenancy of the tenants in the event of a foreclosure. We all seen the effects of vacant homes and keeping families in their homes until suitable and appropriate housing makes sense.

I have seen proposals by the Federal Government; we talked about those today. Supporting H.R. 5818 and supporting H.R. 5870 brings millions of dollars and billions of dollars to help save our neighborhoods is critical. Demolition is a critical tool for our recovery. We have over 10,000 structures in our neighborhood and many of those homes were factory-built and by today's standards are functionally obsolete. This proposal not only financially condemns these homes, they're now physically condemned and should be demolished.

There are a number of plans in place for reuse of this vacant land but what we need is help from the Federal Government. We need the Federal Government to place all the mortgage companies under stricter government lending laws. We need stricter licensing and mortgage brokers and licensing of appraisers. We need the Federal Government to make it a priority to prosecute mortgage fraud at a high level. We need the Federal Government to not bail out banks but to hold them accountable for their actions. The city is doing their part and will now enforce the registration laws and code enforcement laws in at a very aggressive level. The community is doing its part to help cut back some of the problems in our neighborhood. The nonprofits are doing their part.

It's my hope that the next President will learn from our experience and hit the ground running to change the policies and help save our neighborhoods and this year we will see meaningful mortgage packages that we can use now coming from Congress. Thank you very much.

[The prepared statement of Mr. Brancatelli can be found on page 101 of the appendix.]

Chairwoman WATERS. Thank you very much.

Next, we will hear from Tina Skeldon Wozniak, president, Board of Lucas County Commissioners

STATEMENT OF TINA SKELDON WOZNIAK, PRESIDENT, LUCAS COUNTY COMMISSIONERS

Ms. WOZNIAK. Good morning, and thank you so much, Chairwoman Waters, for this opportunity and to the members of the Housing and Community Opportunity Subcommittee for coming to Ohio for this very critical and important hearing. I would also like to thank my own Representative, Congresswoman Marcy Kaptur, for this opportunity. We've been working hard on this issue at home.

I represent 450,000 residents of my county which is located about 100 miles from here, as you know. I also come to you as a trained and professional social worker, here to share stories of the deep worry in the faces of many of our residents.

I'd like to be able to tell you that our problems are unique, but the truth is that Lucas County and Northwest Ohio are just like every other community in America that is dealing with this foreclosure crisis as you have heard from this great panel here today.

You've heard countless times the story of a family member who lost their job and a family that subsequently lost their home. You know too well the pain that unscrupulous lenders have caused not just for homeowners, but in fact in whole neighborhoods in our area. You've seen the struggle on the faces of the people who have come before this subcommittee, whether it's in our Nation's capital or the main streets of America.

This problem is more than just the statistics, more than a report, and data that is gathered in the field. But to fully grasp the extent of this problem, the data is where we have to begin.

Since 2002, foreclosure filings in Lucas County have increased by over 50 percent, and in the last 5 years, we have calculated over 18,000 homes have been part of foreclosure filings. That is nearly 10 percent of the total housing stock in Lucas County and that's a dramatic figure for any community to deal with.

Single-family homeowners are not the only victims. According to RealtyTrac and information from our county auditor, almost 5 percent of all rental units in Lucas County have been involved in a foreclosure action. This proves that you don't have to own your own home to be hurt by this crisis.

A recent study by the policy group ReBuild Ohio determined that vacant and abandoned properties in Toledo, Lucas County's largest city, cost taxpayers at least $3.8 million in 2006 alone. But it's not just our cities like Toledo; the foreclosure crisis in Lucas County has hurt almost every community in our area, especially in the

area of declining home values and this decreases basically the revenue available to provide necessary services.

Yes, the data is dramatic, but we know that the real story of this crisis is in the faces of those who have been disrupted and who have lost their chance at the American Dream. It is both a story of the individual and their family.

But as tragic as those stories are, what's left after a family loses their home is not just a personal crisis, it's a community crisis too.

Those homeowners who didn't take any risks, who didn't fall victim to the slickest sales pitches or unbelievable claims, and who behaved appropriately, are now too watching their homes fall in value in the foreclosure crisis. They are looking across the street to the yard which hasn't been mowed all summer. They are worried about what pests might be attracted by the vacant buildings. They are wondering why their city is no longer able to provide the same tree-trimming, street-cleaning, and trash collections that they have experienced in the past.

When a foreclosure happens in Lucas County, instead of just a family in crisis, a household is in crisis, a bank is in crisis, and that foreclosure leads to a block, a neighborhood, a city, a State, and a Nation in crisis.

Crime rates that had been dropping start to go back up. Middle-class families move out of their former neighborhoods, contributing to greater and greater urban sprawl. The falling value of our homes keeps families from making needed investments and contributing to starved local economies.

In Lucas County, trust me, we've seen it all. Before the foreclosure crisis became a daily news item for the media, we started working. In 2006, in partnership with city, county, and State leaders, as well as nonprofits like United Way, the Toledo Fair Housing Center, and Advocates for Basic Legal Equality, we formed the Lucas County Save Our Homes Task Force.

This innovative group developed an important mailing that is sent to families at the start of their foreclosure crisis, so they can connect immediately with the many resources available in the community. About 5,000 have already been sent out and that's a good thing.

Working with our Department of Job and Family Services, we were the first county in Ohio to devote over $400,000 in Federal TANF dollars toward low-income foreclosure assistance.

The judges of our Common Pleas Court have also responded, setting aside resources to create a foreclosure magistrate and develop an expedited mediation process for homeowners and lenders.

Elected officials and nonprofit leaders from across the county, including myself, went door-to-door in the hardest-hit neighborhoods and talked to residents about upcoming sessions where homeowners could try to work out a mediation with their lenders.

With the limited resources that our county government provides, we've done a great job reaching out, but we know it's not enough. We've been smart about our outreach, we've tried to target our resources responsibly, but we've just nibbled around the edges. At the end of the day, families keep losing their homes and we haven't solved the problem.

I wish that I were here today with a new idea or a new solution that could make a real difference. I am happy that this subcommittee does have the right ideas and does know the best solutions. Ultimately, Lucas County families need the power to bring the lenders to the table to renegotiate these loans. Our homeowners need the opportunity for a fresh start with mortgage terms that they can afford.

This is not a bailout. It's an investment in our future, and it's clear that only the Federal Government has the authority, the clout, and the resources to make it happen.

There are two pieces of legislation currently being considered by the Congress that I believe will bring a tremendous amount of relief. Having listened closely to the conversation regarding H.R. 5830, the FHA Housing and Homeowner Retention Act of 2008, it's clear that these key provisions will give at-risk homeowners the tools needed to get out from under a bad mortgage.

As a local government official, I am pleased by the initiations by the subcommittee. These two bills address the twin grievances that communities like Lucas County are facing in the foreclosure crisis. Our people are not afraid of hard work and are not afraid to do their part to get out of a bad situation. We do not need any special treatment. What we need, both at the homeowner level and the level of the local government, is a readiness by our leaders in Congress to take action and make a difference.

Whether you're in Toledo, Houston, or Los Angeles, we know that you are listening to our issues. Thank you very, very much.

[The prepared statement of Ms. Skeldon Wozniak can be found on page 445 of the appendix.]

Chairwoman WATERS. Thank you very much.

We will now hear from Matthew Stefanak, commissioner, Mahoning County Health Department.

STATEMENT OF MATTHEW STEFANAK, COMMISSIONER, MAHONING COUNTY HEALTH DEPARTMENT

Mr. STEFANAK. Thank you, Chairwoman Waters, and I would also like to thank my Congressman, Representative Charlie Wilson, for listening so intensively to our concerns about the growing blight problem in this district.

When I started my public health career nearly 20 years ago, I never thought of myself as an anti-blight worker, but over the last couple of years, I have come to realize that the blight problem caused by this housing crisis is a public health problem.

Blighted dwellings attract nuisances, and they attract disease vectors, like raccoons, rats, and mosquitoes. This is the public health concern that we face.

Also, unmaintained properties, especially those that were built many years ago when the use of lead paint was commonplace, release lead and threaten to poison children when they reoccupy those properties. In the Youngstown area, where 90 percent of our housing stock was built before 1950, lead-based paint was in common use.

This housing crisis came home to roost for me over the last few years, when I saw our numbers of housing complaints triple. Last year my sanitarians struggled to respond to over 240 of these.

I serve a health district that comprises 14 townships and 9 municipalities in Mahoning County. They range from old steel towns like Campbell, Ohio, all the way to Smith Township, which is a rural Appalachian township. And in each and every one of those communities, there is a blighted property.

I have made a poster here showing you some of them. If you can't see it, I am sorry. It illustrates the kinds of properties that we are dealing with now in public health.

To give you a sense of what this means for people trying to keep up their homes in some of these blighted neighborhoods, last year I was listening to the news. One TV reporter interviewed Ms. Lori Mayberry, who lives on Jefferson Street in Campbell, Ohio. She tried to keep up her home as a resident, put paint on her front porch, and flowers in her front lawn. But she has 10 blighted properties like these up and down her street.

She told the TV reporter, "This neighborhood was full, used to be full of nice, quiet families. One by one they either moved or passed away. Now it is just a bunch of abandoned homes that are just deteriorating. I feel like I am being discriminated against. I feel like they have put me in a category like if you live down here, you deserve what you get."

Now, units of local government, like mine and others, especially the mayor of Campbell and our township trustees across the county, want to do something to help people like Ms. Mayberry, but they either don't have the money or they don't have the tools or know how to use the tools to take down these blighted vacant structures.

We are losing the war on blight, it seems, in Campbell, because, first and foremost, as Congressman Wilson pointed out, we have a lot of surplus housing. Our population has dwindled by up to 50 percent in some communities, like Youngstown, over the last 30 years. In Youngstown, in 1970, there were 160,000 people. Today there are barely 80,000. Campbell has probably lost half of its population as well.

We have too much housing. You can buy a house in Campbell for $2,000. If you bought it for $2,000 several years ago, it is probably worth $500 now. You know, it costs $2,500 to $3,000 to knock down that home today. It is worth less than it takes to knock it down.

That is why when Congressman Wilson and his colleague Congressman Tim Ryan, our other representative from Mahoning Valley, introduced the Emergency Neighborhood Reclamation Act of 2008, we were very excited because we think that kind of short-term Federal help can help us tip the balance in our war on blight in the Mahoning Valley. We need to right size our housing stock in order to deal with the blight problem at the same time.

Some communities, like Campbell, really need that financial assistance because those precious Community Development Block Grant dollars for Campbell would need to be fully allocated over the next 3 or 4 years to take care of the blight problem at the exclusion of taking care of other needed city services, like sidewalks and sewers and whatnot. There just isn't enough money for cities like Campbell to get a handle on their blight problem.

In not every community is just more money the answer. In Smith Township, for example, the township could probably scrape to-

gether the $2,500 to $3,000 it needs to knock down its blighted structures, but it doesn't know how to do it.

The township has tools to deal with blight, but in many cases they have never done it before. They have never had to do it before. And that is why that we have been trying in my district to educate our fire chiefs, our zoning inspectors, our mayors, and our trustees about their authority under Ohio law to deal with blight.

We brought in speakers from the State Health Department, and State EPA earlier in the spring for a workshop. I have to tell you, unfortunately, many of our fire chiefs and mayors came away scratching their heads not knowing how to negotiate the regulatory process to tear down or burn down blighted structures. One of the participants wrote in his comments on the workshop, "This was depressing. I feel like we are regulating ourselves into a Third World country."

So one point I would make, in addition to supporting short-term financial assistance to help communities like ours, is that perhaps Federal agencies, like HUD and EPA, could get together and offer some clear guidance to their State partners and municipalities on how to safely negotiate asbestos regulations and other air quality regulations in those communities that want to deal with blight but can't or don't have the money to do so.

Finally, my final point is that I wasn't around for smallpox eradication in my public health career. It was before I started, but I would like to be around for the elimination of another major disease for many children in this country, and that is childhood lead poisoning.

We have made a lot of progress in my community and nationwide in a push to our goal of eliminating this disease from this country by 2010, but I think that progress is in jeopardy now because of the deteriorated quality of our housing stock. That is why we would ask the Congress to please protect and perhaps expand the opportunities to homeowners and landlords to make their properties lead-safe through the HUD Office of Lead Hazard Control and Healthy Homes.

Thank you. I hope I have made the case that this is also a public health concern as well as an economic crisis.

[The prepared statement of Mr. Stefanak can be found on page 400 of the appendix.]

Chairwoman WATERS. Thank you very much.

Ms. Patricia Kidd, executive director of the Lake County Fair Housing Resource Center.

STATEMENT OF PATRICIA KIDD, EXECUTIVE DIRECTOR, LAKE COUNTY FAIR HOUSING RESOURCE CENTER

Ms. KIDD. Thank you, Chairwoman Waters, and I would like to thank you for asking me to come. My name is Patricia Kidd, and I am the executive director of the Fair Housing Resource Center. We are a nonprofit fair housing advocacy agency that operates in Lake County, Ohio.

Our county and people in the resident counties who spoke, we have the same type of issues. But I want to try to take a different approach, rather than give you statistics of all the problems. I think we are all aware that we have a real issue here.

Our agency has been a certified HUD housing counseling agency since 2002. But, unfortunately, we have been at the front lines of this foreclosure crisis since its beginning. Back in the mid 1990's and late 1990's, I was helping on predatory lending. Here, 10 years fast forward, we are dealing with the results of what predatory lending brought to us.

Our agency had always done loss mitigation counseling for homeowners. This is nothing new. It is not a new concept. We have been doing this type of counseling since 2002. The difference between then and today is that our numbers have increased over 300 percent.

The numbers of homeowners that are coming to our offices seeking services from our counselors are keeping us so incredibly busy. It is time-consuming to assist a homeowner to work out a mortgage loan. It is very time-consuming to try to get a servicer on the phone. It takes anywhere between 6 to 10 phone calls just to find a phone number where we can fax a release form to so that we can get permission to speak to a borrower.

In my testimony, I have outlined 6 pages worth of chronological order of one loss mitigation that we received recently, 6 pages, 4 months, 43 phone calls and e-mails, 43 of them.

Our qualified borrower was told that she didn't make enough money to get a loan modification at $800 a month but, instead, was offered a $1,200 repayment plan. I don't understand the logic.

We are dealing with single families, elderly couples. And it is difficult to see an elderly couple sitting before me who have planned for their retirement 20 years ago as long as they made a substantial amount of money and realizes today that they can't afford to make ends meet. And the house they raised their children in, like somebody on the panel has already said, isn't past the loan. The house is going into foreclosure.

Everybody looks at the foreclosure statistics. But you want to triple that or multiply it by five. That is how many people are in default. We are dealing with people in default for 30 days, 60 days, 90 days, and running around scurrying, trying to do everything that we can to try to prevent the foreclosure from happening.

But the other thing that I think Congress needs to take a look at is it doesn't just end after foreclosure. What happens next? What about the people then? The house gets foreclosed on. It is not like they fall off the face of the planet. They still have to go somewhere. They have to relocate.

Nine times out of ten, the mortgages that the individuals have that they are having trouble paying, then forcing them into foreclosure is probably $300 less a month than the average rental prices, they've learned when they leave that house. And they have to rent somewhere else.

Most of the reputable landlords require a credit report on initiating a lease. Now we have homeowners—they couldn't even rent a decent place because their credit score doesn't pass muster or their foreclosure is a bad stain on their financial circumstances.

Representative Sutton said—and I had it written down—that we have done a lot and there has been a lot initiated in order to try to help this crisis moving down, but we need to do more.

H.R. 5679 is definitely a step in the right direction. Let's get the mortgagors required to speak to us. As a HUD-certified housing counselor, it would be nice to have a direct line to a modification specialist and a direct individual whose job it is to speak directly with our agency.

It shouldn't take 4 months to work out a loss—do a loss mitigation or a repayment plan or a modification for a particular homeowner. It should only take a matter of a couple of weeks. The individuals that our agency is seeing, this increase of 300 percent, is only 10 percent of the total population.

Too many individuals are suffering this crisis, packing up their belongings, and just leaving without picking up the phone. And then when they come to us, we have to go to drag through weeks and weeks and weeks of promises and we're trying, we want phone calls. I think there needs to be more accountability. We need to have more direct contact with the servicers.

Mandatory mediation for any foreclosure filing after 30 days of the complaint, not tail end of the litigation process, at the beginning. Let's bring the borrowers and the lenders to the table, bring somebody who can mediate and negotiate on behalf and try and see what we can do to try to keep people in their homes.

We are seeing too many. And theres are too few of us in our office to try to handle this. We can get more money for increased hiring, our staff needs, but it takes us a while to get somebody trained and up and running in order to effectively counsel individuals. Taking a look at the—just something simple as the Ohio domestic relations laws to try to prevent losing a primary home residence in the issue of a divorce, tough regulation on every recovery scam program.

We have enough bad things that are happening out there. Now we have these individuals who are duping homeowners into quit claiming their properties over to them, thinking that they are recovering their home when, in fact, all they did is just went from being a homeowner to being a tenant. If they are 2 days late on their rent, they are evicted, and they don't even realize that they ever transferred their property.

Increased offer instance to try and get homeowners to get to counseling, to contact housing counseling agencies, such as myself and the rest of my colleagues. And it is—then it is through State governments, through renter regulations dealing with renters' rights to prevent price gouging in rent or unfair and unconscionable lease option purchase agreements, which is going to be the next issue that we are going to see in the future.

Thank you.

[The prepared statement of Ms. Kidd can be found on page 342 of the appendix.]

Chairwoman WATERS. Thank you very much.

I would like to thank all of you for your testimony. And let me just share with you that I think this is the first time that I have conducted a hearing where witnesses were willing to call names, to identify problems in such a pointed way.

I have a great appreciation for the recommendations that you have made. I have sat here listening today, and I am going to ask a few of you to help us improve on some of the legislation that we

are working on and to help us formulate even additional legislation because I have heard some things here today that I think really need to be addressed.

I will start my questions by simply asking whether or not you know of any of our lenders or our service providers who have done an excellent job in helping to do workouts and modifications and whether or not they have had an impact in any of your communities or areas because they have been so great that they have done outreach, they have found people who need help, they have stopped foreclosures, they have been easily accessible. Anybody know any of the lenders or servicers with that kind of description?

Ms. Kidd? Thank you very much. That was a loud "no" that you don't know anybody?

Ms. KIDD. No.

Ms. WOZNIAK. Madam Chairwoman?

Chairwoman WATERS. Yes, Ms. Wozniak?

Ms. WOZNIAK. I was just going to say the service providers, locally it is the Fair Housing Center and GABEL, which is, you know, the attorneys who assist communities, are the greatest resource, but, as Ms. Kidd said, if there is anything that Congress could do to assist with legislation to allow proper staffing levels with agencies like that because the numbers are so great.

So, chairwoman, thank you for that question. I think they are the most unbelievable agencies with the ability that they had to actually reach lenders, unlike anyone else.

Chairwoman WATERS. I thank you. And I certainly was not referring to Ms. Kidd's organization. You know to whom I was referring.

Ms. WOZNIAK. Right, all of them.

Chairwoman WATERS. Basically those who have been, some of whom have been, identified are here today that have a responsibility for a lot of the subprime lending that we are not getting a connection to.

Let me just ask Mr. Lloyd, could you provide us with some detail of the number of Ohio homeowners assisted by FHASecure to date, the impact of the recent changes to that issue, and the proportion of homeowners in the State relative to the total need for assistance preventing foreclosures you expect FHASecure ultimately to have? Let us know what is going on. What is happening with that issue?

Mr. LLOYD. Well, to date, we have endorsed over 12,000 FHASecure mortgages in the State of Ohio.

Chairwoman WATERS. You have done much of this?

Mr. LLOYD. Well over 12,000, 12,244.

Chairwoman WATERS. What did you do?

Mr. LLOYD. Well, for those particular loans, they were either delinquent or they were conventional ARMs that were converted to FHASecure mortgages. They could have been conventional mortgage products, subprime mortgage products, that were converted into FHASecure and refinanced in a sense.

We have FHA, just standard FHA, loans across the State of Ohio. We have roughly 10 percent of the market share, which the point is still valid, 161,000 FHA-insured mortgages statewide.

As far as subprime, and when you look at FHASecure, that is primarily for mortgages that have either reset or are about to reset.

Chairwoman WATERS. So describe to me the ARMs. Give me the numbers of the ARMs that have been—that you have dealt with when the—prior to reset so that people were able to either get refinanced, to be able to continue with the mortgages that—in the way that they were contracted with in the beginning of the—when the mortgage began, and did not have to go into the reset or the increased rate. How many of them?

Mr. LLOYD. I would have to go back and provide that information to you. I don't have it broken out for my records here.

Chairwoman WATERS. Because 12,000 is a lot. I mean, you are giving us a figure of 12,000 that you dealt with, but we don't feel it here, do we?

Mr. LLOYD. I guess the other thing that I was going to say is that when you look across—this information is based on the mortgage bankers delinquency survey that came out, I think, at the end of March. When we look at the situation across the State of Ohio, there are 9,000 subprime ARMs out there that—whereby 28 percent of those are now delinquent and facing foreclosure. So, you know, when you look at it in those terms, there are a vast number of mortgages that are still out there.

What we have been trying to do in doing our outreach, we have been trying to encourage people not to wait until they are reset but to come in and explore the possibility of refinancing.

Chairwoman WATERS. How do you do that? How do you encourage it?

Mr. LLOYD. Well, we have done that through outreach events that we have held here in Ohio and—

Chairwoman WATERS. I am sorry? Outreach?

Mr. LLOYD. Outreach events.

Chairwoman WATERS. What does that mean?

Mr. LLOYD. That means foreclosure summits, foreclosure prevention summits.

Chairwoman WATERS. In direct mail?

Mr. LLOYD. In direct mail to people who are anticipating resets within the next 6 months.

Chairwoman WATERS. What kind of response have you gotten from your direct mail?

Mr. LLOYD. Usually we get a response. It is very low in a sense but roughly maybe 2½ to 3 percent.

Chairwoman WATERS. What would you advise us to do to help FHASecure really identify outreach, too, and get people in to get those mortgages before the resets kick in?

Mr. LLOYD. If we could do more advertising, prime time advertising, I think that would help tremendously. We have just gone on a rally type of training campaign where we provided training to lenders. We brought in practitioners, counseling agencies, and State finance agencies to just talk about barriers that may be out there that preclude people from being able to refinance.

One of the strong suggestions that was made—and we were encouraged to take this back to Brian Montgomery, our Housing Commissioner—is to expand it to include not only just ARMs but all subprime, you know, subprime fixed mortgages, fixed-rate mortgages, and the like.

Chairwoman WATERS. Okay. Thank you very much. I am going to move on.

Councilman, you talked about statutes or efforts to prosecute fraud. Do you think we should do more of that?

Mr. BRANCATELLI. Thank you, Madam Chairwoman.

Absolutely I think it would be more aggressive marshaling all of our Federal resources to prosecute. And then the flipping report that you have shows where people were blatantly using the system, blatantly using the no document loans, loans that were put out there by mortgage companies.

And until we start going after measures of brokers and companies who are participating in this, we are not going to be able to make as much headway as I think we should.

Chairwoman WATERS. I have been wanting to advocate to eliminate the illegal no doc loans altogether. Do you support that?

Mr. BRANCATELLI. I would welcome that with open arms.

Chairwoman WATERS. Thank you.

Mr. Mayor, I am going to ask Congresswoman Stephanie Tubbs Jones to bring us the information on the lawsuit that has been filed by the City, against the Wall Street creditors, so that we can take a look at that and perhaps somehow introduce that into the record in a general way. Perhaps we can take some time on the Floor and talk about that.

So I would like to thank you.

Ms. ZURZ. Absolutely.

Chairwoman WATERS. All right. Congressman Wilson, do you have any questions?

Mr. WILSON. Thank you, chairwoman.

I have a couple of questions. Number one, I would like to make a statement before I ask a question. The statement is that we understand on a Federal level and in Congress what is going on, and we don't fault you at all for being angry. This new direction Congress is trying to address the issues that need to be addressed.

I, for one, feel like I have been among a lot that has gone on here, that I was in the Ohio Senate when we did Ohio Senate bill 185. I was very proud to be a part of that and feel that we were able to curb some of the things that had been going on in the State of Ohio. Red flags had been going up for several years. So it is nice that we could finally get something done.

I wanted to mention as far as in Congress what has happened since 2007, which I think it is never enough and it is never quick enough. But I would like to touch on H.R. 5818 and H.R. 5830, both of which have been discussed here this morning. They have passed the House and are moving forward.

Also H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007 has passed the House in December of this past year. Now, H.R. 1427, the Federal Housing Finance Reform Act of 2007, Chairman Barney Frank's bill, has passed the House and is now moving forward. It passed May 24th.

So action is happening. We would have liked to have seen this 4 or 5 years ago, instead of now. And then certainly what is going on with Chairwoman Waters' bill, that is, the Expanding American Homeownership Act of 2007, has passed the House also, on September 19th of this past year.

So things are moving. How we get them past the House and then through the Senate is another situation. But we are definitely going to continue working and continue pushing.

My first question is for Matthew Stefanak, from our area. Matthew, thanks, first of all, for your help that you have given in the good things that you have written and said for Jim Ryan and I as far as with the new legislation moving forward.

We need to do as much as we can. The Neighborhood Stabilization Act, which Chairwoman Waters helped us with very much, I have never really had an opportunity to personally thank you and thank you for—

They have had us on a comparative basis with California, our housing values with the chairwoman's State. There is a difference, and we were able to get her to hear that and be able to get into that, I think.

You know, really, she didn't have to, being a senior member and the chairwoman of our committee, but she was willing to do that for the State of Ohio.

I just wanted to make that point because many times those things go unheard. And thank you so much, Congresswoman. It is that kind of thing that is showing this new direction Congress working together to be able to accomplish things. And we have a bipartisan effort on this. So I am proud of that.

Back to Mr. Stefanak. My understanding is that a lot of what is going on in Youngstown right now is you had been doing some demolition and gearing down to be more addressing your population, I think you were saying it has gone from 160 to about 80. And so you are gearing down.

We are hoping that this is going to be helpful to you. Do you see being able to have money for demolition for moving forward to remove the blight from some of the neighborhoods? Do you think this is going to be a significant positive action?

Mr. STEFANAK. Congressman, absolutely. I see it as kind of a short-term investment that is really helping cities like Youngstown and Campbell and other former steel centers tip that balance in favor of moving towards a housing stock that is appropriate in size for the population of that community.

Youngstown has a very ambitious plan for creative shrinkage—shrink the City with a plan that would tackle the houses, for 80,000 or so residents, and create opportunities for new green space and redevelopment.

And, as I said, outside of those areas where there are many epicenters of the blight problem, like Youngstown and Cleveland, there is probably less of a need for management assistance than there is for some guidance to these communities on how to deal with their blight problem before it becomes of the proportion of enormity that it is in some of our cities, like Campbell and Youngstown.

Mr. WILSON. Good. Okay. Well, thank you. And hopefully you will be able to use those funds for other things as the Federal money begins coming in and to continue to brighten the neighborhood and lessen the blight.

Mr. STEFANAK. I would add that there is the ability for municipalities and townships in districts in the State to recover some of

those costs when those properties are demolished and made available for redevelopment to recoup those costs as property tax liens. So a short-term infusion of some Federal assistance could benefit those communities on down the line to help them deal with additional blighted properties that come up in the future.

Mr. WILSON. Thank you.

Chairwoman WATERS. Thank you very much.

And let me just say that, Congressman Wilson, I was focused on demolition. I was a little bit concerned that we need rehab; we don't need demolition. But hearing you describe what is happening with Campbell really helps me to understand a lot better why demolition resources are so important. So thank you very much.

Congresswoman Kaptur?

Ms. KAPTUR. Thank you. Thank you, Madam Chairwoman. Again, thank you so much for coming to Ohio, which is off your regular beat as you fly across the entire country from Los Angeles to Washington on a regular basis. Can you imagine that kind of schedule? Ohio truly thanks you for being here today and for bringing the power of this committee to Ohio. Thank you so very much for your leadership on so many issues of importance to the vast majority of the American people.

Mr. Lloyd, I wanted to ask you a question, if I could, regarding whether you know when HUD lifted its normal appraisal and underwriting standards in the early 1990's, certain mortgage letters that were issued by the Department that overturned prior practice within the Department, I believe it was in 1993. I am wondering if you are aware of that at all.

And in addition, in terms of both underwriting and appraisal standards, a major change that occurred, I believe it was in 1994, was that Fannie Mae and Freddie Mac came under the regulatory jurisdiction of HUD. Am I correct in that understanding?

Mr. LLOYD. That was before my tenure with the organization. I have been on board since late 1999.

Ms. KAPTUR. All right.

Mr. LLOYD. What I will do, I can take that information back, and provide a written document to the committee.

Ms. KAPTUR. All right. I thank you.

You know, during this period of time of the 1990's, we saw the time-tested principles of making loans, home loans in particular, which used to be measured by character, collateral, and collectibility. I think Congressman Wilson knows that well. Is anybody in the audience old enough to remember when you actually knew the person who made the loan to you? And we move from that into this world of high finance.

I can remember after we came out of the savings and loan crisis in the 1980's; I served on the committee at that point. And I can remember when they said, "Well, you know, Congressman, you don't ever have to worry because we are going to securitize mortgages. And this magic will be breaking up into pieces and giving to the market. This is going to prevent any down turn. We will never have another savings and loan crisis."

But then as we move into the 1990's, I think around 1997–1998, Congress is a part of the problem looking back, because the Glass-

Steagall Act, which had separated banking from commerce, was abolished.

And so now we see the Federal Reserve bailing out Bear Stearns. Think about that. Think about this change that occurred during that decade before these fine numbers, many of them, arrived in Congress, which set in place the opportunity for the high-risk strategy. So the law also affects what is going on is my point.

I wanted to ask—I also wanted to thank the chairwoman for bringing us together today. You are part of the conversation that happened in Ohio that has not happened before. This is very useful, including the people who are in the audience listening and thinking with us and the think tanks that are out here, the analysts.

If we were to look at Ohio and to put your cumulative knowledge together, if we wanted to go back and unwind what has happened here, what would be the first bank or the first brokerage or the first servicer that would have put their footprint on these subprime loans in Ohio?

All right. Cleveland was a big player here. I mean, things happened in Cleveland. But what do we know of Lucas County that we could lend to what you are involved with here? Is there a way for you to look at the footprints? Go back. What was the first set of institutions you stumbled across or who is at the top of your list?

You mentioned a couple of them here in your testimony, but it is not a complete list. If you were to try to unwind what happened here in Ohio to fully understand what we are all facing, do you want to make any comment for the record? Could you provide for the record additional material on your reflection on what is captured and how Ohio was dipped into?

Who was the first dipper? How did they get here? Then they left, right? The paper got taken. Who took it? How can you help us understand?

I know you are dealing with casualties, and you don't have time to think about this, but this is a very important question because this leads us, then, at the national level to understand the architecture, the broad architecture, of what happened.

What we are doing now, Countrywide has plenty to apologize to the American people for, but they are a downstream participant. They were allowed to—they got into this market, but they are not at the top. They are just involved in it. They and their folks became beneficiaries.

Can you comment on this? As you look back at Ohio, look back in Lucas County and Cuyahoga County. When—who were the door openers? How did this happen here? What is the first—that is the question across the country. What was the first institution or set of institutions to invent the subprime instrument? It may have been Superior Bank in Hinsdale, Illinois, but I can't prove that yet. But I want to prove it.

And then what company, what third party took those subprime loans and gave them to Merrill Lynch? And then what happened to the paper? We don't know, but we need to know. What about here in Ohio? What happened?

Mr. WARREN. To the Chair and to the Congresswoman, I will start on that. I will be brief. It is the right question. Frankly, I can't answer that with precision.

Ms. KAPTUR. We need to.

Mr. WARREN. Yes. And I recognize the need. Part of our goal of our lawsuit is that we'll get to a point where we are able to pursue those questions in the courts. We will get to that. There are 21 defendants, Wall Street-based defendants. And we will provide those to whoever asks, the details of that lawsuit.

But the answer is it seems to me—and I mean, I just have sort of some feelings about this. I mean, you know, the empirical data, you know, provide lots of information on the casualties.

Ms. KAPTUR. Right.

Mr. WARREN. Where were the motives?

Ms. KAPTUR. And in through the media is all focusing—

Mr. WARREN. Yes. And we are going to—

Ms. KAPTUR. —on people trying to care for those who get hurt. What about the ones that did the hurting? We don't have as much focus there.

Mr. WARREN. And where did that start? And, you know, they are people with names and corporations and signed letters and supporters.

Ms. KAPTUR. Was Banc One a part of this at all? Do you know?

Mr. WARREN. Banc One has not been a major player, no. They have been involved. They have not been a major player.

Ms. KAPTUR. Who would it be here in the Cuyahoga County area? Who is number one on the list?

Mr. WARREN. We have Argent. We have Countrywide. We have Litton. We have a whole range of the subprime lenders that are national in scope. They descended on Cuyahoga.

Ms. KAPTUR. Did you know that they were—Countrywide, for example, did you know that they were a primary dealer from the Federal Reserve?

Mr. WARREN. I heard that this morning.

Ms. KAPTUR. So is HSBC. So is Citigroup.

Anybody else want to comment on footprints? Mr. Brancatelli?

Mr. BRANCATELLI. Thank you, Congresswoman.

I think if you go through some of the reports that we gave regarding mortgages in Slavic Village, it clearly indicates those who were really on the front end of the part of the mortgage problems, as the chief outlined, Argent Mortgage, Ameriquest, New Century, Peoples Choice,—

Ms. KAPTUR. I am sorry. You are going to have to speak up louder.

Mr. BRANCATELLI. Okay. Argent Mortgage, Ameriquest, New Century, Peoples Choice, Countrywide, Long Beach, Aegis, Wells Fargo. You can go down the list and see.

Actually, if you go to the Web site, it is kind of a mortgage flow meter. You can see all the companies that are going out of business are those who had their first fingerprints on this. I wouldn't use footprints unless I would use my point elsewhere. Really, it is fingerprints on a crime. And so you can see those who have participated by just looking at the component numbers in our community.

And I think, as Congressman Kucinich—as a matter of fact, as a resident in the Slavic Village neighborhood, you know, the difference between the old Federal days and key bank days when you walked in the bank and knew them, when these folks came in to do their crime center neighborhood, you can see the devastation that they have left behind.

It is pretty clear you can see the fingerprints on a number of these, Beneficial and others, who came in and did their criminal acts.

Ms. KAPTUR. And what percent of those, sir, would it take to get that paper and move it to Freddie Mac or Fannie Mae to service? What would you guess?

Mr. BRANCATELLI. Well, what was interesting, when the first pieces of that started happening, they didn't need—many of them weren't insured you know, they hadn't worked through Fannie Mae or HUD. As the crimes continue now, you start seeing a lot of those that became insured through Fannie Mae and HUD, they used those underwriting standards. And so it changed then and kind of really kind of morphed into something different each year as the crime changed each year.

And I think that when you talk about your demolition budget and things that can be done, there are some things that can be done without adding new House bills, that can be done just by policy, by responding.

When you look at the number of distressed properties that HUD now owns, many of those should be demolished in our neighborhood. The HUD Dollar program right now, we have gotten just in our neighborhood 23 houses this year we are trying to get through the HUD Dollar program. We have a 10-day window to respond to get that household dollar. It has been now 6 months. We still don't have a deed to it.

Two-thirds of those in our neighborhood are slated for demolition on a chiefs bill, and the city is having to pay for that. For a policy change, all you have to say is the M&M Brokers have the right to demolish properties and they can use the budgets that you have all generously given to these M&M Brokers, to demolish those properties today without having to earmark any new funds.

Chairwoman WATERS. All right. Thank you very much. We can move on to Congressman Kucinich. Thank you for that information.

Mr. KUCINICH. Thank you very much, Congresswoman Waters, again for holding this hearing.

I want to go right back to Mr. Warren. The City of Cleveland has brought a lawsuit now against some of these companies. In the course of developing the lawsuit, are you looking at the question as to whether or not this entire subprime fiasco was engineered? It did not just happen by accident, but all across this country, people saw that low- and moderate-income people were a target for these subprime products.

They knew that the people were credit risks to begin with. They knew that there was a reduced level of financial literacy in some of these communities. They knew that there were loans that were being inflated. They knew that Wall Street was building enormous portfolios of these subprime loans that were helping to fuel the

growth of hedge funds. They knew exactly what was going on, as opposed to it being an accident.

Which do you think it was?

Mr. WARREN. I—to the Chair, to the Congressman, I think you are right. It is part of our lawsuit. Let me illustrate the point this way. Slavic Village, the community that you represent, representative council and Councilman Brancatelli represents now, between 2004 and 2006, we saw a study that showed, then, the property values of that neighborhood measured by reported purchase prices in the county. From 2004 to 2006, actually, led Cuyahoga County in great appreciation.

We saw that. We said, go back and do the study. There was something wrong with it. And so you dig into that. And what you find out is that properties worth $20,000, $25,000, and $35,000 were selling, being financed in subprime loans by the fiscal $75,000, $80,000, and $90,000, 10 properties reported on the same day, almost as if, you know, with the same number.

And, as you know, Congressman, in Slavic Village on the southeast side of Cleveland, there are a lot of doubles, so prevalent we call them the Cleveland doubles, two-bedroom apartment down, two-bedroom up. These are classic where the properties were reverted to rentals. And then they were picked up at these $85,000 and $90,000 rates where really the true market value is $40,000.

Now, to your point, how does that fit into some sense of conspiracy? Well, the point being is that these are properties that are then bundled or mortgages paper bundled and sold to the secondary market. And then values seemingly to the rest of the world are so low, they don't—it is not a blip in the screen. They just bundle them as part of thousands of properties on a portfolio.

And so you might say—and, you know, we haven't proved it, but we are pursuing this—that part of the strategy, perhaps from afar, is to look at markets where the values, property values, are so low that a doubling of the value from the true value to the market or to what the sale was doesn't get noticed. It is easily scurried and moved along.

Mr. KUCINICH. Well, here is the point. Speaking out, we should be honest here. These banks, these lending institutions, they knew exactly what they were doing. They knew they were going into the poor neighborhoods. They knew they could jack up the value of the properties through inflated appraisals. They knew if they loaned and then fronted them later on and then they turned out to be securitized, that this would be part of a go-go-go approach on Wall Street, a hedge fund.

And so what you have is some people made a lot of money on these scams, but here is Wall Street supposed to be the really smart people are going to avoid any risks. They are taking the riskiest instruments—the four pronged instruments particularly clean piece of property while the rest of the neighborhood around them is falling away. Their property value goes down. I mean, this is a crime. There is no other way to do it.

And I would urge the City of Cleveland to look at not only pursuing the fraud statutes against these people but also a fast action suit on behalf of African Americans who, no question about it—there are civil rights implications.

And the fact that money wasn't loaned to people in the first place according to the Community Reinvestment Act, subprime loans were ignored, and then—the prime loans were ignored, then they come up with these subprime products that have fraud written all over them. And, you know, this is an issue that goes to the core of our financial situation and goes to the core of whether people can trust these lending institutions. And the City of Cleveland because it is at the epicenter of this crisis can also be at the epicenter of the solution.

I want to thank all of the representatives from our community who are here, the members of the council, who have had to deal with this on a daily basis. You know, Mayor Terrell will tell you this still concerns the city council.

When I was at council years ago, if you had a single home in your community that was boarded-up, it was a problem. You hear about the neighborhood groups organized around this. Okay?

How many, Mr. Brancatelli, are there out there in Slavic Village now?

Mr. BRANCATELLI. Mr. Congressman, we have over 1,000 vacant properties identified.

Mr. KUCINICH. We cannot let these lending institutions get away with this and just say, "Well, it is the people's fault. They should have known better." They knew exactly, these lending institutions knew exactly, what they were doing. Wall Street knew exactly what was going on. And there has to be—somebody is going to have to pay for this.

Our community has already paid. Now we have to follow through on this. As Congresswoman Kaptur says, we have to follow this money all the way to where it leads.

Madam Chairwoman, I hope this committee gets subpoena power so that you can start to go into this. And I will certainly support every effort that you make.

Thank you very much.

Chairwoman WATERS. Thank you very much. Thank you.

Congresswoman Stephanie Tubbs Jones?

Mrs. TUBBS JONES. Thank you, Madam Chairwoman.

First of all, I would like to recognize another elected official from my congressional district who has joined us. His name is Peter Lawson Jones. He is my cousin. And he is a Cuyahoga County commissioner.

Also, because we were limited in the number of witnesses that we could bring before the committee, I do want you to also know that Mayor Georgine Welo represents the First Ring Suburbs. She is the president of the First Ring Suburbs. And I am talking with her about these issues.

In her City, there was a street on which one woman owned 11 houses. How does one woman own 11 houses and have no real reportable income? Georgine, the City of South Euclid came to the attention of this as a result of receiving more than 1,000 calls and complaints on this street for the police department.

What they ultimately did was they purchased these houses. The City bought every one of the houses and then redid the financing because there was no other way that they could immediately get some resolve in there.

And I just want to congratulate Georgine Welo and that City for the work that they did.

There are other cases where cities may have the opportunity to fix some of the problems. We hope that they don't have to do that, which Georgine Welo was saying that they spent tons of money cutting the grass, all of the things that we have been talking about in the process.

I would also hope that when we get to our second panel, you are going to hear some of the litigation that has been implemented by the housing advocates and other organizations to address many of the issues that my colleagues have talked about previously.

I am just so thrilled that here we are in 2008, paying attention to what has been going on in our community for years. And I am just so thankful that all of you each took time to come in.

I would want to pontificate a little bit and ask a few more questions, but I am just going to associate myself with the comments of my colleagues.

I do want to see, Chris, if there is anything else you want to add or, Mr. Brancatelli, anything else you would want to add very briefly. And I am going to yield back my time. Chris?

Mr. WARREN. To the Congresswoman and the Chair, again I want to thank you for this effort today, your work on a variety of fronts on our behalf.

It is a long way back. I think speed is of the essence. The House is clearly taking a strong position. There are issues in terms of looking at culpability and motives that can't be ignored as we look at remedies. I would agree with that. Hopefully our lawsuit would be helpful in that way. But, again, thank you for your leadership, in particular.

Chairwoman WATERS. Mr. Brancatelli?

Mr. BRANCATELLI. Thank you, Congresswoman. I think, as I mentioned earlier, looking at policies for HUD, Fannie Mae, and disposition of those real estate and how we can rescue neighborhoods is critically important.

The other piece I want to note, which I don't think any of the panelists really hit on hard, was the next wave of the tsunami. And this is these houses that are being dumped on the market for pennies, for pennies. You are seeing thousands of houses sold on eBay every day for $1,000 or less.

In our neighborhood, we had hundreds and hundreds of homes that are being bought by out-of-town brokers, from California and on—I am not saying there is anything wrong with California. It is kind of hard to manage scattered site-condemned homes from California.

Chairwoman WATERS. It is okay.

Mr. BRANCATELLI. And so we really need to look hard at how we can try and get in front of that next wave so that more families aren't impacted.

The other thing, members of the panel today talked about these new lease-purchase programs, not lease-purchase but companies that are turning the favor and knocking down the real estate. And we need to stay in front of that because that is what our service providers are going to be dealing with next.

And we are looking at cutting ways of dealing with some of the issues we are facing. We talk about demolition as a tool. We are also looking at deconstruction. And as we pick up our houses, when you talk about an energy crisis now, being able to use deconstruction as a tool for recycling materials and saving some of our neighborhoods and saving some of our resources is just as important.

So I appreciate your being with us.

Mrs. TUBBS JONES. Lastly, I want to say in conjunction with the comments of my colleague Mr. Kucinich, that as we have been looking and focusing on the fact that predatory lending predominates in African-American communities, the Congressional Black Caucus has been up front on this issue since way back, almost back when you got here, Congresswoman Waters. And we have done a lot of things.

But, lastly, I would say to everybody listening: you must, you must understand what you are signing and you must understand who you are going to be operating with. It is so very important.

I don't care what kind of legislation we implement. I don't care what kind of things we do. If you don't pay attention to what you are doing and get the financial literacy information and understand the process, we can't stop what is going on.

Whomever is listening, you must pay attention. You must take a look at your grandparents and your mothers and your aunts and your uncles, the seniors in our community, whom they prey upon, not only in the course of building or buying a home but in the housing reconstruction and remodeling. That is the other way they attack senior citizens in our communities.

So again, Congresswoman Waters, thank you for your leadership. Thank you for holding this hearing. And I yield back my time.

Chairwoman WATERS. Thank you.

Congresswoman Sutton?

Ms. SUTTON. Thank you very much.

Your testimony was extraordinarily insightful, and I appreciate the passion. I just want to be brief. This is obviously a multifaceted challenge that we face. And a lot of the angles have been discussed. I appreciate the questions of my colleagues, which get at the heart of many, many key parts of this issue.

I would like to begin, though, by speaking to Ms. Kidd. If my colleagues haven't had the chance yet to look at the transcript or the record of you trying to seek assistance to help somebody who was trying to take action early on when she identified that she was going to have problems and fulfilling the commitment that she is in, it is an amazing account.

And I don't know if there are more of these that you can make available to folks like myself and other members of this committee as well as Congress, but this is really helpful because we see as we look through this that all of the nonsense that occurs along the way, the nonsensical direction that people are given—on one occasion if you were to read through this—I will just share—when you are seeking help for getting lower payments, when they do the rework, it is actually a higher payment. And that happens I think several times throughout the course of this. You are actually told

to wait to seek help until you are further behind because then help might be available.

So all of this information is really important. One of the reasons why I ran for Congress is because policies don't always make sense when they are being applied. And we also need to see what actors are doing what in the process. So that is why this hearing has been so good.

And, Ms. Kidd, if you could provide us with more information like this? I know a lot of people don't want to tell their stories, but it is important that we know really how this works at the ground level when you are trying to deal with a foreclosure.

Ms. KIDD. Yes, definitely.

Ms. SUTTON. Thank you.

Also, one of the things that has been troubling to me and we haven't talked a lot about it here yet today, although the chairwoman did attempt, Mr. Lloyd, to ask you some questions—and I am going to follow up on those—you know, we have heard a lot about H.R. 5818 was passed. And it is a great, great bill that the chairwoman has shepherded through the House.

And if that bill is signed into law, which I think it deserves, your testimony says that will bring over $830 million in grants and loans to Ohio to help us rebuild our communities that have been devastated by the effects of this crisis if that bill is signed.

Now, sadly, that bill isn't signed. And it doesn't look like under this Administration, that we are likely to get that bill signed. And that is a problem. Okay?

I am troubled about the Administration's, what appears to be overly simplistic responses to some of the thoughtful plans that have come out of the Congress and especially the subcommittee that we are in today.

Oftentimes you hear this issue framed as an issue of irresponsible borrowers. And I concur with my colleague Representative Tubbs Jones that we have to be careful, we have to be educated, and we have to do our best to know what it is we are getting into. But it is framed as an issue of irresponsible borrowers and lenders that don't deserve government bailout.

But then the rhetoric ignores what I said was this multifaceted crisis. First, this is a systemic problem that involves the failure of multiple regulation and accountability mechanisms. We have heard that discussed here today.

And, second, our fates are tied together. We have also heard how that is discussed today. A house goes into foreclosure. Regardless of the fault, it doesn't just affect the family who lives there. It reduces the local tax base. It has health consequences, safety consequences. And so the effects of foreclosure are felt all around.

And the HOPE NOW program, the initiative that you addressed, you addressed, Mr. Lloyd, I just don't think that it was structured to address the enormity of the problem at hand. And so I think that there is much lacking.

There have been some issues with the numbers being reported by the HOPE NOW initiative, as the Comptroller of the Currency has brought up in recent days. He suggested that perhaps only a small fraction of the number reportedly helped by HOPE NOW have received assistance.

And, in addition, there appeared to be significant discrepancies between reported percentage of repayment plan versus the actual loan modifications. And it is not a rounding error. These are major, major differences in the numbers. They are different sets of numbers.

So, Mr. Lloyd, do you have any numbers on—I know we tried to get this a little bit earlier—on how many individuals from Ohio have been helped through this initiative, how many have been saved, literally saved, from foreclosure, how many have received loan restructuring versus loan modifications? I know that it is a bit early in the program, but what is the success rate? Basically what is the success rate of keeping families helped by HOPE NOW in their homes?

Mr. LLOYD. Unfortunately, I don't have the numbers for HOPE NOW. I have primarily concentrated on the FHASecure numbers. And I am versed in our numbers for the FHA portfolio. But I will go back and retrieve those numbers for you and try to find out exactly why there has been such discrepancies noted.

Ms. SUTTON. Okay. I would appreciate that. I realize that you don't run this program, and so this is not an attack on you. But the problem reported about the HOPE NOW alliance, we are wondering what we can do to improve it. And that coupled by some of the other experiences in the information that has been brought to light today, we would find that very useful.

With that, I yield back my time.

Chairwoman WATERS. Thank you very much.

Mrs. TUBBS JONES. Madam Chairwoman?

Chairwoman WATERS. Yes?

Mrs. TUBBS JONES. For the record, I have in my hand and I would seek unanimous consent to add to the record an emergency resolution passed by the Cleveland City Council asking the Cuyahoga Board of Common Pleas to institute an emergency foreclosure moratorium, to stay all active and newly filed foreclosure cases involving occupied residences and continue to work with council and community organizations to implement a comprehensive program that strengthens distressed neighborhoods. And this is from all six council members.

Chairwoman WATERS. Without objection, that will be submitted as part of the record for today. Thank you very much.

Ms. KAPTUR. Madam Chairwoman?

Chairwoman WATERS. Yes?

Ms. KAPTUR. I know that you are about to conclude, but I did want to just ask or suggest to the representatives from the Cleveland area since we have representatives from Lucas County and Youngstown, the Mahoning Valley area, perhaps the attorneys that exist in those counties could join your suit or augment your suit. People might want to think about this as you proceed forward. I think that we probably haven't done that in our region of the State. It is a very interesting path to pursue.

So I just wanted to put that out there. And I thank you, Madam Chairwoman, for yielding the time.

Chairwoman WATERS. You are certainly welcome. And I would just like to send a message to the Governor that we commend him on his leadership, including to the Compact. That has not been

done in other areas for the most part. They have not tackled the foreclosure problem in quite that way. We will be interested in your submitting more information to us about what the impact has been to date.

And we want to know when you have servicers make their first report on their efforts and subsequent successes. And if there are servicers who have declined to participate, we would like to know that, too. I think that information will be very helpful as we go forward.

Ms. ZURZ. Thank you, Madam Chairwoman. I will tell you that we very much appreciate your recognition of that. We do have a lot of work to do here as well.

But to the point of—and you asked the question earlier of any servicers going above and beyond, we are saying "no." And I would be remiss to say that those that signed the compact from our perspective are at least trying to make the efforts. And I don't want that to go unnoticed because they are responding to us and they are working with folks.

Do I think it is enough? No, I don't, and nor does the Governor. But it is a start. We will be happy to get you details, which the first reporting period is up in about by the end of the week.

Chairwoman WATERS. Well, I appreciate that. We don't have time to go into the legislation that I am working on now, but it is directed at servicers. And we are going to need some help because one of the things we have discovered is that we have no regulation over servicers. We have to create a body of law to deal with them because they are the key now, based on the fact that our citizens cannot get back to the institutions that originated the loans, from the broker etc., those security kinds of loans—that was packaged, they're all in service now, and these servicers have a lot of power. But they said to us that they were afraid to use the power because they could be sued by the investors.

We have tried to help with that in this legislation by eliminating liability and all of that but still they are not coming forward, because they have no laws to make them. We have to help them come forward. And we need a lot of pressure from all of our community groups and organizations to do this.

Ms. Kidd, your testimony was right on point about servicers. No telephone numbers, no way to get in contact with them. Some of the loss mitigation is done offshore, where people use a piece of paper with 10 questions. And after the 10 questions are answered, the telephone is hung up, and that is it.

So we know that we have a lot of work to do in this area. I want to thank all of you. And I would like to note that some of our members may have additional questions for this pane], which they may wish to submit in writing. Without objection, the hearing record will remain open for 30 days for members to submit written questions to these witnesses and to place their responses in the record.

This panel is now dismissed. And I thank you so much. I would now like to welcome the second panel.

Chairwoman WATERS. Our next panel consists of: Mr. Andrew S. Howell, executive vice president and chief operating officer, Federal Home Loan Bank of Cincinnati; Mr. Michael Van Buskirk, president and CEO, Ohio Bankers League; Mr. Michael Gross, man-

aging director, Loan Administration and Loss Mitigation Division, Countrywide; Ms. Kimberley Guelker, president, Lorain County Association of Realtors; Mr. Lou Tisler, Neighborhood Housing Services of Greater Cleveland; Mr. Edward G. Kramer, director and chief counsel, The Housing Advocates; and Mr. Frank Ford, senior vice president for research and development, Neighborhood Progress, Incorporated.

We are going to start our testimony with Mr. Andrew S. Howell.

STATEMENT OF ANDREW S. HOWELL, EXECUTIVE VICE PRESIDENT AND CHIEF OPERATIONS OFFICER, FEDERAL HOME LOAN BANK OF CINCINNATI

Mr. HOWELL. Good afternoon. Madam Chairwoman and members of the subcommittee, I appreciate the opportunity to speak to you today on behalf of the Federal Home Loan Bank of Cincinnati about the role our bank has played to help restore balance to the housing finance market and, specifically, to help at-risk homeowners. My name is Andy Howell, and I am executive vice president and chief operating officer of the Federal Home Loan Bank of Cincinnati.

The Cincinnati Bank is one of 12 regional Federal Home Loan Banks established by Congress in 1932 to provide liquidity to community lenders engaged in residential mortgage lending and economic development. For over 75 years, we have fulfilled the housing finance mission with a successful cooperative structure comprised of local lenders and regional management.

Our primary business is the provision of low-cost credit in the form of secured loans or advances to our members. We do not securitize loans. Our members, in turn, use these advances to fund their daily credit needs, such as originating mortgage loans, affordable housing activities, investing in community projects, or managing their own balance sheets.

The Cincinnati Bank's role increased dramatically in 2007 due to the unprecedented disruptions in credit and mortgage markets that have continued into 2008. Industry access to liquidity was substantially restricted, and members increasingly turned to us to support their daily funding needs. Demand for our core products—advances—has reached historic levels.

Since 2000, the State of Ohio has been severely impacted by the substantial rise in residential foreclosure activity. Although questionable lending practices of some have contributed to the rise in home foreclosures, our general experience is that many distressed homeowners did not originate mortgages with a lot of these financial institutions. Nonetheless, the impacts of foreclosures are substantial to both homeowners and their communities.

In addition to meeting our congressionally-mandated liquidity mission, we believe that the combined efforts of our members, housing partners, Advisory Council, and our Board of Directors, has led to the development of meaningful foreclosure assistance programs. The result has been the offering of three foreclosure mitigation programs that address the problem from different perspectives, and a fourth program is under development.

The first program is called HomeProtect, wherein we have made available to our members $250 million in advances at our cost of

funds, targeting these funds to help our members refinance homeowners at risk of delinquency or foreclosure. We instituted this program in June of 2007, and have approved commitments of more than $128 million to date.

Second, we have taken actions to direct more of our Affordable Housing Program funds to assist with foreclosures. Later this year, we will award roughly $13 million through this program, and we have modified the scoring of these applications to favor high-foreclosure areas and projects that will return abandoned foreclosed homes to occupancy. With these new scoring criteria, we expect to see funds directed to those areas of Ohio that have been hardest hit by the foreclosure crisis.

Third, in February 2008, our Board instituted a voluntary program called Preserving the American Dream, which will provide $2.5 million for foreclosure counseling and mitigation. Under this program, we will provide up to $3,500 per household, through our members and qualified nonprofit counseling agencies.

There is also a fourth effort underway. Regulations currently prohibit the bank from using Affordable Housing Program funds to help our members refinance mortgages for at-risk homeowners. We have petitioned our regulator—the Federal Housing Finance Board—for a regulatory waiver of this restriction.

To date, we have experienced modest success with HomeProtect. The interest level for the American Dream assistance is high, and we are optimistic that the Affordable Housing Program scoring adjustments and regulatory changes will be well received.

In closing, we support a collaborative effort with multiple initiatives to provide both preventative and effective solutions to the foreclosure issue. The Federal Home Loan Bank, its 726 members, and hundreds of housing partners, are working diligently to provide long-term solutions to create and maintain healthy communities and cities.

Madam Chairwoman, thank you for the opportunity to address the subcommittee on this important matter. I would be happy to answer questions at the appropriate time.

[The prepared statement of Mr. Howell can be found on page 335 of the appendix.]

Chairwoman WATERS. Thank you very much.

We will now hear from Mr. Van Buskirk.

STATEMENT OF MICHAEL VAN BUSKIRK, PRESIDENT AND CEO, OHIO BANKERS LEAGUE

Mr. VAN BUSKIRK. Chairwoman Waters, members of the subcommittee, and other Members of Congress from Ohio, thank you for the opportunity to appear before you today.

The Ohio Bankers League is a nonprofit association representing Ohio's commercial banks, savings banks, and savings and loan associations. My name is Michael Van Buskirk, and I am the Association's president.

Chairwoman Waters, as you know from your Ohio colleagues, and as we all heard from the witnesses on the first panel, our State, particularly its northern part, is suffering economically. Mortgage loan delinquencies and foreclosures have been one painful result.

Although foreclosures are a national problem, foreclosures in Ohio have remained stubbornly higher than the national average for at least the last 3 years. Other parts of the country, including your home in Los Angeles, face troubling foreclosure problems. However, the nature of foreclosure problems differ regionally. Therefore, we are particularly grateful you have come to Ohio to gain insight into the circumstances here, as the subcommittee works to find ways to help the national recovery.

Ohio's economy has struggled for at least the last 12 years. In northern Ohio, like Michigan, a decline in manufacturing employment continues to be a contributing factor. In eastern Ohio, a part of the country that is in Mr. Wilson's district, a similar story is told through the decline in the mining industry.

While Ohio's problems are not new, they have grown much more severe. In 1995, we suffered 15,000 foreclosures. Last year, we had 83,000. Not surprisingly, foreclosures have been the highest in the northeastern part of the State, where job losses in the auto, steel, glass, and rubber industries have been the highest.

Before I offer the Association's perspective on what is being done and what can be done to mitigate foreclosure short term, I would like to offer a few observations on the causes of our current problem along lines that you asked the first panel, which I hope will help you as you chart this country's course to avoid a recurrence.

Historically, most consumer mortgages in this country were funded from insured deposits. Lenders were banks, thrifts, or credit unions that kept the mortgages in their own portfolios. For that reason, the lender had a shared interest in the ability of the borrower to repay the loan. It suffered the loss if the consumer could not repay the loan.

In addition, these institutions were regularly visited by trained governmental examiners who analyzed both the safety of the lending practices as well as their fairness. That fairness measurement was given increased definition by Congress over time through laws like the Truth in Lending Act, the Home Mortgage Disclosure Act, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, the Fair Housing Act, and the Home Ownership and Equity Protection Act, among others.

By the 21st Century, lending in Ohio had become globally funded. Investors ranging from foreign governments to Ohio public pension funds bought securitized mortgages, rated as very safe by international rating agencies. The securitized loans were usually originated through a new retail outlet called a mortgage broker. The ultimate owner of the mortgage did not know the borrower. In fact, they often knew very little about them.

This new system did bring benefits to the consumer. The huge inflow of mortgage funds helped lower interest rates, and market entrants, at least when they were ethical, gave consumers more choice. Technology allowed mortgage and rate shopping through the Internet. However, the new system also triggered significant problems. Non-bank brokers had no financial stake in the borrower's ability to repay. Both the Ohio broker and the Wall Street securitizer were compensated by sale. Neither suffered loss if the ultimate product didn't work.

Historically, mortgage brokers in Ohio were not licensed. In 2006, when Congressman Wilson was in the General Assembly, our legislature required mortgage brokers to be licensed and, for the first time, required a criminal background check. While Federal lending laws theoretically applied to them, there was no enforcement. Most Ohio mortgage brokers were ethical and did comply with the lending laws. However, as history repeatedly has proven, scoundrels will flow into an enforcement vacuum.

Ohio's Department of Commerce discovered many hundreds of applicants were convicted criminals when it began a licensing process.

Uneven governmental protection had unintended competitive consequences, too. Since non-bank brokers do not face the same high level of regulation and oversight as banks, they benefitted from significantly lower operating costs. Competitively, FDIC-insured lenders in Ohio suffered significant loss of mortgage share.

Today, Ohio is fighting unethical lending practices. Commerce Director Kim Zurz, whom you heard from earlier, has greatly stepped up enforcement efforts under the Strickland administration during her relatively short time in office. Every Ohio mortgage brokerage today now gets some sort of review every 18 months. That compares to no review at all in past years. While we believe more needs to be done, efforts continue to achieve adequate rigor of examination.

Unfortunately, as the subcommittee and the full committee learned, many States still do little or no enforcement. Therefore, we commend the House's work to require all mortgage brokers to be licensed, to set minimum Federal standards, and to establish a Federal alternative if a State fails to act.

We would suggest you consider one change to the House-approved bill, though. The House designated HUD to act if the State fails to do so. While HUD certainly has a great deal of expertise in housing, we believe that the Office of Thrift Supervision, which has trained mortgage examiners in most major cities across the country, including here in Cleveland, in Columbus, and in Cincinnati, is positioned to be immediately effective.

We also want to take this opportunity to publicly support other of your initiatives, including expanding the powers of FHA to guarantee a reworked mortgage, where the investor or lender agrees to reduce the principal to less than the current appraised value, and to provide grants to purchase abandoned properties in distressed neighborhoods and restore it to productive use.

I want to commend Congressman Wilson's amendment to the bill to increase the allocation formula benefitting highly important cities like Cleveland. Funds to remove the blight of unsaleable homes in blighted neighborhoods are sorely needed here.

We commend the provisions in the bill which would dramatically increase funds available to fight foreclosure—a subject I want to return to a little bit later in my testimony. Perhaps most importantly, we support the creation of a credible regulator to ensure the safety and soundness of the housing-related, government-sponsored enterprises.

Ohio is not a homogeneous State. To be successful, Ohio banks and thrifts must tailor their operations to meet the needs of com-

munities each serves. Most Ohio banks maintained prudent underwriting discipline in the face of mushrooming competition from mortgage brokers and other non-traditional lenders. Very few are engaged in subprime lending. As a consequence, these banks and thrift institutions lost market share as some customers were attracted to loans with teaser rates, little or no requirement for documentation, or features like non-amortizing payments.

Remediation processes tend to be tailored to individual markets, too. But in surveying practices, the successful ones at least, we found common elements. Banks want to keep borrowers in their homes. They will work with borrowers on a case-by-case basis, foreclosing only when all else fails. This is not altruism. It represents enlightened self-interest. A loan reworked to the borrower most times will cost the investor or the lender less than foreclosing on a property and selling it under the circumstances we heard the first panel talk about.

If you look across the foreclosure filings in counties across Ohio, you see that the overwhelming majority of foreclosure filings are not by Ohio-based banks or thrifts. In surveying our members, we have found that as long as there is good communication and good faith from the borrowers, ethical lenders routinely waive late fees, permit partial payments, extend terms, and in some cases, forgive past due amounts, lower interest rates, or reduce principal.

We do need to focus on one recurrent problem—communication with the borrower. One of the greatest challenges ethical lenders face is getting delinquent borrowers to talk with them. Mailings and telephone calls often go unanswered. I think we can understand that financial problems are embarrassing. Financial literacy is poor. Too few borrowers understand that an ethical lender is strongly motivated to work with them. Too few borrowers understand that there are competent, neutral counseling services that can help.

Increasingly, these competent counseling services—

Chairwoman WATERS. I'm sorry. Your time was up a long time ago.

Mr. VAN BUSKIRK. I am sorry. Thank you for your indulgence.

Chairwoman WATERS. Thank you.

I am going to move on to Mr. Michael Gross, managing director, loan administration and loss mitigation, at Countrywide.

STATEMENT OF MICHAEL GROSS, MANAGING DIRECTOR, LOAN ADMINISTRATION AND LOSS MITIGATION DIVISION, COUNTRYWIDE

Mr. GROSS. Good afternoon, Madam Chairwoman, and members of the Ohio delegation. Thank you for the opportunity to appear here today to discuss Countrywide's efforts to help families prevent avoidable foreclosures. We have testified on three previous occasions to this subcommittee about these efforts, and today I will update our progress, also providing additional information on our activities in Ohio.

While our progress has been significant, we clearly recognize that more must be done. A key component of the successful loss mitigation initiatives undertaken by national servicers includes partner-

ships with financial counseling advocates and community-based organizations.

At Countrywide, we continue to expand our outreach to ensure that every customer who needs help is reached. In addition to our NACA partnership, which we discussed with this committee last fall, we have strengthened our national relationships with NeighborWorks, the Homeownership Preservation Foundation, the National Foundation for Credit Counseling, and ACORN.

Nowhere are partnerships with effective counseling and advocacy organizations more important than in difficult markets like Ohio's. Here in Cleveland, we have long had a strong relationship with the Neighborhood Housing Services of Greater Cleveland. We also have forged a strong working relationship and signed a home retention agreement with ESOP, Empowering and Strengthening Ohio's People, which also provides valuable assistance to residents in Cleveland's hardest hit neighborhoods.

Since December of 2007, ESOP and Countrywide have assisted 135 borrowers. With over half of those borrowers, we have been successful in preserving homeownership into the future—a success rate that both Countrywide and ESOP take pride in but want to improve. We also are working with the State program—Ohio Save the Dream—and 26 of our borrowers have sought help through that program. Likewise, in Cincinnati, we have begun working with our borrowers to seek counseling and assistance from the nonprofit, Working in Neighborhoods.

We are actively engaged in foreclosure prevention outreach programs with both governmental and community organizations around the country. So far in 2008, we have participated in nearly 170 home retention events around the Nation, including foreclosure prevention fairs and train-the-trainer events.

In Ohio, we have participated in outreach events around the State sponsored by the State of Ohio, HOPE NOW, and ACORN. We as well have staff here on campus today helping our customers. Countrywide remains committed to helping our customers avoid foreclosure whenever they have a reasonable source of income and a desire to remain in the property.

In addition to our work to provide home retention solutions to customers, we are working with nonprofits from ESOP to Enterprise Community Partners, NeighborWorks, and others, to identify how Countrywide can be a partner to communities with greater numbers of vacant and boarded-up properties. We are providing them with information on Countrywide-serviced properties in communities where they and a host of other nonprofit partners are working. ESOP has connected Countrywide with local nonprofits that have expertise in property acquisition and disposition.

While that work is just beginning, we have already conveyed property to the Slavic Village Development Corporation, and we are discussing other properties that may be acquired by nonprofits like Detroit Shoreway. With national intermediaries like Enterprise, we have been working to build a program that would result in the purchase of real properties in certain distressed areas in markets like Cleveland. While this program is not complete, Countrywide recently committed $1.5 million in charitable funding to

Enterprise to assist them in further defining and implementing the program.

As we reported in the last hearing, in the 6 months ending March 31st, we saved an average of more than 15,000 homes nationally each month from foreclosure, more than double the pace from the first 3 quarters of 2007. The pace continues to improve.

In April and May of 2008—our most recent data—we completed nearly 48,000 home retention workouts in these 2 months alone. I would emphasize that these are workouts in which the borrower obtains a plan to keep their home. It does not include deeds in lieu of foreclosure or short sales, which accounted for less than 7 percent of our workouts.

Comparing May of 2008 versus 2007, home retention workouts are up over 540 percent. The primary cause of that increase was a 718 percent jump in loan modification plans, from about 2,000 modifications in May of last year to more than 14,200 in 2008. A new program which has also greatly contributed to these May results was the new Fannie Mae HomeSaver Advance Program, which provided 12,200 homeowners with a fresh start. Clearly, the efforts of our national and community-based partners, and our own home retention teams, are paying off.

Since we announced a series of retention initiatives last fall, loan modifications have become the predominant form of workout assistance at Countrywide. Year-to-date, loan modifications have accounted for more than 68 percent of all home retention plans, while repayment plans accounted for less than 16 percent.

While interest rate relief modifications were extremely rare until late last year, that is not the case today. In May 2008, interest rate modifications accounted for more than 70 percent of all loan modifications Countrywide completed. Importantly, the vast majority of these rate relief modifications had a duration of at least 5 years, in a sustainable area.

The trends are much the same in Ohio. In May 2008, we serviced over 256,000 loans with an unpaid balance of $26.2 billion in Ohio. More than 92 percent of these loans are prime or FHA/VA, with only 7.4 percent being subprime. As with national data, our home retention workouts in Ohio are up substantially. In May 2008, we completed 952 home retention workouts that keep borrowers in their homes, which is a 120 percent increase over November of last year.

Before I conclude, I would like to briefly address our pending acquisition and merger with Bank of America. The acquisition is awaiting final approval by our shareholders next week, and will close in the third quarter of 2008. Until it does, I am limited as to what I can discuss. However, I can assure you that Bank of America is committed to our efforts and to continuous improvement in the foreclosure prevention area.

Chairwoman WATERS. Thank you, Mr. Gross. Your time is up.

[The prepared statement of Mr. Gross can be found on page 320 of the appendix.]

Mrs. TUBBS JONES. Madam Chairwoman, for the record, if there is anyone in the audience who is here to do a workout, workouts are going on in the room right next door. If you go out the door to the left, they are working at one of the tables. The sign-in table

is—behind that sign-in table is where workouts are going on right now. So please feel free to go over there and see if they can be of assistance.

Thank you, Madam Chairwoman.

Chairwoman WATERS. You are welcome.

Ms. Kimberley Guelker.

STATEMENT OF KIMBERLEY GUELKER, PRESIDENT, LORAIN COUNTY ASSOCIATION OF REALTORS

Ms. GUELKER. Good afternoon. My name is Kimberley Guelker. I am a Realtor with Howard Hanna Real Estate Estates, and I am also the volunteer president of the Lorain County Association of Realtors, located in Amherst, Ohio. With me today is our Association's executive vice president, Tom Kowal. I would like to express our thanks to you for convening these discussions to provide an effective solution to the growing problem of foreclosures.

The Lorain County Association of Realtors is a trade association under the Realtor family of the National Association of Realtors and Ohio Association of Realtors. Our Association represents 500 Realtors and 40 brokerage offices in Lorain County. In 2007, our members sold over 2,700 residential units with an average market value of $143,000. The total transaction value exceeds $375 million.

During the nationwide real estate market boom years, Lorain County experienced a very favorable housing market for buyers. Prices escalated about 3 percent, well below the national average, during the same time period. Housing choices were good. Local mortgage rates continue to be at record lows. As a result, homeownership rates are at record levels.

Unfortunately, the current economy of Lorain County is stagnant. Lorain County has experienced numerous heavy industry plant closings, company relocations, and an aging population. The unemployment rate of 6.2 percent in April 2008 was significantly higher than the national rate of 4.4 percent and the State of Ohio's rate of of 5.4 percent. As a result, foreclosures are at an all-time high according to the Lorain County Clerk of Courts.

I would like to share with the group an article that was recently published in The Morning Journal. In Lorain County, 1 in 54 homes is foreclosed on, compared to 1 in 201 homes nationally. We are 4 times as bad as the national average, according to our clerk of courts.

Foreclosures filed through May were up 8 percent, as compared to the same time last year. In one community—Sheffield Lake—1 in every 28 homes is foreclosed on. The major cities of Lorain and Elyria are about 1 in 40.

In addition, the current inventory of homes on the market for sale is over 3,300. That is a 14-month supply. Many of these homes are on the market because owners cannot afford the mortgage payment, the homeowner's insurance, or the real estate taxes. Studies on Lorain County foreclosures have shown that the Lorain County foreclosure problem is not a direct result of predatory lending practices.

While the Lorain County real estate market provides many opportunities for affordable housing, greater amenities, and reasonable cost of living, we are beginning to see negative appreciation

in housing values. The estimated impact on housing values is $1,700 if your property is next to or near a foreclosed or abandoned home. The cumulative impact would be $56 million on our existing inventory of homes for sale.

According to many of our local lenders, they are seeing foreclosures increasing because of rising health care costs and the uninsured paying for medical care, job losses, and social situations. I would also like to add that going forward, the high cost of gas and food items will add to the foreclosure rates as homeowners make a choice between these items or paying their monthly mortgage.

Many of our local lenders are trying to intervene with their mortgagees by participating in consumer outreach programs sponsored by the Lorain County Save Our Homes Task Force and other community organizations. Many of these foreclosed properties were purchased by investors who find very high vacancy rates because of the malaise in the Lorain County economy. They are also reporting extensive property damage which is forcing investors into the foreclosure alternative rather than additional investment in their homes.

Our Association believes that educating the consumer and our Realtor members plays a very important role in foreclosure intervention. In 2005, our Association, with the support of several Lorain County foundations and lenders, provided a 2-day foreclosure intervention program for attorneys, government officials, and Realtors.

The program, which covers the legal, ethical, and intervention process with short sale sellers as an alternative to foreclosure was again offered in 2007 under the leadership of the Lorain County Save Our Homes Task Force, and supported by a grant from the National Association of Realtors. These two programs had over 300 participants.

Also in response to the need to educate the real estate professionals, an extensive 30-hour foreclosure intervention program, licensed by the Lorain County Association of Realtors, has trained over 500 Realtors and attorneys throughout Ohio in foreclosure intervention techniques.

Realtors are encouraged by recent legislation at the national level that supported modernization of the FHA, as well as financial support of community-based outreach programs for helping consumers. Likewise, recent Ohio legislation on predatory lending practices, mortgage rehabilitation programs, and mortgage term reporting are helping homeowners.

We strongly recommend several additional efforts. Local city, township, and county government agencies need to be more concerned with the foreclosure rates in our communities, because of the effect on government costs, tax revenue losses, and reduced valuation of properties. Federal and State funding for community outreach and education programs need to be funneled down to local agencies.

County governments need to expend public funds for consumer awareness programs. Financial literacy programs for young adults need to be funded and become a criterion of classwork in our educational system so they can develop a strong sense of ownership in the next generation of home buyers.

Again, thank you for this opportunity to discuss the local housing conditions and the real estate market in Lorain County. Your attention to this unfortunate situation is commendable. The Lorain County Association of Realtors' leadership and members look forward to working with you to provide solutions.

[The prepared statement of Ms. Guelker can be found on page 326 of the appendix.]

Chairwoman WATERS. Thank you.

Next is Lou Tisler.

STATEMENT OF LOU TISLER, NEIGHBORHOOD HOUSING SERVICES OF GREATER CLEVELAND

Mr. TISLER. Good morning, Chairwoman Waters, and members of the subcommittee. My name is Lou Tisler, and I am the executive director of Neighborhood Housing Services of Greater Cleveland.

I am honored to be speaking to our congressional friends and allies who are battling this crisis. No Federal agency has taken the time to absorb the testimony of this panel.

Neighborhood Housing Services of Greater Cleveland is a not-for-profit community development corporation incorporated in 1975 with a mission to provide programs and services for achieving, preserving, and sustaining the American dream of homeownership. Our footprint is Cuyahoga and Lorain Counties for all our housing programs, and includes Erie and Heron Counties for our foreclosure prevention programs.

As one of the charter organizations in NeighborWorks America, a network of excellence consisting of 236 organizations working in 4,400 urban, suburban, and rural communities, in economic and community development across the Nation. We are also a national board member of the National NeighborWorks Association, and I would like to thank the chairwoman for her leadership and commitment to neighborhood stabilization.

Impact—the preceding panel spoke eloquently and succinctly to the issue, but I would just bring one more study to bear. According to Rebuild Ohio's February 2008 report, $60 million and counting is the cost of vacant and abandoned properties in the State. There are over 25,000 vacant and abandoned properties in eight cities, Lima, Columbus, Springfield, Toledo, and Zanesville—$15 million in additional houses and additional city services and $49 million in cumulative loss and property tax revenues for local governments and schools and counties.

Adding to this impact, the continued stream of requests to the County Treasurer's Office for property reassessment, which will continue to impact exponentially the lost property tax revenues that provide funding for city services to help educational systems.

As a State with one of the highest rates of mortgage defaults in the Nation, Ohio is facing a grim future for the vitality of its communities. My written testimony provides numerous statistics from many sources, including the Mortgage Bankers Association, on the causes and effects of this crisis on Ohio versus the rest of the Nation.

To be brief on the positives, which are fairly familiar to all, lack of financial education exasperated with predatory lending, loss of

unemployment and underemployment uninsured medical costs, and loss of spouse.

What are the programs that are being undertaken by NHS of Greater Cleveland? Local efforts: From a local perspective, NHSGC is involved in the Cuyahoga County foreclosure prevention program started by Cuyahoga County Treasurer Jim Rokakis and Director Paul Oyaski through our Cuyahoga County Department of Development.

This program institutes United Way's two-for-one call for help line that acts as a feeder system to the organization for public prevention counseling services and programs. The measure of effectiveness of this outreach is that NHSGC is the top performer of all agencies participating in this foreclosure program in mortgage foreclosure assistance, predatory lending assistance, mortgage payment assistance, and total agency referrals. Statistics on these measures are included in my written testimony.

NHSGC has one of the most informative and useful Web sites at www.nhscleveland.org with regards to foreclosure information and prevention. NHSGC receives over 800 new visitors per week—the majority of those new visits to the foreclosure prevention area of our Web site.

NHSGC utilizes relationships with over 20 community development corporations in the City of Cleveland to provide common ground, grass-roots outreach to residents of the City of Cleveland. NHSGC also works with the Cleveland City Council to disseminate information to provide yet another outlet for NHSGC programs and services.

NHSGC continues to play a leadership role in the Ohio Home Rescue Fund, NeighborWorks Ohio Coalition, including 12 organizations across the State of Ohio. NHSGC is the administrator of the $4.6 million of mortgage assistance funds or rescue funds, implementing, assisting, and providing direction to agencies across the State. These funds were provided by the Ohio Department of Development and the Ohio Housing Finance Agency.

Strategically placed, Ohio's nonprofit organizations have been collaborating independently with public and private funders, lenders, and nonprofit practitioners, to develop and implement both the strategies to reduce the incidence of foreclosures for the past 10 years.

The Ohio Foreclosure Action Initiative Organization began marketing this program through public service announcements, billboard advertising, public postering, large distributions of literature drops, community and grassroots meetings, special events, etc. We are also involved in a National Ad Council campaign promoting homeownership preservation foundations, credit counseling resource center, or CCRC, or hotline 888–995–HOPE.

As a member of Governor Strickland's Foreclosure Task Force, many of our recommendations have been instituted as others have previously testified. Also, the State of Ohio recently initiated the Save the Dream hotline, 888–404–4674. This number, instituted across the State of Ohio, is a major means for connecting homeowners to over 41 agencies' foreclosure prevention programs and services.

The success of a statewide program is measured in many different ways. The total number of clients counseled in Ohio through the CCRC hotline, the Ohio Foreclosure Prevention Initiative 2006, was 3,972 residents of Ohio. This program is represented by many organizations counseling over 1,022 residents.

For the calendar year of 2007, there were 28,000 calls made to the hotline from Ohio, making Ohio the 3rd greatest user of the hotline in the United States, behind California and Florida. A breakdown of the call volume for the period of the delinquencies is contained in the written testimony.

Nationwide efforts: From a national perspective, NHSGC is part of NeighborWorks America, and a grantee of the NeighborWorks Center for Foreclosure Solutions, a participant in the branding organization of the National Ad Council campaign, as well as having a position on the National NeighborWorks Association Board.

To assist homeowners in distress throughout the county, NeighborWorks, in cooperation with the Ad Council, has embarked on a public awareness campaign for a toll-free hotline. In additional to the national campaign, NeighborWorks is supporting the local implementation of foreclosure prevention strategies to turn greater attention to focus on hot spots.

There was also—has made a Fiscal Year 2008 Consolidated Appropriations Act to administer the National Foreclosure Mitigation Counseling Program. These funds are targeted to provide foreclosure mitigation and counseling help to eliminate foreclosures and help those across the country.

If I could, I would like to move quickly to what Federal legislative and regulatory reforms are needed. One —

Chairwoman WATERS. I am sorry. I can't let you get into it at this moment.

Mr. TISLER. Okay. Thank you very much.

[The prepared statement of Mr. Tisler can be found on page 403 of the appendix.]

Chairwoman WATERS. Thank you. And you can submit your total testimony for the record.

Mrs. TUBBS JONES. Madam Chairwoman, for the record, Councilman Roosevelt from Ward 10 is here.

Chairwoman WATERS. Welcome. Thank you.

Mr. Kramer, director and chief counsel, The Housing Advocates.

STATEMENT OF EDWARD G. KRAMER, DIRECTOR AND CHIEF COUNSEL, THE HOUSING ADVOCATES

Mr. KRAMER. I want to thank you, Chairwoman Maxine Waters, and the members of the subcommittee, especially my Congresswoman, Stephanie Tubbs Jones, and her staff for their untiring efforts to promote affordable housing and assist our clients to fight housing injustice caused by predatory lending.

Housing Advocates was organized in June of 1975 to offer minorities and the poor an opportunity for housing justice. And for over 33 years now our organizations have provided a lifeline to thousands of people who have no other place to turn without the assistance of our staff.

More than a decade ago, Councilman Frank Jackson issued warnings of the dangers posed by subprime mortgage schemes that

were beginning to prey upon Cleveland neighborhoods. If his warnings had been heeded, much of the damage that we have heard today would not have occurred.

Let me talk to you about the five questions that you invited us to discuss. The first, the Congressional Joint Economic Committee estimates that Ohio can expect another 82,000 home foreclosures between now and the end of 2009, with more than $3.7 billion in losses.

And let me put a face on this large number. You in Washington listen to billions of dollars. It is hard for me to imagine. Let me tell you about one client who is actually Councilman Holt's constituent, a 70-year old woman who lives in Cleveland's east side at East 147th Street, and has lived in that house for 38 years. In 2005, she took out a new refinancing of her home. The value of that home was $89,000 in 2005; 7 weeks ago, the bank and Housing Advocates agreed to a new appraisal. The appraisal came back at $31,000. That means that in 3 years, that house is now worth only 35 percent.

We talk about the losses of wealth. This is the human tragedy. The billions of dollars we cannot understand, but this woman whom—the house is well-maintained. Her street has so many foreclosures the appraiser said he could find no comparable houses except sheriff sales. That is why it is $31,000. That is the face that we, on the trenches, live with. Frank and the other people who are testifying see every day, that we need immediate action, not only from Congress but also from the Administration, which hopefully will hear of this hearing and the tragedy.

Housing Advocates has provided, in the last 5 years, 163 educational outreach programs, most from the Homeowner's Assistance Program, which the City of Cleveland has funded thanks to Frank Jackson and Jay Westbrook, and the other council members.

Currently we receive phone calls from the Homeowner's Assistance Program, and we have been assisting 242 victims of predatory lending through this program alone. In addition, we do a predatory lending counseling program through Cuyahoga County, and through Homeowner's Assistance, we resolved 19 cases through litigation in the last 5 years. And we have saved consumers $668,133.37 through this litigation program.

Three years ago, the Fannie Mae program had a pilot program here, which Congresswoman Stephanie Tubbs Jones was at the press conference. The Housing Advocates helped eliminate loans that are predatory, where Fannie Mae agreed to lower—have no credit scores and lower other criteria if Housing Advocates' staff would assist in counseling these individuals.

We had four lending partners that assisted us, who became our own loan committee, where we would present this information to refinance predatory loans. Huntington Bank, Amtrust Bank, Dollar Bank, and Fifth Third Bank have been our lending partners. We have been able to refinance 17 loans and save $1.2 million to consumers through this refinancing program.

Putting several of them that were in bankruptcies, many of them were in foreclosures, they are now saved and these homes are saved. We have an Emergency Mortgage Assistance Program which provides for up to $2,500 of emergency mortgage assistance to help

prevent people from becoming homeless. We also have, under this program, rental and utility assistance where we can provide up to $1,000 to individuals who have their utilities being threatened to be cut off.

Let me tell you my experience with predatory lending. Predatory lending has contributed greatly to this problem that we are hearing about today. Yes, economic problems certainly played its part. But what we are seeing here is in many cases predatory lending, as Congressman Kucinich says, is just a cleverly fashioned form of housing discrimination.

Let me ask you to consider urging Fannie Mae to expand this pilot program that we have told you about. We have been successful here in Cleveland, thanks to the efforts of our staff and also Mayor Jackson. This would be something that could be done immediately. They have the authority.

I would urge you to take a look at the information I have given in my full text. This program can be expanded nationwide.

I thank you very much for the opportunity to present this testimony.

[The prepared statement of Mr. Kramer can be found on page 360 of the appendix.]

Chairwoman WATERS. Thank you very much.

Mr. Ford.

STATEMENT OF FRANK FORD, SENIOR VICE PRESIDENT FOR RESEARCH AND DEVELOPMENT, NEIGHBORHOOD PROGRESS, INC.

Mr. FORD. Yes. Madam Chairwoman, and members of the subcommittee, thank you for the opportunity to come forward and testify today. I am going to focus my remarks on two topics: the impact of this problem; and the recommendations for Federal, regulatory, or legislative action.

I dread the thought of the chairwoman's gavel coming down. At the risk of that, I am going to depart just briefly from my remarks to take issue with one of my fellow panelists at the far right, my right, probably on the left from you, but—and that is Mr. Van Buskirk, whose opening remarks stated that the foreclosures derived from Ohio's economy.

There is no question that is a factor, but let me just point out a statistic. In Cuyahoga County, in 1993, the unemployment rate peaked at 7 percent. It went down by 1995 and hovered at 4 percent in 1995 to 2000. Yet, as that chart shows right over there on the right, foreclosures doubled in that same period. There is no way that you can explain this by saying that the economy caused this problem. It is a contributing factor, but the underlying problem is irresponsible underwriting and investing by lenders.

I would like to talk about impact. The analogy of Hurricane Katrina, others have talked about the tsunami wave, I personally like the tsunami wave, because tsunami wave has the wave—the initial wave, then it recedes and comes back.

And I actually think that there are three to five waves, and three of them I anticipate—I suggest that we haven't quite seen them yet. The first one is the individual impact on borrowers losing their homes. The second is the impact on the neighbors, which has been

talked about quite eloquently by other people, loss of property value, the costs to the city to board-up properties.

There are three waves that I think are just emerging now, and Tony Brancatelli did reference this. The third one would be this emerging culture of flippers and speculators, which many of them are just forming their business enterprises just in the last few months.

And this sign over here, I am going to put that up.

Mr. KRAMER. I did.

Mr. FORD. Oh, thank you. That is a great prop. I get to point to it.

But what we are foreseeing is an emergence of something that we haven't seen for 20 or 30 years, and that is land contrasts, which are definitely not good for low- and moderate-income people. And I can talk more about that later. So that is the third wave.

The fourth one would be something that was referenced also and I want to reinforce it—that property taxes are assessed on a 3-year basis. We have not yet seen the property tax assessments that are going to hit Tioga County. There is going to be a devastating loss to school revenue, police and fire, municipalities. That is another wave that is going to hit us that really hasn't hit us yet.

The final one is one which I hope doesn't hit us, but there is a lot of talk about tightening up credit standards, and there should be a tightening up of credit standards, but not an overtightening to where people who do deserve credit can't get it. I am a little concerned about an overtightening where we go back to a form of redlining.

Now, in terms of recommendations, I have three categories: Federal action for preventing; Federal action for reclaiming and restoring property; and this one I just mentioned, what do we do about the credit markets going forward to make sure that people have access to credit.

In terms of prevention, I am going to put forward two things which I know are controversial, and it may not even be within your power to do them, but I think it is important to put them on the table. The first one is a moratorium on foreclosures. Now, that would appear to be extreme and maybe even unconstitutional, but in 1934, the U.S. Supreme Court upheld the State of Minnesota's foreclosure moratorium. And I can get you the cite for that case if you need it.

The second would be a freeze on the resetting of adjustable rate mortgages. There is probably no other single effect, no other single cause that is greater to trigger a foreclosure than an adjustable rate kicking in and a payment going from $800 a month to $1,200 a month.

The third category of action that could be taken—and I think this is reasonably within the realm of the Federal Government to do—we have four regulatory agencies that regulate lenders: the Federal Reserve; the Comptroller of the Currency; the FDIC; and the Office of Thrift Supervision. These lenders could be using their authority to compel. And I like the fact that—I think it was Chris Warren who used the word "compel." Not just encourage loan modifications, but to use their position to try to compel lenders to consider loan modifications.

And I want to—this may surprise some people, but I want to commend Countrywide for entering into the agreement they did with ESOP. I think that exactly what Mr. Gross talked about is what we need, and I like the fact that he said, "We don't do—when we count a loan modification, it is not a deed in lieu. The family stays in the home." That is what we should be aiming for, and trying to get other lenders to do that.

The question was asked by the chairwoman, I think, earlier, or maybe it was Representative Kaptur, are the servicers doing enough? I would say no, not nearly enough. There are some high points. I would, again, say that Countrywide has responded. But I think we need more leaning by our regulators on lenders and whatever we can do to lean on services to do more workouts.

In terms of reclamation, the cleanup is going to be extraordinary. There is demolition. The City of Cleveland estimates that the 10,000—

Mr. KRAMER. So that is the gap?

Mr. FORD. I was going to say, it sounded a little different than I was expecting.

[Laughter]

[The prepared statement of Mr. Ford can be found on page 309 of the appendix.]

Mrs. TUBBS JONES. [presiding] We will try and give you a little more time as we go through the process.

Madam Chairwoman has stepped out for a moment, so I am stepping in as the Chair, and I am going to go to the first question by my colleague. But before I do that, I would ask unanimous consent to have a statement by the Court of Common Pleas for submission to the record on the foreclosure problems and solutions. They are going to open their mediation program beginning June 24th. Where are the folks from the court mediation program? Stand up if you have any questions.

And then, for the record, this is a copy of a lawsuit against various lenders that was filed. Let me give it back to you.

At this point, I would call upon Congressman Wilson to do his questioning.

Mr. WILSON. Thank you. The first question is to you, Mr. Tisler. I wanted to hear the rest of what you had to say. I know you can't do it in this timeframe, but let me ask you this: Is Senate bill 185 working in Ohio? Is it helping?

Mr. TISLER. I think, Congressman, that we are glad that it was passed and that it is better than nothing. But I think that there are a lot of things that we are taking out of that—that good compromise that should have been. So I think that it is the right way to go. It is starting to get everybody to recognize what a predatory loan is, or at least what 185 says it is, and to really bring some lenders back to earth. But I think that it didn't go as far as it should have.

Mr. WILSON. Thank you. Can I ask another question?

Mrs. TUBBS JONES. Sure.

Mr. WILSON. Mr. Van Buskirk, are we better off today in the way we are doing prime lending, or are we better off to go back to the days where the banker, who is the customer, he insists on a per-

centage down, versus the way we have gone—what has brought us to this home foreclosure situation that we are in?

Mr. TISLER. Representative Wilson, that is a complex question. The good part of what happened in the U.S. housing market over the last 10 years was that we recognized the relatively simple lesson for investment in money from around the world flowing into it. It did make it possible for many more Americans than had historically been the case, to afford homes; most of them are still in those homes.

One of the issues we are dealing with now in credit crunch, credit scams. Most of those sources of mortgages to the United States no longer exist. We talk about when we get back to normal. Part of the question is: what will be normal? I think part of the issue is Congress is coming up with a set of new guidelines that fit assures the investors into these loans that they are buying at very low rates into.

We tend to damn investors. Many of them were people of mutual funds during the Foreclosure Prevention Task Force. The public numbers have stayed—the employees realized that they were investors, because most of the public pension funds, in fact, are impacted by these subprime mortgages. Why? Because rating agencies said they were very safe, and they couldn't see through the numbers.

So I think that one of the keys is getting back to a point where appropriately underwritten mortgages, loaned under fair and equitable lending standards, can be funded, both nationally and again internationally.

When we saw the explosion and the change talked about earlier among the FDIC-insured institutions, well, the good news for the consumer is that there are tens of thousands of choices, good choices and some of them are bad choices. We talked about financial literacy and people being able to choose. We don't want to go back to the old days, because that—there was too little money available for mortgages and it cost too much. But we have to find a new world where the lending is prudent. It is fair, it is available to anybody who has a reasonable probability of being able to pay it back.

Chairwoman WATERS. Thank you.

Mr. Gross, one question for you, if I may. In your testimony, Mr. Gross, you said 718 percent jump in loan modification plans. Can you explain to me more in detail what that means?

Mr. GROSS. It means that in prior periods, back in the last 2 or 3 years, the general type of loan modification was one where the borrower was already in his home, the reason for default had now been cured, and if unemployed now they are employed again, making a fresh start. The modification would mean that any arrears would have been capitalized at a principal balance and reamortized over the remaining term of the loan, which would have resulted in a very small increase in their monthly payment.

In the past year, with credit and all the initiatives, and ASF guidance that we have gotten from the American Securitization Forum, where we have now gotten into a more proactive modifications where we have extended someone's start rates, for hybrid numerical growth, those a year ago did not exist. So now we are able

to do those types of modifications, and as Countrywide is making clear, we are doing tens of thousands of loans on a monthly basis.

Mr. WILSON. Thank you.

Madam Chairwoman, I yield back the balance of my time.

Chairwoman WATERS. Thank you very much.

Marcy Kaptur.

Ms. KAPTUR. Thank you, Madam Chairwoman. I would like to ask unanimous consent to place in the record three excellent articles—one from The New York Times and two from The Washington Post—dealing with this mortgage crisis.

Chairwoman WATERS. Without objection, it is so ordered.

Ms. KAPTUR. I thank the Chair very much.

Number two, I would like to just inform those who are on the panel and in the audience that the poster to your right tracks the rise in foreclosures in Ohio from 1994 to 2007, reflecting the roughly 80,000 foreclosures last year. And the poster to the immediate right, the number of foreclosures we had in the State last year, each red dot representing 10 foreclosures.

I wanted to also thank Countrywide's representative, Mr. Gross, for having people over in the adjoining room today, and the other modes of instrumentality that have shown a presence here today. We all live in this country, I think, and most of us live in this State. And we have to work through this together and it's not easy.

I am also fairly convinced that many people who got caught up in this weren't the ones who came up with it; they came along for the ride. That doesn't mean they are totally guiltless, but I think they have responsibility. So we thank you for being here today.

Mr. Van Buskirk, I am just going to focus this question to you. I think Ohio has a really important role to play in getting our Nation back on the right track. And I think in my very long career in the Congress, when I first arrived we had agricultural bankruptcies all over the country. Ohio had very few of those, because our farmers didn't overextend themselves. They were responsible, they were conservative, they didn't over-borrow. It was an anomaly in the Nation.

When we had all the problems with thrifts back in the 1980's, if you look at California, Arizona, Florida, or Texas, Ohio really—you know, we had some in there that weren't so good, but nothing like the washout that happened in the rest of the country. I see John Floyd sitting out there in the audience from the Ohio Credit Union League. But for the State charters, we have not had a bad record here with federally-regulated credit unions from this State.

So I guess my message to you is that somehow America needs fiscal discipline again, and it needs to exert fiscal responsibility. We are $9.3 trillion in debt, headed to $10 trillion in the public sector, and it in the private sector, according to your own testimony, we are just bringing the money from everywhere else because we are not self-sufficient here at home.

I think people like yourself, and your colleagues from Ohio, need to have louder voices at the Federal level for how this country can get back on track again, because we are merely emptying ourselves. And you say in your testimony how our public pension funds are now invaded by foreign money.

My friends, America has never really been here before. And part of this problem, a large part of this problem is that because we were broke, we should have been broke back in the 1990's when we were growing a little bit and government was balancing the budget, we should have been more responsible fiscally in our private sector dealings. This is a private sector problem with a lack of public regulation.

I just hope that—you say in your testimony here, non-bank brokers no longer have a real interest in the borrower's ability to repay. I think Ohio—the people of Ohio have had a history of paying their own way and wanting America to be financially independent. And we have lost our way. And maybe with, present company excepted, the City of Los Angeles—maybe Ohio voices need to be a little bit stronger at the national level and not be afraid to have our country take the actions we need.

I think Ohio's experience has something to offer. The people in the financial centers in New York often look at us as flyover country, but our record is pretty good compared to other places in the country. So I think your testimony reveals the level of knowledge here that I think gives you special responsibility.

And I guess my questioning really is only to say, ask yourself, what do you do with that knowledge now? Maybe you should play a little larger role before the committee. Maybe Ohio's experience has something to teach the Nation in unwinding things so we can become fiscally solvent in the public and private sectors and stand on our own two feet again as a country.

So I am impressed with your testimony, but don't be afraid to draw from Ohio's experience and take it to the country. We are hurting now, because we haven't looked into all these deals from the coasts and internationally. Ohio should have been a larger voice in opposing all of that. So maybe now is the time to speak out. That is my comment, and I thank you for your efforts.

Mr. VAN BUSKIRK. Congresswoman Kaptur, thank you. I agree with you. You mentioned very few insured depository failures in Ohio's history compared to most other States, and that is true. But you remember in your early days of Congress, the home State failures.

And I think there is something instructive from Ohio history to our current situation, because there was a group of savings and loans that were privately insured. Most had chosen private insurance to avoid the Federal regulator or the prudential regulator protecting the public's interest. Then, when one of them made poor investments in the private insurance fund, it immediately became bankrupt and created a domino chain into some other States, other failures.

Another thing, in terms of Chairman Frank just announced a series of hearings of oversight in terms of the regulatory structure. Regulatory structure on paper doesn't look very pretty. The Comptroller of the Currency has created—the Federal Reserve created in 1913 was never really meant to work with one another very well. We have a series of housing laws designed to protect consumers, but they have never really been looked at as a whole to make them work efficiently and effectively.

The Federal Reserve just announced some new rules dealing with—under the Home Equity Protection Act for high-cost loans. But it only has the authority, as I understand it, to deal with those high-cost loans. In principle, they are very simple. Focus on the disclosures to determine whether consumers learn from them what it is they need to know and make a prudent decision.

So I think some streamlining of the process is an understanding to empower the consumer to make better decisions on these things is a lesson we need to learn here in Ohio.

Ms. KAPTUR. I would say that, in terms of the home State situation relative to California or Texas and some of these other washouts we had, Ohio didn't compare in terms of volume or impact downstream. We had some mergers, and so forth, but in terms of arguing that Ohio was equal to their situation, you would have—

Mr. VAN BUSKIRK. No. In terms of assets or number of institutions, Ohio didn't compare. But unlike some of those other areas, the problem here was a lack of financial regulation that allowed folks to abuse circumstances and do things that would—other kinds of financial institutions couldn't really manage an appropriately regulated market.

Ms. KAPTUR. I know that my time has expired, but I would just like to say in your testimony you also talk about the Office of Thrift Supervision. I have—I am withholding judgment on the Office of Thrift Supervision, because I am asking myself the question: what happened in Chicago, and what happened in Washington, that Superior Bank in the State of Illinois was not supervised? What went wrong? Why should I trust OTS again, if ever? What needs to be done to clean that up?

Thank you.

Chairwoman WATERS. Thank you very much.

Congresswoman Tubbs Jones.

Mrs. TUBBS JONES. Thank you, Madam Chairwoman. One of the things that we didn't talk about earlier that we all need to factor into our discussion is the fact that it is important that predatory lending practices—a number of persons who qualify for prime loans were ushered into subprime loans because it was more financially viable—a financial gain for the lending institution. And we need to take a look at that also, because as a result of that a lot of people ended up in subprime that should never have been in subprime lending.

I want to give—just for the record, say with regard to Ed Kramer—Ed Kramer and I went to law school together, and we started out first landlord-tenant cases way back in the day. And I have to say that is truly where I began the process of being concerned about housing, and that was way back in the day.

And I want to use my time to talk about these things, but also for a moment talk about the kind of litigation that you have been involved in and the problem with litigation in this particular predatory lending area.

Mr. KRAMER. Well, the problem is there are very few attorneys who are capable and have the financial resources to go against major financial institutions in Wall Street. So the fact that the City of Cleveland, through Mayor Jackson, filed that lawsuit against the

Wall Street firms and the investment banks is very important, and we are supportive of the City.

That is something that we hope other cities will do. And, in fact, the City of Baltimore has brought litigation. The Fair Housing Law gives standing to cities because, if the city has been injured—if you look at the—just the devaluation of property, and, therefore, property taxes, every city that has experienced devaluation has a fair housing claim for the next 2 years at least against these banks, but the clock is ticking.

And we really have not seen what I thought—Baltimore and the City of Cleveland leading the way—other cities would join on. And so I was very happy to hear Representative Kaptur talk about encouraging other cities to look at this issue right now.

Mrs. TUBBS JONES. Would the gentleman yield for just a second? I don't know if it is possible before we leave town for that case to be xeroxed and distributed to the members. I would like to take that back to my community. Thank you.

Chairwoman WATERS. We have—I will ask Congresswoman Stephanie Jones to lead us in the Congress—

Mrs. TUBBS JONES. Will you get one of my staffers and tell them to come—one of my staffers and have him come in here, please?

Chairwoman WATERS. Let me just say to Congresswoman Kaptur, what I would like us to do is to take our matter forward and give some national presence to this lawsuit. Then, in addition to that, I would like us to be in touch with the Conference of Mayors in the country, and disseminate the lawsuit to them so that we can create some momentum with other cities following this lawsuit. It sounds as though it is kind of could help us to move the courts in our direction.

Thank you.

Mr. KRAMER. I would also point to Exhibit 2 of my written testimony, which is an article that Marilyn Tobocman and I have written on fair housing laws as a weapon against predatory lending. It cites the principles about using the standing of cities to be able to sue predatory lenders, and that is with the materials that you would have, in my case.

I do want to talk about this sign, which—you are seeing many of these signs popping up. It says, "Sale, $500 down, $350 a month." What is happening here is this is like the third wave of the tsunami. The final devastation is just occurring, and we are the canaries. You know, we have already suffered through this predatory lending.

The banks that have now gotten our property—10,000 vacant properties in the City of Cleveland alone—are not maintaining those properties. And now the City of Cleveland, through Judge Pianka, the City of Cleveland's housing court judge, is trying to take them to task because as property owners they should be maintaining the property. They should be cutting the grass. They should be, maybe, boarding-up to make sure that house stays viable. They are not.

So suddenly what is happening is we are handing these out-of-State companies—this one, for example, is assigned from Destiny Ventures. And Destiny Ventures are being given these homes, sometimes for $500 or $2,000, and they are selling them imme-

diately back—selling—they are renting illegally, 21-year leases, which are never reported, so it is illegal under Ohio law, by giving it to families. It is like poisoning them with candy. It is like Halloween.

And these families are trying to desperately take often condemned property and bring them up, spending the last resources they have because this is their chance, they think, to own a home. But the lease itself is so adhesionary, it says that if you default at all, once, if you don't make a payment, if you don't bring this up to code within 3 months, they can take the property back and they can evict you. Now—

Chairwoman WATERS. Would the gentleman yield for a moment? Would you repeat? Destiny Ventures?

Mr. KRAMER. Destiny Ventures is in—

Chairwoman WATERS. Where are they—

Mr. KRAMER. Oklahoma, Texas also. This is—and they are totally undercapitalized. But what is happening now, banks that have financial resources that own these properties are now trying desperately to get rid of them because they know they could be held responsible by the city of Cleveland.

Chairwoman WATERS. If the gentlemen would yield for a moment, I am basically very, very cautious about eminent domain. But the land use authority vested in the city council, I believe that a criteria could be developed so that you could use the eminent domain in some of these cases, or in many of these cases.

Someone said here today that the banks or the lenders or the investors are anxious to do workouts because in the final analysis they could lose everything or they could save some of their investment with these modifications. But if you are telling me that you have, as he says, which we have heard over and over again, that are bringing down the value of other homes in the neighborhood, that are not kept up, that are being stripped, that are being used for criminal activity, it seems to me that is a good case for eminent domain.

And if the cities get involved with establishing criteria for eminent domain, that if in fact the value of these properties has decreased significantly, then perhaps the city can end up, as I am trying to do with my—one of the pieces of legislation that I have for the cities to buy up these properties so that they can be rehabbed and placed on the market for low and moderate income people. Through eminent domain, you can get them all very, very cheap because the value of them has gone down.

Perhaps the city ought to be a little bit more aggressive in exercising its authority to do some of this. So we would like to talk with you further because we are hearing something today that I always knew was going to happen if this situation persisted, but I didn't know it was actually happening the way that you described.

All right. We are going to move on so that we can get—were you finished?

Mrs. TUBBS JONES. Yes, ma'am.

Chairwoman WATERS. All right. Okay. We will move to Ms. Sutton.

Ms. SUTTON. Thank you, Madam Chairwoman.

Ms. Guelker, thank you for coming in to testify about the good work that you are doing in Lorain County. You mentioned in your testimony short sales and they have been getting increased attention lately as an alternative to foreclosure. Can you just go into a little more detail about what short sales involve? And can you also explain how they might be beneficial to someone as an alternative to foreclosure?

Ms. GUELKER. The lady who was at the end of the first panel, I think she explained it exactly. I can fax or scan or e-mail something eight or nine times. They don't have it. They make a deal with an asset manager; a month later that deal is off the table. The homeowner—I can see why the homeowner gives up, walks away. It is very—they are made promises. They are trying and then somebody pulls the rug out.

I mean, as a Realtor, I sit there and do it. I make the call. You follow up. One mortgage company wanted a $25,000 no interest for 5 years to a guy getting out of jail. The guy didn't have a job. Six months after trying to do a short sale, it went to sheriff's sale in January. He's still in the home because the bank still hasn't paid the country. Kind of disturbing. And he was a good one. He kept the property cut, he made showings available, he was a good homeowner who was actually trying to work with them.

Ms. SUTTON. Thank you. I am going to follow up with you a little bit after this and get some more information.

Mr. Gross, you received some positive support here for Countrywide's president, but, you know, earlier in the first panel, there was discussion about Countrywide. And maybe you can just tell me, how many loans does Countrywide have in the State of Ohio?

Mr. GROSS. 256,000.

Ms. SUTTON. Okay. Do you know how many of those 256,000 are subprime loans?

Mr. GROSS. 7.4 percent.

Ms. SUTTON. 7.4 percent. Do you know how many homes Countrywide foreclosed on in Ohio last month?

Mr. GROSS. No, I am sorry. I do not have that information.

Ms. SUTTON. How about the last year, 2007?

Mr. GROSS. I don't have in terms of—at the present time, approximately 2.04 percent of the loans in Ohio are in a foreclosure status, which means foreclosure is pending. Of those, we estimate normally that 50 to 60 percent of those properties will not complete the foreclosure process, and 40-plus percent will complete it.

Chairwoman WATERS. Move the microphone up as close as you can.

Mr. GROSS. Sorry.

Ms. SUTTON. Okay. In your written testimony you say that you have assisted 26 borrowers who have sought help.

Mr. GROSS. Through that one program.

Ms. SUTTON. Right. Through Ohio Save the Dream Program, right?

Mr. GROSS. That is correct.

Ms. SUTTON. And what percentage of the—well, we can calculate that. That is a relatively small number.

Mr. GROSS. Again, that is just those borrowers who have approached us through that one program.

Ms. KAPTUR. Will the gentlelady yield?

Ms. SUTTON. Certainly.

Ms. KAPTUR. Two percent of 276,000 is 5,520.

Ms. SUTTON. Thank you.

Mr. GROSS. In the foreclosure process, yes.

Ms. SUTTON. Thank you, Representative Kaptur.

Although you are here today, and I appreciate that, and the people are in the other room trying to work out loans, we have heard some of the testimony about how difficult this all seems to be when it is put into practice for people. I looked at the litany of interactions between, you know, our earlier witness when she was trying to help people, and it reminded me of looking at the process that vulnerable people who are trying to get their health care coverage go through, even when they have insurance, it's just call after call after call, and when people are vulnerable, there are always those out there to take advantage.

But I just have a question: Even though you are here, I didn't see Countrywide on the list of loan servicers who signed a Compact to help Ohioans preserve homeownership. Why is that?

Mr. GROSS. We have participated in the discussions regarding the Compact. Many times the overall principles that were in the Compact were ones that we subscribe to and had practiced for many years. Unfortunately for us, it was sort of the devil was in the details, which was for each one of those major points there were sub-bullets in there that we, quite frankly said, if it were just the six principles stated alone, we are fine. We could subscribe to that, as we have done in other States.

But once you got into the details of exactly what was required, one of the challenges that we have is we service 9 million loans across the Nation. We absolutely cannot get into a circumstance where we have materially different requirements and standards that a location makes so that all loans in Ohio have to be serviced in a certain manner, which is different from Minnesota or Michigan.

So for national servicers, which is why I think there were very few national servicers that subscribe to the Compact, this was a major problem.

Ms. SUTTON. So it would be some things that are initiated on the Federal level so that you have—

Mr. GROSS. Which we were one of the first subscribers to the Dodd principles.

Ms. SUTTON. What exactly, just for clarification, what are the—what were the devilish details that kept you out?

Mr. GROSS. I don't recall what they were. I'll have to follow up with you later. Blame it on age; I don't remember.

Ms. SUTTON. Thank you. I yield back.

Chairwoman WATERS. Mr. Gross, are you a lawyer?

Mr. GROSS. No, I am not.

Chairwoman WATERS. Okay. Are you familiar with, I believe there are laws that cover the country with regard to paper, commercial paper, right?

Mr. GROSS. Uniform commercial code.

Chairwoman WATERS. Uniform commercial code, right?

Mr. GROSS. Yes.

Chairwoman WATERS. So even though you are not a lawyer, you know what I am talking about, right?

Mr. GROSS. A little bit.

Chairwoman WATERS. Yes. But, so if we can have a uniform commercial code that addresses consumer paper, why couldn't we do the same thing with mortgages? Because I was—the grief we were getting across the country from the national servicers that it is very hard to put credit—to describe what predatory lending is so you could regulate it, because lending is so different across the country. But if you have uniform commercial paper, you ought to be able to have uniform predatory lending laws, don't you think?

Mr. GROSS. I am betting that you could come up with a designation.

Chairwoman WATERS. Okay. I thought so.

Ms. SUTTON. Just one final question.

Chairwoman WATERS. Yes.

Ms. SUTTON. You said that you didn't want to sign on to the Compact because it is difficult when you are dealing with other States if you agree here. Was there something in the compact that would not have been acceptable or a practice that you could have applied?

Mr. GROSS. Not that I remember.

Ms. SUTTON. Okay.

Mr. GROSS. And I would note for the record that Countrywide does report all of our portfolio management loss mitigation statistics nationally, and we report them on a State level basis, so any State regulator who wants access to this information, it is led by an initiative from Ohio Attorney General Tom Miller, and they are all reported through Deputy Commissioner of Banking, Mark Pierce, in North Carolina. So our information on a State-level basis is available to any regulator.

Ms. SUTTON. Thank you, Mr. Gross.

Chairwoman WATERS. Thank you.

Mrs. TUBBS JONES. Madam Chairwoman, I apologize. For the record, they are doing workout in the next room—Washington Mutual, Countrywide, National City, Freddie Mac, Litton Loan Service, Neighborhood Housing Services, Community Housing Solutions, the Housing Advocates, Legal Aid Society, the East Side Organizing Project, and ACORN. They are next door and available to help you do workouts.

Chairwoman WATERS. All right. Thank you very much. I am supposed to spend my time now asking Mr. Gross and Mr. Van Buskirk about the affordability standards Countrywide and members of the Ohio Bankers League are using in their loss mitigation efforts with distressed borrowers. But I would like you to start to think about that while I—I guess offer a kind of apology and help to accept the blame for the situation we find ourselves in.

Our regulators have already admitted in hearings that they dropped the ball, that they are responsible for this foreclosure event that we are in. Members of Congress, some of us, have certainly admitted that we dropped the ball on our oversight responsibility, and we did not require enough of our regulators so that they

were able to get away with not doing the kind of auditing and the kind of questioning of all these new and exotic products that were coming on the market, so that we could understand what was happening.

But as I look here today, I see further responsibility can be taken. While I am very much aware that the economy certainly plays a role, when people lose their jobs and we have financial difficulties and cannot make our payments and we cannot take care of our mortgages.

But, you know, and I am very close with the Realtors, but I am wondering if some of our Realtors were selling these properties that they did not wince at some of the products that were being offered to their clients and say, "I can't do this. This just doesn't seem right. I know that based on what I know about this client there is no way that this is going to work with the reset, given, you know, the amount of income that they have."

I am also wondering when the Fed—the Home Loan Bank situation, you have participating banks that you give low-cost money to. I am wondering if—how many of those banks were predatory lending, and if there is something interesting—what was going on, and certainly with the Ohio Bankers Association, what kind of early-on discussion did the Association have about these products.

And how many of the banks and the associations were involved with particularly mortgage brokers and bankers who were out there pushing these products with no responsibility? As a matter of fact, in the State of California, Countrywide—we had two ways by which brokers could be licensed. And Countrywide utilized the one where if they got their license, they could go out and hire people without those—those brokers being licensed. We are changing that in the legislation, but we literally had these mortgage folks working out of the backs of their cars with all kinds of utilization of these products and some fraud, etc.

So I think that we all have to take some responsibility to work very, very hard. We owe an apology to the American people. And I really came here today quite upset, and I am trying to be calm and to contain myself because the latest news is this. Countrywide has something called Friends of Mozilo. The friends of the chairman or the CEO, the president, the founder, or whatever all those titles are at Countrywide Bank were people who got special rates and special considerations. And some of them are elected officials—Senator Dodd; Senator Conrad; Jim Johnson, who was the CEO of Fannie Mae; Donna Shalala, who was the head of Health and Human Services; Ambassador Holbrooke; and Alfonso Jackson, who was the Secretary of HUD—all were friends of Mozilo's and got special consideration for their loans.

Not only did they get a reduced interest rate, but some of them were able to borrow money above and beyond the standards of Countrywide, where they were lending for multiple units and properties that were not even supposed to be funded according to the criteria of Countrywide. And, of course, general shock that Jim Johnson, even while he was running Fannie Mae, was able to get a special loan and special consideration on multiple properties.

And so, you know, the American people, and particularly the poorest and most vulnerable in our society who were being raped

with these predatory loans, added value products, and extraordinarily high interest rates and resets that are going to quadruple ought to be mad as hell at all of us about what is happening. And I do think that some of the people who testified here today talk about—we have to dig deeper. There is no way that we should allow, even with the sale—Countrywide can't get off with the sale just to Bank of America.

We have to dig deeper. We have to explore some of what Congresswoman Marcy Kaptur asked about, who started it, whether or not people conspired to target neighborhoods, on and on and on. So I just must say that because it is so uncomfortable as a public policymaker in the middle of Congress doing this work to keep discovering what we are discovering.

This latest transfer with Mozilo with this little private banking that they were doing with professional people and the very people that we expected to protect the people of America were getting privileged loans is just unacceptable. And we are going to have to deal with this.

Not only my committee but the entire Congress of the United States has to do this. We have to subpoena the people. And we have to join some lawsuits. Meanwhile, let me get back to the Bureau of Standards.

Countrywide, you get beaten up a lot, but you ought to be beaten up.

[Laughter]

Chairwoman WATERS. I mean, you know, I thank you for being here today, but I don't feel sorry for you at all. And if you end up getting hit hard, just grin and bear it, as you are doing, because you have become the poster child for what is wrong. I know Ameriquest and Century and some of the others that are out of business were just as bad as you are. Thank you for coming, and accepting the blows.

Now tell me, about the affordability standards in Countrywide and also I will get back to the rivers of the Ohio. Use it in your loss mitigation efforts. Is that understandable? Do I have—

Mr. GROSS. Yes, ma'am.

Chairwoman WATERS. —to be more specific than that?

Mr. GROSS. No, that's very specific.

Chairwoman WATERS. All right.

Mr. GROSS. When we are gathering financial information from a customer today—

Chairwoman WATERS. Would you speak up so everybody can hear you?

Mr. GROSS. Yes. When we are gathering information from the homeowner regarding their income and expenses, which would be gross income versus their expenses, we will use two traditional ratios, one which is called the monthly housing expense, which is principal, interest, taxes, and insurance, which is typically going to fall somewhere in the 33 to 38 percent of a person's or a household's gross monthly income.

The second ratio is the total monthly obligations, which includes the monthly housing expense and all other obligations they might have, which depending upon the homeowner and what area of the

Nation they live in, that would probably cap out somewhere in the 45 to 50 percent of the household's gross monthly income.

Chairwoman WATERS. You have strict standards on affordability for loss mitigation efforts. That may for example require better than $200 in residential income left over after a borrower's household expenses, including payments on all secured and unsecured debt are taken into account. And that requires 20 percent residual income per person. Under the same analysis, VA and FHA also imposed similar standards on services of the loans that they guarantee.

Mr. GROSS. Yes. And the final item that I was going to mention was we would generally try to leave approximately somewhere between $75 to $100 net disposable income per household member.

Chairwoman WATERS. What do you mean you "try?" Is that a standard or not?

Mr. GROSS. It is a guideline.

Chairwoman WATERS. So it could or could not be the case?

Mr. GROSS. Yes. It would be the standard. What I outlined to you before was generally that we would be in compliance with the same thing that either Fannie Mae or Freddie Mac outlines.

Chairwoman WATERS. Well, let me just ask this so I know. The more I learn about servicing and servicers, the more fascinated I am. Countrywide services its own loans. Is that correct?

Mr. GROSS. We service loans for Countrywide's mortgage business, yes.

Chairwoman WATERS. And who else do you service?

Mr. GROSS. Fannie Mae, Freddie Mac, and privately issued securities, some whole loan owners.

Chairwoman WATERS. So you make a lot of money? You are a big servicer?

Mr. GROSS. Yes, we are.

Chairwoman WATERS. And many of the loans that were initiated by Countrywide were purchased on the secondary market by Fannie Mae and Freddie Mac. Is that correct?

Mr. GROSS. That is correct.

Chairwoman WATERS. So there is a little professional relationship going on here? They have to be the same loans that—

Mr. GROSS. We sell loans to Fannie Mae, Freddie Mac, and other investors. And they hire us to service those loans on their behalf.

Chairwoman WATERS. Very interesting. Very, very interesting. Now let me ask one more question: In the servicing of loans, do you contract out your servicing to anybody?

Mr. GROSS. Generally speaking, no.

Chairwoman WATERS. Not generally. Do you contract out your services to anybody?

Mr. GROSS. There are certain isolated—

Chairwoman WATERS. No. Do you contract out—

Mr. GROSS. Yes.

Chairwoman WATERS. —your services? Whom do you contract out to?

Mr. GROSS. It depends upon the—

Chairwoman WATERS. Just give me the name of one or two of the other servicers you contract out to.

Mr. GROSS. Oh, other servicers?

Chairwoman WATERS. Yes.

Mr. GROSS. No, we do not. We service all of the loans on behalf—

Chairwoman WATERS. Well, what were you referring to?

Mr. GROSS. I was referring to we may hire an outside firm to assist us in certain aspects of servicing the loan.

Chairwoman WATERS. Don't go do that with me.

Mr. GROSS. Well, that is the answer to the question.

Chairwoman WATERS. Well, the answer to the question is you do contract out. Do you hire any offshore? And I have to put it in a way that you don't—

Mr. GROSS. Yes, we do them offshore.

Chairwoman WATERS. You have offshore people who help you with some of the aspects of the servicing—

Mr. GROSS. Yes.

Chairwoman WATERS. —that you are alluding to now in nuancing on me. Where are those offshore contractors that help you with some aspects of the servicing? Who are they?

Mr. GROSS. They are employees of Countrywide. And they are in India and Costa Rica.

Chairwoman WATERS. India and Costa Rica?

Mr. GROSS. Yes.

Chairwoman WATERS. And what percentage of the servicing done out in India and Costa Rica are modifications or—

Mr. GROSS. None.

Chairwoman WATERS. None?

Mr. GROSS. None.

Chairwoman WATERS. So what do they do for you?

Mr. GROSS. Mainly office functions during off-hours because they are—

Chairwoman WATERS. So they answer their telephone, maybe. And what do they do for you?

Mr. GROSS. On very infrequent occasions, yes, we do have a telephone staff there that is handled primarily for customer service-oriented discussions.

Chairwoman WATERS. So what does one in India do for an American homeowner in Ohio?

Mr. GROSS. Most typically the type of calls that they would get would be a homeowner calling in to say, "I'm going to make my June 1st payment on June 23rd." And we would note that, and we would say, "Thank you."

Chairwoman WATERS. Well, let me just say this: In addition to some of the things that we are trying to get into for that is to make sure that no part of your business—we talked about offshore. I alluded to it. I think they should be out. I think all brokers should be licensed in Ohio.

One of the things I think we ought to do is we ought to prevent and outlaw offshore contracting for any services. American taxpayers, particularly with these predatory loans and these resets, are paying high interest rates. And there is enough money in there for you to hire people from these communities. If you have legitimate jobs, they deserve to have them.

But it is an insult, really, to talk about your hiring people offshore to have a piece of paper with 10 responses to questions where someone says, "I am behind in my loan," and all they say is, "Yes,"

or they can say, "I want this loan to be repaid. I will catch up. I cannot pay for 10 days," and a paper to tell them "Yes" or "No." "Yes, you may do that," or "No, you may not do that." That is absolutely outrageous. And that is why we are so upset with Countrywide for so many things.

I am not going to go any further with questioning, Mr. Gross. I just want to say to you I thank all of you for being here, despite the fact that you are going to feel a little bit burned when you leave here today. I contained myself a lot better than I thought I could, but I thank you all for participating.

I would like to thank all of the nonprofits and organizations that are attempting to help in so many ways. I liked some of what I heard. We are going to take some of that into consideration to see how we can better help you. I liked some of the information I heard about what HUD can possibly be doing. And, again, we have a lot of work to do. There is no end in sight on these foreclosures. You would think they would be winding down by now, but they are not.

So, with that, yes?

Mrs. TUBBS JONES. I would like to introduce one more person who has come into the hearing. It is our newest councilwoman in the City of Cleveland, Mamie Mitchell. She has the Ward 5. Thank you, Councilwoman.

Chairwoman WATERS. Thank you.

Mrs. TUBBS JONES. Let me ask all of the folks who are participating here to please thank my colleague, the Chair of the Housing and Community Opportunity Subcommittee of the Financial Services Committee, Congresswoman Maxine Waters, for convening this hearing.

Chairwoman WATERS. Thank you very much.

Mrs. TUBBS JONES. Let me thank the key member of the Ohio delegation, Marcy Kaptur, for joining us today.

Let me thank my colleagues Charlie Wilson and my sister in Ohio, other sister in Ohio, Congresswoman Betty Sutton, for being here.

Chairwoman WATERS. Thank you.

Ms. KAPTUR. Madam Chairwoman, I apologize —

Chairwoman WATERS. Absolutely.

Ms. KAPTUR. I just wanted to say to Congresswoman Tubbs Jones, thank you, and thank you to your wonderful, wonderful staff. It is a reflection of all you do for us here, including Cleveland State University. And I want to thank Betty Sutton, one of our crackerjack Congresswomen but also a crackerjack lawyer. So I am glad she is here today. And I know this is the beginning of a whole new day.

Thank you again, Chairwoman Waters. I leave today with better spirits than I came. Sometimes it is very frustrating working in Washington. Today I saw America the way it should be. It was a very respectful discussion regarding the points of view from people from all walks of life here. And we all learned together to try to help our country. This would not have been possible without this chairwoman setting the tone and coming out here, allowing us to face you directly, and to us. This is the way America should look. Thank you.

Chairwoman WATERS. You are certainly welcome. And I would like to thank all of our members who are present here today. This Ohio delegation has been fantastic in coming to organize this hearing that we had today. And, again, I would like to thank the staff from my office and from all of your offices who worked on this.

I thank you so much for your presence. There are times when I hold hearings where I am the only one there because members are so busy and they have so many people at them and so many issues to deal with. But you have certainly demonstrated your concern about this issue of foreclosures in your State, and I am very appreciative of it.

We have learned a lot here today. And we will work together to organize time on the Floor so that everybody understands what took place here today and to give some exposure to Washington. And so this has been very, very helpful to all of us.

Again, let me thank all of those individuals representing the institutions that are in the other room doing workouts. We are going to do follow-up on those. I have asked all of the citizens who are involved in trying to work out some kind of form, a release, so that we could get the information because I don't want anybody sending me back a form that they did 10 workouts.

I want the names of the workouts, and I will call each one of the persons who is supposedly backed up. And I am going to find out what happened with them. And if, in fact, a workout is not a workout, then I am going to get back to the institution that claimed it was a workout.

Without objection, let me just enter into the record written submissions from the following organizations: Policy Matters Ohio; Ohio Credit Union; United Way; the Poverty Center at Case Western Reserve University; Lake County Fair Housing Resource Center; Cynthia Dayton, City Manager; Rashad Young of the Lake County ERMA, E-R-M-A, Program, submitted by Representative LaTourette; and a statement from Mayor Marcie L. Fudge from Warrensville, Ohio.

With that, this hearing is adjourned. Thank you.

[Whereupon, at 1:55 p.m., the hearing was adjourned.]

A P P E N D I X

June 16, 2008

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Financial Services Committee
Hearing "H.R. 5679, The Foreclosure Prevention and Sound Mortgage Servicing Act of 2008"
Opening Statement for Congressman André Carson
April 16, 2008

Thank you, Chairwoman Waters and Ranking Member Capito for holding this hearing today on loss mitigation efforts. I would like to commend the work of this subcommittee in trying to help Americans maintain and secure affordable, safe and stable housing. The legislation at hand today continues that crucial effort by helping at risk borrowers connect with their servicers to reach a mutually beneficial agreement when a loan is in danger of foreclosure.

The Foreclosure Prevention and Sound Mortgage Servicing Act bill addresses the lack of constructive communication between servicers and borrowers; a major problem for my constituents in the 7th Congressional District of Indiana. The bill requires servicers to provide borrowers with timely, accurate information when requested. Further, it prohibits the initiation of a foreclosure if a servicer has not engaged in reasonable loss mitigation efforts.

As you know, Indiana consistently ranks among the top ten states in foreclosure starts. There are about 17,000 foreclosed properties in Indianapolis and over 7,300 in the preforeclosure phase.

I am encouraged that this committee has chosen to move forward H.R. 5679 which would help many in the preforeclosure phase by requiring servicers to forward borrowers contact information to a HUD certified housing counselor if a loan payment is 60 days overdue. That counselor could then help those individuals at risk of foreclosure refinance to safer loans with far stronger underwriting standards.

I would also like to highlight the success of Fannie Mae's HomeStay program which seeks to help borrowers work out their loans or refinance into more stable loan agreements. In my district alone, the program has helped work out 114 loans which totals more than $13 million. Fannie Mae has done a model job of loss mitigation loan workouts through refinancing, and by increasing incentive fees to work out loans and refer borrowers to counseling.

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Opening Statement of Congresswoman Marcy Kaptur

Hearing of Financial Services Subcommittee on Housing and Community Opportunity

Foreclosure Problems and Solutions: Federal, State, and Local Efforts to Address the Foreclosure Crisis in Ohio

June 16, 2008

Thank you Chairwoman Waters, distinguished members of the Financial Services Committee, and the Housing and Community Opportunity Subcommittee, particularly Ohio Congresswoman Pryce, Congressman LaTourette, Congressman Wilson, and guests.

On behalf of our entire Ohio delegation, thank you for accepting our invitation to come to Ohio to conduct one of the most important hearings your Committee has held outside Washington, DC.

Cleveland is Ground Zero of the mortgage foreclosure challenge facing Ohio. Although every quadrant of our state is suffering from rising foreclosures, the crisis is most acute here in Cuyahoga County. Nearly 15,000 new foreclosure filings occurred here in 2007--a 350% increase over 1995.

Our state provides a compelling and representative picture of what is occurring across our nation--the largest washout of private savings in the form of home equity in a half century. According to a report by Pew Charitable Trusts, homeowners nationwide are expected to lose nearly $356 billion on property values over the next two years.

According to Moody's Economy report, "Almost 9 million homeowners now owe more on their mortgage than their home is worth, the largest share since the Great Depression." In fact, for the first time since World War II, in the critical home mortgage sector--our largest form of individual private savings--net home equity is negative, now below 50%. That is to say, as a whole, Americans owe more on their homes than they are worth. Furthermore, Moody estimates that 25% of homeowners with a mortgage will be "upside down" in their homes by this time next year--that's 12 million homeowners who will owe more than their homes are worth.

This enormous loss of real wealth affects not just the homeowner but our nation as a whole. For the first-time-ever, securitization of these mortgages into the international capital markets both fueled and masked this risky process. The effect has been to make our nation and its banks more dependent than ever on foreign borrowing and infusions of foreign capital. America now is a net debtor nation--both publicly and privately. There have been inferences of a taxpayer bailout to prevent financial collapse of major Wall Street banks and brokerages--among them, Citigroup and Bear Stearns. Others like Merrill Lynch and Lehman are awaiting life support in the wings. Our economic future

has been bound to foreign capital inflows in a manner I view as: (1) destabilizing to our nation's financial integrity, (2) politically risky for a nation founded with the ideal of independence, (3) expensive, and (4)unsustainable.

Most often when a homeowner can't make ends meet, they lose their home. But, when a giant firm like Bear Stearns can't make ends meet due to this crisis, the Chairman of the Federal Reserve and Secretary of the US Treasury get involved. Billions of dollars of capital-- now foreign capital from places like Abu Dhabi-- are found to fill the gap, mergers of banks are approved expeditiously, and, just in case, the Fed opens its NY window--with our taxpayers becoming the insurance company of last resort, pledging the full faith and credit of the U.S.to the Bib Banks. Will ordinary homeowners in our nation ever be afforded equal attention by the Fed and Treasury? It does not appear so with the rate of foreclosures and bankruptcies rising every month.

Today, we will learn more about the efforts of the State of Ohio, counties, and localities attempting to mitigate some of the damage in this maelstrom and to prevent further foreclosures and bankruptcies. Thank you for all those trying so hard to assist our fellow citizens.

Congress also must get tougher in its investigations of what has brought America's financial system to this predicament. There remains much Congress does not know about what got us here. I am reminded of an adage from an old professor of mine at the Harvard Business School who advised: "if you want to know how the world operates, follow the

cash."

Yet Congress has not really followed the cash. It has not investigated the paper trails of firms, brokerages, regulatory boards, government bodies, and key individuals who initiated and carried out these risky subprime and internationalized practices. An equity washout of this magnitude does not happen by spontaneous combustion. It was willed to happen. Specific people in specific places set the pieces in place to allow it to proceed. Many have been handsomely rewarded. America needs to know who they were, and are. I believe it incumbent that Congress authorize a full independent investigation of the roots of this crisis that trace back to the unstable period following the savings and loan crisis in the late 1980's. The development of the internationalized mortgage security instrument itself deserves more attention. In effect, it became a clever and high risk credit device, with little transparency, that acted like a bank --it created money, or at least the promises of it, in a Ponzi-schme like manner. And it did so without the normal regulatory restraints of full accounting and proper examination. How could the regulators have let that happen?

America should know the individuals and organizations that allowed these risky instruments and practices to proceed and expand. One of the first institutions to embark on subprime lending was Superior Bank of Hinsdale, Illinois, ultimately bought by Charter Bank here in Ohio. Superior was created out of the Resolution Trust Corporation. By the late 1990's, Superior's return on assets was 7-1/2 times the industry average. It held a very risky portfolio, had a CAMEL rating of only 2, yet its executives were

financially rewarded for presiding over ruin. How could America let this happen? No federal regulator stepped in to properly examine the institution. Why?

Where was the Office of Thrift Supervision? What had happened to HUD's appraisal and underwriting standards? Assuming many of these loans were moved to market through Freddie Mac and Fannie Mae, why did their regulatory oversight fall short? How were their Boards and Executives compensated during those years when risky practices proliferated? Which Board Members at financial institutions and brokerages, regulators, and secondary market bodies voted to allow these risky and predatory policies that escalated this equity drawdown? Do we have evidence that any of those Board Members personally benefited from their Board decisions? Through which domestic and international institutions were the original securitizations first moved? Which persons did it? Which regulatory agencies sanctioned the process? What roles did the US Secretary of Treasury, the Securities and Exchange Commission, and the Federal Reserve play in allowing these practices to flourish?

I find it troubling, for instance, that even when it became known that firms like Countrywide had done great damage to the mortgage market, the Federal Reserve maintained them as one of its handful of favored primary Treasury security dealers. Why? Indeed, who and in which firm, created the very first subprime loan and rolled it into an international mortgage securitization instrument? What set of individuals were involved in moving and clearing it to market? Frankly, Congress doesn't know. Even as homeowners across our nation often find it impossible to locate the holder of their

mortgage security in order to do loan workouts, those who placed them in this predicament are rolling over their stock options and collecting their interest on investments earned at others' expense. Where are the audit trails for thousands of these subprime loan transactions and international securitizations? Congress doesn't know. The excuse "we just can't follow the paper trail" is not believable as financial transactions all have a paper trail. Even credit card companies can bill you for a phone call you made from a pay phone in a foreign country and adjust for the exchange rate.

In 2001, the Federal Deposit Insurance Corporation placed the largest fine in American history --$450 million-- on Superior Bank, just one of the initiators of subprime loan instruments I have been able to identify. Its faulty accounting practices and poor performance in examinations was finally recognized when it couldn't meet capital calls. Though we know what Superior and what Merrill Lynch were involved in moving Superior's paper, we yet do not know which third parties were involved in packaging it, their fees, and how that paper moved into the international market. For a crisis of this proportion, America should know the full story.

I am eager to learn from the witnesses today what more Congress can do to help remedy the current crisis as well as trace its roots to avoid further raids on the private savings of America's homeowners.

Opening Statement of Dennis J. Kucinich (6)
Subcommittee on Housing and Community Opportunity Field Hearing
Oversight Foreclosure Problems and Solutions: Federal, State and Local Efforts to Address the Foreclosure Crisis in Ohio
June 16, 2008

Madam Chairwoman, I appreciate the leadership you have shown over many years in this very important area where banking policy affects the state of housing in America's cities like Cleveland. I want to thank you for taking your subcommittee to Cleveland for this field hearing on Foreclosure Problems and Solutions.

Cleveland is at the epicenter of the national problem of foreclosure. Major American cities have experienced a wave of foreclosures. Last year, the Center for Responsible Lending projected that one out of five subprime mortgages originated during the previous two years will end in foreclosure. These foreclosures will cost homeowners as much as $164 billion—the exact cost they will have on urban America is unknown.

Here in Cleveland, we can already see the damage. This series of maps illustrates the problem here in Cuyahoga County.

Look at this first map. This is where depository banks made loans in 2005. You see the sideways lying "V" highlighted in light green? Let me tell you what that geographical area represents. It is the area in the city where depository banks made very few prime loans.

Now look at the next map of subprime loans made in 2005, highlighted in reds and oranges—look at the same "V" and the same place. This geographical area represents where the highest number of subprime mortgage loans were made during that same year.

Look at the following map. Again, you see the same "V" and the same place. Here the red dots indicate the number of foreclosures in the first 10 months of 2006. These maps tell you that there is a clear and self-reinforcing correlation between the low number of prime loans, the high number of sub-prime loans, and the high number of foreclosures.

Now, look at this next map. Again the familiar sideways-lying "V" shape. But here the foreclosures, indicated by blue dots, are superimposed on the neighborhoods – red indicates predominately African-American neighborhoods. Again, we see a perfect match.

The next map shows the relationship among high cost mortgage loans made to investors in 2006, increases in vacant homes in 2007 and 2008, and high minority population based on the 2000 census. Again, we see the sideways "V." But we also see increases in high-cost loans and vacant properties in the outer suburbs and outlying counties.

The last map highlights only the census tracts with all three factors: the highest cost mortgages, the greatest increase in vacant properties, and the highest minority populations. We still see the sideways "V." But where previously the phenomenon was mainly in African-American census tracts in eastern Cuyahoga County, we see the problem spreading west to

census tracts with larger Hispanic and Arab populations. Now, it looks more like a diagonal "T," spreading in every direction it can spread in Cleveland: East, South, and now West.

Lack of access to prime loans, a high frequency of subprime loans and a high rate of foreclosures are by no means specific to any racial group, *but* the pattern certainly carries a whiff of America's bleak past.

How did our city get to this point?

The Domestic Policy Subcommittee, which I chair, has initiated a broad reaching examination of the predatory mortgage and subprime lending industries, and the federal regulators overseeing the nation's banking industry.

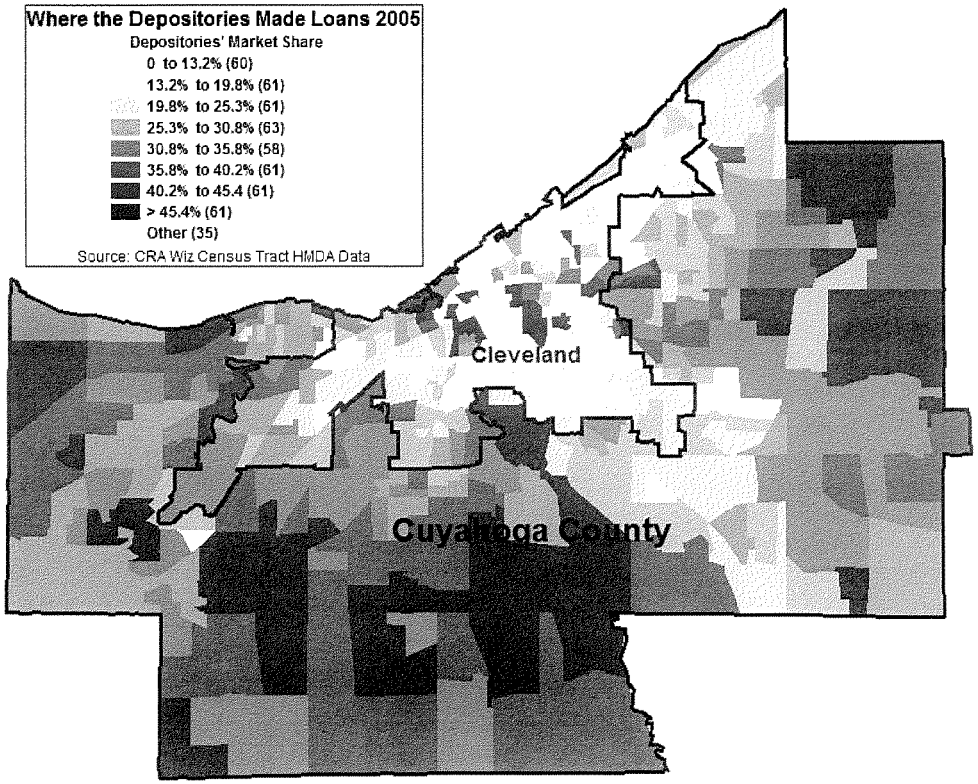
As part of that effort, the Domestic Policy Subcommittee intervened in a major bank merger in Ohio between Huntington Bank and Sky Financial. We asked the Federal Reserve Bank of Cleveland, which is the primary regulator, to extend the public comment period and to hold a public hearing. Instead of giving the merger greater scrutiny in light of the mortgage crisis and particularly this phenomenon in Cuyahoga County, the Federal Reserve and the Office of the Comptroller of the Currency rubber-stamped the merger based on the banks' self reporting of Community Reinvestment Act compliance.

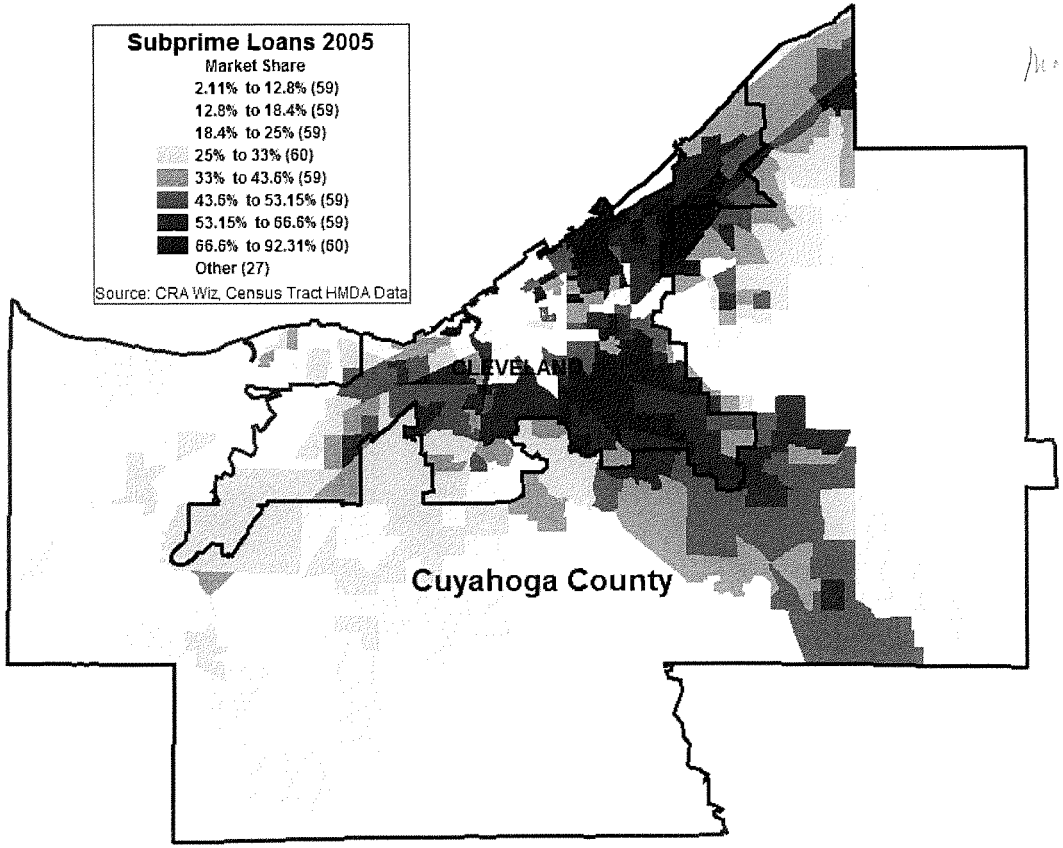
As a result of that merger, we see more depository bank closures in Low-to-Moderate Income (LMI) communities, including Euclid and Cleveland here

in Cuyahoga County, as well as Canton, Grandview, Lima, New Philadelphia, and Ravenna. And as we can see from the newest data, the problem is getting worse.

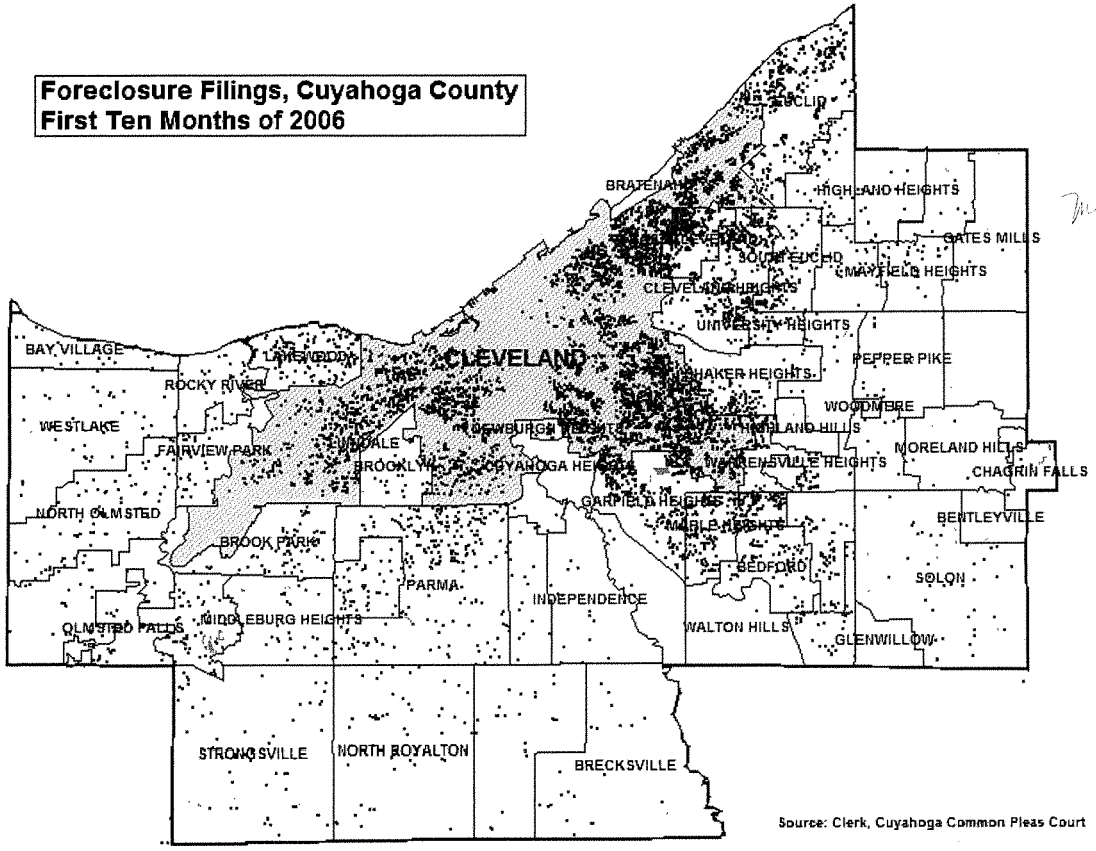
Madam Chairwoman, because of the Waters Amendment which you added to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, the LMI City of Lima, Ohio, held a Waters Amendment meeting to determine what actions must be taken due to the Huntington bank branch closing there. Last week, a similar meeting was held in Cleveland due to the Huntington branch closings in Cleveland and Euclid. We don't know what, if any, result will come of these meetings with the Federal Reserve, the OCC, and the nation's and state's other bank regulators, banks, and community representatives. However, with your leadership and understanding of the problems facing our cities nationwide, and particularly here in Ohio, the Waters Amendment was able to be invoked so we can pay attention to its effectiveness where more depository bank branches have been closed in LMI communities. It is now up to us to listen carefully to what the witnesses today say about the crisis in Ohio and to find ways to supplement the mandate of our nation's regulatory agencies where necessary to get out of the current crisis and avoid similar ones in the future. Thank you again for meeting with the people of our communities in Cuyahoga County.

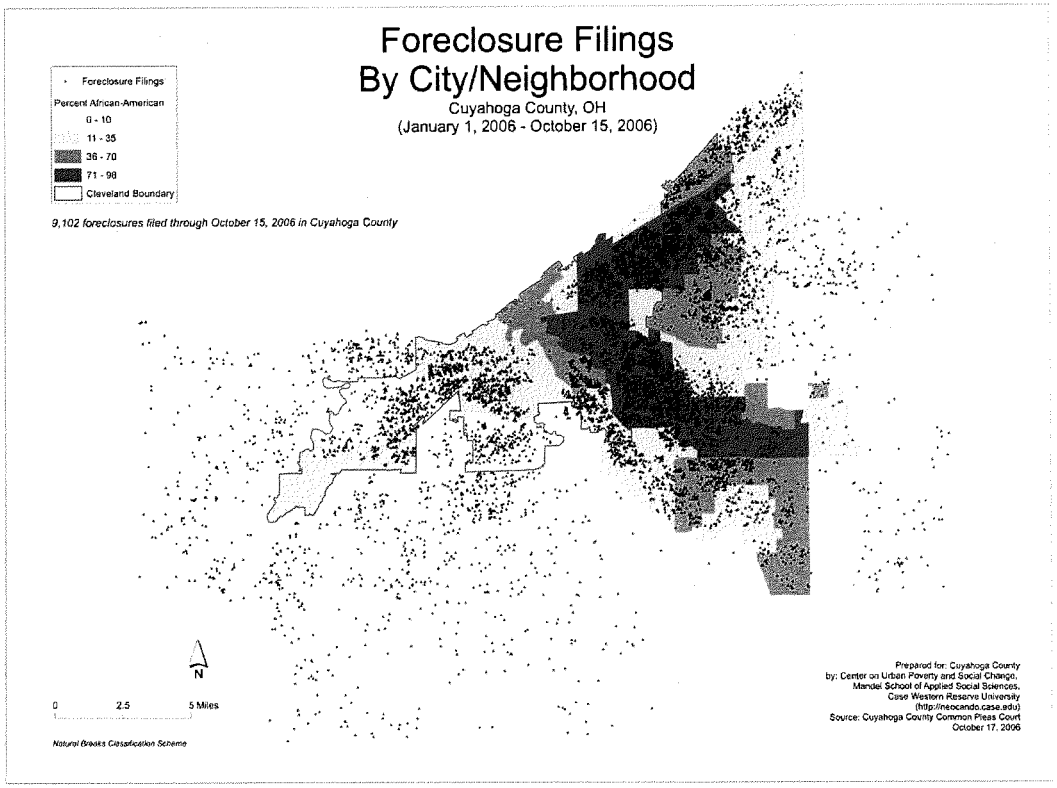
Map 1


Where the Depositories Made Loans 2005
Depositories' Market Share
0 to 13.2% (60)
13.2% to 19.8% (61)
19.8% to 25.3% (61)
25.3% to 30.8% (63)
30.8% to 35.8% (58)
35.8% to 40.2% (61)
40.2% to 45.4 (61)
> 45.4% (61)
Other (35)
Source: CRA Wiz Census Tract HMDA Data
Cleveland
Cuyahoga County

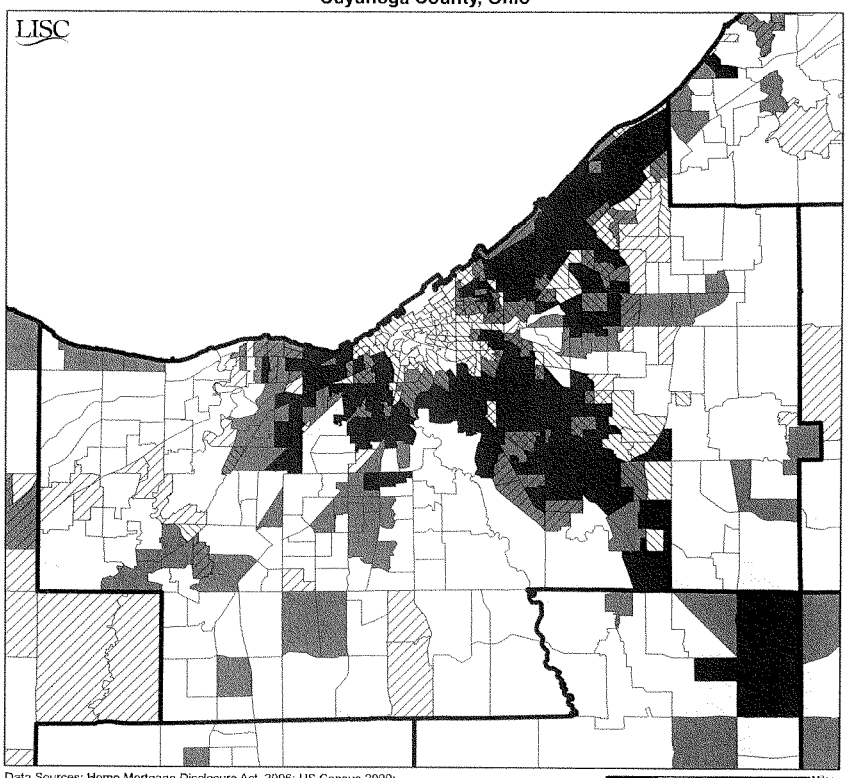

Subprime Loans 2005
Market Share
2.11% to 12.8% (59)
12.8% to 18.4% (59)
18.4% to 25% (59)
25% to 33% (60)
33% to 43.6% (59)
43.6% to 53.15% (59)
53.15% to 66.6% (59)
66.6% to 92.31% (60)
Other (27)
Source: CRA Wiz, Census Tract HMDA Data
CLEVELAND
Cuyahoga County

Map 2


Foreclosure Filings, Cuyahoga County
First Ten Months of 2006
CLEVELAND
BAY VILLAGE
ROCKY RIVER
WESTLAKE
FAIRVIEW PARK
NORTH OLMSTED
BROOK PARK
OLMSTED FALLS
MIDDLEBURG HEIGHTS
PARMA
INDEPENDENCE
GARFIELD HEIGHTS
MAPLE HEIGHTS
BEDFORD
WALTON HILLS
SOLON
BENTLEYVILLE
CHAGRIN FALLS
MORELAND HILLS
WOODMERE
PEPPER PIKE
SHAKER HEIGHTS
UNIVERSITY HEIGHTS
CLEVELAND HEIGHTS
SOUTH EUCLID
MAYFIELD HEIGHTS
GATES MILLS
HIGHLAND HEIGHTS
BRATENAHL
BROOKLYN
STRONGSVILLE
NORTH ROYALTON
BRECKSVILLE
Source: Clerk, Cuyahoga Common Pleas Court


Foreclosure Filings
By City/Neighborhood
Cuyahoga County, OH
(January 1, 2006 - October 15, 2006)
Foreclosure Filings
Percent African-American
0 - 10
11 - 35
36 - 70
71 - 98
Cleveland Boundary
9,102 foreclosures filed through October 15, 2006 in Cuyahoga County
N
0
2.5
5 Miles
Natural Breaks Classification Scheme
Prepared for: Cuyahoga County
by: Center on Urban Poverty and Social Change,
Mandel School of Applied Social Sciences,
Case Western Reserve University
(http://neocando.case.edu)
Source: Cuyahoga County Common Pleas Court
October 17, 2006

Map 1
Relationship Among High Cost Mortgage Loans Made to Investors in 2006, Change in Vacant and Occupied Residential Addresses 2007-08 & Minority Populations 2000
Cuyahoga County, Ohio



Data Sources: Home Mortgage Disclosure Act, 2006; US Census 2000; USPS Administrative Data On Address Vacancies March 2007 & 2008

0 2 4 8 Miles

Top Two Qunitiles of High Cost Loans Made to Investors

- 4 - 8
- 9 - 75
- Increase in Residential Vacant Addresses per Housing Unit
- Percent Minority Population > 35%
- County Boundary

Notes

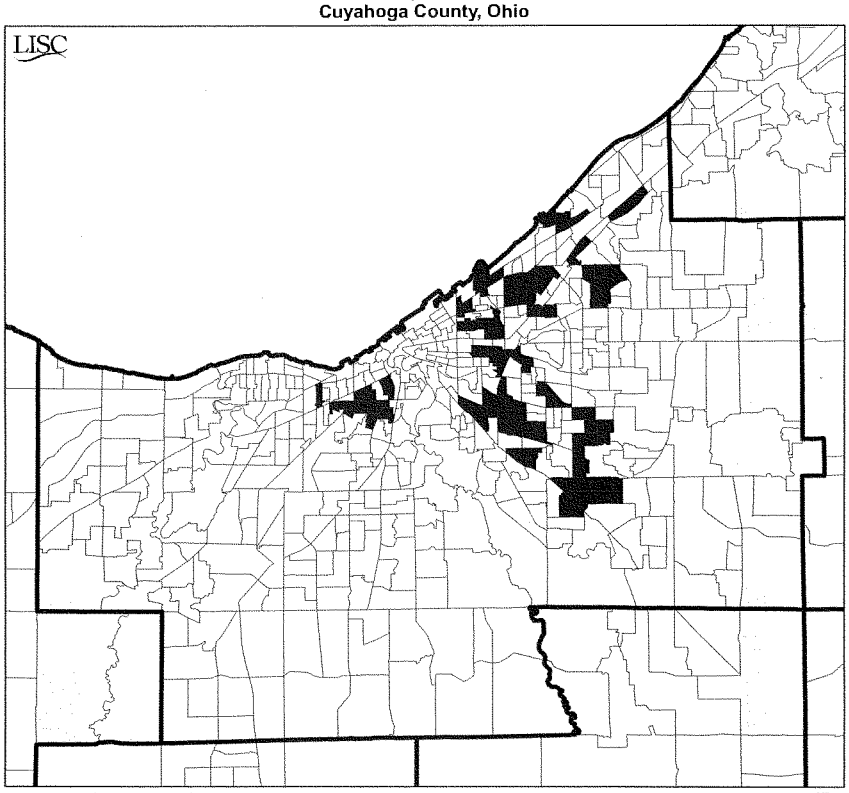
High Cost Loan tracts are those in top 40% of all Ohio census tracts in number of high cost loans made to investors in 2006.

Increase in Residential Vacant Addresses tracts are those in top 20% of all US census tracts in increase in vacant residential addresses per housing unit. Change in vacant adddreses are from April '07 to March '08; housing units are from Census 2000.

Loan data include single-family home purchase and home refinance loans originated in 2006.

High cost loans have interest rates 3 percentage points above comparable Treasury rates for first liens and 5 percentage points above for junior liens.

Map 2
Relationship Among High Cost Mortgage Loans Made to Investors in 2006, Change in Vacant and Occupied Residential Addresses 2007-08 & Minority Populations 2000
Cuyahoga County, Ohio



Data Sources: Home Mortgage Disclosure Act, 2006; US Census 2000;
USPS Administrative Data On Address Vacancies March 2007 & 2008

Intersecting Tracts | County Boundary

Notes

Intersecting tracts are:
(1) in top 40% of all Ohio census tracts in number of high cost loans made to investors in 2006; and
(2) in top 20% of all US census tracts in increase in vacant residential addresses per housing unit; and
(3) have a minority population greater than 35%

Change in vacant adddreses data are from April '07 to March '08; housing units and minority population counts are from Census 2000

Loan data include single-family home purchase and home refinance loans originated in 2006. High cost loans have interest rates 3 percentage points above comparable Treasury rates for first liens and 5 percentage points above for junior liens.

Opening Statement and Parliamentary Directives of the

Honorable Maxine Waters, D-35th CA

Chairwoman, Subcommittee on Housing and Community Opportunity

Hearing on "Foreclosure Problems and Solutions: Federal, State, and Local Efforts to Address the Foreclosure Crisis in Ohio"

Joseph E. Cole Center for Continuing Education at Cleveland State University

3100 Chester Avenue

Cleveland, Ohio

9:30 AM

CALL THE SUBCOMMITTEE TO ORDER.

- **(Bang gavel)** ***"This hearing of the Subcommittee on Housing and Community Opportunity will come to order."***

Good morning ladies and gentlemen. I would like to start by thanking Dr. Michael Schwartz, President of Cleveland State University for allowing us to use this space for today's hearing on "Foreclosure Problems and Solutions: Federal, State, and Local Efforts to Address the Foreclosure

Crisis in Ohio." The University has also kindly allowed us to use some additional rooms to conduct a foreclosure workshop, where local housing counselors, Legal Aid groups, and mortgage servicers are available to work with borrowers trying to avoid foreclosure.

And I would especially like to thank the Ohio Representatives here today for requesting that I hold a field hearing focused on the foreclosure crisis and responses to it in the State of Ohio. Your Representatives have been a powerful, persuasive voice in Congress on behalf of Ohio's residents and neighborhoods, which have been devastated by subprime lending and the turmoil it has spread through the mortgage markets, and, eventually, the entire economy. In fact, I can attest that every Ohio Member sitting beside me today has played an extraordinarily active role in the federal response to this crisis.

Representative Kaptur has been a persistent voice in our Democratic caucus for taking bold action on the foreclosure crisis generally, and for holding this field hearing in particular. Representative Kucinich, in his role as Chairman of the Domestic Policy Subcommittee of the Government Oversight and Reform Committee has painstakingly examined the causes

and characteristics of this growing problem, including a joint hearing with my Subcommittee less than a month ago, which focused on how best to target federal aid to neighborhoods and communities facing block-after-block of foreclosed and abandoned properties. And the Ohio delegation's efforts to address the crisis have been bi-partisan. Indeed, Representatives Kucinich, Wilson, Pryce, and LaTourette -- who wanted very much to be here today but had an unavoidable conflict contributed key amendments to the bill I introduced, H.R. 5818, The Neighborhood Stabilization Act of 2008. The bill would provide $15 billion in grants and loans – with over $800 million of this amount to the State of Ohio—for the purchase, rehabilitation and resale or rental of foreclosed and abandoned properties. My Judiciary Committee colleague Representative Sutton joined us in the effort to make sure the bill passed the House. And all of us here are working diligently to see that these critical resources are retained as our chamber negotiates with the Senate on the elements of the foreclosure rescue package that eventually makes its way to the President's desk, hopefully by July 4th.

Last but certainly not least, I want to thank Representative Stephanie Tubbs Jones, not only for the tremendous logistical support her office and staff have provided to the Subcommittee in putting this hearing together, but also for really opening my eyes to the scope of the foreclosure problem here in Ohio, last year when I traveled here at her invitation and had the opportunity to tour some of the neighborhoods already being devastated by foreclosures.

Because of the challenges it has faced economically over the past few years—with the loss of manufacturing jobs and population from certain parts of the state—Ohio was truly the "canary in the coal mine" of the foreclosure crisis—vulnerable to subprime lending and its aftereffects much earlier than the rest of the nation. .But as the senior California Member of the Financial Services Committee, I can certainly confirm that other states are experiencing the very problems that Ohio has been grappling with for some time now.

Insert a

Today, we are here to learn about where things stand in addressing those problems—specifically, the impact of existing and potential federal, state and local efforts to prevent further foreclosures and to help stabilize

Ohio has contended with rising foreclosures since 1995. According to Policy Matters, from whom we will here today, the number of foreclosures in Ohio has quintupled since that year. Ohio has consistently ranked in the top 5 states monthly in foreclosure filings during the recent crisis. In May of this year, the state ranked seventh nationally, with 12,295 foreclosure filings or one filing for every 410 households.

As the senior Member of the Financial Services Committee from California, which has been ranked first or second in foreclosures for most of the past year, I can certainly confirm that the rest of nation is confronting the problems that Ohio has grappled with for some time. Foreclosure filings in May are up 7 percent from April, and fully 48 percent from a year ago. Over 260,000 properties received foreclosure filings last month, or 1 in 483 U.S. households.

Today, we are here to learn about where things stand in addressing these problems--- specifically, the impact of existing and potential federal, state, and local efforts to prevent further foreclosures and to help stabilize

neighborhoods that have already seen too many of them. I am here primarily to learn, so I will turn things over shortly to my Ohio colleagues and the witnesses. I will close, however, by noting that I am particularly interested in two issues. **First**, I would like to know whether Ohio stakeholders believe that the recent actions taken by the House of Representatives—including passage of The Neighborhood Stabilization Act and a broad housing rescue package that proposes a greatly expanded role for the FHA and the GSEs in preventing further foreclosures—might be helpful to them if enacted into law.

Second, I would like to hear specifics about the efforts of the major mortgage servicers in the state to engage in loss mitigation. Unfortunately, the data provided by the voluntary mortgage industry loss mitigation initiative, HOPE Now, have been incomplete and opaque—and I'm not the only one saying that: Treasury Secretary Paulson and, more recently, the Office of the Comptroller of the Currency, have expressed similar concerns. But the figures HOPE Now does provide, coupled with feedback from constituents facing foreclosure and counselors or attorneys helping them, continue to trouble me. For example, of the 1.5 million loan

workouts HOPE Now members have executed since July 2007, fewer than one-third have been loan modifications. The rest are repayment plans, which can often just postpone the day of reckoning on a subprime adjustable rate mortgage, or so-called "ARM" loan. Indeed, of the over 600,000 subprime ARMs scheduled to reset in the first four months of 2008, less than 3 percent received loan modifications from HOPE Now members of 5 years or longer, the loss mitigation approach recommended by many, including FDIC Chairwoman Sheila Bair, one of the few regulators to sound the alarm early in this crisis. And the stories I have heard from distressed borrowers and their representatives at previous field hearings and town halls in my own District suggest that engagement with members of the HOPE Now Alliance is neither as smooth nor as productive as the Alliance's press releases and testimony before Congress suggest.

For this reason, I introduced H.R. 5679, The Foreclosure Prevention and Sound Mortgage Servicing Act, which would require mortgage servicers to engage in reasonable loss mitigation In particular, the bill would force them to focus on providing loss mitigation offers that are

affordable to the borrower for the long term—something we don't know with respect to any HOPE Now loan workout—be it a repayment plan or a loan modification—because the Alliance members don't report on the affordability standards they use.

I am looking forward to hearing from the witnesses about mortgage servicers' work here in Ohio, as well as local and state government efforts to prevent foreclosures and address the foreclosed and abandoned properties problem.

END OF OPENING STATEMENT

SEEK UNANIMOUS CONSENT FOR NON-SUBCOMMITTEE MEMBERS TO SIT ON SUBCOMMITTEE FOR PURPOSE OF THIS HEARING.

Representative Wilson and I are the regular Members of the Subcommittee present today, but I would like to seek unanimous consent that each of the Members attending be considered part of the Subcommittee for the purpose of today's hearing.

RECOGNIZE MEMBERS FOR OPENING STATEMENTS, ALTERNATING PARTIES—SUBCOMMITTEE MEMBERS

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Fighting Foreclosure and Abandonment Forum:

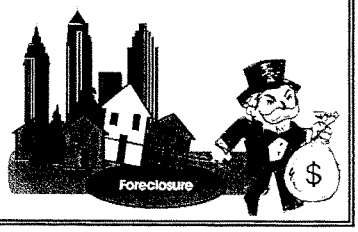
A part of Cleveland City Council's

Breaking the Cycle of Abandonment Initiative

Statement of purpose

The City of Cleveland and the surrounding region is currently at the epicenter of a foreclosure crisis with the 44105 zip code, inside Cleveland, being at times ranked number one in the nation for foreclosures. Though the crisis is most extreme in Cleveland and other rust belt cities, the foreclosure epidemic is a national one. With the March 4, 2008 presidential primary nearing and presidential candidates expected to be in Ohio at the end of February, Cleveland City Council is taking the opportunity to share Cleveland's concerns with those that aspire to lead our nation as the next president of the United States.

Cleveland City Council's Fighting Foreclosure and Abandonment Forum which serves as a platform for local activists and the City of Cleveland to tell presidential candidates what is most needed to combat the foreclosure crises. Local activists are to present testimony at the Fight Foreclosure and Abandonment Forum that highlights their efforts and specifies what action is needed from Washington to effectively fight foreclosure and abandonment. Top presidential candidates Hillary Clinton, John McCain and Barack Obama are invited to attend or send a representative to hear and collect testimony.



Fighting Foreclosure and Abandonment Forum:

A part of Cleveland City Council's

Breaking the Cycle of Abandonment Initiative

Agenda

1) Welcome by Cleveland City Council President Martin J. Sweeney
2) Introduction by Cleveland City Council Majority Leader Sabra Pierce Scott
3) Featured Speakers
   a. Cleveland City Councilman Anthony Brancatelli, Ward 12 (Slavic Village)
   b. City of Cleveland Chief of Regional Development Chris Warren
   c. Cleveland Housing Court Judge Raymond Pianka
   d. Cuyahoga County Treasurer James Rokakis
4) Breaking the Cycle of Abandonment Presentation Panels
   a. Detection: Getting control of the ongoing predatory mortgage market
   b. Prevention: Community prevention efforts
   c. Maintenance and Blight Elimination: Making owners and lenders responsible for their properties
   d. Redevelopment: Restoring properties and communities
5) Presentation of policy packets to presidential campaign representatives
6) Opportunity for campaigns to respond and/or answer questions
   a. Clinton
   b. McCain
   c. Obama
7) Closing Remarks

City of Cleveland
Office of the Council

Martin J. Sweeney
President of City Council

February 22, 2008

Presidential Campaign

To Whom It May Concern:

Cleveland City Council's "Fighting Foreclosure and Abandonment Forum: A part of the Breaking the Cycle of Abandonment Initiative," is to serve as a platform for local activists from within government as well as the public and private sector to present testimony to the top presidential campaigns that highlights their efforts and specifies what action is needed from Washington to effectively fight foreclosure and abandonment.

The City of Cleveland and the surrounding region is currently at the epicenter of the foreclosure crisis with the 44105 zip code, inside Cleveland, being at times ranked number one in the nation for foreclosures. Though the crisis is most extreme in Cleveland and other rust belt cities, the foreclosure epidemic is a national one. Having Washington hear and understand the needs of Cleveland and other cities facing this epidemic is crucial to the growth and vitality of our community.

Thank you for participating in Cleveland City Council's Fighting Foreclosure and Abandonment Forum. Please take the needs of our City as seriously as we do. With your help, we can effectively combat the foreclosure crisis.

Sincerely,

Martin J. Sweeney

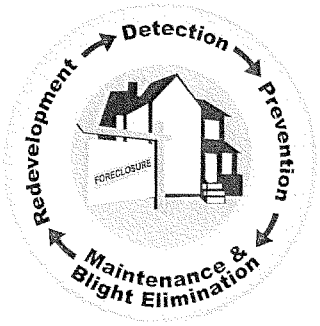
Martin J. Sweeney, President, City Council

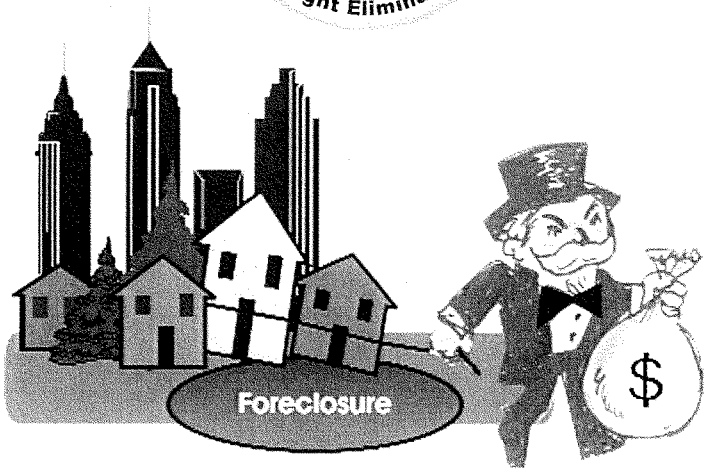
City Hall • Room 216 • 601 Lakeside Avenue • Cleveland, OH 44114 • (216) 664-2903 • Fax (216) 664- 3837
www.clevelandcitycouncil.org

Fighting Foreclosure and Abandonment Forum:

A part of Cleveland City Council's

Breaking the Cycle of Abandonment Initiative





Supporting Organizations

- ACORN
- Case Western Reserve University Poverty Center
- Cleveland Housing Network
- Cleveland Marshall College of Law
- Cleveland Municipal Housing Court
- Cleveland Neighborhood Development Coalition
- Cleveland Tenants Organization
- Cuyahoga Community Land Trust
- Cuyahoga County Department of Development
- Cuyahoga County Foreclosure Prevention
- Cleveland State University Center for Neighborhood Development
- East Side Organizing Partnership
- Enterprise Community Partners
- Home Repair Resource Center
- Housing Advocates Inc.
- Housing Research and Advocacy Center
- NAACP
- Neighborhood Housing Services of Greater Cleveland
- Neighborhood Progress, Inc.
- Network for Neighborhood Success
- Policy Matters Ohio
- PURE
- Rysar Properties
- Safegaurd Properties
- Slavic Village Development Corporation
- St. Clair Superior Coalition
- St. Clair Superior Development Corporation
- Tremont West Development Corporation
- Westown Community Development
- 5/3 Bank

Scheduled Speakers (order may vary)

Keynote:
- Cleveland City Councilman Anthony Brancatelli
- City of Cleveland Chief of Regional Development Chris Warren
- County Treasurer James Rokakis
- Cleveland Housing Court Judge Raymond Pianka

Panel 1: Detection
- Michael Schramm, CWRU Poverty Center
- David Rothstein, Policy Matters Ohio
- Kathleen Engel, Cleveland Marshall School of Law
- Jeffrey Dillman, Housing Research and Advocacy Center

Panel 2: Prevention
- Mark Wiseman, Cuyahoga County Foreclosure Prevention
- Barbara Anderson (replaced by Sara), ESOP
- Julie Smith, ACORN
- Anthony Stevenson, Housing Advocates Inc.
- Paula Miller, Neighborhood Housing Services of Greater Cleveland

Panel 3: Maintenance and Blight Elimination
- Kermit Lind, Cleveland Marshall College of Law
- Marlene Ridenour, Cleveland Municipal Housing Court
- Chris Kious, St. Clair Superior Coalition
- Ruby Nelson, Cleveland Tenants Organization

Panel 4: Redevelopment
- Mary Helen Petrus, Cleveland Neighborhood Development Coalition
- Kate Motner, Cleveland Housing Network
- Marge Misak, Cuyahoga County Land Trust
- Mark McDermott, Enterprise Community Partners
- Frank Ford, Neighborhood Progress, Inc.

Cleveland Fighting Foreclosure & Abandonment Forum: Policy Action Recommendations:

Actionable recommendations from Forum panel participants categorized by abandonment cycle

Detection: Getting Control of the ongoing predatory mortgage market	**Prevention:** Community prevention efforts	**Maintenance & Blight Elimination:** Making owners and lenders responsible for their properties	**Redevelopment:** Restoring properties & communities
			Community Partners Inc.
Support the Foreclosure Act Prevention Act of 2008 Lou Tisler, Neighborhood Housing Services	Impose a rebuttable presumption that a mortgage that exceeded the property's fair market value was unconscionable and unenforceable, shifting the burden to the foreclosing lender-plaintiff to demonstrate that the transaction was fair and equitable Frank Ford, Neighborhood Progress Inc.	Consider making REO property disposition an eligible activity towards banks' responsibilities under the CRA. Banks should receive credit for donation of real estate to a qualified nonprofit organization that will restore foreclosed and vacant properties. Mark McDermott, Enterprise Community Partners Inc.	Provide special allocation of CDIF grants and loan funds to local CDIF entities to facilitate acquisition and rehabilitation of foreclosed properties Mark McDermott, Enterprise Community Partners Inc.
Adopt a national regulatory scheme for policing of mortgage brokers and appraisers Frank Ford, Neighborhood Progress Inc.			
Support Center for American Progress" Saving America's Family Equity" (SAFE) proposal by buying existing mortgage pools at a discount and resell them to government sponsored enterprises or FHA lenders who would refinance troubled owners in to fixed rate loans Mark McDermott, Enterprise Community Partners Inc.			
Support the Foreclosure Prevention Act (S2636) Leonard Calabrese, Commission on Catholic Community Action			
Adoption of national legal standards for due diligence in residential			

Cleveland Fighting Foreclosure & Abandonment Forum: Policy Action Recommendations:

Actionable recommendations from Forum panel participants categorized by abandonment cycle

Detection: Getting Control of the ongoing predatory mortgage market	**Prevention:** Community prevention efforts	**Maintenance & Blight Elimination:** Making owners and lenders responsible for their properties	**Redevelopment:** Restoring properties & communities
mortgage securitization and wholesale purchases of home loans which include: 1. Loan –Level Review for actual Compliance 2. Manual Screening for Other Signs of Fraud 3. review for Facial Compliance 4. Determine Outcomes, by benchmarking for how to respond to loans found to violate screening criteria 5. Adequate Representation and Warranties and Recourse Clauses Enforceable by Trust 6. Post Closing Monitoring Kathleen Engle, Cleveland-Marshall College of Law			
Assignee Liability: Propose a two pronged assignee liability standard – one for entities that adopt statutorily – mandated due diligence standards and one for those who fail to screejn and monitor loans. The former would be subject to declaratory relief, rescission, reformation, compensatory damages that are capable of calculation, and attorney's fees. Those assignees that failed to engage in the required due diligence would be subject to full damages, including statutory punitive damages and compensation for emotional distress.			

Cleveland Fighting Foreclosure & Abandonment Forum: Policy Action Recommendations:

Actionable recommendations from Forum panel participants categorized by abandonment cycle			
Detection: Getting Control of the ongoing predatory mortgage market	**Prevention:** Community prevention efforts	**Maintenance & Blight Elimination:** Making owners and lenders responsible for their properties	**Redevelopment:** Restoring properties & communities
Kathleen Engle, Cleveland-Marshall College of Law			

Fighting Foreclosure and Abandonment Forum:

Itemized and Condensed Policy Recommendations from All Presenters

Cleveland Fighting Foreclosure & Abandonment Forum: Policy Action Recommendations:

Actionable recommendations from Forum panel participants categorized by abandonment cycle

Detection: Getting Control of the ongoing predatory mortgage market	**Prevention:** Community prevention efforts	**Maintenance & Blight Elimination:** Making owners and lenders responsible for their properties	**Redevelopment:** Restoring properties & communities
Need Federal Government to place all lending institutions including mortgage companies under stricter government lending laws Tony Brancatelli, Cleveland Council	Support Senate Bill 2136: "Helping Families Save their Home Bankruptcy Act of 2007" Tony Brancatelli, Cleveland Council	Support H.R. 3498, which earmarks funding for the demolition of blighted and nuisance properties Tony Brancatelli, Cleveland Council	HUD funding for vacant property rehabilitation and mortgage interest rate reset assistance for those families which may loss homes from ARM's Chris Warren, City of Cleveland
Need HUD Inspector General & FBI to prosecute mortgage fraud Tony Brancatelli, Cleveland Council	The City of Cleveland should examine home mortgage lending disparities based on racial and ethnicity. Jeffery Dillman, Housing Research & Advocacy Center	Need Federal authorization to HUD & Fannie Mae to demolish all substandard homes in their inventory and not recycle them on the market to the highest bidder Tony Brancatelli, Cleveland Council	Provide federal dollars for prevention and clean-up programs to reverse the damage which has occurred to the community.
Federal support for a five yr freeze on sub-prime rates and one yr moratorium on sub-prime foreclosure for owner-occupants. Chris Warren, City of Cleveland	Allow (local) courts to use discretion for an "own to rent" policy where foreclosures would be prevented by allowing families to keep their homes as renters. Similarly, allow court supervised mortgage modifications, where judges modify the terms of the loan to market value, could allow families to remain owners in situations where the home was overvalued by an appraiser and the loan was well over-extended. Zack Shiller, Policy Matters	The Federal government must mandate (mortgage lenders) to collaborate with CDC's to conduct outreach to borrowers in default, by requiring lenders and servicers to provide comprehensive lists of defaulted borrowers to community organizations on a regular basis. Inez Killingsworth, ESOP	Reinvest in communities by infusing communities with funding to clean up abandoned properties Zack Shiller, Policy Matters
The federal government should apply stricter standards to Fannie Mae and HUD, in particular greater oversight and screening by guarantors to remove the financial incentive for lenders to avoid working with	Reestablishing the Home Owners Loan Corporation (HOLC) where "bad mortgages are purchased by the corporation and new ones are sold to the homeowners.	Federal preemption should be waived where HUD owns a nuisance property so that HUD is not immune to local court jurisdiction Kermit Lind J.D., Cleveland-Marshall	Lenders currently possessing housing that become vacant as a result of foreclosure s should be required to pay fees to the County that would be set aside for demolition or rehabilitation of said property

Cleveland Fighting Foreclosure & Abandonment Forum: Policy Action Recommendations:

Actionable recommendations from Forum panel participants categorized by abandonment cycle

Detection: Getting Control of the ongoing predatory mortgage market	**Prevention:** Community prevention efforts	**Maintenance & Blight Elimination:** Making owners and lenders responsible for their properties	**Redevelopment:** Restoring properties & communities
borrowers and to permit property to fall into default. Judge Raymond Pianka	Zack Shiller, Policy Matters	Law School	Inez Killingsworth, ESOP
Banks and other lending institutions must be required to work through "toxic" title issues, following through with foreclosures and releasing their liens when necessary, to permit these properties to move into the hands of beneficial owners. Judge Raymond Pianka	Support H.R. 3915. This legislation allows rental leases to survive the tenancy in a housing foreclosure along with a minimal 90 day notice of termination to tenants Zack Shiller, Policy Matters	Change bankruptcy case management to provide that, along with an automatic stay, the municipality shall be automatically appointed receiver of houses cited for blight with authority granted to the receiver to protect the neighborhood from the blight with costs chargeable as cost to the bankruptcy case. If the blight abatement costs are more than the property is worth, the bankruptcy court should convey it to the municipality or a non-profit designee. Federal preemption should be waived where HUD owns a nuisance property so that HUD is not immune to local court jurisdiction Kermit Lind J.D., Cleveland-Marshall Law School	Maintain and increase CDBG Funding Michael Piepsny. Cleveland Tenants Organization
The federal government could provide refinancing for distressed homeowners Gary Cook, Housing Advocates	Support the Mortgage Cancellation Relief Act, which allows the forgiveness of tax debt due to foreclosure. Zack Shiller, Policy Matters	Regulate transfers of residential mortgages to be conditions upon the transferor giving full identification of the transferee's statutory agent within the state of the real property's location Federal preemption should be waived where HUD owns a nuisance property so that HUD is not immune to local court jurisdiction	Support H.R. 2895, Federal Housing Trust Fund Michael Piepsny. Cleveland Tenants Organization

Cleveland Fighting Foreclosure & Abandonment Forum: Policy Action Recommendations:

Actionable recommendations from Forum panel participants categorized by abandonment cycle

Detection: Getting Control of the ongoing predatory mortgage market	**Prevention:** Community prevention efforts	**Maintenance & Blight Elimination:** Making owners and lenders responsible for their properties	**Redevelopment:** Restoring properties & communities
		Kermit Lind J.D., Cleveland-Marshall Law School	
Provide certificates for the amount of the loan that is in excess of appraised value to lenders when the government refinances homes that have loan that exceed property values Gary Cook, Housing Advocates	Federal funding support to local organizations providing loan workouts assistance Inez Killingsworth, ESOP	Require a provision in all mortgages transferred across state lines that dismissal of a foreclosure case where the property is not in substantial compliance with local building and housing codes shall be with prejudice making that mortgage unenforceable. Municipalities should also be necessary parties in foreclosure actions to enable them to marshal any nuisance abatement liens or to seek equitable injunctions to prevent deteriorations due to the abandonment that usually accompanies foreclosure Kermit Lind J.D., Cleveland-Marshall Law School	Continued and increased funding for the CDBG program, particularly for programs that support home repair for low & Moderate income families. Mary Helen Petrus, Cleveland Neighborhood Development Coalition
Extend the rescission period to six days Gary Cook, Housing Advocates	Federal government to require a 5 year moratorium on all adjustable rate mortgages Inez Killingsworth, ESOP	Impose a moratorium on the resetting of adjustable rate loans. Frank Ford, Neighborhood Progress Inc.	Additional funding for for demolition of vacant housing for distressed communities. Mary Helen Petrus, Cleveland Neighborhood Development Coalition
Require that the consumer be given the opportunity to review the closing documents at least three days before closing Gary Cook, Housing advocates	Support 1 year moratorium on foreclosures Julie Smith, ACORN	Impose a one year moratorium on foreclosures of occupied property Frank Ford, Neighborhood Progress Inc.	Additional funding to local & regional governments for acquisition, holding and redevelopment of vacant properties Mary Helen Petrus, Cleveland Neighborhood Development Coalition

Cleveland Fighting Foreclosure & Abandonment Forum: Policy Action Recommendations:

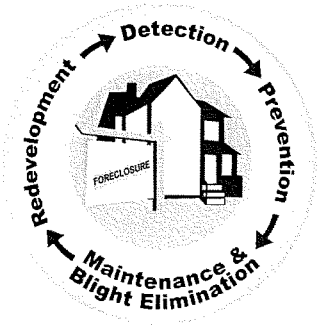
Actionable recommendations from Forum panel participants categorized by abandonment cycle

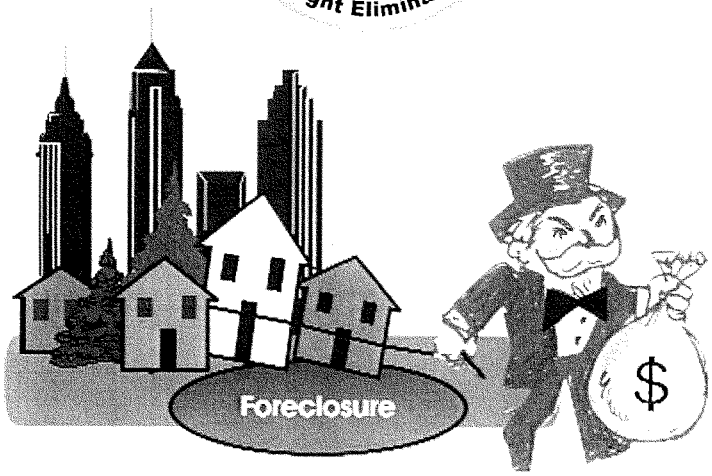
Detection: Getting Control of the ongoing predatory mortgage market	**Prevention:** Community prevention efforts	**Maintenance & Blight Elimination:** Making owners and lenders responsible for their properties	**Redevelopment:** Restoring properties & communities
Require notification to consumer that they have a right to consult counsel prior to closing in order to review documents Gary Cook, Housing Advoc ates	Support H.R. 3915, 90 day notice of termination of tenancy to tenants. Michael Piepsny. Cleveland Tenants Organization	The Federal Reserve, the Comptroller, the FDIC, the Office of Thrift Supervision, and HUD should use their authority to encourage more flexible lender workouts & loan restructuring Frank Ford, Neighborhood Progress Inc.	Creation of tax credits and other incentives to encourage restoration or continued productivity Mary Helen Petrus, Cleveland Neighborhood Development Coalition
Require that the lender provide a form of credit counseling prior to filing foreclosure or prior to declaring default Gary Cook, Housing Advocates	Regulate the sale and transfer of residential property interests in interstate commerce to require compliance with local ordinances protecting houses form harm Kermit Lind J.D., Cleveland-Marshall Law School	Regulatory agencies should use their authority to require depository banks to recapture mortgage markets abandoned to sub prime lenders. Frank Ford, Neighborhood Progress Inc.	Support U.S. Senate bill 2517, which would temporarily allow state finance agencies to broaden their tax-except bond programs to include mortgage refinancing. Mark McDermott, Enterprise Community Partners Inc.
Make underwriting standards uniform and make underwriting standards open to the scrutiny of the consumer and/or consumer advocates Gary Cook, Housing Advocates	The Departments of Treasury & HUD should develop programs that would increase financial education at high school and college levels, increase resources for housing counseling especially pre-purchase education and ensure that tools and funding is available for home ownership preservation counseling after purchase. Lou Tisler, Neighborhood Housing Services	Aggressive use of the Justice Dept. to prosecute mortgage fraud Frank Ford, Neighborhood Progress Inc.	Support the creation of a Neighborhood Stabilization Fund to provide immediate and flexible capital to remove troubled properties from Third-party investors, servicers and lenders Mark McDermott, Enterprise Community Partners Inc.
Establish national registry of residential mortgages Kermit Lind J.D., Cleveland-Marshall Law School	Declare foreclosure unenforceable if the assignment of the mortgage was not filed for record Frank Ford, Neighborhood Progress	Set stronger standards for secondary market investors, requiring them to exercise greater due diligence before making bulk purchase on unsafe loans Frank Ford, Neighborhood Progress I	Expand New Market Tax Credits program to allow financing of vacant properties Mark McDermott, Enterprise

Fighting Foreclosure and Abandonment Forum:

Speakers

Councilman Anthony Brancatelli, Cleveland Ward 12





Breaking the Cycle of Abandonment
Cleveland's Foreclosure Crisis
Forum February 27, 2008

Welcome Presidential Candidate Representatives and guests and thank you for the opportunity to speak with you today.

I am Councilman Tony Brancatelli and have had the pleasure of representing Ward 12 for the past 3 years. Prior to becoming councilman I spent 17 years as the executive director of Slavic Village Development. They are one the most successful community based non-profits in our city. (www.slavicvillage.org)

While tracking this crisis across our city I have seen a record number of negative re-assessments of property values and a decline of real estate tax income. The impact has been devastating to our residents, neighborhoods and our city.

Across our city we have seen our 10,000 points of blight: over 10,000 vacant and abandoned structures. The city of Cleveland spent over seven million dollars last year demolishing condemned structures and has budgeted to spend an additional six million in 2008.

We have found our "weapons of mass destruction" in the form of Deutsch Bank, Argent Mortgage and Lasalle Bank, just to name a few, who have used Wall street tools to destroy our communities. Wells Fargo officials openly admit they are depending on federal dollars to bail them out. (note e-mail)

Our next three speakers will give specific ideas in dealing with this crisis:

- Chief of Regional Development Chris Warren will speak on the city of Cleveland's lawsuit against subprime lenders, define resources needed and our community partnerships.

- Judge Raymond Pianka will speak on foreclosure prevention, improvements in the foreclosure process and establishing responsible ownership

- County Treasurer Jim Rokakis will talk about the magnitude of our crisis, impact on our market and a proposed county wide land bank

First I would like to talk about the impact of this crisis on the community I represent in Ward 12, the historic Slavic Village Broadway community.

This is not a community without an adequate banking presence; we have some of the highest quality banks in the region including one of the best thrifts with Third Federal Savings headquartered in the heart of our community.

This is not a community without a strong development agenda. We have built over 500 new homes and renovated over 1,000 more with great partners such as Cleveland Housing Network, Zaremba Cleveland Communities and Rysar Properties.

This is not a community without retail. We have Dave's Grocery Store and Silverman's Department Store just to name a few.

This is not a community without quality restaurants. We have great ethnic restaurants such as Seven Roses and Europa Deli. We have local diners such as Red Chimney and Arabica Coffee house.

This is not a community without recreational opportunities. We have a First Tee golf course, the first ever inner city rails to trail project as well as wonderful parks and gardens and have broken ground on two new athletic complexes.

This is not a community without strong employers. We have the most efficient steel plant in Accelor Mittal, we have Goodrich Landing Gear in our back yard, Presrite Manufacturing along with thousands of other quality jobs in our community.

What we don't have is adequate protection from predatory mortgage companies, corrupt mortgage brokers, criminally negligent appraisers and title companies who openly participate in the destruction of our neighborhoods.

As the epicenter of the foreclosure crisis the Slavic Village neighborhood averages two foreclosures a day and one home demolished every 3 days. In

the last few years we have lost 10% of our population and currently have 1,000 vacant and boarded homes. Hundreds of homes are condemned and waiting for the wrecking ball. Houses are being stripped at an incredible rate.

This was not unforeseen. In 1999 while executive director of Slavic Village Development we filed a Nuisance Abatement suit led by Cleveland State University Law School against a multi property owner and won. We documented massive real estate flipping that was being done throughout our community. In fact a flipper that I testified against, Ray Delacruz, went to federal jail for years.

What was un-foreseen was Wall Street changing the way they do business. No document loans coupled with securitized bonds that were put on the market created the tools for unprecedented mortgage fraud that left us with this wake of destruction.

We need the Federal Government to enact new rules such S 2136, Helping Families Save Their Home Bankruptcy Act of 2007" that will enable judges to reset mortgages when families are forced to file bankruptcy because of a predatory lender. This could save the homes of 600,000 families across the United States.

We need the Federal Government to support H.R. 3498 which earmarks 500 million dollars to be put in place to help remove these blighted and nuisance conditions.

We need the Federal Government to place all lending institutions including all mortgage companies under stricter government lending laws.

We need the Federal Government to make it a priority to prosecute mortgage fraud, including corrupt brokers and appraisers. This includes marshalling all resources such as the FBI and the HUD Inspector General just to name a few.

We need the Federal Government to authorize and demand HUD and Fannie Mae to demolish all substandard homes in their inventory and not recycle them on the market to the highest bidder.

We do not need the Federal Government bailing out banks. We need to hold them accountable for their actions.

The city has and is doing their part. They have enacted and will now enforce our "Certificate of Disclosure" law. We have enacted an aggressive "Rental Registration" law. We are going to step up our code enforcement and inspections of foreclosed homes. We are aggressively going after scrap yards and their licenses for taking in stripped material from our homes.

The community is doing their part. They have painted over boards on abandoned properties; they have help clean up lots and around houses and have enlisted many of the youth in the area to help. They have gone after and testified against absentee property owners and they will continue to lead the cause to save our communities.

The non-profits are doing their part. Organizations such as Neighborhood Housing Services, ESOP and others are educating residents, helping rescue homes and advocating on behalf of our communities.

The Slavic Village community is a wonderful place to live, work and raise a family. I invite any of the presidential candidates to come visit our wonderful churches and schools and see first hand the vitality of this neighborhood. I have had the pleasure of showing off our community to media from France, Japan, Australia, Greece, Germany, England and others. They have all marveled at how we have been able to survive during this crisis and also how little federal help we have been given.

Last year the Cleveland Plain Dealer stated "If you can't save Slavic Village you can't save the City". Last night at the presidential debate I heard the words *hope, change, experience* and *hit the ground running*. It is my *hope* that the next president will learn from our *experience* and will *hit the ground running* to *change* our policies and help save our neighborhoods.

SUBPRIME LENDING, REAL ESTATE FLIPPING AND THE FORECLOSURE CRISIS IN SLAVIC VILLAGE

Selected Data 2003-2007

Prepared by:
The Slavic Village Vacant and Abandoned Property Committee

With the support of
Neighborhood Progress Incorporated
Slavic Village Development

In the past year, the southeast Cleveland neighborhoods known as Slavic Village have attracted international attention as the epicenter of the nation's foreclosure crisis. Indeed, the postal zip code that includes these neighborhoods now possesses the dubious distinction of having the most housing foreclosures in the United States.[1]

The broad contours of the subprime lending meltdown are visible to anyone reading the business pages, and while the full extent of the crisis remains obscure, its impact on Slavic Village has been devastating and is growing worse. It is now generally recognized that many banks targeting the subprime market sector were engaged in underwriting practices that were, at best, grossly negligent. Further, it is apparent that these practices flourished in a climate of moral hazard in which lenders—with the assistance of investment banks and bond rating agencies—transferred the risk of such dubious loans by bundling them into collateralized debt obligations and selling them to investors as high-grade securities.

Although the results of these practices can be seen in Slavic Village's skyrocketing foreclosure rate, until now it has not been possible to connect the devastation wrought on Slavic Village to the specific lenders responsible for originating bad loans. Similarly, while real estate "flipping" is widely assumed to make up a significant share of the housing foreclosure problem, there has been no detailed study of the role of such speculators and the extent of their responsibility for crisis we now face.

Accordingly, this report has purposes. First, to analyze the precise impact of subprime lending practices in Slavic Village by examining lender market share during 2003-2006 and the corresponding foreclosure rates on loans originated during this period. Second, to examine a significant subset of these transactions involving a small group of speculators involved multiple-property transactions. These individuals, which the report describes as "flippers," account for a disproportionate share of the foreclosures in Slavic Village, and serve to illustrate the reckless practices of the subprime lending industry.

For purposes of this report, the term "Slavic Village" refers to the area served by Slavic Village Development (SVD). The SVD service area includes the South Broadway, North Broadway and portions of the Industrial Valley neighborhoods and is home to more than 30,000 residents.

This analysis draws upon data from the Cuyahoga County Recorder's Office, the Office of the Auditor, the Court of Common Pleas and other public records compiled in the NEO CANDO database developed and maintained by the Center on Urban Poverty and Community Development at the Case Western Reserve University's Mandel School of

[1] See, e.g., CNN Money, Top 500 Foreclosure Zip Codes, June 19, 2007, at http://money.cnn.com (documenting a recent study by RealtyTrac, which lists the zip code 44105 and includes most of Slavic Village, as number 1 in foreclosures)

Applied Social Sciences. The Committee also examined other records such as certificates of disclosure and building permit applications maintained by the City of Cleveland, Department of Building and Housing.

Section I: Mortgage Lending in Slavic Village

An analysis of recorded Sheriff Deeds for the SVD Service Area shows that despite economic recessions in the mid-1970s, early 1980s and early 1990s, the Slavic Village housing market remained remarkably stable in terms of foreclosures. Between 1976 and 1999, the average annual number of completed foreclosure actions in Slavic Village (as measured by recorded Sheriff Deeds) was 41; in no year during this period did foreclosures reach 90.

Unfortunately, as shown in **Table 1: Recorded Sheriff Sale Deeds 1997-2007 and Foreclosure Filings 2006-2007 SVD Service Area,** the number of foreclosures climbed to 108 in 2000, reached 268 by 2005, and is now at the previously-unimaginable level of 633 completed foreclosures for 2007. Moreover, based on 2007 foreclosure filings—a leading indicator for Sheriff's sales—the number of recorded Sheriff's Deeds in Slavic Village is expected to increase substantially in 2008.

To determine the causes of this exponential growth in foreclosures, the Vacant and Abandoned Property Committee conducted an analysis of property transaction and loan origination data for the years 2003 to 2006. This period was chosen on the assumption that the increase in foreclosures seen in 2005-2007 was largely the result of defaulted loans that originated in the immediately preceding this period. The results of this analysis are provided in **Table 2: Slavic Village Lenders Ranked by Loan Originations 2003-2006,** and **Table 3: Slavic Village Lenders by Foreclosure Filings on Loans Originated 2003-2006.**

Table 2 shows that during 2003 to 2006, lenders made nearly 5000 loans secured by mortgages on residential property in SlavicVillage, totaling more than $343 million. Because the data reflects both first and subsequent mortgages secured by a single property, the number of loan originations shown in Table 2 substantially exceeds the number of affected parcels. This fact, however, has no impact on the *market share* for the institutions making loans during the period 2003-2006, or on the *rates of foreclosure* for these loans.

The largest lender during the survey period in Slavic Village was Argent Mortgage (and its parent company, Ameriquest), an out-of-state bank that is now notorious for its lending practices in the sub-prime mortgage market. With more than $51 million in loans, Argent/Ameriquest by far held the largest market share in terms dollar volume (14.9%), loan originations (14.7%), and foreclosures (25%). Of the 726 loans originated by Argent during the survey period, an astounding 335 (46%) had defaulted and were foreclosed as of February 2008.

This pattern is repeated for almost all of the subprime lenders. These out-of-state institutions, which generally did not operate local branch offices and instead originated loans through independent mortgage brokers, accounted for the majority of loans made during the survey period and an even higher share of defaults, as demonstrated by foreclosure rates of up to 60%. Worse, because of the significant lag between origination and the filing of a foreclosure action, and the fact that many of these lenders continued to make loans throughout 2006, these already high foreclosure rates will continue to rise.

By contrast, state-chartered and locally operated lenders had much lower rates of foreclosure. For example, the lender with the second-largest market share, Third Federal Savings and Loan, had a foreclosure rate of 7.5%. Unfortunately, traditional banks such Third Federal proved to be the exception: Of the top twenty lenders by loan originations during the survey period, ten are traditional state-chartered institutions with local offices, ten are out-of-state banks associated with the subprime market. The traditional lenders' combined market share was 26% (1300 loans), of which approximately 10% (144) ended in foreclosure. The ten leading subprime lenders' market share was 34% (1699 loans), of which 52% (704) had foreclosure filings.

Section II: Speculator Activity in the SVD Service Area 2003-06.

For purposes of this report, the term "flipper" is used to denote a speculator engaged in the purchase and quick resale of property at a large markup over the initial purchase price. Although this report does not attempt to define what constitutes flipping with any precision, or to identify every potentially qualifying transaction, our research shows that property flipping in Slavic Village is widespread and accounts for a disproportionate share of foreclosures during the reporting period.

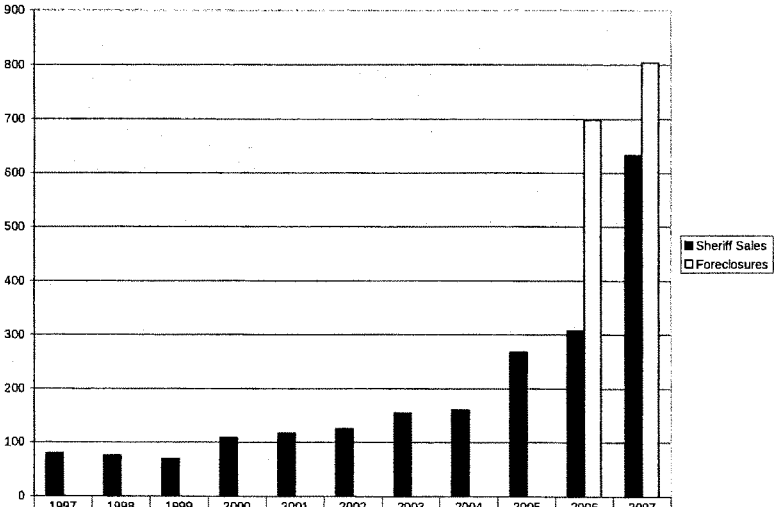
The transactions included on **Table 4: Selected Flipper Transactions in SVD Service Area 2003-2006** do not constitute a comprehensive accounting of speculative property transfers in Slavic Village, but have been selected as examples of flipping activity in the neighborhood, as defined under the broad criteria noted above.

These transactions were chosen from a much larger list of property transfers occurring during the survey period in which the sale price and/or mortgage loan on the property was significantly in excess of the county assessed value. In reviewing these transactions with a high price-to-assessed-value ratio, the Committee noted a small group of buyers who had who purchased more than one property within a short period of time. In many cases, these "multiple buyer" sales were financed by a 90% first mortgage from a subprime lender, with and a 10% second mortgage taken by the seller. It also appeared that a high proportion of multiple buyer transactions ended in foreclosure.

Many of these multiple buyers, in turn, purchased from "multiple sellers" who sold the properties in question at a markup of between 200%-500% over the initial purchase price. Based on these characteristics, the Committee considered these transactions to be speculative in nature, and the properties in question to qualify as "flipped."

Further review of these flipped property transfers shows that that some of the multiple sellers in these transactions may be affiliated by business or family ties. The Committee also obtained the Certificates of Disclosure filed with the City of Cleveland for most of these transactions; these reveal that many of the speculator transactions involved the same mortgage broker, appraiser and title company. A brief description of these affiliations is provided in **Appendix 1.** Finally, our review showed that in most cases, the City of Cleveland Department of Building and Housing issued no permits on these properties between the initial purchase of the properties and the subsequent sale at a high markup. A detailed examination of five of the transactions listed in Table 4 is provided in **Appendix 2**

Table 1: Recorded Sheriff Sale Deeds 1997-2007 and Foreclosure Filings 2006-2007
SVD Service Area



	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Sheriff Sales	79	76	69	108	117	125	155	161	268	308	633
Foreclosures										698	804

Source: Cuyahoga County Auditor and Cuyahoga County Court of Common Pleas, accessed via NEO CANDO (http://neocando.case.edu), Feb 19, 2008

Table 2: Slavic Village Lenders Ranked by Loan Originations
2003-2006
(Minimum 10 originations)

LENDER	Number of Mortgage Originations 2003-2006[i]	Foreclosures on Loans Originated 2003-2006	Foreclosure Rate	Average Loan Amount	Total Amount Loaned	Market Share by originations	Market Share by dollar volume	Share of all foreclosures
ALL LENDERS	4942	1350	27.32%	$69,696	$343,738,613	100.00%	100.00%	100.00%
ARGENT MORT/AMERIQUEST[ii]	726	335	46.14%	$73,483	$51,291,074	14.69%	14.92%	24.81%
THIRD FED S&L ASSN	412	31	7.52%	$67,586	$27,845,510	8.34%	8.10%	2.30%
NEW CENTURY MORT CORP	237	111	46.84%	$73,349	$17,383,613	4.80%	5.06%	8.22%
NATIONAL CITY BANK[iii]	212	51	24.06%	$86,910	$18,424,916	4.29%	5.36%	3.78%
PEOPLES CHOICE HM LN INC	183	77	42.08%	$64,741	$11,847,577	3.70%	3.45%	5.70%
CHARTER ONE BK	158	19	12.03%	$38,778	$6,126,950	3.20%	1.78%	1.41%
COUNTRYWIDE HM LOANS[iv]	109	17	15.60%	$60,091	$6,549,956	2.21%	1.91%	1.26%
LONG BEACH MORTGAGE CO.	101	61	60.40%	$77,672	$7,844,850	2.04%	2.28%	4.52%
FIFTH THIRD BANK[v]	98	10	10.20%	$53,112	$5,205,022	1.98%	1.51%	0.74%
AMERICAS WHOESALE LENDER	90	27	30.00%	$64,233	$5,780,925	1.82%	1.68%	2.00%
HUNTINGTON NATL BK	87	9	10.34%	$45,592	$3,966,536	1.76%	1.15%	0.67%
FIRSTMERIT BK[vi]	85	7	8.24%	$62,688	$6,143,469	1.72%	1.79%	0.52%
AEGIS FUNDING CORPORATION	75	26	34.67%	$61,881	$4,641,050	1.52%	1.35%	1.93%
KEYBANK NATL ASSN	74	6	8.11%	$269,547	$19,946,446	1.50%	5.80%	0.44%
CHASE BANK[vii]	66	12	18.18%	$54,199	$3,577,195	1.34%	1.04%	0.89%
US BK[viii]	65	3	4.62%	$46,583	$3,027,892	1.32%	0.88%	0.22%
WELLS FARGO BK	60	27	45.00%	$66,001	$3,960,063	1.21%	1.15%	2.00%
UNION NATIONAL MORT CO	57	7	12.28%	$72,541	$4,134,849	1.15%	1.20%	0.52%
ZAREMBA CLEV CMNTY	52	1	1.92%	$7,260	$377,520	1.05%	0.11%	0.07%
AMERICAN HM MORT[ix]	52	11	21.15%	$59,743	$3,106,657	1.05%	0.90%	0.81%
CITY OF CLEVELAND[x]	51	9	17.65%	$11,032	$562,620	1.03%	0.16%	0.67%
BNC MORTGAGE	50	20	40.00%	$72,008	$3,600,406	1.01%	1.05%	1.48%
DOLLAR BK	47	2	4.26%	$46,748	$2,197,168	0.95%	0.64%	0.15%
HOUSEHOLD RLTY CORP	47	7	14.89%	$77,578	$3,646,184	0.95%	1.06%	0.52%
FINANCE AMERICA, LLC	46	28	60.87%	$70,834	$3,258,356	0.93%	0.95%	2.07%
LENDER	Number of	Foreclosures	Foreclosure	Average	Total Amount	Market Share	Market	Share of all

Table 2: Slavic Village Lenders Ranked by Loan Originations
2003-2006
(Minimum 10 originations)

	Mortgage Originations 2003-2006[xi]	on Loans Originated 2003-2006	Rate	Loan Amount	Loaned	by originations	Share by dollar volume	foreclosure s
FIRST PLACE BANK	46	13	28.26%	$62,096	$2,856,414	0.93%	0.83%	0.96%
WASHINGTON MUTL BK	43	9	20.93%	$65,952	$2,835,932	0.87%	0.83%	0.67%
AAMES FUNDING CORPORATION	38	18	47.37%	$63,288	$2,404,940	0.77%	0.70%	1.33%
BENEFICIAL	37	9	24.32%	$67,410	$2,494,184	0.75%	0.73%	0.67%
NOVASTAR MORT INC	35	21	60.00%	$72,444	$2,535,525	0.71%	0.74%	1.56%
LEHMAN BROS BANK	31	11	35.48%	$56,832	$1,761,802	0.63%	0.51%	0.81%
CCO MORTGAGE CORP	29	2	6.90%	$42,991	$1,246,735	0.59%	0.36%	0.15%
INDYMAC BANK	28	4	14.29%	$59,064	$1,653,800	0.57%	0.48%	0.30%
OHIO SAV BANK	27	2	7.41%	$57,085	$1,541,304	0.55%	0.45%	0.15%
REAL ESTATE MORT CORP	26	1	3.85%	$77,752	$1,943,792	0.53%	0.57%	0.07%
DELTA FUNDING CORPORATION	25	10	40.00%	$71,675	$1,791,875	0.51%	0.52%	0.74%
GREENPOINT MORT FUNDING INC	25	7	28.00%	$51,986	$1,299,650	0.51%	0.38%	0.52%
SOUTHSTAR FUNDING	24	8	33.33%	$71,565	$1,717,550	0.49%	0.50%	0.59%
EQUITY TRUST CO	23	8	34.78%	$47,309	$1,088,098	0.47%	0.32%	0.59%
SKY BK	22	2	9.09%	$68,898	$1,515,755	0.45%	0.44%	0.15%
HSG & URB DEV SECY OF	21	2	9.52%	$39,600	$831,603	0.42%	0.24%	0.15%
DECISION ONE MORTGAGE	20	5	25.00%	$81,841	$1,636,810	0.40%	0.48%	0.37%
AMERICAN MIDW MORT CORP	19	7	36.84%	$77,594	$1,474,293	0.38%	0.43%	0.52%
FIRST HORIZON HOME LOAN	18	9	50.00%	$63,766	$1,147,787	0.36%	0.33%	0.67%
PARK VIEW FED SAV BK	18	5	27.78%	$109,275	$1,966,950	0.36%	0.57%	0.37%
SUNTRUST MORT CO	18	5	27.78%	$41,594	$707,100	0.36%	0.21%	0.37%
CLEVELAND HOUSING NETWORK	17	0	0.00%	$302,313	$4,837,000	0.34%	1.41%	0.00%
AMERICAN BROKERS COND CORP	16	2	12.50%	$50,863	$813,805	0.32%	0.24%	0.15%
ENCORE CREDIT CORP	16	8	50.00%	$73,496	$1,175,935	0.32%	0.34%	0.59%
YORK MGMT GROUP LLC	16	14	87.50%	$9,513	$152,200	0.32%	0.04%	1.04%
AEGIS WHOLESALE CORP	15	0	0.00%	$56,367	$845,503	0.30%	0.25%	0.00%
FREEDOM MORT CORP	15	1	6.67%	$68,362	$1,025,428	0.30%	0.30%	0.07%
ACCREDITED HOME LENDERS	14	5	35.71%	$97,961	$1,371,448	0.28%	0.40%	0.37%

Table 2: Slavic Village Lenders Ranked by Loan Originations
2003-2006
(Minimum 10 originations)

LENDER	Number of Mortgage Originations 2003-2006[xii]	Foreclosures on Loans Originated 2003-2006	Foreclosure Rate	Average Loan Amount	Total Amount Loaned	Market Share by originations	Market Share by dollar volume	Share of all foreclosures
GEAUGA SAVINGS BANK	14	4	28.57%	$60,732	$850,250	0.28%	0.25%	0.30%
LAKESIDE MORT INC	14	1	7.14%	$60,893	$852,506	0.28%	0.25%	0.07%
REAL ASSET FUND LLC	14	13	92.86%	$48,679	$681,500	0.28%	0.20%	0.96%
HOMECOMINGS FINL NETWORK	13	2	15.38%	$70,120	$911,560	0.26%	0.27%	0.15%
REPUBLIC BANK	13	1	7.69%	$549,746	$7,146,700	0.26%	2.08%	0.07%
SAXON MORTGAGE	13	4	30.77%	$69,677	$905,795	0.26%	0.26%	0.30%
FIRST MAGNUS FINANCIAL CORP	12	0	0.00%	$54,867	$658,400	0.24%	0.19%	0.00%
FIRST NAT BANK OF ARIZONA	12	3	25.00%	$59,379	$712,550	0.24%	0.21%	0.22%
REAL LIVING MORT LLC	11	1	9.09%	$64,203	$706,233	0.22%	0.21%	0.07%
STRATEGIC MORT CO	11	5	45.45%	$69,302	$762,326	0.22%	0.22%	0.37%
UNION FED BK OF INDIANAPOLIS	11	3	27.27%	$70,822	$779,047	0.22%	0.23%	0.22%
WORLD SAVINGS BANK	11	2	18.18%	$62,518	$687,701	0.22%	0.20%	0.15%
GRTR CLEVE FIRE FIGHTERS CU	10	1	10.00%	$20,250	$202,500	0.20%	0.06%	0.07%
MORTGAGEIT INC	10	3	30.00%	$57,231	$572,310	0.20%	0.17%	0.22%

Table 3. Slavic Village Lenders by Foreclosure Filings on Loans Originated 2003-2006 (Minimum 5 foreclosures)

Lender	Originations	Foreclosures	Foreclosure Rate
ARGENT MORT/AMERIQUEST	726	335	46.14%
NEW CENTURY MORT CORP	237	111	46.84%
PEOPLES CHOICE HM LN INC	183	77	42.08%
LONG BEACH MORTGAGE CO.	101	61	60.40%
NATIONAL CITY BANK	212	51	24.06%
THIRD FED S&L ASSN	412	31	7.52%
FINANCE AMERICA, LLC	46	28	60.87%
WELLS FARGO BK	60	27	45.00%
AMERICAS WHOESALE LENDER	90	27	30.00%
AEGIS FUNDING CORPORATION	75	26	34.67%
NOVASTAR MORT INC	35	21	60.00%
BNC MORTGAGE	50	20	40.00%
CHARTER ONE BK	158	19	12.03%
AAMES FUNDING CORPORATION	38	18	47.37%
COUNTRYWIDE HM LOANS	109	17	15.60%
YORK MGMT GROUP LLC	16	14	87.50%
REAL ASSET FUND LLC	14	13	92.86%
FIRST PLACE BANK	46	13	28.26%
CHASE BANK	66	12	18.18%
LEHMAN BROS BK	31	11	35.48%
AMERICAN HM MORT	52	11	21.15%
DELTA FUNDING CORPORATION	25	10	40.00%
FIFTH THIRD MORT CO	98	10	10.20%
FIRST HORIZON HM LOAN CORP	18	9	50.00%
BENEFICIAL	37	9	24.32%
WASHINGTON MUTL BK	43	9	20.93%
CLEVELAND CITY OF	51	9	17.65%
HUNTINGTON NATL BK	87	9	10.34%
ENCORE CREDIT CORP	16	8	50.00%
EQUITY TRUST CO	23	8	34.78%
SOUTHSTAR FUNDING	24	8	33.33%
AMERICAN MIDW MORT CORP	19	7	36.84%
GREENPOINT MORT FUNDING INC	25	7	28.00%
HOUSEHOLD RLTY CORP	47	7	14.89%
UNION NATIONAL MORT CO	57	7	12.28%
FIRSTMERIT BK	85	7	8.24%
KEYBANK NATL ASSN	74	6	8.11%
STRATEGIC MORT CO	11	5	45.45%
ACCREDITED HOME LENDERS, INC	14	5	35.71%
PARK VIEW FED SAV BK	18	5	27.78%
SUNTRUST MORT CO	18	5	27.78%
DECISION ONE MORTGAGE	20	5	25.00%

Table 4: Selected Flipper Transactions in SVCDC Service Area 2003-2006

SEE TABLE 4 EXCEL SPREADSHEET LEGAL SIZE

Appendix 1: Index of Selected Parties Identified on Flipper Transactions Table

Cody, Beverly – Listed as buyer of 7 properties on Flipper Transaction list. One of her properties [PPN: 137-19-096] lists 5801 W. 220 in Fairview Park (PPN: 331-30-016) as her tax mailing address. That property is owned by *Rodney Harris*, who has six transactions on the list (5 as a buyer, 1 as a seller, all of which ended in foreclosure). Beverly Cody is also the statutory agent for *Kellogg Dogs, Inc.*

Community Development & Investments LLC. Seller of two properties to *Nichole Kiesel.* The members are *Wesley Rahmon, Sheldon M. Little* and *Willie B. Grady Jr.* Agent *Wesley Rahmon* 2950 Richmond Road, Beachwood, OH 44122.

Grady, Willie. Listed as buyer for 2 transactions, both ending in foreclosure, and as a seller in 5 others. He is also a seller for 2 transactions in his capacity as member of *Community Development & Investment LLC.*

Harris, Rodney – Listed as purchaser for 5 transactions, a seller in 1 transaction, all ending in foreclosure. He owns property at 5801 W. 220 in Fairview Park, which is a tax mailing address for *Beverly Cody.* Member, *RJM Home Investment Developers LLC.*

Hoover, Bruce T. –Certified Residential Real Estate Appraiser (ACR.2005014822). Member, Hoover Appraisal Services LLC, 13413 Graham Road, East Cleveland, OH 44112. Involved in 60 deals on the Flipper Transaction list with *Mark Kellogg* as the mortgage broker.

Johnson, Ervin Anthony – Purchaser of 5 properties, 2 of which are in foreclosure. Ex-husband of *Lakiesha Williams.*

Kellogg, Mark – Loan Originator/Mortgage Broker for over 70 of the homes on Flipper transaction list. He is a member of *RJM Home Investment Developers LLC* and *Kellogg Doggs LLC.* Many of his deals were also with *Bruce T. Hoover* as the appraiser; also did deals with *Wesley Rahmon* as the appraiser.

Kellogg Hot Doggs, LLC. – The hot dog stand at Fleet/Broadway owned by *Mark Kellogg. Beverly Cody* is registered agent.

Kiesel, Nichole – Bought (4) properties from *Ken Lam, Community Development & Investments LLC,* and *Pak Yan Lui,* all of which were foreclosed on. *Wesley Rahmon* was appraiser on 2 deals with *Mark Kellogg* as broker.

Kwan, Man Keung—Listed as seller for 3 transactions.

Lam, Ken – Seller of six questionable transactions in Flipper Transaction list (including one to *Beverly Cody*). Listed on Auditor web site as sharing the same tax address as *Pak Yan Lui* for property at 3804 Payne, Cleveland, Ohio 44114 (PPN: 102-39-084).

Appendix 1: Index of Selected Parties Identified on Flipper Transactions Table

Lam Developments LLC. Seller of 1 property on list. Member/Agent Lavelle Gibson, 3715 Warrensville Ctr., OH 44122. No apparent connection to *Ken Lam.*

Lam, Kingsdon– Listed as seller in 2 transactions. Tax mailing address is 7461 N Linden Ln, Parma, OH 44130, a property owned by *Ken Lam.*

Lee, Bonita - Purchased 5 properties from Lui and affiliated parties between March and August 2005, all of which ended in foreclosure within one year of purchase. In March 2003 Bonita Lee filed a Chapter 7 (personal) bankruptcy petition. At that time, she had assets of $6,272 and $14,061 in liabilities. In 2002 she had employment income of $27k. Her debts were discharged in bankruptcy on 6/25/03.

Little, Shelton - One of the members of *Community Development & Investment, LLC.* He is listed as mortgage broker for 2 transactions in which *Community Development & Investment, LLC,* is the seller.

Lui, Pak Hor – Tax mailing address 7294 Rita Dr, Independence, OH 44131-5326. Affiliation with other parties unclear.

Lui Lopack LTD – members of the corporation are *Edward Siegel, Pak Yan Lui* and *Lee E. Bokar.* The address is currently 5910 Landerbrook Drive, Suite 3200 in Lyndhurst, OH 44124.

Lui, Pak Choong – Seller of 14 properties on list. Resides at 6453 Poplar Dr, Independence, OH 44131. Member, *Poplar Associates LLC, 138 Real Estate LLC.*

Lui, Pak Tim – Listed as seller of 11 transactions in the Flipper Transaction List.

Lui, Pak Yan – Owns a restaurant with *Pak Tim Lui* and *Pak Choong Lui* at 5555 Brecksville Road and also a single family home on East 36th Street with *Pak Tim Lui.* President of *Merlave LTD, Poplar Associates LLC, Louie Construction Company LLC.* Listed as owner of 6368 Pebblecreek Road, Independence, OH. *Keng Ming Wong, Fanny Mei,* and *Man Kwan* all list this Pebblecreek address on at least one disclosure certificate. Pak Yan Lui is also listed affiliated with *Lui Lopack, LTD.*

Mei, Fannie – Listed as seller of 1 property to *Eddie Buck.* Co-defendant with *Pak Yan Lui* in civil action CV-05-575581, *Stephen Miller Enterprises v. Fanny Mei, et al.*

Merlave LTD – Seller of 11 properties on list. The company also appears as an originator of 5 loans on Tables 2 and 3, all of which ended in foreclosure. Member/Registered agent is *Edward Siegel.*

Poplar Associates, LLC. Listed as seller of 10 properties on list. Tax address is the same as that of ***Pak Choong Lui,*** at 6453 POPLAR Ave, INDEPENDENCE, OH 44131. Agent Edward Siegel 5910 Landerbrook Drive, Cleveland, OH 44124. Appears as loan originator for 3 transactions, all of which ended in foreclosure.

Appendix 1: Index of Selected Parties Identified on Flipper Transactions Table

Rahmon, Wesley – Licensed Residential Real Estate Appraiser (ALR.2001018430); involved in 21 transactions, 13 of which were brokered by *Mark Kellogg*. Member of *Community Development and Investment LLC.* Also appears on list as a seller in 1 transaction with buyer *Rodney Harris* and appears as the buyer in a sale by *Keng Ming Wong*.

RJM Home Development Investors, LLC – (Members *Mark Kellogg* and *Rodney Harris*); agent address 7208 Ivy, Cleveland, OH 44127. Listed as seller for 5 transactions, two of which were brokered by *Mark Kellogg*. Appears as loan originator for one transaction, which ended in foreclosure.

Siegel, Edward F. – Attorney, Siegel and Associates, 5910 Landerbrook Drive, #3200, 44124. Statutory Agent/member of *Popular Associates LLC, Merlave ltd*, and *Lui Lopack, LTD.* Has represented *Pak Tim Lui* in various cases.

Williams, Lakeisha. Purchaser of eight properties on list, five of which are in foreclosure. Bought all of the properties from various *Pak Tim Lui* affiliates, with *Mark Kellogg* and *Bruce Hoover* as broker and appraiser. Ex-wife of *Ervin Anthony Johnson.*

Wong, Keng Ming – Listed as seller for 10 transactions. Sold properties to ***Bonita Lee***, *Beverly Cody, Lakeisha Williams, Wesley Rahmon and Willie Grady. Mark Kellogg, Bruce Hoover* and *Mountaineer Title* are involved in his deals.

Y.Y.L. LLC. - *Pak Yan Lui* is the Managing Partner; sold 2 houses to *Beverly Cody*;

Appendix 2: History of Selected Properties on Flipper Transactions Table

3770 East 77th Street

Pak Yan Lui purchased the above house on April 19th, 2002 for $24,000 from US Bank. On May 16th, 2003 he transferred it to affiliates, Ken & Sendai Lam for $25,000. On November 17th, 2004, Ken & Sendai Lam sold the property to Nichole Kiesel for $120,000. No permits were pulled prior to this sale.

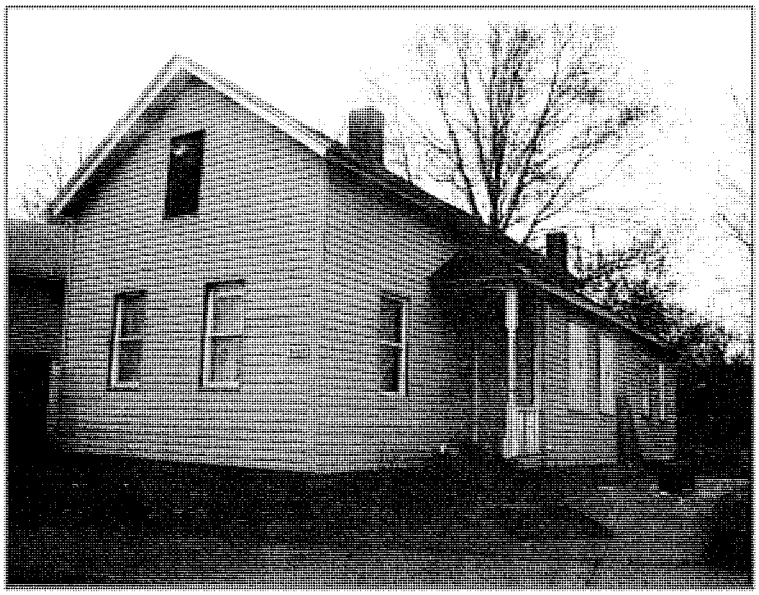
The deal was brokered by Mark Kellogg. The appraiser was Wesley Rahmon. The title company was Mountaineer Title. Kiesel financed this purchase with a loan of $108,000 from People's Choice Mortgage through MERS, and a second mortgage of $6,000 with Ken Lam.

On August 21st, 2007 a foreclosure action was filed against Nichole Kiesel. The default hearing has taken place and the property will be sold at sale in early 2008 (not scheduled yet).

Both Ken Lam and Pak Yan Lui are associates of Pak Tim Lui. Ken Lam owns property with Pak Yan Lui at 3804 Payne Avenue. Ken Lam is/was married to Sendai Lam and owns property with her in Parma. Ken Lam shows up in several other "flip" transactions on the spreadsheet. Pak Yan Lui owns a restaurant with Pak Tim Lui at 5555 Brecksville Road and also a single family home on East 36th Street in Cleveland. Pak Yan Lui is also president of Merlave LTD and a listed partner of Lui Lopack, LTD.

Appendix 2: History of Selected Properties on Flipper Transactions Table

5105 Anson Avenue



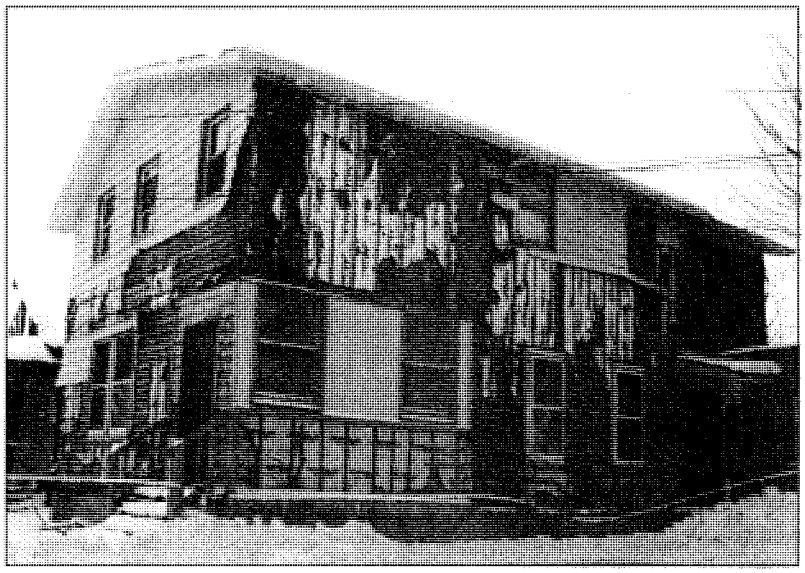
Pak Tim Lui purchased the above house on August 2nd, 2005 for $11,000 from GMAC Mortgage Company. About 7 months later, on March 7th, 2006 he sold the property to Erline Heard for $84,000. No permits were pulled prior to this sale.

The deal was brokered by Mark Kellogg. The appraiser was Bruce Hoover. The title company was Mountaineer Title. Erline Heard financed this purchase with a loan of $71,400 from Long Beach Mortgage Company, and a second mortgage of $12,600 with Pak Tim Lui.

On March 29th, 2007 a foreclosure action was filed against Erline Heard for defaulting on her loan. On January 7th, 2008 this property will be sold at sheriff sale with a minimum bid of $3,334 as the new county appraisal was $5,000.

Appendix 2: History of Selected Properties on Flipper Transactions Table

4080 East 80th Street

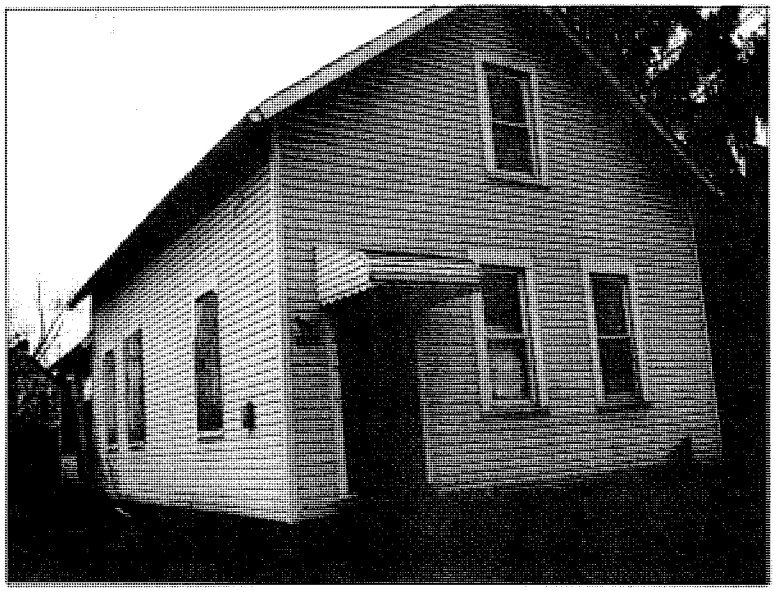


Pak Hor Lui purchased the above house on June 10th, 2005 for $30,600 from Federal Home Mortgage Association (Fannie Mae). About 4 months later, on October 19th, 2005 he sold the property to Julius Gaddis for $85,000.

The deal was brokered by Mark Kellogg. The appraiser was Bruce Hoover. The title company was Mountaineer Title. Julius Gaddis financed this purchase with a loan of $76,500 from Long Beach Mortgage Company, and a second mortgage of $8,500 with Pak Hor Lui. On January 24th, 2008 a foreclosure action was filed against Julius Gaddis.

Appendix 2: History of Selected Properties on Flipper Transactions Table

5977 Engel Avenue



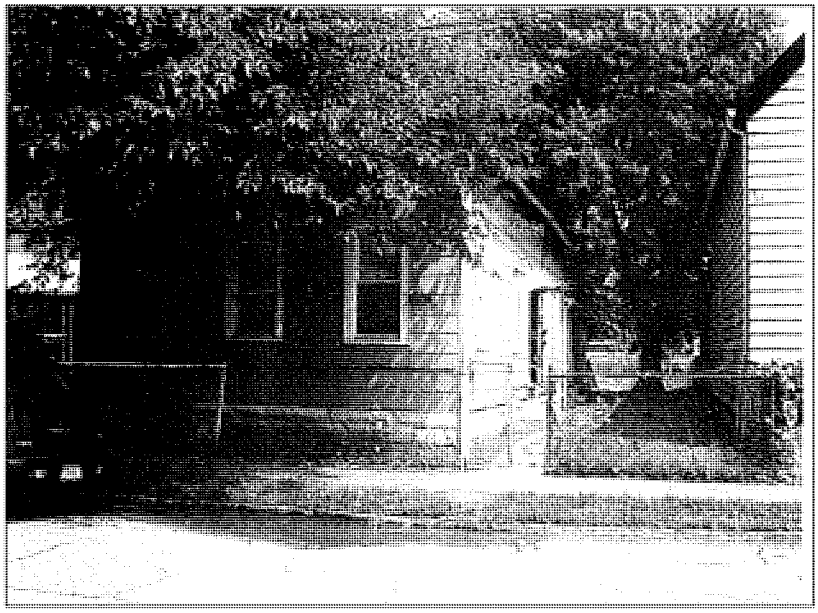
Pak Tim Lui purchased this 1,064 sq. foot house (built 1910) for $18,300 on 12/13/04 from Wells Fargo. On 4/4/05 it was sold to Bonita Lee for 85,000. No permits were pulled prior to this sale. The deal was brokered by Mark Kellogg. The appraiser was Bruce Hoover. The title company was Mountaineer Title. Bonita Lee financed this purchase with a loan of $80,750 from Long Beach Mortgage Company, and a second mortgage of $4,250 with Pak Tim Lui.

This house was one of 5 properties purchased by Bonita Lee from Pak Lui affiliates between March and August 2005. The combined purchase price of the five properties was $426,000. Every transaction was 100% financed with first mortgages from either Long Beach Mortgage or Argent, and second mortgages taken by the seller. Kellogg, Hoover and Mountaineer were involved in all five transactions. Less than two years before she obtained this financing, Bonita Lee's debts were discharged in bankruptcy.

On 8/31/06 a foreclosure action was filed against Bonita Lee on the mortgage for this property. On 9/10/07 the property was offered at Sherriff's sale for a minimum bid of $20,000. The property was withdrawn from sale for lack of bidders.

Appendix 2: History of Selected Properties on Flipper Transactions Table

2985 Nursery



Merlave LTD purchased this 1,188 square foot house (built 1900) a private family on June 4, 2004 for $10,000. On September 23, 2004 Manicka Collins purchased the house from Merlave LTD for $71,250. The deal was brokered by Mark Kellogg. The appraiser was Wesley Rahmon. The title company was Mountaineer Title. Manicka financed this purchase with a loan of $67,500 from Argent on September 23, 2004 and a second mortgage on the same day of $3,750 from Merlave LTD. The second mortgage was released on January 18, 2005.

This house was one of 2 properties purchased by Manicka Collins during August and September 2005. The combined purchase price of the 2 properties was $137,250. Mark Kellog was the broker for both purchases, which later ended in foreclosure.

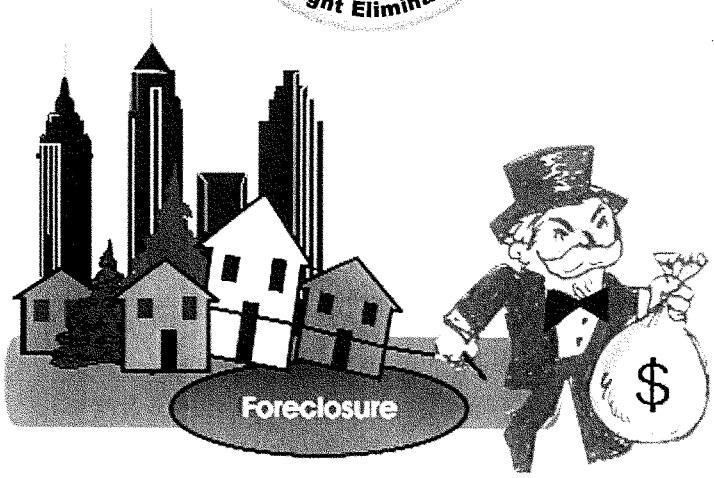
On September 20, 2006 at foreclosure was filed against Manicka Collins for defaulting on the loan. On November 26, 2007 the house went to Sheriff Sale with an appraised value of $10,000. There was a minimum bid of $6,667 and was eventually sold for $36,216 to Wells Fargo. The city has cleaned the above location 3 times and has not been paid- accumulating lien.

[i] Source: Cuyahoga County Recorder and Common Pleas Court. (Foreclosure filings are through February 7, 2008)
[ii] Includes originations by Argent Mortgage (698) and its parent company Ameriquest (28).
[iii] Includes National City Bank (200), National City Bank of Indiana (7) and National City Mortgage Co.(5)
[iv] Includes Countrywide Bank (16) and Countrywide Home Loans (93)
[v] Includes Fifth Third Bank (48) and Fifth Third Mortgage Co.(50)
[vi] Included FirstMerit Bank (76) and Firstmerit Mortgage Co.(22)
[vii] Includes JP Morgan Chase Bank (32), Chase Home Finance (1), Chase Bank USA (14), Chase Manhattan Mortgage Corp. (11), Chase Manhattan Bank (8)
[viii] Includes US Bank of North Dakota (17) and US Bank (48)
[ix] Includes American Home Mortgage (29) and American Home Mortgage Accept Inc. (23)
[x] Includes the City of Cleveland and the Cleveland Department of Community Development.
[xi] Source: Cuyahoga County Recorder and Common Pleas Court. (Foreclosure filings are through February 7, 2008)
[xii] Source: Cuyahoga County Recorder and Common Pleas Court. (Foreclosure filings are through February 7, 2008)

Fighting Foreclosure and Abandonment Forum:

Speakers

City of Cleveland Cheif of Regional Development Chris Warren



Testimony to
Fighting Foreclosure and Abandonment Forum

February 27, 2008
Chris Warren
Chief of Regional Development
City of Cleveland

To the Chair and to the distinguished representatives from the Barack Obama, Hillary Clinton, John McClain, and Michael Huckabee presidential campaigns:

I serve Mayor Frank Jackson as his Chief of Regional Development. In that position I oversee the work of six City Departments related to neighborhood and community development. In addition, I advise the Mayor on issues that impact our Northeast Ohio Region.

The sub-prime mortgage crisis has hit Cleveland and its inner-ring suburbs as horrific natural disasters have hit others. The devastation is manifest: over 10,000 vacant derelict properties, surging foreclosure rates, decades-worth of neighborhood rebuilding undercut, thousands of our citizens uprooted, tens of millions of public dollars diverted from essential services to dealing with the wreckage, and grievous impacts on the personal wealth and well-being of thousands. Call it Hurricane Exploitation.

This Hurricane Exploitation has been an unnatural disaster, one powered by the gale winds of greed blown through our town by those operating and profiting at every level of the sub-prime phenomena. The culprits are many – from the brokers to the financiers, to the investment banks, to those who invested in mortgage-backed securities.

Cleveland is fighting back:

- In January, the City of Cleveland filed a lawsuit in Cuyahoga County Court of Common Pleas to recover damages in connection with Wall Street's role in the sub-prime foreclosure crisis. The City's complaint includes a claim for public nuisance against 21 defendants, including

Deutsche Bank, Ameriquest, Countrywide Financial, Goldman Sachs, and other prominent sub-prime financiers. We believe we will be able to show that the defendants could have and should have foreseen that their sub-prime lending activity would result in the mass foreclosures that have taken place in Cleveland. Between 2002 and 2006, the Defendants collectively issued or underwrote more than $2.5 trillion in securities backed by sub-prime mortgages. Together, they filed more than 16,000 foreclosure actions in Cuyahoga County since 2003.

- The City has joined with County Treasurer Rokakis, Cleveland City Council, and others to craft a program and plan for a County-wide Land Bank designed to handle the redevelopment of thousands of foreclosed upon and abandoned properties.

- The City of Cleveland is working with community-based development corporations, Neighborhood Progress Inc., national and local foundations, and the State of Ohio to institute this year a "Reclaiming Foreclosed Properties" pilot project, targeting city neighborhoods for intensive pre-foreclosure workouts and counseling, the redevelopment of vacant homes for affordable homeownership, and the demolition of condemned nuisance properties. 750-1000 properties will be improved over three years.

These efforts demonstrate a community ready and able – through intra-government cooperation, leveraging the talents of community based development corporations, and private sector commitments - to take on the hard work of rebuilding neighborhoods, family by family, house by house. Regrettably, however, our approaches will fail without resources equal to the task.

The resources can only come through a timely and substantial emergency recovery investment by the federal government.

Accordingly, Mayor Frank Jackson calls on the candidates for President to immediately support the following:

- A five-year multi-billion dollar federal emergency relief program to help cities, like Cleveland, deal with thousands of unsafe abandoned properties, responsibly manage the rebuilding of neighborhoods,

rehabilitate properties for affordable homeownership, and assist families facing interest rate resets and the likely loss of their homes.

For Cleveland and Cuyahoga County, we peg the minimum cost for recovery at $65 million per year for five years.

- The federal government must move quickly to rein in and regulate those elements of the home mortgage industry that have been allowed to trample borrower rights, thumb their nose at fundamental underwriting standards, and totally avoid regulatory scrutiny.

- We support a five year freeze on sub-prime rates and a one year moratorium on sub-prime foreclosures for owner occupants.

On behalf of Mayor Jackson, I thank you for your participation in today's forum and welcome any questions now or later.

CITY OF CLEVELAND
Mayor Frank G. Jackson

Supporting the Urban Core of America
A Proposed Urban Agenda for Presidential Candidates
Presented by Frank G. Jackson, Mayor of Cleveland, Ohio

As Mayor, I am implementing a blueprint for building the Cleveland of the future. In *Making Cleveland a City of Choice: A Strategy for Development and Revitalization in Cleveland,* I outlined a vision for the City of Cleveland in the year 2020. Using this plan, I am rebuilding Cleveland as a city that is a center for advanced manufacturing; a community that connects residents to high quality education and good jobs; a city of safe, family-friendly neighborhoods; a community where racial, ethnic and social diversity is embraced in every neighborhood as one of Cleveland's greatest assets; a Mecca for the arts and culture; and, a model for healthy living and sustainable development.

A "sustainable Cleveland" is a community that meets the needs of the present without compromising the future. Cleveland, like urban centers throughout the country, are facing challenges left behind from development that did not consider the future. These consequences include, among others, contaminated brownfield sites, urban sprawl, over-dependence on the automobile, energy-wasting buildings, poor water quality, and unhealthy lifestyles associated with unhealthy development patterns. These consequences no longer afford cities the luxury of doing business as usual and disregarding the effects of our actions on the future.

Sustainability, however, requires even more than protection of our natural environment and our physical health. Just as important is the commitment to providing Cleveland residents with the education that will enable them to adapt to ever-changing economic and social circumstances.

Over the last two years and even now, the work I am doing as Mayor of Cleveland is to reach the goals laid out in our citywide plan. We have overhauled the means of providing service to our residents, implemented strict fiscal controls to help manage the costs of doing business and are in the midst of sustainability studies that will help determine the improvements that need to be made to the City's infrastructure. We have instituted a five-year capital improvement plan that is guided by fiscal responsibility and the concepts of sustainability.

The City of Cleveland and I, as Mayor, are investing considerable resources in changing the way we do business so that the City of Cleveland will be better off as a result of what we do. This is the guiding principle of my Administration.

After two years of strong management, we have identified the needs of the City of Cleveland. I am continuing to dedicate resources to fulfill those needs. These resources, however, are limited. To be successful in creating a sustainable future for the City of Cleveland, the City, as all urban cores throughout the United States, needs to be the focus of progressive and sustainable federal policy and investment.

Urban centers are the core of America. Urban populations, industries, and assets drive local, regional, and national economies. At the same time, local urban governments bear the burden of providing for large populations that have been historically disadvantaged economically, socially and educationally. Yet, for the last eight years, there has been a disinvestment by the federal government in the nation's urban core.

Disinvestment in America's cities has undercut the ability of municipalities to provide high quality service, to encourage private development, to fight urban sprawl and to improve the quality of life of their residents through increased public safety, education, and health. Disinvestment by the federal government in the City of Cleveland continues to challenge the City's ability to provide high quality services to those who need them the most; to invest in a responsible, sustainable capital improvement plan and to attract new businesses and jobs to the City and the region.

The City of Cleveland, therefore, is looking to the next President of the United States to implement policies and invest dollars in urban areas. An increase in funding to existing programs that target urban centers is needed. The current economic climate and foreclosure crisis dictate new funding sources to meet the unique challenges of urban cores. Investing in urban cores will stabilize population centers, increase economic opportunities, reduce urban sprawl, and empower the people who live in America's cities and improve their lives. By investing in the basic, yet crucial, needs of urban centers, the federal government will create an environment in which cities and their residents can thrive. If cities and their residents can thrive, so will their regions and our nation.

While a $168 billion economic stimulus package has been approved by Congress, its benefits are designed for a short-term boost to the economy. The agenda put forth here is designed for sustained economic growth in American cities. True economic stimulus will come from investing in sustainable redevelopment of urban America.

The following outlines an urban agenda, with a price tag of $120.25 billion per year for five years, which will support America's urban core in a much more significant and sustainable way than any one-time investment. This urban agenda is born out of experience in Cleveland – an urban center that is facing the challenges that are dogging America today.

Supporting America's Core – An Urban Agenda

The following agenda is designed to assist urban centers with:

- Community and economic development services and programs that will support sustainable revitalization of urban neighborhoods and business districts;
- Short-term assistance to help cities offset the costs of the national foreclosure crisis;
- Sustainability and advanced energy resources designed to reduce costs, promote responsible development, protect the environment and help consumers;
- Investments in urban infrastructure, including: existing roads and bridges, a renewed emphasis on mass transit and commuter rail, and public utilities;
- Supporting federal mandates with dollars;
- Community policing and homeland security funding that is delivered directly to cities to maximize the use of these dollars;
- A federal education policy that directs resources to closing the achievement gap in urban centers; and,
- Public health support to assist local governments in providing increased access to health care for the uninsured, chronic disease prevention, reduction of environmental health concerns and improve the overall quality of life for Cleveland residents.

I. Community and Economic Development

The City of Cleveland and other urban centers throughout the country rely on Community Development Block Grants (CDBG) and the HOME Investment Partnerships Program (HOME) to fund services and programs that provide decent housing, suitable living environments, and increase economic opportunities for residents and local businesses.

Yet, in the last eight years, the CDGB funding Cleveland has received has been reduced by more than 23 percent. HOME funding has been reduced more than 31.5 percent. This year, CDBG will fund the following:

- $10,612,572 (45%) for Housing, including all housing repair programs, the Housing Trust Fund, CASH, code enforcement, fair housing and some community development corporation and NDA line items;
- $3,938,000 (16.7%) for public service expenditures, including third party social services, AIDS programs, homeless services;
- $2,111,000 (8.9%) for Commercial and Economic Development activities, including Storefront Renovation Program;

- $1,941,000 (8.2%) on property maintenance, including lot clean up, community gardens;
- $500,000 (2.1%) on demolitions and abandoned property board-up; and,
- $4,500,000 (19.1%) for planning and administration.

Community development block grants allow the City of Cleveland to partner with local organizations and residents to revitalize our neighborhoods and business districts while providing much needed services where they are needed most. Recent reductions in funding have challenged the City's ability to provide assistance at a time when neighborhoods are facing the largest housing crisis of the last two decades, and the economy is weakening. Strengthening urban neighborhoods and business districts is essential to the wellbeing and the future of every city in the country, and by extension, the United States. Without strong neighborhoods, cities will continue to be at a competitive disadvantage and will continue to lose population, business, and industry.

For Cleveland, and all large urban cities, to provide high quality services to their residents, attract new business and jobs, and therefore help stimulate the nation's economy, CDBG and HOME funding must be restored to the funding levels maintained during the 1990s. This would be approximately a 25 percent increase per year for the next five years.

FIVE-YEAR PROGRAM	COUNTY ANNUAL $	FEDERAL[1] ANNUAL $
Community Development Block Grant	50 million	5.0 billion
HOME Investment Partnerships Program	20 million	2.0 billion
TOTAL	**70 million**	**7.0 billion**

II. Recovering from the foreclosure crisis

As an American city that is bearing the brunt of the national foreclosure crisis, the City of Cleveland is urging the creation of a new five-year federal block grant fund to enable cities to recover from the subprime lending and foreclosure crisis. This new program would give targeted local governments whose cities are experiencing the highest foreclosure rates the ability to recover the expenses caused by the crisis.

With an increase in foreclosures, comes an increase in vacant and abandoned properties and in absentee property owners. Cities, like Cleveland, are faced with

[1] In this program, we arrive at the federal allocation by multiplying the County allocation by "100," which is: a) roughly the same as the historical ratio on community development block grants, and b) the right ratio to apply to other urban needs stated in paragraphs III-VIII.

the enormous cost of maintaining these properties. During 2007, the City of Cleveland demolished nearly 1,000 abandoned properties, a more than 400% increase over the number demolished in 2006. Vacant and abandoned property clean up increased nearly 78% in two years, from 27,000 visits in 2005 to 48,000 visits in 2007. Vacant and abandoned properties also present increased fire risk and can become havens for criminals, which increases the cost of providing public safety to our neighborhoods.

Beyond these service-related costs, the City of Cleveland is still working to counsel and educate residents on foreclosure and predatory lending to prevent foreclosures and has provided funding to local non-profits through block grants to assist residents in refinancing their loans. Over the last five years, the City of Cleveland has allocated more than $1.9 million to anti-predatory lending services to Cleveland residents.

The funds expended by the City of Cleveland to abate the nuisances caused by vacant and abandoned property, the increased public safety risk, as well as the money spent to help its residents prevent foreclosure are monies that are being diverted from other services that the City could be providing its residents. This does not include the loss of property value, the loss of equity in our neighborhood and the lost opportunities for economic and community development.

Cleveland, like other large urban areas, will require additional assistance to face the challenges caused by the foreclosure crisis. Therefore, a five-year funding program to assist Cities severely affected by the foreclosure crisis is warranted.

FIVE-YEAR PROGRAM	COUNTY ANNUAL $	FEDERAL[2] ANNUAL $
Home mortgage counseling	2 million	0.1 billion
Home rehabilitation	40 million	2.0 billion
Demolition	15 million	0.75 billion
Concentrated code enforcement	1 million	0.05 billion
Public safety costs of abandoned properties	2 million	0.1 billion
Assist tenants of foreclosed properties	5 million	0.25 billion
TOTAL	**65 million**	**3.25 billion**

[2] In contrast to the ratio described in endnote 1 (multiplying by 100 to arrive at the federal allocation), here we are multiplying by 50 because there are few communities on the national level that have been impacted as severely as Cleveland has by subprime lending and foreclosures.

III. Sustainable Development and Advanced Energy Resources

As Mayor, I moved the City from a year-to-year mentality to one that thinks five years out and beyond. I have implemented this approach in planning our operating budget, our capital improvement program, in conducting a pavement management study and a city facility assessment, as well as the citywide plan, which takes us to the year 2020. This approach is a practical one.

We are continuing to find ways to provide more and better service with fewer resources. High quality service leads to high quality neighborhoods, which in turn attract and retain residents and businesses, solidifying our economic base and ensuring our ability to provide services in the future. Cleveland's economic development efforts are also focused on sustainable development. As a large urban core with an industrial past, Cleveland has numerous brownfields that will need to be cleaned before new development can take place. I have created a commercial and industrial landbank that will help move these properties into productive re-use.

Global demands for resources are dictating the need for sustainable development. With direct access to Lake Erie, Cleveland has the natural resources and infrastructure to position itself as a leader in advanced manufacturing, renewable energy, and green building. These are the economic growth sectors of the future. By becoming competitive in these areas, Cleveland will be able to connect residents with jobs and local businesses with opportunities for growth.

The City of Cleveland is currently conducting an automated trash collection and curbside-recycling pilot program. In addition, plans are underway to build a "municipal solid waste (MSW) to gasification" plant that is projected to drastically reduce the City's landfill deposits, reduce tipping fees, and generate an alternative fuel source. The City has developed an Advanced Energy Portfolio Standard (AEPS) to help support the local advanced energy economy and drive Cleveland Public Power to cleaner energy sources. The City is also participating in an offshore wind turbine study and wind power assessment for developing wind power in Cleveland. Cleveland is addressing our buildings by implementing green building standards that will take effect in 2009.

In order to maximize these efforts, federal renewable energy annual grants and tax credits are needed. In addition, the federal government must require that all public and investor-owned utilities produce or purchase a minimum of 25 percent of power from advanced or renewable energy sources by the year 2025 and mandate benchmarks at three-year increments to hold utilities accountable.

PROGRAM	COUNTY ANNUAL $	FEDERAL ANNUAL $
Advanced/renewable energy capital grants	240 million[3]	24.0 billion
Energy efficiency grants for building owners	10 million	1.0 billion
Hybrid/low emission vehicle/bus tax credits	10 million	1.0 billion
Solar PV and thermal installation grants	40 million[4]	4.0 billion
Green building and permeable paving grants	10 million	1.0 billion
TOTAL	**310 million**	**31.0 billion**

IV. Investment in Urban Infrastructure

Like many of America's established and historic cities, Cleveland's infrastructure is aging, yet still crucial to the quality of life and economic vitality of the entire region and the nation. Therefore, the City of Cleveland is calling for a "Fix It First" federal policy for urban infrastructure, along with an increase in annual funding for transportation infrastructure, support for new commuter rail and mass transit, and a reduction in unfunded mandates for public improvements.

Because of its location, Cleveland is a gateway to the Midwest. Transportation is a key to Cleveland's future as hub for economic growth and jobs. Transportation is one of the most basic amenities that attract and retain residents and businesses. Fixing urban transportation infrastructure before investing in new areas will support urban economies, minimize sprawl and help Cleveland reach its goal of becoming a sustainable community, while ensuring the safety of our residents and commuters.

In addition, a sustainable community will be built by increasing support for commuter rail and mass transit infrastructure. Cleveland has a strong mass transit system within its neighborhoods. Now, greater Cleveland needs to build a strong mass transit system – in the form of commuter rail – that will allow suburban and city commuters easier access to employment centers, reduce energy consumption and improve quality of life in the area.

[3] Annual payments on 5-year financing for the following capital projects: $200 million Cleveland Thermal 50 MW cogeneration, $440 million Medical Center 60-100 MW cogeneration, $160 million MSW gasification plant 20 MW, $70 million County offshore wind project 20 MW, and $30 million City onshore wind project 10 MW.

[4] Includes a solar PV incentive of $5,000 per 2 kW unit for 5,000 installations per year, and a solar thermal incentive of $2,500 for 6,000 Cleveland Division of Water customers per year.

The City of Cleveland is conducting a pavement management survey to help guide its investments in existing road repair. For 1,000 center lane miles of existing road, the cost for ongoing maintenance is estimated to be $228 million over the next 20 years. These repairs must be made to support the quality of life in our neighborhoods, tourism, and economic development.

Finally, urban utilities support the economic health of a region, provide for basic needs of residents, and lessen the impact of natural and man-made disasters. For example, Cleveland's regional sewer district serves more than 1.1 million people. In recent years, the district received a mandate from the federal government for combined sewer overflow upgrades that will cost $1.6 billion. At the same time, the district receives approximately $30 million a year in federally funded low-interest loans, creating a significant gap in funding this project. Because funding gaps are passed on to residents, the impact of the gap is felt by both local agencies and individuals. The cost of living increases and the gap has a negative impact on the economy. It is time to close this significant gap.

Improving existing urban infrastructure before investing in new infrastructure will strengthen local economies by encouraging new development, improving neighborhoods and historic business districts, support local small businesses and create areas where businesses and residents choose to locate. A "Fix it First" policy helps stem the tide of urban sprawl, encourages sustainable development, and improves quality of life for residents.

For these reasons, substantial new federal funding must be provided over the next five years to help repair existing infrastructure, support mass transit and commuter rail and streetscape improvements for pedestrian-friendly neighborhoods, as well as to fund utilities improvements mandated by the federal government.

TRANSPORTATION FIVE-YEAR PROGRAM	COUNTY ANNUAL $	FEDERAL ANNUAL $
Supplement to reconstruct existing roads	30 million	3.0 billion
Supplement for resurfacing existing roads	10 million	1.0 billion
Supplement for bridge repair	30 million	3.0 billion
Supplement for mass transit	20 million	2.0 billion
Supplement for inter-city rail	32 million[5]	3.2 billion
Supplement for streetscape- existing roads	10 million	1.0 billion

[5] A system of priority lines for the State of Georgia had an estimated capital cost of $800 million. Assuming $800 million per state, with Northeast Ohio comprising 1/5 of the State population, yields $160 million spread over a five year construction period, or $32 million per year.

TRANSPORTATION SUBTOTAL	**140 million**	**14.0 billion**
Replacement of water lines	25 million	2.5 billion
Sewer (including combined sewer overflow)	200 million	20.0 billion
Stormwater management	25 million	2.5 billion
UTILITIES SUBTOTAL	**250 million**	**25.0 billion**
INFRASTRUCTURE TOTAL	**390 million**	**39 billion**

V. Community Policing and Homeland Security Funding

The current economic climate, the availability of guns and drugs, aging infrastructure and abandoned properties have a negative impact on public safety in urban America. In Cleveland, homicides were up 14.53 percent in 2007 from 2006. Rising crime and the perception of unsafe city streets deters new investors from locating in the city, new residents from living in the city, as well as discourages existing residents and businesses from staying.

The City of Cleveland is employing an aggressive police deployment plan as well as cross-departmental services designed to mitigate neighborhood symbols of neglect. These actions are helping to improve the quality of life and public safety in our neighborhoods but they are not enough.

The City of Cleveland, like many urban cores, has faced economic challenges that have affected its ability to provide for public safety. In 2003, massive layoffs were announced which significantly reduced the number of police officers on the streets. Ongoing police officer retirements have further reduced our police force. This year, through a Community Oriented Policing Services (COPS) grant, the City will increase the number of police officers on the force by 30 officers.

Community policing provides a much-needed and valuable tool for urban neighborhoods because it helps connect law enforcement officers with the communities they serve. COPS funding provides support for hiring and training law enforcement officers; procuring equipment and support systems; paying officers to perform intelligence, anti-terror or homeland security duties; and developing new technologies, including inter-operable communications and forensic technology. These are crucial police functions, which help improve quality of life and the level of public safety in cities. Yet between 2001 and 2007, Cleveland received about half the COPS funding it did between 1994 and 2000.

By fully funding the COPS program, the federal government can support local governments, improve quality of life and public safety. In turn, safer neighborhoods create better investment environments, promote job growth, and create stable communities.

Another funding challenge for urban governments is created by the increased need for homeland security measures. Homeland security costs have soared in the last seven years and federal funding has increased. However, the current funding structure funnels funding through state and county governments. This causes a delay in training, implementation of new procedures and the purchase and installation of new equipment. In addition, many homeland security measures are mandated by the federal government. Federal funding for such mandates must match the scope and timetable for implementation.

One of greater Cleveland's biggest homeland security challenges is interoperability. Local law enforcement agencies must be able to speak to each other in times of emergency. Greater Cleveland's current system is antiquated by today's technology standards and is estimated to cost more than $80 million to replace. Funding assistance direct to local governments for homeland security measures such as these are needed by local governments across the country.

For these reasons, the City of Cleveland is calling for a federal policy that restores Community Oriented Policing Services (COPS) funding to the level maintained during the 1990s and increases direct funding for Homeland Security measures.

FIVE-YEAR PROGRAM	COUNTY ANNUAL $	FEDERAL ANNUAL $
COPS: hire/train law enforcement officers	15 million	1.5 billion
COPS: equipment and support systems	2 million	0.2 billion
COPS: new technologies	3 million	0.3 billion
Homeland Security interoperability	10 million	1.0 billion
TOTAL	**30 million**	**3.0 billion**

VI. Federal Education Policy and Resources

Since taking office, I have worked closely with the Cleveland Metropolitan School District (CMSD), which has made considerable progress and has implemented a five-year strategic plan. The CMSD has moved up in state ranking to *Continuous Improvement,* new schools have opened and safety and security measures are being enhanced. All of this is designed to reach our goal of increasing academic achievement and equipping our children for the future. This focus is critical to our success.

As I mentioned previously, building a sustainable community means connecting residents with high quality education that will allow them to compete for jobs in the

emerging economy. In order for the City of Cleveland to implement sustainable development and improve quality of life, high quality education for all residents is imperative. Connecting residents to high quality education will be the benchmark for creating a sustainable community and the Cleveland of the future.

The district's plans for new schools, including the Science, Technology, Engineering and Mathematics Academy (STEM) and one for industrial design and technology, are a step in the right direction because they will create a ready workforce for the emerging industries. The District's efforts with these academies and its efforts to improve educational excellence throughout the system must be reinforced by federal policy and funding.

The United States Department of Education, according to its website, states that its mission is "to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access." The City of Cleveland is calling for this mission to be realized by increasing funding for the following programs that will help close the achievement gap:

- Pre-school educational opportunities;
- Improving mathematics and science performance by providing incentives to teachers to specialize in these areas;
- Implementing a strong world languages program which will better prepare Cleveland residents for the global marketplace; and,
- Bridging the gap between high school and college by providing two years of community college free to qualified students.

FIVE-YEAR PROGRAM	COUNTY ANNUAL $	FEDERAL ANNUAL $
Elementary & Secondary Education Act	50 million	5.0 billion
Early Childhood (children < 5 yr old)	100 million[6]	10.0 billion
Loan forgive: K-12 science/math teachers	20 million	2.0 billion
College scholarships: high school graduates	100 million[7]	10.0 billion
TOTAL	**270 million**	**27.0 billion**

[6] Assuming 10,000 children served multiplied by $10,000 per child per year ($10,000 per year is the amount spent by the State of New Jersey, a national leader in early childhood programs). The annual federal funding of $10 billion equates with early childhood funding proposals from candidates Obama and Clinton.

[7] Based on the number of high school seniors in Cuyahoga County taking an average course load of 16 credit hours (tuition and books) per semester for four semesters at Cuyahoga Community College averaged with the same course-load at Cleveland State University. This amount is supported by the well-researched "Learn and Earn" campaign in Ohio, which featured a college scholarship program, but was not approved by voters. The program called for over $800 million per year at the State level, which translates to $100 million per year for Cuyahoga County based on its percentage of the State population, and would have paid for all four years of college.

VII. Improving public health

Access to health care has dominated this year's political debates and news headlines because it is one of the most crucial issues in America today. Just as important to the wellbeing of Americans are public health education, chronic disease prevention and the alleviation of environmental health concerns.

Public health is essential to the overall quality of life in the Cleveland community. The City's ability to provide public health services is crucial to my goal of creating a sustainable community. As stated before, Cleveland was built during a time when the health of the public and the environment in future generations was not the top consideration. Today, the legacy of our industrial past is aging housing stock with high levels of lead paint, contaminated industrial sites, and neighborhood designs that do not encourage healthy lifestyles. Cleveland's citywide plan is designed to change this going forward. In the meantime, the City of Cleveland, just like other urban centers, is faced with the impact these consequences have on the health of our citizens.

The Cleveland Department of Public Health (CDPH) has a strong presence in our community. Over the last year, CDPH has increased nuisance abatement inspections per inspector per week by 27 percent and increased health promotion outreach by 15 percent, to an average of 115 per month to improve public education and awareness. In part, CDPH is able to accomplish this because of federal funding. CDPH received $7.3 million in the current budget cycle from the federal government for programs and services, including $1.9 million for lead poisoning prevention and $1.7 million for chronic disease prevention. Through CDBG funding, the Cleveland Department of Public Health spends $1.5 million on HIV prevention and Housing Opportunities for People with AIDS. Cleveland also receives approximately $2,000,000 for MomsFirst, providing a wide range of services to new mothers and their infants, including lead poisoning prevention, safe sleeping practices, and breastfeeding support.

While this funding is helpful, the need in Cleveland is even greater. It is estimated that at least 20 percent of Cleveland residents do not have health insurance. MetroHealth Medical Center estimates that it will spend more than $230 million on charity care alone in 2008. Providing access to basic primary care, including annual check ups, sick office visits, and basic prescription coverage, for the approximately 100,000 Clevelanders without health insurance is doable. Our primary goal is to connect the uninsured in Cleveland with preventative care. Better access to primary care can prevent more serious illnesses from developing. Once that goal is met, we will be able to increase access to specialists and hospital stays.

In Cleveland, teenage pregnancy is double the national average and incidents of HIV/AIDS cases among 13 to 19 year-olds are on the rise, despite the implementation of a comprehensive sexual behavior program in the public schools.

Increasingly, children are being diagnosed with chronic diseases like diabetes and obesity, even with an active prevention program.

As a public health concern, lead poisoning prevention is one of Cleveland's top priorities because it diminishes quality of life, leads to behavioral problems in children, and contributes tremendously to learning disabilities. Lead poisoning rates of Cleveland children under the age of six using recent data is 42 percent of children, using the City's tough five (5) micrograms per deciliter or greater standard. While this rate exceeds Cleveland's inner ring suburbs, where 22.5 percent of children under six have lead poisoning, it is clear that lead poisoning continues to be a problem in suburban communities as well.

Current local programs are making progress on all of these issues in the City of Cleveland, and CDPH has developed a strong network with Cuyahoga County and other health service providers. In order to improve our outcome, however, more funding is needed. Therefore, the federal government must direct resources to urban communities to increase access to primary health care; eliminate lead poisoning; continue to fund the Steps to a Healthier US Cooperative Agreement for chronic disease prevention; and increase support for urban HIV/AIDS programs.

FIVE-YEAR PROGRAM	**COUNTY ANNUAL $**	**FEDERAL ANNUAL $**
Expanded Access to Health Care	50 million[8]	5.0 billion
Elimination of Lead Poisoning	50 million	2.5 billion[9]
Fully fund Steps to a Healthier US Cooperative Agreement	5 million	0.5 billion
HIV/STD Prevention/Testing/Treatment	20 million	2.0 billion
TOTAL	**125 million**	**10.0 billion**

[8] To serve 100,000 people annually at an average cost of $500 per person to include basic primary care: annual check-ups, sick office visits, and basic prescription coverage.

[9] The County number is multiplied by only 50 to yield the federal number (as opposed to the usual multiplication by 100) on the assumption that lead poisoning is largely confined to dense urban areas.

Supporting the Urban Core of America
A Proposed Urban Agenda for Presidential Candidates
Presented by Frank G. Jackson, Mayor of Cleveland, Ohio

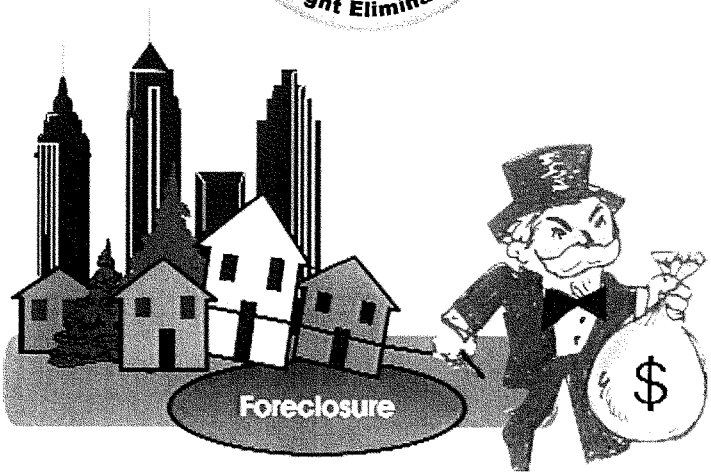
Total Urban Agenda Investments

	COUNTY ANNUAL TOTAL $	FEDERAL ANNUAL TOTAL $	COUNTY 5-YEAR TOTAL $	FEDERAL 5-YEAR TOTAL $
CDBG/HOME	70 million	7.0 billion	350 million	35.0 billion
New Foreclosure Block Grant	65 million	3.25 billion	325 million	16.25 billion
Sustainability and Renewable Energy Supplement	310 million	31.0 billion	1.55 billion	155.0 billion
Transportation "Fix It First"	140 million	14.0 billion	700 million	70.0 billion
Public Utilities Fund	250 million	25.0 billion	1.25 billion	125.0 billion
Local Law Enforcement	30 million	3.0 billion	150 million	15.0 billion
Public Education Supplement	270 million	27.0 billion	1.35 billion	135.0 billion
Public Health Supplement	125 million	10.0 billion	625 million	50.0 billion
TOTAL	**1.26 billion**	**120.25billion**	**6.30 billion**	**601.25 billion**

Fighting Foreclosure and Abandonment Forum:

Speakers

Cleveland Housing Court Judge Raymond Pianka



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Synopsis
WEDNESDAY, FEBRUARY 27, 2008

Raymond L. Pianka is Judge of the Housing Court in Cleveland, Ohio. He has held this position for over twelve years. As the sole Judge of the Housing Division of the Cleveland Municipal Court, he presides over more than 11,000 civil and 5,000 criminal cases filed in the Housing Court each year.

Based upon what Judge Pianka has witnessed in cases before him, he believe that the following three areas within the foreclosure crisis need immediate attention:

1) Prevention of foreclosure through responsible lending and servicing;
2) Improvements in the foreclosure process, including the preservation of the home as an asset, whether by the defaulting borrower or the foreclosing financial institution, the timely filing of deeds, and the elimination of toxic titles; and
3) Responsible ownership of the properties by banks and other lenders.

There are several areas where the federal government could regulate and provide services both to protect borrowers, as well to provide assistance to the communities and neighborhoods that have experienced collateral damage from the fallout associated with a defaulted loan and the resulting foreclosure process.

Primarily, the federal government should apply the strictest of standards to the Federal National Mortgage Association ("Fannie Mae") and the Department of Housing and Urban Development ("HUD"). In particular, greater oversight and screening by guarantors such as Fannie Mae and HUD is needed to remove the financial incentive for lenders to avoid working with borrowers and to permit property to fall into default.

Banks and other lending institutions must be required to do the necessary research, and must be required to procure the proper authenticating documents (e.g., IRS Form 1040, W-2, etc.), prior to providing loans.

Banks and other lenders must be required to work through toxic title issues, following through with foreclosures or releasing their liens when necessary, to permit these properties to move into the hands of beneficial owners.

Finally, federal regulation, and federal dollars for prevention and clean-up programs, are necessary both to reverse the damage that has already occurred and to prevent further injury to the community.

Testimony

Good morning. My name is Raymond L. Pianka and I am the Judge of the Housing Court in Cleveland, Ohio, a position that I have held for over twelve years. I would like to thank Cleveland City Council for giving me the opportunity to speak with you today.

As the sole Judge of the Housing Division of the Cleveland Municipal Court, I preside over more than 11,000 civil and 5,000 criminal cases filed in the Housing Court each year. As we all know too well, Cleveland is experiencing a record number of home mortgage defaults, foreclosures, bankruptcies, and failed financial deals. I observe daily in the cases before me the impact of the foreclosure crisis on our homes and in our neighborhoods.

Based upon what I have witnessed in cases before me, I believe that the following three areas need immediate attention: 1) prevention of foreclosure through responsible lending and servicing; 2) improvements in the foreclosure process, including the preservation of the home as an asset, whether by the defaulting borrower or the foreclosing financial institution, the timely filing of deeds, and the elimination of toxic titles; and 3) responsible ownership of the properties by banks and other lenders.

I. Foreclosure Prevention through Responsible Lending and Servicing:

The current economic downturn has affected even long time homeowners. Banks and lenders should be required to work with these homeowners before resorting to foreclosure, exploring all options to keep the property occupied. Occupancy of properties by homeowners is crucial to the stability of our communities. Lenders must be called upon to examine their own conduct in this area on the most basic level – they need to be accessible to their borrowers. One of the primary problems we face as a court is our inability to reach a person in the bank or lending institution who has authority to discuss the property and the loan with the owner or the Court. In some cases it may take many hours and dozens of telephone calls to find a contact person who is able to discuss refinancing or other options to keep the property in the hands of a beneficial owner. If the Court, with its many resources, has such difficulty in reaching anyone with this authority from the bank or lender, it is easy to imagine why individual homeowners give up, and walk away from their homes.

Further, when homeowners cannot afford to remain in their homes and are willing to assist transfer of property, the banks and lenders should assist them in doing so, to avoid trapping the property in the lengthy foreclosure process. Some of the most challenging cases in the Housing Court involve those owners who are willing to assist in the transfer of their property to new owners, but are trapped in the foreclosure process. Often, the lending institutions involved in the foreclosures are unwilling to discuss options for transfer of the property with the owner or with members of the Housing Court staff after the foreclosure has been filed. The current protracted foreclosure process has a chilling effect on the redevelopment of these properties, leaving the Court to require only that the defendants maintain the exterior of the premises for the months or years until the foreclosure is completed.

We also must accept that homeownership is not for everyone. Banks and other lenders must be called upon to look at their lending practices. Improvident lending to improvident buyers characterizes many of the real estate transactions in the City of Cleveland during the last decade. Lenders have been permitted to rely upon federal guarantees to be less careful in the loans they make. The Federal government must regulate this area to protect shareholders and the rebound effect we recently have seen on Wall Street in the area of mortgage-backed securities. Greater oversight and screening by guarantors such as the Department of Housing and Urban Development and Fannie Mae is needed to remove the financial incentive for lenders to avoid working with borrowers and to permit property to fall into default. Federal regulation, and federal dollars for prevention and clean-up programs, are necessary both to reverse the damage that has already occurred and to prevent further injury to the community.

II. Modification of Foreclosure Process:

The foreclosure process should be modified to permit homeowners an opportunity to retain their homes, while expediting the process of transfer to responsible ownership for vacant and abandoned properties.

In Housing Court, representative of lenders filing foreclosures must appear and participate in work out conferences that give homeowners the opportunity to explore options for remaining in their homes. In some cases, we have been able to persuade lenders to refinance loans, giving homeowners a second chance to retain their property. In other cases, where properties are vacant and abandoned, the Courts must act quickly to process the foreclosures and minimize the period of time that properties stand vacant.

While foreclosures are pending, the Courts, plaintiffs and plaintiff's attorneys must monitor the condition of the property and conduct of the lender while the property is in foreclosures. If lenders don't act in their own best interest to monitor the condition of the property, courts must take the lead in doing so, issuing orders as appropriate. Courts & lenders also must acknowledge the benefit of keeping homes occupied during the foreclosure process. In Housing Court, we often see lenders order owners out of their homes before the process is complete – leaving homes vacant and a target for vandals.

The foreclosure process also should be modified to require the immediate issuance and filing of the deed after Sheriff Sale. The current system permits a property to remain in the name of the original owner for months or even years after the Sheriff Sale. There is no mechanism for requiring the purchaser to file the deed with the County Recorder's office. Purchasers at Sheriff Sale have little incentive to file the deeds promptly; many do not file the deed until the day the property is sold to another party. HUD is one of the biggest offenders of this type. As a result, neither City inspectors, nor community development groups, nor neighbors interested in the property, can determine who legally is responsible for it. The current system should be modified to require the

purchaser to authorize the Sheriff to file the deed, or to penalize purchasers who fail to file the deed within a brief, specified period of time. The accuracy of property ownership records is pivotal to code enforcement in this area.

We have witnessed an additional, alarming trend in foreclosure cases: lenders are taking actions that lead to "toxic titles," that is, leaving titles in a non-transferable condition. For example, lenders write off debts, but keep their liens on the property, making it impossible to transfer those properties. Or, lenders initiate the foreclosure process, then abandon it, sometimes even after sale, having made the business decision that it will not be of sufficient financial benefit to the lender to proceed. There are even instances where a bank has purchased its property for the minimum bid at Sheriff's sale, only to ask the Court to set aside the sale. This leaves the property with an unpaid mortgage, which often is significantly greater than the value of the property itself, making title to the property nearly impossible to convey. Banks and other lenders must be required to work through these title issues, following through with the foreclosures or releasing their liens when necessary, to permit these properties to move into the hands of beneficial owners.

III. Investor-owners, as well as banks and other lending institutions must be familiar with the property they own, and accountable for the condition of it.

Sale and purchase of properties in bulk. One of the most alarming recent trends in property ownership in the greater Cleveland area is the sale and purchase of properties in bulk, often by out-of-state lenders or investors who have never seen the properties they purchase. Often these bulk sales and purchases include properties that are vacant, abandoned and dilapidated. These purchasers focus their attention on the more valuable properties in the package, leaving the vacant properties to linger unattended, falling further into disrepair, after the purchaser concludes that rehabilitation of the property is not financially feasible. Discouraging the sale and purchase of properties in bulk will encourage the buyers and sellers to make decisions based upon the condition and value of the individual properties. These decisions not only will be in their own financial best interest, but also will benefit the community by causing investment in properties with a viable future.

Disconnect. It is undeniable that banks and other lenders have programs that benefit the citizens of the greater Cleveland area. Programs for first time buyers and those who have less than perfect credit make homeownership possible for many people. However, the disconnect between these good deeds the banks perform, and the fact that these same entities permit the properties to which they hold title to fall into disrepair, is clear. Dilapidated structures with tall grass, broken windows, and missing siding can be found in virtually every neighborhood in the City of Cleveland. Surprisingly, a great number of these are titled to, or in control of, banks and lending institutions. Equally surprising, many lenders deny knowledge of the full portfolio of property they own.

Investor owners also must appear in Court when summoned. In Housing Court, we have attempted to secure the attendance of criminal defendants in a number of ways.

First, the Court has begun to hold trials *in absentia*. The law in Ohio provides that, when a corporation fails to appear to answer criminal charges after being served, trial against the corporation may proceed without the corporation present. I have monthly dockets of cases proceeding to trial against corporations *in absentia*, and, to date, have ordered more than a half-million dollars of criminal fines in these cases into civil execution. In addition, court personnel screen eviction actions filed in Housing Court to determine whether the parties bringing the evictions have outstanding warrants in Housing Court criminal cases. Parties seeking eviction orders must do so with "clean hands." A party seeking an eviction order cannot invoke the Court's jurisdiction in that case, while failing to acknowledge the jurisdiction in the same Court over its pending criminal cases. The number of banks and lenders seeking eviction orders, while ignoring the Court's summons in the criminal cases, has become so great that I have had to create a separate docket for those cases. On alternating Fridays, the "warrant docket" is heard, with evictions placed on hold until the attorney for the bank or lender in the eviction case is able to get authority from the client to represent the bank or lender in the criminal case and enter a plea. The eviction cases may be stayed for weeks, or even ultimately be dismissed, waiting for the attorneys to secure permission to enter a plea in the criminal case.

Through these procedures, we have been able to secure both the attendance and the attention of some banks, lenders, and investor-owners. However, additional consequences should be made available when property owners fail to appear when they are summoned into court, such as, for example, the ability to impact a business entity's corporate status until such.

Real estate investment is not a passive investment; these bank-owned properties are actual parcels in the City – real people live across the street from these properties, and neighborhoods are affected by their blight. While asset preservation would appear to be common sense, I witness each day cases where bank-owned properties are vacant, abandoned, and stripped of their historical and architectural details, as well as basic structural components such as aluminum siding and copper pipes. Lenders must be compelled to maintain an inventory of the property they own, and, as property owners, they must be held to the same standards that all property owners must meet.

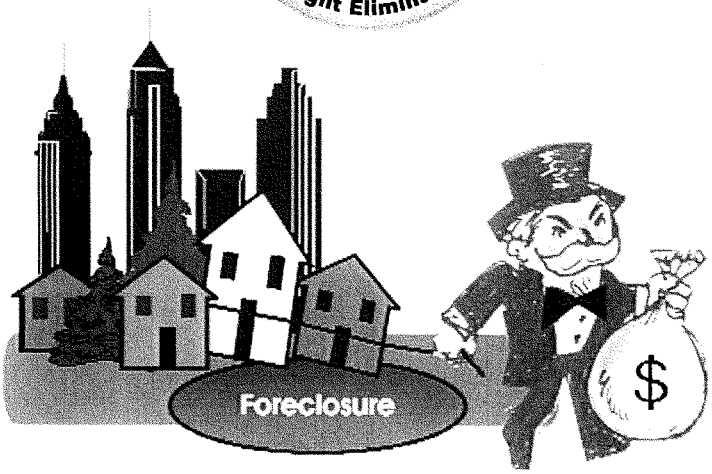
The current foreclosure crisis in the City of Cleveland, and throughout this state, must be addressed quickly if we are to save our housing stock. The Housing Court, in its efforts to provide the best practices to its litigants and the community, has introduced a number of programs in response to the foreclosure crisis to eliminate the decay caused by foreclosures. We will continue to implement new and innovative practices to combat this threat. We encourage other governmental bodies and agencies, and we call upon our candidates for President, to do the same.

I appreciate the opportunity to offer my testimony to you today.

Fighting Foreclosure and Abandonment Forum:

Speakers

Cuyahoga County Treasurer James Rokakis



Fighting Foreclosure and Abandonment Forum:

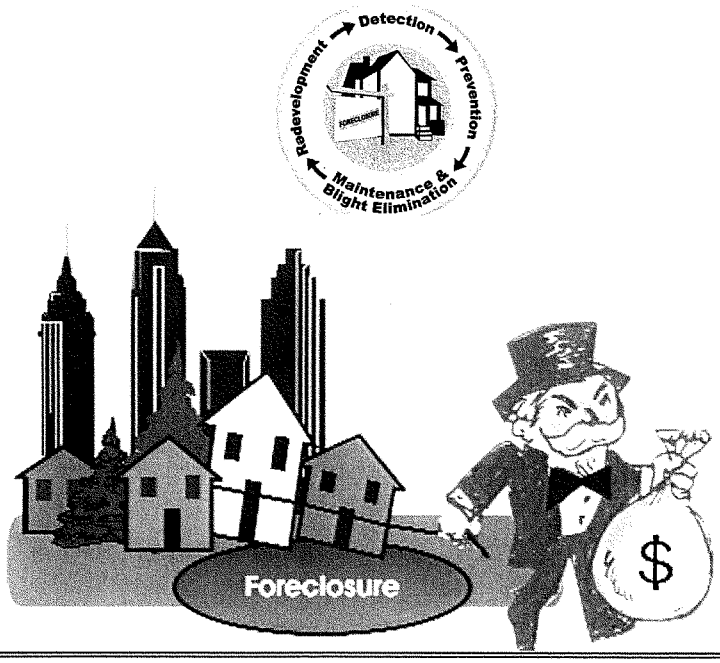
panels

Detection

Kathleen Engel, Cleveland State University

Mike Schramm, NeoCando

Jeff Dillman, Housing Research & Advocacy Center



Statement of Professor Kathleen C. Engel
Fighting Foreclosures Panel
Cleveland City Council
February 27, 2008

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I serve on the Board of Directors of Americans for Fairness in Lending, the Consumer Advisory Council of the Federal Reserve Board of Governors, the Executive Committee of the American Association of Law Schools Section on Financial Institutions, and the Fair Housing Subgroup of the Barack Obama campaign. I have also consulted with all levels of government on issues related to predatory lending and mortgage lending discrimination.

My comments today are based on the attached article that I wrote with Professor Pat McCoy, entitled "Turning a Blind Eye; Wall Street Finance of Predatory Lending,' which Fordham Law Review published last year. The following is an abstract of that article:

> Today, Wall Street finances up to eighty percent of subprime home loans through securitization. The subprime sector, which is designed for borrowers with blemished credit, has been dogged by predatory lending charges, many of which have been substantiated. As subprime securitization has grown, so have charges that securitization turns a blind eye to the financing of abusive loans.
>
> When investors buy securities backed by subprime loans, they face a classic lemons problem. The loans may present credit, prepayment, and litigation risks that investors cannot detect. In turn, lenders, knowing that securitization can hide these risks, have incentives to securitize the riskiest loans. In theory, the lemons problem should cause all but the least risk-averse investors to flee the market for subprime mortgage-backed securities or demand a risk premium commensurate with the worst quality loans. Instead, securitization structures transactions to allay investors' concerns about lemon loans. The devices used by securitization to protect investors do not involve adequate screening of loans to determine whether those loans have predatory features. To the contrary, structured finance provides incentives to securitize predatory loans.
>
> For many reasons, including the costs that abusive lending imposes on unwitting borrowers, their neighbors and communities and the ease with which secondary markets could screen out abusive loans from securitization pools, we contend that the assignees of loans should bear responsibility for wrongdoing by brokers and lenders. We propose a two-pronged assignee liability standard—one for entities

that adopt statutorily-mandated due diligence standards and another for those who fail to screen and monitor loans. The former would be subject to declaratory relief, rescission, reformation, compensatory damages that are capable of calculation, and attorneys' fees. Those assignees that failed to engage in the required due diligence would be subject to full damages, including statutory punitive damages and compensation for emotional distress.

TURNING A BLIND EYE: WALL STREET FINANCE OF PREDATORY LENDING*

*Kathleen C. Engel*** & *Patricia A. McCoy****

INTRODUCTION

Numerous studies have discussed the negative externalities that securitization imposes on creditors.[1] Scholars have paid scant attention, however, to harms caused by securitization to debtors whose loans are securitized.[2] This issue has erupted in the subprime home mortgage

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1. *See, e.g.*, David Gray Carlson, *The Rotten Foundations of Securitization*, 39 Wm. & Mary L. Rev. 1055 (1998); Christopher W. Frost, *Asset Securitization and Corporate Risk Allocation*, 72 Tul. L. Rev. 101 (1997); Edward J. Janger, *Muddy Rules for Securitizations*, 7 Fordham J. Corp. & Fin. L. 301 (2002); Lynn M. LoPucki, *The Death of Liability*, 106 Yale L.J. 1 (1996); Lois R. Lupica, *Asset Securitization: The Unsecured Creditor's Perspective*, 76 Tex. L. Rev. 595 (1998); Steven L. Schwarcz, *Intermediary Risk in a Global Economy*, 50 Duke L.J. 1541, 1580-81, 1585-86 (2001).

2. Kurt Eggert was among the first to discuss this issue, in the context of the holder-in-due-course rule. Kurt Eggert, *Held Up in Due Course: Predatory Lending, Securitization, and the Holder in Due Course Doctrine*, 35 Creighton L. Rev. 503 (2002). Jonathan Remy Nash also highlighted this issue in his work on securitization and environmental superliens. Jonathan Remy Nash, *Environmental Superliens and the Problem of Mortgage-Backed Securitization*, 59 Wash. & Lee L. Rev. 127 (2002). Other works have examined securitization's effect on third-world countries. *See* Carl S. Bjerre, *Project Finance, Securitization and Consensuality*, 12 Duke J. Comp. & Int'l L. 411, 434-35 (2002); Anupam Chander, *Odious Securitization*, 53 Emory L.J. 923 (2004); Tamar Frankel, *Cross-Border Securitization: Without Law, But Not Lawless*, 8 Duke J. Comp. & Int'l L. 255, 260, 265 (1998); David W. Leebron, *First Things First: A Comment on Securitizing Third World Debt*, 1989 Colum. Bus. L. Rev. 173.

market, where charges of predatory lending, many of which have been substantiated, are mounting.[3]

The vast majority of subprime loans are now securitized, leading to claims that securitization facilitates predatory lending and should actively police lenders. Nonetheless, the entities involved in securitization have resisted addressing such concerns and continue to serve as major conduits for predatory loans.[4] As this excerpt from one prospectus illustrates, securitization turns a blind eye to the underwriting of subprime loans:

> With the exception of approximately 20.82% of the mortgage loans in the statistical mortgage pool that were underwritten in accordance with the underwriting criteria of The Winter Group, underwriting criteria are generally not available with respect to the mortgage loans. In many instances the mortgage loans in the statistical mortgage pool were acquired by Terwin Advisors LLC from sources, including mortgage brokers and other non-originators, that could not provide detailed information regarding the underwriting guidelines of the originators.[5]

As this suggests, Wall Street firms securitize subprime home loans without determining if loan pools contain predatory loans. In the worst situations, secondary market actors have actively facilitated abusive lending.[6]

At first blush, securitization's lack of concern about subprime underwriting seems odd. After all, investors in mortgage-backed securities should be concerned about the heightened default risk of subprime loans and predatory loans in particular.[7] Furthermore, they should be concerned

3. *See infra* note 121. The subprime market charges higher interest rates and fees and is designed for borrowers with weaker credit.

4. For instance, a 2005 study of securitized subprime loans found that 57.2 percent of those loans had one or more predatory features, i.e., a balloon clause or a prepayment penalty with a term of at least three years. *See* Roberto G. Quercia, Michael A. Stegman & Walter R. Davis, The Impact of Predatory Loan Terms on Subprime Foreclosures: The Special Case of Prepayment Penalties and Balloon Payments 22-23, 32 tbl.6 (Jan. 25, 2005) (unpublished manuscript, on file with the Fordham Law Review). The role of securitization can also be seen in predatory lending lawsuits involving loan assignees or trustees of securitized trusts that hold home loans. *See, e.g.*, Jackson v. Mundaca Fin. Servs., Inc., 76 S.W.3d 819 (Ark. 2002) (assignee); Stuckey v. Provident Bank, 912 So. 2d 859 (Miss. 2005) (trustee); Skinner v. Preferred Credit, 616 S.E.2d 676 (N.C. Ct. App. 2005) (trust and trustee); Bankers Trust Co. v. West, No. 20984, 2002 WL 31114844 (Ohio Ct. App. Sept. 25, 2002) (assignee).

5. Merrill Lynch & Co., Prospectus Supplement to Prospectus dated June 18, 2004 (Form 424B5), at S-16 (June 24, 2004), *available at* http://www.sec.gov/Archives/edgar/data/809940/000095013604002052/0000950136-04-002052.txt. Our thanks to Alan White for drawing this language to our attention.

6. In the most notorious example to date, in 2003, a federal jury held Lehman Brothers liable, as an investment bank and provider of a warehouse line of credit to the subprime lender First Alliance Mortgage Corp. (FAMCO), for aiding and abetting FAMCO's fraud on borrowers. *See infra* notes 106-07 and accompanying text.

7. Subprime home loans are more likely than prime loans to go into default. *See, e.g.*, FitchRatings, U.S. Subprime RMBS in CDOs 5-9 (Apr. 15, 2005); Michelle A. Danis & Anthony Pennington-Cross, *The Delinquency of Subprime Mortgages* 5-6 (Fed. Reserve Bank of St. Louis, Working Paper No. 2005-022A, 2005). Predatory loans present an even

that subprime lenders will try to pass off their worst loans through securitization—the "lemons" problem that George Akerlof described.[8]

Given investors' concerns, one might expect the capital markets to screen out the riskiest, predatory loans from securitized subprime loan pools. There is growing evidence, however, that securitizing entities perform inadequate screening. When meaningful screening does occur, it focuses on loans originated in states that impose liability on assignees of predatory loans. In states with weak anti-predatory lending laws, screening is minimal or nonexistent.

As we explain, securitization solves the lemons problem for investors without requiring the capital markets to screen out predatory loans from securitized offerings. Investment banks employ a variety of techniques, primarily structured finance and deal provisions, to shield investors from virtually all of the credit and litigation risk associated with predatory loans. Market and legal forces provide additional protection to investors. For example, the holder-in-due-course rule shields investors and securitized trusts from most litigation contesting predatory loan terms. Evidence also suggests that investors extract price concessions as recompense for the lemons problem, which pushes up the cost to borrowers of subprime loans. As a result, investors can safely invest in top-rated subprime mortgage-backed securities without worrying about losses, even when the underlying loan pools are replete with questionable loans.[9]

The protections that securitization provides investors do not safeguard borrowers. To the contrary, securitization inflicts negative externalities on subprime borrowers in at least four ways. First, securitization funds small, thinly capitalized lenders and brokers, thus enabling them to enter the subprime market. These originators are more prone to commit loan abuses because they are less heavily regulated, have reduced reputational risk, and operate with low capital, helping to make them judgment-proof. Second, securitization dilutes incentives by lenders and brokers to avoid making loans with excessive default risk by allowing them to shift that risk to the secondary market, which has other ways to protect itself. Third, securitization denies injured borrowers legal recourse against assignees by triggering the holder-in-due-course rule and impeding work-outs. Lastly, securitization drives up the price of subprime loans because investors demand a lemons premium for investing in subprime mortgage-backed securities.

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higher risk of default than subprime loans generally. *See* Quercia, Stegman & Davis, *supra* note 4, at 25, 35 tbl.10.

8. *See* George A. Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q.J. Econ. 488 (1970).

9. *See* Stephen Wallenstein, *Situating Project Finance and Securitization in Context: A Comment on Bjerre*, 12 Duke J. Comp. & Int'l L. 449, 451 (2002) ("[N]egative effects on select populations are not a concern of . . . securitization (by which I mean the financing aspects).").

The resulting cost to borrowers is substantial. One recent study estimated that lengthy prepayment penalties in securitized subprime loans boosted borrowers' risk of foreclosure by sixteen to twenty percent.[10] Balloon clauses in those loans raised borrowers' risk of foreclosure by an additional fifty percent.[11] Securitization also exacts significant tolls on municipalities by fueling predatory lending. When borrowers, saddled with onerous loan payments, lose or cannot maintain their homes, cities must contend with abandoned and deteriorating properties, which strain city resources and threaten the vitality and stability of neighborhoods.[12]

Given securitization's role in enabling and perpetuating predatory lending, we contend that the law should impose full, quantifiable assignee liability on securitized trusts that do not adopt adequate controls to filter out predatory loans from loan pools. Today, new automated due diligence software makes it technologically and economically efficient to screen out loans with predatory features.

In an earlier article, we proposed federal legislation to require subprime lenders and brokers to make suitable loans.[13] In this Article, we argue that assignee liability should apply to suitability violations and certain other legal violations by mortgage brokers and lenders. Imposing properly tailored liability on securitizers would force them to take into account the negative externalities of securitization on borrowers and communities.[14]

Our analysis of the securitization of subprime residential mortgages expands the debate about negative externalities from securitization by demonstrating that such externalities are not necessarily limited to originators' unsecured creditors. To the contrary, securitization can impose negative externalities on debtors who are liable on the underlying receivables, as well as on surrounding communities.

Moreover, our research helps explain why securitization has taken root. Claire Hill has argued, for instance, that securitization exists because valuing a lender's receivables is simpler than valuing the lender itself. Professor Hill offers the further insight that thinly capitalized lenders—which she dubs "lemons firms"—have the most to gain from securitizing

10. *See* Quercia, Stegman & Davis, *supra* note 4, at 25.

11. *Id.*

12. *See* Kathleen C. Engel, *Do Cities Have Standing? Redressing the Externalities of Predatory Lending*, 38 Conn. L. Rev. 355 (2006) (describing externalities that predatory lending imposes on cities); *see also* William C. Apgar & Mark Duda, Collateral Damage: The Municipal Impact of Today's Mortgage Foreclosure Boom 4 (May 11, 2005), *available at* http://www.hpfonline.org/PDF/Apgar-Duda_study_final.pdf (estimating that vacant properties from foreclosures cost cities more than $30,000 per unit in some cases); Family Housing Fund, Cost Effectiveness of Mortgage Foreclosure Prevention 16-17 (1998) (estimating that Minneapolis and St. Paul lost $2000 on average in tax revenues on vacant homes and spent up to $40,000 per home rehabilitated and $10,000 per home demolished).

13. *See* Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 Tex. L. Rev. 1255 (2002).

14. *See* Janger, *supra* note 1, at 302, 315.

their receivables.[15] We extend her analysis by arguing that securitization solves two "lemons" problems, not one: the originator's possible bankruptcy and adverse selection in the loans being sold and ultimately securitized.

Finally, our research implicitly questions the binary nature of the larger debate about negative externalities from securitization. Too often, the debate is framed as whether securitization must be defended from all attack or altered at its core.[16] The parable of the subprime market, however, suggests that there may be a middle, low-cost course that can protect borrowers from loan abuses without impeding securitization.

The Article unfolds as follows: In Part I, we provide a brief definition of predatory lending. Part II describes the growth of subprime securitization, while Part III provides a thumbnail sketch of securitization of subprime home mortgage loans. In Part IV, we discuss the risks posed by subprime securitization and the resulting lemons problem that investors face. Part V analyzes how securitization solves the lemons problem through a variety of techniques, including sequential tranches, pricing, limited due diligence, and contract provisions. In Part VI, we explain why predatory lending persists despite the substantial risk management techniques employed by securitization. Part VII presents normative justifications for imposing assignee liability on residential mortgage-backed securitizations, while Part VIII sets forth the details of our assignee liability proposal. Finally, in Part IX, we respond to critics of assignee liability for predatory loans.

I. PREDATORY LENDING DEFINED

Predatory lending is a syndrome of loan abuses that benefit mortgage brokers, lenders, and securitizers to the serious detriment of borrowers.[17] Such abuses include the following:

(1) Loans structured to result in seriously disproportionate net harm to borrowers: A major example is asset-based lending, which consists of loans to borrowers whom the lender knows cannot afford the monthly payments. Pushing borrowers to take on more debt than they need, steering prime-eligible borrowers to subprime loans, and refinancing low-interest loans into costlier loans with no justification can also inflict seriously disproportionate net harm on borrowers.[18]

15. Claire A. Hill, *Securitization: A Low-Cost Sweetener for Lemons*, 74 Wash. U. L.Q. 1061, 1091-92 (1996); *accord* Edward M. Iacobucci & Ralph A. Winter, *Asset Securitization and Asymmetric Information*, 34 J. Legal Stud. 161, 180-82 (2005).

16. Compare sources cited in *supra* notes 1, 2, and 10, representing different viewpoints in this debate.

17. Engel & McCoy, *supra* note 13, at 1259-70.

18. Freddie Mac, Automated Underwriting: Making Mortgage Lending Simpler and Fairer for America's Families, ch. 5 & nn.5-6 (1996), http://www.freddiemac.com/corporate/reports/moseley/chap5.htm; *see also* Mortgage Bankers Ass'n, MBA Best Practices ¶ III (2007), *available at* http://www.mortgagebankers.org/IndustryResources/StandardsandBestPractices/MBABestPractices.htm (last visited Feb. 10, 2007); Patricia

(2) Rent seeking: Numerous subprime loans charge fees and interest rates that are exorbitant compared to the risk that the borrowers present. Rent seeking also encompasses steering and charging prepayment penalties and points without a corresponding cut in the interest rate, as is customary in the prime market.[19]

(3) Loans involving illegal fraud or deception: Many predatory loans involve fraud or deception by brokers or lenders. For example, brokers or lenders may procure inflated appraisals or make false promises to refinance loans down the road on better terms.[20]

(4) Other forms of non-transparency that do not amount to fraud: These occur when lenders or brokers withhold information from borrowers in circumstances that fall short of fraud. For example, subprime lenders keep rate sheets containing their prices secret because they do not want borrowers to shop for better rates.[21] Neither the Truth in Lending Act[22] nor the Real Estate Settlement Procedures Act[23] requires disclosure of rate sheets to borrowers.[24] This secrecy impedes comparison shopping.

(5) Loans requiring borrowers to waive meaningful legal redress: Subprime loans often contain mandatory arbitration clauses that require borrowers to take disputes to arbitration and preclude them from joining class actions. Such provisions deny borrowers access to the courts.[25]

(6) Lending discrimination: Many predatory loans impose more onerous terms on members of protected groups, resulting in discrimination even after controlling for risk.[26]

(7) Servicing abuses: Once loans are securitized, a servicer typically becomes responsible for collecting the loan payments and distributing the

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Sturdevant & William J. Brennan, Jr., *A Catalogue of Predatory Lending Practices*, Consumer Advoc., Nov.-Dec. 1999, at 36, 37, 39.

19. Howard Lax et al., *Subprime Lending: An Investigation of Economic Efficiency*, 15 Hous. Pol'y Debate 533, 535 (2004); Sturdevant & Brennan, *supra* note 18, at 38-39; Alan M. White, *Risk-Based Mortgage Pricing: Present and Future Research*, 15 Housing Pol'y Debate 503 (2004); Mark Shroder, The Value of the Sunshine Cure: Efficacy of the RESPA Disclosure Strategy 11 fig.2, 14-15, 14 tbl.4 (Apr. 4, 2000) (unpublished manuscript, on file with the Fordham Law Review).

20. Dep't of Hous. and Urban Dev. & -Dep't of the Treasury Task Force on Predatory Lending, Curbing Predatory Home Mortgage Lending 24, 79-80 (2000) [hereinafter Treasury-HUD Report], *available at* http://www.huduser.org/publications/hsgfin/curbing.html.

21. White, *supra* note 19, at 509-12; *see also* Peter J. Hong & Marcos Reza, *Hidden Costs to Homeowners: The Prevalent Non-Disclosure of Yield Spread Premiums in Mortgage Loan Transactions*, 18 Loy. Consumer L. Rev. 131, 132-34 (2005) (describing rate sheets).

22. 15 U.S.C. §§ 1601-1667 (2000).

23. 12 U.S.C. §§ 2601-2617.

24. *See* Engel & McCoy, *supra* note 13, at 1305-07.

25. Shelly Smith, *Mandatory Arbitration Clauses in Consumer Contracts: Consumer Protection and the Circumvention of the Judicial System*, 50 DePaul L. Rev. 1191, 1193 (2001).

26. *See, e.g.*, Debbie Gruenstein Bocian, Keith S. Ernst & Wei Li, Unfair Lending: The Effect of Race and Ethnicity on the Price of Subprime Mortgages (2006), *available at* http://www.responsiblelending.org/pdfs/rr011-Unfair_Lending-0506.pdf.

proceeds. Some servicers have employed abusive servicing practices, including charging unjustified fees, actively pushing borrowers into default, and employing exploitative collection methods.[27]

II. THE ADVENT OF SUBPRIME SECURITIZATION

Subprime securitization, a relatively new phenomenon, followed on the heels of securitization in the prime residential loan market, first pioneered in the late 1970s.[28] By the early 1990s, technological advances made it possible to estimate and price the risk of subprime home loan pools, paving the way for subprime securitizations.[29] In 2005, total securitizations of subprime and home equity loans ballooned to an estimated $525.7 billion.[30] Today, lenders securitize almost eighty percent of subprime mortgages.[31]

III. HOW SECURITIZATION WORKS

Securitization is the financial technology that integrates the market for residential mortgages with the capital markets. In securitization, investment banks take pools of home loans, carve up the cash flows from those receivables, and convert the cash flows into bonds that are secured by the mortgages. The bonds are variously known as residential mortgage-backed securities (RMBS) or asset-backed securities (ABS).

Securitization goes by the moniker "structured finance," in part because a securitizer structures the transaction to isolate the loan pool from the original lender. This is accomplished by selling the loan pool to a special purpose vehicle or "SPV" that is owned by, but legally distinct from, the lender. The SPV then resells the loan pool to a second SPV, which is also independent of the lender and takes title to the bundle. The second SPV is typically in the form of a trust.[32]

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27. Kurt Eggert, *Limiting Abuse and Opportunism by Mortgage Servicers*, 15 Housing Pol'y Debate 753, 756-61 (2004).

28. *See, e.g.*, Steven L. Schwarcz, Bruce A. Markell & Lissa Lamkin Broome, Securitization, Structured Finance and Capital Markets 1-3 (2004); Michael H. Schill, *Uniformity or Diversity: Residential Real Estate Finance Law in the 1990s and the Implications of Changing Financial Markets*, 64 S. Cal. L. Rev. 1261, 1267-71 (1991).

29. *See, e.g.*, Eric Bruskin, Anthony B. Sanders & David Sykes, *The Nonagency Mortgage Market: Background and Overview*, *in* The Handbook of Nonagency Mortgage-Backed Securities 5, 12-16 (Frank J. Fabozzi, Chuck Ramsey & Michael Marz eds., 2d ed. 2000); Bill Shepherd, *Perils and Phantasm: The Mortgage Securitization Boom Is Threatened by Recession, Legislation and Rate Change*, Investment Dealers Dig., Feb. 3, 2003.

30. *See* Standard & Poor's (S&P), Rating Transitions 2005: U.S. RMBS Volume and Rating Activity Continue to Set Records, tbl.1 (Jan. 24, 2006).

31. *See* S&P, The Subprime Market 7 (June 17, 2005).

32. *See, e.g.*, Steven L. Schwarcz, *Securitization Post-Enron*, 25 Cardozo L. Rev. 1539, 1552-53 (2004). This Article focuses on the "nonconforming" or "private label" market. The conforming market refers to home loans that conform to underwriting guidelines of government-sponsored entities (GSEs) such as Fannie Mae and Freddie Mac. The GSEs purchase and package conforming individual mortgages, create the securities, and market the securities through brokers. *See* Freddie Mac, The Secondary Market for Mortgage Loans,

This two-tiered structure protects investors by preventing lenders' creditors from reaching the assets backing the securities in case the lender goes bankrupt.[33] Bankruptcy remoteness also boosts ratings of securitized offerings. Rating agencies evaluate and rate securitized loan pools. To the extent that SPVs protect investors from the risk of the lender's bankruptcy, it is often possible for the loan bundle to earn a higher rating than the lender itself would receive. In this way, "non-investment grade and unrated originators (the majority of the market) [can] create investment-grade transactions."[34]

After the loans are transferred to the second SPV, the investment bank for the issuer[35] carves the principal and interest payments into tranches of bonds.[36] Then, rating agencies gauge the credit risk of each tranche by comparing the loan pool's characteristics with historical data and forecasting the tranche's performance.[37] In calculating credit risk,

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http://www.freddiemac.com/corporate/about/what_we_do/secmkt.html (last visited Feb. 28, 2007). The nonconforming market, in contrast, finances loans that do not meet the GSE guidelines.

33. *See, e.g.*, Steven L. Schwarcz, *The Alchemy of Asset Securitization*, 1 Stan. J.L. Bus. & Fin. 133, 142 (1994). In many securitizations, a subsidiary of the lender retains some of the risk, either in the form of subordinate tranches, subordinated excess spread, or cash reserves. If a lender were to retain those residual interests within its own corporate entity and later went into bankruptcy, the bankruptcy court might rule that the lender, not the investors, owned the securitized pool, relegating the investors to the role of secured creditors. *See* Len Blum & Chris DiAngelo, *Structuring Efficient Asset-Backed Transactions*, *in* Asset-Backed Securities 237, 243-44 (Anand K. Bhattacharya & Frank J. Fabozzi eds., 1996). Only on rare occasions have courts disregarded bankruptcy-remote status. *See* Michael J. Cohn, Note, *Asset Securitization: How Remote Is Bankruptcy Remote?*, 26 Hofstra L. Rev. 929 (1998); *see also* Schwarcz, Markell & Broome, *supra* note 28, at 80-86; Kenneth M. Ayotte & Stav Gaon, Asset-Backed Securities: Costs and Benefits of "Bankruptcy Remoteness" (Apr. 2, 2006) (unpublished manuscript, on file with the Fordham Law Review) (finding that bankruptcy remoteness protects investors and is priced into the securities).

34. Henry C. McCall III & Len Blum, *Evolution of the B&C Home-Equity Loan Securities Market*, *in* Asset-Backed Securities, *supra* note 33, at 137, 140.

35. The issuer is the special purpose vehicle (SPV) that issues the securities.

36. Collateralized mortgage obligations (CMOs) use a senior-subordinate tranche structure and are the most common type of nonconforming mortgage-backed security (MBS) today. *See* Bruskin, Sanders & Sykes, *supra* note 29, at 14. CMOs are derivatives which consist of interest payments plus principal, interest-only (IO) strips, or principal-only (PO) strips. Other, less common types of MBS include mortgage pass-through securities, in which investors buy fractional interests in pools of whole single-family mortgages, and mortgage-backed bonds (MBBs), which are priced according to the liquidation value of the loans and thus require higher collateral than CMOs. *See* Andrew Davidson et al., Securitization: Structuring and Investment Analysis 185-87, 196, 206-08 (2003); John R. Brick, *A Primer on Mortgage-Backed Securities*, *in* Current Readings on Money, Banking, and Financial Markets 25, 26, 29-32 (James S. Wilcox & Frederic S. Mishkin eds., 1987).

37. *See* Neil D. Baron, *The Role of Rating Agencies in the Securitization Process*, *in* A Primer on Securitization 81 (Leon T. Kendall & Michael J. Fishman eds., 1996); *see also* Davidson et al., *supra* note 36, at 24-25; McCall & Blum, *supra* note 34, at 142. Typically the loan review scrutinizes the lender's underwriting standards, borrower profiles, the geographical distribution of the loans, loan size, loan-to-value ratios, and the prepayment characteristics of the bundle. The rating agency will perform a static pool analysis on the lender's historical loss and delinquency record, using data on the average loss, slope, and

however, rating agencies do not assess the suitability of the underlying loans for individual borrowers.

The tranche system is termed a "senior-subordinate structure" and is the "predominant structure of choice in subprime RMBS."[38] The tranches are arrayed from the most senior to the most junior, with "as many as five mezzanine or subordinated tranches going down the ratings ladder" from AAA to B.[39] The senior class is the AAA tranche, the mezzanine class consists of the AA and A tranches, and the BBB, BB, B, and unrated classes take the junior position.[40] Any rating of BBB-/Baa3 or above is deemed investment-grade and serves to assuage investors' concerns about the credit quality of the mortgages backing the securities.

In a feature known as a "waterfall," the senior tranche is paid off before any other tranche. Once the senior tranche is paid off, the next tranche moves to the head of the line for principal payments until all of the tranches are retired.[41] As a result, the junior tranche is the first to absorb any losses and shields the senior tranches from losses due to loan defaults.[42] Only in the extremely unlikely event that losses exceeded the amounts due the holders of the junior tranches would the senior tranches absorb credit losses.

Before rating agencies issue investment-grade ratings, they insist on added financial cushions known as "credit enhancements."[43] According to rating agencies, when determining the needed level of credit enhancements, they assume catastrophic losses on an order of magnitude of the Great Depression, with the amount of enhancements depending on the rating desired, the type of collateral, and the reliability of the historical pool data.[44]

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peak loss period of the loan pool to forecast future losses and delinquencies. In addition, the rating agency will assess the average coupon rate, seasoning, and average maturity of the loans and sample the loan files to test those statistics. *See* Baron, *supra*, at 84-85; Anand K. Bhattacharya & Frank J. Fabozzi, *The Expanding Frontiers of Asset Securitization*, *in* Asset-Backed Securities, *supra* note 33, at 1, 14; Suzanne Michaud, *A Rating Agency Perspective on Asset-Backed Securitization*, *in* Asset-Backed Securities, *supra* note 33, at 269, 271-73.

38. S&P, Trends in U.S. Residential Mortgage Products: Fourth-Quarter 2003 LTV Ratios, FICO Scores, and Credit Support Levels (2004). *See generally* Steven L. Schwarcz, Structured Finance: A Guide to the Principles of Asset Securitization § 2.4 (3d ed. 2003).

39. Shepherd, *supra* note 29; *see* Davidson et al., *supra* note 36, at 20; Schwarcz, Markell & Broome, *supra* note 28, at 4-5; Hill, *supra* note 15, at 1070 n.39 (describing the rating systems used by major rating agencies).

40. *See* Lakhbir Hayre, *A Concise Guide to Mortgage-Backed Securities (MBSs)*, *in* Salomon Smith Barney Guide to Mortgage-Backed and Asset-Backed Securities 9, 54-60 (Lakhbir Hayre ed., 2001).

41. *See* Davidson et al., *supra* note 36, at 208-09, 333; Blum & DiAngelo, *supra* note 33, at 257-58.

42. *See* Davidson et al., *supra* note 36, at 333; S&P, Rating Transitions 2003: Another Record Year of Credit Performance for U.S. RMBS (2004).

43. *See* Davidson et al., *supra* note 36, at 24-26; Schwarcz, Markell & Broome, *supra* note 28, at 14; Blum & DiAngelo, *supra* note 33, at 252-53; Leon T. Kendall, *Securitization: A New Era in American Finance*, *in* A Primer on Securitization, *supra* note 37, at 4; McCall & Blum, *supra* note 34, at 140-41.

44. *See* Baron, *supra* note 37, at 85; Michaud, *supra* note 37, at 272.

Credit enhancements come in two types, internal and external enhancements.[45] Normally, the lender will provide sufficient internal enhancements to boost the offering to an investment-grade rating. If the internal enhancements do not raise the senior tranche to a top AAA rating, monoline insurers or other outside providers may add external enhancements to raise the senior tranche to an AAA.[46]

Once investment-grade ratings are in hand, the investment bank will price the mortgage-backed securities and sell them to investors, either through a public offering or a private placement.[47] If the offering succeeds as planned, the lender receives two forms of revenue. The first is cash from the sale of the securities. The second is "excess spread," which is the right to any interest on the loans that exceeds the interest paid to the investors after deducting expenses on the asset-backed bonds. In most situations, the present value of the cash proceeds plus the excess spread exceeds the cash that the lender would have received from selling whole loans.[48]

IV. THE LEMONS PROBLEM

In order to succeed, securitization must solve a core problem—that is, why should investors buy mortgage-backed securities when lenders can deceive them about the quality of the loans in the loan pool? Lenders have incentives to cherry-pick their loans and sell the worst ones to investors.[49] And knowing that they can unload the worst loans onto investors, lenders have less reason to underwrite loans carefully. Thus, securitization gives

45. Internal credit enhancements earmark part of the cash flow from the mortgages to fund a cash buffer to protect the senior and mezzanine tranches from losses. The most common internal enhancements are the senior-subordinate structure, excess spread accounts, and over-collateralization. *See* Baron, *supra* note 37, at 85-87; Brick, *supra* note 36, at 29-32; Bruskin, Sanders & Sykes, *supra* note 29, at 31-35; Lina Hsu & Cyrus Mohebbi, *Credit Enhancement in ABS Structures*, *in* Asset-Backed Securities, *supra* note 33, at 277, 281-83. Most external credit enhancements consist of guarantees by monoline insurance companies. *See* Baron, *supra* note 37, at 86-87; Hsu & Mohebbi, *supra*, at 278-80.

46. *See* Schwarcz, *supra* note 38, §§ 2:3, 2:4; Hsu & Mohebbi, *supra* note 45, at 278.

47. *See* Davidson et al., *supra* note 36, at 20; Alfred J. Puchala, Jr., *Securitizing Third World Debt*, 1989 Colum. Bus. L. Rev. 137, 141.

48. *See* McCall & Blum, *supra* note 34, at 141-43.

49. As the president of one of the largest mortgage lenders put it in announcing that the company planned to securitize all of its subprime loans, "'We're looking to hold only pristine product on the balance sheet.'" Ruth Simon & James R. Hagerty, *How American Lenders Shelter Themselves*, Wall St. J., Sept. 22, 2005, at C1 (quoting Stanford Kurland, President, Countrywide Financial Corp.). Similarly, Armando Falcon, Jr., the former director of the Office of Federal Housing Enterprise Oversight, testified before Congress that Fannie Mae cherry-picked the loans it securitized and kept the best in portfolio, consistent with its policy to "keep the best; sell the rest." *OFHEO Agreement with Fannie Mae: Hearing Before the Subcomm. on Capital Mkts., Ins., and Gov't Sponsored Enters. of the H. Fin. Servs. Comm.*, 109th Cong. (2005) (testimony of Armando Falcon, Jr., Director, Office of Fed. Hous. Enterprise Oversight).

rise to the problem of adverse selection or the "lemons" problem, in the words of George Akerlof.[50]

Before the advent of securitization, lenders typically handled loans from cradle to grave. They solicited loan applicants, underwrote and financed the mortgages, serviced the loans, and held the loans in portfolio to maturity. In turn, lenders largely made profits from the interest payments on the loans. Because lenders bore the full risk of default, they had strong incentives to turn down observationally risky borrowers.[51]

Securitization alters this incentive structure by unbundling the tasks in lending and parceling them out among a string of market actors. A mortgage broker may recruit loan applicants, a lender may originate the loans, a specialist firm may provide the servicing, a trust may hold the loans, and outside investors may provide the financing.

The lemons problem occurs because unbundling creates information asymmetries that mortgage lenders (or brokers) can exploit to investors' detriment.[52] A loan's credit risk turns on numerous characteristics, some of which are observable and others of which are not. Neither the lender nor investors are privy to characteristics that are unobservable. However, the lender has observable data on borrowers' default propensities that investors lack.[53] Investors do not interview the loan applicants, do not obtain or review property appraisals, and almost never examine individual loan applications, borrowers' credit reports, or income verifications. Instead, they rely on the issuer's warranties and representations about the borrowers' credit quality. Needless to say, in the subprime sector, these information asymmetries can be pronounced because subprime borrowers are prone to have credit flaws that lenders will want to conceal.

In sum, securitization enables lenders "to shift the risk [of the loan's performance] onto the investor."[54] The more that securitization allows lenders to "take the profits and run," the more adverse selection will rear its

50. *See* Akerlof, *supra* note 8; Amy C. Cutts et al., Lemons with a Twist: Adverse Selection and the Role of Securitization in Mortgage Market Evolution and Pricing (June 2000) (unpublished manuscript, on file with the Fordham Law Review).

51. *See* Joseph E. Stiglitz & Andrew Weiss, *Credit Rationing in Markets with Imperfect Information*, 71 Am. Econ. Rev. 393 (1981).

52. When lenders use mortgage brokers, the brokers have even fuller information than the lenders about observable characteristics of the borrower. Lenders who securitize loans may be indifferent to deceit by brokers about default risks if they can shift the risk of loss wholesale to the secondary market. *See* Patrick Barta, *Is Appraisal Process Skewing Home Values?*, Wall St. J., Aug. 13, 2001, at A1.

53. *See* Cutts et al., *supra* note 50; Wayne Passmore & Roger W. Sparks, *Automated Underwriting and the Profitability of Mortgage Securitization*, 28 Real Est. Econ. 285, 285 (2000) (describing how lenders try to conceal borrowers' bad credit histories from investors).

54. Lalitha A. Shivaswamy, Structured Transactions and Private Placement Criteria and Challenges to Investment in the 144A Market 5 (2004) (unpublished manuscript, on file with the Fordham Law Review). As one set of researchers recently observed, "[T]he market for multi-class MBS is a market for lemon mortgage pools." Chris Downing, Dwight Jaffee & Nancy Wallace, Information Asymmetries in the Mortgage Backed Securities Market 20 (May 3, 2005) (unpublished manuscript, on file with the Fordham Law Review).

head.[55] Solving adverse selection is the key to successful securitization of home loans. In the home mortgage context, securitization must solve the lemons problem for three types of risk—credit risk, prepayment risk, and litigation risk—which we now discuss.

A. *Credit Risk*

Credit risk is the risk that a borrower will miss payments and the loan will go into default. All loans involve credit risk, but subprime loans involve more risk than prime loans because borrowers with impaired credit are more likely to default.[56] Furthermore, when a predatory lender makes a loan to a borrower whom it knows cannot afford the monthly loan payments, default will likely become a self-fulfilling prophecy.[57]

Investment banks and rating agencies measure the credit risk in loan pools by extrapolating from historical data on loan pools with similar characteristics. In the subprime market, several factors make these historical inferences more difficult. First, there is less historical data on subprime loan pools than prime pools, because subprime securitizations did not take off until the early 1990s. Second, subprime loan pools present much larger variance in credit risk. Prime loan pools are limited to the most creditworthy "A" grade borrowers and cover a narrow band of the credit risk spectrum. Moreover, the risk associated with that narrow band has been empirically tested and confirmed over time. Newer subprime loan pools, in contrast, can cover the entire risk spectrum, from A and A- borrowers down to the weakest D borrowers.[58] Third, foreclosure costs vary by state, complicating the job of estimating default costs.[59] Finally, many subprime securitizations are sold on a to-be-announced (TBA) basis, where the lender does not actually form the loan pool until the mortgage-backed securities have been sold, making historical comparisons impossible

55. *See* Cutts et al., *supra* note 50; Passmore & Sparks, *supra* note 53, at 285. George Akerlof commented on a similar problem affecting middlemen in India who tried to arbitrage between the cheap loan rates of central city banks and the exorbitant loan rates of local moneylenders who had personal knowledge of the borrowers, observing, "The middleman who tries to arbitrage between the rates of the moneylender and the central bank is apt to attract all the 'lemons' and thereby make a loss." Akerlof, *supra* note 8, at 499.

56. John C. Weicher, The Home Equity Lending Industry: Refinancing Mortgages for Borrowers with Impaired Credit 76 (1997); Anthony Pennington-Cross, *Subprime and Prime Mortgages: Loss Distributions* 7 (Office of Fed. Hous. Enter. Oversight, Working Paper No. 03-1, 2003).

57. For discussion of why a lender might make a loan that is virtually certain to go into default, see Engel & McCoy, *supra* note 13, at 1280-89.

58. *See* Weicher, *supra* note 56, at 56-57 tbl.4.1.

59. *See* Terrence M. Clauretie & Thomas Herzog, *The Effect of State Foreclosure Laws on Loan Losses: Evidence from the Mortgage Insurance Industry*, 22 J. Money, Credit & Banking 221, 222 (1990); Michael H. Schill, *An Economic Analysis of Mortgagor Protection Laws*, 77 Va. L. Rev. 489 (1991).

before the offering has been closed.[60] These blind spots in evaluating subprime credit risk can hamper efforts to accurately set prices and gauge returns.

B. *Prepayment Risk*

Prepayment risk is the risk that borrowers will pay off their principal before maturity. Prepayment disrupts investors' cash flows in two ways. First, it accelerates the return of principal. Second, it cancels future cash flows from interest payments. If borrowers prepay when interest rates are below coupon (i.e., the nominal interest rate on the loan), investors who want equivalent risk are forced to reinvest the principal at a lower rate of return.

Borrowers in the prime and subprime markets prepay for different reasons. In the prime market, prepayment most often occurs when homeowners refinance their mortgages to take advantage of falling interest rates.[61] In the subprime market, borrowers often have more difficulty qualifying for new loans, making them less sensitive to drops in interest rates.[62] Instead, subprime prepayments tend to occur for two reasons, one voluntary in nature and one involuntary. Voluntary prepayments take place when subprime borrowers improve their credit scores and refinance into prime products at lower rates. Involuntary prepayments, in contrast, are triggered by "loan flipping," in which lenders persuade subprime borrowers to refinance their loans repeatedly at short intervals in order to extract high fees.[63] Lenders can manufacture future loan flips by structuring the original loans so that borrowers will eventually be unable to repay.[64]

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60. *See* Jacob Boudoukh et al., *Pricing Mortgage-Backed Securities in a Multifactor Interest Rate Environment: A Multivariate Density Estimation Approach*, 10 Rev. Fin. Stud. 405, 410, 419 (1997).

61. *See id.* at 406, 437; Amy Crews Cutts & Robert Van Order, *On the Economics of Subprime Lending* 3, 7 (Freddie Mac, Working Paper No. 04-01, 2004).

62. Subprime prepayments do rise as interest rates fall. *See, e.g.*, Quercia, Stegman & Davis, *supra* note 4, at 21. But subprime "borrowers' limited refinancing opportunities" mean that "refinancing rates must fall *200 to 300 basis points* (bps) to significantly increase prepayments due to refinancing in the [subprime] market versus the *25 to 50 bps* that move the private [prime] MBS market." R. Russell Hurst, *Securities Backed by Closed-End Home Equity Loans*, *in* The Handbook of Mortgage-Backed Securities 281, 292 (Frank J. Fabozzi, ed., 5th ed. 2001) (emphasis added).

63. *See* Eggert, *supra* note 2, at 515; ABSNet, Glossary, http://www.absnet.net/help/gloss-new.asp#I (last visited Feb. 28, 2007) (defining involuntary prepayment).

64. For example, a loan might include a hefty prepayment penalty that would be triggered if the borrower refinanced immediately before or after the interest rate on an adjustable rate mortgage adjusted. Alternatively, a large balloon clause can exert pressure on a borrower to agree to a loan flip if the borrower's credit rating has fallen too far to refinance elsewhere on better terms.

C. *Litigation Risk*

Investors face the further risk that borrowers will sue the trusts that hold the securitized loans for wrongdoing in the origination of those loans. Successful borrower litigation, especially litigation that results in large compensatory or punitive damages awards against the trust, can have a negative and serious impact on investors' returns. Thus, securitization deals must be structured to avoid litigation risk altogether or to predict and price it efficiently.

Trusts expose themselves to liability if they aid or participate in unlawful activities by loan originators, most often by being involved with the actual loan underwriting. Such participation can give rise to liability for violations of an array of laws ranging from consumer protection and credit discrimination statutes to conspiracy and fair housing laws.[65]

Some laws impose liability on assignees even absent active wrongdoing. The Truth in Lending Act (TILA) allows borrowers to recover against assignees for originators' violations if the violations are "apparent on the face of" federal disclosure statements.[66] The principal federal anti-predatory lending law, the Home Ownership and Equity Protection Act (HOEPA),[67] imposes strict liability on assignees who purchase specific high-cost loans. In general, holders of HOEPA loans are "subject to all claims and defenses . . . that the borrower could assert against the originator of the mortgage."[68] Regulations implementing the Federal Trade Commission Act impose liability on assignees for "all claims and defenses which the debtor could assert against the seller."[69] Lastly, several states have enacted anti-predatory lending laws that impose liability on assignees.[70] Although these statutes allow for assignee liability, in reality

65. *See, e.g.*, Wise v. Union Acceptance Corp., No. 02-0104, 2002 WL 31730920, at *3 (S.D. Ind. Nov. 19, 2002) (Equal Credit Opportunity Act); Cooper v. First Gov't Mortgage & Investors Corp., No. 00-0536, 2002 WL 31520158, at *13 (D.D.C. Nov. 4, 2002) (consumer protection law); Hays v. Bankers Trust Co. of Cal., 46 F. Supp. 2d 490, 497 (S.D. W. Va. 1999) (conspiracy law); Assocs. Home Equity Servs., Inc. v. Troup, 778 A.2d 529, 537-38 (N.J. Super. Ct. App. Div. 2001) (Fair Housing Act).

66. 15 U.S.C. § 1641(a), (e)(2) (2000). Furthermore, if an originator fails to make the required disclosures to borrowers, the borrower may exercise the right of rescission against the assignee even if the TILA violation is not apparent on the face of the loan documents. *Id.* § 1641(c).

67. *Id.* §§ 1601-1667.

68. *Id.* § 1641(d)(1).

69. 16 C.F.R. § 433.2 (2005). This so-called FTC Rule only governs home mortgage loans that involve the sale of goods or services. *Id.* Some courts have construed the rule to hold, however, that if state consumer protection laws do not permit affirmative relief, consumers are limited to defensive actions against assignees. *See, e.g.*, LaBarre v. Credit Acceptance Corp., 175 F.3d 640 (8th Cir. 1999).

70. *See, e.g.*, N.J. Stat. Ann. § 46:10B-27(b)-(e) (West Supp. 2006); N.Y. Banking Law § 6-l(7), (11)-(13) (McKinney Supp. 2007). *See generally* Baher Azmy, *Squaring the Predatory Lending Circle*, 57 Fla. L. Rev. 295 (2005) (surveying state laws). Increasingly, federal regulators have preempted state anti-predatory lending laws that impose assignee liability. *See* Bank Activities and Operations: Real Estate Lending and Appraisals, 69 Fed. Reg. 1904 (Jan. 13, 2004) (to be codified at 12 C.F.R. pts. 7, 34) (ruling that OCC

the application of the laws is quite narrow. In some cases, the laws require active participation by the assignees. In others, the laws only apply to a small fraction of loans, as is true for HOEPA.[71]

For most potential claims, however, assignees who have distanced themselves from the unlawful activities of originators can find shelter in the holder-in-due course doctrine, which insulates them from most claims for unconscionability, breach of contract, and fraud.[72] To satisfy the requirements of a holder in due course, the purchaser must be the holder of a negotiable note, who took the note for value, in good faith, and without notice that the note contains certain defects.[73] To meet the definition of a "holder," the assignee must possess the note and the note must be "issued or indorsed to him or to his order or to bearer or in blank."[74] If a note is payable to an identified person or entity, the note must bear an endorsement or be among a group of loans to which an allonge was attached.[75] When assignees qualify as holders in due course, they take the notes free of most defenses to nonpayment and affirmative claims that borrowers could have pursued against the originators.

There are scenarios under which borrowers can defeat assignees' status as holders in due course. When an assignee has notice of a potential claim, for example, that a note was obtained through fraud, the assignee is deemed to have sufficient notice to abrogate its status as a holder in due course.[76] Assignees obviously have "notice" if they played a role in the wrongdoing.[77] Notice similarly exists if the borrower brought the claim against the assignor prior to the assignment.[78]

In other instances, failures by originators to comply with technical requirements of the holder-in-due-course rule can open the door to assignee liability.[79] Despite the demanding nature of these requirements, failure to

enforcement preempts state anti-predatory lending laws' application to national banks). On a parallel front, states have preempted many local lending ordinances that contemplate assignee liability. *See, e.g.*, Mayor of New York v. Council of New York, 780 N.Y.S.2d 266 (Sup. Ct. 2004) (holding New York City's anti-predatory lending ordinance preempted by state and federal law).

71. The Home Ownership and Equity Protection Act (HOEPA) covers at best only about five percent of subprime first-lien home mortgage loans. *See, e.g.*, Truth in Lending, 66 Fed. Reg. 65,604, 65,608 (Dec. 20, 2001) (to be codified at 12 C.F.R. pt. 226).

72. James White & Robert S. Summers, Uniform Commercial Code §§ 14-1, 14-2 (2000).

73. U.C.C. § 3-302 (2005).

74. White & Summers, *supra* note 72, § 14-3.

75. *Id.*

76. *See id.* § 14-7 (discussing cases).

77. *See, e.g.*, Williams v. Cent. Money Co., 974 F. Supp. 22, 28 (D.D.C. 1997) (denying summary judgment for assignees on fraud and unconscionability claims where there was evidence that the assignee "participated in the fraud perpetrated by" the assignor).

78. *See* Fairbanks Capital Corp. v. Summerall, No. 02AP-864, 2003 WL 1700487, at *3 (Ohio Ct. App. Mar. 31, 2003).

79. For example, a note that requires performance other than a promise to make the payments due is not negotiable and thus does not give rise to the holder-in-due-course defense if it is sold. *See* White & Summers, *supra* note 72, § 14-4 (discussing cases).

comply with the technical requirements of the holder-in-due-course rule is rarely litigated in predatory home loan cases.

Courts have also held that assignees can lose holder-in-due-course protection if their relationships with loan originators were sufficiently close to make the assignees agents of the originators.[80] Even where no agency relationship exists between the originator and the assignee, courts have imputed knowledge of an originator's wrongdoing to an assignee based on the strength and nature of ties between the assignor and the assignee.[81]

To recap, credit risk, prepayment risk, and litigation risk have the potential to make investors gun-shy about investing in securitizations. Allaying these concerns is a central task of structured finance.

V. HOW STRUCTURED FINANCE SOLVES THE LEMONS PROBLEM

In order to attract outside investors, securitization must solve the lemons problem in all of its three guises: credit risk, prepayment risk, and litigation risk. In this section, we describe how securitization reduces these risks through a variety of techniques. Notably, securitization can insulate investors from the risks of predatory lending without excluding predatory loans from securitized loan pools. In the process, securitization solves the lemons problem for investors without discouraging predatory lending itself.

A. *The Protections Provided by Sequential Tranches*

One way securitization protects investors from credit risk is through sequential tranches. According to Fitch Ratings, defaults in the subprime market "start in month seven, ramp up to a peak in months 28-42, and end at month 120."[82] For this reason, risk-averse investors—the ones most concerned with loan default—want to be paid off as quickly as possible. Investors who are most risk-averse buy the AAA tranche, investors who are slightly less risk-averse buy the AA tranche, and so it goes down the line. The senior tranche is retired first, followed by the AA tranche, etc., enabling the investors who are most risk-averse to get paid first. Originators sometimes—but not always—hold the most junior, and therefore the riskiest, tranches.[83] This technique has worked so well that the safest subprime tranches—the senior tranches—virtually never suffer credit losses.

Likewise, when notes lack the proper endorsements or are not in the possession of the assignee, they are not negotiable. *See id.* § 14-3 (discussing cases).

80. *See, e.g.*, England v. MG Invs., Inc., 93 F. Supp. 2d 718, 722-23 (S.D. W. Va. 2000) (denying summary judgment on a fraud claim where evidence showed that the originator was acting as an agent of the assignee).

81. *See Williams*, 974 F. Supp. at 26-27 (imputing knowledge to the assignee where an officer of the originator, who had "direct contact" with the borrower, was alleged to be a principal and shareholder of the assignee).

82. FitchRatings, *supra* note 7, at 8, 9.

83. *See infra* notes 123-30 and accompanying text.

B. *Investors in Subprime Offerings Benefit from Conservative Risk Assessments by Rating Agencies*

Individuals and entities who purchase bonds in subprime RMBS offerings can benefit from rating agencies' tendency to overestimate credit risk. As securities trade on the secondary market, the rating agencies reevaluate the performance of the underlying collateral in the securitized loan pools and upgrade or downgrade the affected tranches as needed. If the rating model is accurate and there are no unanticipated credit shocks, tranches should keep their original grades. If the rating agency later upgrades a tranche in response to information on collateral performance, its original credit risk assessment was too conservative. If it later downgrades a tranche due to poor loan performance, its initial assessment was too sanguine.

Standard & Poor's (S&P) reports for 2003 through 2006 expressly tout data that S&P tends to overestimate the credit risk of senior subprime tranches. As the chart on the following page shows, S&P upgrades outpaced downgrades in public subprime home loan securitizations through 2005, and downgrades in the senior subprime tranches were almost nonexistent through 2005 and rare in 2006.[84]

Two aspects of these data are noteworthy. First, until 2006, upgrades outnumbered downgrades. In 2003, for instance, S&P issued almost 2.5 upgrades for every subprime RMBS downgrade (111 upgrades to 46 downgrades). In 2004, this ratio widened, and it widened again in 2005. In 2004, S&P issued 4.22 upgrades for every subprime downgrade (152 upgrades to 36 downgrades); in 2005, there were 4.6 subprime upgrades for every subprime downgrade (235 upgrades to 51 downgrades). This data reveals that, at least through 2005, when S&P made errors, its errors were skewed toward excessive caution.

Second, the senior tranches are the main beneficiaries of S&P's excessively conservative ratings of subprime RMBS. Subprime securities rated A+ or higher had numerous upgrades (70 in 2003, 90 in 2004, 117 in

84. In fact, in 2006, the vast majority (98.5%) of public and private subprime tranches combined rated by S&P either kept their ratings or received upgrades. S&P, Transition Study: U.S. RMBS Upgrades Are Down and Downgrades Are Up in 2006 (2007). The 1.5 percent of tranches that received S&P downgrades were probably a reflection of the fact that toward the end of 2005, mortgage loan delinquency rates began rising. Al Yoon, *Housing Bubble Bursts in U.S. Mortgage Bond Market (Update 2)*, Bloomberg.com, Dec. 6, 2005, http://www.bloomberg.com/apps/news?pid=10000103&sid=aDSB370ItSJU&refer=us. Indeed, S&P's slow response to the inherent risk in subprime securitizations caused Gretchen Morgenson of *The New York Times* to lament, "It's amazing how long it can take investors to see that the wheels are coming off a prized investment vehicle. Denial, after all, is a powerful thing." Gretchen Morgenson, *Will Other Mortgage Dominoes Fall?*, N.Y. Times, Feb. 18, 2007, at C1.

We compiled our data from S&P, *supra* note 42, app. 2 (2004); S&P, Rating Transitions 2004: U.S. RMBS Stellar Performance Continues to Set Records, app. 2 (2005) [hereinafter S&P, Rating Transitions 2004]; S&P, Rating Transitions 2005: U.S. RMBS Volume and Rating Activity Continue to Set Records, apps. 1-2 (2006); S&P, Transition Study: U.S. RMBS Upgrades Are Down and Downgrades Are Up in 2006, apps. 1-2 (2007).

2005, and 57 in 2006). Conversely, only one of the senior classes rated A+ or higher in 2003 through 2005 suffered a downgrade, despite rising subprime loan default rates. In 2006, this figure rose to thirteen; upgrades of those classes still outnumbered downgrades by more than four to one. As one subprime lender declared, "If you buy the Triple-A, you're home free."[85]

Table 1: S&P Upgrades and Downgrades of Public Subprime RMBS, 2003-2006

Original Rating	AAA	AA+	AA	AA-	A+	A	A-	BBB+	BBB	BBB-	BB+	BB	BB-	B	B-	CCC+	CCC	CCC-	CC	D
2003 Upgrades	0	16	47	2	5	28	0	0	13	0	0	0	0	0	0	0	0	0	0	0
2003 Downgrades	0	0	0	0	0	3	0	0	8	5	1	7	0	6	0	3	5	10	3	0
2004 Upgrades	0	9	77	1	3	36	0	1	13	9	1	1	0	0	0	0	0	0	0	1
2004 Downgrades	0	0	0	0	0	1	0	0	5	4	1	5	0	8	0	0	9	0	3	0
2005 Upgrades	0	21	85	4	7	54	11	16	24	12	1	0	0	0	0	0	0	0	0	0
2005 Downgrades	0	0	1	0	0	3	0	1	11	7	2	10	0	8	0	0	8	0	0	0
2006 Upgrades	0	13	37	3	4	19	7	8	8	3	1	0	0	0	0	0	0	0	0	0
2006 Downgrades	2	1	5	3	2	14	3	11	43	55	4	32	10	24	1	0	11	0	0	0

This rosy upgrade experience serves two important marketing functions. First, it allays investors' concerns about lemon loans. Second, it entices potential investors to purchase senior subprime tranches by holding out the possibility that investors will enjoy upgrades over time.[86] This upgrade experience, plus a structure that enables senior bonds to mature quickly, helps explain the remarkable growth in subprime RMBS.[87]

C. *Diversification*

Diversification is another means by which securitization reduces investors' risk, including the risk of "lemon" loans. Because there is high

85. *H&R Block, Inc. at UBS Global Financial Services Conference—F*, FD (Fair Disclosure) Wire, May 10, 2005.

86. The larger significance of S&P's upgrade/downgrade data for subprime loan pools is uncertain because S&P does not always report the total number of subprime tranches whose ratings remained unchanged. Some sense of the magnitude can be gleaned from S&P reports, however, that 91.45% of all 17,674 RMBS tranches (including prime and subprime) rated in 2004 maintained the same credit rating a year later, while only 0.82% suffered downgrades and 7.73% experienced upgrades. *See supra* note 84.

87. An empirical study of Freddie Mac multi-class RMBS recently reached the same conclusion, finding that "the capital structures of multi-class MBS" evolved as a solution to the lemons problem. Downing, Jaffee & Wallace, *supra* note 54, at 20.

investor demand for subprime RMBS, lenders can securitize large pools of subprime loans. In turn, large loan pools enable investors to better diversify risk. The greater the diversity in the loan pool in terms of geography, credit risk, prepayment risk, and legal risk, the less likely it is that investors will suffer losses.[88]

D. *Pricing*

Because of the lemons problem, investors in RMBS demand a risk premium, in the form of a price reduction, to compensate them for the risk of adverse selection. To some extent, investment banks seek to reduce this risk premium by refining their pricing models to calibrate risks more accurately. Nevertheless, empirical evidence suggests that the prices for RMBS still contain lemons premia.[89]

In response, lenders who securitize their loans extract price concessions from subprime borrowers in the form of excessive interest rates, prepayment penalties, and other loan terms. In 2004 and 2005, for instance, rating agencies demanded costlier protections for investors in subprime RMBS, prompting subprime lenders to raise the interest rates on their loans in response.[90] This evidence is consistent with findings that securitization can push up home mortgage rates.[91]

Studies of securitized subprime loans have found evidence of overpricing. Freddie Mac researchers have concluded, for example, that

88. *See, e.g.*, Hill, *supra* note 15, at 1088.

89. *See* Wayne Passmore & Roger Sparks, *Putting the Squeeze on a Market for Lemons: Government-Sponsored Mortgage Securitization*, 13 J. Real Est. Fin. & Econ. 27 (1996); Downing, Jaffee & Wallace, *supra* note 54, at 4, 21 (finding that Freddie Mac faced a "lemons discount" on the sale of multi-class RMBS).

90. *See* Erick Bergquist, *Block Quits Subprime Price Fight*, Am. Banker, Sept. 6, 2005, at 1 (reporting that H&R Block's subprime lender, Option One, raised its interest rates on its home loans by forty basis points because the rating agencies were "demanding more costly protection for investors"); Ed Jones, *Getting into Nonprime Lending Is No Problem with New Technology*, Secondary Marketing Executive, Oct. 2004, at 40 ("Major investors can control both the base and incremental pricing they provide to various [subprime] lenders around the country."); Allison Pyburn, *Home Equity Sub Spreads Finally Show Signs of Widening*, Asset Securitization Rep., July 4, 2005; Howard Schneider, *Versatility for Long-Term Success*, Nat'l Mortgage Broker Mag., Feb. 2006, *available at* http://www.nationalmortgagebroker.com ("[subprime] investors now are demanding higher yields to compensate for increased risks. Worries about future delinquencies ha[ve] investors pushing prices down on mortgage-backed bonds, causing yields to go up on mortgages made to consumers with low FICO scores."); *National City at Goldman Sachs Financial Services CEO Conference 2005—F*, FD (Fair Disclosure) Wire, Dec. 6, 2005 (acknowledging "the pressure on gain on sale coming from the capital markets"); *Q1 2006 H&R Block, Inc. Earnings Conference Call—F*, FD (Fair Disclosure) Wire, Sept. 1, 2005 (defending the price hike because, given subprime credit risks, "investors[] ought to be paid more for it").

91. *See* Andrea Heuson, Wayne Passmore & Rogers Sparks, *Credit Scoring and Mortgage Securitization: Implications for Mortgage Rates and Credit Availability*, 23 J. Real Est. Fin. & Econ. 337, 347-53 (2001); Passmore & Sparks, *supra* note 89; Steven Todd, *The Effects of Securitization on Consumer Mortgage Costs*, 29 Real Est. Econ. 29 (2001); Downing, Jaffee & Wallace, *supra* note 54, at 4-5, 21.

subprime lenders steered unwitting customers who qualified for prime loans into subprime products, forcing those customers to overpay for credit.[92] Another Freddie Mac study examined the question whether subprime loans properly price borrowers' risk by comparing the interest rates of prime and subprime (specifically A-) loans securitized by Freddie Mac. After holding credit risk constant, the study concluded that "roughly one-half of the interest rate premium paid by subprime borrowers—100 basis points—cannot easily be explained by the higher levels of risk associated with these types of loans."[93] The study made no "attempt to account for or measure the higher average origination points and fees paid by subprime borrowers."[94] In the authors' view, the "total prices charged to subprime borrowers (rates, points, and fees) are . . . likely in excess of the amounts that can be justified by their differentially higher credit risk."[95]

A new body of research reveals that prepayment penalties similarly push the cost of subprime loans above their risk-adjusted price. Prepayment penalties are common in subprime loans, while prime loans almost never

92. For example, in 1996, Freddie Mac found that ten to thirty-five percent of subprime borrowers could have qualified for prime-rate loans. Freddie Mac, *supra* note 18, ch. 5 & nn.5-6; Wei Li & Keith S. Ernst, The Best Value in the Subprime Market: State Predatory Lending Reforms 8 (2006) (finding that fourteen percent of subprime borrowers studied between 1998 and 2004 were prime-eligible); Lax et al., *supra* note 19, at 565 (finding that "some borrowers end up with subprime loans for reasons other than risk" and calling that finding "disturbing"). Fannie Mae's former President Franklin Raines similarly stated that up to half of all subprime mortgages are eligible for purchase by Fannie Mae under its prime loan guidelines. *See* HUD's Regulation of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), 65 Fed. Reg. 65,044, 65,053 (Oct. 31, 2000) (to be codified at 24 C.F.R. pt. 81); *see also* Darryl E. Getter, *Consumer Credit Risk and Pricing*, 40 J. Consumer Aff. 41, 49-50 (2006) (finding that 36.4 percent of households paying the costliest interest rates on home mortgage "were of high credit quality"); Diana B. Henriques & Lowell Bergman, *Profiting from Fine Print with Wall Street's Help*, N.Y. Times, Mar. 15, 2000, at A1.

93. Lax et al., *supra* note 19, at 569.

94. *Id.*

95. *See id.* at 569; *accord* Li & Ernst, *supra* note 92, at 15 (finding that nominal interest rates on subprime loans in states without strong anti-predatory lending laws were twenty-five basis points higher on average than on comparable loans in states with strong state laws). Lax and his colleagues discussed a persistent price discontinuity on the order of 200-plus basis points separating A and A- loans, only part of which could be explained by risk. *See* Lax et al., *supra* note 19, at 567-68. For discussion of the significance of this price discontinuity, see White, *supra* note 19, at 512-13. The finance literature is riddled with the fallacy that securitization reduces the price borrowers pay for credit by lowering the lender's cost of funds. *See, e.g.*, Kendall, *supra* note 43, at 2; Thomas E. Plank, *The Security of Securitization and the Future of Security*, 25 Cardozo L. Rev. 1655, 1668 (2004); Michael H. Schill, *The Impact of the Capital Markets on Real Estate Law and Practice*, 32 J. Marshall L. Rev. 269, 280 (1999); Schwarcz, *supra* note 33, at 136; Joseph C. Shenker & Anthony J. Colletta, *Asset Securitization: Evolution, Current Issues and New Frontiers*, 69 Tex. L. Rev. 1369, 1379-81 (1991). The high transaction costs of securitization are hard to square with assertions of cost savings. *See* Iacobucci & Winter, *supra* note 15, at 168; Schwarcz, *supra* note 33, at 139-42. Even if there were cost savings, that assumes that the savings are passed on to borrowers. Finally, the cost savings theory fails to take account of the fact that investors demand compensation for the lemons problem.

carry such penalties.[96] Industry representatives defend prepayment penalties by arguing that subprime prepayment speeds are faster than prime.[97] However, there is "sparse" empirical data from the industry to support that claim, and what there is consists only of summary statistics.[98] In contrast, recent multivariate regression analyses have found that prepayment speeds of high-risk borrowers are the same as or slower than speeds of low-risk borrowers.[99] Two of those studies found that slower prepayment speeds made subprime loans relatively more profitable than

96. Prepayment penalties can stay in force for up to five years and commonly consist of six months of interest on the amount prepaid less twenty percent. See Anand K. Bhattacharya, *Prepayment Penalty Mortgage-Backed Securities*, *in* The Handbook of Mortgage-Backed Securities, *supra* note 62, at 75, 77-78. Studies have determined that anywhere from fifty-one to ninety-eight percent of subprime mortgages carry prepayment penalties, depending on the time period studied. In comparison, prepayment penalties are found in less than two percent of prime mortgages. *See* Li & Ernst, *supra* note 92, at 8, 12; Treasury-HUD Report, *supra* note 20, at 93; Joshua Brockman, *Fannie Revamps Prepayment-Penalty Bonds*, Am. Banker, July 20, 1999, at 16.

97. *See, e.g.*, Weicher, *supra* note 56, at 69; McCall & Blum, *supra* note 34, at 141-42; *see also* Treasury-HUD Report, *supra* note 20, at 28.

98. Anthony Pennington-Cross, *Credit History and the Performance of Prime and Nonprime Mortgages*, 27 J. Real Est. Fin. & Econ. 279 (2003); *see also* Wayne R. Archer et al., *Household Income, Termination Risk and Mortgage Pricing*, 27 J. Real Est. Fin. & Econ. 111, 135 n.1 (2003).

99. *See* Archer et al., *supra* note 98 (finding no significant difference between prepayment speeds of low-income and more affluent households; also finding that higher loan-to-value ratios substantially slowed prepayment speeds for low-income households); Pennington-Cross, *supra* note 98, at 280-81, 289-94, 296-97, 300 (concluding that prepayment speeds dropped as credit scores dropped and that average A- prepayment speeds were slower than prime prepayment speeds for borrowers with FICO scores under 700); Robert Van Order & Peter Zorn, *Performance of Low-Income and Minority Mortgages* 23 (Joint Ctr. for Hous. Stud. of Harv. Univ., Working Paper No. LIHO-01.10, 2001) (concluding that black and Hispanic borrowers had significantly slower prepayment rates than whites, even after controlling for FICO scores and loan-to-value ratios); Yongheng Deng & Stuart Gabriel, Risk-Based Pricing and the Enhancement of Mortgage Credit Availability Among Underserved and Higher Credit-Risk Populations 11, 13-14, 17-19, 32 tbl.1 (May 2005) (unpublished manuscript, on file with the Fordham Law Review) (finding that lower FICO scores, high loan-to-value ratios, and being black, Hispanic, or a single female were predictors of lower prepayment speeds); *see also* Davidson et al., *supra* note 36, at 330-31; Ivan Gjaja, *Prepayments on RFC Fixed-Rate Subprime/HELs*, *in* Salomon Smith Barney Guide to Mortgage-Backed and Asset-Backed Securities, *supra* note 40, at 519, 537; Infovest 21 LLC, Strategy Focus: Multi-Strategy Fixed Income (July 1, 2005) (noting that for mortgage derivatives, "agency derivatives [i.e., issued by Fannie Mae and Freddie Mac] have more prepayment risk" than private label RMBS); Harris Nesbitt, Asset-Backed Update 6 (Apr. 2005), *available at* http://www.securitization.net/pdf/transaction/Nesbitt29Apr05.pdf (noting that fast prepayments decrease excess spread, "making the transaction much more sensitive to spikes in losses or deterioration in general performance"); Lakhbir Hayre & Robert Young, *Anatomy of Prepayments: The Salomon Smith Barney Prepayment Model*, *in* Salomon Smith Barney Guide to Mortgage-Backed and Asset-Backed Securities, *supra* note 40, at 131, 161-62; Hurst, *supra* note 62, at 292 (explaining that "prepayment of [subprime home loans] has proved to be much more stable than that of the [prime] MBS market and has resulted in securitization with less negative convexity"). Industry data also suggest that the newest subprime product, interest-only adjustable rate mortgages, "prepay more slowly than regular amortizing ARMs." Banc of Am. Sec., ABS Research Note: 2005 Outlook: Cautiously Optimistic 15-16 (2005); *see also* Neil J. Morse, *The Interest-Only Craze*, Mortgage Banking, Oct. 2004, at 52.

prime loans, even after controlling for differences in credit risk.[100] Conversely, in some interest-rate environments when credit risk is rapidly rising, faster subprime prepayment speeds can actually boost subprime profits. In the summer of 2005, for example, S&P lauded faster subprime prepayment speeds for "driving superior [subprime] performance." According to S&P, "[e]xtended deals may lead to greater losses" due to heightened risk of foreclosure.[101]

Subprime lenders also contend that prepayment penalties represent a trade-off for lower interest rates. If this were true, one would expect subprime borrowers with prepayment penalties to pay lower interest rates than comparable subprime borrowers without. This is not the case. A recent study found that prepayment penalties had little or no downward effect on interest rates on subprime refinance loans after controlling for property location, loan terms, and underwriting factors based on borrowers' characteristics. For subprime home purchase loans, prepayment penalties went hand-in-hand with higher interest rates after controlling for geography and credit risk.[102] Originators have incentives to charge higher interest rates and prepayment penalties because these terms generate higher prices when the loans are sold or packaged for securitization.

To summarize, the lemons problem causes investors in senior tranches of subprime RMBS to pressure lenders to impose excess costs on borrowers. Lenders respond to this pressure by charging borrowers higher interest rates and fees and adding onerous loan terms, such as prepayment penalties.

E. *Due Diligence*

Due diligence is another technique that lenders, underwriters, rating agencies, and institutional purchasers of subprime RMBS use to manage risk. However, to the extent these entities engage in any due diligence, it is limited in scope. "[I]n the past, Wall Street . . . hoped [investors] could purchase originated assets without having to do much [due] diligence on the origination side."[103] Largely, that was because investors depended on the

100. Deng & Gabriel, *supra* note 99, at 20; *see id.* at 5, 22; *see also* Van Order & Zorn, *supra* note 99, at 27 (concluding that for low-income and minority borrowers, "the lower costs from exercising the prepayment option have at least offset these [default costs] for our loan sample").

101. *See* S&P, *supra* note 31, at 35; *see also id.* at 13, 45, 51; *accord* Banc of Am. Sec., *supra* note 99, at 2. In such environments, prepayment penalties can operate to increase default risk by slowing down prepayment speeds. *See* Quercia, Stegman & Davis, *supra* note 4, at 7.

102. Keith S. Ernst, Ctr. for Responsible Lending, Borrowers Gain No Interest Rate Benefits from Prepayment Penalties on Subprime Mortgages (January 2005), *available at* http://www.responsiblelending.org/pdfs/rr05-PPP_Interest_Rate-0105.pdf. *But see* Michael LaCour-Little, Call Protection in Mortgage Contracts 2-27 (2005) (unpublished manuscript, on file with the Fordham Law Review), *available at* http://ssrn.com/abstract=881618 (in a study of loans made by one subprime lender, finding that prepayment penalties were correlated with a reduction in the interest rate).

103. Dona DeZube, *Predatory Pandemonium*, Mortgage Banking, Apr. 2003, at 26, 32; *see also* Richard Beidl, *A Balancing Act; eMortgage*, Mortgage Banking, Apr. 2003, at 95.

senior-subordinate structure, not due diligence, to protect them from credit risk.[104]

In recent years, three developments have prompted some investment banks, loan aggregators,[105] and investors to intensify their due diligence on subprime RMBS. First, in June 2003, a federal jury issued a $50.9 million verdict against Lehman Brothers for aiding and abetting First Alliance Mortgage Corp. (popularly known as "FAMCO") in defrauding subprime borrowers.[106] The verdict sent shock waves throughout the securitization world because Lehman Brothers was found liable in part, as FAMCO's investment bank and warehouse lender, for faulty due diligence on FAMCO's securitized loans.[107] Second, some states, including Georgia, Massachusetts, New Jersey, and New Mexico, enacted new anti-predatory lending laws that hold assignees of subprime loans, who fail to conduct adequate due diligence to exclude high-cost loans from securitization pools, liable for loan originators' predatory practices.[108] Finally, Fannie Mae and Freddie Mac have started buying the better subprime loans and their higher due diligence requirements have forced loan originators to do more due diligence of their own.[109] As we will discuss in Part VI.C below, the extent and nature of this due diligence varies widely.

F. *Deal Provisions*

Secondary market purchasers also demand contractual protections to mitigate the lemons problem.[110] These contractual provisions are designed to shift part or all of the credit risk back onto lenders. The rating agencies

104. *See* Shivaswamy, *supra* note 54, at 38.

105. *See infra* Part VI.A.

106. *See* Erick Bergquist, *Experts Say Lehman Case Is Warning, Not Precedent*, Am. Banker, June 18, 2003, at 6.

107. *Cf.* Austin v. Chisick (*In re* First Alliance Mortgage Co.), 298 B.R. 652, 659-65 (Bankr. C.D. Cal. 2003) (findings of fact). Lehman Brothers allegedly learned of FAMCO's fraud during due diligence and nevertheless gave FAMCO "substantial assistance" in financing FAMCO's operations through securitization. *See* Anand S. Raman et al., *Cutting the Risks Built into Third-Party Lending Relationships*, ABA Banking J., July 2003, at 61. More generally, Professor Christopher Peterson would impose imputed liability on investment banks that structure predatory securitizations. *See* Christopher L. Peterson, Predatory Structured Finance (Sept. 7, 2006) (unpublished manuscript, on file with the Fordham Law Review), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=929118.

108. *See infra* notes 243-60 and accompanying text.

109. Neil J. Morse, *Not Exactly Prime*, Mortgage Banking, June 2003, at 60 [hereinafter Morse, *Not Exactly Prime*]; Neil J. Morse, *The Compliance Battle*, Mortgage Banking, Sept. 2003, at 28 [hereinafter Morse, *The Compliance Battle*]; *see also* U.S. Gen. Accounting Office (GAO), GAO-04-280, Consumer Protection: Federal and State Agencies Face Challenges in Combating Predatory Lending 79-81 (2004). For discussion of Fannie Mae's and Freddie Mac's due diligence standards for A- mortgages, see *infra* notes 266-67 and accompanying text.

110. *See generally* Karen B. Gelernt, *Comment: Avoiding Predator Risk in the Secondary Market*, Am. Banker, July 7, 2000, at 9 (recommending contractual protections that investors should demand when assessing offerings and originators).

consistently laud these and other provisions as effectively insulating investors from the risk of lemon loans. As one Fitch representative stated in 2004, "'Issuers have provided protective measures to significantly reduce transaction risk and investor assignee liability from predatory lending.'"[111]

1. Representations and Warranties

Lenders provide representations and warranties to investors in subprime deals.[112] Some of these provisions are specifically designed to guard against the credit risk and litigation risk of predatory loans. Thus, rating agencies, underwriters, and investors insist that lenders warrant that all loans in the loan pool comply with applicable laws, including consumer protection laws.[113] Sometimes lenders also must provide representations and warranties that all loan applicants' reported salaries fall within a reasonable range of salaries for their specific profession and locale.[114]

2. Recourse and Collateral Substitution Clauses

Similarly, investment banks and rating agencies may insist on recourse clauses that require lenders to take back loans if specific events occur.[115] Events that can trigger recourse clauses include borrower default[116] or evidence that the loans contain prohibited terms.[117] Similarly, collateral substitution clauses require lenders to substitute performing loans for loans that go into default. Recourse clauses and collateral substitution clauses are

111. Patrick Crowley, *Report Says Predatory Lending Issues Mostly Resolved for RMBS Issuers, Servicers*, Mortgage Daily, Jan. 5, 2004 (quoting Tom Albertson, Senior Dir., Fitch Ratings), *available at* http://www.mortgagedaily.com/RatingsSubprime010504.asp; *cf.* Moody's Investor Service, Predatory Lending and Home Equity Securitizations 1 (Apr. 28, 2000) (stating that allegations of predatory lending were unlikely to "have a widespread negative effect on the credit quality of outstanding securitizations . . . because many securitizations of subprime mortgage loans are fully insured by a monoline bond insurer").

112. This occurs more often in public offerings than in Rule 144A private placements. *See* Shivaswamy, *supra* note 54, at 28, 31; *infra* notes 162-65 and accompanying text.

113. *See, e.g.*, JP Morgan Chase & Co., 90 Fed. Res. Bull. 352 (June 2004); Citigroup Inc., 87 Fed. Res. Bull. 613 (Sept. 2001) (Banamex); Citigroup Inc., 87 Fed. Res. Bull. 600 (Sept. 2001) (EAB); Chase Manhattan Corp., 87 Fed. Res. Bull. 76 (Feb. 2001); S&P, *supra* note 31, at 32; Morse, *The Compliance Battle*, *supra* note 109.

114. *See* Jody Shenn, *How Lenders Cut Risk on Low-Doc Loans*, Am. Banker, Oct. 26, 2004, at 6m.

115. *See* S&P, *supra* note 31, at 33; Eggert, *supra* note 2, at 541-42, 548; Steven L. Schwarcz, *The Limits Of Lawyering: Legal Opinions in Structured Finance*, 84 Tex. L. Rev. 1, 3, 4 n.12 (2005). Not all subprime securitizations include recourse provisions. As of September 2005, for instance, Option One's secondary market resales of subprime home loans were made exclusively on a nonrecourse basis. *See Q1 2006 H&R Block, Inc. Earnings Conference Call*, *supra* note 90.

116. *See* Michaud, *supra* note 37, at 272. In a parallel phenomenon in response to the issuance of the FTC Rule, lenders began insisting that merchants agree to recourse provisions obligating the merchants to purchase notes from the lenders if the borrowers were "dissatisfied." Kurt Eggert, *Held Up in Due Course: Codification and the Victory of Form over Intent in Negotiable Instrument Law*, 35 Creighton L. Rev. 363, 430 (2002).

117. *See* Eggert, *supra* note 2, at 527.

meant to redress the lemons problem[118] by making lenders internalize the risk of loans that go into default or that violate the law.

3. Requiring Lenders to Retain Servicing Rights

Some securitization deals require lenders to retain loan servicing rights. Doing so gives lenders incentives to maximize creditworthiness because servicing costs go up as default risk rises.[119] A lender who securitizes its loans but retains the servicing rights has a direct stake in timely repayment, because collection becomes costly when loans become delinquent or go into default. Thus, when lenders retain the servicing rights, they have incentives to hold down credit risk when making loans.

G. *Credit-Default Swaps*

Wall Street has created a new type of derivative that provides added protection to investors from the credit risk associated with abusive lending. This derivative, called a "credit-default swap," functions like an insurance policy and pays off investors when default rates in a loan pool exceed a specified level.[120] These derivatives enable investors to purchase securities backed by predatory loans and then hedge against potential losses if borrowers are unable to repay the loans.

VI. WHY PREDATORY LENDING PERSISTS DESPITE RISK MANAGEMENT

The mechanisms that protect investors from risk should also exert discipline on subprime lenders by forcing them to retain some of the risk associated with the loan pools. All of these measures are designed to give lenders incentives to make good loans and thereby cut default risk. Nevertheless, none of these measures, singly or together, has curbed abusive lending.[121] In this section, we explain why predatory lending persists despite attempts at market discipline by the secondary market.

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118. *See* Schwarcz, *supra* note 115, at 3, 24.

119. *See* Amy Crews Cutts & Richard K. Green, *Innovative Servicing Technology: Smart Enough to Keep People in Their Houses?* 4-5 (Harvard Joint Ctr. for Hous. Studies, Working Paper BABC 04-19, 2004).

120. Mark Whitehouse, *As Home Owners Face Strains, Market Bets on Loan Defaults*, Wall St. J., Oct. 30, 2006, at A1.

121. A 2004 report by The Reinvestment Fund documented the incidence of predatory lending in home loan refinance transactions. *See* The Reinvestment Fund, Predatory Lending: An Approach to Identify and Understand Predatory Lending (2004), *available at* http://www.trfund.com/policy/predatory.lending.htm; *see also* Quercia, Stegman & Davis, *supra* note 4. Between 1998 and 2005, the Federal Trade Commission prosecuted predatory lending cases against home mortgage lenders and brokers including Action Loan Co., Amor Mortgage, Abacus Mortgage, Associates First Capital Corp., Barry Cooper Properties, Capital City Mortgage Corp., Capitol Mortgage Corp., Chase Financial Funding, Inc., CLS Financial Services, Inc., Delta Funding Corp., Fairbanks Capital Corp., First Alliance Mortgage Company, First Plus Financial Group, Inc., Fleet Finance and Home Equity U.S.A., Granite Mortgage, LLC, Interstate Resource Corp., LAP Financial Services, Inc., Mark Diamond, Mercantile Mortgage Co., Nationwide Mortgage Corp., NuWest, Inc., PWR

Processing, Inc., R.A. Walker & Assocs., and Wasatch Credit Corp. *See* Fed. Trade Comm'n, *Prepared Statement of the Federal Trade Commission on Efforts to Combat Unfair and Deceptive Subprime Lending Before the Senate Special Committee on Aging*, 3-8, Feb. 24, 2004, *available at* www.ftc.gov/os/2004/02/02242004subprimelendingtest.pdf; Letter from Donald S. Clark, Sec'y, Fed. Trade Comm'n, to Sandra F. Braunstein, Dir., Fed. Reserve Sys. Div. of Consumer and Cmty. Affairs (Feb. 23, 2005), *available at* www.ftc.gov/os/2005/03/050301enforcemntrpt.pdf; Press Release, Fed. Trade Comm'n, Capital City Mortgage Corp. Defendant Settles with FTC (May 14, 2004), *available at* http://www.ftc.gov/opa/2004/05/sanne.htm; Press Release, Fed. Trade Comm'n, Capital City Mortgage Settles FTC Charges (Feb. 24, 2005), *available at* http://www.ftc.gov/opa/2005/02/capitalcity.htm; Press Release, Fed. Trade Comm'n, FTC Challenges Bogus Mortgage Loan Brokers (June 1, 2004), *available at* http://www.ftc.gov/opa/2004/06/pwrprocessing.htm; Press Release, Fed. Trade Comm'n, FTC, DOJ and HUD Announce Action to Combat Abusive Lending Practices, (Mar. 30, 2000), *available at* http://www.ftc.gov/opa/2000/03/deltafunding.htm; Press Release, Fed. Trade Comm'n, FTC: Mortgage Broker's Deceptive Claims Tricked Consumers Looking for a Good Rate (June 2, 2004), *available at* http://www.ftc.gov/opa/2004/06/chasefinancial.htm; Press Release, Fed. Trade Comm'n, Home Equity Lenders Settle Charges that They Engaged in Abusive Lending Practices; Over Half Million Dollars To Be Returned to Consumers (July 29, 1999), *available at* http://www.ftc.gov/opa/1999/07/hoepa.htm; Press Release, Fed. Trade Comm'n, Home Mortgage Lender Settles "Predatory Lending" Charges (Mar. 21, 2002), *available at* http://www.ftc.gov/opa/2002/03/famco.htm; Press Release, Fed. Trade Comm'n, Midwest Mortgage Lender Agrees to Settle Illegal Lending Charges Brought by FTC, HUD, and State of Illinois, (July 18, 2002), *available at* http://www.ftc.gov/opa/2002/07/mercantilediamond.htm; Fed. Trade Comm'n, FTC Subprime Lending Cases (since 1998), http://www.ftc.gov/opa/2002/07/subprimelendingcases.htm (last visited Feb. 28, 2007).

In April 2004, the Office of Thrift Supervision entered into a supervisory agreement with Ocwen Federal Bank designed to eliminate alleged predatory loan servicing practices. Supervisory Agreement, Ocwen Fed. Bank FSB and Office of Thrift Supervision, OTS Docket No. 04592 (Apr. 19, 2004), *available at* http://www.ots.treas.gov/docs/9/93606.pdf. The following month, Citigroup Inc. and its subprime mortgage subsidiary, Citifinancial Credit Company, agreed to a cease-and-desist order in which the Board of Governors of the Federal Reserve System imposed a $70 million civil money penalty for alleged predatory lending practices. Timothy L. O'Brien, *Fed Assesses Citigroup Unit $70 Million in Loan Abuse*, N.Y. Times, May 28, 2004, at C1; Press Release, Bd. of Governors of the Fed. Reserve Sys. (May 27, 2004), *available at* www.federalreserve.gov/boarddocs/press/enforcement/2004/20040527/default.htm. The 2004 Citigroup order followed on the heels of an earlier $215 million settlement by Citigroup Inc. in 2002 to resolve FTC charges of predatory lending. Press Release, Fed. Trade Comm'n, Citigroup Settles FTC Charges Against the Associates Record-Setting $215 Million for Subprime Lending Victims (Sept. 19, 2002), *available at* http://www.ftc.gov/opa/2002/09/associates.htm.

In 2005, the Office of the Comptroller of the Currency (OCC) similarly issued agency sanctions against Chicago Title Insurance Company for fraudulent home loan settlement practices. *See* OCC, Stipulation and Consent Order, In re Chicago Title Ins. Co., #2005-12 (Feb. 24, 2005), *available at* www.occ.treas.gov/FTP/EAs/ea2005-12.pdf. Finally, the Federal Bureau of Investigation has pursued mortgage fraud aggressively. *See, e.g.*, Fed. Bureau of Investigation, *Statement of Chris Swecker Before the House Finan. Services Subcomm. On Housing and Community Opportunity* (Oct. 7, 2004), *available at* www.fbi.gov/congress/congress04/swecker100704.htm; Fed. Bureau of Investigation, Financial Crimes Report to the Public (May 2005), *available at* http://www.fbi.gov/publications/financial/fcs_report052005/fcs_report052005.htm (reporting on investigations into equity skimming, property flipping and mortgage-related identity theft). In 2006, forty-nine states and the District of Columbia reached a $325 million settlement with Ameriquest Mortgage Company over alleged predatory lending practices. *See, e.g.*, Press Release, Iowa Dep't of Justice, Miller: Ameriquest Will Pay $325 Million

A. *The Unholy Alliance of Marginal Lenders and Loan Aggregators*

Increasingly, subprime lenders are selling whole loans to outside loan aggregators, who bundle and securitize them. Generally, such aggregators are affiliates of Wall Street investment banks. Major players include Credit Suisse First Boston, Morgan Stanley, Lehman Brothers, Bear, Stearns & Co., Merrill Lynch, Greenwich Capital, UBS, Bank of America, and Deutsche Bank Securities.[122]

Subprime aggregation is popular because it offers advantages to both investment banks and lenders. These advantages are particularly strong for small or poorly capitalized lenders. Aggregation permits these lenders to sell loan pools for securitization that would otherwise be too small to provide diversification. More importantly, aggregation enables marginal lenders to obtain financing despite obscure or questionable reputations by "renting" the aggregator's reputation for quality securities.

Wall Street prizes aggregation because it helps boost investment banks' underwriting business and helps them assemble diversified loan pools. Furthermore, it allows investment banks to enjoy subprime profits with reduced legal risk, assuming that the aggregators qualify as holders in due course and do not participate in underwriting loans. Because they have minimal exposure to suits, aggregators have reduced incentives to guard against abusive practices.

B. *Lenders Do Not Always Retain an Interest in the Subordinated Tranches*

In the process of providing credit enhancements, the lender (through an affiliate) often buys securities in the subordinated tranches, which are rated double- or single-B or are simply unrated.[123] While this makes it appear

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and Reform its Lending Practices (Jan. 23, 2006), *available at* http://www.state.ia.us/government/ag/latest_news/releases/jan_2006/Ameriquest_Iowa.html.

122. Loan aggregation is also known as warehouse lending, conduit lending, or "principal finance." The aggregation business has boomed, accounting for 42% of subprime securitizations in 2002. *See* Morse, *Not Exactly Prime*, *supra* note 109; Shepherd, *supra* note 29; Bonnie Sinnock, *Morgan Stanley Sees Technology as Key to 'Strong Credit Culture,'* Nat'l Mortgage News, Mar. 28, 2005, at 3.

123. *See* Jody Shenn, *Where's Mortgage Risk? New Answers Emerging*, Am. Banker, May 11, 2005, at 1. Subordinated tranches comprised only a small fraction of the proceeds—no more than fifteen percent—from all RMBS tranches rated by S&P through 2004 (including subprime tranches). Investment-grade tranches (rated BBB or higher and bought by outside investors) accounted for the remaining eighty-five percent. *See* S&P, Rating Transitions 2004, *supra* note 84, at 5 tbl.4; *see also* Blum & DiAngelo, *supra* note 33, at 253; Frank L. Raiter, *Risk-Based Pricing Nonagency Mortgages and Securities*, *in* Subprime Consumer Lending 145, 151 (Frank J. Fabozzi ed., 1999). Subprime RMBS are often issued through limited offerings or private placements. Under the Securities Act of 1933 and SEC regulations, few private individuals qualify to buy investment-grade subprime RMBS through unregistered offerings. *See* 17 C.F.R. §§ 230.501-.508 (2006). Instead, institutional investors (banks and thrifts, insurance companies, pension funds, mutual funds, and, to a minor degree, hedge funds) plus foreign entities buy the vast majority of those securities. *See* Hayre, *supra* note 40, at 11-12; Ruth Simon et al., *Housing-Bubble Talk*

that the lender retains the riskiest securities, this is not necessarily the case. Instead, outside investors buy many of these so-called "residuals," some at the time of offering and others through later secondary market resales.[124] There is strong demand by outside investors (principally real estate investment trusts, hedge funds, and overseas investors) for the double- and single-B subprime tranches.[125] In addition, lenders can resell their subprime residuals to outside investors through bonds known as Collateralized Debt Obligations (CDOs). Essentially, CDOs securitize residuals from RMBS and other assets.[126] Significantly, U.S. subprime

Doesn't Scare Off Foreigners, Wall St. J., Aug. 24, 2005, at A1; Infovest 21 LLC, *supra* note 99.

124. For lenders who are regulated depository institutions or their operating subsidiaries, regulatory accounting principles may compel the sale of the double- or single-B tranches. *See, e.g.*, Hill, *supra* note 15, at 1069 & n.36, 1070, 1089 & n.131. Even when lenders retain subprime residuals, they can mitigate their credit risk through conventional mortgage insurance on the underlying mortgages or credit-default swaps that hedge the risk. *See, e.g.*, *Countrywide Financial Corporation Analyst Meeting—Final, FD* (Fair Disclosure) Wire, May 24, 2005 (explaining that "one of the ways that we get down to a lower, net residual position on the sub prime is due to use of mortgage insurance"); Simon & Hagerty, *supra* note 49. Additionally, the persistence of predatory lending despite retained residuals may suggest that predatory lending is so profitable—largely due to up-front fees and proceeds from securitization—that those profits generally offset the financial risks of holding the residuals.

125. *See* James R. Hagerty & Ruth Simon, *Mortgage Risk: A Hot Export*, Wall St. J., Sept. 22, 2005, at C1; Iacobucci & Winter, *supra* note 15, at 188-89; Sarah Mulholland, *Single-B HEL Classes Emerge: Yield-Hungry Buyers Driving Trend*, Asset Securitization Rep., Aug. 9, 2004; Simon et al., *supra* note 123; *see also Countrywide Financial Corporation Analyst Meeting—Final*, *supra* note 124 (observing that the "ability to sell residuals or the bottom pieces in the credit . . . spectrum whether it [is] double digits or single digits . . . has been substantially broadened in the last few years as a number of investors have reached down the credit curve for a greater yield"); Kevin Donovan, *Large HEL ABS Beefs Up Otherwise Slow U.S. ABS Market*, Asset Securitization Rep., Feb. 2, 2004, (describing a home equity securitization with single-B plus rated bonds and noting "the strong demand for mezzanine and sub classes").

126. As such, the CDO market provides liquidity for RMBS, including subprime securities. "Through retranching and diversification, CDOs produce higher-rated securities from lower-rated ones." Shenn, *supra* note 123, at 1, 10. For helpful introductions to CDOs, see S&P, Global Cash Flow and Synthetic CDO Criteria 4-13 (2002) [hereinafter S&P, Global Cash Flow and Synthetic CDO Criteria], and Olivier Cousseran & Imène Rahmouni, *The CDO Market: Functioning and Implications in Terms of Financial Stability*, 6 Fin. Stability Rev. 43, 44 (2005). The authors are indebted to Kevin Byers for his insights on CDOs and NIMS. A typical CDO might contain subprime RMBS with a weighted average rating as low as BB+, meaning that many of those securities are rated below investment grade. *See, e.g.*, *Fitch Rates Duke Funding VIII, Ltd./Corp 'AAA/AA/A-/BBB,'* Bus. Wire, Apr. 5, 2005; *Fitch Rates Glacier Funding CDO II, Ltd 'AAA/AAA/AA/BBB/BB,'* Bus. Wire, Oct. 12, 2004; *Fitch Rates G-STAR 2005-5 Ltd./Corp.*, Bus. Wire, Mar. 16, 2005; *Fitch Rates Newcastle CDO VI, Ltd. 'F1+/AAA/AAA/AA/A/BBB,'* Bus. Wire, Apr. 19, 2005; *Fitch Rates Northwall Funding CDO I, Ltd./Inc.*, Bus. Wire, May 17, 2005; *Fitch Rates Sorin Real Estate CDO I, Ltd.*, Bus. Wire, July 21, 2005; *G-STAR 2004-4 Rated 'AAA/AA/A-/BBB' by Fitch Ratings*, Bus. Wire, Aug. 12, 2004; *see also* Allison Pyburn, *Merrill Finds Less Risk in CDO Collateral Versus HEL ABS Market*, Asset Securitization Rep., Aug. 8, 2005 (noting that CDOs are "highly exposed to subordinate [subprime] ABS bonds"); Shenn, *supra* note 123, at 1. One S&P study of CDOs found that the weighted average rating of subprime RMBS backing CDOs dropped from A in 2003 to BBB in 2004. *See* S&P, CDO Spotlight:

RMBS have comprised the single "largest collateral asset class in [CDOs] since the inception of the product in 1999."[127]

A central purpose of residuals is to force lenders to retain the bulk of the credit risk they create.[128] However, when lenders with subprime residuals shift them off their books through CDOs,[129] they are able to escape the market discipline that residuals were meant to exert. As one CDO manager

U.S. CDO of ABS Collateral Composition and Performance 6 (2004) [hereinafter S&P, CDO Spotlight: U.S. CDO of ABS Collateral Composition and Performance]. Any CDO with a weighted average rating of BBB or lower is likely to be backed in part by double- or single-B bonds.

127. FitchRatings, *supra* note 7, at 1; *see also* S&P, CDO Spotlight: U.S. CDO of ABS Collateral Composition and Performance, *supra* note 126, at 4; Morgenson, *supra* note 84.

128. *See* Hurst, *supra* note 62, at 285 (observing that "[r]etention of [the residual] by the seller-servicer provides a primary motivation to maximize the cash flow in the trust (i.e., accelerate collections and minimize losses) so that the value of the residual is realized").

129. *See* FitchRatings, *supra* note 7, at 1; S&P, Global Cash Flow and Synthetic CDO Criteria, *supra* note 126, at 21 (stating that CDO managers "have an appetite not only for senior tranches, but also for mezzanine pieces in senior-subordinated transactions, typically rated in the range of 'BBB' to 'BB'"); Hagerty & Simon, *supra* note 125 ("CDOs . . . are the biggest buyers of the riskier types of mortgage securities . . . ."); *Nomura Installing Sub-Piece Fund*, Asset-Backed Alert, Nov. 28, 2003, at 2 (describing Nomura's plans to organize a CDO conduit to "present[] asset-backed issuers with a ready-made buyer for their hard-to-sell B pieces"); Shenn, *supra* note 123, at 10 (describing two subprime transactions and noting that "a healthy appetite for [CDOs] among foreign investors, pension funds, and hedge funds has let many [subprime] securitizers pass lower-quality bonds to CDO underwriters"); *see also* Infovest 21 LLC, *supra* note 99 (interviewing a CDO manager who stated that "we might be comfortable buying a single B"); S&P, CDO Spotlight: U.S. CDO of ABS Collateral Composition and Performance, *supra* note 126, at 4; Janet M. Tavakoli, Collateralized Debt Obligations and Structured Finance: New Developments in Cash and Synthetic Securitization 261 (2003); *H&R Block, Inc. Annual Investment Community Conference, New York City—F*, FD (Fair Disclosure) Wire, Jan. 10, 2006 (announcing "we're going to be more aggressive at monetizing and moving those residuals on a more recurring basis"); *National City Corp. Analysts' Conference—Final*, FD (Fair Disclosure) Wire, May 26, 2005 (announcing that "we . . . basically sold the portion of that risk that corresponded from single-A down to double-B"); Allison Pyburn, *Terwin Priced High Resi Concentration CDO*, Asset Securitization Rep., May 9, 2005 (announcing first CDO, named Northwall I, issued by Terwin Money Management LLC; deal contained 86.5% of subprime RMBS and "[r]oughly 35% of the assets backing the deal came off of Terwin's books"); *Q4 2005 Ocwen Financial. Earnings Conference Call—F*, FD (Fair Disclosure) Wire, Jan. 26, 2006 (announcing Ocwen's plan to "target acquisitions of residual securities" to hedge its mortgage servicing operations); Jody Shenn, *Pipeline: Too Excited?*, Am. Banker, May 26, 2005, at 11 (explaining that the fact that subprime "originators might not want to hold on to credit risks in this environment" fuels CDOs); *cf. Countrywide Financial Corp. Analyst Meeting—Final*, *supra* note 124 (announcing a new Countrywide private equity fund called Sunfish "investing[] almost exclusively in [Countrywide] sub prime residuals" that enabled Countrywide to "offload[] . . . 100 percent of our residual"; stating that Countrywide was likewise considering issuing CDOs because "we have the product to fill the CDO"; noting that "in the CDO market all the equity gets sold out, much of the equity is not retained"); Andreas A. Jobst, *Risk Management of CDOs During Times of Stress*, Derivatives Week, Nov. 28, 2005, at 8 ("CDO managers are frequently exposed to the equity tranche, which absorbs first losses and, hence, represents the riskiest element . . . .").

put it, CDOs create "an awful lot of moral hazard in the [subprime RMBS] sector."[130]

C. *Due Diligence Is Often Cursory*

Despite recent spurs to action from the Lehman Brothers case and state assignee liability laws, industry and government observers agree that subprime due diligence is uneven and in need of improvement.[131] This is true for public offerings of subprime RMBS, where institutional investors often have a real chance to insist on meaningful due diligence in advance, and even more so for Rule 144A private placements.[132] There is such intense demand for Rule 144A offerings that institutional investors usually have to make snap judgments whether to invest without time for any substantive due diligence; most simply rely on lenders, underwriters, and rating agencies, even though none of these entities has the same level of interest in avoiding credit losses as the investors themselves. Thus, due diligence in the private-label subprime market often shoots low and almost never attempts to filter out predatory loan terms or practices unless they are observationally illegal.

1. What Subprime Due Diligence Means Today

In subprime deals, underwriters, rating agencies, and lenders, not investors, conduct most due diligence. Due diligence is typically limited to determining lender compliance with state and federal consumer protection laws.[133] For example, automated compliance systems tailor their screening tools to the legal requirements of each jurisdiction.[134] Similarly, the rating agencies only require screening for legal compliance and nothing more.[135]

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130. Allison Pyburn, *CDO Investors Debate Morality of Spread Environment*, Asset Securitization Rep., May 9, 2005; *accord* Jody Shenn, *MBS Pioneer Has Concerns: Risk-Passing, GSE Reforms, Commercial Realty*, Am. Banker, June 19, 2006, at 1.

131. *See, e.g.*, GAO, *supra* note 109, at 81; Beidl, *supra* note 103; Neil J. Morse, *Making and Selling Good Loans*, Mortgage Banking, June 2003, at 107; Morse, *supra* note 99; Shenn, *supra* note 114.

132. Rule 144A governs private placements of securities, typically to institutional investors. *See infra* notes 152-65 and accompanying text.

133. This is evident both from industry descriptions of the limited due diligence performed and from statements by banking attorneys about the need for improved reviews of legal compliance. *See, e.g.*, The Royal Bank of Scotland Group plc, 90 Fed. Res. Bull. 479, 499 n.51 (2004) (addressing an investment bank, which, in representations to the Federal Reserve Board, limited its description of its due diligence reviews of subprime securitizations to "evaluations to determine if the lenders are complying with federal and state laws"); Bank of America Corp., 90 Fed. Res. Bull. 217, 224 & n.35 (2004) (same). None of these statements discusses compliance with industry standards or even aspires to such compliance. *See* Shenn, *supra* note 114.

134. *See* ComplianceEase, ComplianceAnalyzer: Automated Compliance Solutions, http://www.complianceease.com.

135. *See, e.g.*, FitchRatings, Can You See Me Now? Screening for RMBS Predatory Lending Loans (Nov. 12, 2003), *available at* http://www.mbaa.org/industry/reports/03/fitch_1112.pdf [hereinafter FitchRatings, Can You See Me Now?]; S&P, Anti-Predatory

Limiting due diligence to legal compliance is problematic, given the large existing gaps in governing law. Today, numerous lending abuses remain legal under state and federal law.[136] The principal federal anti-predatory lending law, HOEPA,[137] has strong proscriptions but at best covers the costliest five percent of subprime home loans.[138] Similarly, many states lack strong anti-predatory lending laws.[139] With legal protections against abusive subprime loans weak in many states and at the federal level, the absence of meaningful due diligence paves the way for inclusion of predatory loans in securitized loan pools.

When due diligence is required, it is not uncommon for some lenders to honor that requirement in the breach, i.e., to say they performed loan-level review when they did not. In 2004, the General Accounting Office (now the Government Accountability Office or GAO) looked at this issue and concluded that "some companies may be more willing than others to purchase loans that are considered questionable in terms of legal compliance, creditworthiness, or other factors."[140] As one subprime lender explained to the press, "We're not structured to do 100 percent due diligence [on certain subprime loan pools], even though Wall Street investment banks might want that."[141] Lenders who offer low- or no-documentation loans are even more prone to skip compliance review.[142]

In the conforming market, both government-sponsored entities do require substantive screening of subprime loans. Fannie Mae and Freddie Mac have best practices standards for residential mortgages to borrowers with

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Lending Alert: Standard & Poor's Revises Criteria Related to Anti-Predatory Lending Laws (May 13, 2004); Press Release, FitchRatings, Fitch Ratings Updates Rating Criteria Regarding Predatory Loans (Jan. 15, 2004); Press Release, FitchRatings, Fitch Revises RMBS Guidelines for Antipredatory Lending Laws (Feb. 23, 2005) [hereinafter FitchRatings, Fitch Revises RMBS Guidelines].

136. *See* Azmy, *supra* note 70. Other federal and state laws of a general nature regulate aspects of predatory lending, but those laws have not succeeded in stamping out numerous predatory lending abuses. *See* Engel & McCoy, *supra* note 13, at 1299-1317.

137. 15 U.S.C. §§ 1601-1667 (2000).

138. *See, e.g.*, Truth in Lending, 66 Fed. Reg. 65604, 65608 (Dec. 20, 2001) (to be codified at 12 C.F.R. pt. 226).

139. *See* Azmy, *supra* note 70.

140. GAO, *supra* note 109, at 81. Some issuers and servicers apparently still put too much effort into checking for facial, rather than actual, compliance. As one attorney cautioned subprime servicers, "[R]eviewing written policies and procedures tells only half the story. It is imperative also to understand how those policies and procedures are implemented in practice." Andrew L. Sandler et al., *Risk Management in Mortgage Loan Servicing and Collection*, 71 Rev. Banking & Fin. Servs. 71 (2004) (listing due diligence checklist).

141. Morse, *supra* note 99, at 56-57.

142. *See* Shenn, *supra* note 114, at 6m ("'The scary [lenders] are the ones that use [Alt-A loans] as an additional menu item' without performing any additional controls." (quoting Paul Fischer, Exec. Vice Pres. of Risk Management, Radian Group Inc.). These so-called low-doc and no-doc loans make up a growing segment of the subprime market. *See, e.g.*, S&P, Trends in U.S. Residential Mortgage Products: Subprime Sector First-Quarter 2005, charts 2, 6 (July 14, 2005).

blemished credit that are stricter in some respects than the laws in many jurisdictions.[143]

Outside of the conforming market, lenders, issuers, and/or major investors are free to adopt internal standards of their own.[144] Nonetheless, usually only market actors with high reputational risk, such as bank holding companies contemplating mergers or lenders previously sanctioned for abusive lending, go to such lengths.[145] For most other private-label market participants, industry self-policing is virtually nonexistent. Thus, in the nonconforming market for subprime RMBS, lenders and underwriters rarely screen out loans that are not prohibited by law, even if those loans violate industry standards or inflict significant harm on borrowers. Furthermore, underwriters are under constant pressure to relax their due diligence, for fear that lenders will move their underwriting business to other underwriting firms.

In sum, the subprime secondary market has not adopted industry best practices voluntarily and will not screen out predatory loans from loan pools unless compelled to by statute, regulations, or court orders.[146]

2. Impediments to Meaningful Due Diligence by Investors

When it comes to screening out predatory loans, investors generally rely on due diligence by rating agencies, underwriters, and lenders. With advance opportunity, institutional investors will generally review the disclosures, ratings, structure, and credit enhancements. Otherwise, they

143. *See, e.g.*, Fannie Mae, Eligibility of Mortgages to Borrowers with Blemished Credit Records, Lender Letter No. 03-00 (Apr. 11, 2000) [hereinafter Fannie Mae, Lender Letter No. 03-00], *available at* http://www.efanniemae.com/sf/guides/ssg/annltrs/pdf/2000/lendltrs2000.pdf; Press Release, Freddie Mac, Freddie Mac Promotes Consumer Choice with New Subprime Mortgage Arbitration Policy (Dec. 4, 2003), *available at* http://www.freddiemac.com/news/archives/afford_housing/2003/consumer_120403.html; Press Release, Freddie Mac, Freddie Mac Will No Longer Invest in Subprime Mortgages with Prepayment Penalty Terms Greater Than Three Years (Mar. 1 2002), *available at* http://www.freddiemac.com/news/ archives2002/subprime_030102.htm; Letter from Freddie Mac to All Freddie Mac Sellers and Servicers, *Freddie Mac's Stance Against Predatory Lending Practices* (Dec. 28, 2000), *available at* http://www.freddiemac.com/sell/guide/bulletins/pdf/1228indltr.pdf; Letter from Freddie Mac to All Freddie Mac Sellers and Servicers, *Reports to Credit Repositories* (Feb. 22, 2000), *available at* http://www.freddiemac.com/sell/guide/bulletins/pdf/2indltr.pdf; Letter from Freddie Mac to All Freddie Mac Sellers and Servicers, *Single-Premium Credit Insurance Products* (Apr. 21, 2000), *available at* http://www.freddiemac.com/sell/guide/bulletins/pdf/421indltr.pdf. The Mortgage Bankers Association has adopted weaker, nonbinding best practices standards for residential mortgages. Mortgage Bankers Association of America, MBA Best Practices, http://www.mortgagebankers.org/IndustryResources/StandardsandBestPractices/MBABestPractices.htm (last visited Feb. 10, 2007).

144. *See, e.g.*, Raman et al., *supra* note 107 (recommending the incorporation of specific best practices standards into screening criteria). See *supra* note 32 for discussion of the differences between the conforming and nonconforming or private label markets.

145. *See, e.g.*, JP Morgan Chase & Co., 90 Fed. Res. Bull. 352 (2004).

146. *See* Jennifer Harmon, *'Purchaser Can't Test for Compliance in Secondary,'* Nat'l Mortgage News, June 7, 2004, at 32.

tend to be passive, especially regarding predatory lending concerns.[147] Only rarely do investors inspect loan files for fraud.[148] Similarly, investors rarely reserve the right post-closing to be notified of predatory lending complaints, to conduct random spot checks, or to perform special audits of lenders when warning signs of predatory lending crop up.[149] Yet after-the-fact monitoring may be the only way to detect certain types of loan fraud and predatory servicing.[150]

Even if investors wanted to engage in more extensive due diligence on their own, market and legal forces would often impede their efforts. To begin with, numerous subprime securitizations are floated on a to-be-announced basis. In TBA offerings, when investors buy their securities, the loans have not yet been pooled, leaving the content of the pool up to the lender's discretion.[151] While investors can reserve the right to review the eventual loan pool post-closing, that is a risky proposition because they lose much of their leverage once they part with their funds.

The law on Rule 144A placements also impedes effective due diligence. Growing numbers of subprime RMBS offerings are issued as Rule 144A private placements, rather than as public offerings under section 5 of the Securities Act of 1933.[152] Before 1990, limited offerings and private placements under Rule 144[153] lacked liquidity because investors could not resell their securities for two years without costly registration under section 5.[154] To remedy this situation, the Securities and Exchange Commission

147. *See* Eggert, *supra* note 2, at 543-44.

148. *See, e.g.*, JP Morgan Chase & Co., 90 Fed. Res. Bull. 352 (2004) (describing JP Morgan's "loan sampling process [as including] obtaining a secondary value on the mortgaged property, performing cost tests before purchase, and performing targeted reviews of purchased loans"); Bank of America Corp., 90 Fed. Res. Bull. 217 & n.35 (2004) (describing loan sampling); Citigroup Inc., 87 Fed. Res. Bull. 600 (2001) (EAB); Citigroup Inc., 87 Fed. Res. Bull. 613 (2001) (Banamex). *But see* Mark L. Korell, *The Workings of Private Mortgage Bankers and Securitization Conduits*, *in* A Primer on Securitization, *supra* note 37, at 99-100 (reporting that some investors are asking private mortgage conduits to "dig out data on the underlying loans in individual pools"); Jody Shenn, *New Bear Stearns Unit to Provide Collateral for MBS*, Am. Banker, Apr. 20, 2005, at 10.

149. *Cf.* Sandler et al., *supra* note 140, at 75 ("One of the most effective risk management tools available to non-prime servicers is a process to address customer complaints promptly and professionally, with an appropriate audit oversight to review and improve the process."). Red flags can include press reports of predatory lending allegations, higher-than-expected delinquency or default rates, borrower complaints, government investigations, and predatory lending lawsuits.

150. *See* Baron, *supra* note 37, at 90; *see also infra* notes 218-30 and accompanying text.

151. *See* Boudoukh et al., *supra* note 60, at 410, 419; Downing, Jaffee & Wallace, *supra* note 54, at 6-7.

152. 15 U.S.C. § 77(e) (2000); *see* Dominion Bond Rating Service, U.S. Structured Finance Newsletter, Mar. 28, 2005, *available at* http://cache.dbrs.com/pdf/1112204169687.pdf?transactionID=109714 (listing recent Rule 144A subprime RMBS offerings).

153. 17 C.F.R. § 230.144 (2006).

154. 17 C.F.R. § 230.144(d) (1989). In 1997, the SEC reduced the holding period under Rule 144 to one year. *See* Revision of Holding Period Requirements in Rules 144 and 145, 62 Fed. Reg. 9242 (Feb. 28, 1997) (codified at 17 C.F.R. pt. 230 (2006)).

(SEC) issued Rule 144A in 1990.[155] Rule 144A states that if a private placement or limited offering is offered or sold solely to parties who are reasonably believed to be qualified institutional buyers (QIBs), those investors can resell the securities at any time to other QIBs without registration.[156]

In order for a private placement to qualify for Rule 144A treatment, domestic issuers must provide prospective purchasers with some scant information upon request, as follows: (a) a "very brief" statement of the nature of the issuer's products, services, and business; and (b) the issuer's financial statements (including balance sheets, profit and loss statements, and retained earnings statements) for the past two years. The information must be "reasonably current" and financial statements "should be audited to the extent reasonably available."[157] For RMBS, servicers or trustees also need to provide "basic, material information concerning the structure of the securities and distributions thereon, the nature, performance and servicing of the assets supporting the securities, and any credit enhancement mechanism associated with the securities."[158]

The key point here is that Rule 144A does not require issuers to provide prospective purchasers anything beyond basic information about the risk profile of the loan pool. As a result, investors do not have access to the information they need to screen out predatory loans. Because Rule 144A transactions allow resales to QIBs, these offerings are in high demand. "Transactions are usually bought and sold very quickly[,] thereby giving the buyer very little opportunity to conduct due diligence."[159] Thus, in the Rule 144A market, "liquidity comes at a price."[160] The "lack of sufficient disclosure" and "very little opportunity for due diligence" deprives Rule 144A investors of "the protections accorded to investors in registered public bond offerings."[161]

155. 17 C.F.R. § 230.144A (1990).

156. *Id.*; *see also* Shenker & Colletta, *supra* note 95, at 1408-10.

157. 17 C.F.R. § 230.144A(d)(4)(i) (2006).

158. *Id.* § 230.144A(d)(4); Resale of Restricted Securities, Securities Act Release No. 33,6862, 55 Fed. Reg. 17,933 (Apr. 30, 1990); Kutak Rock & Campbell, SEC No-Action Letter, 1990 SEC No-Act. LEXIS 1273 (Nov. 29, 1990) (declining to answer questions regarding the adequacy of Rule 144A disclosures for mortgage-backed securities). Even these minimal disclosures are relaxed if the issuer is a reporting company under sections 13 or 15(d) of the Securities Exchange Act of 1934, is exempt from such reporting under SEC Rule 12g3-2(b), is a foreign government, or falls within a category of certain private foreign issuers. 17 C.F.R. § 230.144A(d)(4)(i). In 2005, the SEC promulgated new Regulation AB, which revamped mandatory disclosures for public offerings of mortgage-backed securities to include information regarding the composition and performance of the pool, static pool data, the structure of deals, certain underwriting criteria, and servicing experience. *See* Asset-Backed Securities, 70 Fed. Reg. 1506 (Jan. 7, 2005). The new disclosure requirements do not apply to Rule 144A private placements of mortgage-backed securities, however.

159. Shivaswamy, *supra* note 54, at 28.

160. *Id.* at 30.

161. *Id.* The placement agent will normally conduct due diligence of some sort before the offering and will obtain comfort letters from lawyers and accountants. *See id.* at 27. Because

The lack of meaningful due diligence by investors is compounded by weak covenants after the fact. In Rule 144A deals, "buyers are offered very few covenants and less extensive representations and warranties."[162] Furthermore, the representations and warranties do not survive the closing of the transactions.[163] Instead, the assurances "run to the placement agent, not to the ultimate buyer."[164] As a result, investors cannot rely on contractual guarantees as a backstop in the absence of due diligence:

> Originators try to grant investors as weak a covenant package as possible, thereby giving the originator as much leeway as possible in terms of what it can do with the asset. In that respect, some of the originator's best assets could be long gone before the senior secured investor finds out and given the weak set of representations and warranties that are made at the time of funding of the transaction, there is . . . very little that can be done at that stage.[165]

In sum, due diligence by investors—the people with the most to lose—is hit or miss, particularly in the Rule 144A market.

D. *Recourse Clauses Are Limited in Reach and Are Not Consistently Enforced*

As we already discussed, recourse clauses are relatively common and require lenders to take back bad loans. Their practical effect is limited, however, by spotty enforcement.[166] In some cases, lenders refuse to honor

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the placement agent does not bear credit risk in the transaction, however, it does not have the same incentives as investors for more thorough risk assessment.

162. *Id.* at 28; *see also id.* at 38 ("[W]ith the advent of Rule 144A offerings, market practice has done away with the . . . finer aspects of private placements such as negotiation of covenants and due diligence."). *See generally* Steven L. Schwarcz, *Rethinking the Disclosure Paradigm in a World of Complexity*, 2004 U. Ill. L. Rev. 1.

163. Shivaswamy, *supra* note 54, at 28.

164. *Id.*

165. *Id.* at 38.

166. *See* Shenn, *supra* note 114 (noting that investors rarely attempt to enforce reps and warranties); Shenn, *supra* note 123, at 1; Interview with Kevin Byers, Forensic Accountant, Parkside Assocs. (June 9, 2005). When delinquencies rise, securitized trusts and investment banks are more likely to insist that originators buy back bad loans, and that is happening now. Even so, the percentage of affected loans is small. Credit Suisse Group found, for example, that among 208 subprime RMBS bond deals that it studied for 2005 and 2006, the dollar value of mortgages repurchased was "well under 1% of the total value of mortgages in the pools with at least one repurchase." Ruth Simon & Michael Hudson, *Bad Loans Draw Bad Blood*, Wall St. J., Oct. 9, 2006, at C1. Even this limited enforcement of recourse clauses is cyclical in nature, and the market has a very short memory. As one commentator observed, "'In a rising market, even a bad loan is a good loan.'" *Id.* (quoting Nate Redleaf, Research Analyst, Imperial Capital LLC). In the meantime, recent potential buyers of subprime lenders have sought "to avoid inheriting the subprime sellers' costly obligation of having to buy back the loans already sold in the secondary market because of borrowers' defaults." Lingling Wei, *Subprime Lenders Are Hard Sell*, Wall St. J., Dec. 5, 2006, at C5. The dictates of federal bankruptcy law also place limits on the scope of recourse clauses. Under the bankruptcy code, the sale of loans to the SPV must constitute a "true sale" in order for the receivables to be excluded from the bankruptcy estate in the event of the originator's failure. *See* Schwarcz, *supra* note 38, § 4:1. If recourse exceeds specific levels—generally

recourse clauses and trustees decide that going to court would be unduly expensive.[167] In other cases, poorly capitalized lenders or brokers have gone out of business or lack the funds to buy back their old, nonperforming loans.[168] As a prominent industry attorney observed, "[I]f you purchase loans from small operators, there may not be much water in the well of their repentance. . . . If you do postclosing due diligence and you find 10 percent of your portfolio is affected, what loan broker, with no capitalization, can take back the loan?"[169]

Even when recourse is successful, investors have to worry about the quality of the replacement collateral. Lenders who accept recourse must substitute new loans for the bad loans. However, lenders often obtain deal provisions that allow them unilaterally to substitute collateral.[170] Thus, recourse provisions, which are supposed to give lenders incentives to desist from making predatory loans, actually enable lenders to substitute one bad loan for another. As one analyst warned,

> Once losses eat through the original equity investment, the trading desk has a huge incentive to stuff the portfolio with high margin, risky assets to maximize the residual cash flows. If investors choose to participate in these deals, they need to carefully examine the structural handcuffs that will prevent [such] trading . . . .[171]

Finally, even if a lender does take back a predatory loan, it will not necessarily lose money. If the borrower still has equity in the home, the lender may persuade him or her to refinance the loan, extract new, large fees, and eventually foreclose.[172]

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defined as historical levels of losses—then the "true sale" requirement will be defeated. *See, e.g.*, Bjerre, *supra* note 2, at 417.

167. Interview with Kevin Byers, *supra* note 166. Securitized trusts are more willing to enforce recourse provisions when the market for mortgage-backed securities softens and default risks rise. Jesse Eisinger, *Mortgage Market Begins to See Cracks as Subprime-Loan Problems Emerge*, Wall St. J., Aug. 30, 2006, at C1. In the experience of one of the authors, however, recourse negotiations can take up to two years and still may not result in full recourse.

168. *See* Eggert, *supra* note 2, at 549, 556; *Roundtable: Vendors on New Prevention Tools, New Scams*, Am. Banker, Dec. 9, 2005, at 11, 12 [hereinafter *Roundtable*] (describing "the ease with which [mortgage] entities morph into different businesses"); Shenn, *supra* note 123, at 1.

169. DeZube, *supra* note 103, at 32.

170. S&P, Rating Affirmations and Their Impact on Investors (Apr. 20, 2005). Such clauses are permissible in Financial Asset Securitization Investment Trust (FASIT) structures, which Congress conferred with favored tax status in the Small Business Job Protection Act of 1996. *See* Phillip R. Pollock & Michael E. Shaff, *FASIT Flexibility Applied to Subprime Securitizations*, *in* Subprime Consumer Lending, *supra* note 123, at 155, 156-57 (stating that a "major benefit of FASITs over REMICs is the ability to add or substitute assets to the structure after the startup period and to remove collateral").

171. Tavakoli, *supra* note 129, at 263.

172. Non-bank lenders, in particular, are willing to pursue foreclosure aggressively. *See, e.g.*, David Leonhardt, *Lenders Trying an Alternative to Foreclosure*, N.Y. Times, May 4, 2002, at A1 (stating that "banks, which service many [loans in default, have] a variety of financial incentives to work out new terms and avoid foreclosure" and contrasting predatory lenders, who are willing to aggressively foreclose).

E. *Retained Servicing Rights Are Not the Norm*

It is rare these days for lenders to retain servicing rights. Today, the loan servicing industry is highly concentrated, largely due to economies of scale. Rather than insist that lenders retain servicing rights—as a way to discipline lenders—investors or bond insurers usually press them to employ outside master servicers to ensure a high level of servicing.[173] As a result, the originator's loan servicing rights are generally sold for a fee to one of a small group of specialist firms in the field.[174] Thus, high potential servicing costs are not disincentives to lenders making predatory loans.

F. *Excess Demand for Subprime Securitizations*

Excess demand is a final reason why investors do not screen subprime RMBS for predatory practices. In 2004, for instance, S&P observed that "the market for subprime mortgage securities [experienced] significantly more demand than availability for many issuances."[175] Other observers concur that the market for subprime RMBS suffers from excess demand.[176]

Rule 144A private placements are in short supply because they offer liquidity. In addition, there is a clamor for subprime RMBS of all types, driven by portfolio regulation of institutional investors such as banks and insurance companies. Many institutional investors have legal limits on the types of investments they can buy for their own account.[177] Given those limits, high yields make subprime RMBS attractive,[178] particularly when other legal investments are in the doldrums. Because the demand for bonds in subprime securitizations exceeds supply, investors are willing to purchase bonds without engaging in thorough due diligence.

In sum, the risk management mechanisms used by securitization do not trickle down to deter lending abuses. At the same time, structured finance

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173. *See* McCall & Blum, *supra* note 34, at 145.

174. *See* Eggert, *supra* note 2, at 544.

175. S&P, Trends in U.S. Residential Mortgage Products: Subprime Sector, Fourth-Quarter 2004, at 3 (Apr. 12, 2005).

176. *See* Morse, *Not Exactly Prime*, *supra* note 109, at 63 ("All this investor interest in subprime loans is propelled by the mountain of money piling up on the sidelines of the stock market, fearing entry into that uninviting terrain. 'Mutual funds, hedge funds, private-equity funds are sitting on a tremendous amount of liquidity,' says Kenneth Slosser, managing director of investment banking at Friedman, Billings, Ramsey & Co., Inc., Irvine, California."); Allison Pyburn, *Spread Debate Dominates Global ABS Conference in Barcelona*, Asset Securitization Rep., June 20, 2005; *see also* Lupica, *supra* note 1, at 630.

177. *See, e.g.*, Patricia A. McCoy, Banking Law Manual: Federal Regulation of Financial Holding Companies, Banks and Thrifts § 7.03[1] (2d ed. 2001); Howell E. Jackson, *Regulation in a Multisectored Financial Services Industry: An Exploratory Essay*, 77 Wash. U. L.Q. 319, 352-56 (1999).

178. *See, e.g.*, Vikas Bajaj, *Mortgages Grow Riskier, and Investors Are Attracted*, N.Y. Times, Sept. 6, 2006, at C1; Simon et al., *supra* note 123 ("[I]n an era of low returns, mortgage-backed securities offer yield-starved investors much higher returns than government bonds."); Banc of Am. Sec., ABS Research Note, 2 (Feb. 8, 2005) (reporting that in 1994, "subprime home equity ABS was the best performing ABS sector, followed by credit card ABS and auto ABS sectors").

protects investors so well that S&P routinely assures investors that subprime RMBS "should continue to perform in accordance with expectations, given the advances in loan level modeling, structural safeguards, and improvement in loss mitigation techniques."[179]

VII. NORMATIVE JUSTIFICATIONS FOR INTERVENTION IN RESIDENTIAL MORTGAGE SECURITIZATIONS

Securitization successfully protects investors and reaps profits for rating agencies, lenders, and investment banks, without protecting borrowers from abusive loans. This situation gives rise to the question: Should the law create incentives for securitizers to detect and protect against predatory lending? For the reasons that follow, we answer this question in the affirmative.

A. *Predatory Lending Harms Borrowers and Imposes External Costs on Communities*

Under the current legal regime, borrowers, neighborhoods, and cities bear the brunt of abusive lending, while securitization insulates investors from having to internalize those costs. When lenders make loans that borrowers cannot afford to repay, borrowers can lose their homes to foreclosure. Others keep their homes only by reducing spending on necessities such as health insurance, medical bills, day care, and critical home repairs. When predatory lending results in vacant homes and neighborhood decline, cities lose tax revenues and must pay for added police protection and other city services.[180] The total annual cost to homeowners and cities is in the billions of dollars.[181]

B. *The Secondary Market Can More Efficiently Bear the Costs of Policing Predatory Lenders*

The deregulation of home mortgage loans and the growth of nontraditional lending have impeded comparison-shopping and enabled lenders to market loans with complex terms that borrowers do not understand.[182] As a result, many borrowers enter into complex loans without understanding the terms or their repayment obligations. Currently, the only effective way for borrowers to ensure that they are not entering into predatory loans is to hire lawyers, costing several hundred dollars apiece to review the loan terms and advise them to walk out of closings if loan terms prove abusive.

179. S&P, *supra* note 175, at 5.
180. *See* Engel, *supra* note 12, at 356-60.
181. *See* Quercia, Stegman & Davis, *supra* note 4, at 5, 27; Eric Stein, Quantifying the Economic Cost of Predatory Lending (2001) (unpublished manuscript, on file with the Fordham Law Review) (estimating losses from predatory lending at $9.1 billion annually).
182. *See* Engel & McCoy, *supra* note 13, at 1275, 1311-12.

In contrast, the cost of screening out predatory loans from securitized loan pools is minimal.[183] One study estimated that manual review of a loan file for predatory terms cost $43, or about three percent of origination costs.[184] The same study found that automated review cost approximately one dollar per loan.[185] Thus, unlike borrower attorneys, who must review individual closing files at substantial cost, securitizers can capture increasing returns to scale by purchasing technology that electronically reviews files at a fraction of lawyers' costs.

C. *Securitization Impedes Borrowers' Ability to Obtain Relief from Predatory Loans*

Thinly capitalized lenders and brokers have the most to gain from securitization because they lack other forms of financing.[186] For undercapitalized firms, securitization has two important effects. First, it enables them to enter the subprime industry by providing them with financing.[187] Second, it enables them to stay in operation despite low capital because they can plow the proceeds from securitization into a fresh set of loans, which in turn can be securitized. In the process, originators can render themselves judgment-proof from lawsuits by borrowers by continually shedding their assets through securitization, distributing the profits to shareholders, and draining the company of capital.[188] As one

183. *See* Lisa Keyfetz, *The Home Ownership and Equity Protection Act of 1994: Extending Liability for Predatory Subprime Loans to Secondary Mortgage Market Participants*, 18 Loy. Consumer L. Rev. 151, 168-69 (2005) (noting that secondary market actors are in better positions than borrowers to detect "bad" lenders); Siddhartha Venkatesan, *Abrogating the Holder in Due Course Doctrine in Subprime Mortgage Transactions to More Effectively Police Predatory Lending*, 7 N.Y.U. J. Legis. & Pub. Pol'y 177, 207-08 (2003) (discussing ways the secondary market can spread the cost of assignee liability).

184. *See* Delvin M. Davis & Ellen Schloemer, Ctr. for Responsible Lending, Strong Compliance Systems Support Profitable Lending While Reducing Predatory Practices 6 (2005), *available at* http://www.responsiblelending.org/pdfs/ip010-Compliance_Costs-0705.pdf.

185. *Id.* In a study of mortgage origination costs, the Mortgage Bankers Association reported that the net operational origination cost averaged $1,485 per loan in 2004. *See* Press Release, Mortgage Bankers Ass'n, MBA Releases Annual Cost Study (Oct. 12, 2005), *available at* http://www.mortgagebankers.org/NewsandMedia/PressCenter/32173.htm.

186. Hill, *supra* note 15, at 1065-66, 1073, 1086, 1092-94, 1100, 1102, 1109; Lupica, *supra* note 1, at 627, 629-31; *see also* Eggert, *supra* note 2, at 546, 556-57.

187. As Freddie Mac's former chairman Leland Brendsel observed, "[R]elatively little capital is required to start a mortgage banking operation . . . and even less to become a mortgage broker. Lenders lacking the necessary net worth can still originate loans for lenders qualified to sell into the secondary market." Leland C. Brendsel, *Securitization's Role in Housing Finance: The Special Contributions of the Government-Sponsored Enterprises*, *in* A Primer on Securitization, *supra* note 37, at 19, 24.

188. When originators dissolve or go bankrupt, borrowers have little or no real recourse. *See* Erick Bergquist, *Guess What? Loan Buyers Liable Under Federal Law*, Am. Banker, May 7, 2004, at 1.

commentator put it, "Securitization's structure is designed to divert value away from the originator."[189]

Even when originators can pay judgments against them, borrowers may not be able to obtain meaningful relief. A lawsuit against the original lender or broker cannot halt a foreclosure by the securitized trust. Similarly, rescission or reformation may be difficult or impossible if loans are part of securitized loan pools.[190]

D. *Securitization Impedes Work-Outs with Injured Borrowers*

Securitization complicates and often blocks work-outs with borrowers who are harmed by predatory loans.[191] This is because the underlying securitization contracts tie the trustee's and servicer's hands if they attempt to negotiate a repayment plan in lieu of foreclosure. The value of the securities and the amount of their returns are based on cash flows that are determined, in part, by the loan terms. To protect these cash flows, securitization contracts typically prohibit changes to the terms of the underlying loans. In addition, securitization contracts often prohibit servicers from waiving prepayment penalties and other loan provisions.

Another roadblock arises when subprime lenders securitize prepayment penalties through bonds known as Net Interest Margin Securities (NIMS).[192] If a borrower seeks reformation of a predatory loan, the reformation could be deemed a prepayment, thus triggering prepayment penalties. Theoretically, the prepayment penalties could be waived as part of the work-out. However, if the prepayment penalties have been securitized in a NIMS, contractually they cannot be waived. S&P has assured this by insisting that issuers and servicers provide representations and warranties that they will rigidly enforce the prepayment penalties being securitized.[193]

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189. Lupica, *supra* note 1, at 598; *see also* Iacobucci & Winter, *supra* note 15, at 170; LoPucki, *supra* note 1, at 25-30.

190. *See* Eggert, *supra* note 2, at 560-66 (discussing the difficulty borrowers encounter if they seek to restructure a loan that has been securitized).

191. *Id. See generally* Eggert, *supra* note 27.

192. *See, e.g.*, S&P, Legal Criteria Reaffirmed for the Securitization of Prepayment Penalties 1 (May 29, 2002); Press Release, Risk World, Standard & Poors Rates First NIMS Transaction 1 (June 1, 2005), *available at* http://www.riskworld.com/PressRel/2000/00q3/PR00a059.htm; Vanderbilt Capital Advisors, Net Interest Margin (NIMs), http://www.vcallc.com/mailings/additions/net_interest.htm (last visited Feb. 28, 2007).

193. S&P does allow for exceptions in two instances, both of which erect high barriers to workouts. First, S&P permits waiver where forgiveness would "maximize recovery of total proceeds" and is "standard and customary in servicing similar home equity loans." Press Release, S&P, Standard & Poor's Clarifies Criteria For Prepayment Penalty Income In U.S. NIMs Transactions (2005). Second, a NIMS based on prepayment penalty income can "allow the servicer/master servicer to waive prepayment penalties for any other reason," but only at a steep price. *Id.* In such cases, S&P requires the issuer either to obtain a guarantee or deposit funds in escrow to replace any missing future revenues from prepayment penalties. *See id.*

Finally, servicers have reduced incentives to assist borrowers who go into default. Servicers can earn higher fees if they march borrowers to foreclosure rather than reform the borrowers' loan terms or reschedule payments. In short, securitization creates rigidities that make loan work-outs difficult and often well nigh impossible.

E. *Securitization Causes Borrowers to Pay an Excess Risk Premium*

Pricing anomalies in the subprime market provide additional support for our assignee liability proposal. As we discussed, borrowers in the subprime market often pay prices that exceed their actual risk. For instance, excess risk premiums arise when originators steer prime-eligible borrowers to subprime loans. Excess premiums also arise when lenders impose prepayment penalties on borrowers that are not justified by risk or trade-offs for lower interest rates. To compound this situation, NIMS make subprime home loans more expensive by creating a strong, artificial demand for costly prepayment penalties that result in hefty fees to borrowers if the penalties are triggered. Ultimately, as excess risk premiums push up loan costs to borrowers, their default risk rises, too.[194] Because securitization creates incentives for lenders to extract rents from borrowers, securitization should bear responsibility for the added default risk.

F. *The Holder-In-Due-Course Rule Creates Inequities*

The holder-in-due-course rule also creates inequities when loans are securitized. When loans are sold, borrowers lose the ability to assert various defenses and affirmative claims against the new holders of the loans. Thus, the very fact of the loan sale increases the value of the loan to the assignee with no direct benefit to the borrower. At the same time, the borrower is harmed by the loss of full legal relief for a problem loan. The impact of the holder-in-due-course rule becomes particularly perverse when it prevents borrowers from defending foreclosure actions by assignees.

Ultimately, borrowers have no control over whether their loans are sold or held by lenders in portfolio. As a matter of fairness, the law should not prevent borrowers from obtaining complete relief from abusive loans, especially because securitization creates added incentives toward predatory lending.

194. *See* Donald R. Haurin & Stuart S. Rosenthal, The Growth Earnings of Low-Income Households and the Sensitivity of Their Homeownership Choices to Economic and Socio-Demographic Shocks 18 (Apr. 2005) (unpublished manuscript, on file with the Fordham Law Review), *available at* http://www.huduser.org/Publications/pdf/EarningsOfLow-IncomeHouseholds.pdf (noting that when an adjustable rate mortgage adjusts upwards following closing, each percentage point increase makes it thirty percent more likely that a household will terminate homeownership and return to being renters).

G. *Subprime Borrowers Lack Effective Bargaining Power*

The marketing techniques that subprime lenders and brokers employ often impede borrowers' ability to comparison shop and bargain for loans. The most abusive loans are targeted at unsophisticated people who believe that their ability to borrow money is limited.[195] This targeting, coupled with high pressure tactics, such as promoting time-limited deals that require borrowers to commit or lose the option to borrow at "special" rates, leads borrowers to pay application fees immediately and commit to loans that may not be in their best interests. Once the loan application process begins, borrowers become psychologically committed to the loans and, depending on the size of the application fee and the borrowers' liquid assets, may not be able to afford to apply for another loan.[196]

At the time of application, subprime lenders typically reveal only the vaguest of terms to borrowers, waiting until closing to disclose the final provisions. These last-minute changes in loan terms are problematic on several fronts. First, borrowers are boundedly rational in the sense that they are able to process some, but not all, loan terms.[197] Typically, they focus on simple price terms, such as the monthly payment amount, and ignore other potentially onerous terms, like prepayment penalties.[198] Lenders can exploit these limits on borrowers' ability to absorb information to their advantage. Second, when the final loan terms are presented to borrowers at closing, essential terms are often obscured in the shuffle of complicated loan papers. Many borrowers may believe that they are obligated to enter the loan at closing even though the law permits them to walk away from the closing or rescind the loan within three days of the closing. Others, who may have experienced credit discrimination or who worry that their access to credit is limited, may fear that they will lose access to future credit if they reject proffered loans.[199] The secondary market benefits from the resulting one-sided contracts and, therefore, should be responsible for some of the damage these contract terms cause.

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195. This targeting is often race-based. *See* Bocian, Ernst & Li, *supra* note 26, at 3-5; Kathleen C. Engel & Patricia A. McCoy, From Credit Denial to Predatory Lending: The Challenge of Sustaining Minority Homeownership 35-38 (2006) (unpublished manuscript, on file with the Fordham Law Review) (discussing numerous studies on the link between subprime lending and race); *see also* Complaint at 9, Nat'l Cmty. Reinvestment Coal. v. Allied Home Mortgage Capital Corp. (June 14, 2006), *available at* http://www.ncrc.org/pressandpubs/press_releases/documents/2006/HUDComplaint.pdf.

196. Engel & McCoy, *supra* note 13, at 1283.

197. Susan Block-Lieb & Edward J. Janger, *The Myth of the Rational Borrower: Rationality, Behavioralism, and the Misguided "Reform" of Bankruptcy Law*, 84 Tex. L. Rev. 1481, 1530 (2006).

198. *Id.* at 1539-40. *See generally* Russell Korobkin, *Bounded Rationality, Standard Form Contracts, and Unconscionability*, 70 U. Chi. L. Rev. 1203, 1225-44 (2003) (describing how bounded rationality can lead to contract terms that favor sellers at the expense of unwitting buyers).

199. Engel & McCoy, *supra* note 195, at 30-31.

In sum, although securitization has enabled many people to obtain loans who, in pre-securitization days, could not secure loans, it has also helped to spawn predatory lending and has impeded the ability of borrowers to obtain meaningful relief from abusive loans. These inequities, the other negative externalities that predatory lending imposes on borrowers and cities, and the unwillingness of the secondary market to police predatory lenders effectively justify imposing liability on assignees.

VIII. AN ASSIGNEE LIABILITY PROPOSAL

In the nonconforming market, experience has shown that abusive loans will continue to be securitized unless the law creates incentives to screen out predatory loans. Furthermore, the time has come to hold the secondary market responsible for policing lenders. Accordingly, we propose a system of assignee liability that rewards entities that engage in due diligence designed to detect loans with abusive terms. Our proposal would impose extensive liability on assignees that failed to adopt the due diligence standards we discuss below and would cap liability for those assignees that complied with the specifications we outline.

A. *Considerations When Designing a Due Diligence Standard for Securitizing Residential Mortgage Loans*

In formulating a due diligence standard for securitizing home loans, several considerations must be kept in mind. First, any due diligence standard should ideally contemplate individual loan review. Second, a screening standard must be cost-effective. Any standard that is expensive would counteract the goal of combating abusive lending by pushing up the cost of home loans. Third, screening requires adoption of strong nationwide standards making clear what constitutes a predatory term or practice. Fourth, screening should only apply to abusive terms and practices that are capable of detection on a cost-effective basis. As we recognize, some types of mortgage fraud are not amenable to advance screening. Finally, screening should be adaptable to the to-be-announced and Rule 144A markets.

1. Cost-Effective Screening of Individual Loans

Ideally, due diligence should aspire to more than facial compliance. In particular, it should check for actual compliance with anti-predatory lending criteria by reviewing all individual loans in the loan pool. There are two methods of verifying actual compliance: automated compliance and manual inspection. Each method has its advantages and flaws.

Automated compliance systems have recently come to the fore. These systems check every loan for compliance with state and local anti-predatory laws, federal disclosure laws, and other criteria designated by the lender or

investor.[200] The advances in automated compliance followed the recent spate of state anti-predatory lending laws.

Loan aggregators and investment banks use several different automated compliance systems to screen tapes with data on individual loans.[201] LendTech by ARC Systems, for example, provides individually tailored automatic underwriting and due diligence systems to lenders, wholesalers, investment bankers, and investors.[202] LendTech allows lenders to "upload credit and mortgage applications with a full credit file into the automated model" in advance of warehousing or securitizing their loans.[203] A competing product, ComplianceAnalyzer, is "a pre-close, automated, transaction-level approach" to regulatory compliance.[204] The premier version, known as ComplianceAnalyzer Plus, furnishes "lenders, investors, and securitizers [with] comprehensive regulatory compliance auditing (including 'high-cost' and 'anti-predatory' lending legislation)."[205] The manufacturer of the premier line, ComplianceEase, is so confident about its ability to assure compliance that it offers "a comprehensive and flexible warranty backed by an A.M. Best "A-" or better (Excellent) rated insurer. Each loan can be covered up to $250,000 and the coverage is also easily transferable to secondary market investors."[206] Other automated compliance systems include InvestorServices by CoreLogic, High Cost Analyzer by Clayton, 2Comply by Mavent, and Wiz Sentinel by PCi Corporation.[207] These automated compliance review programs can screen loans for one dollar a loan and probably less.[208]

200. Indeed, Fitch considers it "virtually impossible for originators of any meaningful size to monitor compliance with predatory lending laws, as is required on a loan-level basis, without the assistance of technology." FitchRatings, Can You See Me Now?, *supra* note 135.

201. *See* Erick Bergquist, *Some Lenders Turning to Compliance Software*, Am. Banker, Apr. 1, 2003, at 12; Mary Dum, *ARC Helps PCFS Get the Brass Ring*, Mortgage Tech., Aug.-Sept. 2003, at 41; Anthony Garritano, *Automating the LAW: Mavent Drills Compliance Down to a Few Clicks*, Mortgage Tech., Jan.-Feb. 2005, at 30; *see also* Morse, *Not Exactly Prime*, *supra* note 109. Since the late 1990s, S&P has required issuers to provide S&P with data tapes containing loan level data with a variety of data fields, including credit risk and credit scores. S&P uses the data tapes to assign risk grades to each loan in a loan pool under its automated LEVELS credit scoring model. *See, e.g.*, Raiter, *supra* note 123, at 147.

202. *See* ARC Systems, Products & Services, http://www.arcsystems.com/products.htm (last visited Feb. 28, 2007).

203. Dum, *supra* note 201, at 41; *see* ARC Systems, LendTech Investor, http://www.arcsystems.com/lt_investor_matrix.htm (last visited Feb. 28, 2007).

204. ComplianceEase, ComplianceAnalyzer®: Automated Compliance Solutions, http://www.complianceease.com/mainsite/prod/prod_ca_overview.jsp?content=/opencms/CEContent/prod/prod_ca_overview_m.jsp&right=/opencms/CEContent/prod/r_critical_decision.jsp (last visited Feb. 12, 2007).

205. ComplianceEase, ComplianceAnalyzer® Plus with AssureCert® Protection, http://www.complianceease.com/mainsite/prod/prod_ac_overview.jsp?content=/opencms/CEContent/prod/prod_ac_overview_m.jsp&right=/opencms/CEContent/prod/r_verify_assurecert.jsp (last visited Feb. 12, 2007).

206. *Id.*

207. *See* Davis & Schloemer, *supra* note 184, at 8 tbl.2.

208. *See id.* at 6, 12 nn.21-24.

Some major lenders have already adopted these systems in order to meet legal compliance criteria that Fitch and S&P have imposed on residential mortgage securitizations.[209] Secondary market adoption of automated compliance puts pressure on brokers and lenders to adopt the same safeguards. As one observer put it,

> You know, the money controls the game. . . . [I]f an investor is using tools . . . then the broker or the originator will want to use that tool, too. Not for any ethical reasons or not for any obligation to the investor or anything. Because they want to close that loan, and they want to move that loan. The only reason. Hey, whatever it takes.[210]

Automated compliance is not enough, however. "[L]oans may slip through the cracks" of automated compliance if data is entered incorrectly or too late for review or if the software does not apply the correct legal test.[211] Accordingly, due diligence should augment automated systems with manual inspections of loans and tests to confirm that the right legal filters are in place.

In manual inspection, a compliance team makes an on-site inspection of physical loan files and supporting documentation. One advantage of manual inspection is that it can detect some types of loan fraud that automated compliance cannot.[212] However, manual inspection is time-intensive, taking on average thirty to forty-five minutes per loan.[213] While manual inspection could be performed on every loan, normally it is limited to a sample of loans due to cost concerns.[214] Although manual review costs more than automated screening, it is not financially prohibitive, costing about $43 per loan.[215]

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209. *See id.* at 8 & tbl.2, 9. The GAO casts doubt on the effectiveness of automated compliance systems on grounds that "data tapes used for loan reviews do not include point and fee information." *See* GAO, *supra* note 109, at 79. Whether the GAO's assertion is true, it is beside the point. While the data tapes that lenders provide to rating agencies vary in the extent to which they contain fee information, automated compliance systems must and do review points and fees to ascertain compliance with Truth in Lending Act disclosures and high-cost statutes such as HOEPA and state equivalents that have points and fees triggers. For example, ComplianceEase recalculates the annual percentage rate using the interest rate and finance charges from the actual loan documents. *See* Press Release, ComplianceEase Offers Predatory Lending Compliance Certification for Wall Street Rating Agencies (June 20, 2003), *available at* http://www.complianceease.com/mainsite/about/news/cenews_20030620_m.jsp.

210. *See Roundtable, supra* note 168, at 14.

211. *See* FitchRatings, *supra* note 200, at 2.

212. *See infra* note 228 and accompanying text.

213. *See* Davis & Schloemer, *supra* note 184, at 6-7, 12 n.21.

214. When subprime RMBS underwriters do examine loan files manually, normally they "don't do due diligence on every single loan in a pool; at most, they do a random sample of, say, 3% of the loans." Shepherd, *supra* note 29, at 4.

215. *See* Davis & Schloemer, *supra* note 184, at 6 & n.21.

2. Meaningful Screening Requires Adoption of Strict National Anti-predatory Lending Standards

Automated compliance systems and manual due diligence are designed to verify compliance with federal, state, and local consumer protection laws, including anti-predatory lending laws. However, the current patchwork of federal, state, and local laws leaves many lending abuses unregulated.[216] Further, the private-label secondary market does not screen out loans with abusive features unless those abuses are unlawful.

Thus, for screening effectively to curtail predatory lending wherever it occurs, it is necessary to adopt a strong set of anti-predatory lending standards that apply to home loans throughout the country. Ideally such standards would be adopted directly through federal legislation,[217] but a federal anti-predatory lending statute is not the only way to institute standards with broad national effect. Other avenues might include a uniform state law or a joint rulemaking by federal banking regulators and the Federal Trade Commission declaring predatory practices illegal under the Federal Trade Commission Act. Similarly, laws could specifically prohibit rating agencies from rating loan pools that contain loans with specified predatory terms or require the mortgage industry to adopt anti-predatory lending standards that it would enforce through a self-regulatory organization. However such standards are accomplished, effective screening will not take place until nationwide standards are adopted.

3. Screening and Its Limitations

Screening cannot detect every predatory term or practice. Some types of fraud will pass through automated filters and even manual inspection without detection.[218] There are ways to uncover evidence of fraud, however, some of which are automated. For instance, Fannie Mae's and Freddie Mac's automated underwriting systems issue alerts when there are

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216. Even in states with strong anti-predatory lending laws, the effect of those laws is diluted by federal preemption rulings by federal banking regulators that exempt national banks, federal savings associations, and their operating subsidiaries from such state laws. *See, e.g.*, Arthur E. Wilmarth, Jr., *The OCC's Preemption Rules Exceed the Agency's Authority and Present a Serious Threat to the Dual Banking System and Consumer Protection*, 23 Ann. Rev. Banking & Fin. L. 225 (2004).

217. For discussion of the contents of such a law, see Engel & McCoy, *supra* note 13, at 1317-63, where we proposed a federal suitability standard for subprime mortgages. In addition, HOEPA and its implementing regulations, the anti-predatory lending laws of a number of states, including North Carolina, New York, New Jersey, and Massachusetts, the screening criteria used by Fannie Mae and Freddie Mac, and the regulations for Veterans Administration loans provide an array of anti-predatory lending standards on which screening standards could be modeled. Those standards include limitations on abusive prepayment penalties, loan flipping schemes, asset-based lending, and balloon clauses. *Id.* at 1366-80.

218. *See, e.g.*, GAO, *supra* note 109, at 79. For a cogent description of mortgage fraud schemes, see U.S. Dep't of Justice, Financial Crimes Report to the Public D1-D12 (May 2005).

signs of an inflated appraisal, raising suspicions of property flipping or appraisal fraud.[219] Automation can also check for other types of fraud. A borrower's identity can be confirmed through an online search. A database maintained by Mortgage Asset Research Inc. lists past participants in mortgage fraud.[220] The Department of Housing and Urban Development (HUD) uses a "Neighborhood Watch" website to screen out originators who have histories of making Federal Housing Administration (FHA)-insured loans with high default rates.[221] CoreLogic issues a scorecard ranking every mortgage broker and appraiser on the past quality of their loans.[222] Automatic retrieval of records on loans by the same lender to the same borrower can be instrumental in uncovering loan flipping. These automated antifraud safeguards are powerful because they can be applied to every loan in a loan pool.

A new insurance product partners fraud detection programs with fraud insurance.[223] The Prieston Group (TPG) performs due diligence review of lenders and certifies those that have adopted best practices.[224] TPG also provides various services to assist lenders in preventing and detecting fraud.[225] As part of the package, TPG provides fraud insurance that follows loans when they are sold or securitized.[226] Such products can protect investors from the risk of fraud that may be difficult to detect.[227]

Manual inspection can help detect other types of loan fraud. For example, such inspection can detect whited-out information on loan applications, a telltale sign of fraud. In inspections of no- or low-documentation loan files, Fitch has discovered documents with income and asset information blacked out. The inference is that the borrowers' income or assets were too low to qualify for a conventional loan. Due to these and similar fraud concerns, the Office of the Comptroller of the Currency advises lenders to inspect manually a sample of their loan files, particularly for loans that were sold by a broker or processed by inexperienced workers or temporary employees. Manual checks can also be used to verify Social Security numbers and assets and down payments.[228]

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219. *See* Erick Bergquist, *Identifying Soft Spots in Fight Against Fraud*, Am. Banker, Sept. 27, 2004, at 7; Jody Shenn, *Freddie Adds Suspicious-Valuation Alerts to LP*, Am. Banker, Oct. 22, 2004, at 7.

220. *See* Shenn, *supra* note 114, at 8m.

221. *See* Letter from HUD to All Approved Mortgagees, Enhancements to the Neighborhood Watch Early Warning System, Mortgagee Letter 2002-15 (July 17, 2002), *available at* http://www.hudclips.org/sub_nonhud/cgi/nph-brs.cgi?d=MLET&s1=02-15[no]&SECT1=TXTHLB&SECT5=MLET&u=./hudclips.cgi&p=1&r=1&f=G

222. *Roundtable*, *supra* note 168, at 12.

223. *See* Jody Shenn, *Fraud-Guard Venders Team Up*, Am. Banker, Oct. 19, 2004, at 12.

224. The Prieston Group, Lenders, http://www.priestongroup.com/app/public/lenders.jsp (last visited Feb. 10, 2007).

225. *Id.*

226. *Id.*

227. The Prieston Group, TPG Mortgage Assurance Solution, *available at* http://www.priestongroup.com/app/public/ (last visited Feb. 12, 2007).

228. *See Roundtable*, *supra* note 168; Shenn, *supra* note 114, at 6a.

When fraud slips undetected through due diligence, often it is possible for trustees to detect it later through post-closing monitoring. In the closing documents, lenders can be required to notify trustees of any complaints, government investigations, or enforcement orders involving their lending practices. Similarly, those contracts can give trustees the right to perform spot audits of loans when red flags of lending abuse appear post-sale.

Screening can be difficult when anti-predatory lending standards are vague. Examples include prohibitions on asset-based lending and refinancings with no tangible net benefit to the borrower that do not provide objective guidelines for determining compliance. Despite the difficulties these types of standards present, rating agencies have devised ways of rating loans from jurisdictions with imprecise lending standards.[229] It is also possible to devise objective measures to determine compliance with vague standards. The Veterans Administration, for V.A. loans, uses two quantitative tests—a debt-to-income ratio and a residual income test—to guard against asset-based lending.[230] Similarly, the Federal Reserve Board, in the regulations implementing HOEPA, regulates loan flipping by prohibiting a lender and any assignee from refinancing a HOEPA loan with another HOEPA loan within one year from closing.[231] Both of these standards are objective and thus capable of detection through automated compliance systems.

4. Tailoring Screening to the TBA and 144A Markets

The to-be-announced and Rule 144A markets present unique obstacles to screening, but these obstacles are not insurmountable. Because these markets do not contemplate presale screening, due diligence could take place post-sale. In a TBA offering, the lender and/or the trustee can do automated screening of loans immediately before loans are added to the loan pool. Similarly, in a Rule 144A offering, screening could be performed after the closing.

Nevertheless, screening poses a practical concern in both markets. In the TBA market, post-closing review means that investors lack the leverage they had before closing to walk away from the deal. When TBA offerings are structured as public offerings, the lenders have to provide disclosures and representations and warranties about the quality and legality of the loan

229. For example, S&P looks for factors mitigating aggressive enforcement of statutes, such as laws limiting recovery to a pattern or practice of violations, scienter requirements, an objective safe harbor, the litigation history of the law, or high proof or procedural hurdles to recovery. S&P will require more credit enhancements absent such mitigating factors. *See* S&P, *supra* note 135; *see also* Press Release, S&P, New Criteria Implemented for Including Anti-Predatory Lending Law Lns in U.S. Rtd SF Trans (May 13, 2004) [hereinafter S&P, New Criteria Implemented].

230. *See* 38 C.F.R. § 36.4337 (2006).

231. *See* 12 C.F.R. § 226.34(a)(3) (2006). While the rule recognizes an exception for refinancings that are "in the borrower's interest," essentially the one-year rule creates a rebuttable presumption that refinancings within one year violate HOEPA. *Id.*

pool. With those safeguards in hand, the trustee at least has the legal right to reject substandard loans from the loan pool. The real issue, then, is the transaction costs of enforcing those safeguards.

Matters are dicier in Rule 144A offerings. There, investors not only lack the leverage to walk away, but do not benefit from any presale disclosures or binding representations and warranties. Without those deal protections, investors have no contractual guarantee of the minimum quality of loans to be included in the loan pool. While Rule 144A investors and trustees could insist, after-the-fact, that any illegal loans be removed from the loan pool, their weak contract rights would undercut their bargaining position and likely result in prolonged negotiations to no effect. As we discuss in the next section, carefully tailored provisions imposing assignee liability for predatory lending would arm Rule 144A and other investors with the leverage they need to insist on adequate disclosures and binding representations and warranties.

B. *A Proposal for Assignee Liability in Residential Mortgage Securitizations*

1. Due Diligence

The time has come to adopt a national legal standard for due diligence in residential mortgage securitizations and wholesale purchases of home loans. We propose a due diligence standard with the following contours:

(i) Loan-Level Review for Actual Compliance: Due diligence should include review of every loan in a loan pool for compliance with substantive screening standards. Lenders and underwriters would have the choice of manual or automated screening. Most lenders, particularly larger lenders, would likely opt for automated screening. All residential loan pools would be subject to loan-level review in full, whether those pools contain prime or subprime loans.

(ii) Manual Screening for Other Signs of Fraud: Due diligence should further require manual screening of a random sample of loan files for other indicators of fraud. This review would be in addition to the automated or manual review just described. Indicators of fraud could include the whiting-out of critical underwriting information, inconsistent information, and suspect or absent documentation. The random sample should be sufficiently large to support statistical inferences within specified tolerances about the absence or presence of the type of fraud tested for in the loan pool.

(iii) Review for Facial Compliance: Before the advent of automated screening, due diligence by underwriters and rating agencies traditionally consisted of reviewing originators' loan products, sales and training manuals, underwriting policies, broker selection, oversight, compensation policies, and form loan contracts to verify compliance with consumer protection and lending laws. Such due diligence continues to remain

important. Indeed, in the Lehman Brothers case, FAMCO's scripted sales materials allegedly coached FAMCO's loan officers on how to make fraudulent sales pitches.[232] Accordingly, due diligence should retain review for facial compliance. In addition, this phase should review all lawsuits filed, other borrower complaints, and government investigations of or actions taken against the lender for alleged predatory lending practices.

(iv) Determine Outcomes: A well-functioning due diligence system sets benchmarks for how to respond to loans found to violate the screening criteria. In the event of isolated violations, any loan that violated the screening criteria would either have to be rejected from the loan pool or have the defect promptly corrected. Higher volumes of violations would require rejection of the entire loan pool and cancellation of the sale.[233]

(v) Adequate Representations and Warranties and Recourse Clauses Enforceable by the Trust: In addition to ensuring screening, lenders should be required to provide representations and warranties that all loans in the loan pool comply with all applicable laws, including the nationwide screening criteria. All representations and warranties should run to, and be enforceable by, the trustee on behalf of the securitized trust.[234]

(vi) Post-closing Monitoring: Due diligence should further require loan originators, loan aggregators, underwriters, and servicers of residential mortgage loan pools to provide written notice to the trustee of any borrower complaints, lawsuits, subpoenas, notices of government investigations, and enforcement orders involving any loans in the loan pool. In addition, trustees should be required to investigate lenders whose loans prove to have higher-than-average default, prepayment, and/or foreclosure rates than loans with comparable risk.[235]

We recognize that these standards form the outer parameters for workable due diligence and monitoring. Accordingly, we recommend that

232. Austin v. Chisick (*In re* First Alliance Mortgage Co.), 298 B.R. 652, 657-58 (Bankr. C.D. Cal. 2003) (findings of fact).

233. HUD has adopted this approach for Federal Housing Administration-insured loans. *See* Letter from HUD to All Approved Mortgagees, Due Diligence in Acquiring Loans, Mortgagee Letter 2002-21, at 5 (Sept. 26, 2002), *available at* http://www.hudclips.org/sub_nonhud/html/nph-brs.cgi?d=MLET&s1=02-$[no]&op1=AND &SECT1=TXTHLB&SECT5=MLET&u=../html/shortcut.htm&p=1&r=7&f=G.

234. Fannie Mae, Freddie Mac, and the Federal Housing Finance Board already require these contractual enforcement mechanisms. *See, e.g.*, Fed. Hous. Fin. Bd., Advisory Bull. 2005-AB-08 (Aug. 25, 2005), *available at* http://www.fhfb.gov/GetFile.aspx?FileID=4201; Fannie Mae, Lender Letter No. 03-00, *supra* note 143; Press Release, Freddie Mac, Freddie Mac Promotes Consumer Choice with New Subprime Mortgage Arbitration Policy, *supra* note 143; Press Release, Freddie Mac, Freddie Mac Will No Longer Invest in Subprime Mortgages with Prepayment Penalty Terms Greater Than Three Years, *supra* note 143; *cf.* HUD, *supra* note 233, at 5-6 (noting that best practices involve such provisions).

235. Post-purchase monitoring can effectively detect unusual patterns among loan pools. For example, in 2005, Freddie Mac observed unusually high prepayment rates on loans sold by National City Mortgage. Eric Dash, *Freddie Mac Purchased and Sold Faulty Loans*, N.Y. Times, Apr. 14, 2005, at C3. Elevated prepayment rates can be evidence that originators are engaging in loan flipping. *Id.* Further investigation revealed that one broker was responsible for the questionable loans. *Id.*

a federal agency be empowered to work out the nuts-and-bolts details of due diligence and monitoring through a rulemaking proceeding in which consumer advocates, lenders, and secondary market participants provide input into the types of controls that would best detect and deter predatory lending. Furthermore, that agency should be empowered to update due diligence and monitoring standards as circumstances and technology evolve.

2. Assignee Liability

Our assignee liability proposal aims to achieve three objectives. First, it would cause capital markets to internalize harm to borrowers from financing abusive loans. Second, it would restore the full panoply of remedies to borrowers that they had before their loans were securitized. Finally, it would foster certainty by establishing bright-line rules enabling assignees to estimate their potential liability for any predatory lending claims.

a. *Which Claims Would Be Subject to Assignee Liability?*

Although borrowers can harness an array of claims against originators for predatory lending, we propose extending assignee liability only to specific causes of action. These causes of action are: (1) common law tort claims, such as fraud and improvident lending; (2) contract claims such as unconscionability; and (3) claims under state and local anti-predatory lending laws. In addition, we would impose liability on assignees for violations of a national suitability standard that we previously proposed.[236] This standard, which is akin to the suitability doctrine in securities regulation, would prohibit originators from making unsuitable loans to borrowers.

At this point, we do not propose altering or expanding assignee liability under federal or state antidiscrimination, disclosure, or unfair and deceptive trade practices laws. Doing so would require amending a multitude of statutes. In addition, caution suggests that this foray into federal assignee liability laws not be sweeping. After there has been time for adequate study of the impact of our proposal, policymakers could consider harmonizing assignee liability standards for discrimination, disclosure, and consumer protection claims to reflect the expanding class of market participants who should be liable under the statutes.

Finally, our proposal would operate as a floor, not a ceiling, and thus would not preempt any stricter assignee liability provisions under state or federal lending laws,[237] such as HOEPA.

236. Engel & McCoy, *supra* note 13, at 1317-39.

237. *See* Azmy, *supra* note 70, at 390-404 (discussing how state lending laws provide opportunities to assess the effect of various approaches to regulating lending practices).

b. *Remedies Available Against Assignees*

Trusts that complied with the due diligence and monitoring standards outlined above would be liable for the same declaratory and equitable relief that borrowers could seek against their original lenders or brokers, including rescission and reformation. Borrowers could also obtain compensatory relief to the extent their damages were calculable. Thus, we would permit recovery of relocation expenses, lost equity, excess fees, interest payments, and late payment fees, but not recovery against assignees for emotional distress. We would also permit prevailing borrowers to recover attorneys' fees. Importantly, trusts that employed our due diligence methods would not be subject to punitive damages or statutory penalties that were punitive in nature. This limitation would apply even if the underlying cause of action permitted punitive remedies against brokers or lenders. Conversely, trusts that failed to check all due diligence criteria would be liable for treble damages or other inflation-adjusted numeric statutory penalties, whichever were greater. In no case could indeterminate punitive damages or penalties be assessed against assignees.

Our liability proposal is subject to three provisos. First, assignees could not escape liability by returning the abusive loan in question to the lender under a recourse or other comparable clause and then raising the defense that they no longer owned the loan.[238] Second, borrowers would not need to demonstrate a pattern or practice of weak controls across multiple securitizations in order to assert a claim or defense against an assignee. Lax due diligence in their own securitization would be enough to support treble damages or a statutory penalty. Lastly, none of the limitations on the claims that borrowers could assert against assignees or the relief to which they would be entitled would apply to claims against brokers or lenders.

c. *Comparison to Existing Assignee Liability Provisions*

Assignee liability for predatory lending already exists on a limited scale. The federal government, through HOEPA, and numerous states and cities have adopted anti-predatory lending laws that contain assignee liability provisions. Our proposal differs from these laws in several respects. We contend our proposal offers a more effective approach to assignee liability.

First, our proposal would extend assignee liability to all abusive loans nationwide, including loans that do not meet the HOEPA or state law definitions of "high-cost" loans. Second, our proposal would enable rating agencies to predict potential assignee liability and thus allay secondary market concerns about indeterminate relief. Finally, our due diligence provisions would impose the greatest liability on the assignees least willing to police lenders.

238. The assignees could implead originators, however.

HOEPA and most state and local assignee liability laws apply only to so-called "high-cost" loans that exceed specific interest rate or points and fees triggers. HOEPA only applies to refinance loans[239] where the annual percentage rate at origination exceeds the yield on Treasury securities of comparable maturity plus eight percent on first-lien loans or where the total points and fees exceed eight percent of the total loan amount or $547 (in 2007), whichever is greater.[240] Lenders who make HOEPA loans are limited or precluded from making loans with balloon payments, prepayment penalties, negative amortization, and other potentially onerous terms.[241] Assignees of HOEPA loans are liable for

> all claims and defenses . . . the consumer could assert against the creditor of the mortgage, unless [the assignees] demonstrate, by a preponderance of the evidence, that a reasonable person exercising ordinary due diligence, could not determine, based on the documentation required by this [subchapter], the itemization of the amount financed, and other disclosure of disbursements that the mortgage [was a HOEPA loan].[242]

Many state and local anti-predatory lending statutes and ordinances track HOEPA's structure. Some have adopted HOEPA's triggers.[243] Most other state and local laws have modified the criteria for covered loans, including lower triggers,[244] broader definitions of the fees trigger,[245] and imposing maximum loan amounts in the definition of high-cost loans.[246] Many have also enlarged the list of prohibited practices for "covered" loans.[247]

Just as the triggers and other provisions in state and local anti-predatory lending laws take a range of approaches, so do state assignee liability laws. Some states insulate assignees from all liability for abusive loans. Among states that do permit assignee liability, most impose liability only for "high-cost" loans, as defined by statute. The conditions under which assignees may be liable for abusive lending and the remedies available against them vary widely. Some laws exempt assignees from liability if they engage in due diligence to keep "high-cost" loans out of loan pools. Others only cap the liability of assignees who engage in due diligence. Depending on the jurisdiction, assignees who fail to meet the laws' due diligence standards may face very limited damages or indeterminate punitive sanctions and damages awards. Still other jurisdictions have no due diligence standard and restrict the scope of assignee liability. Finally, a couple of cities have

239. 15 U.S.C. §§ 1602(i), (w), (bb) (2000); 12 C.F.R. § 226.32(a)(2) (2006).

240. 15 U.S.C. §§ 1602(aa)(1)-(aa)(4); 12 C.F.R. §§ 226.32(a)(1), (b)(1); Truth in Lending, 71 Fed. Reg. 46388 (2006). *See generally* Eugene J. Kelley et al., *An Overview of HOEPA, Old and New*, 59 Consumer Fin. L.Q. Rep. 203 (2005).

241. 15 U.S.C. § 1639 (2000).

242. *Id.* § 1641(d)(1).

243. *See, e.g.*, Me. Rev. Stat. Ann., tit. 9-A, § 8-103(1)(F-1) (1997).

244. *See, e.g.*, N.M. Stat. Ann. §§ 58-21A-3(H), (L) (LexisNexis Supp. 2003).

245. *See, e.g.*, 815 Ill. Comp. Stat. Ann. 137/10 (West Supp. 2006).

246. *See, e.g.*, Ark. Code Ann. § 23-53-103(5)(A) (Supp. 2005).

247. *See, e.g.*, Ky. Rev. Stat. Ann. § 360.100(2) (LexisNexis Supp. 2005).

passed ordinances that imposed strict liability on assignees with no safe harbors or limitations on available remedies.

California's Financial Code explicitly exempts assignees from any claims arising under its law restricting abusive loan terms so long as they are holders in due course or "chartered by Congress to engage in secondary mortgage market transactions."[248] In contrast, Georgia provides assignees with a safe harbor for reasonable due diligence. Under its state anti-predatory lending statute, borrowers with "high-cost" loans can bring any claims and raise any defenses against assignees that they could raise against loan originators,

> unless the purchaser or holder demonstrates, by a preponderance of the evidence, that the purchaser or holder exercised reasonable due diligence at the time of purchase of the home loans, or within a reasonable time thereafter, intended to prevent the purchaser or holder from purchasing or taking assignment of high-cost home loans.[249]

Conversely, if assignees fail to engage in the prescribed due diligence, borrowers can obtain equitable relief, the balance of the amount due on their loan, and reasonable attorneys' fees.[250]

Another approach is to allow limited assignee liability even when assignees engage in due diligence. This is the approach New Jersey took in its Home Ownership Security Act. The law insulates assignees from almost all liability for "high-cost" loans if they meet due diligence requirements designed to screen out "high-cost" loans.[251] The law does, however, provide two exceptions. The first permits borrowers to assert claims against all assignees, even those that engage in due diligence, for violations of the Home Ownership Security Act for the amount "required to reduce or extinguish the borrower's liability under the home loan plus amounts required to recover costs including reasonable attorney's fees."[252] Second, borrowers can raise any defense, claim, or counterclaim against assignees

> at any time during the term of a high-cost home loan after an action to collect on the home loan or foreclose on the collateral securing the home

248. Cal. Fin. Code § 4979.8 (West Supp. 2007).

249. Ga. Code Ann. § 7-6A-6(b) (2004); *see also* Ark. Code Ann. § 23-53-105(a)(2)(A)(ii); D.C. Code § 26-1153.05(a) (2005); 815 Ill. Comp. Stat. Ann. 137/135(d)(1). Taking a different tack, in Kentucky, assignee liability applies only if "the violation for which the action or proceeding is brought is apparent on the face of the disclosure or the underlying promissory note." Ky. Rev. Stat. Ann. § 360.100(1)(b); *see also* Nev. Rev. Stat. §§ 598D.050, 598D.110.2 (2004) (holding assignees liable if they "willfully engage[d] in any unfair lending practice described in this chapter in connection with a home loan").

250. *See, e.g.*, Ga. Code Ann. § 7-6A-6(c). Other jurisdictions similarly limit the relief available against assignees. *See, e.g.*, D.C. Code § 26-1153.05; 815 Ill. Comp. Stat. Ann. 137/135(d); Ark. Code Ann. § 23-53-105(a)(2)(A)(ii).

251. N.J. Stat. Ann. § 46:10B-27(b) (West Supp. 2006). Other states have enacted similar statutory schemes. *See, e.g.*, N.M. Stat. Ann. § 58-21A-11(A); Mass. Gen. Laws ch. 183C, § 15 (Supp. 2006).

252. N.J. Stat. Ann. § 46:10B-27(c).

> loan has been initiated or the debt arising from the home loan has been accelerated or the home loan has become 60 days in default.[253]

Again, borrowers' recovery is limited to the "amounts required to reduce or extinguish the borrower's liability" and attorneys' fees.[254] Assignees who do not satisfy New Jersey's due diligence requirements are liable for the full range of claims and defenses which borrowers could assert against loan originators.[255]

New York does not require due diligence to screen for high-cost loans. Rather, it imposes assignee liability in limited situations and restricts the relief to which borrowers are entitled. Borrowers can "assert any claims in recoupment and defenses to payment" arising under the state's high-cost home loan law "that the borrower could assert against the original lender."[256] This provision only applies to an "action by an assignee to enforce a loan against a borrower in default more than sixty days or in foreclosure."[257]

The cities of Los Angeles and Oakland attempted to paint assignee liability with a broad brush by passing ordinances holding assignees liable for any claims arising from high-cost loans that could be asserted against loan originators.[258] The ordinances had no due diligence or other safe harbor provisions and no limits on the liability to which assignees could be exposed. The California Supreme Court has held that state law preempts these ordinances.[259]

While each of these approaches has laudable features, they all suffer from infirmities. First, it is too easy for lenders to write loans beneath the triggers for high-cost loans and thus evade the reach of anti-predatory lending laws. A recent nationwide study of state anti-predatory lending laws, which found evidence that mortgage lenders had switched from fixed-rate to adjustable-rate loans following passage of those laws, suggests that lenders are attempting such evasion.[260] As part of the switch to adjustable-rate products, the recent spate of interest-only and option adjustable-rate mortgages made without regard for the borrowers' ability to repay so

253. *Id.* § 46:10B-27(c)(2).

254. *Id.* § 46:10B-27(c). Similarly, Arkansas allows claims against assignees who engage in due diligence, but only in the form of offset actions in default or foreclosure actions. Ark. Code Ann. § 23-53-105.

255. N.J. Stat. Ann. § 46:10B-27(b); *see also* Mass. Gen. Laws ch. 183C, § 15(a) (authorizing unrestricted liability on assignees who do not adhere to state's due diligence requirements); Ind. Code Ann. § 24-9-5-1 (LexisNexis 2006) (same).

256. N.Y. Banking Law § 6-l(13) (McKinney Supp. 2007).

257. *Id.*

258. Oakland, Cal. Code, ch. 5.33.070 (2006); Los Angeles, Cal. Municipal Code, art. 1, § 162.07.

259. Am. Fin. Servs. Ass'n v. City of Oakland, 104 P.3d 813 (Cal. 2005).

260. *See* Giang Ho & Anthony Pennington-Cross, *Predatory Lending Laws and the Cost of Credit* 21-23, 26 (Research Div., Fed. Reserve Bank of St. Louis, Working Paper No. 2006-022A, 2006), *available at* http://research.stlouisfed.org/wp/2006/2006-022.pdf.

alarmed federal banking regulators in 2006 that they issued a guidance curbing abusive practices in nontraditional mortgages.[261]

There are also signs that predatory lending is starting to infiltrate the prime market. For instance, the number of foreclosure starts for prime loans in Chicago in 2005 exceeded the number of foreclosure starts that year for subprime and high-cost loans combined.[262] This suggests that predatory lending laws should not focus solely on high-cost loans.

Second, when laws fully immunize assignees who engage in due diligence from liability, they reap the benefits of the pricing distortions and market imperfections that permeate the subprime market. In contrast, laws like New Jersey's that impose limited liability on assignees who engage in due diligence force assignees to internalize some costs that affected borrowers would otherwise bear.

Our third concern goes to appropriate relief against assignees who do not perform due diligence. Current remedies range from very limited relief to unbounded compensatory and punitive damages. The former provides insufficient incentives to police lenders. The latter are so indeterminate that rating agencies cannot estimate potential assignee liability and therefore the needed level of credit enhancements.[263]

The laws that do not have due diligence safe harbors have their own limitations. The law should treat assignees who engage in due diligence more favorably. This satisfies notions of fairness and forces the worst actors to absorb the most costs.

Our proposal solves the problems presented by existing legislation by (1) eliminating triggers for assignee liability for abusive loans; (2) having clear standards that make it possible for assignees to predict the potential bases for and extent of liability; (3) requiring all assignees to internalize some of the costs that securitization imposes on borrowers; (4) making the extent of assignee liability depend on adequately screening loans; and (5) providing quantifiable damages that will enable rating agencies to evaluate the risks associated with loan pools.

IX. A RESPONSE TO CRITICS

Due diligence standards and assignee liability are controversial propositions in the residential mortgage market. In this section, we respond to criticisms of such proposals.

261. *See* Interagency Guidance on Nontraditional Mortgage Product Risks, 71 Fed. Reg. 58609 (Oct. 4, 2006).

262. David C. Rose, Chicago Foreclosure Update 2006, at 6, 8 (2006) (unpublished manuscript, on file with the Fordham Law Review), *available at* http://www.ntic-us.org/documents/ChicagoForeclosureUpdate2006-revised_000.pdf.

263. *See* S&P, Standard & Poor's Addresses New Jersey Predatory Lending Law (May 2, 2003).

A. *Our Due Diligence Proposal Does Not Espouse Radical Changes to the Secondary Market*

In all modesty, there is nothing new about our due diligence standards. To the contrary, two of the most important purchasers in the conventional secondary mortgage market, Fannie Mae and Freddie Mac, have adopted similar standards. Both government-sponsored entities (GSEs) already require lenders who sell them loans to screen out loans with specified predatory features, regardless of the interest rates on those loans or whether the predatory features are legal.[264] The market coverage of such due diligence is impressive: The two GSEs together purchase a large portion of subprime home loans, amounting to 43.7 percent of total subprime securitized issues in 2004.[265]

Beginning in the mid-1990s, Fannie Mae and Freddie Mac made their first forays into subprime territory, buying the best, A- subprime loans. In April 2000, as predatory lending concerns began to mount, Fannie Mae issued guidelines to sellers of loans mandating screening criteria to protect Fannie Mae from buying predatory loans. Those guidelines require lenders to use Fannie Mae's automated underwriting program to avoid steering of prime-eligible customers to high-priced loans, prohibit loans made without regard to the borrower's ability to pay, and limit points and fees to five percent of principal.[266] Freddie Mac issued comparable guidelines to sellers and servicers in December 2000.[267] Fannie Mae and Freddie Mac are reputedly aggressive in rejecting predatory loans and in requiring lenders to repurchase such loans if later evidence of predatory lending crops up.

The two GSEs are not the only federal entities that require review of purchased loans. The Office of the Comptroller of the Currency (OCC) stipulates that national banks that buy home loans require intermediaries and originators to conduct proper due diligence to avoid purchasing predatory loans.[268] Similarly, HUD has adopted best practices guidelines

264. *See, e.g.*, GAO, *supra* note 109, at 79-81; *supra* note 143. HUD regulations can or do deny credit to the GSEs toward their affordable housing goals for HOEPA loans and mortgages that are "contrary to good lending practices," contain "unacceptable terms or conditions," or "result[] from unacceptable practices." 24 C.F.R. §§ 81.2, 81.16(c)(12)-(c)(13) (2005). Impermissible loans include loans where lenders fail to report repayments by borrowers to credit agencies, asset-based loans, and loans involving steering, excessive fees, abusive prepayment penalties, or prepaid single-premium credit life insurance. *Id.*; *see also* Regulatory Amendments to Strengthen Prevention of Predatory Lending Practices, 71 Fed. Reg. 33144 (June 7, 2006) (to be codified at 21 C.F.R. pt. 81); Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs, 71 Fed. Reg. 33138 (June 7, 2006) (to be codified at 24 C.F.R. pt. 115) (applying property flipping restrictions to the GSEs).

265. *See* S&P, *supra* note 175, at 2.

266. *See* Fannie Mae, Lender Letter No. 03-00, *supra* note 143.

267. *See* Letter from Freddie Mac to All Freddie Mac Sellers and Servicers, Freddie Mac's Stance Against Predatory Lending Practices, *supra* note 143.

268. The OCC requires such guidelines by national banks to impose minimum underwriting requirements, appraisal criteria, and standards on total interest and fees,

governing due diligence in the purchase and servicing of loans insured by the FHA.[269] In the most recent example of this trend, in 2005, the Federal Housing Finance Board instructed the Federal Home Loan Banks to adopt uniform anti-predatory lending guidelines for purchases of mortgages by Federal Home Loan Bank members.[270]

Already, substantial portions of the secondary market are subject to due diligence or are encouraged by federal regulators to adopt best practices. Nevertheless, much of the private-label resale market continues to escape those guidelines. As a result, numerous predatory loans still slip into securitizations.

B. *Our Proposal Will Not Drive Out Legitimate Credit*

Assignee liability proposals for residential mortgages often face opposition on grounds that they will cause a retraction in available credit to underserved borrowers. This criticism is susceptible to testing. Over the last few years, numerous states have passed anti-predatory lending laws.[271] Two noteworthy empirical studies with nationwide scope have assessed the impact of specific state laws on the volume of subprime credit.

Economists Giang Ho and Anthony Pennington-Cross have analyzed the impact of state and local anti-predatory lending laws on subprime lending.[272] They found that "predatory lending laws have only a modest impact on the cost of credit."[273] In addition, they concluded that "the

including provisions on "maximum rates, points, and other charges, and the use of overages and yield-spread premiums, structured to avoid providing an incentive to originate loans with predatory or abusive characteristics." *See* 12 C.F.R. pt. 30, app. C.III.E.3 (2006); *see also* OCC, Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans, Advisory Letter 2003-3 (Feb. 21, 2003).

269. The HUD guidelines recommend loan-level review designed to reject loans involving property flips, appraisal frauds, excessive points and fees, and credit extensions without regard to the borrower's ability to pay. *See* HUD, *supra* note 233.

270. In drafting uniform guidelines, the Banks are to consult similar guidelines of the GSEs, HUD, federal regulators, and large financial institutions. In addition to barring purchase of illegal loans, the guidelines must address the purchase of HOEPA loans and loans with certain predatory features, such as prepaid single premium credit life insurance, prepayment penalties with extended terms, and mandatory arbitration clauses. *See* Fed. Hous. Fin. Bd., *supra* note 234.

271. *See generally* S&P, Anti-Predatory Lending Law Update (Feb. 7, 2005) [hereinafter S&P, Anti-Predatory Lending Law Update]; S&P, *supra* note 135; S&P, Evaluating Predatory Lending Laws: Standard & Poor's Explains its Approach (Apr. 15, 2003) [hereinafter S&P, Evaluating Predatory Lending Laws]; Azmy, *supra* note 70, at 371-76.

272. *See* Giang Ho & Anthony Pennington-Cross, *The Impact of Local Predatory Lending Laws on the Flow of Subprime Credit* 50 (Fed. Reserve Bank of St. Louis, Working Paper No. 2006-009A, Feb. 2006), *available at* http://research.stlouisfed.org/wp/2006/2006-009.pdf.

273. *See* Giang Ho & Anthony Pennington-Cross, *Predatory Lending Laws and the Cost of Credit* 13 (Fed. Reserve Bank of St. Louis Working Paper No 2006-022A, 2006), *available at* http://research.stlouisfed.org/wp/2006/2006-022.pdf. In a press release dated February 1, 2005, S&P announced that it had completed a study showing that the capital markets financed only $87 million in high-cost loans in 2004 and surmised that anti-predatory lending legislation had limited either the origination or securitization of such

typical law has little impact on the flow of subprime credit as measured by loan origination and application."[274] In fact, state anti-predatory lending laws with lower triggers (and thus broader coverage) resulted in increased loan originations and applications. In their opinion, broader anti-predatory lending laws may alleviate consumers' concerns that they could fall prey to predatory lending and make them more confident about applying for subprime mortgage loans. "In other words," they observed, "the demand for subprime credit can actually increase when a predatory lending law is enacted."[275]

A second study by the Center for Responsible Lending (CRL) of securitized subprime loans reported comparable findings.[276] The study compared subprime loan volumes in twenty-eight states with anti-predatory lending laws to volumes in states with no such laws (designated the control states), after controlling for time effects plus economic and demographic variables. When the latter variables were held constant, twenty of the twenty-eight states experienced no change in volume, six had higher volumes, and two had lower volumes, relative to the control states. Furthermore, Georgia—one of the two states with reduced volumes—experienced an increase in subprime loans without prohibited loan terms.[277] Finally, the CRL study found that nominal subprime interest rates remained the same or dropped in almost all states with anti-predatory lending laws, compared with the control states.[278]

Experience under the Federal Trade Commission (FTC) rule abolishing the holder-in-due-course rule for consumer loans, including home loans used to finance goods and services, also suggests that fears of a credit drought are overstated.[279] When the FTC promulgated its rule in 1976,

loans. However, S&P did not provide comparative data for prior years and has not made the study publicly available. *See* Press Release, S&P, Study Shows Capital Markets Not Financing High Cost U.S. Mortgage Loan Originations (Feb. 1, 2005). A separate study, commissioned by the National Home Equity Mortgage Association (NHENA) and the National Association of Mortgage Brokers (NAMB), found that New Jersey lenders planned to cut their subprime cash-out refinance and home improvement lending by sixty-nine percent after passage of New Jersey's assignee liability law. *See* Richard F. DeMong, The Impact of the New Jersey Home Ownership Security Act of 2002, at 5 (Mar. 26, 2004) (unpublished manuscript, on file with the Fordham Law Review), *available at* http://www.mbaa.org/images/namb/documents/PDF/2004_03_26_nj_results.pdf. The NHEMA/NAMB study, however, was based solely on self-reports by lenders and brokers, and its quantitative estimates were calculated before New Jersey amended its law to soften its provisions. Other scholars have pointed out that a drop in lending volumes does not necessarily harm social welfare, and in fact enhances it when the reduction is mostly limited to predatory loans. *See* Roberto G. Quercia, Michael A. Stegman & Walter R. Davis, *Assessing the Impact of North Carolina's Predatory Lending Law*, 15 Housing Pol'y Debate 573 (2004).

274. Ho & Pennington-Cross, *supra* note 273, at 47.

275. Giang Ho & Anthony Pennington-Cross, *The Impact of Local Predatory Lending Laws on the Flow of Subprime Credit*, 60 J. Urb. Econ. 210, 226 (2006).

276. Li & Ernst, *supra* note 92.

277. *See id.* at 13-14.

278. *See id.* at 15-17.

279. *See* 16 C.F.R. § 433.2 (2005).

lenders predicted dire effects on the availability of consumer credit. Time proved them wrong. Instead, "suppliers of consumer goods and credit, at least the honest ones . . . accommodated themselves easily to the FTC [rule], with only a slight drop in the amount of consumer credit available."[280]

Finally, there is compelling anecdotal evidence that state anti-predatory lending laws have not had an adverse impact on the flow of subprime credit. After surveying lenders in states with anti-predatory lending laws, including those with assignee liability provisions, Morgan Stanley issued a report in 2002 stating,

> We recently conducted a "channel check" among branch managers of several major consumer-finance lenders. We expected to hear that new predatory lending laws were crimping growth and driving capacity out of the margin. Our thinking was that volume might slow, but that improving margins would offer a partial offset. Instead, we discovered that, at least according to the 280 branch managers with whom we conducted detailed telephonic surveys, new laws, and the changes in lending practices that have resulted, are not hurting growth. On the contrary, we heard from a number of branch managers that the changes they have made to comply with the new lending laws may have increased origination volume, as potential customers feel more at ease with the loan process. . . .
>
> . . . .
>
> . . . Even the toughest new laws, in states like North Carolina, for example, do not seem to be affecting branch volumes.[281]

C. *Rating Agencies Do Rate Loans Subject to Damages Caps for Assignee Liability*

Some critics have claimed that rating agencies cannot and will not rate subprime loans originated in states with assignee liability provisions. The reality belies this claim. Rating agencies are rating subprime issues from most states with assignee liability laws.[282] Their willingness to rate issues

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280. Eggert, *supra* note 116, at 429 n.305 (citing William H. Lawrence & John H. Minan, *The Effect of Abrogating the Holder-in-Due Course Doctrine on the Commercialization of Innovative Consumer Products*, 64 B.U. L. Rev. 325, 338 & n.51 (1984)) (describing how the Wharton Forecasting Institute estimated that only a 5.5% reduction in the volume of consumer credit in 1976 was caused by the FTC's rule); *see also* White & Summers, *supra* note 72, at 508 ("It now appears that [arguments that the holder-in-due-course rule was essential to the free flow of credit] were incorrect"; abolition of the rule for certain consumer transactions "caused barely a ripple on the consumer credit pond").

281. Morgan Stanley, Channel Check: Surprisingly Strong Subprime Growth 2-3 (Aug. 1, 2002), *available at* http://butera-andrews.com/legislative-updates/directory/Media/other/MS-SubPrime.pdf.

282. *See, e.g.*, S&P, *supra* note 135; S&P, Anti-Predatory Lending Law Update, *supra* note 271; S&P, Evaluating Predatory Lending Laws, *supra* note 271. For a discussion of the application of the credit enhancement criteria, see *infra* notes 283-301 and accompanying text.

from these states typically hinges on whether assignees' potential damages can be quantified. In this regard, S&P has stated, "Standard & Poor's believes that when the risk associated with violating an anti-predatory lending law is quantifiable, then Standard & Poor's will allow loans governed by that law in its rated transactions if the risk is supported by the appropriate credit enhancement."[283]

S&P has been able to quantify the following elements of damages: unpaid loan balance, principal, interest, and fees paid to date, double or treble damages, attorneys' fees, and costs. In addition, S&P is able to quantify the cost of loan rescission.[284]

In a handful of controversial situations, S&P has refused to rate high-cost loans in states that enacted assignee liability laws with indeterminate damages provisions.[285] The most celebrated instance was in Georgia, which passed a strict assignee liability law in 2002. Thereupon, S&P announced it would refuse to rate all Georgia home loans subject to the law, after which the Georgia legislature amended the law to cap damages on high-cost loans.[286] With passage of the amendment, S&P agreed to "review transactions that propose to include [Georgia] high-cost loans on a case-by-case basis."[287]

Currently, S&P refuses to rate loan pools containing high-cost loans governed by assignee liability laws in Indiana, Massachusetts, and New Jersey on grounds that those laws create indeterminate damages exposure and thus do not permit S&P to calculate the maximum exposure per loan for securitized trusts.[288] Our assignee liability proposal, unlike the Indiana,

283. S&P, *supra* note 135. Because S&P has taken the lead in developing ratings methods for high-cost loans from states with assignee liability, this discussion focuses on S&P's approach.

284. *See* S&P, Standard & Poor's Implements Credit Enhancement Criteria and Revises Representation and Warranty Criteria for Including Anti-Predatory Lending Law Loans in U.S. Rated Structured Finance Transactions (May 13, 2004).

285. *See generally* Azmy, *supra* note 70, at 374-76; David Reiss, *Subprime Standardization: How Rating Agencies Allow Predatory Lending to Flourish in the Secondary Mortgage Market*, 33 Fla. St. U. L. Rev. 985 (2006).

286. *See* Azmy, *supra* note 70, at 374-76; Press Release, S&P, Standard & Poor's to Disallow Georgia Fair Lending Act Loans (Jan. 16, 2003). *Compare* Georgia Fair Lending Act, Ga. Code Ann. §§ 7-6A-1 to 7-6A-13 (West 2002), *with* Ga. Code Ann. § 7-6A-6 (West 2004).

287. Press Release, S&P, Standard & Poor's Will Admit Georgia Mortgage Loans into Rated Structured Finance Transactions (Mar. 11, 2003).

288. In certain cases, S&P will rate high-cost loans from Massachusetts originated by national banks, federal savings associations, and federal savings banks that enjoy federal preemption. *See, e.g.*, S&P, Anti-Predatory Lending Law Update, *supra* note 271; *see also* S&P, Standard & Poor's Addresses Indiana Anti-Predatory Lending Law (Oct. 18, 2004); S&P, Standard & Poor's Addresses Massachusetts' Predatory Home Loan Practices Act (Sept. 20, 2004); S&P, New Criteria Implemented, *supra* note 229; S&P, *supra* note 284; S&P, *supra* note 263; Press Release, S&P, Standard & Poor's Eliminates Additional Credit Enhancement Requirements for Indiana Home Loans (Feb. 7, 2005) (excluding, however, Indiana high-cost loans); Press Release, S&P, Standard & Poor's Permits Additional New Jersey Mortgage Loans Into Rated SF Transactions (Nov. 25, 2003).

Massachusetts, and New Jersey statutes, is limited to quantifiable exposure and thus is amenable to rating.

D. *Our Proposal Will Not Make Legitimate Loans Unaffordable*

Critics of assignee liability also contend that proposals such as ours will render home loans uneconomical. As we have demonstrated, the cost of due diligence is minimal, both in absolute terms and as a percentage of the overall cost of originating a home loan. The more significant cost consideration arises from the possibility that rating agencies might require additional credit enhancements in response to the increased liability exposure of trusts. If they were large enough, credit enhancements could push up the price of loans. As it turns out, there is scant evidence that S&P has required significant added credit enhancements in response to laws imposing assignee liability so long as there is an adequately capitalized lender, a well-crafted assignee liability law, and effective due diligence review.

S&P officially takes the position that high-cost loans originated in states with quantifiable assignee liability laws require added credit enhancements.[289] S&P, however, keeps the exact amount of credit enhancements required a mystery.[290] Repeatedly, in public statements, S&P has trotted out estimates of the maximum legal exposure per loan (which S&P terms "loss severities"). These loss severities vary by state and go as high as 275 percent of the original loan balance for "high-cost loans" that are originated in North Carolina and Kentucky.[291] Obviously, if

289. S&P states that it requires elevated credit enhancements or their equivalent for certain high-cost or covered loans originated in Arkansas, Colorado, the District of Columbia, Florida, Georgia, Illinois, Maine, Massachusetts, New Jersey, New Mexico, New York, Ohio, and Oklahoma. The same is true for home loans originated in Cleveland Heights and Toledo, Ohio, and HOEPA loans. *See* S&P, *supra* note 284.

290. *See* Erick Bergquist, *Predator Laws: S&P's Awkward Position*, Am. Banker, May 18, 2004, at 1 ("S&P couches risk warnings on various loan types under the term of potential 'loss severity'—even in jurisdictions and categories where S&P says it would not require credit enhancements—but does not specify the actual credit enhancement requirement.").

291. *See* Susan Barnes, Managing Dir., S&P & Scott Mason, Dir., S&P, 14-16 (May 17, 2004) (unpublished PowerPoint presentation, on file with the Fordham Law Review); Susan Barnes, Managing Dir., S&P, Evaluating Anti-Predatory Lending Laws: S&P's Approach 4 (Apr. 19, 2004) (unpublished PowerPoint presentation, on file with the Fordham Law Review); *see also* S&P, *supra* note 135; S&P, *supra* note 284. For jurisdictions with assignee liability laws, S&P has estimated loss severities ranging from 37 percent of the original loan balance in Ohio to 275 percent in North Carolina and Kentucky (both of which permit forfeiture of interest charges plus twice the interest paid, attorneys' fees and costs). *See* S&P, *supra* note 284. An S&P managing director explained how S&P would arrive at a 268 percent loss severity for a 30-year fixed-rate home loan for $100,000 at 9.00 percent annual interest under a proposed Nevada law to impose treble damages liability on assignees (assuming that damage to the borrower would consist of all interest paid over the life of the loan):

- Conservatively assume that average life of a mortgage is 10 years
- Total interest paid on loan over 10 years is $85,984
- Assume 10% of the [unpaid principal balance] ($10,000 in this example) as attorney fees and costs

lenders had to provide credit enhancements equaling 275 percent of the loan principal, subprime securitization would come to a halt.

Despite these predictions, subprime securitization keeps growing, which suggests that loss severity risks are not hampering the securitization market.[292] Indeed, "S&P insists that loss severity numbers by themselves do not say much."[293] Rather, it appears that even where S&P projects high loss severities, the company does not recommend correspondingly high credit enhancements. For example, in a talk before industry representatives, S&P presented a worst-case projection suggesting that for a pool with five percent of high-cost loans originated in an assignee liability state with a loss severity level of 196 percent, the required credit enhancements for the AAA tranche would rise at most by eighteen percent.[294] The assumption that five percent of loans in a pool are high-cost is likely excessive, thus inflating S&P's calculation of the level of needed credit enhancements. S&P's own estimates suggest that the average proportion of high-cost loans in any one loan pool may be well under five percent.[295]

Even if S&P applied its formula ruthlessly, the required credit enhancements would exceed (and often far exceed) the actual risk involved. S&P's formula assumes that every loan in default (plus twenty-five percent of performing loans) will be successfully litigated and result in maximum legal exposure. As any experienced litigator knows, that is virtually never the case. Indeed, state anti-predatory laws have deterred lenders from

- $85,984 * 3 = $257,952
- $257,952 + $10,000 = $267,952 or 268% of original loan balance

See Barnes, *supra*, at 18.

292. *See* David Glehan, Dir., S&P, The Subprime Market 7 (June 10, 2005) (unpublished PowerPoint presentation), *available at* http://events.mortgagebankers.org/nonprime2005/signatureconferences/nonprime/images/img/TheSubprimeMarket.pdf.

293. *See* Bergquist, *supra* note 290, at 9.

294. *See* Barnes & Mason, *supra* note 291, at 16. The example used was Arkansas H.B. 2598, which authorizes damages in the amount needed to extinguish the borrower's liability under the loan, plus the total principal, interest, and fees already paid, plus attorneys' fees and costs. *See id.* at 14. Nominally, S&P calculates added credit enhancements as follows. S&P separately calculates the exposure from defensive claims (claims raised in defense to collection or foreclosure) and affirmative claims under state anti-predatory lending laws and adds them together. For each type of claim, the agency uses the following principle to calculate the required credit enhancement:

$$FF \times LS = CER$$

The foreclosure frequency (FF) is the probability of foreclosure and is assumed to include all loans in default. (On top of the foreclosure frequency, S&P also assumes that one-quarter of subprime loans not in default will result in affirmative claims by borrowers). The loss severity (LS) usually equals the maximum damages exposure in a particular jurisdiction. The required credit enhancement (CER) is then discounted by the percentage of high-cost loans in the loan pool. S&P uses this methodology to price both potential individual claims and class action liability (where the class size can be determined). *See id.* at 14-16; *see also* S&P, *supra* note 135; S&P, *supra* note 284; Barnes, *supra* note 291, at 4.

295. S&P has determined that only one-one-hundredth of one percent (0.01%) of U.S. home loans that it rated in 2004 were high-cost loans. *See* S&P, *supra* note 273; *cf.* S&P, New Criteria Implemented, *supra* note 229 (noting that the proportion was low).

making unlawful high-cost loans.[296] Nonetheless, S&P's formula automatically "defaults to the remedy that reflects the worst-case scenario," thereby inflating its credit enhancement projections.[297] Perhaps this is why S&P says that "[a]s performance and loss information for the loans subject to additional credit enhancement develops, Standard & Poor's will adjust its criteria as appropriate."[298]

In reality, S&P rarely requires the credit enhancements it claims are necessary. While S&P's pronouncements on the subject have been inconsistent, its statements reveal wide-scale waiver of the official credit enhancement requirement. Thus, in 2004, S&P officials said that added credit enhancements will be required only for loans from states with assignee liability laws that contain subjective standards and where no mitigating factors otherwise exist.[299] Elsewhere, an S&P managing director assured lenders that for loan pools that have undergone satisfactory compliance review, where S&P considers the lender creditworthy, and where the lender reports which loans are governed by an assignee liability law, on "a case by case basis, S&P will allow the loans into a transaction and will track them through its TRENDS Database."[300] S&P will also waive added credit enhancements where the lender provides representations and warranties that the loan pool does not contain high-cost loans.

In sum, for creditworthy lenders, S&P has sufficient confidence in automated compliance[301] to allow high-cost loans into loan pools, subject to tracking, without the need for significant added credit enhancements. This suggests that the cost of assignee liability in terms of added credit enhancements under our proposal would be relatively low. Combined with the low cost of due diligence and the large anticipated welfare effects to consumers and society from eliminating lending abuses,[302] assignee liability would improve, not destroy, credit for underserved borrowers.

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296. *See* Li & Ernst, *supra* note 92, at 11-12; Quercia, Stegman & Davis, *supra* note 273, at 593-97.

297. *See* S&P, *supra* note 284.

298. *See* S&P, New Criteria Implemented, *supra* note 229.

299. *See* Barnes & Mason, *supra* note 291, at 2. Mitigating factors that can reduce or eliminate the need for added credit enhancements include (1) damages arising only from a pattern or practice of violations; (2) liability only for knowing and/or intentional violations; (3) objective standards; (4) little or no litigation history; (5) rebuttable presumptions; (6) cure periods; (7) restrictions on affirmative or defensive claims; and (8) statutes of limitation. *See id.* at 6.

300. Barnes, *supra* note 291, at 19.

301. In a related context, Fitch stated that experience had demonstrated the accuracy and reliability of automated compliance systems:

> Based on results of the transaction loan sampling over the past 22 months, Fitch has determined that there has been excellent compliance with Fitch's high cost loan criteria. Furthermore, compliance systems have become a critical component of the underwriting and quality control process, and the investment in these systems and the reliance on them has grown accordingly.

FitchRatings, Fitch Revises RMBS Guidelines, *supra* note 135.

302. Robert Quercia and his co-authors made this point eloquently in a 2004 study of the North Carolina anti-predatory lending law, in which they demonstrated that almost ninety

E. *Our Proposal Could Help Solve Adverse Selection Problems that Harm Securitizers, Lenders, and Borrowers*

Our assignee liability proposal could also help to solve the adverse selection problem caused by securitization, which could reduce the level of credit enhancements needed and the cost of credit to borrowers. As we have discussed throughout this Article, absent due diligence, "lemon loans" can escape detection during the securitization process. Effective due diligence creates disincentives to adverse selection by lenders, and thus will deter the worst abuses. This will help reduce the credit risk that arises from information asymmetries between lenders and the secondary market and reduce needed credit enhancements. Ultimately, borrowers could benefit from these savings and pay less for their loans.

Similarly, reports of abusive lending may have led potential borrowers, who would be desirable to lenders and the secondary market, to shy away from taking out loans. To the extent that these borrowers believe that powerful anti-predatory lending laws will protect them, the laws may solve another adverse selection problem, which is that reports of predatory lending have driven "good" borrowers from the marketplace.

CONCLUSION

In a 2004 report to Congress, GAO expressed optimism that market discipline by investors in subprime mortgage-backed securities would help drive out predatory lending.[303] That optimism was misplaced. Predatory loans continue to be financed by the capital markets. Furthermore, experience has shown that the private-label secondary market will generally only screen out abusive loans when required to do so by law.

The Department of Housing and Urban Development put it well when it said in the context of FHA-insured loans,

> Effective due diligence policies, uniformly applied by mortgagees prior to purchase, would cripple the ability of fraudulent lenders to pawn predatory loans off on others in the mortgage industry. If predatory loans cannot be sold, they are unlikely to be made and all borrowers . . . will be protected.[304]

For the reasons we have described, the time has come to adopt assignee liability on a nationwide basis for securitized home loans.

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percent of the resulting decline in North Carolina refinance loans after passage of that law consisted of a reduction in loans with predatory features. *See* Quercia, Stegman & Davis, *supra* note 273, at 593-97. A 2006 study by the Center for Responsible Lending echoed their finding, reporting that the proportion of loans with specified predatory loan terms fell in many states with anti-predatory lending laws, relative to states without those laws. *See* Li & Ernst, *supra* note 92, at 11-12. As both studies illustrate, the critical question is not whether lending fell in absolute terms, but what *type* of lending fell, bad or good.

303. *See* GAO, *supra* note 109, at 76-79.

304. *See* HUD, *supra* note 233.

Testimony of Jeffrey D. Dillman
Executive Director
Housing Research & Advocacy Center

The Housing Research & Advocacy Center ("Housing Center") is a nonprofit fair housing organization founded in 1983 whose mission is to eliminate housing discrimination and assure choice in Northeast Ohio by providing those at risk with effective information, intervention and advocacy. We do this through research into housing, population, and lending trends; education on fair housing laws and how consumers can avoid predatory lending; and through an enforcement and advocacy program designed to detect and deter housing discrimination.

I would like to address the issue of who has been most affected by subprime and predatory lending in the region and the state. On February 18, 2008, we released a report entitled "Continuing Racial and Ethnic Disparities in Ohio Mortgage Lending," analyzing the most recent mortgage lending data available for the state of Ohio and the seven largest metropolitan areas, including Cleveland.

The report found that African Americans and Latinos were denied loans more often than whites and, when they received loans, were more likely to receive high-cost subprime loans than white borrowers. While some lenders might point to income as a cause of such disparities, our report examined not only race and ethnicity but also income to see whether that explained the differences in lending.

Our research shows that *upper income* African Americans are denied mortgage loans more often than *low income* whites. For example, in the Cleveland metropolitan area, 37.52% of upper income African Americans were denied home purchase loans, compared to 24.46% of low income whites, the highest disparity in the state.

The disparities were even greater when examining what type of loans Ohioans actually obtained. In every metropolitan area studied in Ohio, African Americans at every income level received more high-cost subprime loans than whites at every income level. That is, throughout the state, upper income African Americans received more high-cost subprime loans than low income whites.

The Cleveland metropolitan area had the highest racial disparities in subprime lending in the state, with *upper income* African Americans receiving high-cost home purchase loans at almost three times the rate of *low income* whites (63.03% compared to 22.80%) and high-cost refinance loans at almost twice the rate of low income whites (55.72% compared to 30.97%).

The denial and high-cost lending rates for Latinos, while not as high as for African Americans, were also higher than for whites in most areas of the state.

These racial and ethnic disparities in mortgage lending are extremely troubling and provide strong evidence of bias in the mortgage industry in Ohio. Not only do African Americans and Latinos have a harder time getting approved for a loan, but once they get a loan, they wind up with high-cost subprime loans more often than whites even when they have higher incomes.

Although all Ohioans have suffered from the mortgage and foreclosure crisis in recent years, the report

shows that African Americans and Latinos – even those with high incomes – have suffered more. While this evidence by itself does not prove racial discrimination, it raises extremely troubling questions about whether all groups have fair access to mortgage lending. The lending community has an obligation to address these disparities to ensure that everyone has a fair opportunity to obtain a home mortgage, regardless of race, ethnicity or other similar status. However, our experience tells us that not enough lenders will do so voluntarily. Therefore, it is incumbent for governments at all levels to make a strong stand against housing discrimination and to commit additional resources to ensure that all individuals have an opportunity to choose their housing free from discrimination.

The City of Cleveland's recent lawsuit against mortgage servicers is an important step in attempting to hold the lending industry accountable for the devastation they have caused in the region. I would urge the City of Cleveland and other local governments to also examine the lending disparities that exist in the industry and consider appropriate action, including possible litigation, to ensure that all residents have fair access to mortgage loans.

I have submitted a copy of our report for the record and would be happy to provide additional copies to individuals who contact our office. It is also available on our website at <http://www.thehousingcenter.org>.

Thank you for your attention.

Housing Research & Advocacy Center
3631 Perkins Ave., #3A-2, Cleveland, OH 44114 – Phone: (216) 361-9240 – Fax: (216) 426-1290
www.thehousingcenter.org

POLICY MATTERS OHIO

CLEVELAND: 3631 PERKINS AVENUE SUITE 4C - EAST • CLEVELAND, OHIO, 44114 • TEL: 216/361-9801 • FAX: 216/361-9810
HTTP://WWW.POLICYMATTERSOHIO.ORG

To Cleveland City Council members and interested community members,

Ohio is at the epicenter of the housing foreclosure crisis in America. Greater Cleveland being devastated by foreclosures, abandonment, and predatory mortgage lending. For the past 5 years, Policy Matters Ohio has tracked foreclosures and sheriffs sales in Ohio noting a surge in rural, suburban, and urban areas a like. We have included those reports in your briefing book, but it is important to note the near 80,000 new Ohio foreclosure filings in 2006, a 23% increase from 2005. Cuyahoga County, with more than 13,500 foreclosures, continues to have more filings per person that any other county in Ohio.

Policy Matters Ohio is a nonprofit, nonpartisan research group in Ohio. We provide real-world policy analysis regarding economic issues that affect low- and moderate-income families. Housing foreclosures have a detrimental affect on working families, draining incomes and depleting savings. Communities are also negatively impacted as tax revenues are depleted, social services are in higher demand, and dozens of intangible effects ripple outward.

Our recent work has found that foreclosures are still increasing, despite initial steps by the government and mortgage lenders to keep people in their homes. We have also begun to document and will release a report next month that details the adverse affect of foreclosures on renters, who have little knowledge about and defense against this process.

Several federal policies could help working families in Ohio and strengthen its communities:

- Allowing courts to use discretion for an "own to rent" policy, where foreclosures would be prevented by allowing families to keep their homes as renters. An appraiser would determine the rental value of the home and the owner becomes a tenant. Similarly, allowing court supervised mortgage modifications, where judges modify the terms of the loan to market value could allow families to remain owners in situations where the home was overvalued by an appraiser and the loan was well over-extended.

- Reestablishing the Home Owners' Loan Corporation (HOLC) where "bad" mortgages are purchased by the Corporation and new ones are sold to homeowners. In the past, HOLC was used to help millions of homeowners during the Great Depression, selling government bonds to banks for the troubled mortgages. The HOLC should also have perimeters, focusing on owner-occupied residential properties.

- Supporting H.R. 3915, which was voted out of the U.S. House of Representatives and is being heard in the Senate. This legislation allows rental leases to survive the tenancy in a housing foreclosure along with mandating a minimal 90-day notice of termination to tenants.

- Continuing to support the Mortgage Cancellation Relief Act, which allows forgiveness of tax debt due to foreclosure. This is not real income and should not be taxable.

- Reinvesting in communities, by infusing affected communities with cash to clean up abandoned properties and retrofit inefficient homes, making sure neighborhood people are tapped for the jobs.

The roots of the foreclosure crisis lie in poor regulation of mortgages and a housing bubble. But in states like Ohio, the crisis has been intensified by a weak economy. While we urge you to pass specific returns to address foreclosures, Ohio is also eager for federal leadership on five key fronts. We need to invest in the future, particularly in infrastructure, clean energy, and education, so that we're better prepared for future challenges. We need to protect assets – not just homes but also savings – by regulating payday lending and making it easier for families to save. We must also rebuild on-ramps to the middle class by providing universal health insurance, raising the minimum wage, and making it easier to join a union. The president must also provide more opportunity, by having a fair, progressive and adequate tax system so that we can fund crucial public programs. Finally, we need to retain strong public structures so that government can do the work it needs to do and businesses and workers can thrive.

Respectfully submitted,

David Rothstein
Researcher, Policy Matters Ohio 2/27/2008

Fighting Foreclosure and Abandonment Forum:

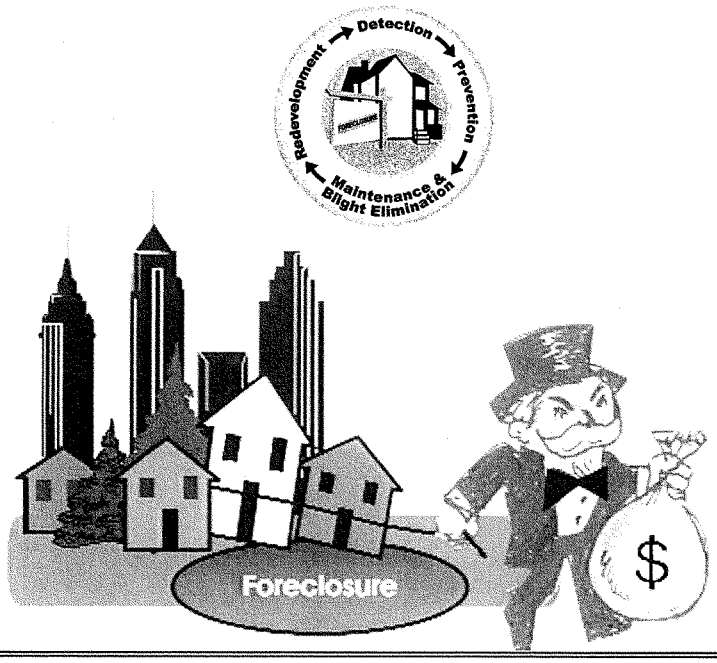
panels

Prevention

Barbara Anderson, East Side Organizing Parternship

Acorn

Tony Stevenson, The Housing Advocates



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ESOP

Empowering and Strengthening Ohio's People

1) Inez Killingsworth/ Barbara Anderson, Empowering and Strengthening Ohio's People (ESOP), 3631 Perkins, 4C-S, Cleveland, OH 44114, 216-361-0718, mark@esop-cleveland.org

2) ESOP works with homeowners who are experiencing an issue with foreclosure through the Hot Spot Car program, which allows ESOP to work directly with lending and servicing representatives through fair lending agreements that create sustainable homeownership and policy change in the lending industry.

3) Describe as specifically as possible the problem you or your organization have experienced in your work that your policy proposal will help overcome. Supporting statistics, examples/anecdotes, etc. are fine but please make sure you include a summary description of the problem in "elevator speech" form.

   The most obvious problem with the lending industry is the alarming number of predatory and subprime loans that have been originated by brokers and lenders across the nation. The lack of government regulations has allowed numerous corporations to take advantage of vulnerable homebuyers, and as a result, in 2007 over 17,000 foreclosures have taken place in Cuyahoga County alone. However, the issue we face is not the lending practices themselves, as lenders have virtually stopped making these loans. The issue at hand now is the lack of concern these lenders and servicers seem to have for the mess they have created, and the havoc they have wreaked on the lives of individuals and communities. At ESOP, we have seen firsthand the reluctance of many lenders and servicers to cooperate with borrowers, especially those who are unable to make their payments due to adjustable rates, or able to follow through with plans of refinance due to the housing market. Borrowers report how difficult it is to navigate the organizational structure of these large corporations, and how unwilling any customer service representatives are to offer assistance.

   It is for this reason that borrowers come to community groups such as ESOP, where we have established agreements and specific contacts that produce results for our homeowners that they could not obtain on their own. It is obvious that community groups have the potential to mitigate a great deal of the dangers created by the lending industry, however, lenders and servicers still need a stronger push to work with ESOP and other organizations. Despite the agreements ESOP has negotiated with various lenders, many still do not produce results in a timely manner, and others are still dragging their feet on even coming to a agreement. This may be because the only leverage ESOP has over these corporations is the direct action organizing techniques we have developed, which, although intimidating and embarrassing to the lenders, do not come with serious legal and financial costs to them. It is unfortunate that we must resort to name-calling and shark-throwing in order to achieve results, and it seems as though many of the lenders cooperate only to save face, and not because it is the responsible thing for them to do.

In addition to the problems it has created for individual borrowers, the lending industry has left many communities in a state of disrepair, as high rates of foreclosure in cities like Cleveland have resulted in a slew of abandoned and decaying homes in our neighborhoods. As a result, property values have plummeted, crime rates have skyrocketed, and the morale of our neighborhoods is virtually nonexistent. It will take years, if not decades, to repair this physical and emotional damage, yet lenders and investors have done little, if anything, to address the disaster they have caused.

4) Describe as specifically as possible what you would like the Federal government to do that would help eliminate or reduce the problem you described in point 3.

In order to remedy the financial and social burden created by the lending industry, the federal government must take an aggressive stance against the lack of cooperation currently exhibited by lenders and servicers across the country. The federal government must mandate these corporations to collaborate with community organizations to conduct outreach to borrowers in default or at risk of losing their homes. The Federal government could accomplish this by requiring lenders and servicers to provide comprehensive lists of defaulted borrowers to community groups on a regular basis, giving those groups the ability to conduct outreach and make the borrowers aware that help is available through counseling and advocacy. With such a plan in place, borrowers would be able to work through a local organization in order to obtain a loan workout, and to do so in a manner that has proven far more effective than trying to navigate the complex system the lending industry has created for its consumers.

In order to support the increased caseloads that will inevitably result in local organizations from increased outreach, the Federal government must begin to allocate funding for these agencies for additional staff and resources. The funding must be administered at the County level, as local governments will be far more in tune with where the funding is most needed and deserved.

After these changes are made, measures must also be taken so that homeowners who obtain workouts from their lenders through local agencies are not forced into financial difficulty (and the possibility of foreclosure) later down the road. The federal government must ensure this by placing a five-year moratorium on all adjustable rate mortgages, and by eliminating the requirement that borrowers who have obtained workouts, deeds in lieu, or short sales in place of foreclosure claim these as "gains" on their yearly tax returns.

Finally, due to the toll that the practices of lenders and investors have taken on our communities as a whole, the federal government must take steps to rebuild the neighborhoods that have been hit the hardest by the abusive tactics of banks and corporations. In order to compensate for the lack of traditional banks in many low-income communities, the federal government must begin to offer more responsible lending alternatives to potential homebuyers by creating affordable loan products through Fannie Mae and Freddie Mac. Additionally, lenders currently possessing houses that have become vacant as a result of foreclosures should be required to pay fees into County funds that would be set aside for demolition and rehabilitation of said vacant and deteriorating houses.

Julie Smith, ACORN
3109 Walton, Up
Cleveland, Ohio 44113
216-854-2930
jewel33@adelphia.net

As an ACORN member and Clark-Fulton resident, I am calling on the Presidential Candidates to support a 12-month moratorium on foreclosures, and to call on mortgage servicers to address unaffordable loans by making them a fixed, affordable rate for the life of the loan (not a short-term, quick fix, that is only a band-aid on the underlying problem).

As a lifelong Clark Fulton resident, I have seen the effects of predatory lending first hand. The vacant houses and abandoned buildings are more than just eyesores- they make the neighborhood unsafe for my children to play in. In addition to being a resident of Clark-Fulton,

I am also the chair of our local chapter of ACORN. As an ACORN member, I have spoken out against the unfair and racist lending practices that have gotten us here, and I have volunteered on Saturdays down at the ACORN office, where every Saturday there are dozens of families seeking help with foreclosure – some of them my neighbors.

ACORN Housing counselors have helped hundreds of people this year, working out modifications with lenders so that families can stay in their homes. When families get a loan modification – get their adjustable rate changed to a fixed rate and get arrearages tacked on to the end of the loan, for example – everybody wins. As a resident, I get to keep my neighbor, rather than have another vacant house (that gets stripped of materials right away). The family gets to stay in their home – sometimes a home that has been in the family for 30 years or more. The lender or servicer can continue to collect a mortgage. As a result of a family staying in their home, the rest of the block is saved from deteriorating property values.

Unfortunately, many families do not get the kind of help that ACORN Housing and other agencies can provide. They do not get help because they do not know that HUD-certified housing counseling agencies are out there, or they are intimidated and do not know where to turn, or, in many cases, their foreclosure is processed so quickly, their sheriff sale so sudden, that they do not have a chance to get help. Time after time we have seen residents come to ACORN for help, only to find that their home has been sold and it is too late.

Many of these foreclosures are the direct result of predatory lending. Cases where brokers and/or lenders convinced borrowers to take out a risky, soon to be unaffordable, loans. Hard working families are being put out of their homes, because the government failed to regulate this industry. Now state and federal government is moving to institute regulations, but these steps are too little too late for borrowers who have already fallen victim to the predators. Having failed to provide basic consumer protections that could have prevented this crisis, we have a moral obligation to do all in our power to stop wrongful foreclosures.

The stakes are extremely high in this foreclosure crisis – for families, communities, cities and our national economy. Many families stand to lose not only their home, but also all the wealth that they have built up, and hoped to pass on to their children. Neighborhoods all over Cleveland are suffering, both from the growing number of vacant properties and the attendant decline in property values. And as anyone reading the news cannot miss, our economy is reeling because of this crisis.

We need solutions.

Again, ACORN members are calling on the Presidential Candidates to push loan servicers to modify loans with fixed, affordable rates for the life of the loan.
The candidates should support a 12-month moratorium on foreclosures, giving time for counselors to work with borrowers and for servicers to work out loan modifications. We need new measures that will help families in homes that are being foreclosed to stay on in the houses and pay rent to the new owners. Finally, we need a commitment to work with community groups like ACORN, together with responsible lenders like Third Federal, to ensure that our communities do still have access to credit, both for those working to stay in their homes as well as for future homeowners.

THE HOUSING ADVOCATES, INC.
FAIR HOUSING LAW CLINIC
3655 Prospect Avenue, East
Cleveland, Ohio 44115-2601
(216) 391-5444 (Telephone)

February 25, 2008

Presidential Candidates
c/o Cleveland City Council
601 Lakeside Avenue, Rm 220
Cleveland, OH 44114

Dear Candidates,

I am an attorney who works for the Housing Advocates, Inc. Home Ownership Assistance Program (HOAP) which is funded through a contract with the City of Cleveland. For more than five years this program has: 1) provided education and outreach programs to Cleveland's residents and victims of predatory lenders; 2) provided brochures, documents and other materials designed to demystify the mortgage lending process; 3) offered mortgage document review to Cleveland's residents; and 4) in some situations, negotiated and/or litigated cases on behalf of Cleveland's homeowners.

If you become the President, we ask that you consider the following legislative options:

1. Prohibit mandatory binding arbitration in all consumer, loan and employment contracts. If the parties wish to enter into binding arbitration, tbey can do so after a dispute arises.

2. Three *business* days before a loan closes, the lender must provide the borrower with the information shown below. The information must be provided on a single piece of "red" or "bright yellow" paper and printed in 12 point type. It must be printed in the primary language used by the borrower.

Your interest rate is _____ . Your interest rate will be _____ (fixed or adjustable)

Your annual percentage rate is _____

Excluding taxes and insurance, your highest monthly payment will be _____

You _____(will / will not) have a balloon payment.

You _____(will / will not) be charged a penalty if you refinance or pay off the loan early

You _____(will / will not) have three (3) business days to cancel the mortgage after you have signed the mortgage documents

The lender shall not provide any other documents to the borrower in the referenced color. If the document is not provided under the conditions described above or if the information is modified after the borrower receives the document, then the borrower will have six (6) *business* days, after the closing date, to rescind or cancel the loan.

3. If a homeowner makes monthly payments to a loan/mortgage servicer, then all communications from the servicer must identify the entity which owns the note.

4. Before a foreclosure action is filed in Federal Court (and if within your authority, if before an action is filed in state courts) a lender, servicer, holder, trust, etc. (i.e., note holder) must participate in four hours of good faith and fair mediation before the lawsuit will be allowed to proceed. A HUD certified counseling agency will act as the mediator.

If a note holder *fails* to participate in the mediation or *fails* to act in good faith and fair dealing (as determined by the court with input from the counseling agency), then the note holder will not be permitted to recover, recoup or otherwise collect attorneys fees, litigation cost or court cost from the homeowner or from the proceeds of the sale of the foreclosed property.

5. Any person who acquires residential real estate from a foreclosure sale for business purposes shall be required to maintain a $100k bond payable to the City for potential, future upkeep code violations, inspections, demolition, etc.

If you have further questions, feel free to contact me at (216) 391-5444, ext. 106.

Sincerely,

/s/ Anthony M. Stevenson

Anthony M. Stevenson, Esq.
Attorney and HOAP Manager
Amstevenson8@aol.com

To: Bill Callahan

From: Gary Cook, Esq. - Housing Advocates, Inc.

The federal government could provide refinancing for distressed homeowners.

Provide certificates for the amount of the loan that is in excess of appraised value to lenders when the government refinances homes that have loans that exceed property values.

Require more disclosures and the right of rescission in the form of different color papers than the primary closing documents.

Require a brochure similar to the one mandated in Lead Paint Poisoning which must be given to the consumer no later than when the consumer makes an application for a loan describing legal rights, things to ask regarding a loan, explanation of TILA and HOPEA and other consumer rights. Failure to give this brochure results in a $1,000.00 fine or actual damages. This penalty is similar to the Fair Debt Collection Act provisions.

Extending the rescission period to six days. Similar to section 32 HOEPA loans

Require that the consumer be given the opportunity to review the closing documents at least for 3 days before closing.

Indicate that the consumer has a right to consult counsel prior to the closing in order to review the documents.

Require that the lender provide a form of credit counseling prior to filing foreclosure or prior to declaring default.

Make underwriting standards uniform and make the underwriting standards open to the scrutiny of the consumers and/or consumer advocates.

Fighting Foreclosure and Abandonment Forum:

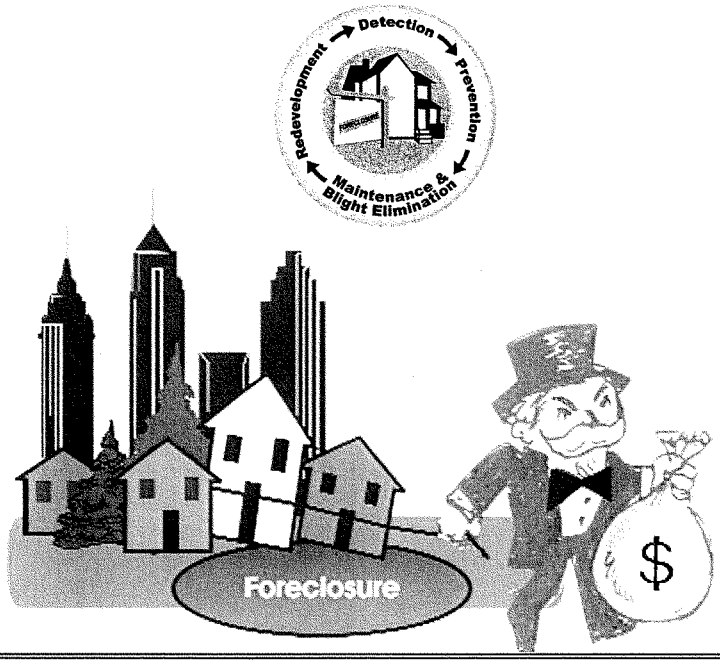
PANELS

Maintenance & Blight Elimination

Cleveland Housing Court

Ruby Nelson, Cleveland Tenants Organization

Kermit Lind, Cleveland State University



Marlene J. Ridenour

On behalf of the Cleveland Municipal Housing Court, I will be discussing the issues with HUD and Fannie Mae owned property.

1) It is very difficult to identify whether there is federal mortgage insurance on a loan.

2) Locating a contact person at HUD or Fannie Mae to discuss options such as refinancing or short sales is difficult.

3) When lenders submit the required certification paperwork to HUD (that would enable properties to transfer after foreclosure), HUD fails to process the paperwork which in turn leaves the properties in limbo – sometimes for months and months.

4) Once properties do transfer at Sheriff's Sales, lenders do not record the deeds in a timely manner. Some lenders believe that this practice will increase the likelihood that they will recover on mortgage insurance. This practice also allows for the former homeowner to be cited for housing code violations although they no longer have title to the property.

5) Flippers know which properties have insured loans and they work hard to milk every dime out of them by buying them in bulk at extremely low prices and selling them to naïve investors at inflated prices.

6) HUD and Fannie Mae fail to maintain their properties in compliance with City Code and they have both been on the Court's docket for these violations. Currently, Fannie Mae still has an outstanding warrant from 2006.

Testimony of: Michael J. Piepsny, Executive Director
Cleveland Tenants Organization
3631 Perkins Avenue, Suite 3A-4
Cleveland, Ohio 44114
Phone: (216) 432-0617
E-mail: mpiepsny@clevelandtenants.org

The **Cleveland Tenants Organization** is a non-profit grassroots advocacy organization with the mission to preserve and expand the supply of affordable rental housing. The foreclosure crisis affecting our community has had a significant impact on low and middle income tenants throughout Cleveland and Cuyahoga County. The Cuyahoga County Sheriff's Office estimates that at least 30% of foreclosures occur on rental property, often leaving tenants in desperate need of safe, decent, affordable rental housing.

Although Cleveland's struggle with foreclosure has been well documented in the national media, the focus has been almost exclusively on the predatory practices of the lenders, and the inability of the home-buyers to make their mortgage payments. **An important aspect of this crisis that has been overlooked is the harmful effect of these foreclosures on tenants, who have paid their rent and otherwise complied with their leases.**

When there is a foreclosure on a tenant-occupied property in Cleveland, the renter's first notice of the foreclosure is usually after the foreclosure sale, and is usually a notice to vacate from the Sheriff's Office or from the lender as the foreclosure purchaser. The foreclosure sale terminates the lease and the lenders never permit tenants to continue their tenancy at the property. The lenders want the property vacant and seek to avoid any responsibility for maintaining an occupied property.

Unfortunately, whether tenants are formally evicted, leave because they are unaware of their rights, or signs "cash for keys" deals to vacate the property, the community (as well as the tenant) suffer. Vacant homes are more often than not entered into illegally within days of becoming vacant, and immediately stripped of all plumbing, duct work, wiring, and any other items of value. The home becomes an eyesore to the community, with broken windows, doors, and a daily diminishing property value. The simple act of allowing a tenancy to continue would do wonders for maintaining the integrity of thousands of foreclosed homes across Greater Cleveland.

It should also be noted that a foreclosure sale is the only instance in which a sale of real property terminates the existing rental agreement. In EVERY other sale of commercial or residential property, the buyer acquires title to the property subject to any existing tenancy.

What can be done on the Federal level to help alleviate these issues:

1) **Develop a Federal Housing Policy**. The Federal government has not had a Housing Policy since the 1970's. With the number of housing issues facing communities across our nation, now is an important time to resurrect a workable, deliverable Federal Housing Policy.

2) **Support the legislation of H.R. 3915**. The U.S. House of Representatives has recently passed H.R. 3915 and the Senate has referred it to the Committee on Banking, Housing, and Urban Affairs Committee. H.R. 3915, among other key provisions, provides for the continuation of an existing lease and a minimum of 90 days notice of termination of tenancy to tenants in the event of foreclosure.

3) **Maintain and increase CDBG funding**. Community Organizations that work to prevent and assist with the local foreclosure crisis depend upon Community Development Block Grant money. Halt the recent cuts to CDBG funding, and increase the availability of these funds.

4) **Support the Federal Housing Trust Fund legislation of H.R. 2895**. The U.S. House of Represeantatives has recently passed H.R. 2895, and it has been introduced into the Senate under S.B. 2523. The Federal Housing Trust Fund would provide important supplemental funding for activities related to preserving and expanding safe, decent, affordable housing.

Testimony Submitted to Cleveland City Council
Wednesday, February 27, 2008

Kermit J. Lind, J.D.
Clinical Professor of Law
Cleveland-Marshall College of Law
Cleveland State University

Now that the mortgage failure crisis is focusing national attention on a battle Cleveland residential neighborhoods have been waging for more than a decade against the cycle of abandonment and foreclosure, it is important to consider in some detail what is going on and what needs to be done about it. In this statement, I will identify just a few problems and offer suggestions for responses from agencies of government at the federal level.

Problem	Federal Response
Mortgages on real property are traded as security interests with no identification on the instruments of the originator. Tracking of the trading by others with an interest in the subject property, including local authorities who regulate the condition of the real property, is costly and time consuming.	As with other securities, mortgage instruments should all bear the identification of the borrower, the property, the licensed broker and the licensed lender who originated the loan. This is similar in concept to CUSIP numbers on shares of stock.
Mortgages on illegally blighted real property are transferred without registering the transfer with local authorities. This imposes undue burdens on municipalities who must give notice to all interested parties of code enforcement actions affecting title to the property in accord with federal constitutional notice requirements.	Establish a national registry of residential mortgages that publishes the full identity of the holder with contact information. Penalties would be imposed for failure to register transfers promptly. The registry needs to be searchable by property parcel identification number, by mortgagor and by mortgagee.
Federally chartered institutions (e.g. Fannie Mae) acquire, hold and sell blighted property without compliance or even respect for local housing and building codes. Their marketing in blight is a burden on neighbors and taxpayers, and it accelerates the decline of neighborhoods.	Regulate the sale and transfer of residential property interests in interstate commerce to require compliance with local ordinances protecting houses and neighborhoods from harm. Mortgagees who ignore official notices that their collateral is a public nuisance should not be able later to benefit from failure to exercise their contractual right to prevent harm to the property.
HUD holds more blighted properties than any other single property owner and it does a poor job of cooperating with local authorities in the manner and timing of disposition of its inventory. It has a reputation as the biggest slum lord in America. Yet, as a federal agency, it is immune from local regulatory compliance and court jurisdiction.	HUD plays a critical role in the provision of housing assistance and neighborhood development, but its management and disposition of properties received in foreclosures is a shameful mess. That operation needs reform now. In addition, HUD should not be immune from municipal court jurisdiction to enforce compliance with local health, safety and welfare ordinances affecting residential property. Federal pre-emption should be waived where HUD owns nuisance property.
Bankruptcy of mortgagors and financial institutions tie up foreclosures of distressed, low value properties that sit in legal limbo,	Change bankruptcy case management to provide that, along with an automatic stay, the municipality or its designee shall be

sometimes for years, waiting for stays to be lifted or trustee abandonment of the property to mortgagees.	automatically appointed receiver of houses cited for blight with authority granted to the receiver to protect the neighborhood from the blight with costs chargeable as costs to the bankruptcy case. If blight abatement costs more than the property is worth, the bankruptcy court should convey it to the municipality or its nonprofit designee.
Entities from other states are dealing in real property interests in this state without having a statutory agent or other publicly identified representative for service of process. They are coming into the state to affect the title of property which is permanently located in the state and subject to state taxation and regulation. As dealers in real property within the state, they should be required to have a statutory agent in the state as a condition to exercising any rights in the property.	Regulate transfers of residential mortgages to be conditioned upon the transferor giving full identification of the transferee's statutory agent within the state of the real property's location.
Mortgagees who initiate foreclosure actions sometimes abandon the cases when the subject property is found to have little or no value. When this happens, the mortgage lien is neglected or sold to scrap dealing debt collectors who sell to speculators. Taxes go unpaid and the condition of the property is neglected to the detriment of the health, safety and welfare of the neighborhood.	Require a provision in all mortgages transferred across state lines that dismissal of a foreclosure case where the property is not in substantial compliance with local building and housing codes shall be with prejudice making that mortgage unenforceable. Municipalities should also be necessary parties in foreclosure actions to enable them to marshal any nuisance abatement liens or to seek equitable injunctions to prevent deterioration due to the abandonment that usually accompanies foreclosure.

These specific reforms should not take the place of a comprehensive review and overhaul of the home financing system. Financial institutions and federal regulators, including Congress and the Executive branch, have become so cozy in their relationship that the people and property in neighborhoods where mortgages are made and serviced are ignored and increasingly irrelevant. Deregulated and unregulated lenders, investors, servicers and rating agencies, whose only interest is in trading mortgages, have dominated the financing of homes. No business entity which profits or seeks to profit from home mortgage financing should be without oversight that ensures transparency and accountability.

Most of the burden for and the response to the devastation abandonment and foreclosure is causing in urban neighborhoods must be born by state and local governments. The federal government should recognize that burden and ease it rather than increase it. A good start would be an enlightened urban policy that makes partnership between local governments and the federal government beneficial and functional and, further, recognizes the reality of the long-term harm the mortgage failures have caused in cities like Cleveland.

Fighting Foreclosure and Abandonment Forum:

PANELS

Redevelopment

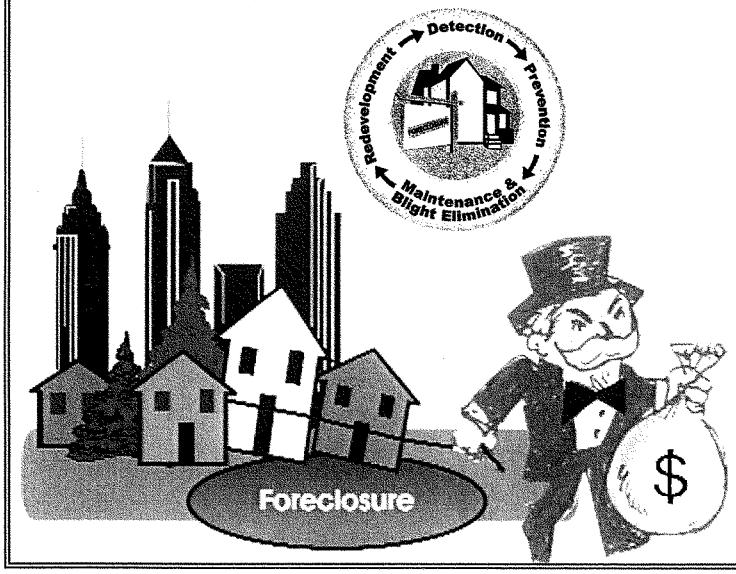
Coleen Gilson, Cleveland Neighborhood Development Coalition

Cleveland Housing Network

Enterprise Foundation

Community Land Trust

Frank Ford, Neighborhood Progress, Inc.



Lou Tisler, Neighborhood Housing Services of Greater Cleveland
5700 Broadway Avenue, Cleveland, OH 44127, (216) 458-4663 x 12
ltisler@nhscleveland.org

Thank you for giving Neighborhood Housing Services of Greater Cleveland the opportunity to address this body today. NHSGC, through our partnerships with the Ohio NeighborWorks Foreclosure Prevention Initiative and the Cuyahoga County Don't Borrow Trouble Campaign, has been at the forefront of creating, implementing and delivering programs to provide assistance with foreclosure prevention and mortgage delinquency, over the last three years.

NHSGC has identified one of the main problems that we believe has a solution that can be delivered. This problem is the lack of resources and promotion of housing counseling before and after the purchase of home. Secretary of the Department of Housing and Urban Development said on Friday, February 22, 2008 that home buying education was the MOST important tool to combat foreclosures and that an educated homeowner is more likely to be a successful homeowner.

It is clear that the majority of homeowners seeking assistance in the prevention of foreclosure have not received any education and/or counseling prior to purchasing or refinancing their mortgage. Recent data by NeighborWorks America indicates those that receive loans from NeighborWorks Organizations, which requires homebuyer education, are on par nationally with the low default rates of conventional prime loans. In addition, very few homeowners who have attended NHSGC's pre-purchase program return seeking assistance for mortgage delinquency. It is clear that homebuyer education works and should be mandated and/or incented prior to purchase or refinance of a mortgage loan.

The federal government can be a leader in promoting increased counseling for homeowners facing trouble by supporting The Foreclosure Prevention Act of 2008. This legislation will increase available funds for pre-foreclosure counseling by $200 million. It will change the bankruptcy code to remove the prohibition on modifying the mortgages of debtors in bankruptcy. It will raise the cap on Housing Finance Agencies by $10 billion generating revenue to be used to refinance subprime loans. Under this legislation communities with high foreclosure rates will be able to access Community Development Block Grant funds to purchase foreclosed homes in blighted neighborhoods and use these funds to rehab and re-sell them. It will also amend the Truth-In-Lending Act and improve the disclosures about loans that homeowners at purchase and refinance.

Neighborhood Housing Services of Greater Cleveland encourages governmental departments such as the Departments of Treasury and Housing and Urban Development to develop programs that would increase financial education at the high school and college levels, increase resources for housing counseling especially pre-purchase education and ensure that tools and funding is available for homeownership preservation counseling after purchase so that building wealth through sustainable homeownership will remain available to all Americans.

Thank you for allowing Neighborhood Housing Services of Greater Cleveland the opportunity to address this body. It is our hopes that our experiences, our lessons learned, and our solutions drawn will be adopted by the new administration to address this crisis. Again, thank you.

Testimony: Kate Monter Durban *February 27, 2008*
Cleveland Housing Network, Assistant Director
Cleveland City Council Forum on Foreclosure and Abandonment

Good Morning. My name is Kate Monter Durban and I am the Assistant Director of the Cleveland Housing Network, the largest private provider of affordable housing and related services in the region. For 27 years, CHN has been dedicated to the simple notion that every family deserves a home, and without one, no family can succeed. In the last 2 years, nearly all of the housing counseling that we provide is aimed at trying to stop pending foreclosures. To date, we have helped 341 homeowners save their homes.

I have worked in the community development field in Cleveland's neighborhoods since 1981, and I have seen enormous progress and so many reasons for hope. Together we have built one of the strongest models of urban redevelopment in the country. However, because aggressive, abusive mortgage lending practices were allowed to flourish unabated, everything we have worked for is decidedly at risk. State Treasurer Cordray has termed this crisis the Great Depression of our time.

By far, the largest housing issue facing Cleveland today is the more than 10,000 vacant, abandoned houses that plague our neighborhoods in the wake of America's subprime mortgage implosion. Some have described it as a hurricane without water, and without FEMA aid, or insurance proceeds. Current estimates are that 10,000 houses will need to be demolished throughout Cuyahoga County in the next 5 years. This price tag approaches $100 million. Obviously, the City of Cleveland and Cuyahoga County cannot foot this bill. Yet, if these open, vacant and vandalized homes are allowed to languish and further blight neighborhoods, property values will continue to plummet, and the county's tax base will be increasingly inadequate to meet basic needs.

In crafting national solutions to the problem of vacant homes, one size definitely does not fit all. What is needed in weak market, disproportionately impacted cities like Cleveland is an entity willing to accept large portfolios of vacant homes. Because for-sale absorption rates throughout Cuyahoga County are very low, any such operation will be a big loser, at least in the short-term. While the entity could sell the best properties in the best suburban markets, these profits would be entirely swamped by the losses incurred on demolition and holding costs in the most impacted areas, even if properties were donated by lenders. In fact, there are a handful of lenders with large portfolios who are willing to donate large numbers of properties in the most devastated neighborhoods to a responsible entity right now. Their willingness to donate is not philanthropic. It is based on their projections of large losses incurred on demolition and holding costs, and the prospects of **very low** sales prices from the private market. We are totally back to the future here, with many vacant homes selling on the internet or at auction for $1,000 - $10,000.

Thus, national solutions and funding are desperately needed, and must be targeted to the most impacted, low-income communities. Cleveland has been devastated, and our ability to mobilize the resources needed to recover has been severely compromised. Many people made enormous fortunes on the destruction of our neighborhoods, while the federal government chose to look the other way, refusing to regulate predatory lending and the mortgage broker industry. This abdication will cost Cleveland dearly for the better part of a generation. It is time that federal policy makers come to the table with real solutions, and real dollars to help cities like Cleveland recover from the greed and devastation of Hurricane Wall Street.

REMARKS BY MARY HELEN PETRUS, CLEVELAND NEIGHBORHOOD DEVELOPMENT COALITION

Good morning/afternoon. My name is Mary Helen Petrus. I am the Director of Policy Development for the Cleveland Neighborhood Development Coalition, the nonprofit umbrella trade association of neighborhood community development corporations in the City of Cleveland. Our members are on the front lines of their neighborhoods, working very hard to prevent foreclosures, and to keep vacant and abandoned properties from falling into disrepair. Managing these problem properties has become one of the most tenacious community development challenges nonprofit developers and local governments have had to grapple with in recent years. These properties, and the problems associated with them, such as flipping, have in an accelerated way siphoned off many of the gains made by the community development industry to neighborhood revitalization and individual wealth building over the past 20 years.

I am also the co-chair of ReBuild Ohio, a statewide consortium of local government, civic and nonprofit organizations dedicated to developing effective state and local policies that work to prevent, reduce and reclaim problem properties. ReBuild Ohio recently released a major study, "$60 Million and Counting: the Cost of Vacant and Abandoned Properties to 8 Ohio Cities," which showed that local governments bear significant costs city service costs due to widespread vacancies, and sustain staggering amounts of lost property tax revenues. The study also found that cities have limited capacity to track and address vacant and abandoned properties. The study and ReBuild Ohio's policy recommendations are available for downloading at www.rebuildohio.org

Although ReBuild Ohio's policy recommendations focus on what the state legislature and administration can do to address problem properties, many of them could be supported by Federal policies and funding. Specifically, I would call for:

- Federal aid to states to support the development of local, county and statewide property inventories, as well as land use and value data bases, so that local governments can quantify and shape targeted remedies

- Continued and increased funding for the CDBG program, particularly for programs that support home repair for low and moderate income families

- Additional funding for demolition of vacant housing for distressed communities

- Additional funding to local and regional governments for acquisition, holding and redevelopment of vacant property

- Additional funding to municipalities for land use planning, emphasizing sustainable redevelopment strategies

- Creation of tax credits and other incentives to encourage restoration or continued productivity of properties

Thank you for the opportunity to offer testimony to share CNDC's concerns and ideas on vacant property reclamation and redevelopment.

Testimony Submitted To Cleveland City Council
Wednesday, February 27, 2008

Preventing Further Foreclosure and Abandonment

What the Federal Government Can and Should Do

Submitted By Frank Ford, Senior Vice President for Research and Development at Neighborhood Progress, Inc. Background and Experience: Attorney, 32 years in housing and community development, teaching positions at the University of Colorado and Case Western Reserve University (CWRU), author of studies on home mortgage and small business lending discrimination.

The Role of Neighborhood Progress, Inc. (NPI) in Addressing Mortgage Foreclosure and Housing Abandonment: For 20 years NPI has been a major supporter of housing and community development in Cleveland and has for the past 4 years been a leader in investigating causes and developing solutions to foreclosure and property abandonment. Contributions include: financial support for Cuyahoga County's Foreclosure Prevention Program, the NEO CANDO property data system at CWRU, and the assessment of the Cleveland Building and Housing Dept. by the Lien Firm. Collaborated with Empowering and Strengthening Ohio's People (ESOP) on a pilot foreclosure prevention program in six neighborhoods. Sponsored Rebuild Ohio and its recent "$60 Million and Counting - Cost of Abandonment Study".

Problem: A subprime lending system that emerged in 1995, characterized by irresponsible and reckless loan origination and bulk purchase of mortgages, has caused a Tsunami wave of mortgage foreclosure in Cleveland. The abandonment of an estimated 10,000 (and counting) homes is a cancer that is destroying neighborhoods, erasing decades of investment, and costing the City and County millions in clean-up, lost tax revenue and lost property value.

Federal Congressional or Executive action is urgently needed to combat this disaster. We need to stop further housing abandonment by stopping or slowing the onslaught of new mortgage foreclosures.

- *Impose a moratorium on the resetting of adjustable rate (ARM) loans. Drastic payment increases are a leading cause of default and foreclosure.*
- *Impose a one year moratorium on foreclosure of occupied property.*
- *Declare foreclosure unenforceable if the assignment of the mortgage was not filed for record.*
- *Impose a rebuttable presumption that a mortgage that exceeded the property's fair market value was unconscionable and unenforceable, shifting the burden to the foreclosing lender-plaintiff to demonstrate that the transaction was fair and equitable.*
- *The Federal Reserve, the Comptroller, the FDIC, the Office of Thrift Supervision, and HUD should use their authority to encourage more flexible lender loan workouts & loan re-structuring.*
- *Regulatory agencies should use their authority to require depository banks to recapture mortgage markets abandoned to subprime lenders. Studies by Fannie Mae and Freddie Mac have found that 35-50% of borrowers with a subprime loan would have qualified for a prime loan. Meanwhile studies by national and local researchers continue to find that depository banks are failing to meet the credit needs of their communities.*
- *Aggressive use of the Justice Department to prosecute mortgage fraud.*
- *Adopt a national regulatory scheme for policing of mortgage brokers and appraisers.*
- *Set stronger standards for secondary market investors, requiring them to exercise greater due diligence before making bulk purchase of unsafe loans.*

- *Insure that lawmakers and regulators, as they work to eliminate irresponsible lending practices, maintain the fundamental balance of the Community Reinvestment Act (CRA) - access to fair credit, but consistent with safe and sound lending practices.*

Testimony Submitted To Cleveland City Council
Wednesday, February 27, 2008

The Growing Inventory of Housing Abandonment

What the Federal Government Can and Should Do

Submitted By Frank Ford, Senior Vice President for Research and Development at Neighborhood Progress, Inc. Background and Experience: Attorney, 32 years in housing and community development, teaching positions at the University of Colorado and Case Western Reserve University (CWRU), author of studies on home mortgage and small business lending discrimination.

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Problem: A subprime lending system that emerged in 1995, characterized by irresponsible and reckless loan origination and bulk purchase of mortgages, has caused a Tsunami wave of mortgage foreclosure in Cleveland. The abandonment of an estimated 10,000 (and counting) homes is a cancer that is destroying neighborhoods, erasing decades of investment, and costing the City and County millions in inspection services, demolition, clean-up, lost tax revenue and lost property value. At an average of $8,000 per house, estimates for demolition in the City of Cleveland over the next 10 years range from $40 to $100 million.

Federal Congressional or Executive action is urgently needed to provide disaster relief to local communities swamped by a growing inventory of vacant and abandoned homes. The scale of the disaster equals or exceeds that caused by major hurricanes and warrants similar assistance from the Federal government.

- *Federal funding for blight control & demolition.*
- *Federal funding for reclaiming and renovating vacant homes that can still be salvaged.*
- *The Federal Reserve, the Comptroller, the FDIC, the Office of Thrift Supervision, and HUD should use their authority to encourage lenders to donate vacant foreclosed property to non-profit community development corporations and government land banks.*
- *Similarly, the Federal Reserve, the Comptroller, the FDIC, the Office of Thrift Supervision, and HUD should use their authority to discourage lenders from "dumping" their foreclosed properties with property flippers and speculators .*
- *The Federal Reserve, the Comptroller, the FDIC, the Office of Thrift Supervision, and HUD should use their authority to encourage lenders to make financial restitution for the damage*

caused either by reckless loan origination, or by reckless investing in bundled subprime mortgages.

The Subprime Lending and Foreclosure Crisis

Frank Ford, Senior Vice President For Research and Development
Neighborhood Progress, Inc.

The following is intended as a briefing for community development practitioners on the subjects of subprime lending, foreclosure and property abandonment. Using Cleveland, Ohio as a backdrop, this briefing will provide an introduction to the following:

- Defining The Problem
- The Causes – How Did We Get Here?
- Major Fixes Required

Defining The Problem

For the past 12 years lenders specializing in high risk and high cost "subprime" lending have made loans to people who had little prospect of repaying those loans. As a result, beginning in the mid to late 1990s, rates of ***loan default and foreclosure*** increased – and are continuing to increase - dramatically.

However, the problem is not that easily defined – it has additional manifestations and ripple effects. In some cases, subprime lending has set the stage for additional subcultures of fraud and criminal activity.

Two types of fraud are now flourishing and have been greatly enabled by subprime lending. The lax underwriting standards of subprime lending – where almost anyone could get a loan – have been a dream come true for ***dishonest flippers, mortgage brokers and appraisers.*** And, ***foreclosure "rescue" scams*** now prey upon the tens of thousands of foreclosure victims in Cuyahoga County.

The unprecedented escalation in annual mortgage foreclosure – from 2,000 in Cuyahoga County in 1995 to a projected 14,000 in 2007 – has created ***an inventory of abandoned property*** and ***blight***, that is beyond the capacity of local government, or the local community development system, to rectify. Streets that once may have had 1 or 2 vacant properties, now have 10 or 15. Strong market areas that rarely if ever saw a vacant property now count them by the dozens or the hundreds.

As grave as these foreclosure rates are, they are predicted to go even higher. Apart from the problem of lax underwriting applied by mortgage lenders, many lenders aggressively promoted adjustable rate mortgages (ARMs) and financial analysts predict that a high share of these ARMs are going to have their rates re-set over the next 16 months – adding to the number of foreclosure "time bombs" waiting to go off. News reports are already noting examples of monthly payments jumping – for example – from $800 to $1,200.

The abandoned property that follows these foreclosures ***reduces the property values*** of adjacent and nearby homeowners; two studies in the past 5 years found market value drops of $5,000 to $7,000 on average for properties within 100 feet of an abandoned home. Community Development Corporations (CDCs) and private developers find they ***cannot sell their new or redeveloped homes***, or must do so at a loss.

These problems influence the housing choices of ***homeowners and homebuyers*** in Greater Cleveland, leading many to ***choose to leave the City*** and inner-ring suburbs. Those choices further exasperate the problem by decreasing the value of property.

The problem, therefore, is not one-dimensional. It has many faces. And, its newest face may only now just be taking shape. As lenders, investors, regulators and legislators scramble to tighten up lending standards, there could be an over-reaction that could result in a ***denial of access to credit*** to those who should receive it. This could result in a return to a form of "red-lining" that would undermine the efforts of the community development industry. Fair access to credit is essential to the redevelopment of Cleveland's neighborhood and suburban markets.

The foregoing has described some of the more prominent local manifestations. As daily news reports now tell us, the damage from the subprime lending crisis has now spread to impact national and global economic markets.

The Causes – How Did We Get Here?

The causes of and the contributing factors to the subprime lending and foreclosure crisis are as complex as its outcomes. To fully understand how we got to this point, it's important to understand some of the major shifts in banking regulation that have taken place over the past century.

Until the economic depression of the 1930s the banking and lending industry was subject to minimal regulation. The depression brought the collapse of depository banks and savings and loans, and the loss of life savings for millions of people. Congress and states responded with laws and regulations built around a theme of "safe and sound lending" designed to protect depositors assets. This continued for 40 years, with regulation generally favoring the rights of depositors over borrowers. By the 1970s many housing and community development advocates felt that this imbalance led to a denial of credit ("red-lining") for people of color specifically, and urban neighborhoods in general. Congress responded by passing the Home Mortgage Disclosure Act (HMDA) in 1974 and the Community Reinvestment Act (CRA) in 1977 in an effort to protect people of color and other minorities from being shut out of the credit marketplace. It is significant to note that the Community Reinvestment Act required fair access to credit – but mandated that it be done "***consistent with safe and sound lending practices***". These laws achieved a balance between protecting the rights of borrowers, and protecting the interests of depositors.

The fundamental problem today is that much of the lending industry seems to have recklessly abandoned the core principles of "safe and sound" lending.

The following are among the factors that may have contributed to a shift away from the core principles of "safe and sound" lending.

The Creation of a Secondary Mortgage Market. As early as the 1930s housing advocates realized that if mortgage lenders held and serviced their loans for a full 30 year term, lenders would have to wait during that period for the loans to be repaid before funds could be re-loaned to other borrowers. However, if a "secondary" market were created that could buy mortgages soon after they were made, money could be re-cycled and re-loaned faster, making the dream of homeownership available for more people. The Federal government created three quasi-public institutions to fill this need: Fannie Mae (the Federal National Mortgage Association), Freddie Mac (the Federal Home Loan Mortgage Corporation) and Ginnie Mae (the Government National Mortgage Association). In the 1990s Wall Street investment firms followed the lead of Fannie, Ginnie and Freddie and began purchasing mortgages as an investment.

One of the most common questions asked by people trying to understand predatory and subprime lending is "Why would they make a loan knowing it has a high probability of going into default?" One obvious answer is – they're selling the loans on the secondary market within days or weeks after making them. There simply isn't the same incentive to insure "safe and sound lending" when you don't have to hold onto the mortgage for 30 years. In fact, once it's clear that there are investors waiting to buy pools of loans by the hundreds or thousands at a time, it becomes highly profitable for subprime lenders to churn out loans as fast as they can make them. ***The original idea behind a secondary market is sound – but there is a need at the national level for regulation that would require secondary market investors to exercise greater due diligence before purchasing unsafe loans.*** When loan originators cannot "dump" their products easily, they will exercise greater care in making the loans.

Some may argue that there is no need for regulation since Wall Street investors have, since February 2007, begun to react to the high rates of foreclosure and appear to be exercising greater caution. It's worth noting that communities such as Cleveland suffered 12 years of damage before they reacted. We could also question whether, without stronger regulatory guidelines for the secondary market, the same cycle could repeat in 15 or 20 years.

Increased Mergers and Acquisitions. The past 20 years have seen a dramatic increase in the number of acquisitions and mergers of banks and savings and loans. As a result, the majority of subprime loans are issued by lenders operating out of state. Forty years ago a Clevelander seeking a mortgage loan would have typically gone to a Cleveland-based bank, savings and loan or mortgage company. The loan review would have taken place in Cleveland and the loan decision would have been made in Cleveland – most likely by someone who knew the neighborhood in question. Finally, as noted above, prior to the rise of the secondary market the loan would have been serviced by

the local institution and its personnel for the life of the loan. Today almost every lending institution in Cleveland has its home base out of state. The review, decisions, and servicing may also be done out of state. The opportunity for reckless lending, or outright fraud, is greatly increased when the decisions are made by people who have little or no knowledge of the local neighborhood.

The Rise of the Mortgage Broker Industry. As a result of this long-distance lending, a new industry evolved around the role of the "mortgage broker", someone who serves as an intermediary to arrange a loan, and earns their fee based on the size of the loan. A mortgage broker is not the "loan originator" – as Federal regulations define the entity that actually makes the loan decision and issues the loan. The broker earns a fee for packaging the loan and forwarding the paperwork to the lender. The mortgage broker makes their profit from the size of the loan, and their success is not tied to the success of the loan. Not only are brokers not harmed by high rates of foreclosure, they may actually contribute to default. To enhance their fee, a broker may be inclined to encourage a borrower to borrow more money than they can afford, increasing the risk of default.

The Declining Market Share of Prime Lenders. Since 1995 the market share of high-cost subprime loans has increased while prime loans have decreased. A study by the Housing Research and Advocacy Center in Cleveland found that 48% of all loans made in Cleveland in 2005 were high-cost subprime loans. While this does not necessarily suggest that a withdrawal of lending by prime lenders is a cause of the foreclosure problem, it does suggest that a re-engagement in mortgage lending by prime lenders may be an important part of the solution. This view is supported by a Fannie Mae study that found that 50% of all borrowers who obtained a high-cost subprime loan would have qualified for a prime loan. This finding suggests that there are market opportunities for prime lenders that are not being taken advantage of. ***Municipal, County and State governments should use the billions of dollars they place on deposit at banks to encourage greater participation by prime lenders.***

Overselling The Goal of Homeownership. For 40 years it has been a goal of community development to increase homeownership opportunities, a goal supported by local, state and Federal government and the community development industry. While this has had generally positive results, a legitimate question can be asked whether the zeal with which homeownership was pursued inadvertently led some to fail to see the lending abuses that were rising over the past decade. Some argue that homeownership has been pushed in underserved markets without sufficient commitment to prevent abuses and provide adequate counseling and homebuyer education.

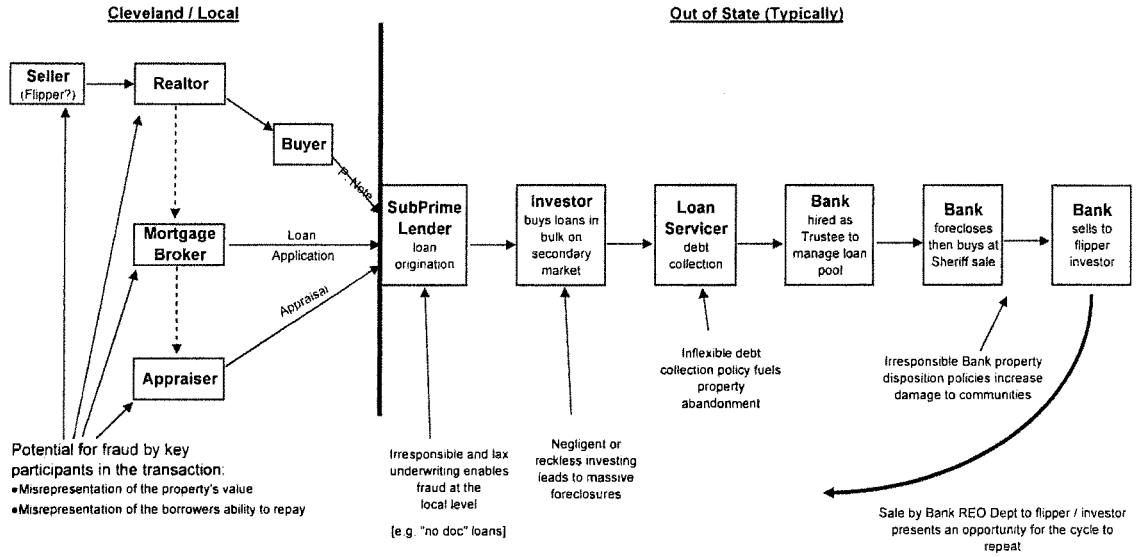
Major Fixes Required

There are four broad remedies that are needed, and they can be categorized according to four categories of people directly affected. The table on the following pages provides a summary of these remedies.

	People Affected	Fix
1	**Borrowers** who presently have a subprime loan and are still occupying their homes, e.g. - • *in foreclosure, still occupying the home* • *in default, but soon to be in foreclosure* • *not in default yet, but at risk*	**Maximize the opportunity for owner-occupants to remain in their homes.** • *Impose a moratorium on the resetting of ARM loans.* • *Impose a one year moratorium on foreclosure of occupied property.* • *Declare foreclosure unenforceable where the assignment of the mortgage was never filed for record.* • *Where the mortgage debt on a property exceeded the County Appraised value at the time of the mortgage transaction, impose a rebuttable presumption that the mortgage transaction was unconscionable and unenforceable, shifting the burden to the lender-plaintiff to demonstrate that the transaction was fair and equitable.* • *City, County and Federal governments use all available means to encourage lender loan workouts & loan re-structuring.* • *City, County and Federal governments use all available means to encourage more alternative re-financing products, (such as the program offered by Cleveland's Third Federal Savings and Loan).*
2	**Neighbors** and communities faced with the abandoned property that follows foreclosure. *A recent study commissioned by Rebuild Ohio conservatively estimates that abandoned property is costing Ohio taxpayers $60,000,000.*	**Maximize tools for stabilizing abandoned property and promoting responsible redevelopment; restrict the flipping and churning of property by speculators.** • *Federal funding for blight control & demolition.* • *Federal funding for reclaiming and rehabbing vacant homes.* • *City, County and Federal governments use all available means to encourage lenders to donate (to CDCs and government land banks) vacant property in their REO inventory.* • *Enhance state authority for creation of municipal and county land banks.* • *Prohibit Sheriffs from carrying out a post-foreclosure sale when there are outstanding code violations cited by the Building, Housing or Health department of the local jurisdiction.*

	People Affected	Fix
3	**Potential Borrowers** still at risk of being victimized by irresponsible lending. *In spite of the media attention, some abusive and irresponsible lending is still occurring.*	**Insure a Return to Safe, Sound and Responsible Lending Practices** • *Aggressive prosecution of fraud.* • *Stricter policing of mortgage brokers and appraisers by the regulatory agencies.* • *Aggressive enforcement of Predatory Lending Laws.* • *Greater investment in financial literacy education for homebuyers.* • *Require secondary market investors to exercise greater due diligence before purchasing unsafe loans.*
4	**The next generation of Potential Borrowers** who will need home mortgage credit in the next 1 – 5 years. *Studies by Freddie Mac and Fannie Mae found that 30-50% of borrowers who obtained a subprime loan were qualified for prime credit, but didn't receive it. In our effort to eliminate irresponsible lending, we have to be careful not to "throw the baby out with the bath water". A blind over-reaction to this crisis could result in a restriction of credit to those in underserved markets who are otherwise good credit risks.*	**Insure Access to Fair Credit Consistent With Safe and Sound Lending Practices** • *Encourage lawmakers and regulators, as they work to eliminate irresponsible lending practices, to maintain the fundamental balance of the Community Reinvestment Act (CRA) - access to fair credit, but consistent with safe and sound lending practices.* • *Use the regulatory powers of the Federal Reserve, the Comptroller of the Currency, the FDIC and the Office of Thrift Supervision, to require depository banks to recapture mortgage markets abandoned to subprime lenders.* • *Leverage Municipal, County, State and Federal funds on deposit with banks to encourage them to recapture mortgage markets and meet the credit needs of their communities as required by the Community Reinvestment Act.*

ABUSIVE LENDING, FLIPPING & FORECLOSURE
A Continuum of Culpability



Underlying causes and contributing factors

- Changes in banking laws in the 1970s spur mergers & acquisitions - as a result, most lenders are now out-of-state.
- The lack of local lenders creates a new role - and an increase in - local mortgage brokers.
- Local brokers make their profit from up-front fees, not whether the loan is sound and sustainable over time.
- Out-of-state lenders don't know the neighborhood and rely on faxed information from brokers and appraisers.
- The relaxation of secondary market underwriting - by Wall Street investors - has helped enable an irresponsible lending environment
- Lenders have less incentive to insure a sound transaction when they know they can sell off the loan within days.
- The rise of sub-prime lending in the mid-1990s resulted in a corresponding decrease in prime lending.
- Secondary market investors gambled that they could withstand a certain percentage of bad loans.
- A lack of code inspection creates a permissive environment for vacant property flipping and mortgage fraud

Testimony Submitted To Cleveland City Council
Wednesday, February 27, 2008

Debunking 5 Myths of The Foreclosure Crisis

Submitted By Frank Ford, Senior Vice President for Research and Development at Neighborhood Progress, Inc. Background and Experience: Attorney, 32 years in housing and community development, teaching positions at the University of Colorado and Case Western Reserve University (CWRU), author of studies on home mortgage and small business lending discrimination.

The foreclosure crisis is complex. Crafting solutions is a difficult undertaking. But it's made more difficult by disinformation perpetuated by the lending industry and, occasionally, fueled by long-standing prejudices in our society against those who have been victimized by the crisis.

Myth #1. **"It's the Economy"**. The statement suggests that the foreclosure crisis will go away once the economy turns around, and is usually put forth by the lending industry to counter the suggestion that irresponsible subprime lending caused the crisis. Significant increases in foreclosures began to be noticed after 1995, with foreclosures more than doubling in Cuyahoga County from 1995 to 2000. The Ohio Recession did not begin until late in 2000. If the economy was the cause, why did foreclosures increase dramatically between 1995 and 2000 while the economy was still relatively healthy? The explanation is that subprime lending activity surfaced around 1995 and this marks the beginning of the lending industry's head-long rush toward irresponsible and unsafe lending.

Myth #2. **"It's these irresponsible [or ignorant] borrowers"**. The number of people foreclosed on in Cuyahoga County quadrupled from 1995 to 2007. In order to believe that ignorance or stupidity is the core cause of the problem, you'd have to also believe that people in Cuyahoga County just became incredibly ignorant over a 12 year period. Was it something in the air, or water? Is it just a coincidence that a major portion of the lending industry moved to a system of reckless and irresponsible subprime lending over the same period of time?

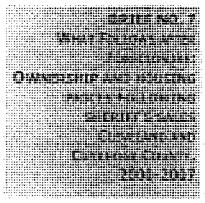
Myth #3. **"The Banks are victims"**. Over the past year the Business Section of the Cleveland Plain Dealer has run numerous articles with headlines like "XYZ Bank Takes Hit Due To Problems in the Mortgage Industry". The inference the reader would draw is that the bank was the innocent victim of something someone else was doing in the mortgage industry. In most cases, bank losses can be traced either to reckless lending decisions made by the bank itself, or reckless investing by the bank in bundled "pools" of bad loans.

Myth #4. **"The Community Reinvestment Act (CRA) pushed lenders to make irresponsible loans"**. The purpose of CRA, adopted by Congress in 1977, was to stop lending discrimination and make credit available to people of color as well as white borrowers. Significantly, CRA advocated for fair access to credit – while still applying safe and sound lending criteria. CRA advocates never argued for "no doc" loans, e.g. no proof that the borrower could repay. The record of CRA lending from 1977 to 1995 is clear – virtually no documented increase in foreclosure rates. But in 1995 the lending industry discovered that there was tremendous profit to be made by ignoring "safety and soundness" - making high risk loans and selling the loans in bulk on the secondary market. That's not CRA – that's a perversion of CRA.

Myth #5. **"The solution is to tighten up credit across the board"**. There is no need to restrict credit unilaterally; there is only a need to eliminate reckless underwriting that ignores the core principles of safe and sound lending. The substantial record of CRA lending in the 1980s and early 1990s proved that fair credit can be provided to people of color borrowers who meet sound underwriting guidelines. An over-reaction now, either by the lending industry or regulators, could take us back to the days of red-lining where credit-worthy individuals could not get a loan in an inner-city neighborhood. That would only serve to further inhibit the restoration of damaged neighborhood housing markets.

behind the numbers

data analysis from the
center on urban poverty
and community development



CLAUDIA COULTON
co-director
KRISTEN MIKELBANK
research assistant
MICHAEL SCHRAMM
analyst-programmer

Losing a home to foreclosure and sheriff's sale has become an increasingly common occurrence and can be devastating to home owners and neighborhoods. Foreclosures contribute to neighborhood decline when the circumstances are such that these homes fail to return to their previous level of productive use and value. Homes that are sold at sheriff's sales may sit vacant while the receivers or their representatives process the properties and try to move them back into the marketplace. The longer the homes sit vacant, the more likely they are to deteriorate and lose value. And as foreclosed upon homes accumulate in neighborhoods without reverting to owner occupants or investors who maintain and rent the property, they will have spillover effects, such as becoming nuisances or undermining the desirability and value of the surrounding area.

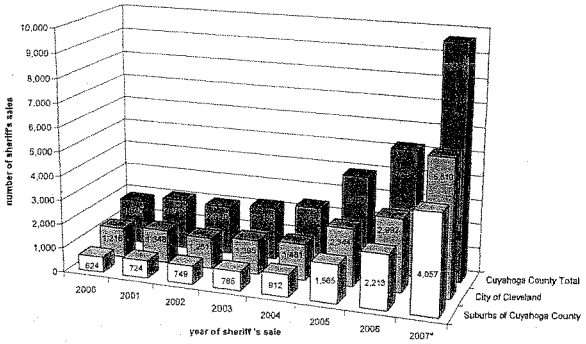
In examining the effects of increasing foreclosure rates in on Cleveland neighborhoods and suburban municipalities of Cuyahoga County, additional questions arise: What entities take ownership of these foreclosed properties and for how long do they hold them? Who purchases these homes next, and how do the sales prices compare to the value of the homes prior to the time they entered the foreclosure process? And have these patterns changed as the number of properties being auctioned at sheriff's sale has skyrocketed?

Trends in foreclosures

The number of recorded sheriff's deeds has risen dramatically, as can be seen in the figure. In fact, the number of sheriff's sales in the county more than quadrupled from 2000 to 2007, with a sharp rise that began in 2005. Much of the increased foreclosure activity was concentrated in the City of Cleveland, but suburban municipalities in Cuyahoga County also experienced recent growth of sheriff's sales.

All total, 23,700 residential properties in Cuyahoga County have been involved in a sheriff's sale in Cuyahoga County in the last seven years. This count represents 8.8% of residential parcels in the City of Cleveland and 3.0% of residential parcels in the suburbs of Cuyahoga County.

Number of Recorded Sheriff's Sale Deeds in Residential Parcels in Cuyahoga County



*These are annualized numbers based on the first 8 months of 2007.

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Visit our community data resource:
http://neocando.case.edu

For a more detailed version of this report, visit our website: http://povertycenter.case.edu.

Testimony of Mark McDermott
Vice President and Central Region Director
Enterprise Community Partners, Inc.

On Strengthening our Economy:
Foreclosure Prevention and Neighborhood Preservation

Before Cleveland City Council
February 27, 2008

My name is Mark McDermott. I am the Central Region Director and Vice President of Enterprise Community Partners. I appreciate the opportunity to share with you our best thinking on how to stabilize an increasing number of communities impacted by the recent wave of foreclosures.

Enterprise is a leading provider of development capital and expertise needed to create decent, affordable homes and rebuild communities. For more than 25 years, Enterprise has pioneered neighborhood solutions through private-public partnerships with community organizations, financial institutions, local governments and others who share our vision. Enterprise has raised and invested $8 billion in equity, grants and loans to support the creation of 225,000 affordable homes, and is currently investing in communities at a rate of $1 billion a year.

The current discourse and the attention from Congress and the President have, understandably and necessarily, focused on assistance to individual homeowners at risk of losing their homes. Enterprise wholeheartedly supports these efforts. But the foreclosure crisis also threatens the health and stability of many low- and moderate-income communities that will face disproportional concentrations of foreclosed properties. Without strategic federal intervention and resource deployment, these foreclosed properties will destabilize communities, erode tax bases, bring down

property values of neighboring homes and undermine decades of progress in impacted neighborhoods by furthering a cycle of abandonment and disinvestment.

Impact of Concentrated Foreclosures on Low- and Moderate-Income Neighborhoods

If the forecast on foreclosure trends materializes – estimates are that one million mortgages will default in the next two years – current disposition channels such as auctions and discounted sales will not suffice, contributing to a mounting stock of vacant properties owned by lenders or investors. The longer these real estate owned properties, known as REOs, sit vacant, the more they will contribute to falling property values and loss of demand from potential owner-occupant homebuyers.

This picture is already a reality in many neighborhoods. We believe that the federal government can play a pivotal role today, as it did decades ago, to come up with creative and targeted solutions to help our cities and communities overcome these serious and immediate challenges.

I would like to share with you some ways in which Enterprise is crafting partnerships to model successful approaches to community stabilization, as well as provide policy recommendations.

Strategies to Stabilize Distressed Neighborhoods

1. Building on Existing Models

Enterprise has long partnered with HUD to operate Asset Control Area (ACA) programs. Created by Congress in 1998, the ACA program allows FHA to sell at a discount all foreclosed, single-family homes it owns in designated revitalization areas that have high rates of foreclosures or low rates of

homeownership. Preferred purchasers – local governments and experienced nonprofit organizations – must agree to buy all foreclosed homes within the designated area and develop a business plan for revitalizing the community, to include goals for increasing homeownership and assuring housing quality. They then rehabilitate and resell the homes to qualified income-eligible, working families.

We believe we can learn important lessons from the ACA model to address the current REO crisis. This model can provide a vehicle for lenders and investors to transfer or sell, at a deep discount, foreclosed homes in designated areas to qualified, high-capacity nonprofits or to local governments. As it has with FHA foreclosures, this system would help limit losses from future foreclosures, prevent real estate speculation that exacerbates blight and slow neighborhood decline and disinvestment. Enterprise is in conversation with servicers to explore opportunities to implement this model with REO properties in targeted locations.

2. Exploring New Financing Mechanisms

We are in early discussions with other partners to create special financing tools for gaining control of vacant foreclosed properties in several targeted states. Senators Kerry and Smith recently introduced S. 2517, legislation that would temporarily allow state housing finance agencies to broaden their tax-exempt bond programs to include mortgage refinancing to provide an important role for state and local housing agencies. We support this approach as well as the Center for American Progress' Saving America's Family Equity (SAFE) proposal to buy existing mortgage pools at a discount and resell them to government-sponsored enterprises (GSEs) and/or FHA lenders who would refinance troubled owners into affordable, fixed-rate loans.

Enterprise™

3. Neighborhood Stabilization Fund

As an immediate step to stave off additional community distress caused by the mortgage foreclosure epidemic and growing numbers of REO-foreclosed properties, we join the National Foreclosure Prevention and Neighborhood Stabilization Task Force in calling on Congress and the President to authorize flexible block grant resources that can be quickly deployed to the hardest hit states and localities. We support the creation of a Neighborhood Stabilization Fund to provide immediate and flexible capital to remove troubled properties from third-party investors, servicers and lenders and help place these properties in the hands of local agencies, nonprofit entities, and responsible entrepreneurs whose mission and interests are to renovate the properties and preserve neighborhood viability. S. 2636, The Foreclosure Prevention Act of 2008, recently introduced by Sen. Reid, includes $4 billion in new CDBG funds for just this purpose.

4. Additional Policy Recommendations

Expand the New Markets Tax Credit

The highly successful $16 billion New Markets Tax Credit program is an innovative financial tool providing private sector capital to qualified Community Development Entities (CDEs) for community revitalization in low-income communities across the nation. The President and Congress should authorize a long-term extension of the program and expand it to allow for financing of vacant properties, such as Enterprise has done with Columbus Housing Partnership in Columbus, Ohio. .

Maximize CDFI Resources

The President could call for a special allocation of Community Development Financial Institution (CDFI) grants and loan funds to local CDFI entities to facilitate acquisition and rehabilitation of foreclosure properties.

Utilize CRA Requirements

The President could consider making REO property disposition an eligible activity toward banks' responsibilities under the Community Reinvestment Act. Banks should receive CRA credit for donation of real estate to a qualified nonprofit organization or state or local agency that will restore foreclosed and vacant properties to productive use.

Enact a National Housing Trust Fund

The Senate should proactively advance passage of S. 2523, the National Affordable Housing Trust Fund Act of 2007. A national housing trust fund is a critically needed tool to help stabilize neighborhoods, bringing off-budget resources to the production, preservation and rehabilitation of housing that is affordable to low-income households.

We need to employ the best skills of all sectors – public, private and nonprofit – to ensure that our neighborhoods are stable, productive and real communities of opportunity for all families. Thank you.

COMMISSION ON CATHOLIC COMMUNITY
ACTION Catholic Charities Health & Human Services
Secretariat Diocese of Cleveland

The Commission on Catholic Community Action (CCCA) is the Social Justice Office for Cuyahoga County for Catholic Charities in the Diocese of Cleveland. The CCCA has worked on serious matters of social justice for 39 years. We have done a great deal of work with the public sector and with the banking industry to end redlining which hurt so many families and neighborhoods. In the past decade we have partnered with several banks in sponsoring financial planning and home ownership preparation seminars at parishes across Greater Cleveland. Those seminars were quite successful and qualified most participants for home mortgage loans at prime rates. We have also held sessions with the Federal Reserve Bank of Cleveland financial institutions on constructive, practical ways to help meet the credit needs of lower income communities, especially in regard to home ownership.

Out of this work and out of the pastoral experience of parishes in our diocese we have been alarmed for several years now about the spread of predatory lending practices. We know that excessive obstacles and lack of information disadvantage too many people. Unnecessary or discriminatory barriers to prime lending access limit pursuit of the American Dream by hard working families. Unfortunately subprime lending involving unscrupulous practices by certain ethically challenged businesses and lenders has too often exploited that vacuum with devastating results for individuals and communities.

That is why the CCCA has joined with other religious and community organizations to advocate for more just and effective public policy that would prevent and punish predatory lending. Over 25 years ago the Community Reinvestment Act made a real difference in ending redling practices. Similarly, we need the Federal Government to respond decisively and swiftly to the current foreclosure crisis which is ravaging so many of our neighborhoods, communities and families. Something like an amended Foreclosure Prevention Act of 2008 (S2636) could be a starting point We think some of its provisions are needed in any comprehensive, effective responsive. That includes pre-foreclosure counseling, mortgage revenue bonds for refinancing subprime loans, amending the bankruptcy code to allow judges to modify mortgage debt for certain borrowers, and preventing flipping of properties. The $4 Billion called for in that proposal to help states and local governments facing the greatest need in this crisis would be a good start. That money could be used to purchase and rehab foreclosed properties for resale or for rental opportunities. Any proceeds could be recycled back into housing redevelopment. We believe, however, that lower income families should be included in any such response. We also support the proposal advanced by our County Treasurer about a County Landbank.

The CCCA calls upon public officials to take effective, just and timely action in response to this crisis because we are convinced this whole matter involves substantial moral concerns. In writing to Congress in 2002 on behalf of the U.S. Conference of Catholic Bishops supporting federal legislation that would help combat predatory lending practices, Cardinal Theodore McCarrick said that "Efforts to revitalize neighborhoods and to expand homeownership among low income families are being threatened by abusive lending practices. These practices termed 'predatory lending,' trap far too many ... into high cost loans that frequently led to foreclosure after stripping any equity from the home. The Catechism of the Catholic Church condemns this sort of speculation, this usury, as 'morally illicit.'"

Such practices must be ended and constructive, practical policies implemented to strengthen the common good, revitalize communities and support families. Federal action is needed now.

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February 27,2008

Executive Summary

The number of Ohioans who lost their homes to foreclosure and sheriff sales continued to grow in 2005. Last year, there was one foreclosure filing for every 71 Ohio households.

Filings have quadrupled from a decade ago. Overall, according to data reported to the Ohio Supreme Court by common pleas court judges across the state, there were 63,996 new foreclosure filings in 2005, an increase of 8.45 percent from 2004. The increase, amounting to almost 5,000 more filings than the year before, follows smaller growth of 3 percent in both 2003 and 2004. Since foreclosures climbed rapidly in the 1990s, the number in 2005 represents at least a recent record.

Results from a Policy Matters Ohio survey of Ohio's county sheriff departments indicate that the number of foreclosed properties put up for sheriff sale also has continued to increase. Altogether, 71 counties representing 86.3 percent of the state's population reported 43,123 properties put up for sale. That represents a 4.6 percent increase in those counties from 2004 and a 21.3 percent increase from 2003, according to department responses. Sheriff sales grew in 56 out of the 71 counties between 2003 and 2005. The overall increases are not as great as those reported in the Policy Matters survey that covered 2001 through 2003. However, together with the increased pace of foreclosure filings, the survey reflects that stresses on homeownership in Ohio continue to grow.

The growth in foreclosure filings is widespread around the state. Filings grew last year in 60 of Ohio's 88 counties, and quadrupled in 61 counties between 1995 and 2005. Cuyahoga County ranked first in foreclosure filings per person last year. But while the problem is more concentrated in urban counties, it is common statewide. Counties with the greatest growth in 2005 were scattered across Ohio, and none of the 10 counties that saw the greatest relative foreclosure filing growth were on the list of those that grew the most in 2004.

Among 50 sheriff departments that responded to the Policy Matters survey with numerical rankings on factors contributing to foreclosures, 31 ranked predatory lending first. Another 11 cited job loss/weak economy, while divorce or family break-up ranked third.

Last spring, the Ohio General Assembly passed legislation aimed at curbing predatory lending practices that have contributed to Ohio's foreclosures. The number of foreclosure filings and properties put up for sheriff sale will be among the benchmarks for assessing the law after it takes effect in January.

Foreclosures in Cuyahoga County Communities

A Report From

Policy Matters Ohio

Zach Schiller
Josh Marcin

August, 2007

AUTHORS

Zach Schiller is research director of Policy Matters Ohio. He follows tax and economic development policies, as well as other areas such as unemployment compensation. Schiller has a master's in journalism from Columbia University and a bachelor's degree from the University of Michigan. He spent more than 20 years following business and industry in Ohio at *Business Week* and the Cleveland *Plain Dealer* before joining Policy Matters. Josh Marcin is a political science and Spanish student at John Carroll University. He was a summer research intern at Policy Matters Ohio in 2007 and participated in the John Carroll Poverty and Solidarity Program.

ACKNOWLEDGEMENTS

Policy Matters Ohio interns Mark Stovell and Jamie Smith collected important data for this report and assisted in its publication. Michael Schramm of the Center on Urban Poverty and Community Development provided access to data from the Northeast Ohio Community and Neighborhood Data for Organizing (NEO CANDO) system and helpful comments. Mark Wiseman of the Cuyahoga County Foreclosure Prevention Program also provided useful information on foreclosure filings in the county.

POLICY MATTERS OHIO, the publisher of this study, is a nonprofit, nonpartisan research institute dedicated to researching an economy that works for Ohio. Policy Matters seeks to broaden debate about economic policy by doing research on issues that matter to working people and their families. With better information, we can achieve more just and efficient economic policy. Areas of inquiry for Policy Matters include work, wages, education, housing, energy, tax and budget policy, and economic development.

Foreclosures have become a major problem in Cuyahoga County, across Ohio and the nation. Policy Matters Ohio previously reported that the county has led the state in foreclosure filings per person.[1] In this report, we document the number of filings in the county by municipality in the first half of 2007. We analyzed data from the Center on Urban Poverty and Community Development's NEO CANDO data base, which analyzes foreclosure filing data from the Cuyahoga County Court of Common Pleas.[2] An increasing number of foreclosure filings are being made in the U.S. District Court for the Northern District of Ohio. We have also included those filings for Cuyahoga County in this report.[3] While this study does not contain a comprehensive list of all foreclosure filings in the county, it covers the vast bulk of filings and those for which geographic information is readily available.

Foreclosure filings are growing in most Cuyahoga County municipalities. The number of filings increased in 38 out of 59 communities in the first half of 2007 compared to the first half of 2006. In another seven municipalities, the number stayed the same, while in 14, it fell. Four communities, each with fewer than 1,000 residents in 2006, had no filings. Table 1 shows the 10 municipalities in the county with the largest absolute number of foreclosure filings in the first half the year and their rank in growth among the 59 from the same period in 2006. Foreclosure filings are concentrated in the City of Cleveland, which accounted for more than half the filings though it has only 34 percent of the county's population, according to 2006 estimates by the U.S. Census Bureau. The damage this is causing was recently described again in a Congressional hearing.[4]

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[1] *Foreclosure Growth in Ohio 2007*, March 2007, available at http://www.policymattersohio.org/ForeclosureGrowthOhio2007.htm Foreclosure filings are the first step in the foreclosure process, and do not always lead to actual foreclosures, in which borrowers lose title to their property. For more discussion, see the state report.

[2] Northeast Ohio Community and Neighborhood Data for Organizing (NEO CANDO) is a data system of the center, a research institute housed at Case Western Reserve University's Mandel School of Applied Social Sciences. See http://neocando.case.edu. The court's foreclosure filing data are available at http://cpdocket.cp.cuyahogacounty.us/p_ForeclosureSearch.aspx. Some foreclosure filings in the court data base are not identified by zip code, and thus were not included in the NEO CANDO data base when Policy Matters accessed it in July, 2007. During the first half of 2007, Policy Matters Ohio found 7,039 filings listed by the common pleas court, compared to the total of 6,353 listed by NEO CANDO at that time. However, most of these 686 filings also do not include parcel numbers, making it difficult to place them in a particular municipality. This report does not include these filings, so it somewhat understates the extent of the foreclosure problem. It also excludes duplicate filings and those filed with the Board of Revision.

[3] Altogether, there were 344 such new federal court filings involving properties in Cuyahoga County in the first half of 2007, up from 301 in the same period the year before. That excludes filings made in error or removed from the county court, cases that were reopened, and those from other counties. Thus, this report covers 6,697 total filings during the first half of the year.

[4] Eaton, Sabrina, "Congress Hears about Predatory Loans in Cleveland," *The Plain Dealer*, July 26, 2007, p. A2. See United States Congress, Joint Economic Committee, "A local look at the national foreclosure crisis, Cleveland families, neighborhoods, economy under siege from subprime mortgage fallout," http://jec.senate.gov/hearings.htm#072507

Table 1

Municipalities with the Greatest Number of Foreclosure Filings, First Half 2007		
	Number of filings	**Rank in Filings Per Person***
Cleveland	3532	3
Euclid	290	9
Maple Heights	288	1
East Cleveland	280	2
Cleveland Heights	275	11
Parma	230	21
Garfield Heights	218	4
Lakewood	149	22
South Euclid	122	12
Shaker Heights	108	16

Source: Cuyahoga County Common Pleas Court data analyzed by NEO CANDO system; U.S. District Court, Northern District of Ohio. *Rank among all 59 Cuyahoga County communities. See Appendix 2 for complete listing

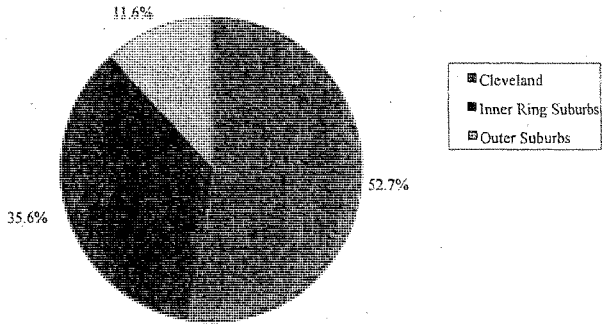
However, after adjusting for population size, two inner-ring suburbs had higher foreclosure filing rates than Cleveland. Maple Heights had more foreclosure filings per person in the first half of 2007 than any other municipality in Cuyahoga County, followed by East Cleveland, despite a drop in filings in East Cleveland from the same period a year earlier. Cleveland ranked third. Other eastern suburbs, especially southeastern suburbs, had the highest proportion of filings in relation to the size of their populations (see Appendix 2).[5] Altogether, 21 inner-ring suburbs accounted for more than 35 percent of the 6,697 total filings tracked by NEO CANDO or listed in federal court in the first half of this year.[6] Figure 1 shows a breakdown of filings between Cleveland, inner-ring suburbs and outer suburbs.

[5] Policy Matters Ohio used Census Bureau American Community Survey population estimates for 2006 to compute these ratios, which are shown in Appendix 2. The number of foreclosure filings in relation to a municipality's population is not a precise measure of the relative number of filings, but it provides a measure for comparing communities of varying size. Communities with greater amounts of multi-unit housing or larger household sizes may appear to have higher rates than they actually do compared to others. However, comparing municipalities based on Census data on housing units from 2000 produces similar results to the population estimates. For instance, by either measure, Maple Heights and East Cleveland rank first and second in foreclosure filing rate, respectively.

[6] These suburbs include all members of the First Suburbs Consortium, along with four others that border the City of Cleveland. They are: Bedford, Bedford Heights, Bratenahl, Brook Park, Brooklyn, Brooklyn Heights, Cleveland Heights, Cuyahoga Heights, East Cleveland, Euclid, Fairview Park, Garfield Heights, Lakewood, Linndale, Maple Heights, Newburgh Heights, Parma, Shaker Heights, South Euclid, University Heights and Warrensville Heights.

Figure 1

Foreclosure Filings, First Half 2007



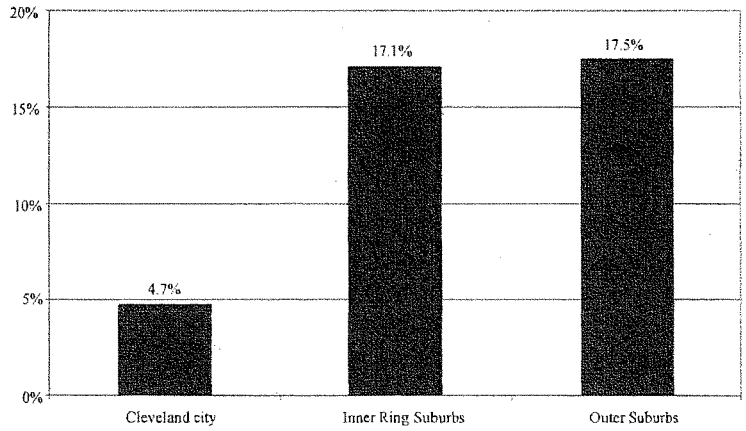
Apart from the City of Cleveland, nearly all of the communities with the highest foreclosure-filing rates per person are inner-ring suburbs. Overall, Cleveland's rate of 7.9 filings per thousand persons is 1½ times higher than the rate in the 21 inner-ring suburbs taken together as a group, and more than four times as high as in the outer suburbs.

Filings are growing by nearly the same rate in the inner-ring and outer suburbs. In both cases, the growth is faster than in Cleveland. Though absolute numbers are small, some of the fastest growth over the past year has occurred in outer suburbs such as Bay Village, Beachwood, Rocky River and Westlake.[7] However, totals in these communities remain small compared to those in Cleveland and many inner-ring suburbs, and some outer suburbs have seen declines. Figure 2 shows the percentage growth from a year earlier in the city, the inner-ring and outer suburbs:

[7] Some small municipalities such as Brooklyn Heights and Hunting Valley showed proportionally large increases in filings, but the absolute numbers are so small that their top growth rankings do not mean much. In these cases, one or two foreclosure filings could drastically change the relative picture. Figures for small communities must be treated with some caution. However, all communities in the county have been included in this report. *Crain's Cleveland Business* noted the trend of growing foreclosures in the outer suburbs in "Foreclosures Sprawl into the Suburbs," by Stan Bullard, July 23, 2007. See http://www.crainscleveland.com/article/20070723/FREE/307230038

Figure 2

Percentage Change in Foreclosure Filings, First Half 2007 vs. First Half 2006



Housing industry experts agree that the foreclosure picture is likely to worsen further before there is any improvement. While some steps are being take to cope with the rising tide of foreclosures, mortgage servicers will need to modify the terms of many more loans and help borrowers avoid foreclosure in order to avert even greater devastation of Cuyahoga County's communities.

The appendix, which follows, includes data on all 59 Cuyahoga County communities.

Appendix 1

Growth in Foreclosure Filings Across Cuyahoga County First Half 2006 to First Half 2007				
City	**First Half 2006 Filings**	**First Half 2007 Filings**	**Change, First Half 2006 to First Half 2007**	**Rank in Growth, First Half 2006 to First Half 2007**
Bay Village	14	34	142.9%	3
Beachwood	10	19	90.0%	5
Bedford	62	90	45.2%	14
Bedford Heights	43	56	30.2%	20
Bentleyville	0	0	0.0%	N/A
Berea	43	60	39.5%	15
Bratenahl	5	9	80.0%	7
Brecksville	20	11	-45.0%	52
Broadview Heights	16	22	37.5%	17
Brook Park	45	67	48.9%	13
Brooklyn	24	25	4.2%	38
Brooklyn Heights	0	4	N/A	1
Chagrin Falls Twp.	0	0	0.0%	N/A
Chagrin Falls Village	7	7	0.0%	39
Cleveland	3,372	3,532	4.7%	37
Cleveland Heights	236	275	16.5%	30
Cuyahoga Heights	0	0	0.0%	N/A
East Cleveland	310	280	-9.7%	44
Euclid	240	290	20.8%	28
Fairview Park	30	25	-16.7%	48
Garfield Heights	181	218	20.4%	29
Gates Mills	5	1	-80.0%	55
Glenwillow	2	1	-50.0%	53
Highland Heights	10	10	0.0%	39
Highland Hills	2	3	50.0%	10
Hunting Valley	0	2	N/A	1
Independence	12	6	-50.0%	53
Lakewood	121	149	23.1%	25
Linndale	2	0	-100.0%	56
Lyndhurst	32	34	6.3%	35
Maple Heights	236	288	22.0%	26

Mayfield	7	6	-14.3%	46
Mayfield Heights	32	27	-15.6%	47
Middleburg Heights	25	20	-20.0%	49
Moreland Hills	3	7	133.3%	4
Newburgh Heights	12	15	25.0%	24
North Olmsted	58	64	10.3%	32
North Randall	3	5	66.7%	9
North Royalton	37	45	21.6%	27
Oakwood	29	19	-34.5%	51
Olmsted Falls	29	39	34.5%	19
Olmsted Twp	21	21	0.0%	39
Orange	6	9	50.0%	10
Parma	168	230	36.9%	18
Parma Heights	40	43	7.5%	34
Pepper Pike	10	9	-10.0%	45
Richmond Heights	27	35	29.6%	21
Rocky River	20	37	85.0%	6
Seven Hills	13	18	38.5%	16
Shaker Heights	85	108	27.1%	23
Solon	34	44	29.4%	22
South Euclid	105	122	16.2%	31
Strongsville	59	64	8.5%	33
University Heights	40	37	-7.5%	43
Valley View	3	3	0.0%	39
Walton Hills	3	2	-33.3%	50
Warrensville Heights	93	98	5.4%	36
Westlake	29	49	69.0%	8
Woodmere	2	3	50.0%	10
Cuyahoga County	6,073	6,697	10.3%	

Source: Center on Urban Poverty and Community Development, MSASS, Case Western Reserve University, NEO CANDO system (http://neocando.case.edu) analysis of data from Cuyahoga County Common Pleas Court; U.S. District Court, Northern District of Ohio. As noted on p. 1 of the report, data exclude 686 filings for which the geographic location was not readily available at the time of this report.

Appendix 2

Foreclosure Filings/1,000 Population, First Half 2007				
City	2006 Population	First Half 2007 Filings	First Half '07 Filings/1,000 Population	First Half 2007 Rate Rank
Bay Village	14,976	34	2.3	29
Beachwood	11,350	19	1.7	40
Bedford	13,320	90	6.8	8
Bedford Heights	10,663	56	5.3	13
Bentleyville	914	0	N/A	56
Berea	18,139	60	3.3	20
Bratenahl	1,293	9	7.0	6
Brecksville	13,106	11	0.8	54
Broadview Heights	17,563	22	1.3	50
Brook Park	19,699	67	3.4	18
Brooklyn	10,692	25	2.3	28
Brooklyn Heights	1,484	4	2.7	26
Chagrin Falls Twp.	139	0	N/A	56
Chagrin Falls Village	3,739	7	1.9	38
Cleveland	444,313	3,532	7.9	3
Cleveland Heights	47,097	275	5.8	11
Cuyahoga Heights	548	0	N/A	56
East Cleveland	25,213	280	11.1	2
Euclid	48,717	290	6.0	9
Fairview Park	16,212	25	1.5	43
Garfield Heights	28,518	218	7.6	4
Gates Mills	2,330	1	0.4	55
Glenwillow	591	1	1.7	39
Highland Heights	8,620	10	1.2	51
Highland Hills	1,413	3	2.1	31
Hunting Valley	704	2	2.8	24
Independence	6,789	6	0.9	52
Lakewood	52,194	149	2.9	22
Linndale	91	0	N/A	56
Lyndhurst	14,195	34	2.4	27
Maple Heights	24,293	288	11.9	1
Mayfield	3,191	6	1.9	37
Mayfield Heights	18,110	27	1.5	46
Middleburg Heights	15,237	20	1.3	49
Moreland Hills	3,142	7	2.2	30

Newburgh Heights	2,197	15	6.8	7
North Olmsted	32,126	64	2.0	34
North Randall	850	5	5.9	10
North Royalton	29,465	45	1.5	44
Oakwood	3,630	19	5.2	14
Olmsted Twp	10,365	21	2.0	33
Olmsted Falls	8,333	39	4.7	15
Orange	3,319	9	2.7	25
Parma	80,009	230	2.9	21
Parma Heights	20,293	43	2.1	32
Pepper Pike	5,738	9	1.6	42
Richmond Heights	10,372	35	3.4	19
Rocky River	19,377	37	1.9	36
Seven Hills	11,915	18	1.5	45
Shaker Heights	27,245	108	4.0	16
Solon	22,257	44	2.0	35
South Euclid	21,791	122	5.6	12
Strongsville	43,347	64	1.5	47
University Heights	13,015	37	2.8	23
Valley View	2,064	3	1.5	48
Walton Hills	2,321	2	0.9	53
Warrensville Heights	13,967	98	7.0	5
Westlake	31,025	49	1.6	41
Woodmere	769	3	3.9	17
Cuyahoga County	1,314,246	6,697	5.1	

Sources: Center on Urban Poverty and Community Development, MSASS, Case Western Reserve University, NEO CANDO system (http://neocando.case.edu) analysis of data from Cuyahoga County Common Pleas Court; U.S. District Court, Northern District of Ohio; U.S. Census Bureau, 2006 American Community Survey. As noted on p. 1 of the report, data exclude 686 filings for which the geographic location was not readily available at the time of this report.

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Foreclosure Growth in Ohio 2007

A Report From

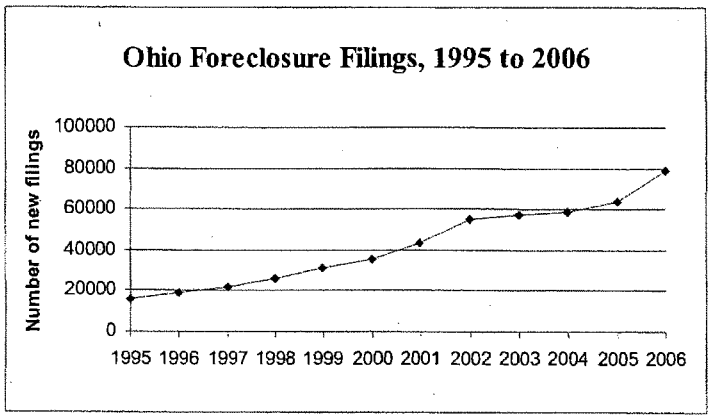
Policy Matters Ohio

Zach Schiller

March, 2007

Foreclosure Growth in Ohio 2007

Ohio foreclosure filings jumped sharply in 2006. Overall, according to data reported to the Ohio Supreme Court by common pleas court judges across the state, there were 79,072 new foreclosure filings, an increase of 23.6 percent from 2005.[1] That represents the largest absolute gain in recent history and the largest relative gain since 2002. It comes after three years of smaller increases. Filings grew by double-digit rates in 68 of Ohio's 88 counties in 2006, and state-wide, they have nearly quintupled since 1995 (Figure 1). The latest numbers indicate that Ohio's foreclosure crisis, already severe, worsened substantially in 2006.



Source: Ohio Supreme Court

During 2006, 78 of Ohio's 88 counties saw an increase in the number of filings. The number of filings grew by 20 percent or more in 46 counties.

For the second year in a row, Cuyahoga County topped the list of counties with the greatest number of foreclosure filings per person. Once again, Montgomery County

[1] Data for 2006 was supplied to Policy Matters Ohio by the Ohio Supreme Court. Data from previous years originally obtained from the Supreme Court are republished from previous Policy Matters Ohio reports. See http://www.policymattersohio.org/Foreclosure_Growth_2006.htm. The Ohio Supreme Court's reporting of foreclosure filings includes an unspecified number of non-mortgage foreclosure cases, including delinquent tax foreclosures and others. It also includes double filings that occur if bankruptcy interrupts the process, or if a lender uses the threat of foreclosure as a collection mechanism several times against one borrower. Non-mortgage filings and double-filings have not been eliminated from the data. All foreclosure data in this report are for filings. Not all filings lead to actual foreclosures, in which borrowers lose title to their property. On the other hand, filing statistics do not cover all cases in which homeowners lose their property, such as cases in which they give the title back to the lender and walk away from the home. As discussed on p. 4 of this report, Policy Matters Ohio conducts a biennial survey on sheriff sales of foreclosed properties in Ohio. Surveys last year and previously indicate that while the number of families actually losing their homes to foreclosure is considerably lower than the number of filings, it has grown sharply and tens of thousands of Ohio households are losing their homes to foreclosure each year.

ranked second and Summit County ranked third. Urban counties dominate the list of those with the greatest number of filings per person (see below). Table 1 shows the top ten counties in Ohio in per capita foreclosure filings. Eight of the ten counties that made the list last year again did so for 2006. Hamilton County, which ranked tenth in the state in 2005, fell to 15th last year because filings grew "only" 16.0 percent. One foreclosure was filed for every 96.6 people in Cuyahoga County, as well as one for every 106.8 people in Montgomery County and one for every 113 people in Summit County:

Table 1

Population/Foreclosure Filing - Top 10 Counties, 2006

County	2006 Population	2006 Filings	Population/Filing
Cuyahoga	1,314,241	13,610	96.6
Montgomery	542,237	5,076	106.8
Summit	545,931	4,833	113.0
Lucas	445,281	3,618	123.1
Franklin	1,095,662	8,875	123.5
Clark	141,872	1,113	127.5
Mahoning	251,026	1,946	129.0
Marion	65,583	495	132.5
Lorain	301,993	2,252	134.1
Highland	42,833	317	135.1

Source: Ohio Supreme Court, U.S. Census Bureau

Continuing a recent pattern, none of the ten counties that saw the greatest relative foreclosure growth in 2006 were on the list of those that grew the most in 2005. Conversely, of the ten that grew fastest in 2005, four ranked 80th or lower in growth rate in 2006, and none ranked higher than 28th.

Delaware County, the Ohio county with the fastest growing population, led the list for 2006 foreclosure filing growth. Filings grew from 481 in 2005 to 720 in 2006, or 49.7 percent.[2] Since Franklin and Pickaway counties also showed among the fastest growth in filings last year, three of the top ten counties with the highest growth were in the Columbus area.[3]

Counties with the greatest growth in filings last year included a number in western and northwest Ohio, as well as Ross in the south and Lorain in the northeast. Five of the ten have fewer than 60,000 people, including Wyandot County, which ranked 83rd in the state with 22,553 people last year according to the U.S. Census Bureau estimate.

[2] The U.S. Census Bureau has reported that Delaware County's population grew 4.12 percent last year. See Annual Estimates of the Population for Counties of Ohio: April 1, 2000 to July 1, 2006, http://www.census.gov/popest/counties/tables/CO-EST2006-01-39.xls

[3] Foreclosure filings did not grow as fast in other counties in the Columbus area, though growth exceeded 20 percent in Fairfield, Licking and Madison counties.

Among the counties with the greatest filing growth in 2006, two were also among the highest in foreclosure filings per person: Franklin (5) and Lorain (9). Others, however, were scattered; Mercer was 79th, and three others were 54th or below. Thus, the fastest growth was not strongly concentrated in those counties that had the highest rates of filings per person. Table 2 shows Ohio counties with the greatest growth in foreclosure filings between 2005 and 2006:

Table 2

Ohio Counties with the Greatest Growth in Foreclosure Filings, 2005-2006

County	2005 Filings	2006 Filings	Change 2005-2006
Delaware	481	720	49.7%
Mercer	91	132	45.1%
Wyandot	72	102	41.7%
Defiance	120	170	41.7%
Pickaway	219	308	40.6%
Hardin	158	218	38.0%
Ross	293	399	36.2%
Lorain	1,656	2,252	36.0%
Franklin	6,596	8,875	34.6%
Huron	251	333	32.7%

Source: Ohio Supreme Court

Ohio's ten biggest urban counties saw their combined number of filings grow by more than 10,000 last year, or 26 percent. Urban counties, as noted, dominate the rankings of those with the highest foreclosure-filing rates. The ten biggest urban counties accounted for 65.1 percent of the foreclosure filings in Ohio last year and 52.7 percent of the population. The growth rate for these ten urban counties was somewhat higher than the state-wide increase (26.0 percent vs. 23.6 percent). All of the urban counties saw double-digit growth last year; only in two, Hamilton and Mahoning, was it below 24 percent. Lorain and Franklin led the growth among the big counties in 2006, with increases of 36.0 percent and 34.6 percent, respectively. Table 3 on the following page shows 2006 foreclosure filings in Ohio's ten largest counties and increases since 2001:

Foreclosure Growth in Ohio 2007

Table 3
Foreclosures in Ohio's Largest Counties in 2006

County	2001 Filings	2006 Filings	2001-2006 Change	Population / Foreclosure
Butler	1,370	2,580	88.3%	137.6
Cuyahoga	6,959	13,610	95.6%	96.6
Franklin	5,077	8,875	74.8%	123.5
Hamilton	3,080	5,876	90.8%	140.0
Lorain	1,111	2,252	102.7%	134.1
Lucas	1,807	3,618	100.2%	123.1
Mahoning	1,012	1,946	92.3%	129.0
Montgomery	3,152	5,076	61.0%	106.8
Stark	1,570	2,799	78.3%	136.0
Summit	2,525	4,833	91.4%	113.0
Totals	27,663	51,465	86.0%	117.6

Source: Ohio Supreme Court, U.S. Census Bureau

Foreclosure filings at least doubled in all but two of Ohio's counties over the past 11 years; in 82 counties, the number at least tripled, and in 70, it quadrupled. Filing growth has been pervasive in Ohio. Two counties – Huron and Pickaway – were among the top ten in growth both last year and over the last 11 years.

Foreclosure filing data does not provide a complete picture of foreclosures, but it remains the best source of information to compare recent levels of foreclosure activity in the state and among Ohio's counties. Every other year, Policy Matters Ohio also conducts a survey of the state's county sheriff departments asking for data on the number of foreclosed properties the sheriffs have put up for sale. These numbers come closer to documenting how many families actually have lost their homes through foreclosure. Last year's survey found that 71 counties representing 86.3 percent of Ohio's population reported putting 43,123 properties up for sale in 2005. That was a 4.6 percent increase from 2004 and a 21.3 percent increase from 2003. As with foreclosure filings, sheriff sales have shown a large increase in number over the past decade.[4]

In the Policy Matters Ohio survey last year, a majority of the 56 county sheriff departments that responded to the question ranked predatory lending as the leading factor contributing to foreclosures in their respective counties.[5] Last year, the Ohio General Assembly approved legislation aimed at reining in predatory lending, which became

[4] See previous Policy Matters Ohio reports on foreclosure filings and sheriff sales at http://www.policymattersohio.org/publications.htm#foreclosures

[5] See *Foreclosure Growth in Ohio 2006*, Zach Schiller, Policy Matters Ohio, July 2006, at http://www.policymattersohio.org/Foreclosure_Growth_2006.htm Job loss/weak economy, the second leading factor cited, trailed far behind. A previous survey in 2004 similarly found that predatory lending was far and away the leading factor for foreclosures cited by sheriffs.

effective Jan. 1, 2007.[6] State and local law enforcement officials also have dedicated more resources to attacking predatory practices.[7]

However, as Gov. Strickland noted in setting up a task force on the issue, the foreclosure wave likely has not crested yet in Ohio.[8] According to a survey by the Mortgage Bankers Association, the proportion of loans in Ohio that was more than 30 days behind rose in the fourth quarter. Nearly one-sixth of the subprime loans in Ohio were delinquent, the survey found, up half a point from the previous quarter.[9] The explosion of subprime lending nationally over the past decade has been followed now by troubles for subprime lenders as well as borrowers. *The Wall Street Journal* described the genesis of the problems this way in a recent article on the decline of New Century Financial Corp.:

> "New Century's swift rise and fall illuminates how Wall Street investment banks such as Morgan Stanley and hedge funds awash in cash helped fuel a binge in subprime lending that prolonged the housing boom. The lenders made themselves vulnerable by relying heavily on outside mortgage brokers and gunning for growth even as the boom faded. The Wall Street banks supplied the money to keep them on a roll, readily gobbling up loans and turning them into securities that global investors were avid to put into their portfolios."[10]

U.S. Rep. Barney Frank said in mid-March that he was preparing legislation to impose legal liability for abusive loans not only on the direct lenders, but the Wall Street firms that packaged the loans and buyers of those securities.[11] Federal and state officials also need to consider how to provide relief to homeowners caught in adjustable-rate subprime mortgages offered at initial "teaser" rates which reset later at unaffordable higher levels.[12]

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[6] A bill passed later in that session took some of the teeth out of the new law by capping at $5,000 the non-economic damages that consumers can collect for suits under the Consumer Sales Practices Act. Gov. Ted Strickland vetoed the bill, but the General Assembly, the House Speaker and the Senate President have challenged the constitutionality of his veto (see State ex rel. The Ohio General Assembly et al. v. Jennifer Brunner, Secretary of State of Ohio, http://www.sconet.state.oh.us/clerk_of_court/ecms/resultsbycasenumber.asp?type=3&year=2007&number=0209&myPage=searchbypartyname.asp). The value of the anti-predatory lending law will depend in part on whether the veto stands up.

[7] See, for instance, "Dann Chases Mortgage Cheats," by James Nash, *The Columbus Dispatch*, Feb. 27, 2007.

[8] "Strickland Establishes Foreclosure Prevention Task Force," March 7, 2007, http://www.governor.ohio.gov/News/March2007/News3707/tabid/205/Default.aspx

[9] "Delinquency Measures for Ohio Rise in the Fourth Quarter's National Delinquency Survey," Mortgage Bankers Association, March 13, 2007. Ohio ranked first in the nation in its inventory of loans in the foreclosure process – 3.38 percent – at the end of the fourth quarter, according to the MBA survey.

[10] "At a Mortgage Lender, Rapid Rise, Faster Fall," by James R. Hagerty, Ruth Simon, Michael Corkery and Gergory Zuckerman, *The Wall Street Journal*, March 12, 2007, p. A1.

[11] "Lawmakers Aim to Curb Loan Abuses," by Stephen Labaton, *The New York Times*, March 17, 2007, p. B1.

[12] See "Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners," by Ellen Schloemer, Wei Li, Keith Ernst and Kathleen Keest, Center for Responsible Lending, December 2006, http://www.responsiblelending.org/issues/mortgage/reports/page.isp?itemID=31217189. In April, the Ohio Housing Finance Agency is to begin offering refinancing deals for up to 1,000 homeowners who might otherwise lose their homes because of loans inappropriate for their circumstances. However, that will only

As consumer advocates have testified before Congress, these loans make up an important part of the today's mortgage mess.[13] Additional national protections, backstopping Ohio's state law, are needed to make sure that lenders are obliged to consider if a loan is suitable for a borrower over the long-term.[14]

cover a modest portion of those affected. See http://www.cleveland.com/news/plaindealer/index.ssf?/base/news/1173347030273930.xml&coll=2

[13] Testimony before the Congressional Subcommittee on Domestic Policy of the House Committee on Oversight and Government Reform, March 21, 2007, by Cuyahoga County Treasurer Jim Rokakis; Inez Killingsworth, president, East Side Organizing Project; and Josh Nassar, Center for Responsible Lending.

[14] Ohio's new law has such a standard, but as noted in Footnote 6, it could be undercut if Gov. Strickland's veto of legislation passed later does not stand up in court.

Table 4

New Foreclosure Filings by Ohio County, 1995 and 2004-2006

County	1995 Filings	2004 Filings	2005 Filings	2006 Filings	Change 2005-2006	Rank in Growth, 2005-2006	Change 1995-2006	Rank in Growth, '95-'06
Adams	25	130	118	107	-9.3%	87	328.0%	67
Allen	164	531	591	647	9.5%	69	294.5%	71
Ashland	30	189	238	235	-1.3%	80	683.3%	16
Ashtabula	111	610	586	723	23.4%	34	551.4%	26
Athens	21	120	128	157	22.7%	36	647.6%	19
Auglaize	34	150	174	201	15.5%	58	491.2%	36
Belmont	40	143	209	200	-4.3%	82	400.0%	58
Brown	62	277	300	308	2.7%	77	396.8%	60
Butler	447	1,952	2,032	2,580	27.0%	22	477.2%	39
Carroll	35	125	122	130	6.6%	75	271.4%	77
Champaign	45	183	208	246	18.3%	51	446.7%	44
Clark	144	894	925	1,113	20.3%	44	672.9%	17
Clermont	182	796	812	988	21.7%	39	442.9%	47
Clinton	36	241	216	234	8.3%	71	550.0%	27
Columbiana*	258	599	599	558	-6.8%	84	116.3%	86
Coshocton	19	166	150	180	20.0%	46	847.4%	11
Crawford	31	235	255	277	8.6%	70	793.5%	13
Cuyahoga	3,345	9,751	10,935	13,610	24.5%	30	306.9%	70
Darke	45	176	212	259	22.2%	37	475.6%	40
Defiance	22	123	120	170	41.7%	3	672.7%	18
Delaware	130	410	481	720	49.7%	1	453.8%	43
Erie	75	229	370	441	19.2%	49	488.0%	37
Fairfield	110	621	622	765	23.0%	35	595.5%	25
Fayette	16	128	167	195	16.8%	53	1118.8%	2
Franklin	1,459	5,940	6,596	8,875	34.6%	9	508.3%	34
Fulton	17	97	141	176	24.8%	28	935.3%	8
Gallia	42	61	84	82	-2.4%	81	95.2%	87
Geauga	81	219	260	313	20.4%	43	286.4%	73
Greene	242	584	528	670	26.9%	23	176.9%	84
Guernsey	50	196	183	167	-8.7%	86	234.0%	79
Hamilton	1,490	4,528	5,066	5,876	16.0%	55	294.4%	72
Hancock	84	228	309	375	21.4%	40	346.4%	64
Hardin	39	160	158	218	38.0%	6	459.0%	42
Harrison	11	56	63	60	-4.8%	83	445.5%	45
Henry	7	100	94	109	16.0%	56	1457.1%	1
Highland	31	279	286	317	10.8%	67	922.6%	10
Hocking	37	113	123	142	15.4%	60	283.8%	74
Holmes	15	108	105	81	-22.9%	88	440.0%	48
Huron	30	224	251	333	32.7%	10	1010.0%	4
Jackson	63	148	149	184	23.5%	33	192.1%	83
Jefferson	57	259	245	281	14.7%	62	393.0%	61
Knox	195	254	265	298	12.5%	65	52.8%	88
Lake	301	864	918	1,141	24.3%	31	279.1%	75
Lawrence	42	174	223	206	-7.6%	85	390.5%	62
Licking	89	798	862	1,081	25.4%	26	1114.6%	3
Logan	69	242	271	313	15.5%	59	353.6%	63

Table 4

New Foreclosure Filings by Ohio County, 1995 and 2004-2006

County	1995 Filings	2004 Filings	2005 Filings	2006 Filings	Change 2005-2006	Rank in Growth, 2005-2006	Change 1995-2006	Rank in Growth, '95-'06
Lorain	413	1,510	1,656	2,252	36.0%	8	445.3%	46
Lucas	1,165	2,766	2,903	3,618	24.6%	29	210.6%	82
Madison	96	192	176	213	21.0%	42	121.9%	85
Mahoning	321	1,367	1,692	1,946	15.0%	61	506.2%	35
Marion	92	395	433	495	14.3%	63	438.0%	50
Medina	140	536	607	729	20.1%	45	420.7%	54
Meigs	13	86	65	83	27.7%	19	538.5%	31
Mercer	21	86	91	132	45.1%	2	528.6%	32
Miami	81	406	427	521	22.0%	38	543.2%	29
Monroe	12	34	34	45	32.4%	11	275.0%	76
Montgomery	949	4,002	4,050	5,076	25.3%	27	434.9%	53
Morgan	8	31	36	43	19.4%	48	437.5%	51
Morrow	54	192	194	230	18.6%	50	325.9%	68
Muskingum	78	412	395	501	26.8%	24	542.3%	30
Noble	5	29	25	25	0.0%	79	400.0%	59
Ottawa	42	127	145	185	27.6%	20	340.5%	65
Paulding	24	97	95	121	27.4%	21	404.2%	57
Perry	26	161	195	221	13.3%	64	750.0%	14
Pickaway	29	221	219	308	40.6%	5	962.1%	6
Pike	31	107	101	108	6.9%	74	248.4%	78
Portage	143	535	617	725	17.5%	52	407.0%	56
Preble	96	228	234	307	31.2%	12	219.8%	81
Putnam	16	80	80	86	7.5%	72	437.5%	52
Richland	128	592	580	752	29.7%	15	487.5%	38
Ross	74	366	293	399	36.2%	7	439.2%	49
Sandusky	42	218	232	303	30.6%	13	621.4%	22
Scioto	63	277	312	326	4.5%	76	417.5%	55
Seneca	79	197	226	263	16.4%	54	232.9%	80
Shelby	44	208	203	252	24.1%	32	472.7%	41
Stark	380	2,129	2,167	2,799	29.2%	16	636.6%	20
Summit	745	3,358	3,744	4,833	29.1%	17	548.7%	28
Trumbull	254	1,117	1,197	1,560	30.3%	14	514.2%	33
Tuscarawas	56	278	346	401	15.9%	57	616.1%	23
Union	26	223	237	266	12.2%	66	923.1%	9
Van Wert	18	139	147	149	1.4%	78	727.8%	15
Vinton	10	40	40	43	7.5%	73	330.0%	66
Warren	112	778	938	1,029	9.7%	68	818.8%	12
Washington	33	209	190	230	21.1%	41	597.0%	24
Wayne	41	292	356	426	19.7%	47	939.0%	7
Williams	17	139	144	185	28.5%	18	988.2%	5
Wood	106	369	352	442	25.6%	25	317.0%	69
Wyandot	14	67	72	102	41.7%	3	628.6%	21
Ohio	**15,975**	**59,007**	**63,996**	**79,072**	**23.6%**		**395.0%**	

* The Ohio Supreme Court confirmed in 2006 that its reports from Columbiana County showed 599 filings in 2004 and 2005. Judge David Tobin of the Columbiana County Court of Common Pleas told Policy Matters Ohio he was confident the numbers were accurate.

Table 5
Foreclosure Filing Rates in Ohio Counties, 2006

County	2006 Population	2006 Filings	2006 Pop./Filing	2006 Rate Rank
Adams	28,516	107	266.5	71
Allen	105,788	647	163.5	27
Ashland	54,727	235	232.9	63
Ashtabula	102,703	723	142.1	16
Athens	61,860	157	394.0	85
Auglaize	47,060	201	234.1	64
Belmont	68,771	200	343.9	82
Brown	44,423	308	144.2	17
Butler	354,992	2,580	137.6	12
Carroll	29,189	130	224.5	58
Champaign	39,921	246	162.3	25
Clark	141,872	1,113	127.5	6
Clermont	192,706	988	195.0	40
Clinton	43,399	234	185.5	36
Columbiana	110,542	558	198.1	46
Coshocton	36,976	180	205.4	51
Crawford	45,047	277	162.6	26
Cuyahoga	1,314,241	13,610	96.6	1
Darke	52,780	259	203.8	48
Defiance	39,091	170	229.9	61
Delaware	156,697	720	217.6	54
Erie	78,116	441	177.1	32
Fairfield	140,591	765	183.8	35
Fayette	28,305	195	145.2	19
Franklin	1,095,662	8,875	123.5	5
Fulton	42,900	176	243.8	66
Gallia	31,313	82	381.9	84
Geauga	95,676	313	305.7	77
Greene	152,298	670	227.3	59
Guernsey	40,876	167	244.8	67
Hamilton	822,596	5,876	140.0	15
Hancock	73,824	375	196.9	45
Hardin	31,966	218	146.6	20
Harrison	15,799	60	263.3	70
Henry	29,520	109	270.8	74
Highland	42,833	317	135.1	10
Hocking	28,973	142	204.0	49
Holmes	41,574	81	513.3	87
Huron	60,313	333	181.1	33
Jackson	33,543	184	182.3	34
Jefferson	70,125	281	249.6	68
Knox	58,561	298	196.5	43
Lake	232,892	1,141	204.1	50
Lawrence	63,179	206	306.7	78
Licking	156,287	1,081	144.6	18
Logan	46,189	313	147.6	21

Table 5
Foreclosure Filing Rates in Ohio Counties, 2006

County	2006 Population	2006 Filings	2006 Pop./Filing	2006 Rate Rank
Lorain	301,993	2,252	134.1	9
Lucas	445,281	3,618	123.1	4
Madison	41,496	213	194.8	39
Mahoning	251,026	1,946	129.0	7
Marion	65,583	495	132.5	8
Medina	169,353	729	232.3	62
Meigs	23,092	83	278.2	75
Mercer	41,303	132	312.9	79
Miami	101,914	521	195.6	41
Monroe	14,606	45	324.6	81
Montgomery	542,237	5,076	106.8	2
Morgan	14,821	43	344.7	83
Morrow	34,529	230	150.1	22
Muskingum	86,125	501	171.9	29
Noble	14,165	25	566.6	88
Ottawa	41,331	185	223.4	57
Paulding	19,432	121	160.6	24
Perry	35,313	221	159.8	23
Pickaway	53,606	308	174.0	30
Pike	28,269	108	261.8	69
Portage	155,012	725	213.8	53
Preble	42,491	307	138.4	13
Putnam	34,744	86	404.0	86
Richland	127,010	752	168.9	28
Ross	75,556	399	189.4	37
Sandusky	61,625	303	203.4	47
Scioto	76,441	326	234.5	65
Seneca	57,255	263	217.7	55
Shelby	48,884	252	194.0	38
Stark	380,575	2,799	136.0	11
Summit	545,931	4,833	113.0	3
Trumbull	217,362	1,560	139.3	14
Tuscarawas	91,766	401	228.8	60
Union	46,702	266	175.6	31
Van Wert	29,303	149	196.7	44
Vinton	13,519	43	314.4	80
Warren	201,871	1,029	196.2	42
Washington	61,867	230	269.0	73
Wayne	113,950	426	267.5	72
Williams	38,719	185	209.3	52
Wood	124,183	442	281.0	76
Wyandot	22,553	102	221.1	56
Ohio	**11,478,006**	**79,072**	**145.2**	

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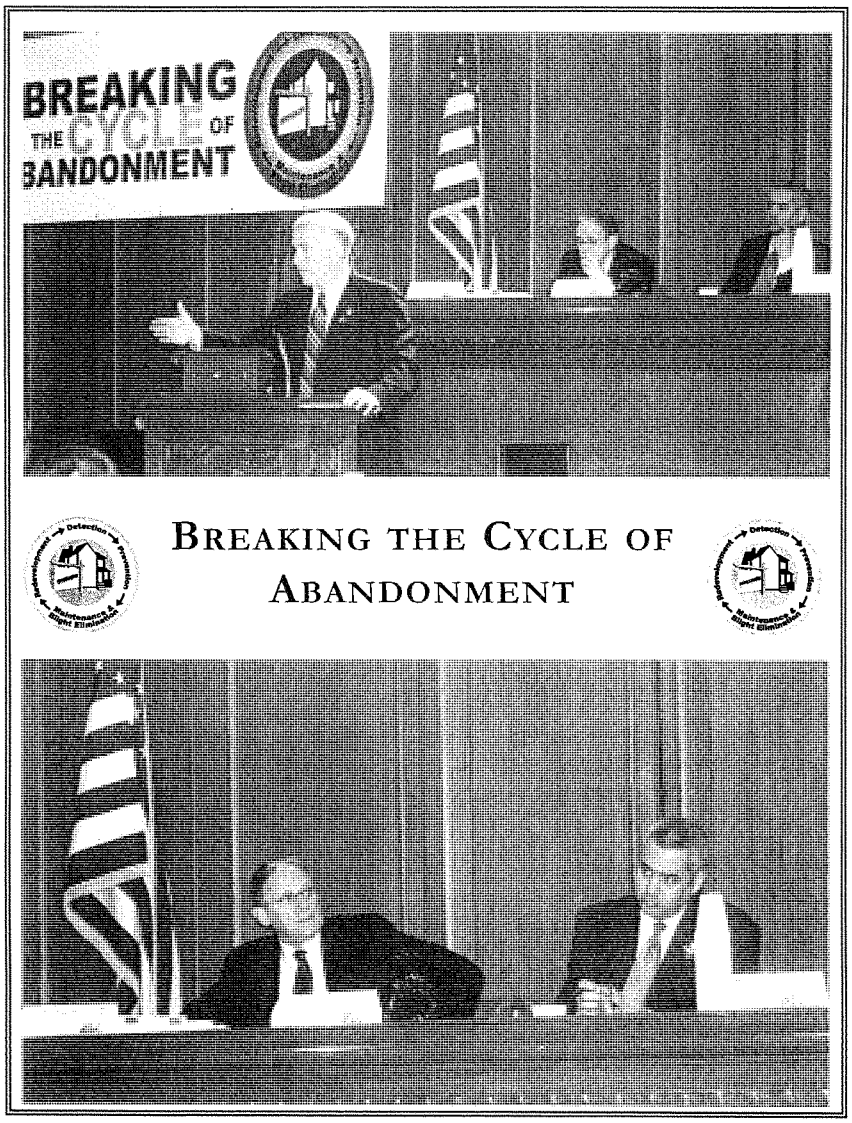

BREAKING
THE CYCLE OF
ABANDONMENT
BREAKING THE CYCLE OF
ABANDONMENT

Obama Campaign: National Policy Advisor Mark Alexander

Seton Hall University School of Law Press release (1/31/07):

Seton Hall Law Professor Mark C. Alexander Joins Barack Obama's Presidential Exploratory Team

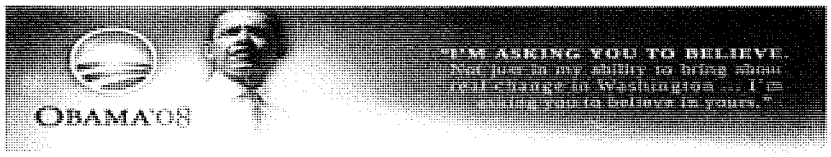
Newark, NJ – Mark C. Alexander, professor of law at Seton Hall University School of Law and Montclair resident, has been asked by Senator Barack Obama to serve as a key advisor for his presidential exploratory team.

Alexander, who teaches election and constitutional law at Seton Hall Law School, has extensive experience in serving as a policy advisor for Democratic candidates. Last year, he took a leave of absence from Seton Hall Law School to serve as general counsel for Cory Booker and the Booker Team in the 2006 Newark mayoral campaign. He served as issues director for Bill Bradley's 2000 presidential campaign, and was issues director for Senator Edward Kennedy's reelection in 1998. Prior to that, he served as legislative assistant to Senator Howard Morton Metzenbaum.

"It's a privilege to have this opportunity to help someone who is a great leader for our country. I'm honored that Senator Obama has asked me to be part of his team at this critical time for America," said Alexander.

Alexander earned his B.A. and J.D. from Yale University. He joined the Seton Hall Law School faculty in 1996. He and his wife, Amy, have three children.

The only private law school in New Jersey, Seton Hall University School of Law was founded in 1951, and is located in the city of Newark. Seton Hall Law School offers both day and evening programs leading to the Juris Doctor (J.D.), Master of Laws (LL.M.) and Master of Science in Jurisprudence (M.S.J.) degrees. For more information on Seton Hall Law School, visit law.shu.edu.



Protect Homeownership and Crack Down on Mortgage Fraud

Obama will crack down on fraudulent brokers and lenders. He will also make sure homebuyers have honest and complete information about their mortgage options, and he will give a tax credit to all middle-class homeowners.

- **Create a Universal Mortgage Credit:** Obama will create a 10 percent universal mortgage credit to provide homeowners who do not itemize tax relief. This credit will provide an average of $500 to 10 million homeowners, the majority of whom earn less than $50,000 per year.

- **Ensure More Accountability in the Subprime Mortgage Industry:** Obama has been closely monitoring the subprime mortgage situation for years, and introduced comprehensive legislation over a year ago to fight mortgage fraud and protect consumers against abusive lending practices. Obama's STOP FRAUD Act provides the first federal definition of mortgage fraud, increases funding for federal and state law enforcement programs, creates new criminal penalties for mortgage professionals found guilty of fraud, and requires industry insiders to report suspicious activity.

- **Mandate Accurate Loan Disclosure:** Obama will create a Homeowner Obligation Made Explicit (HOME) score, which will provide potential borrowers with a simplified, standardized borrower metric (similar to APR) for home mortgages. The HOME score will allow individuals to easily compare various mortgage products and understand the full cost of the loan.

- **Create Fund to Help Homeowners Avoid Foreclosures:** Obama will create a fund to help people refinance their mortgages and provide comprehensive supports to innocent homeowners. The fund will be partially paid for by Obama's increased penalties on lenders who act irresponsibly and commit fraud.

- **Close Bankruptcy Loophole for Mortgage Companies:** Obama will work to eliminate the provision that prevents bankruptcy courts from modifying an individual's mortgage payments. Obama believes that the subprime mortgage industry, which has engaged in dangerous and sometimes unscrupulous business practices, should not be shielded by outdated federal law.

Address Predatory Credit Card Practices

Obama will establish a five-star rating system so that every consumer knows the risk involved in every credit card. He also will establish a Credit Card Bill of Rights to stop credit card companies from exploiting consumers with unfair practices.

- **Create a Credit Card Rating System to Improve Disclosure:** Obama will create a credit card rating system, modeled on five-star systems used for other consumer products, to provide consumers an easily identifiable ranking of credit cards, based on the card's features. Credit card companies will be required to display the rating on all application and contract materials, enabling consumers to quickly understand all of the major provisions of a credit card without having to rely exclusively on fine print in lengthy documents.

- **Establish a Credit Card Bill of Rights to Protect Consumers:** Obama will create a Credit Card Bill of Rights to protect consumers. The Obama plan will:

- Ban Unilateral Changes
- Apply Interest Rate Increases Only to Future Debt
- Prohibit Interest on Fees
- Prohibit "Universal Defaults"
- Require Prompt and Fair Crediting of Cardholder Payments

Reform Bankruptcy Laws

Obama will reform our bankruptcy laws to protect working people, ban executive bonuses for bankrupt companies, and require disclosure of all pension investments.

- **Cap Outlandish Interest Rates on Payday Loans and Improve Disclosure:** Obama supports extending a 36 percent interest cap to all Americans. Obama will require lenders to provide clear and simplified information about loan fees, payments and penalties, which is why he'll require lenders to provide this information during the application process.
- **Encourage Responsible Lending Institutions to Make Small Consumer Loans:** Obama will encourage banks, credit unions and Community Development Financial Institutions to provide affordable short-term and small-dollar loans and to drive unscrupulous lenders out of business.
- **Reform Bankruptcy Laws to Protect Families Facing a Medical Crisis:** Obama will create an exemption in bankruptcy law for individuals who can prove they filed for bankruptcy because of medical expenses. This exemption will create a process that forgives the debt and lets the individuals get back on their feet.

Clinton Campaign: Bill Clinton Administration Cabinet member Fred Hochberg

Biography from Milano The New School for Ubran Policy and Management Website

Dean Fred Hochberg has more than 25 years of experience in business, government, civil rights activities, and philanthropy. From 1998 through 2000, he served as deputy then acting administrator of the Small Business Administration (SBA), an agency elevated to cabinet rank by President Bill Clinton, with more than 4,000 employees and 100 offices across the country. At the SBA, he directed the delivery of a comprehensive set of financial and business development programs for entrepreneurs, with particular outreach to women and minorities. He also served on President Clinton's Management Council.

From 1994 to 1998, Fred Hochberg worked as founder and president of Heyday Company, a private investment firm managing real estate, stock market investments, and venture capital projects. Prior to that, he was president and chief operating officer of the Lillian Vernon Corporation, where he led the transformation of a small family mail order company into a publicly traded direct marketing corporation, one of the great success stories of American entrepreneurship.

Dean Hochberg is dedicated to com-mu-nity service
and philanthropic involvement in civil rights, education, and the arts. He has served on numerous civic and business boards of directors and is currently on the boards of the Citizens Budget Commission, FINCA International Micro Finance, Fusion Communications, the Howard Gilman Foundation, Seedco, and the World Jewish Congress Foundation.

Hillary for President

Press Release:
12/5/2007

Hillary Calls On Wall Street To Address Housing Crisis
Hillary goes to the Nasdaq stock exchange today to call on Wall Street to help clean up the housing foreclosure crisis it helped create. Wall Street not only enabled reckless mortgage lending, it encouraged it - 1.8 million home foreclosure notices have been filed this year, a 74% increase from 2006. Now it's time for lenders, homeowners and investors to come together to solve this crisis and stem the tide of foreclosures.

Hillary will challenge lenders and financial institutions to take three immediate steps today: 1) Voluntarily support a moratorium of at least 90 days on home foreclosures; 2) freeze the fluctuating rates on subprime loans for at least 5 years until they can be converted into fixed rate, affordable loans; 3) Require regular status reports on the progress they're making in converting unworkable mortgages into loans families can afford so we have real accountability.

Hillary is proposing a comprehensive work out - not a bail out - that would end the foreclosure crisis. If Wall Street refuses to act, Hillary will propose legislation to tackle the problems in the housing market head on.

As we see growing economic challenges - from the housing crisis to rising energy costs-- it's clear that we need a leader with Hillary Clinton's strength and experience to create the change America needs. Hillary has proposed allocating up to $5 billion in immediate assistance to help communities and distressed homeowners weather the foreclosure crisis, and called for $1 billion in emergency energy assistance for families facing skyrocketing heating bills this winter.

FORECLOSURE MORATORIUM: Hillary will call for a moratorium on home foreclosures of at least 90 days so that a rate freeze can take effect and at-risk homeowners can get financial counseling to help them transition to affordable loans.

FREEZE ADJUSTABLE RATE LOANS: The rate freeze must last at least 5 years, or until subprime mortgages have been converted into affordable loans. A typical subprime adjustable rate loan is raising monthly payments by 30% to 40% for many families, causing a wave of housing defaults across the country.

REQUIRE ACCOUNTABILITY: Hillary will ask for regular status reports on the progress Wall Street is making in converting unworkable mortgages into loans families can afford.

Testimony of

Michael Van Buskirk, President
The Ohio Bankers League

Before the

U.S. House of Representatives
Financial Services Committee
Subcommittee on Housing and Community Opportunity

Regarding

Foreclosure Problems and Solutions: Federal, State, and Local
Efforts to Address the Foreclosure Crisis in Ohio

June 16, 2008

Chairwoman Waters, Members of the Subcommittee, and other Members of Congress thank you for the opportunity to appear before you today.

The Ohio Bankers League is a non-profit association representing Ohio's commercial banks, savings banks, and savings and loan associations. My name is Michael Van Buskirk. I am the association's president.

Chairwoman Waters, we very much appreciate your bringing the subcommittee to Ohio. As you know from your colleagues from Ohio; our state, particular its northern part, has been hit hard economically. Mortgage loan delinquencies and foreclosures have been one painful result. Your concern about home ownership is one that I have shared all of my professional life.[1]

You are here today because, although foreclosures are a national problem, foreclosures in Ohio have remained stubbornly higher than the national averages for at least the last three years.[2] The specifics of that problem differ greatly by region, and it is commendable that you have come out of Washington to understand the differences as the subcommittee works to find ways to help the national recovery.

Ohio's economy has struggled for at least 12 years. In northern Ohio, like Michigan, a decline in manufacturing employment continues to be a contributing factor. In eastern Ohio a similar story is told through the decline of the mining industry. While Ohio's problems are not new, they have grown more severe. In 1995 we suffered 15,000 foreclosures. Last year we had 83,000.

Unemployment and underemployment are directly linked to mortgage delinquencies, and leading causes of foreclosures.[3] In fact there is a direct correlation: foreclosures in Ohio are the highest in the northeastern quadrant of our state, which is also where job losses in auto, steel, glass and rubber industries have been the highest.

Before I offer the industry's perspective on to what is being done and can be done to mitigate foreclosures short term, the OBL would like to offer a few observations on the causes of our current problem as you chart this country's course to avoid a recurrence.

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[1] Thirty years ago, as an aide supporting a senior Member of Congress from Ohio, I worked on bills being considered by the Housing Subcommittee. In later years, as an Ohio banker, I designed many of my organization's community development efforts and served on the Federal Reserve Board's Consumer Advisory Council and worked with the Congress' Office of Technology Assessment in its work on the implications of technology for the delivery of retail financial services. I was involved in the Consumer Federation of America's landmark efforts to measure consumer literacy. After coming to head Ohio's banking association, I have been active in foundation activities to promote financial literacy. Last year, Governor Strickland appointed me as a member of his Foreclosure Prevention Task Force.

[2] This is according to statistics published by the Mortgage Bankers Association. For example mortgage loan delinquencies in Ohio for both prime and non-prime loans are currently 5.97%, but nationally it is only 4.03%. Foreclosures filed in Ohio this past quarter are 1.14% of all loans, where the statistic is only 1.01% nationally.

[3] *Foreclosures in Ohio: What is happening and what can be done about it.* Mark Duda, January 2005. Unemployment was a factor in 19% of foreclosures. Other leading causes were a health crisis (14%), divorce (13%) and death (10%).

Historically most consumer mortgages in this country were funded from insured deposits. Lenders were banks or thrifts that kept the mortgages in their portfolios. For that reasons the lender had a shared interest in the ability of the borrower to repay the loan because it would suffer the loss if it did not. These institutions were regularly visited by trained governmental examiners who analyzed both the safety of the lending practices as well as their fairness. That fairness measurement was given increasing definition by Congress over years through laws like Truth in Lending, the Home Mortgage Disclosure Act, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, the Fair Housing Act and The Home Ownership Equity Protection Act among others.

By the 21st century lending in Ohio had become globally funded. Investors from foreign governments to Ohio public pensions funds bought securitized mortgages, rated as very safe by national rating agents, originated through a new retail outlet called a mortgage broker. The ultimate "owner" of the mortgage did not know the borrower. In fact they often knew very little about them.

This new system did bring benefits to the consumer. The huge inflow of mortgage funds lowered interest rates; sometimes, in fact, in the face of Federal Reserve efforts to raise them. New market entrants did give consumers more choice. Technology allowed mortgage and rate shopping through the Internet. However, it also brought significant problems. Non-bank brokers no longer had a real interest in the borrower's ability to repay. Both the Ohio broker and the Wall Street securitizer were compensated by sale.

Mortgage brokers in Ohio were not then licensed. While the federal lending laws theoretically applied to them, there was no enforcement. Most Ohio mortgage brokers were ethical and complied with lending laws. However as history indicates, scoundrels will flow into any enforcement vacuum. When our General Assembly enacted the law requiring brokers to be licensed with background checks, our Department of Commerce discovered many applicants to be convicted criminals.

Uneven governmental protection had unintended competitive consequences too. Since non-bank brokers do not face the same high level of regulation and oversight as banks, they benefited from significantly lower operating costs. Competitively, FDIC insured lenders in Ohio suffered significant loss of mortgage share.

Today, Ohio is doing better fighting unethical lending practice. Governor Strickland, along with Ohio House Speaker Jon Husted and Ohio Senate President Bill Harris deserve great credit for stepping up enforcement efforts during his relatively short time in office. Under Commerce Director Kim Zurz every Ohio mortgage brokerage now gets some level of review every 18 months and efforts continue to achieve adequate rigor of examination. We can do better however, and while more can be done in Ohio, many states still do nothing to regulate their mortgage brokers.

Many states lag behind Ohio's efforts. We commend the Financial Services Committee's work to require all mortgage brokers to be licensed, to set minimum federal standards,

and to establish a federal alternative if a state fails to act. However, we would recommend one improvement in the House bill, suggesting that a federal agency which already has skilled mortgage examiners in all 50 states like the Office of Thrift Supervision, which in fact has an office in Cleveland, is better prepared than HUD to be immediately effective.

We commend your efforts to expand the powers of the Federal Housing Authority including allowing it to guarantee distressed mortgages where the investor or lender agrees to reduce the principal to less than current appraised value, to provide grants to cities to purchase abandoned property in distressed neighborhoods and restore it to productive use, to dramatically increase funds available for foreclosure counseling, and to create a credible regulator for the housing related government sponsored enterprises. All are actions which will bring important short and long term help.

We would also like to thank Representatives Wilson, Pryce and LaTourette for the amendment, included in *The Neighborhood Stabilization Act* (HR 5818) as it passed the House last month, which allocated increased funding for homeowners facing foreclosure in states like Ohio where the rise in foreclosures is more closely tied to our economy as opposed to speculative bubbles.

Turning to current Ohio efforts to combat the foreclosure crisis, the financial institutions that make up the OBL are in most cases organizations of long standing that have survived through the economic cycles of a century or more by responding to the needs of their communities and customers. They have that in common, but Ohio is not a homogeneous state. Its banks and thrifts reflect their markets and are diverse. That is true of their mortgage lending. However, most maintained traditional underwriting discipline in the face of mushrooming competition from mortgage brokers and other non-traditional lenders. Very few engaged in subprime lending. As a consequence these banks and thrifts lost market share as some customers were attracted to loans with teaser rates, or features like interest only or even negative amortization; payments that consumers did not fully understand.

Remediation processes tend to be tailored to individual markets too. Most of our banks have procedures with the common element that they are based on a philosophy of working with borrowers on a case by case basis, foreclosing only when all else fails.[4] As you look at foreclosure filings in counties across Ohio, you see the result. The overwhelming majority of foreclosure filings are not by Ohio based banks or thrifts.

In surveying our members we have found that as long as there is good communication and good faith from the borrower, these banks are routinely waiving late fees, permitting partial payments, extending terms and waiving escrow deposits if that will help borrowers overcome temporary problems. This flexibility has worked out to the customers' benefit, and few borrowers lost a home to foreclosure.

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[4] One $250 million community bank has four foreclosures pending, two of which were the result of a divorce. Another $150 million bank from eastern Ohio has had 12 to 15 foreclosures over the last 25 years. A third bank in eastern Ohio has 1 foreclosure in its Freddie Mac servicing portfolio over the last 10 years.

We do need to focus on a recurrent problem – communication with the borrower. One of the greatest challenges banks still face is getting delinquent borrowers to contact them. Mailings and telephone calls often go un-answered. Ohio's results mirror those nationally. Despite outreach efforts by our members, supported by messages from Governor Strickland, Ohio Members of Congress, the Secretary of the Treasury, and national and neighborhood consumer organizations, historically fewer than 50% of homeowners going through foreclosure have talked with their lender despite multiple outreach efforts.

Unfortunately, this is understandable. Financial literacy is poor. Many borrowers do not understand that an ethical lender is strongly motivated to work with them. Few borrowers understand there are competent, neutral counseling resources.

Increasingly, competent counseling efforts are making a difference. We commend your efforts to expand these programs. Nevertheless, more needs to be done to help a troubled borrower find a competent counselor. That's more than just a problem of supply. Unfortunately, there are those in our communities who would further victimize the victims by providing sham counseling. In years past we saw an explosion of bogus credit repair clinics. Today, we hear anecdotes of bogus mortgage counselors. In just one example from our hearings of Ohio's foreclosure prevention task force, an individual was promising much and delivering little for a significant up-front fee. His qualifications as a counselor were that he had gone through two foreclosures of houses he was trying to flip the previous year. State and federal agencies are now providing significant help referring consumer to credible resources.

Our members with multi-state markets have received recognition for their comprehensive outreach and workout programs. For example one of Ohio's largest prime mortgage lenders has started the *You Have Options* program aimed at any loan customers behind on payments or concerned about falling behind. This program is being marketed in bank branches, and if payment history indicates a borrower is headed to toward default, information on the You Have Options Program will be sent to them. Solutions offered include modifying payments, forgiving fees, fixing or changing interest rates or refinancing into a different loan.

Other large mortgage loan servicers in Ohio have also gone to great lengths to work with troubled borrowers. OBL member banks are hiring full-time loan counselors that are dedicated to workouts, not collections. In some institutions the number of counselors now equal or nearly equal collectors. The philosophy among larger servicers is to use technology to make it easy on the customer to reach a loan counselor, so customers can get a counselor at their convenience, via the Internet or a 1-800 number. Loan counselors at larger servicers now all have access to sophisticated software that permits them to start the workout process as soon as the customer contacts them. As a goal, large bank servicers want more than 95% of the calls to work out centers connected to a counselor. Average waiting times are now well under a minute.

You previously heard about the programs Ohio banks support through the Federal Home Loan Bank of Cincinnati. OBL members are also partners with the Ohio Housing Finance Agency and its *Opportunity Loan Refinance Program.* This program is for households with income that does not exceed 125 % of the county's median income. OHFA can provide affordable 30-year fixed rate financing for borrowers that have a mortgage that is no longer suitable for their financial situation. Also, applicants may be reimbursed for out-of-pocket expenses for an appraisal, credit report or any up front hazard insurance payments.

Alternatively, OHFA can provide a 20-year second mortgage up to 5% of the appraised value of the home. These funds may be used to pay fees associated with an existing mortgage, including escrow payments, pre-payment penalties, late fees, attorney fees or other financing charges. The Opportunity Loan Refinance Program also includes four hours of HUD-approved counseling. It is the goal of OHFA to serve as many applicants as possible, so they use expanded underwriting guidelines for their programs.

Finally, major home mortgage lenders from Ohio have joined forces with the *Hope Now Alliance* which now includes Fannie Mae, Freddie Mac and a number of non-profits like Neighbor Works, the Home Ownership Preservation Foundation and HUD counseling intermediaries. Hope Now an important piece of the solution to stem the increasing rates of foreclosure, and the national advertising and out reach campaign is helping. Hope Now counselors now field about 4,500 calls, ten hours each day. So far its efforts have accomplished workouts in nearly 1.6 million cases, including more than 500,000 loan modifications.[5]

Agencies like Freddie Mac and Fannie Mae, and other investors, have become more familiar with the Hope Now program counseling, they are granting servicers more flexibility. As a result the loan modifications as a percentage of total workouts have been steadily growing, and now equal 42% of all resolutions.

The numbers from Ohio alone are equally compelling. Since July 1, 2007 an impressive 38,630 Ohio loans have been worked out through this program. Of that number, 12,820 represent cases where the loan was rewritten to change key terms, for example lowering the interest rate or writing off a portion of principal. Similar to the numbers nationally, loan modifications as a percentage of the total workouts have been growing. It reached a point in April where loan modifications nearly equaled repayment plans. In addition, for all of 2007 the Homeownership Preservation Foundation (HPF) counseled 9,272 Ohio borrowers. Through the end of May, HPF has counseled 5,963 Ohio homeowners.[6]

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[5] All statistics were provided by Hope Now, and are current through April, 2008. On Thursday the OCC produced different numbers using data from only 9 national banks. While we appreciate input that will help develop more accurate data, the numbers in this testimony also include information form state banks as well as state and federal savings and loans and savings banks.

[6] According to the Homeownership Preservation Foundation these counseling sessions are extensive and will usually involve the exchange of detailed information and take place over several calls and or meetings.

In conclusion I would like to return briefly to financial literacy. Ultimately, a well informed consumer is her or his best protector. Some years ago I participated in a standardized national test sponsored by the Consumer Federation of America. It found even the best educated Americans on average only knew about half of the basic financial information they needed to protect themselves in routine financial transactions.

Ohio has finally mandated financial literacy education prior to high school graduation. While it does not go into effect until 2011, many schools have already implemented programs. As a part of this effort, several years ago OBL formed a charitable foundation dedicated to financial literacy. During that timeframe we have worked with the Ohio School Board Association, Ohio Treasurer Richard Cordray, teachers and consumer groups to bring financial knowledge to Ohio adults and students. Financial literacy isn't the only solution, but it must be an important part of it so that future generations can make better decisions related to their financial well-being.

Thank you for the invitation to appear before the subcommittee today. I would be happy to try to answer any questions at the appropriate time today or at any time in the future.

The Subprime Lending and Foreclosure Crisis

Testimony Submitted to The Subcommittee on Housing and Community Development
U.S. House of Representatives
Frank Ford, Senior Vice President For Research and Development
Neighborhood Progress, Inc.
June 16, 2008

The following is intended as a briefing for community development practitioners on the subjects of subprime lending, foreclosure and property abandonment. Using Cleveland, Ohio as a backdrop, this briefing will include:

- Defining The Problem (p.1)
- What is the Impact on Neighborhoods? (p.2)
- The Causes – How Did We Get Here? (p.2)
- Major Fixes Required (p.4)
- Summary of Big-Picture Themes and Fixes (p.7)
- Debunking 5 Myths of the Foreclosure Crisis (p.8)
- Opportunities and Innovation Resulting From the Crisis (p.8)
- Flow Chart on Abusive Lending and Foreclosure – "A Continuum of Culpability"
- Chart of NPI's Role and Activities in Vacant Property Prevention and Redevelopment

Defining The Problem

For the past 12 years lenders specializing in high risk and high cost "subprime" lending have made loans to people who had little prospect of repaying those loans. As a result rates of ***loan default and foreclosure*** increased – and are continuing to increase - dramatically. However, the problem is not that easily defined – it has additional manifestations and ripple effects. In some cases, subprime lending has set the stage for additional subcultures of fraud and criminal activity.

Two types of fraud are now flourishing. The lax underwriting standards of subprime lending – where almost anyone could get a loan – have been a dream come true for ***dishonest flippers, mortgage brokers and appraisers.*** And, ***foreclosure "rescue" scams*** now prey upon the tens of thousands of foreclosure victims in Cuyahoga County.

The unprecedented escalation in annual mortgage foreclosure – from 3,000 in Cuyahoga County in 1995 to 15,000 in 2007 – has created ***an inventory of abandoned property*** and ***blight*** beyond the capacity of local government, or the local community development system, to rectify. Streets that once had 1 or 2 vacant properties, now have 10 or 15. Strong market areas that rarely if ever saw a vacant property now count them by the dozens or the hundreds.

As grave as these foreclosure rates are, they are predicted to go even higher. Apart from the problem of lax underwriting applied by mortgage lenders, many lenders aggressively promoted adjustable rate mortgages (ARMs) and financial analysts predict that a high share of these ARMs are going to have their rates re-set over the next 16 months – adding to the number of foreclosure "time bombs" waiting to go off. News reports are already noting examples of monthly payments jumping – for example – from $800 to $1,200.

What is the Impact on Neighborhoods?
The abandoned property that follows these foreclosures ***reduces the property values*** of adjacent and nearby homeowners; two studies in the past 5 years found market value drops of $5,000 to $7,000 on average for properties within 100 feet of an abandoned home. Community Development Corporations (CDCs) and private developers find they ***cannot sell their new or redeveloped homes***, or must do so at a loss.

A Study released earlier this year by ***Rebuild Ohio*** entitled ***"Sixty Million and Counting"*** provided the first documentation of the costs to municipal governments in a sample of cities across Ohio.

These problems influence the housing choices of ***homeowners and homebuyers*** in Greater Cleveland, leading many to ***choose to leave the City*** and inner-ring suburbs. Those choices further exasperate the problem by decreasing the value of property.

The problem, therefore, is not one-dimensional. It has many faces and some are still coming into focus. Three new faces – after-effects of the problem – that are still unfolding include:

1. ***Looming crisis for schools and municipal services.*** Property in Cuyahoga County is due for a 3-year assessment. Severe reductions in property tax collection are likely – which will lead to a major financial crisis for school and municipal budgets.
2. ***Churning of property among flippers and speculators.*** A new crop of irresponsible property flippers and speculators has arisen, taking advantage of lenders scrambling to unload thousands of vacant properties. These transactions are resulting in an increase in land contract sales and other practices that prey on lower income families.
3. ***Potential for a return to Red-Lining.*** As lenders, investors, regulators and legislators scramble to tighten up lending standards, there could be an over-reaction resulting in a denial of access to credit to those who should receive it. This could result in a return to a form of "red-lining" that would undermine the efforts of the community development industry. Fair access to credit is essential to the redevelopment of Cleveland's neighborhood and suburban markets.

The Causes – How Did We Get Here?
The causes of and contributing factors to the foreclosure crisis are as complex as its outcomes. To fully understand how we got to this point, it's important to understand some of the major shifts in banking regulation that have taken place over the past century.

Until the economic depression of the 1930s the banking and lending industry was subject to minimal regulation. The depression brought the collapse of depository banks and savings and loans, and the loss of life savings for millions of people. Congress and states responded with laws and regulations built around a theme of "safe and sound lending" designed to protect depositors assets. This continued for 40 years, with regulation generally favoring the rights of depositors over borrowers. By the 1970s many housing and community development advocates felt that this imbalance led to a denial of credit ("red-lining") for people of color specifically, and urban neighborhoods in general. Congress responded by passing the Home Mortgage Disclosure Act (HMDA) in 1974 and the Community Reinvestment Act (CRA) in 1977 in an effort to protect people of color and other minorities

from being shut out of the credit marketplace. It is significant to note that the Community Reinvestment Act required fair access to credit – but mandated that it be done "***consistent with safe and sound lending practices***". These laws achieved a balance between protecting the rights of borrowers, and protecting the interests of depositors.

The fundamental problem today is that much of the lending industry seems to have recklessly abandoned the core principles of "safe and sound" lending. What follows are factors that may have contributed to a shift away from the core principles of "safe and sound" lending.

The Creation of a Secondary Mortgage Market. As early as the 1930s housing advocates realized that if mortgage lenders held and serviced their loans for a full 30 year term, lenders would have to wait during that period for the loans to be repaid before funds could be re-loaned to other borrowers. However, if a "secondary" market were created to buy mortgages soon after they were made, money could be re-cycled and re-loaned faster, making the dream of homeownership available for more people. The Federal government created three quasi-public institutions to fill this need: Fannie Mae (the Federal National Mortgage Association), Freddie Mac (the Federal Home Loan Mortgage Corporation) and Ginnie Mae (the Government National Mortgage Association). In the 1990s Wall Street investment firms followed the lead of Fannie, Ginnie and Freddie and began purchasing mortgages as an investment.

A common question asked by people trying to understand predatory and subprime lending is "Why would they make a loan knowing it has a high probability of going into default?" One obvious answer is – they're selling the loans on the secondary market within days or weeks after making them. There simply isn't the same incentive to insure "safe and sound lending" when you don't have to hold onto the mortgage for 30 years. In fact, once it's clear that there are investors waiting to buy pools of loans by the hundreds or thousands at a time, it becomes highly profitable for subprime lenders to churn out loans as fast as they can make them. ***The original idea behind a secondary market is sound – but there is a need at the national level for regulation that would require secondary market investors to exercise greater due diligence before purchasing unsafe loans.*** When loan originators cannot "dump" their products easily, they will exercise greater care in making the loans.

Increased Mergers and Acquisitions. The past 20 years have seen a dramatic increase in the number of acquisitions and mergers of banks and savings and loans. As a result, the majority of subprime loans are issued by lenders operating out of state. Forty years ago a Clevelander seeking a mortgage loan would have typically gone to a Cleveland-based bank, savings and loan or mortgage company. The loan review would have taken place in Cleveland and the loan decision would have been made in Cleveland – most likely by someone who knew the neighborhood in question. Finally, as noted above, prior to the rise of the secondary market the loan would have been serviced by the local institution and its personnel for the life of the loan. Today almost every lending institution in Cleveland has its home base out of state. The review, decisions, and servicing may also be done out of state. The opportunity for reckless lending, or

outright fraud, is greatly increased when the decisions are made by people who have little or no knowledge of the local neighborhood.

The Rise of the Mortgage Broker Industry. As a result of this long-distance lending, a new industry evolved, i.e. the "mortgage broker", someone who serves as an intermediary to arrange a loan, and earns their fee based on the size of the loan. A mortgage broker is not the "loan originator" – as Federal regulations define the entity that actually makes the loan decision and issues the loan. The broker earns a fee for packaging the loan and forwarding the paperwork to the lender. The mortgage broker makes their profit from the size of the loan, and their success is not tied to the success of the loan. Not only are brokers not harmed by high rates of foreclosure, they may actually contribute to default. To enhance their fee, a broker may be inclined to encourage a borrower to borrow more money than they can afford, increasing the risk of default.

The Declining Market Share of Prime Lenders. Since 1995 the market share of high-cost subprime loans has increased while prime loans have decreased. A study by the Housing Research and Advocacy Center in Cleveland found that 48% of all loans made in Cleveland in 2005 were high-cost subprime loans. While this does not necessarily suggest that a withdrawal of lending by prime lenders is a cause of the foreclosure problem, it does suggest that a re-engagement in mortgage lending by prime lenders may be an important part of the solution. This view is supported by a Fannie Mae study that found that 50% of all borrowers who obtained a high-cost subprime loan would have qualified for a prime loan. This finding suggests that there are market opportunities for prime lenders that are not being taken advantage of. ***Municipal, County and State governments should use the billions of dollars they place on deposit at banks to encourage greater participation by prime lenders.***

Overselling The Goal of Homeownership. For 40 years it has been a goal of community development to increase homeownership opportunities, a goal supported by local, state and Federal government and the community development industry. While this has had generally positive results, a legitimate question can be asked whether the zeal with which homeownership was pursued inadvertently led some to fail to see the lending abuses that were rising over the past decade. Some argue that homeownership has been pushed in underserved markets without sufficient commitment to prevent abuses and provide adequate counseling and homebuyer education.

Major Fixes Required

There are four broad remedies that are needed, and they can be categorized according to four categories of people directly affected. The table on the following pages provides a summary of these remedies.

	People Affected	Fix
1	**Borrowers** who presently have a subprime loan and are still occupying their homes, e.g. - • *in foreclosure, still occupying the home* • *in default, but soon to be in foreclosure* • *not in default yet, but at risk*	**Maximize the opportunity for owner-occupants to remain in their homes.** • *Impose a moratorium on the resetting of ARM loans.* • *Impose a one year moratorium on foreclosure of occupied property that includes mandated interim loan counseling offered to homeowners.* • *Declare foreclosure unenforceable where the assignment of the mortgage was never filed for record.* • *Where the mortgage debt on a property exceeded the County Appraised value at the time of the mortgage transaction, impose a rebuttable presumption that the mortgage transaction was unconscionable and unenforceable, shifting the burden to the lender-plaintiff to demonstrate that the transaction was fair and equitable.* • *City, County and Federal governments use all available means to encourage lender loan workouts & loan re-structuring.* • *City, County and Federal governments use all available means to encourage more alternative re-financing products, (such as the program offered by Cleveland's Third Federal Savings and Loan).*
2	**Neighbors** and communities faced with the abandoned property that follows foreclosure. *A recent study commissioned by Rebuild Ohio conservatively estimates that abandoned property is costing Ohio taxpayers $60,000,000.*	**Maximize tools for stabilizing abandoned property and promoting responsible redevelopment; restrict the flipping and churning of property by – and among - speculators.** • *Federal funding for blight control & demolition.* • *Federal funding for reclaiming and rehabbing vacant homes.* • *City, County and Federal governments use all available means to encourage lenders to donate (to CDCs and government land banks) vacant property in their REO inventory.* • *Enhance state authority for creation of municipal and county land banks.* • *Prohibit Sheriffs from carrying out a post-foreclosure sale when there are outstanding code violations cited by the Building, Housing or Health department of the local jurisdiction.* • *Encourage lenders who hold vacant foreclosed property to adopt a "Code of Conduct", e.g. restricting bulk sales to known flippers and speculators.*

	People Affected	Fix
3	**Potential Borrowers** still at risk of being victimized by irresponsible lending. *In spite of the media attention, some abusive and irresponsible lending is still occurring.*	**Insure a Return to Safe, Sound and Responsible Lending Practices** • *Aggressive prosecution of fraud.* • *Stricter policing of mortgage brokers and appraisers by the regulatory agencies.* • *Adopt a national regulatory scheme for policing of mortgage brokers and appraisers.* • *Aggressive enforcement of Predatory Lending Laws.* • *Greater investment in financial literacy education for homebuyers.* • *Require secondary market investors to exercise greater due diligence before purchasing unsafe loans.*
4	**The next generation of Potential Borrowers** who will need home mortgage credit in the next 1 – 5 years. *Studies by Freddie Mac and Fannie Mae found that 30-50% of borrowers who obtained a subprime loan were qualified for prime credit, but didn't receive it. In our effort to eliminate irresponsible lending, we have to be careful not to "throw the baby out with the bath water". A blind over-reaction to this crisis could result in a restriction of credit to those in underserved markets who are otherwise good credit risks.*	**Insure Access to Fair Credit Consistent With Safe and Sound Lending Practices** • *Encourage lawmakers and regulators, as they work to eliminate irresponsible lending practices, to maintain the fundamental balance of the Community Reinvestment Act (CRA) - fair access to credit, but consistent with safe and sound lending practices.* • *Use the regulatory powers of the Federal Reserve, the Comptroller of the Currency, the FDIC and the Office of Thrift Supervision, to require depository banks to recapture mortgage markets that were abandoned to subprime lenders.* • *Leverage Municipal, County, State and Federal funds on deposit with banks to encourage them to recapture mortgage markets and meet the credit needs of their communities as required by the Community Reinvestment Act.*

"Big Picture" Themes and Fixes

1. We need to Frame the **Context** Appropriately – Think in Terms of "**Disaster Recovery**"
   The scale of the clean-up is far greater than is presently being discussed at the Federal level. Hard-hit urban communities like Greater Cleveland will need:
   - $ for Demolition, and
   - $ for Rehab

2. The Disaster is Man-Made – There are **Perpetrators** Who Should be Held **Accountable**
   Federal funding is appropriate, but taxpayers should not bear the full weight of fixing the problem. Equally important to funding is the government's role in holding financial institutions accountable for **reckless lending and investing**. Lending institutions should be required to make reparations in the form of:
   - $ for Demolition
   - $ for Rehab
   - Donation of foreclosed property in their REO inventory

3. The Fix With the **Biggest Impact** = **Halt the Ongoing Pipeline** of New Foreclosure Filings
   In descending order of preference (or do all 3 concurrently):
   - 1-2 Year Moratorium On Foreclosure Filings (on Occupied Property)
   - 1-2 Year Moratorium on resets of Adjustable Rate Mortgages
   - Increased government pressure on lenders to do loan workouts

4. The **Long Term Clean-up** will require **Land Bank** Authorities that can:
   - Take title to the growing inventory of abandoned property
   - Prevent foreclosed property from "churning" in the hands of speculators
   - Plan for the beneficial redevelopment and reuse of foreclosed property

5. We need to **Reject** the "**Blame the Borrower**" Myth
   - Acknowledge that some borrowers were irresponsible, <u>but:</u>
     - they were not the majority of borrowers and
     - it is irrelevant in any case since the financial community's move away from "safe and sound lending" is the underlying cause.

6. We need to **Resist the temptation to Over-Tighten Credit** across the board
   - Restricting credit to the credit-worthy could impede market recovery
   - And cause a return to neighborhood red-lining
   - We need to re-discover and reclaim the core principles of the Community Reinvestment Act:
     - **Fair access** to credit, combined with
     - **Safe and Sound Lending**

Debunking 5 Myths of the Foreclosure Crisis

The foreclosure crisis is complex. Crafting solutions is a difficult undertaking. But it's made more difficult by disinformation perpetuated by the lending industry and, occasionally, fueled by long-standing prejudices in our society against those who have been victimized by the crisis.

Myth #1. **"It's the Economy"**. The statement suggests that the foreclosure crisis will go away once the economy turns around, and is usually put forth by the lending industry to counter the suggestion that irresponsible subprime lending caused the crisis. Significant increases in foreclosures began to be noticed after 1995, with foreclosures more than doubling in Cuyahoga County from 1995 to 2000. The Ohio Recession did not begin until late in 2000. If the economy was the cause, why did foreclosures increase dramatically between 1995 and 2000 while the economy was still relatively healthy? The explanation is that subprime lending activity surfaced around 1995 and this marks the beginning of the lending industry's head-long rush toward irresponsible and unsafe lending.

Myth #2. **"It's these irresponsible [or ignorant] borrowers"**. The number of people foreclosed on in Cuyahoga County quadrupled from 1995 to 2007. In order to believe that ignorance or stupidity is the core cause of the problem, you'd have to also believe that people in Cuyahoga County just became incredibly ignorant over a 12 year period. Was it something in the air, or water? Is it just a coincidence that a major portion of the lending industry moved to a system of reckless and irresponsible subprime lending over the same period of time?

Myth #3. **"The Banks are victims"**. Over the past year the Business Section of the Cleveland Plain Dealer has run numerous articles with headlines like "XYZ Bank Takes Hit Due To Problems in the Mortgage Industry". The inference the reader would draw is that the bank was the innocent victim of something someone else was doing in the mortgage industry. In most cases, bank losses can be traced either to reckless lending decisions made by the bank itself, or reckless investing by the bank in bundled "pools" of bad loans.

Myth #4. **"The Community Reinvestment Act (CRA) pushed lenders to make irresponsible loans"**. The purpose of CRA, adopted by Congress in 1977, was to stop lending discrimination and make credit available to people of color as well as white borrowers. Significantly, CRA advocated for fair access to credit – while still applying safe and sound lending criteria. CRA advocates never argued for "no doc" loans, e.g. no proof that the borrower could repay. The record of CRA lending from 1977 to 1995 is clear – virtually no documented increase in foreclosure rates. But in 1995 the lending industry discovered that there was tremendous profit to be made by ignoring "safety and soundness" - making high risk loans and selling the loans in bulk on the secondary market. That's not CRA – that's a perversion of CRA.

Myth #5. **"The solution is to tighten up credit across the board"**. There is no need to restrict credit unilaterally; there is only a need to eliminate reckless underwriting that ignores the core principles of safe and sound lending. The substantial record of CRA lending in the 1980s and early 1990s proved that fair credit can be provided to people of color borrowers who meet sound underwriting guidelines. An over-reaction now, either by the lending industry or regulators, could take us back to the days of red-lining where credit-worthy individuals could not get a loan in an inner-city neighborhood. That would only serve to further inhibit the restoration of damaged neighborhood housing markets.

The Subprime Lending and Foreclosure Crisis

On the Brighter Side.....
Opportunities and Innovation Resulting From This Crisis

1. Negotiating Bulk Property Donations with Lenders
Large scale bulk donations of foreclosed property – being explored now by NPI, Enterprise Foundation, the City of Cleveland, and others in the community development field – would provide the raw material for future neighborhood revitalization when market conditions improve.

2. Land Banking
The County-wide Land Bank Authority proposed by Cuyahoga County Treasurer Jim Rokakis would be a powerful tool for holding abandoned under-utilized buildings, and for planning for and implementing their redevelopment. As lenders move toward a willingness to donate, a County-wide land bank would provide the means for accepting donated property – at a time when no other entity is available to accept bulk donations of vacant buildings [the City of Cleveland Land Bank will not accept vacant buildings].

3. Deconstruction
Deconstruction of foreclosed vacant houses, as opposed to traditional demolition, could

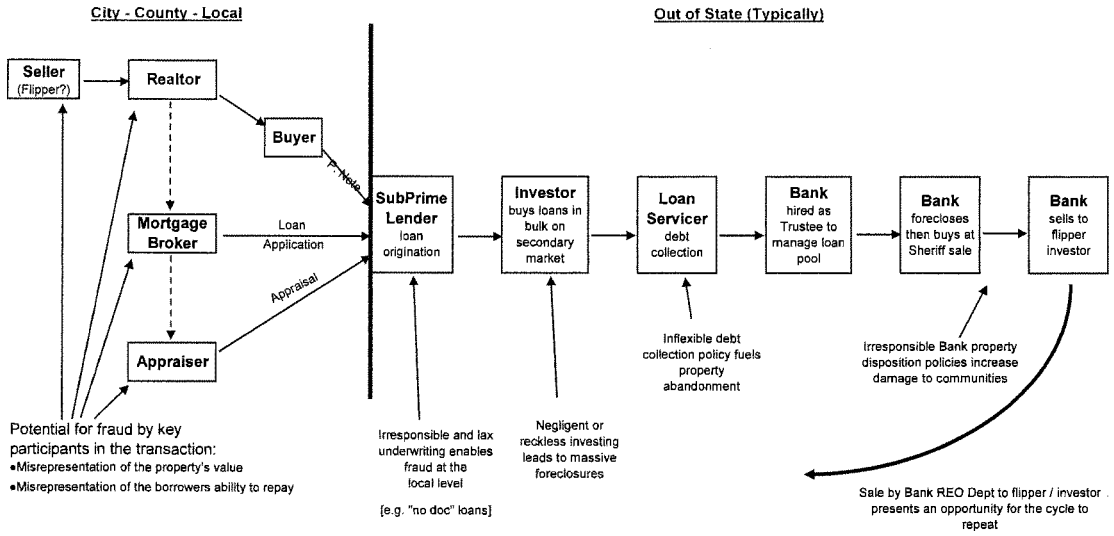
- *Provide jobs*
- *Reduce waste and recycle valuable material, and*
- *Contribute to Cleveland emerging as a center for "green" technology and industry.*

4. Targeted redevelopment in Strategic Investment Initiative Areas
In spite of the scale of the devastation caused by the foreclosure crisis, there are places in the city where strategic investment still makes sense. NPI is piloting a vacant house rehab program in targeted areas with existing locational assets, e.g. in close proximity to University Circle, Shaker Square, the Detroit Shoreway Arts and Culture District. etc.,

5. Data systems and research at Case Western Reserve University
The NEO CANDO data system at Case Western Reserve University has emerged as a national model for a property-based data system that can be used to track and redevelop vacant and foreclosed property, and analyze and recommend solutions to the foreclosure problem.

6. Creative Alternative Land Re-Use Strategies
A shrinking population, combined with the growing inventory of vacant property, has caused many to rethink previous assumptions. What does it mean to be a "shrinking city"? Does every vacant house and vacant lot have to be redeveloped for housing? We're starting to explore alternative and sustainable re-uses for vacant underutilized property, e.g. gardens, green space, recreation, etc. that will contribute to making Cleveland and competitive place to live and work.

ABUSIVE LENDING, FLIPPING & FORECLOSURE
A Continuum of Culpability



Underlying causes and contributing factors

- Changes in banking laws in the 1970s spur mergers & acquisitions - as a result, most lenders are now out-of-state.
- The lack of local lenders creates a new role - and an increase in - local mortgage brokers.
- Local brokers make their profit from up-front fees, not whether the loan is sound and sustainable over time.
- Out-of-state lenders don't know the neighborhood and rely on faxed information from brokers and appraisers.
- The relaxation of secondary market underwriting - by Wall Street investors - has helped enable an irresponsible lending environment
- Lenders have less incentive to insure a sound transaction when they know they can sell off the loan within days.
- The rise of sub-prime lending in the mid-1990s resulted in a corresponding decrease in prime lending.
- Secondary market investors gambled that they could withstand a certain percentage of bad loans.
- A lack of code inspection creates a permissive environment for vacant property flipping and mortgage fraud.

Frank Ford, Senior Vice President, Neighborhood Progress, Inc. *Updated 3/5/08*

A Comprehensive Response By Neighborhood Progress, Inc. To The Foreclosure and Property Abandonment Crisis

6/16/08

		Prevent Foreclosure & Abandonment	Acquire, Hold & Redevelop Abandoned Property
"10,000 Foot Level" (State of Ohio)	POLICY ↑	**Support "Rebuild Ohio" and Help Develop a statewide Urban Policy Agenda** Promote regulatory and legislative reforms that prevent abusive and irresponsible lending.	Promote regulatory and legislative reforms for the recovery and redevelopment of abandoned property, e.g., Land Bank reform, Receivership reform, municipal code enforcement, clearing "toxic" titles. Sponsor of Cost of Abandonment Research "Sixty Million and Counting"
"5,000 Foot Level" (Cuyahoga County and Cleveland)	POLICY ↓	**Vacant and Abandoned Property Action Council** City, County, First Suburbs, Funders, CDCs Support County-wide foreclosure prevention. Encourage prosecution of flipping and fraud. Support CWRU foreclosure research. Support the campaign calling for a moratorium on foreclosure of occupied property in Cuyahoga County.	A County Land Bank Authority with the capacity to acquire, hold and redevelop abandoned buildings and land. Encourage lender donation of REO property. Remove impediments to code enforcement, inspection, condemnation and demolition of abandoned property. A one-stop data system for tracking and researching abandoned property (NEO CANDO @ CWRU)
"On the Ground" (Six Target Neighborhoods)	PRACTICE ↑ ↓	**NPI's Strategic Investment Initiative** Targeted Neighborhood Market Recovery Projects and Programming Contact borrowers with subprime and adjustable rate mortgages (ARMs) prior to default and provide loan workouts and restructuring. A partnership with CWRU, East Side Organizing Project (ESOP) and six CDCs. Targeted investigations into neighborhood loan fraud and flipping - Slavic Village Fraud Report issued June 2008.	"Model Block" Redevelopment: •Land Assembly - Targeted Acquisitions •Lender Donation of REO Property •Strategically Targeted Rehab and Demolition •Deconstruction Pilot Project •Home Repair, Landscaping and Visible Improvements

Working at multiple levels offers a unique synergy. "On the ground" experience at the neighborhood level exposes the need for system reform and informs the broader policy debate. Meanwhile, policy reforms won at the state and local level can be tested and applied at the neighborhood level.

TESTIMONY OF

MICHAEL GROSS

MANAGING DIRECTOR FOR LOSS MITIGATION

COUNTRYWIDE FINANCIAL CORPORATION

Before the

HOUSE FINANCIAL SERVICES COMMITTEE

SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY

UNITED STATES HOUSE OF REPRESENTATIVES

FIELD HEARING IN CLEVELAND, OHIO

JUNE 16, 2008

Good morning, Madam Chair and members of the Ohio delegation. Thank you for the opportunity to appear here today to discuss Countrywide's efforts to help families prevent avoidable foreclosures. We have testified on three previous occasions to this Subcommittee about these efforts, and today I want to update you on our progress, and provide additional information on our activities here in Ohio and in Cleveland.

While our progress has been significant, we clearly recognize that more must be done. Today's market conditions challenge us to both expand our existing home retention efforts as well as develop new approaches which will mitigate losses for investors. This is a critically important balancing act that must be done right if we as an industry are going to preserve the flow of mortgage credit to support housing, and at the same time protect communities and neighborhoods from avoidable foreclosures.

A key component of successful loss mitigation initiatives undertaken by national servicers includes partnerships with financial counseling advocates and community based organizations. At Countrywide, we continue to expand our outreach to ensure that every customer that needs help is reached. In addition to our NACA partnership which we discussed with this committee last fall, we have strengthened our national relationships with NeighborWorks, the Homeownership Preservation Foundation, the National Foundation for Credit Counseling and ACORN.

Nowhere are partnerships with effective counseling and advocacy organizations more important than in difficult housing markets like Ohio's. Here in Cleveland, we have developed a strong relationship with the Greater Cleveland Neighborhood Housing Services. We have also forged a strong working relationship and signed a home retention agreement with East Side Organizing Project (ESOP), which provides valuable assistance to residents in Cleveland's

hardest hit neighborhoods. Since December of 2007, ESOP and Countrywide have assisted 135 borrowers. For over half of those families, we have been successful in preserving homeownership into the future – a success rate that both Countrywide and ESOP take pride in but want to improve. We are also working with the state program – Ohio Save the Dream – and 26 of our borrowers that have sought help through that program. Likewise in Cincinnati, we have begun working with our borrowers that are seeking counseling and assistance from the non-profit, Working in Neighborhoods.

We are actively engaged in foreclosure prevention outreach programs with both governmental and community organizations around the country. So far in 2008, we have participated in nearly 170 home retention events around the country, including foreclosure prevention fairs and "train the trainer" events. In Ohio alone, we have participated in outreach events sponsored by ACORN, HOPE Now and the State of Ohio. We have staff here on campus today helping our customers, and we will continue to target key markets in Ohio to help distressed homeowners. Countrywide remains committed to helping our customers avoid foreclosure whenever they have a reasonable source of income and a desire to remain in the property.

In addition to our work to provide home retention solutions to our customers, we are working with nonprofits from ESOP to Enterprise Community Partners, NeighborWorks, and others, to identify how Countrywide can be a partner to communities with greater numbers of vacant and boarded properties. Through our work with ESOP, we are actively providing them updated real estate listings of Countrywide-owned or –serviced properties in communities where they and a host of other nonprofit partners are working. As a result, ESOP has connected Countrywide to local nonprofits that have expertise in property acquisition and disposition.

While that work has just begun, we have already conveyed one property to Slavic Village Development Corporation and we are discussing other properties that may be acquired by nonprofits like Detroit Shoreway. With national intermediaries like Enterprise, we have been working to build a program that would result in the purchase of REO properties in certain distressed areas in pilot markets like Cleveland. While the program model is not complete, Countrywide recently committed $1.5 M in charitable funding to Enterprise to assist them in further defining and implementing that program.

Last November, we testified before the House Financial Services Committee and before a Housing Subcommittee field hearing, and we updated our results this past April. Today I can report that our progress continues.

As we reported at the last hearing, in the six months ending March 31, we saved an average of more than 15,000 homes each month from foreclosure, more than double the pace from the first three quarters of 2007. The pace continues to improve. In April and May 2008, our most recent data, we completed nearly 48,000 home retention workouts in these two months alone. I would emphasize here that these are workouts in which the borrower obtains a plan to *keep their home*. It does *not* include deeds in lieu of foreclosures or short sales, which accounted for less than 7% of all workouts so far in 2008.

Comparing May of 2008 with May 2007, home retention workouts are up over 540%. The primary cause of that increase was a 718% jump in loan modification plans, from about 2000 modifications in May of last year, to more than 14,200 in May 2008. A new program that also greatly contributed to these tremendous May results was the FannieMae HomeSaver Advance Program which provided over 12,200 homeowners with a fresh start. Clearly, the

efforts of our national and community based partners, and our own home retention teams, are paying off.

In addition to sharply increasing the pace of workouts, we have also become more aggressive in the types of workout plans completed. Since we announced a series of home retention initiatives last autumn, loan modifications have become the predominant form of workout assistance at Countrywide. Year to date, through May of 2008, loan modifications have accounted for more than 68% of all home retention plans, while repayment plans accounted for less than 16%. Prior to the programs we announced last year, loan modifications accounted for less than a third of all home retentions.

Interest rate relief modifications – where the servicer freezes or reduces the borrower's interest rate – were extremely rare until late last year. Today, that is not the case. In May 2008, interest rate modifications accounted for more than 70% of all the loan modifications Countrywide completed. Importantly, the vast majority of these rate relief modifications have a duration of at least 5 years.

The trends are much the same in here in Ohio. First, let me provide you some background on our Ohio servicing portfolio. As of May 2008 we service over 256,000 loans with an unpaid principal balance of $26.2 billion. More than 88% of these loans are prime conventional or FHA/VA loans. As with the national data, our home retention workouts in OH are up substantially over the past several months. In May 2008, we completed 952 Ohio home retention workouts that kept borrowers in their homes. This is a 119% increase over November 2007. More than 92% of the May 2008 workouts were either loan modifications or FannieMae HomeSaver Advance programs, both sustainable retention solutions.

Before I conclude I would like to briefly address our pending merger with Bank of America. The acquisition is awaiting final approval by our shareholders next week and will close shortly thereafter. Until it does, I am limited in what can discuss. However, I can assure you that the Bank of America is committed to our efforts and to continuous improvement in the foreclosure prevention arena. During the recent Federal Reserve hearings on the merger, the Bank of America made several important announcements about our combined efforts that I would like to highlight:

- Countrywide and Bank of America will devote the resources necessary over next 2 years to successfully modify or workout at least $40 billion in troubled mortgage loans, helping at least 265,000 customers remain in their homes.
- Combined home retention staffing at both companies will be maintained at levels needed to support this $40 billion goal.
- The combined companies will continue pro-active outreach efforts to communities in need, including developing new or expanded partnerships with community organizations.
- Finally, the company will make $35 million in grants and investments targeting loan counseling, foreclosure prevention and community partnerships to facilitate the purchase of real estate owned property by owner-occupants, low-income and/or minority borrowers.

While I cannot provide any additional detail on these initiatives at this time, I wanted to make the panel aware of these important commitments.

I am available to respond to your questions at the appropriate time. Thank you.

U.S. House of Representatives

Committee on Financial Services

Subcommittee on Housing and Community Opportunity

Chairwoman, Congresswoman Maxine Waters

"Foreclosure Problems and Solutions"

June 16, 2008

Prepared Remarks from Realtor® Kimberley Guelker

2008 President Lorain County Realtors

Good morning, my name is Kimberley Guelker, I am a Realtor with Howard Hanna Realty Services and I am also the volunteer President of Lorain County Association of Realtors, located in Amherst, Ohio. With me today is our Association's Executive Vice President Tom Kowal. I would like to thank you for convening these discussions on providing effective solutions to the growing problem of foreclosures.

The Lorain County Association of Realtors is a trade association under the Realtor family of the NAR (National Association of Realtors) and OAR (Ohio Association of Realtors). Our Association represents 500 Realtors and 40 brokerage offices in Lorain County. In 2007, our members sold over 2700 residential units with an average market value of $143,000. The total transaction value exceeds $375 million dollars.

During the nationwide real estate market boom years, Lorain County experienced a very favorable housing market for buyers. Prices escalated about 3%. Housing choices were

good. And local mortgage rates continue to be at record lows. As a result homeownership rates are at record levels.

Unfortunately, the economy in Lorain County is stagnant. Lorain County has experienced numerous heavy industry plant closing, company relocations and an aging population. Unemployment rate of 6.2% in April 2008 was significantly higher than the national (4.4%) and state of Ohio (5.4%) rates. As a result foreclosures are at an all time high according to the Lorain County Clerk of Courts. I would like to share with the group an article that was recently published in "The Morning Journal". In Lorain County, one in 51 homes is in foreclosure (compared to one in 201 homes nationally). "We're four times as bad as the national average" according to our Clerk of Courts.

Foreclosures filed through May were up 8% as compared to the same time period last year. One community (Sheffield Lake has one in 28 homes in foreclosure). The major cities of Lorain and Elyria are about one in forty homes.

In addition, the current inventory of homes on the market for sale is over 3300 homes (14 month supply). Many of these homes are on the market because the owner's cannot afford the mortgage payment, the homeowner's insurance or the real estate taxes.

Studies on Lorain County foreclosures have shown that the Lorain County foreclosure problem is not a result of predatory lending practices.

While Lorain County real estate market provides many opportunities for affordable housing, great amenities and reasonable cost-of-living, we are beginning to see negative

appreciation (value depreciation) in housing values. The estimated impact on housing values is $1700 if your property is next to or near a foreclosured or abandoned home. The cumulative impact would be $56 million on our existing inventory of homes for sale.

These numbers are not specific to Lorain, but are nationwide. Consider this information. According to research conducted by the Woodstock Institute, a single foreclosed home lowers the price of surrounding homes by about 1 percent. The same research also found that each additional foreclosed home within an eighth of mile lowered the values by an additional percent.[1] Recently, the Center for Responsible Lending (CRL) released startling research on the spillover effect on our nation's communities and neighborhoods. Specifically, CRL estimates:

- More than 40 million neighboring homes will suffer a decline in property values because of foreclosures in their neighborhood;
- The total decline in property values and reduced tax base because of nearby foreclosures will be $202 billion;
- Homeowners living near a foreclosed home will see their property value reduced by about $5,000[2].

Recently, the U.S. Conference of Mayors commissioned a report looking at the economic and fiscal impact of foreclosures. The findings were largely consistent with the CRL and

[1] There Goes the Neighborhood: The Effect of Single-Family Mortgage Foreclosures on Property Values, Woodstock Institute (June 2005).
[2] Subprime Spillover: Foreclosures Cost Neighbors $404 Billion; 40.6 Million Homes Lose $5,000 on Average, Center for Responsible Lending (January 2008).

concluded that 2008 will bring more foreclosures, curtailed consumer spending and significant financial stresses for state and local government budgets.[3]

State and local governments will immediately feel the impact of the reduced property tax revenue, which goes to fund important county/city services we depend on every day (police protection and fire rescue services, schools, social services, public transportation etc.).

Furthermore, what many people do not realize is that foreclosures actually require local governments to spend money "for inspections, court actions, extra law enforcement, visits from city utilities and sometimes demolition."[4]

Someone once said that foreclosures are like mold — once it starts, it's difficult to get rid of it. Families struggling to make mortgage payments and who live in a neighborhood where homes have already been lost to foreclosure will find it difficult to refinance or sell due to declines in area home values. Far too often the financially stressed family will end up losing their home and feeding the vicious proliferation of foreclosures.

According to many of our local lenders, they are seeing foreclosures increasing because of raising health care costs and the uninsured paying for medical care, job losses, and social situations. I also would like to add that going forward, the high cost of gas and food items will add to the foreclosure rates as homeowners make a choice between these items or paying their monthly mortgage.

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[3] The Mortgage Crisis: Economic and Fiscal Implications for Metro Areas, Global Insight for the United States Conference of Mayors and the Council for the New American City (November 2007).
[4] T.W. Farnam, As Foreclosures Rise, Mayors Brace for Fallout, Wall Street Journal (January 28, 2008).

Many of our local lenders are trying to intervene with their mortgagees by participating in "Consumer Outreach" program sponsored by the Lorain County "Save Our Homes Taskforce and other community organizations.

Many of these foreclosed properties were purchased by investors who now find very high vacancy rates because of the malaise in the Lorain County economy. They are also reporting extensive property damage which is forcing investors into the foreclosure alternative rather than additional investment in these properties.

Our Association believes that educating the consumer and our Realtor members plays a very important role in foreclosure intervention. In 2005, our Association, with the support of several Lorain County foundations and lenders provided a two-day foreclosure intervention program for attorneys, government officials and Realtors. The program which covers the legal, ethical and intervention process with "short sale sellers" as an alternative to foreclosure was again offered in 2007 under the leadership of the Lorain County Save Our Homes Taskforce and supported by a grant for the National Association of Realtors® (NAR). These two programs had over 300 participants.

Unfortunately, our members have found that the short sales process is often complicated and confusing to homeowners, real estate professionals, and lenders. To that end, we support the following goals to ease the facilitation of short sales, when there is no option for the family to stay in the home:

- A commitment by all lenders and their servicers to make it easy for sellers and agents to *immediately* locate <u>online</u> the correct department and the individual who will be responsible for processing the short sale applications.

- A single industry-wide short sale application and list of supporting documents that all lenders and servicers would agree to accept.
- A commitment by all lenders and their servicers to keep the listing agent and seller regularly informed of the status of the short sale application throughout the process and respond to reasonable requests for information.
- A commitment by all lenders and their servicers to deliver a clear answer, in writing, yes or no, within a reasonable time frame. For example, 30 days from receipt of the complete application is a reasonable goal.

Also in response to the need to educate real estate professionals, an extensive thirty-hour foreclosure intervention program licensed by our Association has trained over 500 Realtors and attorneys throughout Ohio in intervention techniques.

On the national level, NAR also believes that we have an obligation to help educate homebuyers about today's mortgage products. Starting in 2005, NAR worked with the Center for Responsible Lending (CRL) to produce a series of brochures that describe the pros and cons of conventional loans and nontraditional mortgages, give consumers tips on how to avoid predatory loans.

In May of 2007, NAR partnered with CRL and NeighborWorks, on a brochure that focuses on helping financially stressed homeowners understand their options and offers tips on how to avoid foreclosure. Shortly after the brochure was released, NAR's President sent an e-mail to over 1.3 million REALTORS® informing them of the

foreclosure prevention brochure and encouraging REALTORS® to put the brochure into the hands of every consumer they help to become a homeowner.

NAR is also in the process of finalizing a best practices book for REALTORS® about the short sales process called, "Short Sale Blueprint: A Guide to the Short Sale Process". While we hope that more families can find tools to help them stay in their homes, a short sale is certainly a better option than a foreclosure.

Realtors are encouraged by recent legislation at the national level that supported modernization of the FHA mortgage insurance program, and GSE reform, as well as financial support of community based outreach programs for helping consumers. In addition, we support legislation to expand FHA as a tool to assist homeowners to avoid foreclosure and a tax credit for homebuyers to reduce the inventory of foreclosed homes. Realtors are also a supportive of legislation that would create a one-time homebuyer tax credit that would help turn "just looking" into actual homebuyers. We hope Congress will act on these important provisions and send a bill to the President as soon as possible. Realtors also applaud recent Ohio legislation on predatory lending practices, mortgage rehabilitation programs and mortgage term reporting that are already helping homeowners. We are also excited about the passage of H.B. 138 that will simplify the foreclosure process.

We strongly recommend several additional efforts:

1. Local city, township and county government agencies be more concerned with the foreclosure rate in our communities because of the effect on government costs, tax revenue losses, and reduced valuation of properties.

2. Federal and state funding for community outreach and education programs needs to be funneled down to local government agencies.
3. County governments need to expend public funds for consumer awareness programs.
4. Financial literacy programs for young adults needs to be funded and become a criterion of class work in our educational system so that we can develop a strong sense of homeownership in the next generation of homebuyers.

Again, I would like to thank the Subcommittee for this opportunity to discuss the local housing conditions and real estate market in Lorain County. Your attention to this unfortunate situation is commendable. Our Association leadership and members look forward to working with you to provide solutions.

THE MORNING JOURNAL
FRIDAY, JUNE 6, 2008 MorningJournal.com 50 CENTS

1 in 51 homes in foreclosure

Frequency for county was four times the national average

By MATT SUMAN
Morning Journal Writer

ELYRIA — Foreclosures in Lorain County are up again and the frequency during 2007 was four times the national average, Ron Nabakowski, county clerk of courts, said yesterday. One in 51 homes in the county is in foreclosure, Nabakowski said, compared to the national average of one in 201 homes.

"We're four times as bad as the national average," he said.

Through the end of this May, there have been 1,009 foreclosures in the county; more than the 933 in 2007 through May, Nabakowski said. Foreclosures have proportionally hit Sheffield Lake the hardest, with one in 28 homes being in foreclosure, he said.

The next four Lorain County cities that with high foreclosures rates are Lorain, Amherst, Elyria and North Ridgeville.

Foreclosures do not only hurt those who have fallen victim to the debt, Nabakowski said. Every

See FORECLOSURE, Page A2

The top Lorain County cities for ratios of foreclosures per number of homes in 2007

- Sheffield Lake — 1 in 28
- Lorain — 1 in 38
- Amherst — 1 in 41
- Elyria — 1 in 46
- North Ridgeville — 1 in 48

The number of foreclosures in the first five months of the year has risen each year since 2004

- 2004 — 584
- 2005 — 640
- 2006 — 923
- 2007 — 933
- 2008 — 1,009

Numbers provided by Lorain County Clerk of Courts Ron Nabakowski

FORECLOSURE

From the front page

home near a foreclosed property loses 1.4 percent of its value, he said. Ohio is the second worst state when it comes to amount of money banks lose to foreclosures, he said.

"Banks are losing a ton of money on these foreclosures," Nabakowski said.

The county clerk of court's office and the county auditor's office have been working together to set up a system to provide notice to a building department in a given community when a home is in foreclosure. The goal is to give notice to the building department within a week of the foreclosure to thwart the possibility of people gutting copper pipes and other valuables from the homes, he said.

"We're in the process of developing that (the system to notify building departments)," Nabakowski said.

Another problem is that the defendants in foreclosure complaints typically do not have an attorney to represent them in a court proceeding, he said. Only 8 percent of foreclosure defendants in the county have attorneys representing, according to Nabakowski.

"People feel very poor, so they don't talk to a lawyer," he said.

Common reasons why people have become vulnerable to foreclosure are death of a spouse, loss of a job, a divorce or credit card debt, Nabakowski said.

The average age of a mortgage in which a home is being foreclosed upon is 3.7 years, according to Nabakowski.

Some advice Nabakowski offered:

- Contact your lender's mitigation department at the first sign of difficulty with making a mortgage payment
- Contact a housing counselor approved by the U.S. Department of Housing and Urban Development

Foreclosure prevention on the Web: www.savethedream.ohio.gov/ or www.yourmoneynowonline.org/

Statement of

Andrew S. Howell
Executive Vice President and COO
Federal Home Loan Bank of Cincinnati

Before the

House Financial Services Committee
Subcommittee on Housing and Community Opportunity

"Foreclosure Problems and Solutions: Federal, State, and Local Efforts to Address the Foreclosure Crisis in Ohio"

Cleveland, Ohio
June 16, 2008

Madame Chair, Ranking Member Capito, and Members of the Committee, I appreciate the opportunity to speak to you today on behalf of the Federal Home Loan Bank of Cincinnati (Cincinnati Bank) about the role our Bank has played to help restore balance to the housing finance market and, specifically, to help at-risk homeowners. My name is Andy Howell and I am Executive Vice President and Chief Operating Officer of the Cincinnati Bank.

The Cincinnati Bank is one of 12 regional Federal Home Loan Banks established by Congress in 1932 to provide liquidity to community lenders engaged in residential mortgage lending and economic development. For over 75 years we have fulfilled this housing finance mission with a successful cooperative structure comprised of local lenders and regional management. Our primary business is the provision of low-cost credit in the form of secured loans, or "Advances," to members. Our members, in turn, use these Advances to fund their daily credit needs such as originating mortgage loans, investing in community projects or managing their own balance sheets.

Addressing the Current Housing Environment

Economically and socially, the state of Ohio has been negatively affected by the substantial rise in residential foreclosure activity. Since 2000, annual home foreclosures in Ohio have more than doubled, with a concentration in the northeast part of the state, according to state and federal court records. Although questionable lending practices of some within the housing finance industry have contributed to the rise in home foreclosures, the underlying economics of the region are also a factor. A declining manufacturing base, related job losses and a demographic shift have made it difficult to sustain a meaningful recovery to date.

The impacts of foreclosures are substantial to both the homeowners and their communities. Rising home vacancies can lead to a range of problems for affected neighborhoods, from declining home values to increased crime, to an erosion of the municipal tax base and community destabilization. For these reasons the Federal Home Loan Bank of Cincinnati has a strong interest in working with our member financial institutions and community housing partners to develop meaningful foreclosure assistance programs.

The Cincinnati Bank's role in the current stressed housing environment increased dramatically in 2007 due to the unprecedented disruptions in the credit and mortgage markets

that have continued into 2008. Industry access to liquidity was substantially restricted and members increasingly turned to us to support their daily funding needs. Demand for our core product, Advances, rose to historic levels, growing by more than 27 percent, or $11 billion, during 2007. At the end of the first quarter of this year, our Advances approached $62 billion, an increase of nearly 50 percent compared to the end of 2006.

As you can see, meeting our congressionally mandated liquidity mission has been a full-time job. At the same time, our Board of Directors and management were also engaged in a series of activities to assess the scope of the foreclosure issue within the Fifth District and develop possible interventions. We believe we have been a leader among the Federal Home Loan Banks in addressing the foreclosure crisis. Through the combination of input from our members, direction from our Housing Advisory Council and leadership by our Board of Directors, we believe that the Cincinnati Bank has been aggressive in developing programs to assist our members in dealing with the difficult economic and foreclosure environment.

Our Board is represented here today by Grady Appleton, Executive Director of East Akron Neighborhood Development Corporation and Leslie Dolin Dunn, Retired Partner, Jones Day, Cleveland, Ohio. I want to commend our Board's leadership in taking the initiative to implement meaningful programs.

Federal Home Loan Bank Programs

What we've learned from our members and our housing partners is that this is a problem with many facets, and solutions must come from many different angles. Recognizing this, our Board authorized the implementation of three specific foreclosure mitigation programs that address the problem in different ways, and a fourth program is under development.

The first program is called HomeProtect. In this program, we made available to our members $250 million in Advances at our cost, targeting these funds to help our members refinance homeowners at risk of delinquency or foreclosure. We instituted this program in June 2007, and have approved commitments of more than $128 million since then.

Second, we have taken actions to direct more of our Affordable Housing Program funds toward the foreclosure situation. As you know, the Affordable Housing Program is the result of a congressional mandate, to set aside 10 percent of our profits annually to support affordable housing for very low- to moderate-income households in the Fifth District. This is our largest

housing initiative, and it has the most impact in our district. Since 1990, we have committed nearly $280 million to help create 43,000 units of affordable housing in Ohio, Kentucky and Tennessee. We award grants and subsidized Advances through a competitive process, individually scoring each application based on the merits of the project and characteristics of the clientele being served.

Later this year we will award roughly $13 million through this program and we have taken steps to target the scoring of these applications to high-foreclosure areas, and to favor projects that will return abandoned foreclosed homes to occupancy. We recognize the detrimental effect that abandoned homes will have in neighborhoods throughout our district, and we believe this effort will help communities recover from the effects of the foreclosure crisis. With these new scoring criteria, we expect to see funds directed to those areas of Ohio that have been hardest hit by the foreclosure crisis.

Third, in February 2008, our Board instituted a voluntary program, called Preserving the American Dream, to provide $2.5 million for foreclosure counseling and mitigation. Our Board began in 2003 to voluntarily commit a portion of our profits to specific housing programs. This voluntary commitment has helped provide downpayment assistance for minorities and those with special needs. We have also been able to create set-asides for special situations. After Hurricane Katrina devastated New Orleans, for instance, we set aside funds to provide downpayment assistance to households displaced by the hurricane and relocated into our district.

This year, facing the current crisis, our Board raised our voluntary commitment from $3 million to $5 million for 2008, and directed half the funds to foreclosure mitigation. Discussing the foreclosure issue with our Board of Directors and our housing Advisory Council, we learned that we could help many families avoid foreclosure with just a few thousand dollars, to help them become current on their mortgages or to cover the costs of refinancing. In Preserving the American Dream, we will provide up to $3,500 per household, through our members and qualified non-profit counseling agencies, to assist with foreclosure mitigation. We accepted applications for this program through June 2, and our Board of Directors will approve these grants in July.

Along with these three programs, we have taken additional actions. On our web site, www.fhlbcin.com, we established and continuously update a Foreclosure Guidance page, where we describe our programs and share links to other resources. Our members tell us that early

communication is critical to keeping residents in their homes, and we urge consumers to engage in early communication with their lenders.

Also, we have lent our expertise to several efforts to pull together community resources to address the situation. Ohio initiatives have included participation in the Governor's Foreclosure Prevention Task Force and in a bi-partisan Ohio Congressional Roundtable in Washington, DC, in 2007.

Obstacles and Challenges

There is also a fourth program proposed, one that requires a regulatory waiver. Regulations currently prohibit the Bank from using Affordable Housing Program funds to help our members refinance mortgages for at-risk homeowners. We have petitioned our regulator, the Federal Housing Finance Board, for a regulatory waiver that would allow the use of Affordable Housing Program funds for refinancing. This waiver would allow us to help homeowners whose loss of equity in their homes has become an impediment to refinancing their mortgages. Other Federal Home Loan Banks have made similar requests, and the Finance Board is considering a change in the regulation to allow refinancing assistance. We are awaiting a final decision on this.

How have these efforts worked so far? It's too soon to say. We have experienced modest success with HomeProtect. Unfortunately, the level of discount does not fully compensate for the risk involved to lenders who did not originate the loan. Our experience is that many stressed homeowners did not originate mortgages with Cincinnati Bank members.

We anticipate greater success with our new initiatives and have already received a large number of applications for Preserving the American Dream grants. We also hold seminars to educate our members and housing partners on our housing programs, and interest in those has been strong.

Conclusion

In closing, we note that this current housing crisis was not created overnight, nor can it be fixed overnight. It also will not be fixed with a one-size-fits-all solution. A collaborative effort that involves all interested parties will be key to the development of effective solutions. That is why we have chosen to address the problem from several different perspectives. The Federal

Home Loan Bank, its 726 members and hundreds of housing partners are working diligently to provide long-term solutions to create and maintain healthy communities and cities.

Madame Chair, thank you for the opportunity to address the Committee on this important matter. I will be happy to answer questions at the appropriate time.

ANDREW S. HOWELL

EXECUTIVE VICE PRESIDENT AND CHIEF OPERATING OFFICER FEDERAL HOME LOAN BANK OF CINCINNATI

Andrew S. Howell holds the position of Executive Vice President and Chief Operating Officer at the Federal Home Loan Bank of Cincinnati (FHLBank). He is responsible for the FHLBank's Accounting, Bank Operations and Treasury departments, as well as Mission Asset Activity, which includes Credit Services, Mortgage Purchase Program, and Housing and Community Investment.

Mr. Howell began his career at the FHLBank in 1989 as the Manager of Credit Services. He was promoted to Senior Vice President of Credit Services in 2000, where he was responsible for the development and administration of the FHLBank's Credit Policy. In 2007, he was promoted to Executive Vice President, Mission Asset Activity, and in 2008, he was promoted to his current position. Prior to 1989, Mr. Howell served as Vice President, Commercial Lending, at Huntington Bank and in various credit and lending positions at Bank One and First National Bank of Cincinnati.

Mr. Howell holds an MBA with a concentration in management from the University of Cincinnati and a bachelor's degree in finance from the University of Kentucky.

Testimony of Patricia A. Kidd
Executive Director
Fair Housing Resource Center, Inc.
Before the
Subcommittee on Housing and Community Opportunity
to the
Committee on Financial Services

June 16, 2008
Cleveland, Ohio

My name is Patricia Kidd, and I am the Executive Director for the Fair Housing Resource Center, Inc. and I would like to thank you for the opportunity to provide information to the Committee today regarding the local efforts of Lake County Ohio to address the Foreclosure Crisis in Ohio.

I have served as The Fair Housing Resource Center, Inc. (FHRC) Executive Director and as a civil rights attorney for the past 9 years. The Fair Housing Resource Center, Inc. is a 501(c) (3) organization located in Lake County, Ohio. FHRC has one office and operates in the county seat of Painesville, Ohio. The mission of Fair Housing Resource Center is to promote equal housing opportunities for all persons and to advocate for fair housing and diversity in Lake County and surrounding communities through the education and involvement of the public, the governments, and the business community.

FHRC has operated as a HUD-approved Housing Counseling agency since August 2002, and has established positive working relationships with both the private and

public sector of the County and surrounding areas. Fair Housing Resource Center, Inc. provides one-on-one counseling for individuals who need assistance in the following areas: Landlord/Tenant Rights, Fair Housing, Loss Mitigation / Foreclosure Prevention, Homeownership, and Predatory Lending. The work plans created by the Fair Housing Resource Center, Inc., support individuals in becoming self-sufficient and ensures that all persons are provided safe, decent and affordable housing.

Service Area

FHRC serves Lake County which is comprised of 18 incorporated municipalities (either cities or villages) and 5 unincorporated townships for a total of 23 communities serving 227,000 residents. As you are aware, the foreclosure crisis in the nation has continued to grow to epidemic proportions. National leaders down to local community groups are being made aware of this crisis. However, awareness alone will not address the problem; awareness with action will. According to the Mortgage Bankers Association (MBA), Ohio has the highest foreclosure rates of all states in the nation; has the second highest percentage of loans in the serious delinquency category, right behind Mississippi.[1] Last year, there was one foreclosure filing for every 71 Ohio households.[2] Within Ohio itself, northeastern counties such as Lake and Ashtabula have a high incidence of foreclosure rates. Statewide, the number of foreclosures rose 34 percent in one year, to a high in 2004 of 59,007, according to the report."[3] Then, those same rates

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[1] *Dimensions of Ohio's Foreclosure Crisis and the Prominent Role Subprime Lending Plays*, Coalition on Homelessness and Housing in Ohio COHHIO, March 2007. http://www.cohhio.org/info_factsheets.php.

[2] *Foreclosure Growth in Ohio 2006*, Policy Matters Ohio, July 2006.

[3] News Herald article March 23, 2006 "Ohio's Foreclosures High – Easy Credit can open door to trouble for homeowners", Diane Snyder

rose another 23% in 2006.[4] Lake County has reported that the foreclosure rates in the area have more than tripled over the last decade. During 2006, Lake County had 1,114 foreclosure filings which was an increase of 24% over 2005 rates.[5] According to an article recently published in The News Herald on November 19, 2007, 835 homes in Lake County have been placed in sheriff sales this year, [6] compared to the 1,534 homes that faced foreclosure proceedings in 2006 alone.

The demographic profile of this stressed community directs target market outreach initiatives to the following specific populations:

- 11,655 Female-Headed Households (10.0%), of whom more than half, (7,362) have minor children.
- Black household income of $30,642 is 70% compared to the County household income of $42,185.
- There are 58,772 non-institutionalized disabled residents.
- Over 75% of the individuals assisted by FHRC have been either of low income and /or female head-of-households with a majority of those individuals are disabled.
- The total senior population of individuals 65 and over amounts to approximately 14% of the total county population.
- The total number of new residential construction units are down more than 10% from 2004 and cost per unit has decreased approximately $20,000 for the past two years.
- The median gross rents average $623.00 according to the ODOD OSR County profiles, however in actuality the foreclosure crisis is driving up market rents due to an increase in demand for rental property.

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[4] *Dimensions of Ohio's Foreclosure Crisis and the Prominent Role Subprime Lending Plays*, Coalition on Homelessness and Housing in Ohio COHHIO, March 2007. http://www.cohhio.org/info_factsheets.php

[5] Id.

[6] The News Herald, *Lake County has busy year for sheriff's sales*, David W. Jones, Nov. 19, 2007.

In sum, the foreclosure crisis has severely impacted the Lake County area in ways similar to other communities throughout the state:

- Housing values have substantially decreased over the last year and continue on a downward spiral;
- Home sales market has slowed to a small crawl specifically for houses over 2,500 square feet;
- New home construction has substantially slowed which in turn means loss of employment;
- Bankruptcy filings in Lake County has doubled this year compared to the previous year;
- The Lake County Treasurer's office has seen more individuals requesting information regarding the County's Escrow Program for property taxes ;
- The Treasurer's office has also seen a larger of number of individuals complaining that their taxes were never escrowed in their mortgage when they were told the taxes would be escrowed;
- The Lake County Auditor's office has daily inquiries from area homeowners seeking information regarding the revaluation program in an attempt to lower their property taxes; and
- The Lake County Sherriff's office claims crime rates in the area are increasing. They claim vacant houses invites vandalism and are seeing a higher level of homeless squatting in vacant homes.

Counseling Activites, Experience and Programs.

Housing Counseling Experience

FHRC has been a certified HUD Housing Counseling agency since August of 2002 and has provided various types of housing counseling and education services to individuals on a one-on-one basis, including foreclosure prevention as listed below:

Foreclosure Prevention Program

FHRC believes one-on-one counseling is the most effective form of counseling for individuals. However, loss mitigation counseling on a one-on-one basis is an extremely time consuming process. On average, to provide counseling assistance to one individual from beginning to end through the loss mitigation process, takes approximately 20 hours of an experienced housing counselor's time. This time constraint far exceeds our normal HUD funded counseling time of 2.0 hours per person.

FHRC's counseling process begins upon the initial intake. All applicants are required to complete a detailed counseling application which includes questions regarding an applicant's annual income, their mortgage company, the type of mortgage loan, how far they are delinquent, reason for delinquency, and what alternatives they are seeking. The income listed will include monies from wages and salaries, benefits and pensions, public assistance, and other income. This information assists the counselor to evaluate loss mitigation options.

FHRC counselors require the clients to execute a "Lender Disclosure Form" which will allow the counselor to talk directly to the lender. FHRC assists clients with mortgage workouts, loan modifications, forbearance plans, and repayment plans. FHRC also educates homeowners with refinance options, including the many recovery programs which the individual may be eligible for.

There are some instances in which a borrower is unable to retain their home and foreclosure is evitable. In these cases, quick action is needed to help reduce the financial hardship on the borrower. In this instance, after reviewing the financial situation it may be best to leave the home. FHRC will educate consumers of their option to conduct

either a full sale or a short sale on the home if no other feasible option is available. FHRC will network the clients with area realtors experienced with these types of transactions. Also, FHRC will educate the client about the option of providing a Died in Lieu of Foreclosure option. While FHRC has no relationship with mortgage servicing agencies, FHRC has past experience with mortgage workouts and have been quite successful with these efforts.

FHRC does receive funding on a local level from Lake County HOME Program funds for a program FHRC created titled ERMA. ERMA (the Emergency Housing Assistance Program) was created to help assist income eligible households' who suffered an inability to pay for housing related costs arising from an unexpected crisis which could cause a potential foreclosure. Through this program, the County provided financial assistance on behalf of the eligible households in the form of a grant over a period of up to two (2) consecutive months to providers of such services as mortgage payments up to a $2,000.00 limit. FHRC has received three rounds of funding to date, two of which had a combined total of $120,000.00 with a third award of $60,000 for FY 2007. On April 1, 2008, the County decided to increase the limit of funding from $2,000 per household to $3,000 per household to assist individuals with higher monthly mortgage payments. The problem with this program is that FHRC received only nominal funding to help defray the administrative costs of this program. The ERMA program seriously taxed the housing counselor's time and the administrative costs created a financial burden to the agency. Thankfully, Fair Housing Resource Center recently received funding as a subcontractor for the Ohio Housing Finance Agency on the National Foreclosure Mitigation Counseling Grant (NFMC).

The NFMC grant will assist the agency with additional financial resources to help ease the financial costs and allow Fair Housing Resource Center to hire additional staff, whose main focus will be on overseeing the ERMA program, providing loss mitigation counseling to area homeowners, providing direct assistance to the Executive Director of FHRC, and the Commissioners in formulating the task force and marketing strategies regarding our foreclosure prevention programs. Funding has also had a significant impact on FHRC marketing and outreach strategies, allowing the agency to reach out to individuals encouraging them to utilize our services.

However, as stated above, the foreclosure prevention counseling FHRC provides is an extremely time consuming process and the numbers of individuals seeking our assistance are increasing monthly. As stated above, the foreclosure rates in Lake County have more than tripled over the last decade. During 2006, Lake County had 1,114 foreclosure filings which was an increase of 24% over 2005 rates.[7] According to an article recently published in The News Herald on November 19, 2007, 835 homes in Lake County have been placed in sheriff sales this year,[8] compared to the 1,534 homes that faced foreclosure proceedings in 2006 alone.

In FY 2006, FHRC received two-hundred and forty (240) phone calls regarding foreclosure and were able to counsel these individuals through the loss mitigation program, which resulted in one-hundred (100) individuals preserving their homes. FHRC anticipates the numbers to increase as the foreclosure crisis accelerates. Nearly $1.5 trillion of adjustable rate mortgages (ARMS) will be eligible to reset during 2007 and

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[7] Id.

[8] The News Herald, *Lake County has busy year for sheriff's sales*, David W. Jones, Nov. 19, 2007.

between $500 billion to $800 billion will actually reset with new interest rates.[9] The incidence of ARMS resetting will have a serious impact on Lake County residents. Without additional funding to assist this increase in call volume and housing counseling staff time assisting individuals through the loss mitigation progress, FHRC believes many individuals counseling needs will go without assistance.

Marketing / Outreach

FHRC has made steps towards foreclosure prevention on a local level by the implementation of the ERMA program, the Lake County Foreclosure Prevention Task Force, and our loss mitigation counseling program. The additional marketing efforts that have been implemented include: billboard advertising, additional transportation advertising, quarterly publications of the foreclosure rates in Lake County, quarterly publications from the Lake County Foreclosure Prevention Task Force, surveying the residents of our service area to gain a better understanding of what needs to be changed, direct marketing to individuals in ARMS informing them of the many opportunities and programs for refinancing options, and television and radio campaigns.

Obstacles and Challenges

In my opinion, the number one obstacle that we face when assisting a homeowner with loss prevention counseling is the lack of customer service by the lenders. Numerous staff hours are wasted trying to reach an individual on the phone who has the ability to make decisions on behalf of the lending institution. Each phone call is met by a different individual, thus lacking in clear and consistent communication and follow through.

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[9] *Foreclosure Prevention: Improving Contact with Borrowers*, U.S. Department of Treasury, Community Affairs Department, June 2007.

Most lenders withhold direct numbers, last names, and extensions for contact purposes, which prohibit a return phone call to the same individual. Housing Counseling agencies should be provided a direct phone number to the loss mitigation/hardship department and assigned a particular individual to speak with to enhance consistent and effective communication. In order to clearly understand the obstacles and time constraints when seeking a resolution for a client, please see attached Exhibit "A" case summary.

Another obstacle Fair Housing Resource Center endures is the lack of communication between the lending institution and their attorneys who are handling the foreclosure litigation. Fair Housing Resource Center has direct experience on numerous occasions where the lender has entered into a repayment plan or loan modification with a borrower and after the documents are signed, a foreclosure complaint is then filed with Lake County Court of Common Pleas due to the lack of communication between the lender and their counsel. This situation drains valuable housing counselor staff time for our office as it takes many days/weeks to get a complaint formally dismissed.

Lenders are entering into repayment plans and loan modification agreements which require the borrower to waive any and all rights to the loan. For example, some of the contracts state the following:

> "By executing this modification, you forever irrevocable waive and relinquish any claims, actions, or causes of action, statute of limitations, or other defenses, counterclaims, or setoffs of any kind which exist as of the date of this modification, whether known or unknown which you may now or hereafter assert in connection with the making, closing administration collection or the enforcement by (lender) of the loan documents, this modification or any other related agreements."

> "By executing this modification, your irrevocably waive all rights to a trial by jury in any action, proceeding or counterclaim arising out of or relating to this modification and any related agreements or documents or transactions contemplate din this modification."

In sum, Borrowers who are facing losing their home are put into a corner – foreclosure or waive their rights. Many of these agreements have language similar to this noted above, where borrowers feel they are forced to agree to.

Lastly, homeowners create their own obstacles and challenges as well. Many homeowners are not forthcoming with information or are so consumed with shame they do not seek the services of a counseling agency to assist them with this process. Local education and outreach efforts have targeted homeowners overwrought with shame to encourage them to contact our office to help them prevent foreclosure. However statistically speaking, Fair Housing Resource Center is only assisting approximately 10% of the individuals facing a looming foreclosure.

Preventing Foreclosure

There is no one cure to this problem but rather a series of events that may help this crisis get better, including:

- Regulation on the lenders requiring mandatory loss mitigation efforts prior to filing a foreclosure complaint;
- Reform of Ohio Domestic Relation Court rules providing for mandatory protections to the marital home during the divorce process;
- Mandatory court ordered mediation within 30 days of filing a complaint for foreclosure;
- Incentives for lenders who offer loan deferments for individuals who are delinquent due to a temporary crisis;
- Tougher regulation on Equity Recovery Programs and other scam operations that charge high fees for foreclosure relief and dupe homeowners into executing a quit claim deed for their property;
- Increased education to homeowners encouraging them to seek foreclosure prevention counseling immediately when they are 30 days delinquent on their loan;

- Mandatory housing counseling for all borrowers prior to purchasing or refinancing a home; and

- Incentives for State governments who amend legislation dealing with renter's rights to prevent price gouging in rents and unclear or unconscionable Lease/Option agreements.

Case Summary

EXHIBIT A

Diane is a single, 45 year old woman who lives modestly. Diane began suffering financial hardships in December of 2005 when the company she worked for went out of business. In Feb. 2006, she ended up taking a job that paid less money an hour than her previous one. Diane supplemented this income with a part time job in retail. To make the mortgage and bill payments, Diane resorted to using credit cards and borrowing money from family members. In November of that same year, Diane got a better job. She was making more money and was doing fine, until Feb. 2007 when she was let go due to the company downsizing.

Since that time, Diane has applied for over 100 jobs and was either over- qualified, under- qualified, or just not the right person for the job. Diane took another part time job in June of 2007 while looking for a full time job. In the meantime, Diane kept using her charge cards to pay household debts, and borrowing money from family members to stay afloat. Fearful of going even further in debt, Diane then shredded her credit cards.

In October 2007, Diane got a full time job, still making less than the original job. Since that time, Diane has supplemented her income with 2 additional part time jobs, just to make ends meet. Diane has always made her mortgage payments, maybe not always precisely on time, but she has made one every month. Her account was overrun by late fees and she was always trying to play catch up. Diane contacted our office on 2/5/08

requesting assistance with her loan. Diane was current on her loan, but the monthly payments were creating such a hardship for her that she felt she was going to default and lose her home. FHRC attempted to get Diane's loan restructured to prevent the looming foreclosure. Below is an actual timeline documenting our loss mitigation efforts.

Diane – Loss Mitigation Timeline – National City Bank

February 5, 2008

- Diane contacted our office for assistance
- Diane came to office to complete an application for financial assistance program

February 11, 2008

- Finished processing client file
- Contacted NCB for number to fax release of information form
- Forwarded completed file to housing counselor

February 12, 2008

- Counselor reviewed file:
  - Original payment 908.86. Amount due equals $1,225.84 with the difference being late fees and penalties.
  - 1st phone call to NCB requesting waiver of late fees. Answer – they are not sure, may attempt to put a request in writing. NCB will send out a hardship packet for client to complete.
  - Submitted a written request for late fees to be waived (faxed) to Default Support.

February 13, 2008

- Phone call to Diane – left a message regarding above

February 14, 2008

- Phone call to Diane:
  - When will you have Feb. house payment? – Late February
  - If ERMA assists with Feb. payment, will you have March payment? – Yes
- Action plan developed: Goals
  - Submit payment to get late fees waived
  - Lower payment (see if qualify for OFHA program)
  - See if she qualifies for county Loan Recovery program
  - Call Lender NCB see if they can modify loan
- Phoned NCB for more info on state OFHA program

  - NCB will pull refinance sheet and call back
  - NCB phoned – Diane owes $102,253.00 on home at an interest rate of 6.375. The State OFHA program interest rate is higher at 7.5% - utilizing that program will result in an increase in her monthly payment, not a decrease. NCB will run the numbers to see if they can refinance her at a lower rate.
- NCB phoned – refinancing with fees and costs will result in her payment being higher. Advised for Diane to complete hardship package for other options and to contact loss mitigation
  - Phoned loss mitigation – was advised to fill out hardship packet but not to fill it out until after Feb. 29, because she has to be 30 days behind before they can help.
  - NCB stated that they may be able to restructure loan after receiving hardship packet.
  - Can download packet and submit on-line

February 15, 2008

- Phoned Diane and explained above conversations
- Diane agreed to hold off and submit hardship package on March 1, 2008.

February 20, 2008

- Letter from NCB dated 2/14/08 to Diane requesting documentation to be considered for a relief option.

February 21, 2008

- Diane came into FHRC office to fill out the hardship package that will be submitted on March 1, 2008.

March 3, 2008

- Could not log Diane into NCB – Diane will need to reset password

March 6, 2008

- Diane came in, set up online Hardship Packet Account uploaded financial online took 1- ½ hrs to finish because of NCB website issues.
- Completed the online Hardship Packet
- Received status of Packet submission (submission accepted – 12:40pm)
- (Dated) Letter from NCB outlining the process for submitting financial documentation for review to be considered for any program option.

March 10, 2008

- Letter from NCB; may be able to qualify for a streamlined loan modification.

March 17, 2008

- (dated for March 12, 2008) Received Letter from NCB: repayment agreement – offered payments of $1,009.84 until September 2009 – this is a 100 dollar increase in her payments, not a decrease like we were asking.

March 18, 2008

- Phoned NCB to discuss payment agreement. Was told that we needed a loan processor to look at agreement, someone will get back to us.

March 22, 2008

- NCB stated- at this time they can only offer the client a repayment plan with a payment of $100 more a month then her usual payment. She cannot qualify for a loan modification because she is not more then 90 days late on her mortgage.
- NCB recommended that Diane wait, do nothing and resubmit another workout package on April 1, 2008 along with another hardship letter requesting a loan modification. NCB stated – after paperwork is submitted, request to speak directly to a loan processor to expedite the file. I advised NCB that I do not feel comfortable advising my client to not pay their mortgage.

March 23, 2008

- Emailed Federal Grants Administrator requesting permission to deviate from standard ERMA protocol and reinstate her loan if NCB drops the ball.
- Receive written response from Federal Grants Administrator, we could offer to help pay her mortgage until April 1, 2008.

March 27, 2008

- Called Diane and recapped NCB phone call and county request to her. Diane was clearly informed that she has 1 of 3 options:
  1. Pay all of her delinquency up to April 1, 2008 and let her original loan amount stay where it is;
  2. Accept the repayment plan at $1109.00 a month until 9/15/09 (100 more then her usual payment); or
  3. Not pay anything right now and request a loan modification after April 1, 2008.
- Diane informed us that she wanted some time to think it over, and also informed us that she received a new job.

March 28, 2008

- Email from Diane – questioning the lack of cooperation by NCB
- Patricia forwards the response from the county received addressing the increase in funding to assist her with her mortgage payment.

March 31, 2008

- Diane came in to FHRC office to discuss loan options.

- Diane has chosen to upload info on April 1, 2008, holding off to try to obtain loan modification.

April 1, 2008

- Downloaded application and uploaded another hardship assistance packet. (Took 1.5 hrs to process and upload packet).

April 3, 2008

- Spoke with NCB – no foreclosure proceeding will start until at least after April 15, 2008 – due to the first day of the repayment plan. NCB wants 24-48 hours to review new packet; call back in a couple of days
- Confirmation received of submission of Online Hardship Application

April 11, 2008

- Phone National City Management to check on status of application; account still under review. Asked NCB to note the account that we have phoned to check on the status
- Phoned Diane – gave update on her account

April 14, 2008

- Email to Diane; request for her to share her story with the Coalition on Housing & Supportive Services of Lake County – including consent to share her story on camera for their annual luncheon and conversation with Legislators.

April 16, 2008

- Phone call to NCB; no word yet, follow-up next week

April 24, 2008

- (dated) Letter from NCB; another repayment plan offered – payments of $1,027.00 until April 2010
- Phoned NCB:
  - Offered 2nd repayment plan
  - Told doesn't qualify for a loan mod because income is to low
  - Said loan mod would be $840.00 but "their investor" does not feel she has enough income to support that high of a loan
  - Patricia explained how the loan amounts have gone so far:
  - Original Payment was $908, Repayment #1-$1009.84, Repayment #2-$1057. We stated that this is not an option, the payment is getting higher and not lower. Demanded to speak with someone

who has the authority to make a decision rather than "read the screen"
  - Was transferred to Brandon Gordon; left message on his voicemail
- Phoned Diane; gave update on her account

April 26. 2008
- Phone call to Brandon Gordon; message left

April 29. 2008
- Phone call from Diane Fabis requesting update message left

May 2, 2008
- Diane came into the office; we talked, she cried, left upset

May 5. 2008
- Phone call to Brandon Gordon, AGAIN; left mean message on voicemail

May 6, 2008
- Spoke to Brandon at NCB . Told NCB the Loan Recovery Program will help pay delinquencies – stressed importance of working quickly with the loan modification. Brandon requested another copy of the latest hardship packet faxed to their office
- Faxed hardship packet to NCB

May 13, 2008
- Called Brandon – He said still under review, should know something in a couple of days

May 14, 2008
- Email from Diane; asking for an update on the status and apologizing for her outburst
- Response to Diane's email; no need to apologize, completely understand. Let her know that Brandon Gordon said her "hail mary" attempt is still under review and should have an answer in a couple of days. Will follow up on Friday.

May 20, 2008
- Left message for Brandon to check progress

May 22, 2008
- NCB refuses to do a loan modification at this time – credit report and financials show that Diane does not make enough money – if Diane made more money she wouldn't need loan modification.

- E-mailed Diane NCB response – Told Diane that the Loan Recovery Program would pay her delinquencies and that the check would be expedited out as soon as possible.

May 23, 2008

- Sent letter and check via express mail to NCB to get Diane current again.

May 29, 2008

- Housing Coalition luncheon video tape of Diane's story was aired.

June 03, 2008

- Diane sent a letter via e-mail directly to the CEO of NCB describing her difficulties in dealing with NCB.

June 11, 2008

- Received phone call from NCB offering her a loan modification in the amount of $737.00 lowered her interest rate down to 5% interest and extended the length of the loan. This modification was in the range of our original request in February.

Summary

One loan modification for Diane took four months to process and complete. Our office communicated by telephone and email on forty-three separate occasions. We invested so many hours on Diane's case that we eventually lost count. The result: Foreclosure prevention, the key element that keeps our office dedicated and working hard during this crisis.

TESTIMONY OF EDWARD G. KRAMER, Director & Chief Counsel of THE HOUSING ADVOCATES, INC

Before the

Subcommittee on housing & Community Opportunity of the U.S. House of Representatives Committee on Financial Services

June 16, 2008

Cleveland, Ohio

I. Introduction

Good morning. I am Edward G. Kramer, Director & Chief Counsel for The Housing Advocates, Inc.(HAI). I would first like to thank Chairwoman Maxine Waters and the members of the Subcommittee for holding this important hearing on "Foreclosure Problems and Solutions: Federal, State, and Local Efforts to Address the Foreclosure Crisis in Ohio. I also want to express my apprcciation to Congresswoman Stephanie Tubbs Jones and her staff for their efforts in advocating for affordable housing and aiding our efforts over the years to fight the injustices caused by predatory lending. This hearing is coming at a crucial time with the meltdown of the subprime mortgage business and the unprecedented foreclosure rates throughout Ohio and our nation.

A legal system in which only the politically powerful and wealthy can afford legal representation is not only inherently unfair, but justice will be better served if all persons are represented. The Housing Advocates, Inc. (HAI) was organized in June 1975 to offer minorities and the poor an opportunity for housing justice. In the ensuing 33 years the organization has emerged as a full-service public interest law firm, fair housing organization, consumer and housing counseling agency with a multiplicity of projects:

" providing housing and foreclosure defense to thousands of Greater Clevelanders over the last six years;

" undertaking a comprehensive fair housing testing program since 1989;

" operating a Discrimination Complaint Service since 1975 to protect the rights of all persons regardless of race, color, creed, religion, disability, nationality or familial status;

" providing technical assistance to communities and the housing industry attempting to fulfill their civil rights obligations;

" undertaking litigation to secure housing justice which has resulted over two million dollar of verdicts and settlements to victims of housing discrimination;

" recruiting and training attorneys to conduct fair housing litigation;

" counseling apartment and mobile/manufactured home tenants regarding their rights;

" operating a legal clinic in conjunction with Cleveland State University through which second and third-year law students defend the rights of minorities and other victims of housing discrimination including not-for-profit housing corporations;

" preparing studies and operating a speakers bureau on housing subjects

" targeting the unmet housing needs of Hispanics, immigrants and the disabled in Greater Cleveland.

" establishing the Mid-Ohio Project last September by opening a new service in Columbus, Ohio to fight housing injustices in the 10 counties of Central Ohio.

The success of the organization can be attributed to both human and financial resources. Contributions from individuals and corporations, coupled with grants from the U.S. Department of Housing & Urban Development, the State of Ohio, City of Cleveland, Cuyahoga County, private and business foundations have enabled HAI to launch many innovative programs. For more information about the organization go to our website www.housingadvocatesinc.com.

More than a decade ago, Councilman Frank Jackson was warning of the dangers posed by the subprime mortgage schemes which were beginning to prey on Cleveland neighborhoods that had been abandoned by many of our traditional lenders. If these warnings had been acted on the damage to our community could have been lessened if not avoided. As Councilman, President of City Council and now Mayor of Cleveland, Frank Jackson has fought to obtain justice for Cleveland residents against the abusive practices of some lenders, brokers, title companies and appraisers who have used predatory practices to make a fast buck. Our organization has always received strong support for our clients from Mayor Jackson and Angel Guzman, his Director of Consumer Affairs. We wish to acknowledge Major Jackson's leadership in this area and thank him for his vision and courage.

My testimony today will address the five questions which you asked for statements on in your letter of June 5th inviting my participation. The Housing Advocates, Inc. and our sister community organizations face strained financial and staff resources in face of the tsunamis of foreclosures and sheriff sales devastating all of our Greater Cleveland communities. I am honored to provide this testimony as an advocate for the other organizations like ESOP, Community Housing Solutions, Inc., Cleveland Housing Network, Spanish American Committee, Neighborhood Services, Inc., the Legal Aid Society of Cleveland, and the many other groups working to prevent homelessness caused by this crisis.

1. Please describe the impact of foreclosures and vacant properties in Cleveland.

Victims of lending abuses lose their home, but the individual tragedy is only part of the impact of these illegal practices. The sizable investment made by federal, state and local governments along with private foundations over the last 20 years to increase

affordable, decent and safe housing in the City and to stabilize its neighborhoods is threatened by these predatory lending practices. This investment of millions of dollars in private and public monies has been lost by the stripping of equity and foreclosures with its vacant and deteriorating structures threatening the viability of Cleveland's neighborhoods.

The costs of Ohio's foreclosure epidemic have been staggering. Foreclosure filings have jumped 395 percent from 1995 to 2006, up 24 percent just between 2005 and 2006. Dayton Daily News , Our View: Treat mortgage lenders like polluters, Wednesday, October 31, 2007. The Congressional Joint Economic Committee estimates that Ohio can expect another 82,000 home foreclosures between now and the end of 2009 — with an economic impact of more than $3.7 billion, measured in terms of the loss in value of foreclosed homes and neighboring properties, and the decrease in property tax revenues. Id.

Also, recent foreclosure filings reveal that this problem is growing in the suburbs of Cuyahoga County. Cleveland no longer ranks number 1 in foreclosures in the County it is third with Maple Heights and East Cleveland having more per thousand persons. Ohio Policy Matters, Foreclosures in Cuyahoga County (August 2007) Appendix 2 attached as Exhibit 1.

The Chinese adage that a picture is worth a thousand words is a truism. I urge the members of the Subcommittee to take time to visit the neighborhoods in Cleveland to see the vacant dilapidated homes that only a few years ago were part of our affordable housing stock. Let me give you an example of what this means not only to the community, but the impact on individual homeowners.

Gretchen Bowman, one of HAI's staff attorneys, and I represent a 78 year old woman who lives in Cleveland's east side. Our client has lived in this house for 38 years. It is a well maintained home where she raised her children. In 2005, she was approached by a mortgage broker with promises to refinance the home so she could pay off a $5,000 unsecured high interest Household Finance loan. She did not get what was promised! Instead the broker earned thousands of dollars of fees and our client received $879.10 from Argent Mortgage LLC. The broker made sure she would have no choice but to sign this new loan. He advised her not to pay the current mortgage so by the time of closing, almost three months after making her loan application, the threat of foreclosure forced her to sign the new loan papers. Unfortunately, the new bank soon declared a default – not for failure of paying her mortgage -- and started a foreclosure action. In 2005, this house was appraised for $89,000. HAI undertook the defense of this foreclosure and about six weeks ago by agreement of the parties a new appraisal was undertaken. The appraisal came back with a value of $31,000. A lifetime of mortgage payments and maintaining a home now is worth less than thirty-five per cent of its value three years ago.

2. Please describe any programs your organization has undertaken to reduce or prevent foreclosures or to address properties abandoned as a

result of foreclosures. In what ways have those programs been successful or unsuccessful in preventing foreclosures?

The Housing Advocates, Inc. (HAI) is a truly unique organization in the Greater Cleveland area. It is the only remaining Cleveland area public interest law firm recognized by the Internal Revenue Service. HAI has nine lawyers at the present time. However, the organization is much more than a public interest law center. It provides programming to educate the public, government officials and housing professionals on a wide range of subjects, it develops both reports and brochures on housing issues, has a staff of 18 employees and 13 student interns for counseling and advocacy on foreclosure prevention and promotion of affordable housing opportunities, provides legal representation to victims of predatory lending where necessary and appropriate and is recognized as one of the leaders on housing consumer and predatory lending issues.

EDUCATIONAL OUTREACH EFFORTS

HAI educates homeowners, renters, real estate professionals and attorneys. It produces and provides glossaries, checklist, brochures and other documents and materials. The program has the following accomplishments:

A. **Educating Cleveland and Cuyahoga County Residents.** Perhaps the most important of HAI's educational efforts is the education of the public. Between December of 2001 and May 2008, HAI performed 163 educational outreach programs on predatory lending practices for Cleveland residents through its Home Owner Assistance Program (HOAP). HAI, under a contract with the U.S. Department of Housing & Urban Development, has conducted educational outreach programs for Cuyahoga County residents on predatory lending issues. Several of these trainings were designed for religious leaders to identify potential situations where their members may be victims of predatory lending so they can refer them to HAI. In addition to the educational outreach programs, HAI also educates residents through the following methods:

X**Predatory Lending PowerPoint Program.** This is an interactive program. A HAI attorney describes the loan process and shows residents what documents they will likely see when they purchase a home or use their home as collateral for a loan (e.g., refinance, home equity loans, etc.) The program also helps residents to understand their basic legal rights and identifies steps residents can take to avoid bad loans. A modified, more detailed version of the program is available for real estate professionals and a more detailed legal version is available for attorneys

X**Mortgage Glossary**. HAI produces and provides mortgage glossaries to residents in basic, easy to understand terms. This is a proactive step that helps to demystify mortgage lending language. The glossary

empowers residents by providing them with knowledge and information. The most recent version of the glossary includes sample documents that a resident might see when signing a mortgage.

X**Mortgage Checklist**. HAI produces and provides a checklist to residents who are considering getting a mortgage-related loans. Residents can take the checklist to their loan arranger, have the arranger complete the form and then return it to HAI for an analysis.

X**Anti-Predatory Lending Brochures**. HAI produces brochures in both Spanish and English to help residents avoid becoming victims. Brochures are distributed at HOAP's offsite locations, during outreach efforts and are distributed to libraries. Similarly, HAI has produced anti-predatory lending brochures in both Spanish and English

X**Assists Other Organizations**. HAI and HOAP staff consulted with the City of Shaker Heights to help create that City's predatory lending awareness program. In the past, HAI has worked with the City of Cleveland and local groups to help create its senior predatory lending program.

LENDING ABUSE HOTLINE

HAI currently receives phone calls and referrals regarding alleged abusive lending practices from a variety of areas. The Home Owners Assistance Program (HOAP) is funded by the City of Cleveland through Federal Community Block Grant Development (CDBG) funds. The City has committed ***over $750,000.00*** in the last three years to fund this program. HOAP maintains a database of each city resident that contacts the program and falls within certain income guidelines.

HAI receives funds from Cuyahoga County to assist residents in most communities who have been victimized by predatory lending. Records are kept of all contacts that are made, pursuant to this County contract. The referral sources for HAI's clients include: the 2-1-1 Help Line, and Consumer Affairs offices for Municipalities in most of the outlying County suburbs, various non-profit agencies and residents that have contacted HAI.

HOAP has received approximately, 242 calls from January 2003 to May 2008 regarding alleged predatory lending abuses.

PREDATORY LENDING COUNSELING

Through its educational outreach efforts, HAI encourages the public to get their mortgage-related documents from lenders before their closing and then to bring those documents to HAI. This is one of the reasons for the Mortgage Checklist. However, in most cases, residents do not come to HAI until after the documents have been signed.

Therefore, HAI provides pre- and post-loan counseling to residents. Between January 2003 and May 2008, HOAP serviced almost 807 Cleveland households. This number does not include most high income residents and residents who are repeat users of HAI's services. Members of Cleveland City Council, City of Cleveland's Department of Consumer Affairs and Department of Aging, Community Development Corporations throughout the City, other housing organizations, attendees from the various educational outreach programs and former clients all send people seeking assistance to HAI. HAI has serviced over 274 additional households referred by the above entities. The process of assisting residents is as follows:

Intake Initially, a Cleveland Resident contacts HOAP either over the telephone or during a face-to-face meeting at one of HOAP's five offsite locations or at HAI's main office. Either the paralegal or the resident completes the intake form depending on whether information is given over the phone or face-to-face. Shortly after receiving the resident's relevant information, the paralegal will input the information into a database, create a folder and forward the information to one of the attorneys.

Interview, Document Review and Counseling After the attorney receives the resident's information, the counseling process begins. The attorney will interview the resident, listen to the resident's concerns and ask appropriate questions to determine what if any laws may be relevant. The attorney will likely also ask the resident to bring or produce key documents (e.g., mortgage documents, home improvement contracts, etc.). Sometimes it is necessary to request the documents from either the lender or the title agency because the resident does not have copies of the documents or the resident has unsigned copies of the documents. Once the resident produces the documents, those documents will be reviewed to determine if any other laws have been violated. The review and analysis of the documents usually involves a calculation of the costs and fees associated with the loan to determine if the loan violates the "Truth In Lending Act" or the "Home Ownership And Equity Protection Act".

After the attorney has gathered sufficient information, analyzed the documents and assessed the legal merits of the case, the attorney will counsel the resident. If the attorney cannot help the resident with his or her concerns (e.g., the resident needs or desires to file bankruptcy), the attorney will discuss what possible avenues of recourse the resident might have and refer the resident to the appropriate organization or agency. If the attorney believes that resident's case has some merit and believes that HOAP can assist the resident (based on HAI's financial resources and human resources), then the resident will be signed to an investigation, communication and negotiation agreement.

Negotiations The investigation, communication and negotiation agreement specifically states that at this stage of the representation, HAI is <u>not</u> agreeing to file a lawsuit or take any legal actions other than to further investigate their case, communicate with the appropriate party (e.g., lender, home improvement contractor, title company, etc.) and if possible negotiate an amicable settlement with the party. The HAI attorney then normally sends the appropriate parties or their attorneys a letter either seeking to gather additional information for the investigation or to inform the party of the potential

violations of various laws. The parties or their attorneys will normally respond and either deny liability or attempt to resolve the matter. If the party is willing to discuss an amicable settlement, then the negotiation process begins. Depending on the client's/resident's needs and desires, settlements may take many forms. Some residents want their loan modified, others want to be compensated and some residents want their loans modified and to be compensated. If the client wants their loan modified, HAI attorneys will work with the client and the party to ensure that their new loan will be significantly better than their current loan discuss. For example, in one case we were able to assist Labron S. by stopping his foreclosure, getting Labron $5,000 in cash, reducing his mortgage debt by $5,000, lowering his interest rate from 11.95% to 7.0% and reducing his mortgage from a 30 year loan to a 15 year loan. In another case, we were able to reduce John T. monthly mortgage payment by $275.88 per month on a 30 year loan. There are currently 5 cases in which HOAP attorneys are actively negotiating on behalf of residents or are involved in active investigations.

Litigation In some limited cases, where negotiations have failed and the attorneys continue to believe the resident's case has merit, the HAI attorneys will enter into a litigation agreement with the resident. Unfortunately, most plaintiff's (i.e., victim's) attorneys in Northeast Ohio will not take a predatory lending case. Therefore, HAI is an extremely valuable tool in fighting predatory lending in Cleveland.

First, predatory lending cases are complex. Although we encourage other attorneys to take the time to learn the relevant consumer and mortgage-related laws, most victim's attorneys in Northeast Ohio do not have the interest, time, willingness and skills necessary to pursue a predatory lending case. Attempting to read, understand and apply the Truth In Lending Act (i.e., the primary law used in predatory lending cases) is sufficient to scare away most attorneys.

Second, predatory lending cases are notoriously time consuming. It can take an attorney 3 to 4 hours just to review documents and interview victims and this time is spent before the attorney has determined whether a resident has a "predatory loan" or merely entered into an "unwise transaction".

Finally, Predatory lending cases are difficult and not profitable. The victims of predatory loans are mostly poor and unsophisticated. The lenders, brokers and contractors who perpetrate the loans are mostly wealthy and are primarily defended by bigger law firms. The thought of fighting a large law firm is also a factor in some attorneys fear of taking these cases. Also, a victim's attorney might work on a predatory lending case for 1 to 3 years without receiving any compensation for his or her efforts, while the foreclosure attorney receives regular compensation.

HOAP Attorneys are currently litigating on behalf of 15 Cleveland residents. In some cases, these residents tried unsuccessfully to obtain assistance from various other housing organizations and governmental entities in Cleveland. The residents could not afford to retain an attorney. Therefore, they turned to HOAP as their last option. Between January 2003 and May 2008, HOAP attorneys have successfully resolved 19 cases through

litigation. These cases have resulted in consumer savings of $668,133.37 through reduced principal in the mortgage note, lower interest rates, cash pay outs and reimbursement of costs. For example, HAI's attorneys negotiated down an existing mortgage note with back payments, attorney fees, costs and late fees of $108,000 to a 6% interest rate for 321 months with the principal reduced to only $22,500 ---an immediate savings of $85,500. In another case, HOAP recovered $23,895 for one resident. In the other case, HOAP recovered $6,700 in cash for a resident and saved the resident an additional $15,000 over the life of her loan. This amount to a total of $21,700 recovered for this resident.

THE **HOUSING ADVOCATES, INC. HAI- HELP ELIMINATE LOANS THAT ARE PREDATORY (HELP) MORTGAGE FUND**

While counseling and, when necessary, litigation, has saved some Cleveland residents from becoming homeless, HAI needed its own refinancing option. Fannie Mae has partnered with HAI in providing a pilot program to purchase on the secondary market up to Five Million Dollars of conventional loans used to refinance these predatory loans. In order to do so, Fannie Mae was willing to liberalize their underwriting criteria for an acceptable mortgage. However, the pilot program requires substantial work and time to identify potential victims, qualify them, assemble loan documents and get a lender to issue a H.E.L.P. Rescue Mortgage. The pilot program created a multi-lender loan committee with our lending partners: Huntington Bank NA, AmTrust Bank, Dollar Bank, and Fifth-Third Bank to spread the risk since the issuing financial institution is still responsible if the new mortgage is not paid back. The entire program is administered by HAI as a not-for-profit organization.

Staff members working for the HELP program have an extensive list of responsibilities. HELP staff members:

1. Conduct intake and make referrals to callers that do not meet the initial criteria of the HELP program.
2. Conduct document reviews to determine if loans need attorney review, have predatory characteristics, warrant further investigation, and/or could be considered for the HELP program.
3. Provide limited credit counseling to individuals participating in the program. HELP staff members work with clients on filling out budgets and staying on task.
4. Conduct initial appointments to determine if callers are even eligible for the HELP program. We gather information in intake form as well as document form.
5. Negotiate loan modifications with mortgage companies so that callers may be able to avoid facing foreclosure.
6. Prepare loan packages to be reviewed at committee meetings. Committee meetings are held once a month.

7. Work out refinancing using the HAI Community Second program that the City of Cleveland created to provide second mortgages in appropriate cases to make up the difference between the HELP mortgage and the payoff of the original loan.

HELP provides pre- and post-loan counseling to residents. Members of Cleveland City Council, The Department of Consumer Affairs and Department of Aging, other housing organizations and former clients send persons who are seeking help to HELP & HOAP. HELP & HOAP has the following accomplishments:

Households Serviced: From Sept 2005 (program launch) to June 2008, there have been 1452 callers. Out of those 1452 callers, 880 have been from the Cleveland area. On average, the HAI-HELP program receives 50 calls per month. There are currently 58 active HELP files. Since Sept 2005, 29 went to Committee for review. Since Sept 2005 we have closed 17 loans. It is anticipated that in June 2008 there will be 2 more loans closed. This will mean that approximately 19 loans will close by the end of June 2008. It is a program goal that that in a calendar year the HELP program closes 8 loans per year. The program may require individuals to use 2-24 months to complete due to the extensive nature of the program, amount of information requested, types of situations that we encounter, and various other difficulties associated with client's issues. The project is in need of additional funding to support these activities. We have saved over $1.2 million to consumers through this refinancing program.

THE **EMERGENCY MORTGAGE (UTILITY, RENTAL & TAX) ASSISTANCE PROGRAM (EMAP)**

Beginning in April 2007, HAI has provided Emergency Mortgage, Rental, Utility and Tax Assistance to help families in Cuyahoga County. The Ohio Department of Development is funding HAI $470,000 for two years to administer this program. The Emergency Mortgage Assistance Program (EMAP) is a loss mitigation program that will provide an emergency fund to households that are in imminent danger of losing their homes due to foreclosure or predatory lending. Households that are provided emergency mortgage and tax assistance must be at or below 50 percent of area median income (AMI) and must be receiving financial counseling. The maximum length of emergency mortgage assistance is three months, for a maximum of $2,500. Households provided utility and rent assistance must be at or below 35 percent of AMI at time of entry into the program. The maximum length of emergency utility, tax or rent assistance is also three months, for a maximum of $1,000. EMAP emergency assistance funds will also provide HAI staff the leverage to negotiate forbearance agreements and/or loan modifications for predatory loan and foreclosure victims in Cuyahoga County. Forbearance Agreements will allow HAI staff to negotiate with the holder of the loan to forbear on foreclosure. Since the inception of the program there has been 201 callers, 17 households assisted (43 persons). Of the 17 households, 9 were provided rental assistance, 5 were provided mortgage assistance and 3 were provided utility assistance. To date HAI has disbursed $11,183.67 in mortgage assistance, $9,647.81 in rental/utility assistance.

COUNTY FORECLOSURE PREVENTION PROGRAM

Since February 2006, HAI has been a counseling partner of the Cuyahoga County Foreclosure Prevention Project. In this program, HAI is providing foreclosure defense to borrowers who have accessed the First Call For Help – United Way 2-1-1 Help Line and have not been able to enter into a workout agreement with their lender. United Way's 2-1-1 First Call For Help is an essential piece of the Foreclosure Prevention Program. Any borrower who has their primary residence is in Cuyahoga County, who wants to stay in their home and who has the means to maintain a payment plan for their loan is eligible to receive counseling and advice through the Foreclosure Prevention Program. These borrowers are asked to call 2-1-1 to be referred to the appropriate agency, including the Housing Advocates, Inc. HAI has one attorney that is staffed by the County Foreclosure Prevention Program. On average this attorney counsels six (6) individuals a month in foreclosure defense. For more information on the County Foreclosure Prevention Program please visit http://www.dontborrowtroublecc.org/partners.htm.

Since the launch of the program, HAI has received one-hundred and twenty-nine (135) referrals from the 2-1-1 system. Of these referrals, seventy four (74) were from the City of Cleveland and sixty-one (61) were from Cuyahoga County communities. The Foreclosure Prevention Attorney was able to provide legal assistance to fifty-six (56) of these individuals. Due to the current contract with the County, it has been documented that on average the Foreclosure Prevention Attorney is able to provide comprehensive investigation and legal services to three to four (3-4) County residents. Comprehensive legal services include negotiation with lenders, loan workout agreements, loan modifications, and litigation.

3. Please describe the experiences of your organization in working with borrowers to prevent foreclosures.

Housing Advocates, Inc. (HAI) brings thirty-three (33) years of organizational experience in addressing the divergent housing and credit opportunities available in Northeast Ohio. As an organization, we have been actively involved in providing direct services in the form of education & outreach and loan document review to victims and potential victims of predatory lending since 2001. Previously, HAI staff attorneys have been on the "cutting edge" of efforts to combat predatory lending, including giving testimony, conducting seminars, providing direct services to victims, and litigating predatory lending cases such as *Eva v. Midwest National Mortgage Banc,* and *Turner v. Welsh.* Further, practically since its inception HAI has operated a discrimination complaint service (DCS) for local persons to call if they feel they have been the victims of housing discrimination or predatory lending. Since the DCS has been in operation, numerous County residents and potential residents have received free legal assistance in their fight against housing discrimination.

HAI has extensive experience in providing foreclosure prevention services in Cuyahoga County. HAI utilizes a team approach to facilitate full counseling, educational and legal services for those HAI is contracted to serve. This team approach is comprehensive, involving various professionals. Our current Foreclosure Intervention team includes: a Residential Lending Specialist/Loan Manager with 17 years of

experience. HAI has an Intake/Counseling Supervisor and a part-time Assistant to the Residential Lending Specialist/Loan manager with over 21 years in providing foreclosure prevention counseling. There are six full time attorneys with a broad range of experience that engage in Foreclosure Intervention Legal Counseling including: our Director/Chief Counsel, Assistant Director, Senior Staff Attorney, Foreclosure Prevention Attorney, and Two Home Ownership Assistance Attorneys. HAI also has a part time attorney, a paralegal, and a Budget Analysis/Testing Coordinator. Volunteers include law students from the Fair Housing Law Clinic which is taught by HAI attorneys in cooperation with Cleveland-Marshall College of Law.

At HAI, we understand the importance of tapping into the resources inside and outside of our organization to fully solve the problems of those we serve. HAI currently engages in the following types of foreclosure prevention activities:

a) Predatory Lending & Home Improvement Counseling
   - through the Home Ownership Assistance Program (HOAP) and Help Eliminate Loans that are Predatory Program (HELP)

b) Foreclosure Defense & Loss Mitigation Counseling
   - through HAI Staff Attorneys / HELP Program Manager providing foreclosure defense and loss mitigation counseling
   - through the County Foreclosure Prevention Program and 2-1-1 referrals
   - through the Emergency Mortgage Assistance Program (EMAP) and the prevention of mortgage, utility, and tax default

c) Home Buyer Education & Prepurchase Counseling
   - through HOAP and HELP – counseling to prospective homebuyers and how to avoid falling risk to a predatory loan
   - through fair housing law counseling & education

d) Post-Purchase Counseling
   - through follow up counseling: until a client has found alternative housing, until default has been corrected, until mortgagee completes foreclosure or the legal situation has been finalized in the court

e) Home Equity Conversion Mortgage (HECM) Counseling
   - 2 of HAI's Counselors are HECM certified

f) Money/Debt Management Counseling
   - Financial counseling through HOAP, HELP, EMAP, and with all legal clients.

g) Other Counseling Services Performed by HAI
   - Legal Counseling Services – direct legal services from staff attorneys

- fair housing law clinic, a joint venture between Cleveland Marshall College of Law, Cleveland State University and HAI
- Technical Assistance Program: special projects developed to assist local governments, members of housing, lending and insurance industries meet their civil rights obligations.
- Discrimination Complaint Service - a telephone discrimination complaint intake service for residents and potential residents of Cuyahoga County
- Continuing Legal Education

HAI also has extensive experience in providing foreclosure prevention through the Home Owner Assistance Program (HOAP). HOAP provides assistance to low and moderate income residents to prevent predatory lending activities and other consumer fraud problems through education, negotiation and litigation. Through HOAP, HAI has assisted hundreds of Cleveland residents in reviewing their loan documents, and providing outreach and education programs. As a result, HAI has a unique understanding of predatory practices by financial institutions, mortgage brokers, appraisers, and home improvement contractors.

Through HOAP, HAI Staff attorneys negotiate on behalf of residents with lenders. In some cases, HOAP also provides litigation services to residents. Unfortunately, most plaintiff's (i.e., victim's) attorneys in Northeast Ohio will not take a predatory lending case. Therefore, HOAP is an extremely valuable program.

First, predatory lending cases are complex. Although we encourage other attorneys to take the time to learn the relevant consumer and mortgage-related laws, most victim's attorneys in northeast Ohio do not have the interest, time, willingness and skills necessary to pursue a predatory lending case. Attempting to read, understand and apply the Truth In Lending Act (i.e., the primary law used in predatory lending cases) is sufficient to scare away most attorneys.

Second, predatory lending cases are notoriously time consuming. It can take an attorney 3 to 4 hours just to review documents and interview victims and this time is spent before the attorney has determined whether a resident has a "predatory loan" or merely entered into an "unwise transaction".

Third, Predatory lending cases are difficult and not profitable. The victims of predatory loans are mostly poor and unsophisticated. The lenders, brokers and contractors who perpetrate the loans are mostly wealthy and are primarily defended by bigger law firms. The thought of fighting a large law firm is also a factor in some attorneys fear of taking these cases. Also, a victim's attorney might work on a predatory lending case for 1 to 3 years without receiving any compensation for his or her efforts. While predatory lenders' attorney's are receive regular compensation.

Finally, as further support for the value of HOAP, open the yellow pages. The yellow pages contain approximately 134 pages of ads for lawyers. I doubt if you could find more than two attorneys who are willing to help predatory lending victims. If you can find one or two attorneys, it is unlikely that they will represent residents for **free**.

4. In your opinion, what obstacles or challenges have prevented your organization from working with borrowers to prevent foreclosures?

Predatory lending practices have contributed greatly to this crisis in the City of Cleveland robbing our citizens of their home=s equity, forcing them into bankruptcy, or losing their homes through foreclosure. In many cases, predatory lending is merely a clever form of housing discrimination. Predatory lenders often Asteer@ borrowers into sub-prime loans when the borrowers are actually eligible for conventional rate loans. Upper-income and middle-income African Americans are more likely to receive a sub-prime loan than low-income white homeowners when refinancing.

The term "dual mortgage market" was first coined in the late 1990's by Chicago economists Daniel Immergluck and Marti Wiles. In studying neighborhood lending patterns in Chicago they had observed that conventional lenders served higher-income white areas while subprime lending was concentrated in lower-income and minority communities. Further, they noticed that this discrepancy was too great to be explained by the credit quality of the borrowers. They described the effects of this pattern as a dual mortgage market. Immergluck, Daniel, and Marti Wiles. 1999. *Two Steps Back: The Dual Mortgage Market, Predatory Lending, and the Undoing of Community Development.* Chicago: Woodstock Institute.

As the Joint Center for Housing Studies at Harvard University points out, the adverse consequences of the dual mortgage market include higher borrowing costs for consumers, increased exposure to abusive practices, and increased foreclosures. These adverse consequences, being tied so closely to subprime lending patterns, have a greater adverse effect in minority neighborhoods, where subprime lending patterns are most concentrated. Apgar, William C. and Allegra Calder. December 2005. *The Dual Mortgage Market: The Persistence of Discrimination in Mortgage Lending.* Published in The Geography of Opportunity: Race and Housing Choice in Metropolitan America. Brookings Institution Press 2005.

Thus, the practice of extending higher cost loans in minority neighborhoods has a disparate impact on minorities living in minority neighborhoods, making it more likely that they will face foreclosure. This trend is not unique to Cleveland and has not gone unnoticed:

> Also troubling is the rapid rise of subprime and predatory **lending** and its significant racial and geographic concentration. A report by the United States Treasury and the Department of Housing and Urban Development (HUD) found that black borrowers were five times more likely to take out a subprime home equity loan than white borrowers - a trend that persists at higher income levels. Moreover, a Federal Reserve Board governor noted that as many as half of subprime borrowers have credit scores that would qualify them for a prime loan. Together, these statistics suggest that black borrowers consistently overpay for home finance.

Howell, Benjamin, Exploiting Race and Space: Concentrated Subprime Lending as Housing Discrimination, 94 Cal. L. Rev. 101, 103 (2006).

As a further consequence, the collateral securing the loans contained in subprime mortgage backed securities will be held primarily in minority neighborhoods by minority borrowers. Thus, when secondary market purchasers exercise their right of foreclosure, those foreclosures have fallen most heavily in concentrated racially segregated neighborhoods.

As African-Americans are more likely than whites with similar credit histories to receive so called "high cost loans", they are consequently more likely than others to have a home refinance result in a foreclosure. (See the Federal Reserve Bank's 2007 Economic Trends Index *available online at www.clevelandfed.org/Research* and provided with other supporting documentation.) Thus, the practice of purchasing notes securing high-cost loans in minority neighborhoods is not in actuality a race-neutral practice. Credit is available to borrowers of different races on different terms, in contravention of the requirements of Federal and State fair housing laws. Therefore, the high rates of default and foreclosure that result from these transactions are not unforeseen consequences of a race-neutral policy but instead are logical outgrowths of a lending policy that has a disparate impact.

There are now over 10,000 foreclosed homes, many which are vacant just in the City of Cleveland. This was not done by chance, but reflects the lack of traditional lenders for many of our neighborhoods. Our neighborhoods have seen in the last thirty years many bank branches closed and savings and loans lost through the previous deregulation debacle giving the predators a vulnerable population to give out their toxic loans.

In some of Cleveland's neighborhoods, Census data indicates that nearly 15% of all available homes are vacant. Most of these homes are vacant due to foreclosure and thus are owned by bank REO departments. To illustrate the extent of bank-owned portfolios in Cleveland, I will turn to the example of Wells Fargo Bank, which at the beginning of this year owned nearly 2,000 properties in the City of Cleveland alone. While vacant, many homes will be vandalized and stripped of any valuable or portable materials, including their pipes and roof shingles. These homes often are so abused that they become inhabitable. Thus, many lenders holding large portfolios of empty, foreclosed Cleveland properties are facing a market saturated with housing of exceptionally poor quality.

Into the vacuum of willing buyers have stepped a number of investment companies. They operate by purchasing foreclosed homes in bulk, and then reselling these homes to buyers on a land contract or rent-to-own schedule. As the investment companies are eager to shift liability for building code violations away from themselves, these rent-to-own contracts often specify that the buyer is to rehabilitate and maintain the properties at their own expense. This type of arrangement can be very dangerous indeed to an unsuspecting purchaser. As a purchaser under a rent-to-own contract, they are legally entitled only to the protections due a rental tenant. This is true despite the fact that the purchaser may have made substantial investments in improving the property, or

in the alternative, may have found themselves responsible for remedying code violations and/or paying Housing Court fines. In addition to the financial danger faced by the unsuspecting consumers, there is real physical danger inherent in these transactions as well. In at least one instance, the Housing Advocates has assisted a homeowner who unwittingly purchased a property that had been condemned by the City for numerous safety violations.

Further, the this rent-to-own scheme appears to be occurring predominately in those neighborhoods on Cleveland's east side where census data indicates that many zip codes have more than 75% African-American residents, and where some zip codes are nearly exclusively African-American. In a study conducted by the Housing Advocates, we found that Destiny Ventures, which has sold many properties in Cleveland on a rent-to-own program, is most active in Cleveland's zip codes 44103, 44104, 44108, and 44112. All of these zip codes are anywhere from 79.1% to 95.8% African-American. Nearly all of the properties purchased by Destiny Ventures were purchased from lender REO portfolios. Some of these properties were purchased by Destiny Ventures for as little as $2,500.

5. What Federal legislative or regulatory reforms are needed to prevent foreclosures in Ohio?

A. We believe that the Federal and Ohio Fair Housing laws can be an important tool in this effort. Our organization brought one of the early fair housing lawsuits against predatory lenders in the case entitled Eva v. Midwest National Mortgage Banc, Inc., 143 F. Supp. 2d 862 (N.D. Ohio 2001). In Eva female borrowers brought an action under Federal and Ohio Fair Housing Acts alleging that lenders engaged in pattern or practice of predatory and sexually discriminatory lending relating to refinancing of homes previously owned by borrowers. The Court found that these allegations stated a claim under both fair housing laws. The Eva case has been used in other federal litigation to support both race and national origin claims. See Exhibit 2 which is an article entitled Fair Housing Law as a Weapon Against Predatory Lending, Cleveland Bar Journal (April 2007)

We are filing administrative charges with the US Department of Housing & Urban Development, the Ohio Civil Rights Commission and the Cleveland Fair Housing Board against predatory lenders and their cohorts mortgage brokers, appraisers, and banks. Attached as Exhibit 3 is a recent probable cause to believe discrimination occurred determination letter against Argent Mortgage LLC by the Ohio Civil Rights Commission on a charge brought by HAI. We are now exploring similar types of charges against entities that purchased such predatory mortgages which allowed these predators to reload with cash to continue their illegal practices. Financial or Wall Street institutions which refuse to monitor their relationship to mortgage brokers have played an important role in creating this situation. These lenders can be subjected to substantial damage awards. Playing an ostrich and hiding their heads in the sand will not insulate them from any

illegal actions of their mortgage brokers, appraisers and real estate agents with whom they deal. If there can be shown a pattern and practice, then they do have control. They have the right to say yes or no. They have a right to monitor and determine whether or not these independent actors are breaking the law. If they knew or should have known, they can be held liable under the Fair Housing Act.

We urge this committee to recommend doubling the Fair Housing Initiatives Program, 42 U.S. C. § 3616 to Fifty Million dollars for FY2009. This is a major source of funding for private fair housing organizations. The additional monies should be targeted for predatory lending litigation and programs. This relatively small federal commitment can have immediate impact as the US Supreme Court has recognized that "[i]t is apparent, as the Solicitor General says, that complaints by private persons are the primary method of obtaining compliance with the [Fair Housing]Act." Trafficante v. Metropolitan Life Ins. Co., 93 S. Ct. 364, 367 (1972)

B. The costs for the City of Cleveland and other communities in lost property taxes, demolition, boarding up and maintaining vacant buildings will be astronomical in the billions of dollars over the next decade. This does not even include the social costs to communities of increased crime and a generation that will not have their parent's ability to borrow on their homes for an education or the down payment on the kids first home. We urge the equivalent of a "Superfund" to finance the necessary money to recover from these toxic loans. Just as Congress imposed a tax on some manufacturers and allowed the government to demand reimbursement for businesses that had helped create an environmental hazard so should those responsible for these predatory loans be required to contribute to the clean up of our cities!

C. It is estimated that about 30% of foreclosures in Cuyahoga County are on Rental properties with tenants occupying at the time of a sheriff sale. Under Ohio law foreclosure purchases are not subject to any existing tenancy at the property, even though the tenants are not parties to the foreclosure action in most cases. A tenant's first notice of the foreclosure (and resulting termination of tenancy) often is – the foreclosure purchaser's three-day notice to vacate, or – the deputy's notice of the foreclosure sale. The tenants are then evicted even though they have often been paying their rent without any recourse. Tenants who have paid their rent and complied with their rental agreements are forced to move before their rental agreements expired, often in the middle of a school year, and always with additional expenses (moving costs, security & utility deposits) We support the position taken by Ohio Policy Matters, Cleveland Tenants Organizations and the Legal Aid Society of Cleveland that legislation be enacted to permit the lease to survive the foreclosure, but that it can be terminated after a 90 day notice or at a lesser period if a cash payment is made to the existing tenants. See Exhibit 4 the testimony of Peter Iskin, Attorney with the Legal Aid Society of Cleveland on May 13, 2008 to the Judiciary-Civil Justice Committee, Ohio Senate.

D. We urge the US Congress to renew the $180 million dollars allocated for the National Foreclosure Mitigation Counseling Program to increase the availability of foreclosure counseling. This money has permitted us to increase our counseling staff both

in Cleveland and soon in Columbus, Ohio. It will be impossible for community groups already strained to maintain their housing counselors without an early renewal of this vital program.

E. We urge that the Community Reinvestment Act of 1977 be strengthen. Unfortunately, many of these predatory lending practices identified in our testimony were often being funded by financial institutions. It was driven, in part, by the need to check off their Community Reinvestment Act obligations by purchasing these subprime CRA loans. The underlying purpose of the CRA has been perverted by the opportunity to make substantial profits through these high cost loans while continuing to close branches in minority and low and moderate income neighborhoods.

F. We urge HUD to promulgate new Fair Lending regulations that would establish an effective enforcement strategy against racial redlining in lending. HUD has ample regulatory authority to promulgate Fair Lending regulations that will establish the enforcement standards that are necessary if the federal ban on racial redlining is to be a reality in the nation's minority neighborhoods, rather than just a congressional promise. The new HUD regulations should firmly establish the effective lending territory concept as a key element of the Fair Lending enforcement strategy. Any serious enforcement strategy to curb racial redlining must have a clear method for defining the geographic scope of a mortgage lender's effective lending territory.

The new HUD regulations should also establish criteria or guidelines for determining whether minority neighborhoods have been improperly excluded from a lender's effective lending territory. For example, these regulations should make it clear that if a major lender makes loans broadly throughout most of a metro area, then the lender is obligated to include most of the metro area's minority neighborhoods within its effective lending territory.

Specifically, the new HUD Fair Lending regulations should accomplish the following:

1. Declare that mortgage lenders may not pursue marketing or lending policies or practices that exclude minority neighborhoods from their effective lending territories or substantially underserve minority neighborhoods;
2. Establish standards for defining a mortgage lender's effective lending territory;
3. Establish standards for determining whether minority neighborhoods have been improperly excluded from a mortgage lender's effective lending territory or substantially underserved;
4. Establish that lending pattern maps showing virtually no lending or very limited lending in minority neighborhoods within the lender's effective lending territory (properly defined for Fair Lending purposes) are important evidence of unlawful exclusion or underserving;

5. Establish that where marketing strategies that target upscale neighborhoods have a clear discriminatory effect with respect to the inclusion of minority neighborhoods within a lender's effective lending territory, these marketing strategies constitute unlawful discrimination;
6. Establish that where restrictive lending criteria have a discriminatory effect on minority neighborhoods, such lending criteria constitute unlawful discrimination, unless the lender can show that the criteria are required by business necessity and that alternative, less discriminatory criteria are not practical.
7. Direct the primary Fair Lending enforcement agencies to review the effective lending territories of mortgage lenders and to take supervisory action where minority neighborhoods have been improperly excluded or underserved;
8. Establish that where minority neighborhoods have been improperly excluded or underserved, the primary Fair Lending enforcement agency shall at a minimum require the lender to develop and implement an affirmative lending program for such neighborhoods;
9. Explicitly recognize the importance of computerized HMDA data as a tool to enforce the prohibition against racial redlining; and
10. Make it an affirmative duty on the lender to uncover these insidious practices by requiring financial institutions to do a test of loan application files financed by them. In this fair lending review, the Truth in Lending and the HUD Good Faith Estimate documents would be examined. By examining the standard types fees associated with a loan transaction, it is possible to determine if such fees may be excessive or unusual. Another strategy would be to examine any loans where credit life insurance was sold to the borrower along with the mortgage. If the financial institution begins to see some inconsistencies from broker to broker, then that would send up a red flag. Such a pattern would result in closer scrutiny of all new loans being submitted by this particular mortgage broker before agreeing to lend money to its customers.

G. We support the City of Cleveland's City Council resolution for a foreclosure moratorium for the purpose of creating a community counseling and mediation opportunity for all homeowners who are at any stage of foreclosure. We believe linking any moratorium on the borrower attending credit and housing counseling will significantly improve their chances of successfully owning the house after resolving the foreclosure action.

H. We urge that Congressman Dennis Kunnich's bill which prohibits mandatory arbitration in all consumer, loan and employment contracts be enacted. If the parties desire to enter into mandatory arbitration, they can do so <u>after</u> the dispute arises.

I. We urge legislation be enacted requiring three business days before a loan closes, the lender must provide the borrower with the information shown below. The information must be provided on a single piece of "red" or "bright yellow" paper and printed in 12 point type.

Your interest rate is _____ Your interest rate will be _____ (fixed or adjustable)

Your annual percentage rate is _____

Excluding taxes and insurance, your maximum monthly payment will be _____

You _____(will / will not) have a balloon payment.

You ___(will / will not) be charged a penalty if you refinance or pay off the loan early

You _____(will / will not) have three (3) business days to cancel the mortgage after you have signed the mortgage documents

The lender shall not provide any other documents in the referenced color. If the document is not provided or if the terms are changed after the borrower receives the document, then the borrower will have fourteen (14) days to rescind or cancel the loan.

J. If a homeowner makes monthly payments to a loan/mortgage servicer, then all Communications from the servicer must identify the entity which owns the note.

EXHIBIT 1

Foreclosures in Cuyahoga County Communities

A Report From

Policy Matters Ohio

Zach Schiller
Josh Marcin

August, 2007

Appendix 2

Foreclosure Filings/1,000 Population, First Half 2007				
City	**2006 Population**	**First Half 2007 Filings**	**First Half '07 Filings/1,000 Population**	**First Half 2007 Rate Rank**
Bay Village	14,976	34	2.3	29
Beachwood	11,350	19	1.7	40
Bedford	13,320	90	6.8	8
Bedford Heights	10,663	56	5.3	13
Bentleyville	914	0	N/A	56
Berea	18,139	60	3.3	20
Bratenahl	1,293	9	7.0	6
Brecksville	13,106	11	0.8	54
Broadview Heights	17,563	22	1.3	50
Brook Park	19,699	67	3.4	18
Brooklyn	10,692	25	2.3	28
Brooklyn Heights	1,484	4	2.7	26
Chagrin Falls Twp.	139	0	N/A	56
Chagrin Falls Village	3,739	7	1.9	38
Cleveland	444,313	3,532	7.9	3
Cleveland Heights	47,097	275	5.8	11
Cuyahoga Heights	548	0	N/A	56
East Cleveland	25,213	280	11.1	2
Euclid	48,717	290	6.0	9
Fairview Park	16,212	25	1.5	43
Garfield Heights	28,518	218	7.6	4
Gates Mills	2,330	1	0.4	55
Glenwillow	591	1	1.7	39
Highland Heights	8,620	10	1.2	51
Highland Hills	1,413	3	2.1	31

Hunting Valley	704	2	2.8	24
Independence	6,789	6	0.9	52
Lakewood	52,194	149	2.9	22
Linndale	91	0	N/A	56
Lyndhurst	14,195	34	2.4	27
Maple Heights	24,293	288	11.9	1
Mayfield	3,191	6	1.9	37
Mayfield Heights	18,110	27	1.5	46
Middleburg Heights	15,237	20	1.3	49
Moreland Hills	3,142	7	2.2	30
Newburgh Heights	2,197	15	6.8	7
North Olmsted	32,126	64	2.0	34
North Randall	850	5	5.9	10
North Royalton	29,465	45	1.5	44
Oakwood	3,630	19	5.2	14
Olmsted Twp	10,365	21	2.0	33
Olmsted Falls	8,333	39	4.7	15
Orange	3,319	9	2.7	25
Parma	80,009	230	2.9	21
Parma Heights	20,293	43	2.1	32
Pepper Pike	5,738	9	1.6	42
Richmond Heights	10,372	35	3.4	19
Rocky River	19,377	37	1.9	36
Seven Hills	11,915	18	1.5	45
Shaker Heights	27,245	108	4.0	16
Solon	22,257	44	2.0	35
South Euclid	21,791	122	5.6	12
Strongsville	43,347	64	1.5	47
University Heights	13,015	37	2.8	23
Valley View	2,064	3	1.5	48
Walton Hills	2,321	2	0.9	53
Warrensville Heights	13,967	98	7.0	5
Westlake	31,025	49	1.6	41

Woodmere	769	3	3.9	17
Cuyahoga County	1,314,246	6,697	5.1	

Sources: Center on Urban Poverty and Community Development, MSASS, Case Western Reserve University, NEO CANDO system (http://neocando.case.edu) analysis of data from Cuyahoga County Common Pleas Court; U.S. District Court, Northern District of Ohio; U.S. Census Bureau, 2006 American Community Survey. As noted on p. 1 of the report, data exclude 686 filings for which the geographic location was not readily available at the time of this report.

EXHIBIT 2

CLEVELAND BAR JOURNAL

April 2007 Vol. 78 No. 6

by Marilyn Tobocman and Edward G. Kramer

Marilyn Tobocman is a principal assistant attorney general in the Civil Rights Section. Edward G. Kramer is director and chief counsel of The Housing Advocates, Inc..

The evils of predatory lending have been recognized by the Ohio General Assembly with its passage of SB 185, legislation that responds to some of the abuses by some mortgage brokers, loan officers, appraisers and others taking advantage of vulnerable consumers. This article describes a number of advantages the fair housing laws offer the attorney representing victims of predatory lending practices, making it a logical companion in any enforcement of Ohio's recently enhanced consumer protections.

What Are Predatory Practices and Loans

Predatory loans are a product of the subprime loan market, which is designed to serve consumers ineligible for "A-Credit" loans. In the subprime market, the lenders evaluate the credit-worthiness of a borrower by establishing various risk classifications with associated pricing parameters. There is no standard set of credit risk assessment criteria as exists in the prime market. The subprime market typically takes into consideration a potential borrower's credit history; the household debt-to-income ratio if the loan is approved; and the combined loan-to-value ratio for home equity loan and other mortgage debt on the property. Standards vary, however, within the subprime market, and different lenders may assign different weights for each of these factors. The borrower pays more because subprime loans are usually more costly to the lender to originate, sell and service than traditional "A-credit" loans.

There is a legitimate place for sub prime lending, but not for predatory lending. When the loan exceeds the borrower's needs and repayment capacity it is predatory.[1] The types of practices which, made in a combination, turn a subprime loan into a predatory loan include:

- Loans sold over the phone, door-to-door or by direct mail
- Loans carrying high interest rates (usually higher than 13 percent)
- Imposing excessive "points" or "fees"
- Requiring the borrower to purchase specific credit, life, accident or unemployment insurance as a condition of the loan
- Monthly payments that exceed the borrower's income
- Balloon payments that are unexplained to the borrower
- Successive refinancing that increases the interest rate while reducing the monthly payment ("Flipping")
- Prepayment penalties locking the borrower into unfair terms
- Arranging a subprime loan with high interest rates when the borrower's credit would qualify them for a lower interest prime loan
- Appraisals that inflate the property's value, offer cash to the borrower, but leave the mortgage dissatisfied in any subsequent sale, resulting in both foreclosure and bankruptcy for the borrower ("Equity Stripping")

Predatory Loans that Invoke the Protections of Fair Housing Laws

The fair housing laws apply when the lender exploits the need for refinancing or loans for home purchase of a particular group the laws were intended to protect. Therefore, whenever it can be shown that persons have been targeted for unfair lending practices based on their race, color, religion, sex, familial status, ancestry, disability or national origin, the state[2] and federal[3] fair housing laws provide an additional legal claim for damages. In our very segregated housing market, the most prevalent type of targeting is directed at neighborhoods where the residents are primarily of one national origin or race. Targeting under the fair housing laws is known as "reverse redlining." One of the reasons minorities are vulnerable to reverse redlining is the history of redlining by traditional banks that has led them to believe that they are not welcome or eligible for prime loans.

The Fair Housing Laws can Expand Who has Standing to Bring a Predatory Lending Action

The advantage of a fair housing law claim over consumer protection laws is its history of being liberally construed.

Caucasians have standing to sue when race discrimination deprives African Americans of housing on grounds that the Caucasians are injured by being deprived of the economic, social and educational advantages of interracial association.[4] Fair housing organizations have standing on grounds that discrimination frustrates their purpose and diverts their resources.[5] Cities have standing when the conduct perpetuates ghettos or has negative impact on housing values.[6] The language of the state and federal statutes make this possible by permitting "any person aggrieved" to file a claim.[7]

Both the federal and state statutes provide for investigations by administrative agencies, giving the private practitioner some free discovery.[8] And injury from a discriminatory act is presumed[9] without the limits on damages often found in consumer protection statutes.

Fair Housing Laws Stretch the Net of Liability over more Actors

Fair housing laws offer a wider choice of parties to be sued. The state law identifies persons liable to suit as any owner, lessor, assignor, builder, manager, broker, salesman, appraiser, agent, employee, lending institution, the state, all political subdivisions, and state authorities, agencies, boards and commissions.[10] Federal law covers "any person or entity whose business includes engaging in a residential real estate-related transaction." That phrase includes making or purchasing loans or providing other financial assistance for purchasing, constructing, improving, repairing or maintaining a dwelling that is secured by residential real estate and the selling, brokering or appraising of residential real property.[11]

The doctrine of respondeat superior is available to impose liability on both principal and agent.[12] One court concluded that the Fair Housing Act's "overriding societal priority" requires that "the one innocent party with the power to control the acts of the agent, the owner of the property or other responsible superior, must act to compensate the injured party for the harm, and to ensure that similar harm will not occur in the future."[13] Similar reasoning permits fair housing claims against the defendant mortgage company's president and employee survive the motion to dismiss.[14] In this same case, an additional named defendant managed a "Equity Acceleration Program" that paid one extra mortgage payment each year with funds drawn from the mortgagor's checking account, charging the mortgagor both to sign up for the program and imposing a transaction fee every time payments were made. They argued they were not a mortgage lender, banker, mortgage arranger or creditor. In denying their motion to dismiss, the court noted that the fair housing laws do not apply exclusively to an entity specifically existing for the purpose of engaging in real estate-related transaction. They only need be "included" as one aspect of its overall functioning to come under the statute's language of "other financial assistance."

In *Hargraves v. Capital City Mortgage Corp.*,[15] the Fair Housing Act claims survive against the lender who purchased the plaintiffs' loans even absent any role in establishing the credit terms or originating the loans. In *Echols v. A-USA Mortgage Corp.*, the complaint named everyone connected with the home purchase from the real estate broker, the mortgage broker, the lender, the appraiser, the attorneys who presided over the closing and the loan servicer. The only named defendants dismissed from all claims were the sellers' agents.[16]

Beat the Statute of Limitations Defense with the Fair Housing Law

The state fair housing law's statute of limitation is one year for initiating the administrative processing and filing a civil action[17] and, for the federal law it is one year for initiation of the administrative process[18] and two years for the filing of a civil action.[19] The continuing violation theory has expanded the time in which claims can be filed. In *Honorable v. The Easy Life Real Estate System, Inc.*,[20] the court permitted the last of the several sales alleged in the complaint, which were within the limitations period to allow untimely transactions to remain subject to the lawsuit. The allegation was that each home buyer could not know that the defendants were exploiting the dual housing market based on the sale of one home. Only after the plaintiffs learned that defendants engaged in a pattern of similar sales practices against other African Americans in the Austin community could they know that the defendants had the power to exploit the dual market and discriminate against them on the basis of their race. In *Hargraves v. Capital City Mortgage Corp.*,[21] the court permitted the fair housing law claims to continue on the theory that as long as the illegal contracts were in operation, imposing exorbitant interest rates and being enforced through collection letters and foreclosure proceedings, the unlawful acts continued to occur under the continuing violation concept.

In *Matthews v. New Century Mortgage Corp.*,[22] equitable tolling based on fraudulent concealment permitted four plaintiffs to survive what would otherwise be an untimely filing. They ranged in age from 69 to 72, were all single females living on pensions or social security and were solicited for home improvement loans. They received loans ranging from $49,000 to $102,000 on applications describing them as business owners with monthly incomes more than double the actual amounts received in the form of social security or pensions or babysitting. None were given the documents to review before closing or were able to review documents before signing them. They learned the loan terms at the time of foreclosure.[23]

Conduct that Invites Consideration of a Fair Housing Claim
For purposes of alleging a fair housing violation in a standard lending context, the plaintiff must show:

- He or she is a member of a protected class
- He or she applied for and was qualified for the loan
- The loan given was on grossly unfavorable terms
- The lender continues to provide loans to other applicants with similar qualifications, but on significantly more favorable terms

Gonzalez v. Ameriquest Mortgage Co.[24] provides an example of predatory practices visited on a Hispanic, thereby permitting a fair housing claim. The borrower, who spoke spanish and little or no english, claimed that the brokers actively pursued her to refinance a home loan with the assurance that her monthly payments would increase only marginally. The loan documents, which were in english, disclosed loan payments that exceeded her monthly income. When the borrower closed the loan, she was not provided any closing documents. Her request for copies of all loan documents was met with a demand she pay for them. The complaint alleged that the lender discriminated against her on the basis of race, national origin and gender in violation of the Fair Housing Act based on terms less favorable than those offered to borrowers not better qualified, but of a different race, national origin or gender. These allegations were sufficient to state a claim under the Fair Housing Act and survive a motion to dismiss.

A parallel allegation of discrimination relied on a comparison of conduct of the parent corporation with its subsidiary, a subprime lender. In Chicago, Equicredit, a subsidiary of Bank of America, made loans almost exclusively in minority areas, while the Bank of America made loans in predominantly caucasian areas. The complaint alleged Equicredit imposed unfair credit terms, including high interest rates, terms not imposed by Bank of America entities.[25]

There is an alternate analysis that brings a predatory lending claim within the prohibitions of the fair housing laws without requiring less favorable treatment, the hallmark of a discrimination claim. In *Beard v. Worldwide Mortgage Corp.*,[26] the allegation that defendants intentionally targeted african americans and african american neighborhoods with fraudulent loan practices designed to take away their homes stated a fair housing violation. In *Eva v. Midwest National Mortgage Banc, Inc.*,[27] the complaint alleged a pattern of predatory and discriminatory lending directed at female borrowers for residential loans by locking them into unaffordable loans that included equity stripping features and allowed defendants to deceive secondary market purchasers. The necessary allegation for purposes of the Fair Housing Act was that the defendants discriminate against women by deliberately targeting them for predatory loans.

When confronting real estate transactions that strip equity from housing, the addition of a Fair Housing Act claim with its history of liberal interpretation may provide a safety net when other consumer claims are lost because their statutes tend to be strictly construed.

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1 Hargraves v. Capital City Mortgage Corp., 140 F. Supp. 2d 7 (D.D.C. 2000)
2 Ohio Revised Code Section 4112.02(H)
3 42 U.S.C. 3601 et seq.
4 Trafficante v. Metropolitan Life, 409 U.S. 205 (1972).
5 Havens v. Coleman, 455 U.S. 363 (1982).
6 Gladstone Realtors v. Village of Bellwood, 441 U.A. 91 (1979).
7 Ohio Revised Code Section 4112.051; 42 U.S.C. 3613.
8 Ohio Revised Code Section 4112.05(B); 42 U.S.C. 3610.
9 McDonald v. Verble, 622 F.2d 1227 (6th Cir. 1980); 725 F. 2d 684(6th Cir. 1983).
10 Ohio Revised Code Section 4112.01.
11 42 U.S.C. 3605.
12 General Building Contractors Ass'n v. Pennsylvania, 458 U.S. 375, 392, 73 L.Ed. 2d 835, 102 S. Ct. 3141 (1982).
13 Walker v. Crigler, 976 F.2d 900 (4th Cir. 1992)

14 Eva v. Midwest National Mortgage Banc, Inc., 143 F. Supp. 2d 862 (N.D. Ohio 2001)
15 140 F. Supp. 2d 7 (D.D.C. 2000)
16 2001 U.S. Dist. LEXIS 25878 (W.D. Tenn. 2001)
17 Ohio Revised Code Section 4112.05(B) and 4112.051.
18 42 U.S.C. 3610.
19 42 U.S.C. 3613.
20 182 F.R.D. 553 (N.D. Ill. 1998)
21 140 F. Supp. 2d 7 (D.D.C. 2000)
22 2002 U.S. Dist. LEXIS 2144 (S.D. Ohio 2002)
23 Jarrett v. Kassell, 972 F.2d 1415, 1423 (6th Cir. 1992).
24 2004 U.S. Dist. LEXIS 22705(N.D. Ca. 2004)
25 Johnson v. Equicredit Corp. of America, 2002 U.S. Dist. LEXIS 4817 (N.D. Ill. 2002)
26 354 F. Supp. 2d 789 (W.D. Tenn. 2005)
27 143 F. Supp. 2d 862 (N.D. Ohio 2001)

EXHIBIT 3

Governor Ted Strickland

March 13, 2008

Housing Advocates, Inc.
3214 Prospect Ave. East
Cleveland, OH 44115

Argent Mortage Company, LLC
2550 Golf Rd.
Rolling Meadows, IL 60008

Housing Advocates, Inc. v. Argent Mortgage Company, LLC
(CLE)H4(38066)05212007; 05-07-0938-8

OHIO
CIVIL RIGHTS
COMMISSION

Commissioners
Leonard Hubert
Grace Ramos
Pastor Aaron Wheeler, Sr.
Rashmi Yajnik

The Ohio Civil Rights Commission administers Chapter 4112 of the Ohio Revised Code, which prohibits discrimination in housing. The Commission has completed its investigation of the subject charge, which was filed under the Act. Informal efforts to resolve the case during the investigation were unsuccessful. All jurisdictional requirements for filing a charge have been met.

The Complainant, Housing Advocates, Inc., has filed an affidavit with the Ohio Civil Rights Commission, alleging that Respondent Argent Mortgage Company, LLC, discriminated on the basis of race by engaging in a pattern and practice of extending loans that are likely to result in default and foreclosure in neighborhoods that are majority African-American. Complainant alleges that the making of such loans is a form of reverse redlining by Respondent. Complainant alleges that Respondent misrepresented loan terms, imposed unreasonable and predatory fees for loans, established impossible repayment terms, failed to consider the borrowers' ability to repay the loans and failed to investigate the practices of brokers of Argent loans.

Complainant cites Elizabeth Redrick's loan as an example of such discriminatory action by Respondent. Complainant alleges that Ms. Redrick received a refinanced loan that increased her interest rate and required her to pay over half of her monthly income for the mortgage, which sets up the loan to fail and enter into foreclosure.

Based on the evidence obtained during the investigation, the Commission has determined that probable cause does exist to believe that a discriminatory housing practice based on race has occurred.

The investigation revealed that Respondent began originating loans in 2003. Respondent was a subprime lender with no prime arm or element. Respondent was financed through lines of credits drawn from banks, it sold most of the loans it originated and then the sales of such loans would then be used to pay back the lines of credit, broker fees, employee pay, employee bonuses, etc. This process would repeat each time the lines of credit were restored.

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Frank J. Lausche Building
615 West Superior Ave.
Suite 885
Cleveland, OH 44113
(216) 787-3150 Phone
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www.crc.ohio.gov

A review of Respondent's screening process for brokers that can sell Respondent's loans show that it only required the brokers to have a license and have the brokers state that they did not have a history of any legal or regulatory problems in connection with mortgage brokering activities. Although Respondent had the brokers agree to abide by a Best Practice guideline, a broker code of conduct, and to follow all applicable laws and regulations, it cannot show how it

monitored the brokers or if it had taken any action against a broker that violated its policies.

Respondent's underwriting guidelines showed that the better an applicant's credit score, debt to income ratio, and documentation of income, the better the rate an applicant can secure. However for those that are deemed to be poor risks, they can still borrow money at high rates of interest. Those loans can be obtained with limited or no documentation to verify income and no money down. Respondent also had loans that had interest-only and adjustable rate mortgage options and loans that allowed borrowers to take cash out of the deal. These factors gave borrowers greater incentives to use loans originated by Respondent.

Given the low thresholds required to secure loans, Respondent was able to originate almost 16,000 loans in the Cleveland-Elyria-Lorain Metropolitan Statistical Area. It kept half of those loans and sold the rest. This pattern was also found in the Dayton and Youngstown Metropolitan Statistical Areas. Respondent filed over 650 foreclosures in Cuyahoga County where it was a named party. Since Respondent did not buy the loans or act as the trustee, it is believed that Respondent appeared on the foreclosure paperwork because it had originated the loan.

Respondent's first originated loans in Cuyahoga County in 2003. 19 foreclosure actions were filed that year. The next year saw a drastic climb in foreclosure actions, from 19 to 309. The rate of failure for loans did not slow down in the other years as compared to the rates from 2003 and 2004. Loans were failing in a very short time period, but Respondent took no action to address the failures of loans until allegedly in 2005. However, no information was provided to substantiate its claims that it implemented automated fraud software.

Respondent's operating structure allowed for it to have an endless level of financing for its loans and its relationships with the brokers allowed for Respondent to plead ignorance as to fraud committed by the brokers. Respondent also can quickly close its doors easily and without any liquid assets at risk if its loans failed in high numbers. Respondent was in operation for four years before it closed.

Complainant cited Ms. Elizabeth Redrick as an aggrieved party who was a victim of Respondent's practices. The investigation looked into the loan obtained from Respondent by Ms. Redrick. Her paperwork and testimony revealed that Respondent's loan met her goal of reducing her monthly payments and she also received some much-needed cash from the loan. The loan was more sustainable than the loan she had previously held and she did make payments until an intervening problem arose. Respondent had sold her loan along with a pool of other loans totaling slightly over $3.5 billion to Park Place Securities, Inc. Park Place Securities, Inc. in turn securitized the pool, sold it and got it into the hands of a trustee (Wells Fargo Bank, N.A.) and a servicer (HomEq Servicing Corporation). Ms. Redrick's loan agreement included a provision requiring her to maintain homeowner's insurance. There was an increase in her homeowner's insurance rates at renewal time that Ms. Redrick refused to pay and she also failed to secure replacement insurance. When her insurance lapsed, the servicer purchased insurance for a six month period and added the payments to her monthly mortgage payments. Ms. Redrick refused to pay these higher amounts. This led to the foreclosure action being filed against her. This action in itself does not rise to the level of predatory lending. However, it was noted that the

broker was using incorrect income amounts on Ms. Redrick's loan application, inflating her income levels to help her secure that loan.

The effect of Respondent on African American neighborhoods was looked at to see if indeed Respondent engaged in a pattern and practice of providing predatory loans to African Americans. Data from the Homeowner's Mortgage Disclosure Act and foreclosure actions were reviewed. An analysis by the Housing Research & Advocacy Center was also incorporated into the investigation. The information took a look at the city of Cleveland and the Cuyahoga County in 2005.

The analysis looked at that racial characteristics and the top ten lenders in the areas of home purchase applications, home purchase originations, refinance applications, and refinance originations for Cleveland's 36 statistical planning areas (SPA). The study showed that Respondent had the greatest market share of applications for refinance lending (2,836 applications, 11.98% of the total market share), applications for home purchase (2,925 applications, 18.36% of the total market share), home purchase originations (1,258 originations, 17.63% of market share) and refinance originations (1,165 originations, 16.65% of market share).

Upon an analysis at the statistical planning area level with race being factored in, the data shows that there is a definite difference between Respondent's presence in heavily African-American SPAs in Cleveland and its presence in SPAs with few African-Americans. In all of these SPAs where there is a predominant African American population, Respondent was number one in each category looked at while in contrast, the market share in SPAs with fewer African-Americans was far less.

At the county level, Respondent's presence has a tremendous correlation to the racial composition of an area. In the 10 areas with the highest percentages of African-Americans, Respondent is in the top ten in any one of the four categories tracked (applications for refinance lending, applications for home purchase, home purchase originations and refinance originations) 37 out of 40 possible times (92.5%). In the 10 areas with the lowest percentages of African-Americans, Respondent was in the top ten in any one of the four categories only 5 out of 40 possible times (12.5%). Of those five times, all of them were in the area of applications. Respondent was never in the top ten when it came to originations in the ten least heavily African-American neighborhoods.

Even more striking is when Respondent was looked to see how many times it ranked number one in the same four areas tracked. In the ten areas with the highest percentage of African-Americans, Respondent was No. 1 23 of the 40 possible times (57.5%). In contrast, in the ten areas with the highest concentration of Caucasians, Respondent was never No. 1 in any of the categories (0.00%).

Comparing the total number of purchase applications, purchase originations, refinance applications and refinance originations in the 10 cities and villages that have the heaviest concentration of African-Americans and the 10 cities and villages with the lowest concentration

of African-Americans shows that while Respondent is dominant in the areas with the largest concentration of African-Americans, it virtually disappears in the 37 cities and villages that have populations that are less than 10% African-American.

In the foreclosure arena, between 2003 through mid-2007, there were 665 Argent loans that went into foreclosure in Cuyahoga County. Of those loans 463, or almost 70%, were in census tracts that were 50% or more African-American.

As a result of analyzing Argent's activity, the information gathered tends to demonstrate that Argent's practices had a tremendous negative impact on African-American neighborhoods in Cuyahoga County. Therefore, it is determined that it is probable that Argent's activities and practices had a disparate impact on African-American neighborhoods in Cuyahoga County.

DECISION:

Upon investigation, the Ohio Civil Rights Commission has determined that it is **PROBABLE** that Respondent has engaged in practices unlawful under Section 4112, Ohio Revised Code, and hereby orders the matter be **SCHEDULED FOR CONCILIATION (J1)**.

NOTICE OF RIGHT TO REQUEST RECONSIDERATION:

Pursuant to Ohio Administrative Code 4112-3-04, you have the right to request reconsideration of this determination of the Commission. Such application must be in writing and state specifically the grounds upon which it is based.

This request must be sent to the Compliance Department, Ohio Civil Rights Commission, 30 East Broad Street, 5th Floor, Columbus, Ohio 43215-3428. You must submit this request for reconsideration, along with all additional evidence or supporting documentation you wish to provide in support of your request for reconsideration, within TEN (10) days of the date of mailing of this notice. Any application for reconsideration or additional materials received by the Compliance Department in the Commission's Columbus Central Office after the ten-day period has expired will be deemed untimely filed.

The Commission's Rules do not permit any employee of the Commission to grant any extension to this ten-day filing period.

FOR THE COMMISSION

Iris M. Choi
CLEVELAND REGIONAL DIRECTOR

EXHIBIT 4

Judiciary-Civil Justice Committee, Ohio Senate
Hearing on Sub. H.B. 138, LSC 127 0111-7 (SJCV-2) – May 13, 2008
Testimony of Peter M. Iskin, Esq.

The Foreclosure Crisis for Tenants: the Problem and the Remedy

- **Scope of Problem:** About 30% of foreclosures are on tenant-occupied properties
- **Foreclosure Sales Terminate Existing Tenancies:**
  - Foreclosure purchases are not subject to any existing tenancy at the property, even though the tenants are not parties to the foreclosure action in most cases
  - All other purchasers of real property in Ohio buy the property subject to any existing tenancy at the property
- **No Prior Notice to Tenants:** a tenant's first notice of the foreclosure (and resulting termination of tenancy) often is
  - the foreclosure purchaser's three-day notice to vacate, or
  - the deputy's notice of the foreclosure sale
- **Banks (Foreclosure Purchasers) Evict All Tenants Immediately:** The banks (as foreclosure purchasers) rarely permit tenants to remain in the property, but instead
  - Evict tenants in the foreclosure action, when permitted, or
  - Evict tenants with a three-day notice in an eviction action
- **These Evictions Harm Good Tenants and the Neighborhoods**
  - Tenants who have paid their rent and complied with their rental agreements are forced to move before their rental agreements expired, often in the middle of a school year, and always with additional expenses (moving costs, security & utility deposits)
  - Without adequate advance notice, these tenants often are required to double-up with family or friends, or stay in a shelter, until they can find a rental unit and secure the funds needed to relocate (moving costs again, plus security & utility deposits)
  - Cleveland Tenants Organization recently surveyed 50 tenants who were required to move due to a foreclosure: average moving costs, $1,500; 25 forced to move in with family or friends, or stay in a shelter
  - As a result of these evictions, neighborhoods are left with vacant properties that often are vandalized and breeding grounds for other crimes
- **Remedy: Permit the Tenancy to Survive the Foreclosure Sale, but Permit the New Owner to Terminate the Tenancy with a 90-Day Notice**
  - Permitting the tenancy to survive the foreclosure sale treats a foreclosure purchaser like every other purchaser of real property (*i.e.*, the purchase is subject to any existing tenancy at the property)
  - The 90-day notice provision would provide tenants with reasonable time to relocate before an eviction action can be filed against the family
  - The 90-day notice provision would insure that, during the 90-day period, the owner is obligated to maintain the property
  - The 90-day notice provision would protect the foreclosure purchaser against any undue burden relative to the future use of the property

WRITTEN STATEMENT OF ENGRAM LLOYD

Director, Philadelphia Homeownership Center
U.S. Department of Housing and Urban Development

Field Hearing before the Subcommittee on Housing and Community Opportunity
House Committee on Financial Services

United States House of Representatives

"Foreclosure Problems and Solutions: Federal, State, and Local Efforts to Address the Foreclosure Crisis in Ohio"

June 16, 2008

Thank you, Mr. Chairman. I appreciate the opportunity to speak today on behalf of Steven Preston, the Secretary of the U.S. Department of Housing and Urban Development (HUD). I am Engram Lloyd, Director of the Philadelphia Homeownership Center.

The significant effects of foreclosure on our national economy and on world markets bring us here today. Congress and the Administration have for some time been looking at legislative and regulatory options for minimizing foreclosures. At HUD, I can report that we are working on both in our efforts to mitigate the adverse effects of this market correction on borrowers.

One of the strongest tools we have to protect both borrowers and markets is the Federal Housing Administration (FHA). As you may know, FHA helps individuals secure credit by providing mortgage insurance through a private sector distribution network that makes owning a home more affordable and safe and, therefore, a reality for many borrowers that might otherwise go unserved.

Several times in testimony before Congress last year, HUD witnesses stated that many of those who ultimately entered the subprime market would have been better off with an FHA-insured loan. Many may still be eligible to refinance today. Although we cannot go back in time to ensure that each borrower made the best decision when obtaining a mortgage, we can provide refinancing options to many subprime borrowers and we can do more to help people make better decisions going forward through both innovative products and counseling support.

The Administration has taken decisive action to help responsible homeowners stay in their homes. Last fall, the Administration launched the *FHASecure* initiative and facilitated the creation of the HOPE NOW Alliance, which together have helped more than a million struggling homeowners.

FHASecure is a refinance option designed specifically for conventional and subprime borrowers who default on their mortgages solely because they can no longer afford the payments on their adjustable rate mortgages (ARMs) after the interest resets to a higher rate.

On April 9, 2008, the Department announced a dramatic expansion of the *FHASecure* program to help additional borrowers stuck in subprime mortgages, some of whom may owe more on their mortgage then their home is worth. Under the original *FHASecure* program, FHA modified its refinancing program to help creditworthy homeowners who missed payments after their teaser rates reset. Now, *FHASecure* has expanded its eligibility standards to cover borrowers with adjustable rate mortgages who were late on as many as three monthly mortgage payments over the previous twelve months.

FHA has already helped about 250,000 people refinance into safer mortgages – and with these additional changes, FHA is expected to help approximately 500,000 homeowners refinance by the end of the year.

One of the goals of the HOPE NOW Alliance was to develop and fund a nationwide advertising campaign to encourage delinquent borrowers to seek help through the 888-995-HOPE network of HUD-approved housing counselors. HOPE NOW is an alliance among counselors, servicers, investors, and other mortgage market participants. The alliance maximizes

outreach efforts to homeowners in distress to help them stay in their homes. Its purpose is to reach and support as many homeowners as possible. The members of this alliance recognize that by working together, they will be more effective than by working independently.

In the fall of 2007, HUD released informational video footage containing foreclosure prevention tips and information for homeowners who are struggling to pay their mortgage. Among other things, the video includes a list of 10 tips on how to avoid foreclosure. I suggest anyone who owns a home or who is in the market to buy a home visit HUD's website at www.hud.gov for more information.

Throughout this year, HUD staff and senior officials have sponsored or participated in more than 92 separate homeownership retention events in Ohio including clinics, fairs, targeted mailings, advertising, and joint task forces that reached a combined audience of over one million people. The Philadelphia Homeownership Center, in cooperation with the Ohio congressional delegation, the State of Ohio, and HUD's field offices, has conducted housing preservation clinics and foreclosure summits to spread the word about foreclosure prevention alternatives. Participants besides HUD include Fannie Mae and Freddie Mac, various agencies within the State of Ohio, local governments, congressional representatives, housing counseling agencies, lenders and realtors. Of these, the most effective have been our Homeownership Preservation Clinics in Cleveland and Columbus, which enabled homeowners to meet face-to-face with participating lenders, including Wells Fargo, Countrywide, and National City, and were attended by over 1,000 participants. These clinics also enabled on-the-spot counseling sessions with a HUD-approved counseling agency.

In addition to these Homeownership Preservation Clinics, staff from the Philadelphia HOC has attended several banking and realtor conventions and meetings as part of our outreach effort to help publicize the *FHASecure* initiative.

As you can see, the Department has taken several steps to address foreclosures, but there is much work still to be done. Thank you and I look forward to your questions.

Mahoning County

DISTRICT BOARD OF HEALTH
50 Westchester Drive, Youngstown, Ohio 44515

(330) 270-2855
Laboratory Services (330) 270-2841
Tuberculosis Clinic (330) 744-4246
Nursing FAX (330) 270-2860
Environmental FAX (330) 270-2859
http://www.mahoning-health.org

June 10, 2008

Representative Maxine Waters
Chairwoman
Subcommittee on Housing and Community Opportunity
Committee on Financial Services
U.S. House of Representatives
2129 Rayburn House Office Building
Washington, DC 20515

Dear Congresswoman Waters:

Thank you for the opportunity to testify before your committee about the impact of home foreclosures and vacant properties on the health of my community. As Health Commissioner of the General Health District in Mahoning County, I have responsibility for enforcing basic sanitary housing standards in the health district. With authority delegated by the Ohio Department of Health, my health department also enforces state laws requiring the remediation of lead hazards in children's homes. This home foreclosure and vacant property crisis has challenged our ability to fulfill these responsibilities due to (1) the growing number of blighted condemned housing units in my health district, and (2) the increased risk posed to children living in deteriorating units with lead hazards.

Blighted, condemned housing units

The crisis in my health district has become manifest over the last three years by the growing numbers of housing complaints received by my health department - the number nearly *tripled* between 2005 and 2007. These complaints stem from the presence of trash on the property or vacant buildings that are unsecured and create safety hazards and harbor disease vectors such as rodents and mosquitoes. When the roof of an abandoned structure leaks, mold growth inside often renders uninhabitable a home that could have been rehabilitated. In many cases we work successfully with the owner to remediate the conditions that gave rise to the complaint before the home is too far gone, but increasingly, we are unable to resolve the problem because the property is now owned by an out-of-state bank or mortgage company that doesn't acknowledge or respond to our property nuisance abatement orders.

The number of blighted properties whose owners have failed to respond to our demolition or abatement orders in my health district now stands at 122. Although many of these properties are found in our most distressed community – Campbell – not one of our 14 townships and 9 municipalities is now without a blighted property – even our most affluent community Canfield.

Although Ohio health districts, townships, and municipalities have the legal authority to demolish or secure blighted structures and assess these costs as a tax lien, our small townships and municipalities lack the financial resources to do so. Up to this point we have been unsuccessful in identifying a source of local, state or federal funding to assist these communities. We were encouraged when last month our Congressional Representatives Charlie Wilson and Tim Ryan introduced the **Emergency Neighborhood Reclamation Act of 2008**. This legislation would authorize $1 billion in federal funds for the demolition of abandoned buildings in blighted areas.

Without federal assistance, distressed areas like ours that have suffered population losses in recent decades will never have the local resources needed to deal with our problem of blighted surplus housing. I strongly support Reps. Wilson and Ryan's legislation as a means to provide our communities a helping hand in their war on blight.

Complicated, confusing demolition regulations

Even if the townships and municipalities in my health district had the resources to demolish blighted properties within their borders, understanding and complying with complicated and confusing asbestos abatement regulations can be a barrier to communities taking action. For example, at a seminar for local fire chiefs and zoning officials we sponsored earlier this year in Mahoning County, the state agencies in Ohio that share responsibility for regulating asbestos abatement practices – the Ohio Environmental Protection Agency and the Ohio Department of Health – appeared to offer conflicting guidance on how to comply with asbestos rules in the course of demolishing or burning blighted structures.

The U.S. EPA or HUD should help local authorities who want to take action to demolish blighted, condemned structures by providing clear guidance on how to adhere to asbestos abatement regulations with a minimum of confusion, cost, and delay for local authorities.

More children at risk for lead poisoning

After making so much progress in recent years toward the elimination of the most preventable pediatric environmental disease in this country – child lead poisoning – we are concerned that this housing crisis may set back efforts to meet our national goal of eliminating this disease by 2010. Many foreclosed homes in Youngstown and Campbell are sold and resold multiple times and sit idle for long periods. When normal maintenance in these units is deferred, the lead paint found in the oldest of these homes can emerge as a hazard for the children who move into them.

Further, nondisclosure of existing lead hazards by sellers is all too common in Youngstown; the frequent property transfers make it difficult for the health department to track ownership and assure that buyers and renters, especially those with young children, are aware of unremediated hazards in these units. We publish a registry of units with unremediated lead hazards and share it widely with community stakeholders like the local landlord and realtors associations. The registry currently has 274 owner-occupied and rental units listed. It is a continuous struggle for my child lead poisoning prevention staff (of 1 full-time sanitarian and a part-time nurse and secretary) to keep ownership information for these properties up-to-date.

Since many of these foreclosed homes are eventually bought or rented by families with modest incomes, these families would benefit from Congress's protection and expansion of HUD's lead hazard control and healthy homes grant and loan programs that target low income home owners and tenants. In addition, if HUD could develop an intervention that was reasonable in cost and mandatory, point-of-sale inspections for lead hazards, and requirements that mortgage lenders remediate any existing lead hazards prior to reselling the unit would be ideal strategies for preventing more children from being poisoned by these units.

Finally, local health departments' capacity to respond to housing concerns and other community health needs is being threatened by the very housing crisis itself. Declining property values translate into flat or declining property tax revenues that my health department depends on for nearly 20% of our revenue. Coupled with declines in building industry-related permit revenue from a slumping housing industry and cuts in federal preparedness funding, we faced an operating deficit at the beginning of this year that forced us to lay off nearly 10% of our public health workforce. As a consequence, we are less able to respond at a time when so many distressed members of our community need our help.

Sincerely,

Matthew A. Stefanak, M.P.H.
Health Commissioner
General Health District in Mahoning County

Lou Tisler, Executive Director
Neighborhood Housing Services of Greater Cleveland
Before the
U.S. House of Representatives Committee on Financial Services
Subcommittee on Housing Community Opportunity
Foreclosure Problems and Solutions: Federal, State, and Local Efforts to Address the Foreclosure Crisis in Ohio
June 16, 2008

Good morning, Chairwoman Waters, Ranking Member Capito and Members of the Subcommittee. My name is Lou Tisler, and I am the Executive Director for Neighborhood Housing Services of Greater Cleveland (NHSGC).

I am here today to testify regarding the efforts of Neighborhood Housing Services of Greater Cleveland, and its partners, in addressing the foreclosure crisis in State of Ohio. I will also discuss both local and national strategies that have been developed to manage the rise in foreclosures including homeownership counseling both pre and post purchase. Finally, I will also talk about the importance of partnerships in the addressing the issue of foreclosures because there is no one solution.

Overview of Neighborhood Housing Services of Greater Cleveland
Neighborhood Housing Services of Greater Cleveland (NHSGC) is a not-for-profit, community development corporation incorporated in July 1975 as one of the charter organizations of NeighborWorks® America, a network of excellence consisting of 236 organizations working in 4,400 urban, suburban and rural communities in economic and community development across the nation. We are also a member of the National NeighborWorks Association, and on behalf of the National NeighborWorks Association I would like to thank the Chairwoman's for her leadership and commitment to neighborhood stabilization.

MISSION STATEMENT
Neighborhood Housing Services of Greater Cleveland provides ongoing programs and services for achieving, preserving, and sustaining the American dream of home ownership.

VISION STATEMENT
Neighborhood Housing Services of Greater Cleveland is a premier organization for assisting individuals and strengthening communities by supporting sustainable homeownership. Working collaboratively with entities from both the public and private sector, NHSGC will continue to be recognized for being efficient and effective in preparing residents for successful homeownership and preserving homeownership through home repair lending and support services.

NHSGC was established to provide home repair programming and home ownership education to six targeted neighborhoods in the City of Cleveland. This agency began with primary support from NeighborWorks® America, the City of Cleveland and local lenders. Today, NHSGC receives support from NeighborWorks® America, the State of Ohio, Cuyahoga County, the City of Cleveland, local foundation support, financial institutions, and the insurance and real estate

development industries. NHSGC is the fifth chartered organization with NeighborWorks® America receiving training, financial and technical assistance through our affiliation.

NHSGC's programs are the HomeOwnership Promotion - educational classes and loans for people interested in becoming homeowners and HomeOwnership Preservation Program- loan products, post-purchase counseling, foreclosure assistance to those homeowners interested in maintaining and preserving, not only the physical structure of the home, but also the ability to retain ownership. Counseling services are required in order to access any NHSGC program. In the pre-purchase curriculum, NHSGC staff work with individuals to immerse them in the home buying process, secure better credit and become "mortgage ready". Post-purchase counseling includes home maintenance, refinance clinics, budgeting classes and foreclosure prevention.

NHSGC has launched several strategic alliances, programs and services that significantly enhanced the growth and reputation of the organization with expansion of limited programs and services offered in Lorain, Erie and Huron counties. The foundation has been set to grow NHSGC into one of the premier NeighborWorks® organizations, not only in the Great Lakes region, but across the nation.

Organizational Strengths: NHSGC's strengths, which lead to numerous opportunities to provide additional client services, are three fold, consisting of a highly regarded, knowledgeable and committed staff; a board structure that is representative and responsive to the macro environments; and the organizational credibility within our industry.

One of our most valuable partnerships is with the community development corporations, organizations and municipalities throughout the region. Most of the staff and board are not only work within northeast Ohio, but also live within the city of Cleveland and other northeast Ohio communities. This allows NHSGC to solicit feedback, receive input/suggestions/constructive criticism of programs and services administered by NHSGC.

Impact of Foreclosures and Vacant Properties in Cleveland

The City of Cleveland has been denoted in the recent past as the most impoverished city in the United States. Ohio has been denoted the state with the one of the highest rates of foreclosures in the United States. The impact of foreclosures and vacant properties in Cleveland has been substantial, as it has been across the State of Ohio. According to ReBuildOhio's February 2008 report "$60 Million and Counting: The Cost of Vacant and Abandoned Properties to Eight Ohio Cities", there are over 25,000 vacant and abandoned properties in eight Ohio cities (Cleveland, Columbus, Dayton, Ironton, Lima, Springfield, Toledo, and Zanesville); $15 million of additional costs in annual city services; and $49 million in cumulative lost property tax revenues to local governments and school districts.

Adding to this impact is the continued stream of requests to the Cuyahoga County Treasurer's office for property reassessments, which will continue to impact, exponentially, the lost property tax revenues that provide funding for city services and local educational systems.

As the state with one of the highest rate of mortgage defaults in the nation, Ohio is facing a grim future for the vitality of its communities.

The Mortgage Bankers Association reported the following statistics at the end of the fourth quarter of 2007:

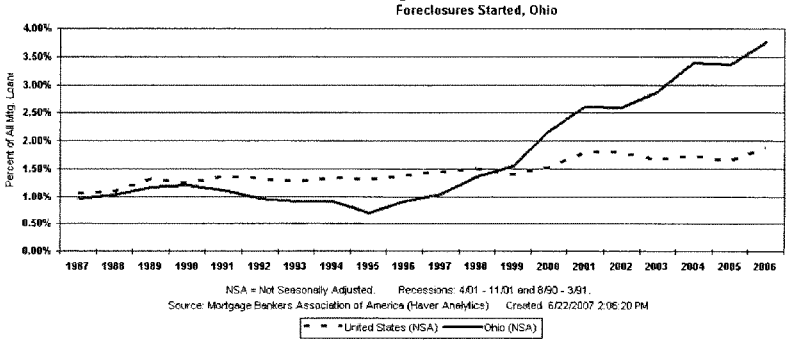
Comparison of Mortgage Default Rates

Type of Loan	Percent of Loans in Foreclosure in Ohio	Percent of Loans in Foreclosure in United States	Ratio of Ohio Rate Compared to National Rate	Ohio Ranking vs. Other States
All Mortgages	3.88	2.04	1.90	#1
Prime Mortgages	1.85	0.96	1.92	#1
Subprime Mortgages	13.69	8.65	1.58	#1
FHA Mortgages	4.70	2.34	2.01	#2
VA Mortgages	3.31	1.12	2.96	#1

Source: National Delinquency Surveys, Fourth Quarter 2007. Mortgage Bankers Association.

Long-term annual analysis shows that Ohio's foreclosure rates have more than doubled since 1999, as shown in the chart below. The largest jump was in 2000 and 2001, with significant jumps in 2003, 2004, and 2006 as well. Ohio's foreclosure rate in 2006 was twice the national rate and over four times the state's 1995 rate.

Foreclosures Stated in 1987-2006, Ohio Compared to U.S. Rates



Source: FDIC RECON (www2.fdic.gov/recon), from Mortgage Bankers Association's National Delinquency Survey

There are several factors that, in combination, form a likely explanation for the rise in foreclosures and sheriff sales in Ohio in recent years.

First, is the increasing prevalence of sub-prime loans, which, as shown earlier in this report, are more likely to enter into foreclosure proceedings. Policy Matters Ohio reports that in 1999 Ohio

had the third-highest sub-prime share of refinancing loans in the nation. This is likely to hit racial minorities the hardest. According to analysis of 1998 HMDA data by Policy Matters Ohio, sub-prime lenders accounted for two-thirds of the top 50 refinancing lenders in Ohio's minority census tracts. Of the 50 Ohio sheriff departments responding to Policy Matters' 2005 survey, 31 ranked predatory lending (which commonly uses sub-prime loans) as the highest contributing factor to foreclosures.

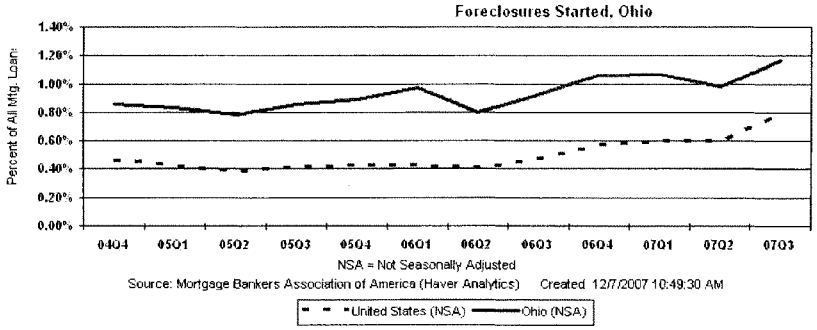
The second factor is rising consumer debt, including the use of credit cards, which has been pervasive throughout the U.S.

Third, is the weak economy in Ohio. The state's housing prices have not increased as rapidly in recent years as other states in the U.S. (between 2% and 5% annually in Ohio in 2001-06), meaning that equity gains for new homeowners have been slow to nonexistent. At the same time, household income growth in Ohio has also been sluggish (between 1% and 4% annually in 2001-2006).

Average household incomes have been hurt in part due to the unemployment rate in Ohio, which increased from 4% in 2000 to over 6% in 2004 and 2005. Ohio's unemployment rate has eased slightly since 2005, but the January 2007 rate of 5.3% was still the sixth highest in the nation. Between the official start of the recession in March 2001 and the end of December 2003, Ohio lost 236,700 jobs, of which two-thirds were in the manufacturing sector. Together, these factors add up to a precarious financial situation for many of Ohio's households.

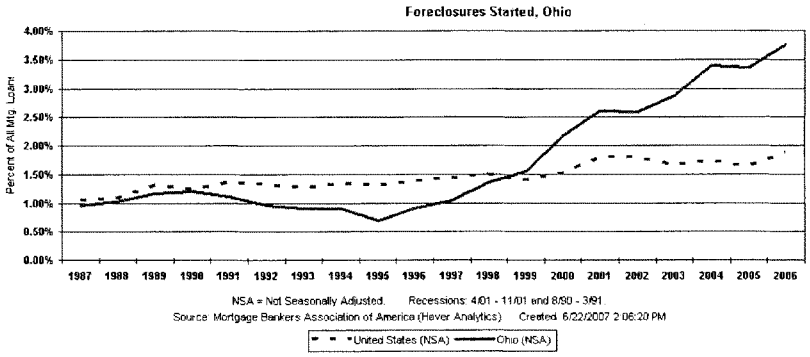
Ohio's foreclosure rate has more than doubled since 1999 and continues to climb

Ohio's foreclosure rate continued to climb in 2007. Quarter-by-quarter statistics shows that the foreclosure rate jumped in the third quarter of 2007, after a slight dip the previous quarter. The Ohio-US gap remains substantial, with Ohio's rate about 0.4% higher than the national rate.



Source: FDIC RECON (www2.fdic.gov/recon), from Mortgage Bankers Association's National Delinquency Survey

Long-term annual analysis shows that Ohio's foreclosure rates have more than doubled since 1999, as shown in the chart below. The largest jump was in 2000 and 2001, with significant jumps in 2003, 2004, and 2006 as well. Ohio's foreclosure rate in 2006 was twice the national rate and over four times the state's 1995 rate.



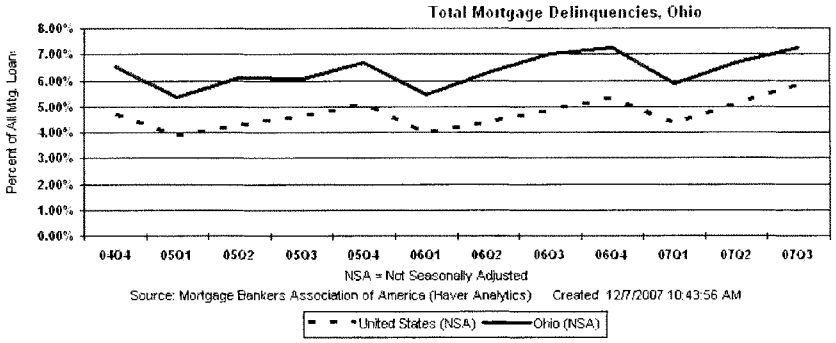
Source: FDIC RECON (www2.fdic.gov/recon), from Mortgage Bankers Association's National Delinquency Survey

The non-profit organization Policy Matters Ohio has done research confirming that the number of foreclosures filed in Ohio has more than quadrupled since 1995, from 17,000 in 1995 to 79,000 in 2006. This represents an increase of 24% in just the past year from 2005 to 2006. The 2006 figure represents 1 foreclosure filing for every 145 people or roughly every 58 households in the state.

Note that these foreclosure filing rates, which measure new foreclosure filings, are not exactly the same as the "foreclosure inventory" reported in MBA's National Delinquency Survey. The foreclosure inventory is generally less because foreclosure proceedings usually last less than a year. In other words, at any given time there are fewer loans in foreclosure proceedings than will enter foreclosure over the course of an entire year. For example, the national foreclosure inventory was 1.0% at the end of 2006, while over the course of 2006 about 1.9% of national loans entered foreclosure. Ohio's foreclosure inventory at the end of 2006 was 3.4%, while over the course of the year about 3.8% of Ohio's loans entered foreclosure.

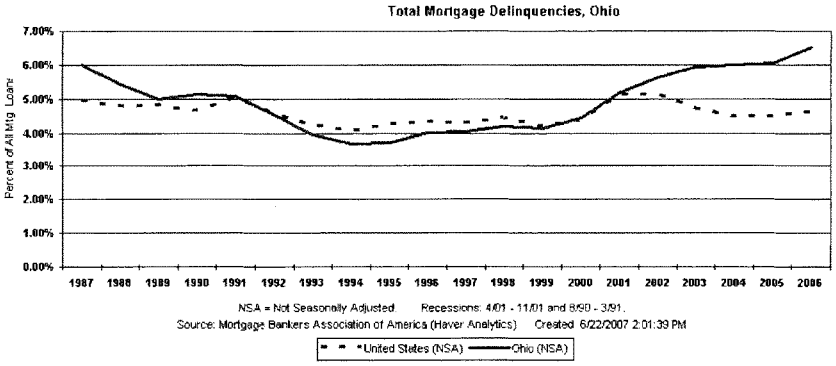
Ohio's delinquency rate continues to rise

The delinquency rate (the percentage of loans more than 30 days past due) is an indication of loans that may be in danger of foreclosure. As with the foreclosure rate, Ohio's delinquency rate rose in the third quarter of 2007, as shown in the graph below. The state's delinquency rate remained one percentage point higher than the national rate at the end of September 2007.



Source: FDIC RECON (www2.fdic.gov/recon), from Mortgage Bankers Association's National Delinquency Survey

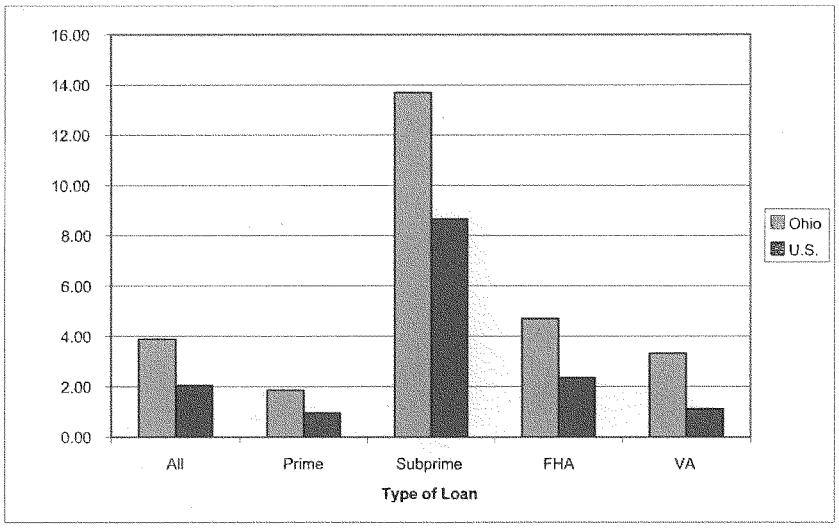
Year-by-year analysis shows that Ohio's delinquency rate increased in the past two decades, from a low of about 3.8% in 1994 to just over 6.5% in 2006, as shown in the chart below. While the national delinquency rate dropped after 2001, Ohio's rate continued to climb and in 2005 was about 1.5 percentage points higher than the national rate. This gap widened in 2006 to nearly 2 percentage points, as the national rate increased but Ohio's rate increased faster.



Source: FDIC RECON (www2.fdic.gov/recon), from Mortgage Bankers Association's National Delinquency Survey

Foreclosure rates are highest for sub-prime loans

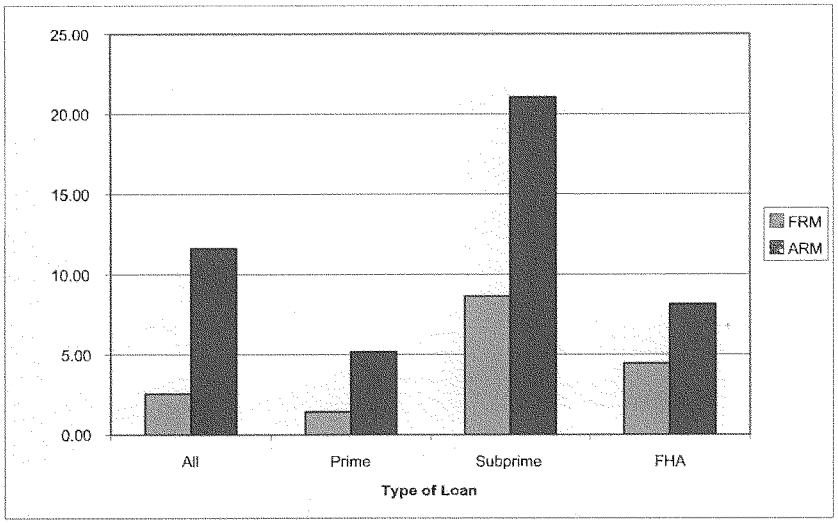
Foreclosure rates (in this case, the foreclosure inventory) are higher for subprime mortgages than other types of mortgages, both nationally and in Ohio. As of 31 December 2007, subprime loans in Ohio were about 7.4 times as likely to be in foreclosure than were prime loans. Subprime loans made up 14% of the state's mortgages but 50% of its foreclosures. FHA and VA mortgages were also much more likely to be in foreclosure than prime loans. Ohio's foreclosure rates are higher than the nation's foreclosure rates, ranging from 1.6 times the national rate for subprime loans to 3 times the national rate for VA loans.



Source: Mortgage Bankers Association, National Delinquency Survey, Fourth Quarter 2007

Adjustable rate mortgages have much higher foreclosure rates

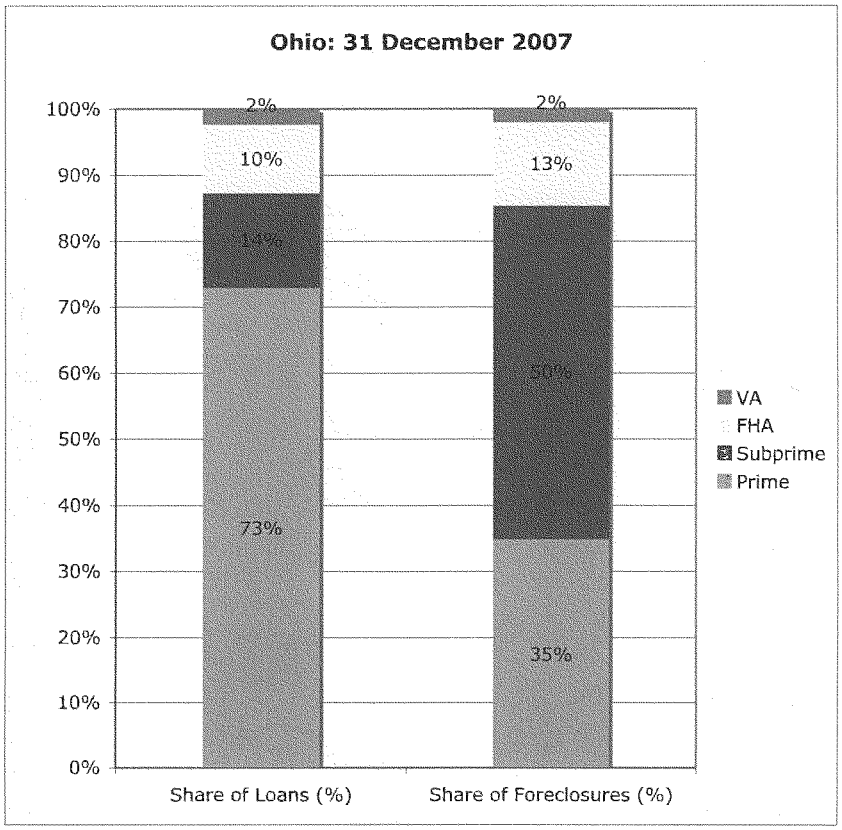
Adjustable rate mortgages (ARM) are much more likely to be in foreclosure proceedings than fixed rate mortgages (FRM). As of 31 December 2007, subprime ARMs in Ohio were over 2.4 times as likely to be in foreclosure than subprime FRMs, as shown in the chart below. Prime and FHA ARMs were also much more likely to be in foreclosure than their FRM counterparts. For all of Ohio's mortgages combined, ARMs are about 4.6 times as likely to be in foreclosure than FRMs. This ratio is so high because adjustable-rate mortgages are disproportionately subprime (which have higher foreclosure rates), while fixed-rate mortgages are disproportionately prime (which have lower foreclosure rates). About 41% of Ohio's subprime loans are ARMs, while only 11% of prime loans are ARMs. In other words, the higher likelihood of foreclosure for ARMs is exacerbated by the frequent use of ARMs with subprime loans, which are already relatively risky.



Source: Mortgage Bankers Association, National Delinquency Survey, Fourth Quarter 2007

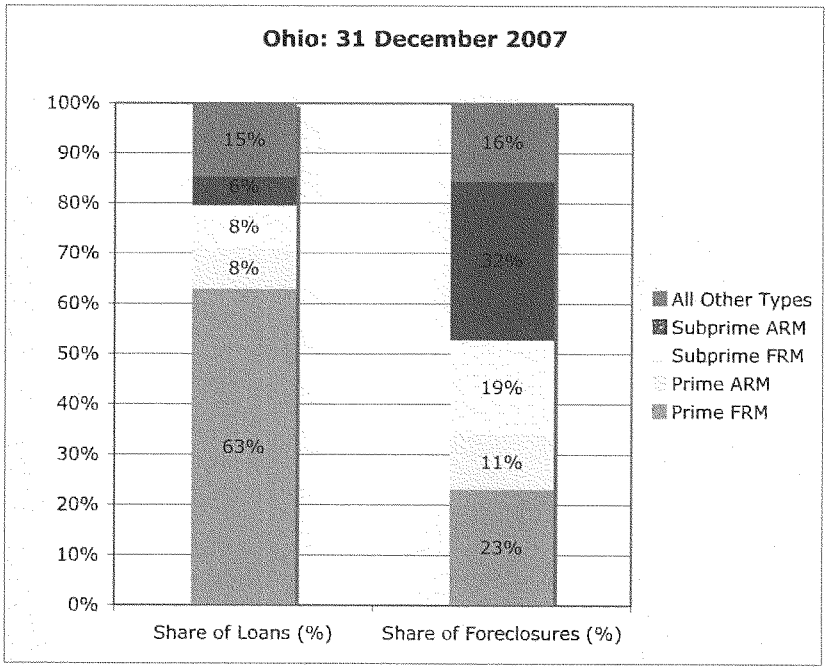
Subprime and ARM loans are over-represented in foreclosure

One outcome of the higher foreclosure rates for subprime loans is that, while they make up only 14% of Ohio's mortgages, they are responsible for 50% of the state's foreclosure inventory, as shown in the chart below. Prime loans, in contrast, contribute only 35% of Ohio's foreclosures despite making up 73% of the state's mortgages.



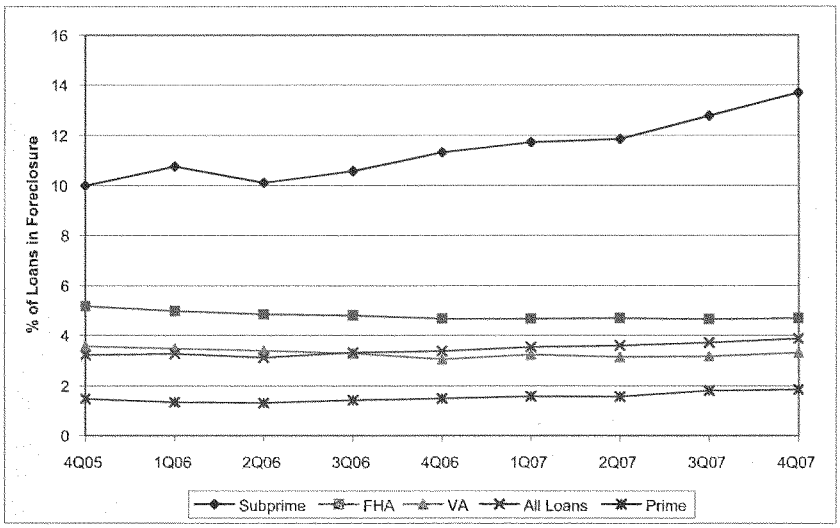
Source: Mortgage Bankers Association, National Delinquency Survey, Fourth Quarter 2007

This pattern is more pronounced when we look at subprime ARMs, which make up the largest share of foreclosures (32%) of any loan type, despite being only a small fraction (6%) of all mortgages. In contrast, prime FRMs make up 63% of all mortgages but contribute only 23% of foreclosures.



Source: Mortgage Bankers Association, National Delinquency Survey, Fourth Quarter 2007

From 31 December 2005 through 31 December 2007, the foreclosure inventory for Ohio's subprime loans increased nearly four percentage points, while the inventory for other types of loans remained fairly static. The foreclosure inventory for FHA and VA loans eased slightly during the past two years, around half a percentage point.



Source: Mortgage Bankers Association, National Delinquency Survey, various quarters

Ohio leads U.S. in foreclosure inventory for nearly all types of loans

As of 31 December 2007, Ohio had the highest foreclosure inventory of all 50 states for prime, subprime, and VA loans, and it was second only to Michigan for FHA loans.

All			Prime			Subprime			FHA			VA		
State	*%*	State Rank	*State*	*%*	State Rank	*State*	*%*	State Rank	*State*	*%*	State Rank	*State*	*%*	State Rank
									Michigan	5.49	1			
Ohio	***3.88***	***1***	***Ohio***	***1.85***	***1***	***Ohio***	***13.69***	***1***	***Ohio***	***4.70***	***2***	***Ohio***	***3.31***	***1***
Alaska	0.67	**50**	Washington	0.32	**50**	Alaska	2.47	**50**	Alaska	0.62	**50**	Utah	0.39	**50**
U.S.	2.04		U.S.	0.96		U.S.	8.65		U.S.	2.34		U.S.	1.12	

Source: Mortgage Bankers Association, National Delinquency Survey, Fourth Quarter 2007

Ohio's new foreclosure filing rates are among the nation's highest

The foreclosure filing (or "foreclosures started") rate for the most recent quarter (October – December 2007) shows the percentage of loans that entered foreclosure during that time. With its focus on the most recent quarter's filings, this rate reflects more recent trends than the foreclosure inventory, which includes loans that entered foreclosure in the previous two to three quarters.

Ohio still ranks high in terms of foreclosures started in the most recent quarter, but not as high as with the foreclosure inventory. This indicates that a few other states' foreclosure rates are increasing more rapidly than Ohio's. Over time, if this trend continues, it should be reflected in the foreclosure inventory.

All			Prime			Subprime			FHA			VA		
State	*%*	State Rank	*State*	*%*	State Rank	*State*	*%*	State Rank	*State*	*%*	State Rank	*State*	*%*	State Rank
Nevada	1.54	**1**	Florida	0.8	**1**	Rhode Island	5.43	**1**	Michigan	1.88	**1**	Michigan	1.05	**1**
Ohio	***1.15***	***5***	***Ohio***	***0.57***	***6***	***Ohio***	***3.95***	***11***	***Ohio***	***1.49***	***2***	***Ohio***	***0.87***	***2***
N. Dakota	0.25	**50**	Hawaii	0.13	**50**	Alaska	0.97	**50**	N. Dakota	0.13	**50**	Hawaii	0.21	**50**
U.S.	0.88		U.S.	0.43		U.S.	3.71		U.S.	0.95		U.S.	0.43	

Source: Mortgage Bankers Association, National Delinquency Survey, Fourth Quarter 2007

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Largest counties have high foreclosure rates

RealtyTrac compiled county-level data on foreclosure filings for the month of December 2007, including all phases of foreclosure (default, auction, and real-estate-owned). The table below shows that most large metropolitan counties in Ohio had foreclosure rates higher than the state rate and the national rate. Summit County (Akron) topped the list, with one foreclosure filing for every 187 households. Cuyahoga County (Cleveland) had the highest absolute number of filings, with 2,541 in the month of December 2007 alone.

County (major city)	Foreclosure Filings December 2007	Households per Filing	Rank
Summit (Akron)	1,286	187	1
Van Wert	65	195	2
Stark (Canton)	755	215	3
Fayette	51	243	4
Cuyahoga (Cleveland)	2,541	244	5
Lucas (Toledo)	831	244	6
Union	66	273	7
Franklin (Columbus)	1,801	285	8
Montgomery (Dayton)	819	309	9
Lorain (Lorain)	355	338	10
Muskingum (Zanesville)	99	359	11
Fairfield (Lancaster)	139	393	12
Trumbull (Warren)	236	410	13
Statewide	**12,066**	**415**	
Warren	173	416	14
Richland (Mansfield)	126	435	15
Hamilton (Cincinnati)	797	481	16
Clermont	159	482	17
Greene (Xenia)	123	518	18
Highland	34	533	19
Mahoning (Youngstown)	208	547	20
United States	**215,749**	**577**	

Source: RealtyTrac

Percentage increase in foreclosure filings, 1995-2006

PolicyMatters Ohio gathered data showing that, from 1995 through 2006, foreclosure filings quadrupled in 70 of Ohio's 88 counties. The highest percentage increases in foreclosure filings tended to occur in smaller counties, which were expanding off a smaller base than the larger counties.

But the 10 largest counties also experienced high increases. This ranged from Lucas County, where the 2006 total was more than three times the 1995 total, to Stark County, where the 2006 total was over seven times the 1995 total. Seven of the 10 largest counties had percentage increases that were higher than the statewide average.

Rank in State (of 88)	County (City within)	2006 Filings	Increase 1995-2006
1	Henry	109	1457%
2	Fayette	195	1119%
3	Licking	1,081	1115%
4	Huron	333	1010%
5	Williams	185	988%
6	Pickaway	308	962%
7	Wayne	426	939%
8	Fulton	176	935%
9	Union	266	923%
10	Highland	317	923%
20	Stark (Canton)	2,799	637%
28	Summit (Akron)	4,833	549%
34	Franklin (Columbus)	8,875	508%
35	Mahoning (Youngstown)	1,946	506%
39	Butler (Hamilton)	2,580	477%
46	Lorain (Lorain)	2,252	445%
53	Montgomery (Dayton)	5,076	435%
-	**Statewide**	**79,072**	**395%**
70	Cuyahoga (Cleveland)	13,610	307%
72	Hamilton (Cincinnati)	5,876	294%
82	Lucas (Toledo)	3,618	211%

Source: Policy Matters Ohio (www.policymattersohio.org), based on data from Supreme Court of Ohio

Recent foreclosure filings show Ohio metro areas in top third nationwide

RealtyTrac's data on new foreclosure filings for 2007 show how Ohio's larger metropolitan statistical areas (MSAs) stack up among the largest 100 metropolitan areas in the U.S. All six of Ohio's metropolitan areas analyzed are in the top third for foreclosure rates nationwide. As with the December 2007 data, the Akron and Cleveland areas had more foreclosures per household than Ohio's other large cities. The foreclosure rate doubled or nearly doubled in Ohio's largest metro areas from 2006 to 2007.

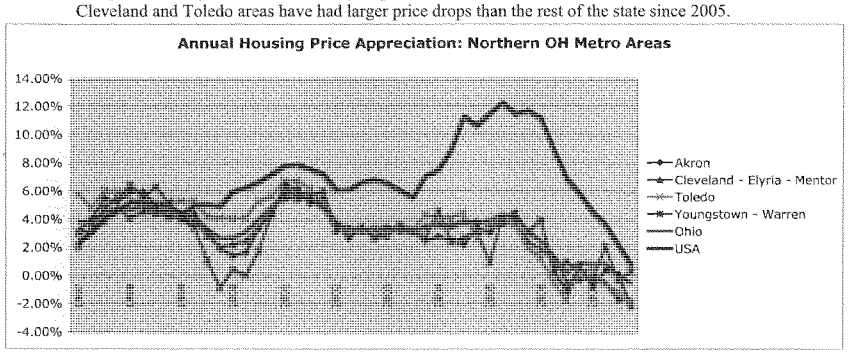
Rank	MSA	Foreclosure Filings	% of Households	% Change from 2006
1	DETROIT/LIVONIA/DEARBORN, MI	72,616	4.9	68
2	STOCKTON, CA	22,184	4.9	271
3	LAS VEGAS/PARADISE, NV	59,983	4.2	169
4	RIVERSIDE/SAN BERNARDINO, CA	102,506	3.8	186
5	SACRAMENTO, CA	49,532	3.2	273
6	**CLEVELAND/LORAIN/ELYRIA/MENTOR, OH**	**49,071**	**3.0**	**112**
7	BAKERSFIELD, CA	13,682	3.0	245
8	MIAMI, FL	51,662	2.7	106
9	DENVER/AURORA, CO	49,519	2.6	28
10	FORT LAUDERDALE, FL	45,367	2.6	110
12	**AKRON, OH**	**12,359**	**2.3**	**108**
15	**DAYTON, OH**	**14,285**	**2.1**	**146**
19	**TOLEDO, OH**	**10,056**	**1.9**	**117**
25	**COLUMBUS, OH**	**24,055**	**1.8**	**86**
33	**CINCINNATI, OH**	**21,392**	**1.5**	**104**
	TOP 100 METROS	1,774,778	1.4	78
	U.S. TOTAL	2,203,295	1.0	79

Source: RealtyTrac data for January – December 2007

Housing price growth has dropped

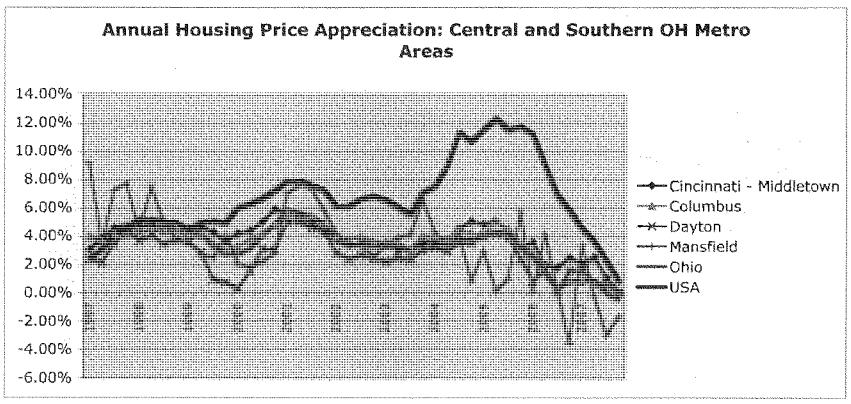
Ohio's housing price growth has trailed the national rate since 1999, experiencing little of the nationwide boom period from 2004 to 2006. Because of Ohio's failure to reach these dizzying heights, the state's price drop off since 2006 has been less dramatic than the national nosedive. Ohio's housing price growth is still, however, flirting with negative territory.

Metropolitan areas in the northernmost part of Ohio have generally followed the statewide trend, though the Youngtown area had a rougher patch than the rest of the state in 1999-2000, and the Cleveland and Toledo areas have had larger price drops than the rest of the state since 2005.



Source: Office of Federal Housing Enterprise Oversight (www.ofheo.gov): Housing Price Index

The graph for the central and southern parts of the state show that metro areas there have had similar experiences to the state as a whole, though Mansfield has had a more erratic pattern.



Source: Office of Federal Housing Enterprise Oversight (www.ofheo.gov): Housing Price Index

The housing market's fortunes in Ohio's metro areas are summarized in the table below. Canton fared the best in 2007, but still was in the bottom half of all metro areas in the U.S., with a meager growth rate of less than one percent. All of Ohio's metro areas lag the national one-year and five-year growth rates significantly.

Metro Area	Annual Growth Rank (of 291)	Annual Growth to 31 December 2007	Growth 4th Qtr 2007	5-Yr Growth
Canton - Massillon, OH	175	0.6%	1.5%	8.5%
Youngstown - Warren - Boardman, OH-PA	182	0.4%	0.0%	10.5%
Springfield, OH	184	0.3%	-2.5%	7.8%
Cincinnati - Middletown, OH-KY-IN	189	0.1%	0.3%	15.2%
Columbus, OH	190	0.1%	0.3%	13.5%
Dayton, OH	191	0.1%	0.5%	11.1%
Mansfield, OH	215	-1.6%	1.4%	8.0%
Cleveland - Elyria - Mentor, OH	216	-1.7%	0.0%	8.1%
Lima, OH	222	-2.0%	0.8%	16.0%
Toledo, OH	223	-2.0%	-0.3%	7.7%
Akron, OH	224	-2.2%	-0.1%	7.8%
Ohio	41st of 50	-0.4%	0.4%	11.5%
USA	n/a	0.8%	0.1%	41.4%

Source: Office of Federal Housing Enterprise Oversight (www.ofheo.gov): Housing Price Index

Likely explanations for Ohio

There are several factors that, in combination, form a likely explanation for the rise in foreclosures in Ohio in recent years.

First, is the increasing prevalence of sub-prime loans, which, as shown earlier in this report, are more likely to enter into foreclosure proceedings. Policy Matters Ohio reports that in 1999 Ohio had the third-highest sub-prime share of refinancing loans in the nation. This is likely to hit racial minorities the hardest. According to analysis of 1998 HMDA data by Policy Matters Ohio, sub-prime lenders accounted for two-thirds of the top 50 refinancing lenders in Ohio's minority census tracts. Of the 50 Ohio sheriff departments responding to Policy Matters' 2005 survey, 31 ranked predatory lending (which commonly uses sub-prime loans) as the highest contributing factor to foreclosures. Adjustable-rate mortgages (ARM) pose particular difficulties, as they often have low initial "teaser rates" that are fixed for the first two or three years, followed by increases as often as every six months.

The second factor is rising consumer debt, including the use of credit cards, which has been pervasive throughout the U.S.

Third, is the recent downturn in the housing market. With a sluggish housing market come slower equity gains (or even a loss of equity) and an increased likelihood of foreclosure, particularly if home equity loans were acquired to finance consumer purchases.

Median household incomes across Ohio grew much slower than housing prices in the past several years, around 2% annually. This has decreased housing affordability and has probably led to relatively high debt-to-income ratios for many borrowers.
Periods of unemployment may also be taking their toll. The state unemployment rate increased from 4% in 2000 to over 6% in 2004 and 2005. Ohio's unemployment rate has eased slightly since 2005, but the January 2008 rate of 5.5% was still the ninth highest in the nation. Between the official start of the recession in March 2001 and the end of December 2003, Ohio lost 236,700 jobs, of which two-thirds were in the manufacturing sector.

Together, these factors add up to a precarious financial situation for many of Ohio's households.

Personal bankruptcy rates

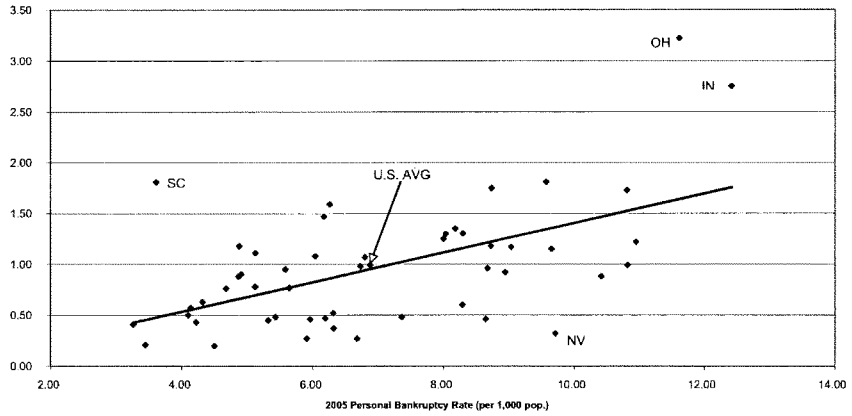
The financial difficulties of Ohio households are reflected in the fact that personal bankruptcy rates in 2006 were much higher in the state than in the nation as a whole. (Information from 2007 is not yet available.) Ohio's largest counties make up most of the state's counties with the highest bankruptcy rates. The state's largest cities are all in counties with a higher bankruptcy rate than the statewide average.

Source: FDIC RECON (www2.fdic.gov/recon), from Administrative Office of the U.S. Courts

Rank in State (of 88)	County (City within)	Filing Rate (per 1,000 pop.)
1	Stark (Canton)	3.70
2	Columbiana	3.65
4	Cuyahoga (Cleveland)	3.56
3	Franklin (Columbus)	3.56
5	Muskingum	3.52
6	Summit (Akron)	3.51
7	Montgomery (Dayton)	3.46
8	Union	3.45
9	Madison	3.45
10	Logan	3.44
11	Mahoning (Youngstown)	3.44
16	Lucas (Toledo)	3.14
19	Hamilton (Cincinnati)	3.11
-	**Statewide**	**2.98**
-	**United States**	**2.00**

Foreclosure rates are correlated with personal bankruptcy rates

Foreclosure rates appear to be somewhat correlated with personal bankruptcy rates. Generally, states with higher personal bankruptcy rates in 2005 had higher foreclosure inventories at the end of 2005. It would not be surprising if the financial and economic factors leading to high bankruptcy rates in an area also led to high foreclosure rates.
Some of the outliers from this correlation are South Carolina, which had a foreclosure inventory rate nearly twice that of the U.S. despite having a significantly lower bankruptcy rate; and Nevada, which had one of the lowest foreclosure inventory rates despite a high bankruptcy rate. Ohio and Indiana both had relatively high bankruptcy rates and extraordinarily high foreclosure rates.



Source: Mortgage Bankers Association, National Delinquency Survey Results, Fourth Quarter 2005; and FDIC RECON (www2.fdic.gov/recon), from Administrative Office of the U.S. Courts

Reasons for this growth in foreclosures include divorce, medical problems, and easy access to credit but in Cuyahoga County the top reasons are job loss or a weak economy and sub prime lending. Although NHSGC services are not related to assistance with job creation the organization does provide programs that help homeowners make the most of the income they earn and prevent the loss of the wealth they have created through homeownership.

Programs Undertaken by Neighborhood Housing Services of Greater Cleveland to Reduce or Prevent Foreclosures

Local Efforts

From a local perspective, NHSGC is involved in the Cuyahoga County Foreclosure Prevention program (as well as various organizations noted below) that institutes the 2-1-1 "First Call For Help" line that acts as a feeder system to the organization's foreclosure prevention counseling

services and programs. The measure of effectiveness of this outreach is that NHSGC is the top performer (according to year to date summary – first quarter 2008 report) of all agencies participating in this foreclosure program in:

- Mortgage Foreclosure Assistance
- Predatory Lending Assistance
- Mortgage Payment Assistance
- Total Agency Referrals

Top 5 Types of Referrals 2008 (2,751 Total Agency Referrals)
Source: United Way First Call for Help Report

1. Mortgage Foreclosure Assistance (1,156 referrals)

Agencies

Neighborhood Housing Services ▪ 26%
ESOP ▪ 15%
Community Housing Solutions ▪ 12%
Cleveland Housing Network ▪ 12%
NID Housing Counseling ▪ 8%
Northern Ohio Affordable Housing ▪ 8%
Consumer Credit Counseling Service ▪ 7%
Consumer Protection Assn. ▪ 6%
Cleveland Assn. of Community Organizations for Reform Now ▪ 3%
Spanish American Committee ▪ 2%
Home Repair Resource Center ▪ 1%
Legal Aid Society (non-direct referral) ▪ 1%
Cuyahoga County Treasurer ▪ <1%
United States Dept. of Housing ▪ <1%

ZIP Codes (Top 5)

44128 ▪ 8%
44105 ▪ 7%
44112 ▪ 5%
44120 ▪ 5%
44137 ▪ 5%

2. Mortgage Payment Assistance (1,043 referrals)

Agencies

Neighborhood Housing Services ▪ 32%
Cleveland Housing Network ▪ 23%
Community Housing Solutions ▪ 19%
ESOP ▪ 16%
Spanish American Committee ▪ 5%
Consumer Protection Assn. ▪ 4%
Parma – City of ▪ <1%
Neighborhood Development Services <1%
Council for Economic Opportunities ▪ <1%

Neighborhood Conservation Services of Barberton ▪ <1%

ZIP Codes (Top 5)
44105 ▪ 9%
44121 ▪ 7%
44128 ▪ 7%
44108 ▪ 6%
44137 ▪ 6%

3. **Predatory Lending Assistance (169 referrals)**

Agencies
Neighborhood Housing Services ▪ 28%
Housing Advocates ▪ 22%
ESOP ▪ 21%
Community Housing Solutions ▪ 21%
Cleveland Assn. of Community Organizations for Reform Now ▪ 3%
NID Housing Counseling Agency ▪ 2%
Case Western Reserve University ▪ 2%
Ohio Attorney General's Office ▪ 1%

ZIP Codes (Top 5)
44128 ▪ 11%
44105 ▪ 9%
44134 ▪ 8%
44110 ▪ 8%
44120 ▪ 7%

4. **4. Utility Bill Payment Assistance (44 referrals)**

Cleveland Housing Network ▪ 39%
Salvation Army ▪ 30%
Consumer Protection Assn. ▪ 16%
Council for Economic Opportunities ▪ 7%
Journey of Hope ▪ 5%
Ohio Dept. of Development ▪ 2%
Harry Ratner Fund ▪ 2%

ZIP Codes (Top 5)
44105 ▪ 18%
44128 ▪ 9%
44123 ▪ 9%
44102 ▪ 7%
44108 ▪ 7%

5. **Loan Counseling (18 referrals)**

Agencies
Community Housing Solutions ▪ 33%

Neighborhood Housing Services ▪ 22%
Cleveland Housing Network ▪ 22%
Northern Ohio Affordable Housing ▪ 17%
Housing Advocates ▪ 6%

ZIP Codes (Top 5)

44146 ▪ 44%
44118 ▪ 17%
44105 ▪ 17%
44132 ▪ 11%
44017 / 44108 ▪ 6%

Top 10 Agency Referrals 2008 (of 2,751 Total Referrals)

1. Neighborhood Housing Services ▪ 25%
2. Cleveland Housing Network ▪ 15%
3. Community Housing Solutions ▪ 14%
4. ESOP ▪ 14%
5. Consumer Protection Association ▪ 4%
6. NID Housing Counseling ▪ 4%
7. Northern Ohio Affordable Housing ▪ 3%
8. Consumer Credit Counseling ▪ 3%
9. Spanish American Committee ▪ 3%
10. Cleveland Assn. of Community Organizations for Reform Now ▪ 1%

Location of Person Needing Assistance

➢ Top 5 ZIPS ▪ 2008	➢ Top 5 Cities ▪ 2008
1. 44105 ▪ 9%	1. Cleveland ▪ 48%
2. 44128 ▪ 7%	2. Euclid ▪ 6%
3. 44120 / 44121 ▪ 5%	3. Maple Hts. ▪ 5%
4. 44108 ▪ 5%	4. Cleveland Hts. ▪ 5%
5. 44137 ▪ 5%	5. Parma ▪ 4%

Referral Source

How did you hear about us?	2006	2007	2008
Agency	34%	34%	42%
Media (Radio, TV)	45%	33%	26%
Printed Materials (flyer, postcard)	8%	9%	13%
Phone Book/Operator	4%	5%	5%
Family/Friend	5%	5%	8%
Web	1%	3%	2%
Unknown	3%	11%	4%

The 2-1-1 program allows NHSGC to access clients throughout Cuyahoga County. Cuyahoga County residents also have accessed NHSGC services through the Homeownership Preservation Foundation hotline.

NHSGC has one of the most informative and useful websites in regards to foreclosure information and prevention. NHSGC receives over 800 new visitors per week (according to LiveStats) with the majority of those new visits to the foreclosure prevention area of our website.

NHSGC utilizes relationships with over 20 community development corporations in the City of Cleveland, to provide on the ground, grass roots outreach to the residents of the city of Cleveland. NHSGC also works with the 21 city councilpersons of the city of Cleveland to disseminate information and provide yet another marketing outlet for NHSGC programs and services. NHSGC advertises in various local community newspapers, newsletters and local websites to further our programs and services' visibility.

Finally, NHSGC coordinates news events and editorials with the local news media including The Plain Dealer, Crain's Cleveland Business, The Free Times, The Sun News and local television stations which creates homeowner awareness of the programs and offers of NHSGC.

STATEWIDE EFFORTS

NHSGC continues to play a leadership role in the Ohio Home Rescue Fund of NeighborWorks® Ohio Coalition includes 12 organizations across the state of Ohio. NHSGC is the administrator of $4.6 million of mortgage assistance funds (rescue funds), implementing, assisting and providing direction to agencies across the state. Strategically placed throughout Ohio, twelve nonprofit organizations have been collaborating independently with public and private funders, lenders and non-profit practitioners to develop and implement local strategies to reduce the incidence of foreclosure for the past ten years.

In 2005, all 11 of the NeighborWorks® organizations in Ohio formed a statewide coalition to share best practices, align efforts and leverage their strategic partnerships to achieve a common goal of reducing foreclosures among low- and moderate-income families across Ohio. These organizations invited COAD to participate so as to have complete statewide coverage.

The Ohio Foreclosure Prevention Initiative organizations began marketing the program through the following:

- Public service announcements
- Billboard advertising
- Public postering/tear-offs
- Large distribution literature drops
- Community and grassroots meetings
- Special events
- Community Workshops

- Mailings
- Collaborations with other partners (lending, insurance, realtors/realtists, DJFS)
- Distribution of information by elected officials

The National Ad Council Campaign promoting the Homeownership Preservation Foundation's Credit Counseling Resource Center (CCRC) hotline (888.995.HOPE) and co-sponsored by NeighborWorks® America started in June 2007 throughout the nation, including Ohio. Through this campaign, each participating organization in Ohio has the ability to locally brand collateral material for the campaign in Ohio.

Also, the State of Ohio's initiated the Save the Dream hotline, 888.404.4674. This number, though instituted across the State of Ohio, is a major means of connecting homeowners to over 41 agencies' foreclosure prevention programs and services.

The success of this program is measured in many different ways. The total number of clients counseled in Ohio through the Homeownership Preservation Foundation's CCRC and the Ohio Foreclosure Prevention Initiative organizations in 2006-07 is 3,972 residents of Ohio. This number is represented by the Ohio organizations counseling 1,022 residents. For the calendar year of 2007 28,235 calls were made to the hotline from Ohio, making Ohio the third greatest user of the hotline, behind California and Florida.

As an example, the distribution of Office of Housing and Community Partnership's (Ohio Department of Development) portion of the Ohio Home Rescue funds for the year ending June 30, 2008, from the program's inception will be $1.5 million, $700,000 in year 1, $800,000 in year 2 and an anticipated $1,000,000 in year 3. Actual numbers indicate an increase in demand for funds as the program progressed.

Other successful measures in calendar year 2007 for the Ohio coalition:

Number of Families Receiving Counseling	2,810
Number of Foreclosures Avoided	1,073
Number of Rescue Funds/Applicants Committed	395

An ancillary success of this program has been the recognition of this crisis on the local, regional, state and national levels. The Ohio Foreclosure Prevention Initiative organizations' efforts have been highlighted in numerous media outlets including local and national publications/ newspapers, local and national broadcast media, as well as federal congressional recognition.

Major Deliverables for 2006-07 included:

1. Continued to provide a scaleable foreclosure prevention program in key markets and across the state of Ohio in order to increase borrower contact rates with lenders and improve the success of loan workouts.
2. Provided 24 hour, 7 days a week, telephone counseling and triage to 3,972 distressed borrowers.

3. Assisted 1,022 families with coordinated on the ground, face-to-face foreclosure prevention counseling services through the NeighborWorks® network and other nonprofit partners.
4. Continued a dual local and statewide public relations campaign to reach at-risk borrowers. Integrate National Ad Council campaign with Ohio efforts.
5. Provided access to national training opportunities through NeighborWorks® America's nationally recognized training institutes.
6. Continued to provide additional statewide Ohio Home Rescue Fund financing to assist up to 250 distressed borrowers in order to help them become current with their mortgage obligations and avoid foreclosure Applied and secured for additional funding to provide those that are not eligible for OHCP awarded program due to income limits.
7. Promote/document the successful, replicable statewide model that the Ohio Foreclosure Prevention Initiative instituted with the support by OHCP, throughout the NeighborWorks® America national network (NeighborWorks® America has affiliated organizations in every state of the nation including Puerto Rico).

Year 2 challenges continued to be: areas of density of potential clients of the Ohio Home Rescue Funds (distribution in urban areas, where the crisis is more prevalent gave the ability to access more clients then our rural counterparts); varying levels of government support in marketing/outreach efforts (various areas embraced the campaign, while others were not as warm due to the start up nature of the collaborative/or the urgency of the foreclosure crisis); timing of loan processing is contingent on client preparation and submission of needed documents after initial application is made (this has delayed the origination of loans for some borrowers); and, finally the saturation of "help" from for profit organizations and a barrage of scams to "cure" the foreclosure crisis.

The NeighborWorks® Ohio Foreclosure Prevention Initiative includes the East Akron Neighborhood Development Corporation, Neighborhood Conservation Services of Barberton, The HomeOwnership Center of Greater Cincinnati, Neighborhood Housing Services of Greater Cleveland, St. Mary Development Corporation in Dayton, Neighborhood Housing Services of Toledo, Neighborhood Housing Services of Hamilton, Neighborhood Development Services in Ravenna, Neighborhood Housing Partnership of Greater Springfield, Columbus Housing Partnership, Rural Opportunities, Inc. of Ohio and the Corporation for Ohio Appalachian Development.

Summary of Ohio Home Rescue Fund Program

Office of Housing and Community Partnership

Terms:

- $3,000 or 3 months of mortgage/interest/taxes – whichever is less
- 0%, 3 year, deferred, forgivable second mortgage
- Must be recorded

Income Qualifications:

- 65% or below area median income (AMI)
- Window of qualification – previous 365 days of income at application

Other Qualifications:
- Documentable trigger event
- Budget wherewithal to maintain home once "rescued"
- Must agree to post-rescue counseling
- Other documents, including hardship letter needed

Ohio Housing Finance Agency

(Follow same processing, predatory screen, etc. as OHCP with noted exceptions below)

Terms:
- $3,000 or 3 months of mortgage/interest/taxes – whichever is less or if the mortgage/interest/taxes is more than $1,000 a month - $5,000 or 3 months of mortgage/interest/taxes – whichever is less
- 0%, deferred, due on sale or transfer second mortgage
- Must be recorded
- Must me assigned to OHFA

Income Qualifications:
- 65% to 115% area median income (AMI)
- Exceptions:
  - Up to 140% AMI in HUD target areas
  - No income limit if a first mortgage was obtained through OHFA first time homebuyer program
  - Window of qualification – previous 365 days of income at application

Other Qualifications:
- Documentable trigger event
- Budget wherewithal to maintain home once "rescued"
- Must agree to post-rescue counseling
- Other documents, including hardship letter needed

Additionally, NHSGC was honored to represent various stakeholders while participating on Governor Strickland's Ohio Foreclosure Prevention Taskforce. This allowed NHSGC to have an impact on statewide solutions, and to also develop relationships to further our breadth and reach to underserved residents.

NATIONWIDE EFFORTS

From a national perspective, NHSGC is part of the NeighborWorks® network, a grantee of the NeighborWorks® Center for Foreclosure Solutions, a participant and branded organization in the

National Ad Council campaign, as well as having a position on the National NeighborWorks® Association board. NHSGC also provides its' national House of Representatives and Senators with updates and overviews that are shared on a district level for constituent services. We have also testified to the effectiveness of counseling and the desire of GSE reform that re-evaluates the exclusion of mandatory counseling in the GSE products.

Center for Foreclosure Solutions - Ohio Foreclosure Prevention Efforts

NeighborWorks® America has established the NeighborWorks® Center for Foreclosure Solutions, in partnership with the private sector; to preserve homeownership by NeighborWorks® coordinated foreclosure intervention strategies in communities nationwide. NeighborWorks® America is targeting foreclosure hotspots-- those communities experiencing significant and rapid increases in delinquencies and foreclosures.

In Ohio, 10 NeighborWorks® organizations including the NHSGC collaborating with lenders, state and local government, other partners, with support from NeighborWorks® America, initiated a statewide foreclosure prevention effort to address rising foreclosures across the state. In just the first three months of the Ohio program, 584 delinquent borrowers were counseled.

In order to address foreclosures more broadly, through a partnership with the Homeownership Preservation Foundation, NeighborWorks® America has promoted a national hotline to assist homeowners in distress, helping them contact their mortgage servicers and providing them with referrals to local NeighborWorks® organizations for face-to-face counseling, rescue funds and help navigating local resources. For example, Lorraine from Ravenna, Ohio received a $2,100 loan from her local NeighborWorks® organization that allowed her to set up new mortgage payments with her lender. Lorraine is also currently enrolled in budget counseling.

To assist homeowners in distress across the country, NeighborWorks®, in cooperation with the National Ad Council, has embarked on a public awareness campaign for the toll-free hotline. We know that if we can educate homeowners in financial distress, we can help many avert foreclosure. The Ad Council campaign is being financed, almost entirely, by private sector funds from NeighborWorks® partners. In addition to the national campaign, NeighborWorks® is supporting the local implementation of foreclosure prevention strategies to ensure greater attention is focused on select hotspots. NeighborWorks® America is also conducting in-depth industry research and training foreclosure counselors around the nation. Through these training courses, NeighborWorks® America is creating a national standard for foreclosure counseling and developing best practices for this growing industry. Our research projects are aimed at better understanding the complexities surrounding foreclosures and developing an early warning system to predict future foreclosure hotspots.

After its kickoff on April 11, the Ohio campaign sponsored by NeighborWorks® America and the Homeownership Preservation Foundation gained momentum in May, June and July.

Total Ohio Calls to 888-995-HOPE hotline

21,713 total calls since January 1, 2008
5,963 total counseling sessions completed

Loan Status at time of first call (through May, 2008):

Less than 30 days late:	18%
30-60 days late:	22%
61-120 days late:	23%
Over 120 days late:	29%

Remainder:	
Sale Pending	3%
Bankruptcy	1%
In Workout Plan	2%
Unknown	3%

NeighborWorks America was named in the FY 2008 Consolidated Appropriations Act to administer the National Foreclosure Mitigation Counseling program. The legislation requires that NeighborWorks America grant at least $167,800,000 to qualifying organizations that provide mortgage foreclosure mitigation assistance primarily in states and areas with high rates of defaults and foreclosures primarily in the subprime housing market. These funds are targeted to provide foreclosure mitigation counseling to help eliminate the default and foreclosure of mortgages of owner-occupied single-family homes that are at risk of foreclosure. NeighborWorks America received grant requests totaling nearly $350 million, demonstrating a very high demand for resources to support foreclosure counseling services.

On February 26, 2007, NeighborWorks America announced National Foreclosure Mitigation Counseling program grants totaling $130,438,408 to 130 organizations (including HUD-approved housing counseling intermediaries, State Housing Finance Agencies, and NeighborWorks organizations.)

Summary of National Foreclosure Mitigation Counseling Program Applications				
	Number of Applicants	**Number Awarded Funds**	**Dollar Amount requested (rounded)**	**Dollar Amount Awarded (rounded)**
State Housing Finance Agencies	36	32	$70.0 million	$38.7 million
HUD-Approved Housing Counseling Intermediaries	17	16	$254.1 million	$80.3 million
NeighborWorks Organizations	90	82	$23.8 million	$11.4 million
Totals	**143**	**130**	**$348 million**	**$130.4 million**

Up to $5 million in National Foreclosure Mitigation Counseling funds is being used to build the capacity of mortgage foreclosure and default mitigation counseling agencies.

It is anticipated that the awarding more than 3,000 certificates for foreclosure prevention counseling training through the National Foreclosure Mitigation Counseling program. More than 475 people have been trained already this calendar year. This training builds on NeighborWorks America's existing training programs, which issued more than 12,000 training certificates to community development professionals in FY 2007.

Nationally, NHSGC has been quoted or appeared in national publications such as The Wall Street Journal, the Christian Science Monitor, USA Today, CNNMoney, and The Economist in discussing our efforts in foreclosure prevention, solutions and adaptations.

Describe Experience Working with Borrowers to Prevent Foreclosure

NHSGC's "footprint" for foreclosure prevention and intervention is a four county area including Cuyahoga, Lorain, Erie and Huron counties. The majority of borrowers that NHSGC counsels have experienced a life crisis, or trigger event including; loss/under employment, uninsured medical costs, loss of spouse (death/divorce). Though a majority of NHSGC's clients are from designated cities, NHSGC is seeing an increase of suburban homeowners seeking assistance. In counseling sessions, these homeowners have stated that they have exhausted savings, retirement and cash advances and have no where else to turn. This is having a devastating effect on the future of their families, which is in part due to their reluctance either to the knowledge that there are resources available to them early on, or that these programs and services are only aimed at low to very low income individuals, or finally, as in the case across the board, that there is a pride barrier that inhibits clients to seek help until all resources have been drained.

Neighborhood Housing Services of Greater Cleveland's foreclosure prevention housing counseling program provides efficient and quality individual and group counseling and is designed to optimize both the homeowner's and counselor's time to achieve a positive outcome as quickly as possible. Our housing counselors are certified and trained in providing foreclosure prevention counseling through the NeighborWorks America Training Institute. The Institute is a nationally recognized leader in providing training, certification and resources to community development professionals. Their training and curriculum is considered the highest standard of certification available for housing counseling professionals and is recognized by HUD.

At NHSGC we structure our foreclosure prevention housing counseling in the following manner. For those seeking our assistance we offer a foreclosure prevention orientation twice a week. One session is held at 12pm and the other at 6pm in the evening. At this one-hour group orientation homeowners are given an overview of the services provided by NHSGC as well as an overview of the foreclosure process. This includes defining terms for people such as foreclosure, understanding timelines in the foreclosure process and learning about loss mitigation options. The attendees do receive handouts on this process. In addition, homeowners are asked to bring specific documents to the orientation such as proof of income, bills, loan statements, etc. so a file can be started at this orientation. This helps the counselor prepare for the individual counseling session.

The group intake orientation benefits the homeowner through the opportunity to ask questions about foreclosure and options as well knowing what the counselors expect of them as well as what the homeowners can expect from the counselors. An emphasis is placed on the homeowner being very involved in this process. It also helps the counselors determine if a homeowner might be better assisted at another agency such as Legal Aid and an immediate referral can happen prior to any time spent on counseling. In addition this process helps reduce the number of no-shows at individual counseling appointments because homeowners that are serious about saving their homes are the ones following through with the process.

Once a homeowner attends the orientation and a file is started a counselor will call the homeowner to schedule an individual counseling session. During this session, the counselor will review with the homeowner their budget, including looking at copies of their bills and bank statements, as well as making sure the authorization letter is signed by the homeowner giving the counselor permission to speak with the lender or servicer. The counselor will also review their credit report. If a surplus of funds are available after reviewing the budget (meaning the homeowner can now afford the loan) the counselor will contact the lender or servicer to see if a workout is possible either through a loan modification or forbearance or repayment agreement.

The counselor will also know at this time if the homeowner has any funds saved to help contribute to a down payment for a workout. If no surplus is available the counselor will both go through their budget and determine where expenses can be cut or advise the homeowner to seek additional income through other resources. If neither of these is an option and the homeowner can truly not afford the home any longer, the counselor will advise the homeowner to try and sell the property or seek a deed-in-lieu of foreclosure from the lender. Either way the counselor is up front with the homeowner to start saving money for a security deposit and rent if homeownership is no longer an option. The counselor also will give them resources for affordable rental housing in the area.

If a lender agrees to a workout with a homeowner the counselor will then determine if home rescue fund assistance is needed to ensure the workout is completed. If the homeowner qualifies for this assistance either through the Ohio Home Rescue Fund Program or the Cuyahoga County Rescue Fund Program the appropriate applications will be filled out and given to the loan officer for review. If the Loan Committee approves the application for funds a check will be cut, loan papers filled out with the homeowner and the check will be sent with copies of the agreement if necessary. Many times homeowners simply need assistance in bringing their mortgage current to get out of the cycle of paying late fees.

Beginning the following month after receiving assistance the counselor will follow-up with the homeowner for the next 3 months to make sure they are making their payments and staying within their budget. At this time a homeowner might also be place in our Refinance Class if the homeowner needs to refinance within the next year. This program helps homeowners who are in unsustainable loan terms refinance into better sustainable terms with our lender partners.

Over the past several months the housing counselors have been able to develop better relationships with lenders and mortgage servicing agencies. Because of this they have seen better

responses and quicker turn around times for requested information from most lenders and servicers. This in the end brings about a quicker positive resolution for both the lenders and homeowners. As stated earlier NHSGC has been able to assist 87 households since January 2007 achieve a positive outcome with their lender through mortgage workouts.

NHSGC utilizes the database program NStep to manage counseling sessions and information on our clients. We have enclosed a sample intake screen, group counseling session or education screen, individual counseling screen, and our HUD 9902 counseling results screen to demonstrate our capability of managing and tracking not only our clients' progress but the results and outcomes of our programs as well.

Obstacles or Challenges to Prevent Foreclosures

Obstacles and challenges are presented on the individual and institutional levels.

Individually
Borrowers are STILL waiting too long to contact a HUD approved housing counselor. At times, a "contact the lender" campaign has been in place, but from NHSGC's experience, a preference to contact a HUD approved housing counseling agency, to act as an intermediary, is much more preferred to contact a lender, especially if that lender was dubious, at best, in originating/underwriting/servicing the loan. Nothing is worse than doing nothing.

Lack of homeownership education, which in NHSGC's opinion is the greatest tool for foreclosure prevention, compounds the time of contact and contributes to the borrower's lack of knowledge of the true loan type, terms, resets, etc. of the current mortgage.

The increase of for-profit foreclosure prevention companies; preying on those that most can not afford to be scammed again. These unregulated, not unbiased, agencies are feeding on the misery or our borrowers, providing false hope for a price they can not afford. When the borrower actually has a small savings, these agencies are intervening on the borrower's behalf, only to the point of exhausting that savings, which could have been used for a successful workout or outcome with a HUD approved housing counseling agency.

Institutional
Lender/servicers are STILL reluctant to communicate with, inconsistent with their abilities, training, and knowledge of loss mitigation. It has been experienced many times, that the same case, taken to different loss mitigation specialists, will result in a different outcome. That is, of course, if the counselor is able to communicate with the lender/servicer/loss mitigation specialist.

Timeliness
There does not seem to be any urgency on the lender/servicer's behalf to resolve the foreclosure cases in a timely and/or efficient manner. NHSGC counselors continue to experience the uselessness of faxing any documentation and having an expectation that they will not have to fax the same information at least one more time to the lender/servicer. This is a critical step in establishing NHSGC as a borrower approved intermediary, therefore delaying the ability to reach resolution.

Displaced Homeowners/Occupants
NHSGC continues to see displaced homeowners or tenants of properties of which have been foreclosed. As NHSGC attempts to provide a soft landing for those who have lost their homes, the issue to affordable housing for displaced homeowners and tenants remains under the radar screen of many in the policy realm of this crisis. Many tenants are not aware of the foreclosure proceedings until they receive an order to vacate, which normally gives the tenant 3 days to vacate the property before the county sheriff removes their ownings from the foreclosed property.

What Federal Legislative or Regulatory Reforms are Needed

1. *Enforce existing predatory-lending laws, penalize egregious lenders and provide targeted help to victimized consumers.*
   Aggressively prosecute lenders, brokers, appraisers, and other parties for fraud and/or abusive lending under existing laws. Lenders who have been involved in abusive lending tactics should be prosecuted and fined heavily. Any fines or settlements from these cases should be directed to help borrowers who have received unaffordable mortgages, support for nonprofits to assist with loan modifications, foreclosure-prevention counseling, legal assistance, and rescue funds for these victimized borrowers.

2. *Reform FHA and expand its refinancing offerings.*
   The Federal Housing Administration (FHA) was marginalized over the last decade as subprime lending took over a huge piece of the market. FHA could offer more on the refinance side, as President Bush has proposed, by expanding its role in providing affordable mortgages to help troubled borrowers refinance onerous subprime loans.

3. *Provide funding to plan and implement strategies to reuse foreclosed and vacant properties.*
   Experts are predicting up to three-quarter million vacant properties across the nation due to foreclosures in the next few years. The negative impact of these vacancies on communities will be potentially devastating in terms of the lost market value and tax revenues unless quick action is taken. Funding is critical to begin this planning and testing appropriate reuse strategies, which will vary based on community input and needs. NHSGC and the National NeighborWorks Association strongly support the Chairwoman's "Neighborhood Stabilization Act of 2008", H.R. 5818, and are working hard to ensure its inclusion in any national housing package.

4. *License all mortgage brokers and improve consumer disclosures.*
   Given that the vast majority of home mortgages are now originated by mortgage brokers, and the inherent conflict of interest between brokers and borrowers, a national licensing system for mortgage brokers is desperately needed. J. Michael Collins, the principal researcher for PolicyLab Consulting Group, suggests that "individual brokers be licensed and their identity number needs to be on every loan for at least seven years (the average life of a loan). That way, they can be held accountable for seven years for any misrepresentation in the loan, not unlike tax preparers or other professionals." In addition, consumer disclosures that are

provided in loan applications and before closings need to be in simpler and more transparent language.

5. *Expand federal banking oversight to all lenders, including non-bank independent mortgage companies and extend CRA reviews to all lenders.*
   To a great extent, non-regulated lenders manufactured this foreclosure crisis by originating loans with extraordinarily loose underwriting standards. Federal banking regulators need to step up and provide oversight of these lenders.

6. *Increase oversight of the secondary mortgage markets and the ratings agencies.*
   The mistakes of the mortgage securitization industry have created havoc in world financial markets and also cry out for greater oversight and regulation.

7. *Develop suitability requirements for the mortgage lending industry.*
   Establishing a suitability standard would require brokers and lenders to perform a more thorough evaluation of a borrower's finances and his or her ability to repay a mortgage. They would presumably think twice about putting borrowers into inappropriate and unaffordable mortgages if they knew those borrowers could sue for damages.

8. *Require that all borrowers be qualified based on their ability to pay the fully indexed, fully amortizing payment on any mortgage.*
   Many problematic types of mortgages in the current foreclosure crisis (such as interest-only loans, Option ARMs and 2/28s) had low initial "teaser rates." Risky borrowers were approved for these mortgages based on the low initial payments rather than on the basis of the potentially higher payment when the mortgages were reset.

9. *Require escrow accounts for taxes and insurance on subprime mortgages.*
   Many subprime borrowers got in trouble because they were qualified for risky loans without including the additional monthly cost of property insurance and taxes. Borrowers with low credit scores and high combined loan-to-value (CLTV) ratios (above 80% CLTV) should be required to have escrow accounts for taxes and insurance.

10. *Invest in early intervention of foreclosures.*
    Timely financial advice, credit counseling and assistance with loan modifications can make a huge impact in preventing foreclosures. The cost of this early intervention work is a small fraction of the cost of the negative consequences of foreclosures — for lenders, local economies, and neighboring homeowners. According to a report by the Joint Economic Committee of U.S. Congress, "Foreclosures are costly — up to $80,000 for all stakeholders combined… [while] estimates suggest that foreclosure prevention costs approximately $3,300 per household." In short, it pays to prevent foreclosures.

11. *Focus more resources on preparing future homeowners.*
    Funding should be dramatically increased to community groups to expand homeownership counseling and educational classes to encourage families to reduce their debts, increase their savings and become stronger financially ***before*** they become homeowners.

NHSGC is working hard along with our other local community development corporations and in collaboration with state and national organizations to manage rising foreclosures and to sustain our local communities. I know that this Committee has aggressively pursued actions to improve affordable housing opportunities for all Americans. We hope that you will continue to tackle the issue of sustainability of homeownership for underserved Americans as well, and be cognizant of the collateral damage of this foreclosure crisis on our counties, cities, communities and neighborhoods.

Neighborhood Housing Services of Greater Cleveland appreciates the opportunity to testify on this important topic, and I would be happy to answer any questions you may have.

Testimony to Subcommittee on Housing and Community Opportunity

Field Hearing in Cleveland, Ohio
June 16, 2008

Chris Warren
Chief of Regional Development
City of Cleveland

Good morning.

Thank you Congresswoman Waters and members of the Subcommittee for bringing this important hearing to Cleveland. Your presence is more than welcomed, it is desperately needed as Cleveland, Cuyahoga County, and urban centers throughout Ohio try to recover from the devastation caused by unchecked predatory lending practices. This has been a murderous unnatural disaster, one that has wiped out decades of patient community development progress, threatened our futures, and left thousands of homeowners and renters in the lurch. Call it Hurricane Greed.

I'd also like to thank and acknowledge the leadership on this issue brought to bear by our Congressional representatives, notably Congresswoman Stephanie Tubbs Jones, Congressman Dennis Kucinich, Senator Sherrod Brown, and Senator George Voinovich.

I work as the Chief of Regional Development for the City of Cleveland. In that role I oversee six city departments and advise Mayor Frank Jackson on issues that impact the Northeast Ohio region.

No issue has been as confounding as the sub-prime mortgage crisis. Consider the wreckage in Cleveland alone:

- 17,600 foreclosures of 1-2 family homes since 2002; about 15,000 in 2006 and 2007; and, about 80% are linked to high-cost sub-prime mortgages;

- 3,500 certified tax delinquent residential properties (as of January 2008); this is a five-fold increase since 2005.

- 9,500 vacant residential structures as of December 2007; tripled since 2005.

- In 2007, the city spent $12.5 million to demolish and board up unsafe 1-4 family structures. The city spent another $2 million last year cutting and clearing vacant lots. Similar amounts, all from the city's general operating funds, have been budgeted for 2008.

- The Cleveland Fire Department responded to more than 200 fires at vacant homes in 2007, a 250% increase above 2006 incidents. As reported in the Plain Dealer yesterday, Cleveland Fire Chief Paul Stubbs attributes the rise to foreclosures.

- Cleveland Tenants Organization reports there has been a sharp increase in evictions, not because people are not current in their rent obligations, but because their landlords have defaulted on their mortgage loans. Not surprisingly, homeless shelters have reported dramatic increases in demand, especially from families with children and the elderly.

- Housing values have fallen so far throughout Ohio that cities are bracing for the first declines in property tax valuations and the consequent loss of sorely needed funds for public improvements, basic city services, and critical infrastructure investments.

And, the devastation in our region has not stopped at the city limits. Double the foreclosure, abandonment, and public service cost figures cited above for Cleveland and you will have a fair idea of the impacts on Cuyahoga County.

Who are the plunderers?

It's a long list, but the main culprits in Cleveland are:

- The subprime lenders (Argent, Countrywide, etc.) and brokers who substantiated underwater loans with bogus appraisals and falsified financial statements while maximizing their fee income through careless assembly line underwriting practices.

- The real estate scam artists who bought dozens of low valued properties with subprime loans, converted them to high cost rentals, put little money into repairs. Once the resets came, these operators were gone and abandonment came swiftly.

- Wall Street. We now know that tens of thousands of the mortgages originated in Cleveland since 2003 were snapped up by some very large financial institutions, all of whom trafficked in high risk mortgage-backed securities. In fact, for firms like Deutsche Bank, Merrill Lynch, Wells Fargo, Goldman Sachs, and others, it appears the only home mortgage business they did in Cleveland in recent years involved the acquisition of sub-prime loans.

  The default rate on these loans backed by these titans of finance? Better than 60 percent! These firms could have known and should have known that the mortgages they purchased were doomed from day one.

What can we do?

Drawing on the work of a Cleveland's Abandoned Property Task Force, here's a summary of possible remedies, first for borrowers and tenants who have been victimized and secondly, for communities, like Cleveland, who are now contending with wholesale blight, abandonment, and decay of historic proportions.

For People

- Place a moratorium on the foreclosure of occupied properties that would give defendants the chance to utilize court-supervised mediation in an effort to restructure their loans..

- Declare foreclosure unenforceable where the assignment of the mortgage was never filed for record.

- Where the mortgage debt on a property exceeded the County appraised value at the time of the transaction, impose a presumption that the mortgage transaction was unconscionable and unenforceable, shifting the burden to the lender-plaintiff to defend the valuation used to underwrite the mortgage.

- Ask federal, state, and local governments to use all available means to encourage lender loan workouts and loan restructuring commitments and to coordinate commitments with local mortgage and financial counseling efforts.

- As is called for in a number of bills now before Congress, increase the amount of FHA mortgage insurance available for refinancing restructured subprime loans and require lenders to recast such loans at principle amounts consistent with true property values.

- Institute strict policing by regulatory agencies of mortgage brokers and appraisers.

- Aggressively prosecute fraud through actions by the Justice Department.

- Maintain high levels of federal funding of financial literacy and counseling programs.

- Require secondary market investors to exercise greater due diligence before purchasing unsafe loans.

- Maintain the fundamental balance called for in the Community Reinvestment Act – that is access to fair credit consistent with safe and sound lending practices. Use CRA to require depository banks to recapture mortgage markets abandoned to sub-prime lenders.

For Communities

- *Hold Wall Street Accountable*: In January, the City of Cleveland filed a lawsuit in Cuyahoga County Common Pleas Court to recover damages in connection with the role of 21 Wall Street institutions in the sub-prime foreclosure crisis. The City's complaint, based on Ohio's public nuisance statute, asserts the

defendants could have and should have foreseen massive numbers of foreclosures, and the cataclysmic impact those foreclosures would have on the city, when they purchased thousands of obviously unsafe and unsound sub-prime loans from 2003 through 2007. The 21 defendants have filed more than 16,000 foreclosure actions in Cuyahoga County since 2003.

- *Emergency Federal Relief*: Cleveland's Mayor Frank Jackson has called on the President and Congress to authorize a five-year multi-billion dollar program to help cities, like Cleveland, deal with thousands of unsafe abandoned properties, responsibly manage the rebuilding of neighborhoods, and assist families facing interest rate resets and the likely loss of their homes. For Cuyahoga County, including Cleveland, we peg the minimum cost for recovery at $65 million per year for five years.

Congresswoman Waters, your leadership in introducing and securing passage in the House of HR 5818 (the Neighborhood Stabilization Act of 2008) is a huge step in the right direction.

- *Reclaiming Foreclosed Properties*: In cooperation with community-based development corporations, national and local foundations, local banks, and the State of Ohio we have launched the "Reclaiming Foreclosed Properties" program.

Led by Neighborhood Progress Inc., Cleveland Housing Network, and community development corporations in each of the six neighborhoods, the initiative will target six city neighborhoods for intensive pre-foreclosure workouts and counseling, systematic "property banking" of tax-foreclosed and bank-foreclosed properties, clearance of all vacant properties that are unsafe and beyond repair, the redevelopment of vacant homes and lands on terms affordable for low and moderate income homebuyers, and the demolition of condemned properties. The effort is assisted by pledges by some lenders to donate REO properties to the City or to nonprofits with the condition that unsalvageable properties be demolished at the expense of the lender prior to transfer.

- *Countywide Land Reutilization Authority*: Cuyahoga County Treasurer Jim Rokakis is leading a campaign to secure state legislation that would make it possible to establish and finance a countywide entity capable of holding, maintaining, and redeveloping abandoned and foreclosed properties.

The "Reclaiming Foreclosed Properties Program" and the County Land Reutilization Program are just the kinds of self-help initiatives needed to deal with the effects of Hurricane Greed.

Last March, Cleveland City Council hosted a half-day forum on the foreclosure crisis for the benefit of senior policy advisors to each of the presidential candidates. One participant summed up our situation well. She said, "With the help of the federal government, including the regulatory agencies, we might recover in 5 to 10 years. Without their help, it will take a century."

Thank you.

Tina Skeldon Wozniak
President, Board of Lucas County Commissioners

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Testimony before the House Subcommittee on Housing and Community Opportunity
Cleveland, Ohio - June 16, 2008

Good morning. I would like to thank Chairwoman Waters and the members of the Subcommittee on Housing and Community Opportunity for coming to Ohio for this very important hearing. I would also like to thank my own Representative, Congresswoman Marcy Kaptur, for arranging this opportunity.

My name is Tina Skeldon Wozniak and I am the President of the Board of Lucas County Commissioners. I am here today on behalf of the 450,000 residents of my county, just about 100 miles from here. I am also here as a professional social worker, trained to recognize the deep worry in the faces of too many of our residents.

I'd like to be able to tell you that our problems are unique, but the truth is that Lucas County and Northwest Ohio are just like every other community in America that is dealing with a foreclosure crisis.

You've heard countless times the story of a family member who lost their job and a family that subsequently lost their home. You know too well the pain that unscrupulous lenders have caused not just for homeowners, but for whole neighborhoods too. You've seen this struggle on the faces of the people who have come before this Subcommittee, whether in our Nation's capital or the main streets of America.

This problem is more than just the statistics, reports, and data that is gathered in the field. But to fully grasp the extent of this problem, the data is where we must begin.

Since 2002, foreclosure filings in Lucas County have increased by over 50% and in the last five years, over 18,000 homes have been a part of a

foreclosure filing. That's nearly 10% of the total housing stock in Lucas County and a dramatic figure for any community to deal with.

And single family homeowners are not the only victims. According to RealtyTrac and information from our county Auditor, almost 5% of all rental units in Lucas County have been involved in a foreclosure action. This proves that you don't have to own your own housing to be hurt by this crisis.

A recent study by the policy group ReBuild Ohio determined that vacant and abandoned properties in Toledo, Lucas County's largest city, cost taxpayers at least $3.8 million in 2006. But it's not just our cities like Toledo. The foreclosure crisis in Lucas County has hurt almost every community in our area, especially as declining home values decrease the revenue available for necessary services.

Yes, the data is dramatic, but we know that the real story of this crisis is in the faces of those whose lives have been disrupted and who have lost the chance at the American Dream. It is both a story of the individual and their family.

But as tragic as those stories are, what's left after a family loses their home is not just a personal crisis; it's a community crisis too.

Those homeowners who didn't take any risks, who didn't fall victim to the slickest sales pitches or unbelievable claims, and who behaved appropriately, are now watching their homes fall in value too.

They are looking across the street to the yard which hasn't been mowed all summer. They are worried about what pests might be attracted by the vacant buildings. They are wondering why their city is no longer able to provide the same tree-trimming, street-cleaning, and trash-collection that they have in the past.

When a foreclosure happens in Lucas County, instead of just a family in crisis, a household in crisis, a bank in crisis – that foreclosure leads to a block, a neighborhood, a city, a state, and a nation in crisis.

Crime rates that have been dropping start to go back up. Middle-class families move out of their former neighborhoods, contributing to greater and

greater urban sprawl. The falling value of our homes keeps families from making needed investments and contributing to starved local economies.

In Lucas County, trust me, we've seen it all. Before the foreclosure crisis became a daily news item for the media, we started working. In 2006, in partnership with city, county, and state leaders, as well as non-profits like United Way, the Toledo Fair Housing Center, and Advocates for Basic Legal Equality, we formed the Lucas County Save Our Homes Task Force.

This innovative group developed an important mailing that is sent to families at the start of their foreclosure, so they can connect immediately with the many resources available in the community. Almost 5,000 have already been sent out.

Working with our Department of Job and Family Services, we were the first county in Ohio to devote over $400,000 in federal TANF dollars toward low-income foreclosure assistance.

The Judges of our Common Pleas Court has responded too, setting aside resources to create a Foreclosure Magistrate and develop an expedited mediation process for homeowners and lenders.

Elected officials and non-profit leaders from across the county, including myself, went door-to-door in the hardest hit neighborhoods and talked to residents about upcoming sessions where homeowners could work directly with lenders.

With the limited resources that our county government could provide, we've done a great job reaching out – but we know it's not enough. We've been smart about our outreach, we've tried to target our resources responsibly, but we've just nibbled around the edges.

At the end of the day, families keep losing their homes and we haven't solved the problem.

I wish that I were here today with a new idea or a new solution that could make a real difference. I am happy that this Subcommittee does have the right ideas and does know the best solutions.

Ultimately, Lucas County families need the power to bring the lenders to the table and re-negotiate these loans. Our homeowners need the opportunity for a fresh start with mortgage terms that they can afford.

This is not a bailout; it's an investment in our future, and it's clear that only the federal government has the authority, the clout, and the resources to make it happen.

There are two pieces of legislation currently being considered by the Congress that I believe will bring a tremendous amount of relief to homeowners in Lucas County.

Having listened closely to the conversation regarding H.R. 5830, the FHA Housing and Homeowner Retention Act of 2008, it's clear that key provisions will give at-risk homeowners the tools needed to get out from under a bad mortgage and save their home.

As a local government official, I am also heartened to see H.R. 5818, the Neighborhood Stabilization Act of 2008, introduced by this Subcommittee.

Together, these two bills address the twin grievances that communities like Lucas County are facing in the foreclosure crisis – too many homeowners who can't refinance into a more stable mortgage, and too few resources at the city and county level to deal with the growing impact of foreclosed homes on our neighborhoods and the social fabric of the community.

As I've tried to make clear today, Lucas County residents aren't very different from any other Americans dealing with this foreclosure crisis. Our people are not afraid of hard work, and not afraid to do their part to get out of a bad situation. We do not need any special treatment.

What we need, both at the level of the homeowner and the level of local government, is a readiness by our leaders in Congress to take action and make a difference.

A family who is on the verge of losing their home in Toledo, Houston, or Los Angeles did not get into that situation by themselves. This problem wasn't created by bad decisions at the local level – and local efforts can only do so much.

More than anything else, we are looking to you for national solutions to this devastating national problem.

Thank you for this opportunity this morning.

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Kimberly A. Zurz
Director

Testimony of Kimberly A. Zurz
Director, Ohio Department of Commerce
Chair, Ohio Foreclosure Prevention Task Force

U.S. House of Representatives Committee on Financial Services
Subcommittee on Housing and Community Opportunity
Hearing on Foreclosure Problems and Solutions: Federal, State, and Local Efforts to Address the Foreclosure Crisis in Ohio
June 16, 2008

Chairwoman Waters, members of the Committee, Ohio Delegation, thank you for the opportunity to discuss the impact of foreclosures on the state of Ohio. The crisis of mortgage foreclosure has touched all corners of Ohio. Virtually every county recorded an increase in foreclosure filings from 2005-2008, reaching the highest level statewide in 13 years.

The skyrocketing rate of mortgage foreclosure in our state is a problem that needs innovative and aggressive solutions—solutions the state of Ohio is making in a concerted effort to help our citizens stay in their homes. These solutions are a collaborative effort crossing all branches of government and expanding into the private sector as well. Today, as I explain Ohio's crisis and our innovative efforts to combat foreclosures, I hope that I can share my perspective, and also the perspective of the other Ohio entities who continue to wage the war on foreclosure.

AN OVERVIEW OF OHIO'S FORECLOSURE CRISIS

Many people with poor credit histories, no proof of income, and little or no down payment were aggressively marketed subprime adjustable rate mortgages (ARM) with low "teaser" introductory rates. Many borrowers have not been able to afford these loans, especially as adjustable rates have reset to higher rates. At the same time the value of many properties has declined and continues to decline.

In Ohio, the foreclosure rate has increased due to several factors, including predatory lending, the economy, job losses, and other major life events that can impact family finances. Recently, the Ohio Supreme Court reported that there were 83,230 new foreclosure court filings in Ohio during 2007. That is a record high and an increase of 5 percent over 2006.

In Policy Matters Ohio's April 2008 report, it is estimated that there was one foreclosure filing for every 60 housing units in Ohio in 2007.

Additionally, The Mortgage Bankers Association (MBA) reported that in the first quarter of 2008, Ohio had 4.1 percent of all loans in foreclosure – the third highest among the states. During the fourth quarter of 2007, Ohio had 3.88 percent of all loans in foreclosure – the highest of any state.

MBA also reported that nearly 6.6 percent of all mortgages in Ohio during the first quarter of 2008 were at least 30 days late. This is an improvement from the fourth quarter of 2007 when 7.24 percent of all loans in Ohio were delinquent. MBA reported that 14,950 Ohio homeowners filed for foreclosure during the first quarter of 2008, down from the 15,480 filings in the fourth quarter of 2007.

RealtyTrac reported in April that Ohio's foreclosure rate in the first quarter of 2008 ranked eighth highest among the states. Additionally, according to RealtyTrac, Ohio's six biggest cities were among the nation's top 46 metropolitan areas in the number of foreclosures during the first quarter of 2008.

- Cleveland/Lorain/Elyria/Mentor – 18th (was 6th last quarter)
- Dayton – 31st (was 15th last quarter)
- Columbus – 32nd (was 25th last quarter)
- Akron – 34th (was 12th last quarter)
- Toledo – 37 (was 19th last quarter)
- Cincinnati – 46th (was 33rd last quarter)

In February 2008, The Conference of State Bank Supervisors (CSBS) issued a report that projected that the number of subprime and Alt-A adjustable loan resets will increase each quarter during 2008 peaking in the fourth quarter. The report projects a steady decline in 2009. Additionally in May 2008, the Core Mortgage Risk Monitor predicted that mortgage delinquencies nationwide will continue to increase over the next six to 12 months.

While these statistics are sobering, they do not speak to the human stories behind each mortgage foreclosure, nor do they speak to Ohio's uniqueness on this issue.

In the last couple years, some states began their fight against foreclosure, but Ohio has been seeing an increase in foreclosures for over a decade. Obviously, Ohio has its share of economic problems which contribute to this trend, but Ohio also saw unscrupulous lending.

I have attached statistics that show Ohio's foreclosure trend since 1994.

I ask that you keep in mind Ohio's unique and continual battle with foreclosure, and please understand that there are states, such as Ohio, where the rising number of foreclosures has been ongoing for years—not just the last couple. I hope that you do not lose sight of this as you work in Congress on formulas and legislation to address the crisis.

IMPACT OF FORECLOSURES

Foreclosures have had a devastating impact on Ohio families, neighborhoods, entire communities, and our local governments. A family coping with foreclosure faces not only the loss of their home, but also damaged credit, which may affect their opportunities to borrow money at a reasonable interest rate for years to come. Damaged credit may even restrict employment opportunities and the ability to rent. The emotional strain on individuals and families can be just as serious as the community impact and economic repercussions.

Abandoned homes in our neighborhoods become havens for squatters, vandals, thieves and drug dealers. These blighted neighborhoods lead to serious problems for those who remain in the neighborhood, as property values decline and crime increases.

The broader impact of foreclosures on a community is equally troubling. Foreclosures affect the value of surrounding properties, and may impede others from selling their own homes even though they have been faithfully making all of their mortgage payments. A community with multiple foreclosures generates less property tax revenue to support all aspects of local government, such as schools, social programs, and fire and safety services. As their tax base erodes, local governments are forced to increase policing, pay for mowing and securing vacant properties, and meet a higher demand for social services.

The average sale price of homes in Ohio continues to decrease. The Ohio Association of Realtors (OAR) reports that the average sale price in Ohio in the first quarter of 2008 was $132,005—a 7.8 percent decrease from the same period last year. Statewide sales of new and existing homes in the first quarter of 2008 are 15.3 percent lower than for the same period last year. Additionally, OAR reports the total number of sales in 2007 was 131,120—an 8.6 decrease from 143,415 in 2006.

FORECLOSURES AND VACANT AND ABANDONED PROPERTY

The impact of vacant and abandoned property varies from one locality to another and one neighborhood to another. In Ohio, vacant housing goes beyond our current crisis. Ohio communities were experiencing problems with vacant housing before the subprime loan crisis hit the market, due to loss of population, obsolete housing stock, and the relatively low cost of housing in more affluent neighborhoods.

Nonetheless, vacant and abandoned property due to foreclosure is a problem that needs tackled.

The scope of the foreclosure crisis and the number of abandoned buildings left in its wake is far beyond the capacity of local jurisdictions. While local communities are allocating resources, these efforts represent only a fraction of the funds required to rehabilitate or demolish the thousands of properties impacted.

The high level of foreclosures in many communities has resulted in a rapid increase in the number of vacant and abandoned houses, accelerating the cycle of falling values and shrinking demand. The loss of population and jobs in many Ohio communities has created weak markets that defy traditional redevelopment strategies. In these areas, local stakeholders must make an honest assessment as to whether structures and whole residential areas are appropriate for rehabilitation or need more drastic redevelopment measures. The scale and impact of the problem is on the level of a natural disaster, warranting emergency assistance from the state and federal government.

In 2007, ReBuild Ohio authorized a study which was completed this February by Community Research Partners. The study, titled "$60 Million and Counting: The cost of vacant and abandoned properties to eight Ohio cities" examined the impact of such properties in Cleveland, Columbus, Dayton, Ironton, Lima, Springfield, Toledo and Zanesville.

Their research found widespread vacancies in large and small cities and identified an estimated 15,000 vacant and abandoned buildings and approximately 10,000 vacant and abandoned lots.

The study conservatively identified approximately $64 million in local costs to the eight cities due to vacant and abandoned properties. Of these costs, $15 million were identified for municipal services, such as code enforcement, boarding, demolition, and maintenance, as well as police and fire services. In addition, $49 million was identified in lost property tax revenue that severely impacted local governments and school districts.

The study focused on the patterns of vacant and abandoned properties as well as the value of occupied homes in three neighborhoods in Cleveland and in Columbus. The study found that some data displayed expected patterns in that the assessed values and sales prices rose in areas distant from vacant properties. However, in areas that were in close proximity to the highest vacancy rates, a pattern of increased value and sales price also occurred. This is likely due to property flipping and fraudulent mortgage schemes that artificially inflated the value of properties when they were quickly sold in short periods of time.

To address vacant properties, the eight cities are utilizing various strategies. These strategies include targeted and coordinated code enforcement, overcoming legal hurdles, aggressive demolition, land banking, investments in neighborhood revitalization, and partnerships to prevent foreclosure.

While cities are trying to combat the problem, more needs to be done to assist them. Ohio needs federal as well as state action to reduce the impact of vacant and abandoned property.

OHIO'S RESPONSE

On March 7, 2007, Governor Strickland announced the creation of a task force to deal with the mounting foreclosure crisis in Ohio. The 25 member Task Force, that I chaired, brought together representatives from state and local government, the financial industry, and the non-profit sector.

Based on the Governor's directive, the mission of the Foreclosure Prevention Task Force was to provide a unified response to improve prevention methods and manage foreclosure issues in Ohio. This was to be done through outreach and education for homebuyers and those facing foreclosures, proactive intervention to help homeowners facing imminent foreclosure, and financial resources and strategies to work out distressed mortgages to keep people in their homes.

OHIO'S FORECLOSURE PREVENTION TASK FORCE

Governor Strickland charged the Task Force to create the appropriate model of foreclosure prevention, intervention, and strategies to assist distressed mortgages. Our goal was to do everything in our power as a task force to assist Ohioans so they can stay in their homes.

We held 11 meetings and heard testimony from the public, interested parties, The Federal Reserve Bank of Cleveland, The Center for Responsible Lending, Freddie Mac, Fannie Mae, Countrywide Financial, Homeownership Preservation Foundation, HUD, and Montgomery County Recorder Willis Blackshear.

At the beginning of the process, we broke into subcommittees on Community Outreach and Community Education, Housing Options, Legal, Legislative, and Responsible Lender Options, which explored options from lenders to help Ohioans through loan modifications and work out resolutions. A total of more than 20 meetings were held, and each subcommittee submitted its report and recommendations to the full Task Force.

TASK FORCE REPORT AND RECOMMENDATIONS

The Task Force Final Report, a compilation of the subcommittee's recommendations, was submitted to Governor Strickland on September 10, 2007. The Task Force's report and recommendations contain the best ideas and approaches to help Ohioans and the state's communities prevent as many additional foreclosures as possible.

The Task Force issued 27 recommendations under seven themes:

1. Encourage borrowers to get help early
2. Expand housing counseling and intervention services
3. Work with lenders and servicers to maximize alternatives to foreclosures
4. Provide options for homeowners to refinance or restructure their mortgages
5. Improve Ohio's foreclosure process
6. Strengthen protections for homeowners
7. Help communities recover from the aftermath of foreclosures

The 27 recommendations of the Foreclosure Prevention Task Force were divided among numerous parties for implementation, asking each responsible party to take action. These recommendations comprise the state of Ohio's numerous efforts and programs aimed at addressing the foreclosure crisis.

OHIO'S FORECLOSURE PREVENTION EFFORTS

Governor Ted Strickland

In March 2007, before the Foreclosure Prevention Task Force had its first meeting, Governor Strickland had a meeting with subprime servicers and began the process toward an agreement between the state of Ohio and the servicers (Task Force Recommendations #8-11). At a press conference on October 9, 2007, Governor Strickland proposed the establishment of the Compact to Help Ohioans Preserve Homeownership between subprime mortgage servicers and the state. On November 8, 2007, Governor Strickland announced that, while the response to the proposed compact was inadequate and that nothing meaningful was offered, he was open to talk with individual servicers.

After Governor Strickland found the first response from the servicers unacceptable, I met with servicers and their trade associations in December 2007 to discuss the proposed Compact. On April 7, 2008, after a year of discussions and negotiations, nine mortgage loan servicers signed the compact, giving Ohio the first such signed agreement in the nation. The six principles agreed to by the loan servicers included their willingness to:

- Engage in a substantial and large-scale loan modification effort for ARM resets and subprime mortgages.
- Identify, evaluate and make good faith attempts to contact at-risk or defaulting borrowers as soon as possible.
- Modify loans to the extent permissible within existing fiduciary, contractual or other legal obligations and in accordance with prudent mortgage lending and servicing practices.
- Create incentives for staff and foreclosure counsel to modify loans rather than foreclose.

- Report progress to the Ohio Department of Commerce.
- Enter into a non-binding agreement with the state for some defined period of time. (The agreements extend to June 30, 2009.)

The servicers who agreed to sign the Ohio Compact are: Carrington Mortgage Services, Citi, GMAC RESCAP/Homecomings Financial, HSBC Finance Corp., Litton Loan Servicing, Ocwen Financial Corp., Option One Mortgage, Saxon Mortgage Services and Select Portfolio Servicing. I encourage more servicers to join their colleagues and the state of Ohio in this good faith effort to help Ohioans stay in their homes.

Ohio Department of Commerce

The Ohio Department of Commerce (ODOC) has been actively working to conduct a public awareness campaign and borrower outreach events to encourage borrowers to contact their servicer if they are facing an ARM reset or if they are having trouble making their mortgage payment (Task Force Recommendation #1). ODOC launched "Save the Dream," a multi-media public awareness campaign in March 2008 that includes statewide television, radio, and billboard advertising, an information-rich Web site (www.savethedream.ohio.gov), and a telephone hotline (888-404-4674).

The campaign is designed to help Ohioans prevent foreclosure. In a multi-agency effort, the second component Save the Dream was announced by Governor Strickland, Ohio Supreme Court Chief Justice Thomas J. Moyer, the Office of the Ohio Attorney General, Ohio Treasurer Richard Cordray, Ohio State Bar Association President Rob Ware, legal aid leaders, and Ion April 1, 2008. This initiative connects qualified homeowners with legal aid lawyers and nearly 1,100 attorneys statewide who have volunteered to provide legal services free of charge.

When a borrower calls the hotline, they are connected either with an attorney or a housing counselor. In addition, the telephone operator collects numerous pieces of information from the caller and emails this to the Ohio Department of Commerce's Office of Consumer Affairs (OCA), which is part of the Department's Division of Financial Institutions (DFI). If the caller provides the operator with the name of their mortgage servicer, OCA contacts the consumer's mortgage servicer on the customer's behalf. After notifying the servicer that the consumer has reached out to the state for assistance, we ask the servicer to make a good faith effort to work with this consumer to reach a reasonable accommodation. The servicer is also asked to keep the Department of Commerce apprised of any progress they make in each consumer's matter. OCA staff tracks and maintains all correspondence.

To date nearly 4,500 consumers have called the Save the Dream hotline. OCA has forwarded 1,500 callers' information on to mortgage servicers. Nearly 2,000 of these callers were immediately referred and transferred to housing counselors. 370 callers have been referred for legal assistance.

In March 2008, the Department of Commerce hosted Borrower Outreach Day events in Akron and Youngstown. These were the fifth and sixth Borrower Outreach Days, with previous events held in Nelsonville, Columbus, the Toledo-area, and Cincinnati. The U.S. Department of Housing and Urban Development (HUD) sponsored a Homeownership Preservation Clinic in Cleveland on August 30, 2007, which was supported by the state of Ohio. To date, nearly 2,000 Ohioans have participated in these events. More Borrower Outreach Days are being planned for this summer.

In addition to Borrower Outreach Days, OCA regularly conducts and participates in consumer outreach events throughout the state. The purpose of these events is to educate Ohioans on responsible borrowing practices, mortgage-related regulations, and steps they can take to prevent foreclosure. Also, OCA staff assists foreclosed-upon Ohioans in determining what options exist for them based upon the stage of their foreclosure.

OCA maintains a Consumer Affairs Hotline. Callers are encouraged to call this hotline if they have any question, concern or complaints regarding a financial institution or activity that the DFI regulates. Callers are either directly assisted by DFI staff or they are directed to the appropriate state or federal agency that can most effectively assist them.

OCA processes all consumer complaints made against individuals and institutions licensed by DFI or engaging in activity for which they should be licensed by DFI. OCA staff attempts to resolve each complaint and determine if an action has occurred that could constitute a violation of the rules and statutes administered by DFI. To accomplish this, the OCA compels respondents named in each complaint to address all of the consumer's allegations. These responses are then reviewed by OCA staff and DFI legal counsel to determine if any such violations exist.

In an effort to get lenders and servicers to maximize alternatives to foreclosure, ODOC pursued rulemaking authority (Task Force Recommendation #17b.). Administrative rules for the Ohio Mortgage Loan Act (OMLA), which covers second mortgage lenders, were revised in April 2008 to incorporate some of the provisions from Governor Strickland's Compact to Help Ohioans Preserve Homeownership. Under the rules, a second mortgage registrant is required to attempt to contact borrowers who have an ARM that had an initial fixed-rate period. The communication is to happen six to seven months prior to the first reset. The registrant must attempt to convey to the borrower the following:

- The current interest rate and monthly payment;
- A good faith estimate of the borrower's anticipated future interest rate and monthly payment following the reset; and
- A toll-free number for the borrower to call to discuss possible payment problems and workout options if there is a problem of repayment at the higher interest rate and monthly payment.

Additionally, six to seven months prior to the first reset of an ARM that had an initial fixed-rate period, the registrant is required to provide the above information in writing to the borrower, in addition to providing contact information for HUD-approved housing counselors and other information. The registrant is required to provide the borrower with contact information for the loss mitigation, foreclosure prevention, or loan workout staff who can discuss foreclosure avoidance options. This information is to be provided at least 10 days prior to a referral to foreclosure counsel. In the case of a default of a mortgage loan, the registrant must provide the borrower with a toll-free number to contact loss mitigation staff to discuss payment problems and workout options. To reduce the risk of consumer fraud and identity theft, the registrant must comply with federal laws concerning the maintenance, security, and disposal of consumer information and records while in business and after ceasing business operations.

Ohio Housing Finance Agency

Ohio was the first state to offer a refinance product for homeowners who have a mortgage that is no longer suitable for their financial situation. The Ohio Housing Finance Agency's (OHFA) Opportunity Loan Refinance Program is a 30-year, fixed-rate refinancing product that offers a 100 loan-to-value percent first mortgage, and a 5 percent second mortgage to cover fees and closing costs. Borrowers may be permitted to have up to one 60-day late payment and two 30-day late payments in the last 12 months. To date, OHFA has closed and purchased 40 loans.

OHFA conducted a public awareness campaign in an effort to help borrowers understand their mortgages (Task Force Recommendation #1). OHFA partnered with the Ohio Association of Broadcasters (OAB) to produce radio spots urging homeowners to "Take a Second Look at Your Mortgage." From December 2007 to February 2008, OHFA received 3,648 web hits and 122 calls specifically about the campaign. If borrowers found themselves in mortgages that no longer fit their financial situation, they were given information on OHFA's Opportunity Loan Refinance Program or directed to other counseling resources.

Attempting to increase the capacity of housing counseling organizations to assist borrowers in default and foreclosure (Task Force Recommendation #5), OHFA announced in March 2008 that it will be distributing nearly $3.1 million in housing counseling funds to 18 organizations around the state to increase the availability of foreclosure counseling and to boost these organizations' services. These organizations are a part of the 32 state-sponsored housing counseling agencies offering counseling services to the Save the Dream hotline.

OHFA has also expanded the Ohio Home Rescue Program (Task Force Recommendation #6). The Ohio Home Rescue program operates through a network of 12 organizations and is administered by the Neighborhood Housing Services of Greater Cleveland (NHS). The Ohio Department of Development (ODOD) established the program with a grant of $1 million through the Ohio Housing Trust Fund to help lower income borrowers. The program is supported by $1 million from the Ohio Housing Trust Fund for grants to homeowners with incomes at or below 65 percent of the area median income, and $3.1 million from OHFA to deferred loans for homeowners with incomes between 65 and 125 percent of the area median income. NHS has committed to establish parameters for a partnership among NHS, Save the Dream-approved-counseling organizations, and other organizations participating in the Ohio Home Rescue Fund, thus increasing access to this important resource.

Currently, OHFA is working with national, state and local partners to develop strategies and resources to address vacant properties, foreclosed homes, and community revitalization (Task Force Recommendation #21). As a first step, OHFA amended the Qualified Allocation Plan (QAP) to provide additional incentives for the development of vacant properties using the Low Income Housing Tax Credit. In April 2008, the OHFA Board approved investment in a major initiative to purchase and rehabilitate 150 vacant homes over three years in six Cleveland neighborhoods.

OHFA launched a new program in March 2008 to address the need for affordable workforce housing for Ohio's heroes. The program, called Ohio Heroes, offers a 30-year, fixed-rate mortgage to full-time employees in the following professions: active military, emergency medical technicians, firefighters, healthcare workers, military veterans, paramedics, police officers, and teachers. Loans through the Ohio Heroes Program will be at a quarter percent below OHFA's First-Time Homebuyer Program rates. The borrowers must meet OHFA's standard mortgage guidelines, which provide low, competitive mortgage rates through conventional loans or FHA, VA, and USDA-RD government

loans. This program reallocates existing state resources to put a greater emphasis on foreclosure prevention and recovery by expanding employer-assisted housing programs (Task Force Recommendation #23d.).

Ohio Department of Development

The Task Force recommended providing a total of $10 million for housing and financial counseling from local, state, federal and private sources, including at least $2 million in state funds (Task Force Recommendations #4-5). In January 2008, the Ohio Department of Development (ODOD) announced that 24 organizations will receive $2 million in awards for foreclosure counseling through the Foreclosure Prevention Housing Counseling Program. The grants will assist 9,000 low and moderate income households in 64 Ohio counties. These 24 organizations are a part of the 32 state-sponsored housing counseling agencies offering counseling services to the Save the Dream hotline. The Foreclosure Prevention Housing Counseling Program is designed to provide an effective means of reducing the number of mortgage foreclosures and delinquencies for low to moderate households in Ohio. Funding is provided to eligible nonprofit organizations for the purpose of providing counseling to homeowners in danger or at risk of losing their homes due to foreclosure.

ODOD has also been working closely with OHFA and Save the Dream to build housing counseling capacity to assist borrowers in default and foreclosure (Task Force Recommendation #5).

Ohio General Assembly

A very serious challenge facing neighborhoods with a significant number of vacant properties is being able to identify the deed holder responsible for maintenance and repair of the property. House Bill 138 (H.B. 138), which was signed into law by Governor Strickland on June 11, 2008, will take the mystery out of who owns vacant foreclosed properties by requiring the sheriff to file a deed within fourteen business days after the sheriff sale (Task Force Recommendations #16b., 25). Often, lenders do not file the deed in their name for months or even years after obtaining the property from foreclosure. The new law also requires that foreclosing agents provide contact information for responsible parties who can respond to complaints about the state of the property as it sits vacant. Additionally, the law cleans up tax foreclosures where the land is vacant or abandoned and is subject to foreclosure from the County Treasurer. The law includes language which allows courts to pursue mediation in foreclosure cases. The courts can require the appropriate parties to participate in the mediation. Also, the law allows property that did not sell at a judicial sale to be offered to a political subdivision before forfeiture to the state.

Senate Bill 277 (S.B. 277), which passed the Senate in May, will help address vacant housing and assist with revitalizing Ohio neighborhoods (Task Force Recommendation #21). This bill will help bring properties back up to code. S.B. 277 will assist nuisance property abatement by creating a new cause of action in foreclosure in the environmental or housing division of a municipal court in Franklin, Cuyahoga, and Lucas counties, giving the courts greater jurisdiction and the ability to proceed to foreclosure in a timelier fashion.

S.B. 329, introduced in May 2008, will require a third party trustee's name and address to be included on a real property transfer application submitted to the county auditor for endorsement, when the trustee holds title to real property and is neither the grantor nor the grantee. The bill has been referred to the Senate Judiciary-Civil Justice Committee.

Two bills were introduced this General Assembly to utilize surplus county Delinquent Tax Administration and Collection (DTAC) funds to support local efforts for mortgage rescue,

foreclosure prevention, and demolition of vacant houses (Task Force Recommendation # 22). Both H.B. 359 and H.B. 388 will allow communities to access surplus funds from their county's DTAC fund for maintenance of vacant and abandoned properties. H.B. 388 would also allow these funds to be used for foreclosure prevention counseling and rescue loans to help people avoid foreclosure. H.B. 359 passed both chambers by June 10, 2008. H.B. 388 has had one hearing in the House Financial Institutions, Real Estate and Securities Committee.

In April 2008, H.B. 531 was introduced to modify Ohio's receivership law by extending many of the provisions governing the abatement of public nuisances (Task Force Recommendation #26). The purpose is to help communities gain control over abandoned properties and return these properties to the tax rolls. The bill has been referred to the House Civil and Commercial Law Committee.

H.B. 440 and S.B. 295, both introduced in early 2008, would provide that a lease does not terminate upon the foreclosure of the landlord's mortgage (Task Force Recommendation #27). Renters would still have to abide by their lease agreements. H.B. 440 is pending in the House Civil and Commercial Law Committee, and S.B. 295 has had one hearing in the Senate Judiciary-Civil Justice Committee.

Judicial Branch Guidance

Chief Justice Moyer proposed that the courts manage the foreclosure problem by developing foreclosure mediation programs that could be used to resolve some of the many foreclosure cases. This initiative is the first of its kind in the nation. It will give foreclosure cases the same access to mediation that has been regularly available in other types of civil cases for more than a decade. Mediation presents a safe and structured opportunity for a homeowner to negotiate with the loan holder to reach an agreed resolution that would either avert foreclosure and keep the homeowner in the home or provide alternate outcomes that benefit the homeowner and the community. The model was released to local courts in early 2008 as a way to encourage mediation and alternative dispute resolution to maximize the early resolution of foreclosure actions (Task Force Recommendations # 14-15).

The Supreme Court's Advisory Committee on Dispute Resolution appointed a Foreclosure Working Group to develop a foreclosure mediation program model that courts can adapt to meet their local needs and resources. The working group included judges, magistrates, mediators, attorneys, legal aid representatives, educators, mortgage bankers, and representatives of homeowners.

The model includes best practices, related documents, forms, and other resources. Not every foreclosure case is appropriate for mediation. Therefore, the model is designed to assist courts in determining those cases that are eligible for mediation through the assessment of information provided by both the homeowner and the lender.

Ohio Treasurer of State

In an effort to utilize local coalitions to educate and aid borrowers (Task Force Recommendation #3c.), and encourage the expansion of financial literacy programs and efforts to help people who rebuild their credit (Task Force Recommendation 5f.), Ohio Treasurer Richard Cordray has established Save Our Homes Task Forces in nearly 50 counties. The focus of many of these groups is educating borrowers who are behind on their mortgages how to remain in their homes. The groups discuss a variety of methods to reach borrowers including television call-in programs, borrower workshops, professional trainings and dissemination of educational materials.

Treasurer Cordray also offers personal finance education to a number of constituencies including senior citizens, women, victims of domestic violence, employees in the workplace and teachers. One series is the Rebuild Your Credit workshops which are offered in collaboration with Consumer Credit Counseling Services, TransUnion and local elected officials. The Treasurer's Office has also developed www.yourmoneynowonline.org, which provides financial education to Ohioans 24 hours a day.

In addition, Treasurer Cordray and State Representative Joyce Beatty chair the Ohio Commission on Personal Finance Education where the mission is to provide personal finance education to all Ohioans.

Striving to establish an investment policy for those financial entities and their subsidiaries that invest state funds (Task Force Recommendation #11b.), the Ohio Treasury issued a Request for Proposal (RFP) for banking services that seeks information from financial institutions about their community involvement and their posture with respect to the foreclosure crisis. The Treasurer has requested information about how financial institutions assess and address the credit needs of local communities. The RFP also asks how financial institutions are assisting customers who are facing bankruptcy and/or foreclosure. Although a new venture for the Ohio Treasury, such information gathering and monitoring will continue in the future.

Local Official Involvement

Montgomery County Recorder Willis Blackshear works to utilize information from public county databases to identify borrowers who are at risk and contact them (Task Force Recommendation #2a.). Mr. Blackshear works with an academic and a former mortgage company employee to identify the most active subprime lenders in his county. With the help of Treasurer Cordray's office, he has distributed thousands of letters to the borrowers of these lenders in hopes of alerting them to potential problems before their interest rates are reset and they find themselves unable to make monthly payments.

CHALLENGES FOR THE STATE

We continue to see the fallout from the lack of oversight of the subprime mortgage origination, sale, and securitization process. Had there been more stringent regulation, many of the problems we are facing could have been prevented.

For many homeowners, the only chance at maintaining homeownership is through a workout agreement or loan modification with their servicer. Without a workout or modification, these homeowners are foreclosed upon which is not desirable for the homeowner, servicing company, or the neighborhood. Yet, we face the continued challenge of attaining more workout agreements from servicers. There are state and federal resources for counseling now allowing more counselors to assist borrowers and, to some extent, we are seeing greater numbers of workouts. The problem is that workouts are still being done on a case by case basis which is not enough. Ohio is hopeful our unprecedented Compact with servicers will lead to more workouts and loan modifications.

Additionally, we continue to fight the vacant and abandoned property problem, yet we have a lack of resources to address the issue. The battle is tougher particularly in communities that are not growing in population such as Cleveland, Youngstown, Dayton, and Toledo.

While Ohio is attempting to do everything in its power at the state level to combat the foreclosure crisis, we believe aggressive action is needed at the Federal level as well.

FEDERAL REFORMS

First, I would like to thank Congresswoman Pryce, Congressman LaTourette, and Congressman Wilson for your continued work on ensuring Ohio's needs are addressed as we work through this devastating crisis. That dedication was never more apparent than during your work on H.R. 5818, The Neighborhood Stabilization Act, which the Chairwoman (Waters) introduced. If the bill were to be signed into law today it would bring over $830 million in grants and loans to Ohio to help us rebuild our communities that have been devastated by the effects of this crisis.

We also appreciate the Committee's recognition that states need a variety of tools to stop the decline our neighborhoods are experiencing. Thank you Congressman Wilson for introducing an amendment to H.R. 5818, which adds demolition as an eligible expense. Here in Cleveland, like other areas of the state, due to the out-migration of residents, the supply of housing far exceeds the demand and many properties are in such disrepair they are simply not worth saving. These funds will allow communities to recover quicker and increase the value of surrounding properties by adding valuable green space.

We urge Congress to act now and not be swayed by the argument that this bill, and other housing bills, will only bail out Wall Street and unscrupulous lenders. Every day more and more families are losing their homes and suffering the devastating consequences of foreclosure. To sit back and say it is someone else's problem while our citizens and communities continue to suffer is wrong. As we watch the federal government address Wall Street and bail out Bear Stearns, we cannot sit idle and let our communities that need so much help continue to suffer unassisted. Main Street needs your help as much as Wall Street, if not more.

In addition to the Neighborhood Stabilization Act, there are many changes before you in numerous pieces of legislation that could assist Ohio. As the housing economic stimulus package is being negotiated, I ask that you consider the following provisions that will assist Ohioans by addressing the effects of the current crisis and preventing the type of environment that helped lead to the situation we are all confronting today.

As we strive to increase the capacity of housing counseling organizations to assist borrowers in default and facing foreclosure, long-term federal funding for counseling is imperative. Please include significant funding for housing counseling beyond this calendar year. These resources should be allocated disproportionately to high-foreclosure states such as Ohio for flexible distribution by the state.

Ohio needs resources to acquire, rehabilitate, or demolish vacant housing. Please include a minimum of $4 billion in emergency grant funding for community stabilization in the housing package that is currently being negotiated. While the $4 billion in the senate bill is a great start, Ohio could benefit greatly if the allocation is $15 billion, as it currently is in Chairwoman Water's bill. This will assist to facilitate the bulk purchase and repair of foreclosed homes in targeted communities in order to stabilize neighborhoods, create homeownership and rental housing opportunities and stop the cycle of disinvestment. With these funds, Ohio could create a national corporation through a public-private partnership to acquire real estate owned (REO) properties and facilitate transfers to redevelopment entities.

For far too long, we have been neglecting one specific population affected by the foreclosure crisis. Legislation must be passed to protect renters. It is estimated that 30% of foreclosures are on tenant-occupied properties, and unfortunately, foreclosure sales terminate existing leases. In these circumstances, a tenant's first notice of the foreclosure and termination of tenancy often is the foreclosure purchaser's three-day notice to vacate or the sheriff's notice of the foreclosure sale. These evictions harm hard-working, rent-paying tenants and the surrounding neighborhoods. In order to protect tenants renting property that falls into foreclosure, I urge you to pass or include in the housing package, H.R. 5963, the Protecting Tenants at Foreclosure Act of 2008.

Federal Housing Administration (FHA) modernization is a necessity as the country continues to try to pull itself out of the current housing slump. These updates should include provisions aimed at serving more low-income borrowers at affordable rates and terms, recapturing borrowers that may have received risky loan products in recent years, and offering refinancing opportunities to borrowers currently struggling.

Comprehensive regulatory reform for Government Sponsored Enterprises (GSE) is also essential. Fannie Mae and Freddie Mac play an indispensable role in Ohio's affordable housing delivery system by providing liquidity to the mortgage markets by buying loans already made and freeing up money for new mortgages and refinances. They benefit significantly from their Congressional charters and should be a large part of the solution to Ohio's housing woes.

Both FHA modernization and GSE reform provisions are included in H.R. 3221, the Foreclosure Prevention Act of 2008.

If additional bonding authority were passed, it would allow Ohio to offer more low to moderate income families access to our First-Time Homebuyer Program. This demographic is so important because this is the same population that subprime lenders targeted and right now the product is one of the few still available to them.

It is also important to allow these bond dollars to be used for refinancing. If Congress agrees to lift this restriction temporarily, it would lower our cost of borrowing and allow us to pass the savings on to Ohio families. We would also be able to offer our refinancing program in conjunction with FHASecure to reach even more struggling homeowners.

To make these mortgage revenue bonds more valuable in the market and allow us to be more responsive to Ohio's housing needs, we would also like to see that they be excluded from the Alternative Minimum Tax (AMT). Right now investors are shying away from anything with the word "mortgage" included in the investment. Eliminating the AMT would increase interest in our bonds and we would be able to pass the savings on to our customers.

More regulation of the "non-conforming" mortgage origination and securitization process could also assist Ohio. Securitization and the separation of servicers from the actual note holders creates impediments to having someone in authority to make quick judgments on loan workouts and modifications. Though we would like more federal regulation, please be aware that federal preemption of state laws is not always in our citizens' best interest.

We need across the board solutions that can be accomplished through a common platform used by servicers and counselors together. Encouraging servicers to modify loans is vital. This can begin

with H.R. 5579, the Encouraging Mortgage Loan Modification Act, which provides legal protection for mortgage servicers making loan modifications to encourage them to be aggressive in undertaking workouts. Please continue to open the door to greater flexibility for servicers to modify loan terms. As you continue to pursue solutions to the foreclosure crisis, please be cognizant of Ohio's uniqueness. We have been living and breathing this foreclosure crisis for years, and I ask that you keep this in mind as you craft potential solutions to address the crisis. We have built a wealth of talent and expertise at the local and state level, and we stand ready to assist you and be your partners as we work to turnaround Ohio.

OHIO'S RECOGNITION

As you can see, we are making every possible effort to aggressively and proactively respond to the foreclosure crisis facing Ohio. Our efforts here in Ohio are not going unrecognized.

We were recently asked by the National Governor's Association Center for Best Practices to participate in their State Summit on Foreclosures and Housing Solutions. The Department of Commerce participated in a panel discussion on Comprehensive State Foreclosure Prevention Programs. At this conference, many states referenced looking to Ohio for guidance when crafting their foreclosure prevention response.

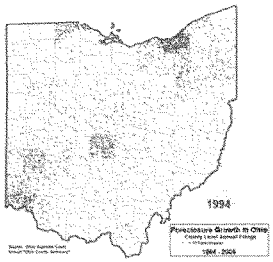
Also, the state receives numerous inquiries from other states interested in following the Ohio model, and our unique approach of consolidating all foreclosure prevention resources into one unified, statewide program.

An April 2008 report by the Pew Charitable Trusts ranked Ohio's foreclosure response as one of the three best in the country. The report's project manager stated that Ohio has taken one of the most aggressive and comprehensive efforts in combating foreclosures. Pew's Project Manager Kil Huh said, "Every state has the tools to act, and I think Ohio is a model in the sense that it's trying to use whatever mechanism it has to help the state's families and communities."

In addition, the foreclosure prevention counseling efforts by the state's housing counseling agencies are being recognized. ESOP, a HUD-approved housing counseling agency here in Cleveland, has been inundated with media requests from both national and international media outlets to understand the scope of the foreclosure crisis in Ohio and how we are responding to the crisis. When the international media is asked why they are so interested in this issue, all indicate that their cultures view this crisis as being similar to what happened during Hurricane Katrina.

The foreclosure crisis is a difficult challenge that we collectively face, and while the state will do everything that we possibly can to help Ohioans save the dream of homeownership, we cannot do it without your assistance and the assistance of your Congressional colleagues.

Thank you for this opportunity to testify before you. I appreciate your attention and would be happy to respond to any questions you may have.



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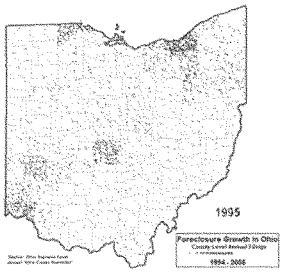

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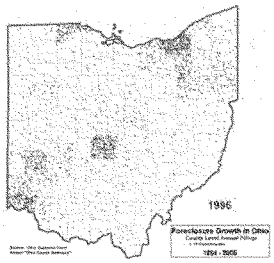

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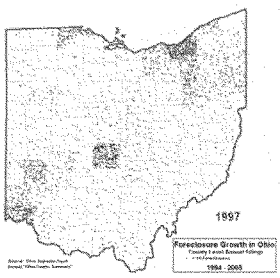

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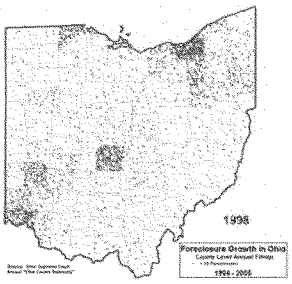

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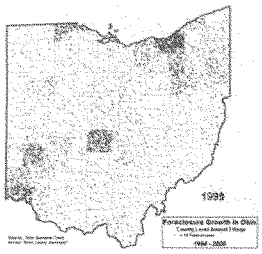

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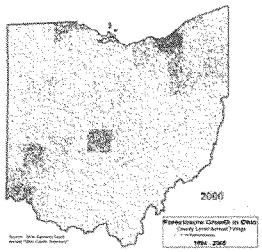

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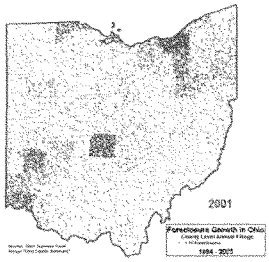

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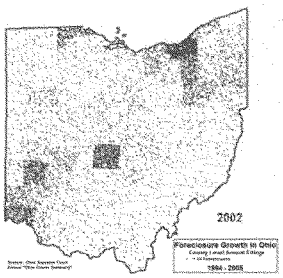

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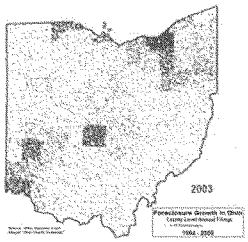

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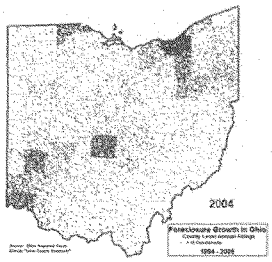

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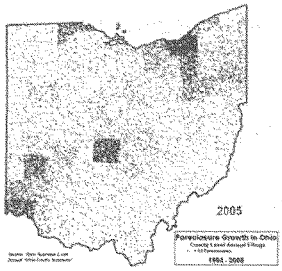

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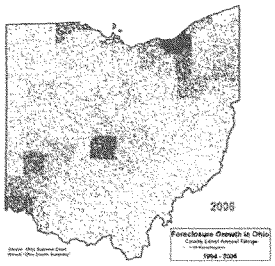

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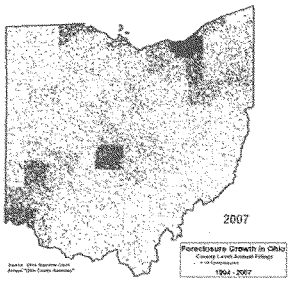

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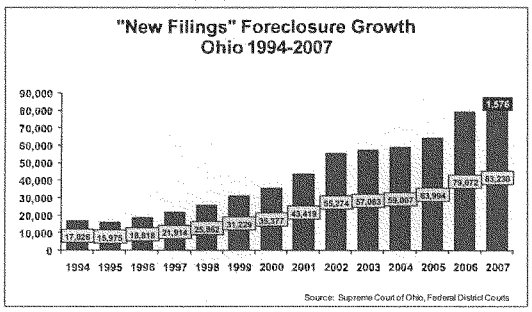
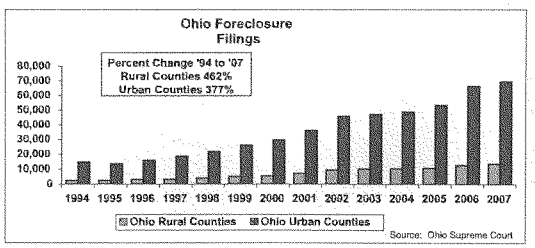
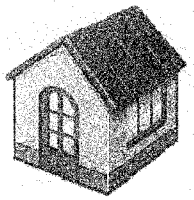


Including the federal courts, Ohio's total
for 2007 was 84,806 foreclosure cases

2006 foreclosures were higher than any of the last 13
years. Larger numbers in urban counties
Larger percentage increases in rural counties



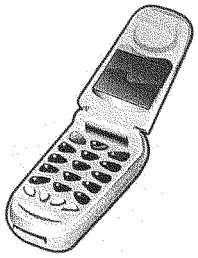
FORECLOSURE PREVENTION RESOURCES[1]



Community Solutions for the Prevention and Management of Foreclosures and Subprime Mortgages

Monday, June 16, 2008
The Joseph E. Cole Center
Cleveland State University

[1] Prepared by the Office of Congresswoman Maxine Waters



Calling Your Mortgage Servicer:

Basic information you should have available:

1. Your Name
2. Property Address
3. Phone Number
4. Loan Number

Talking to Your Mortgage Servicer:

Be prepared to answer the following questions:

1. **Why is your loan in default?** Explain what circumstances have led you to be behind on your payments, i.e. an unaffordable interest rate increase, loss of job, unanticipated medical expenses, bankruptcy, etc.

2. **What is your current income and what are your current expenses?** Have pay stubs and bills handy. Be sure to have information on non-mortgage debt (e.g., credit cards, auto loans, etc.) and minimum monthly costs of servicing that debt.

3. **Are there any expenses you can reduce in order to devote more funds to your monthly mortgage payment?** (Servicers will ask you this whether your current mortgage terms continue or a different monthly payment plan is put into place under a repayment plan, loan modification, etc.)

4. **Are you anticipating in the next several months any increases in income on an ongoing (e.g., annual pay raise/COLA) or one-time (e.g., tax refund) basis?**

Contact Information for Mortgage Servicers

Mortgage Servicer	Hotline
Acqura Loan Services	866.660.5804
Aurora Loan Services	800-550-0509
Avelo Mortgage, LLC.	866-992-8356
Bank of America	800-846-2222
Carrington Mortgage Services	800-790-9502
CitiFinancial/Citi Trust Bank	800-422-1498
CitiMortgage Conv/FNMA	800-695-0384
CitiMortgage/Gov't & Freddie Mac	866-272-4749
CitiResidential Customer Care	800-430-5262
Countrywide Home Loans	800-669-6650
EMC Mortgage, Inc.	877-362-6631
First Horizon Home Loans	800-364-7662
GMAC/Homecomings/ResCap	800-799-9250
Home Loan Services, Inc. (d/b/a First Franklin Loan Services and NationPoint Loan Services)	800-500-5022
HomEq Servicing	888-270-6663
HSBC Consumer Lending	800-333-5848
HSBC Mortgage Services	800-365-6730
HSBC Mortgage Corporation	888-648-3124
IndyMac Bank	800-880-6848
JPMorgan Chase Prime Loans	800-446-8939
JPMorgan Chase Non-Prime	877-838-1882
JPMorgan Chase Home Equity	866-582-5208
JPMorgan Chase Default HPO Help Line	866-345-4676
LandAmerica	800-909-9525
Litton Loan Servicing	800-999-8501
National City Mortgage Corporation	800-523-8654
Nationstar Mortgage, LLC.	888-480-2432
Ocwen Loan Servicing, LLC.	877-596-8580
Option One Mortgage Corporation	888-275-2648
Saxon Mortgage Services	888-325-3502
Select Portfolio Servicing	888-818-6032
SunTrust Mortgage, Inc.	800-443-1032
Washington Mutual, Inc.	866-926-8937
Wells Fargo Home Mortgage	877-216-8448
Wells Fargo Financial	800-275-9254
Wilshire Credit Corporation	888-917-1050

Loss Mitigation Terms

What is Loss Mitigation?

Loss mitigation refers to activities a servicer can undertake in order to help you stay in your home and avoid foreclosure.

What Are the Different Types of Loss Mitigation Activities?

Loss mitigation activities are tailored to address temporary and long-term problems affecting your ability to pay your mortgage.

Temporary loss mitigation activities include:

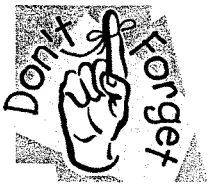
- **Reinstatement:** This involves your lender willing to accept the total amount owed in a lump sum by a specific date. Forbearance may accompany this option.
- **Forbearance:** Under forbearance, you are allowed to reduce or suspend payments for a short period of time. Following this period, you agree to another option to bring your loan current. A forbearance option is often combined with a reinstatement when you know you will have enough money to bring the account current at a specific time. The money might come from a hiring bonus, investment, insurance settlement, or tax refund.
- **Repayment plan:** This involves an agreement between you and your lender that requires you may be able to resume making your regular monthly payments, plus a portion of any amount past due every month until the amount you owe is paid in full.

Permanent or long-term loss mitigation activities include:

- **Loan modification:** This involves changing the terms of your original loan so that the payments are more affordable. Loan modification is typically used for borrowers who can't afford their current payments because of a permanent or long-term change in their financial situation. Under loan modification, a servicer can
    - Modify your interest rate. This can include lowering your interest rate or refinancing your adjustable rate mortgage into a fixed rate mortgage.
    - Extend the term of your mortgage, i.e. from 30 years to 40 years. .
    - Add any payments you have missed to your existing loan balance.

Last Resort Options:

- **Short sale:** If you owe more on your home than it is worth and need to sell, your lender may agree to a short sale. Under a short sale, the lender accepts a payoff amount less than the balance of the mortgage.
- **Assumption:** A loan is assumed when the servicer agrees to allow another qualified buyer to take over your mortgage.
- **Deed-in-lieu of foreclosure:** Under this option, you return your property to the servicer. This does not involve a sale. In exchange for the property, the servicer forgives your loan. This is typically a last resort option for borrowers and servicers and is only explored after all other loss mitigation activities have failed. It is also not an option for borrowers with other liens against the property, including second mortgages.



Key Points to Remember

1. Contact your servicer as soon as possible if you are having problems making payments.

2. Beware of fraud and other scams related to avoiding foreclosure. Never sign the title to your property over to a third-party who promises to save it from foreclosure!

3. Contact a housing counselor if you are having problems communicating with your servicer.

4. Persist in trying to reach the Loss Mitigation department at your servicers—this is the department with personnel authorized to help you.

5. Do not agree to a repayment plan or other loss mitigation offer that you cannot afford—unaffordable plans that result in foreclosure don't help you or the mortgage servicer. Be realistic in assessing and communicating what you can afford.

HELPFUL WEBSITES

Countrywide: http://my.countrywide.com/

Fannie Mae:
http://www.fanniemae.com/homebuyers/homepath/index.jhtml?p=Homepath

Federal Housing Administration:
http://portal.hud.gov/portal/page?_pageid=33,717234&_dad=portal&_schema=PORTAL

Freddie Mac: http://www.freddiemac.com/corporate/buying_and_owning.html

HomeFree USA: http://www.homefreeusa.org/

Home Loan Learning Center: www.homeloanlearningcenter.com

Homeownership Preservation Foundation: http://www.995hope.org/

Los Angeles Urban League: http://www.laul.org/

MyMoneyManagement: www.MyMoneyManagement.net

NeighborWorks America: http://www.nw.org/network/home.asp

Office of Congresswoman Maxine Waters: http://www.house.gov/waters

Washington Mutual:
http://www.wamu.com/personal/loans/home_loan/default.asp

Wells Fargo: https://www.wellsfargo.com/mortgage/

West Angeles Community Development Corporation:
http://www.westa.org/ministry_cdc.html

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Consumer Resources

Foreclosure Prevention and Homeownership Preservation

2008

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Definitions

- **Collections** – the process of contacting the homeowner for and receiving delinquent amounts which are owed
- **Delinquency** – failing to make a timely payment so that it is received on or after the due date
- **Foreclosure** – legal action to force the sale of a home
- **Investor** – the owner of the loan
- **Insurer** – insures the lender/investor in case the loan becomes delinquent
- **Loss Mitigation** – working with the customer to find a permanent solution to resolve the delinquency
- **Mortgage Servicer** – responsible for customer service, processing payments, and working with delinquent customers

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Homeowner Responsibilities

- Make mortgage payments your **first** priority
- Manage budgets to avoid overspending
- Build savings accounts for financial crises
- Call your lender as soon as you know you can't make your next mortgage payment
- Call 1-888-995-HOPE for free housing counseling
- Don't make payments to anyone other than your lender or the foreclosure attorney

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Resources

- **Freddie Mac English Avoiding Foreclosure Information for Borrowers**
  http://www.freddiemac.com/corporate/buyown/english/avoiding_foreclosure/
- **Freddie Mac Spanish Avoiding Foreclosure Information for Borrowers**
  http://www.freddiemac.com/corporate/buyown/spanish/avoiding_foreclosure/
- **Freddie Mac Avoiding Foreclosure Fraud Video**
  http://www.freddiemac.com/news/archives/corporate/2007/20071212_youtube_fraud_video.html
- **Freddie Mac/Roper Borrower Survey**
  http://www.freddiemac.com/news/archives/corporate/2008/20080131_07roper survey.html
- **Freddie Mac Response to the Subprime Crisis**
  http://www.freddiemac.com/corporate/about/policy/pdf/Subprime2.pdf
- **Industry's HOPE NOW**
  http://www.hopenow.com/

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Resources

- **HUD-Approved Housing Counseling Agencies**
  http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm

- **MBA – Listing of National Consumer Foreclosure Prevention Workshops**
  http://www.homeloanlearningcenter.com/YourFinances/ForeclosurePreventionResourceCenter.htm

- **MBA - Servicer Foreclosure Prevention Contacts**
  http://www.homeloanlearningcenter.com/ForeclosurePreventContactInfo.htm

- **MBA - 12 Things to Know When Calling Your Lender**
  http://www.homeloanlearningcenter.com/12things.htm

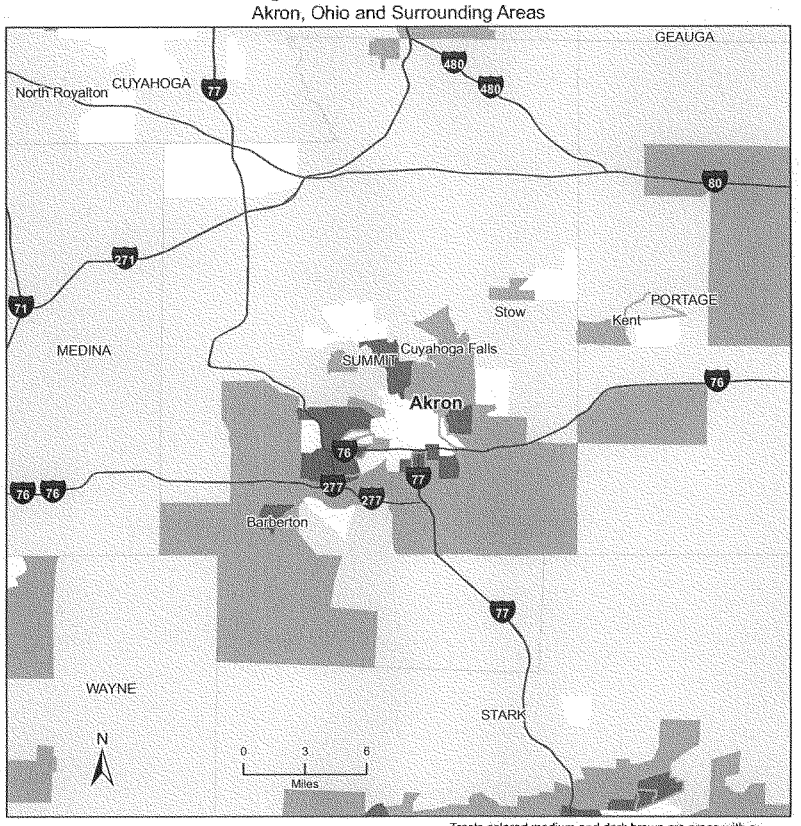
- **MBA - Facts About Mortgage Servicing**
  http://www.homeloanlearningcenter.com/files/FactsAboutMortgageServicing.pdf

- **NeighborWorks®/Ad Council – Foreclosure Prevention Ads**
  http://www.adcouncil.org/default.aspx?id=474

- **NeighborWorks® Foreclosure Help and Hope**
  http://www.foreclosurehelpandhope.org/

High Risk Loans with Change in Vacancy Rate through March 2008 by Census Tract

Akron, Ohio and Surrounding Areas



Legend

Percent of High Risk Loans by Census Tract

- 0.42 - 25.00
- 25.01 - 50.00
- 50.01 - 75.00
- 75.01 and higher
- Vacancy Rate Increasing by 3.1% or more

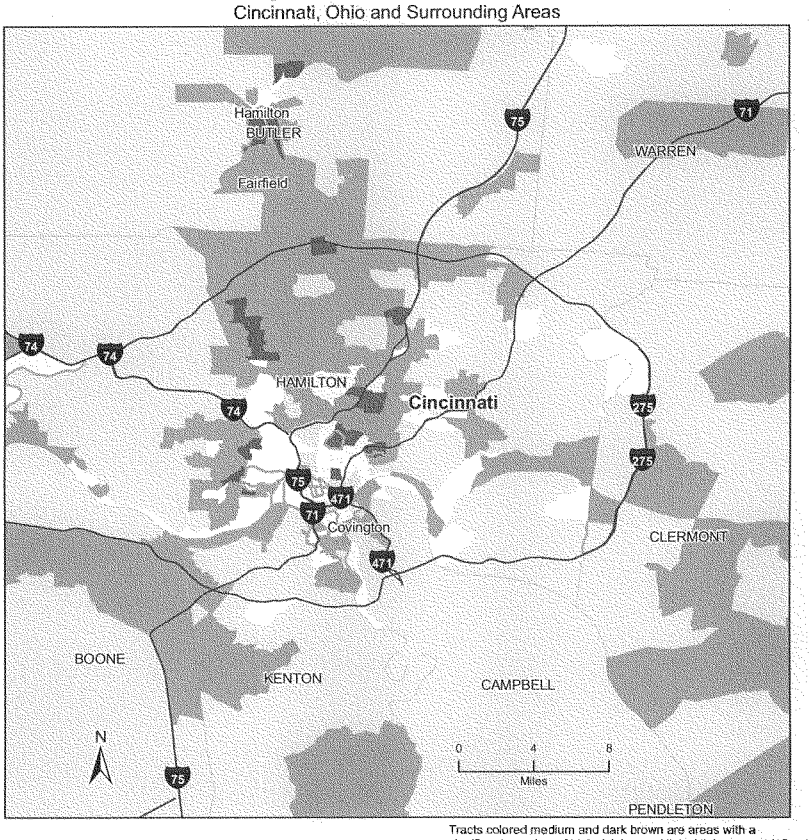
Tracts colored medium and dark brown are areas with a significant number of high-risk loans. High-risk loans are defined as those with an interest rate three percentage points or more above the Treasury security of comparable maturity and with a loan-to-income ratio equal to or above four. Tracts colored white were excluded because of a statistically small number of home loans.

Tracts outlined with orange are areas with a statistically significant (1 standard deviation above the mean) increase in vacancy rates between 2005 and 2008. Tracts with fewer than 300 addresses were excluded as were tracts with vacancy rates less than five percent in March 2008.

Source: Home Mortgage Disclosure Act (HMDA) data for 2004 through 2006 and U.S Postal Service address data for December 2005 and March 2008.

High Risk Loans with Change in Vacancy Rate through March 2008 by Census Tract

Cincinnati, Ohio and Surrounding Areas



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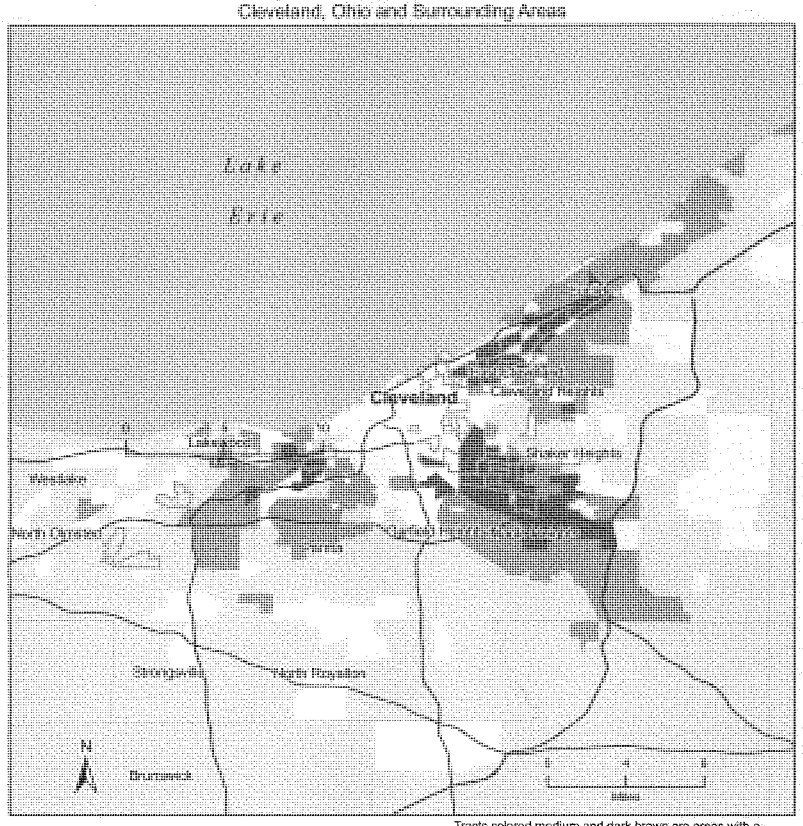
High Risk Loans with Change in Vacancy Rate through March 2008 by Census Tract

Cleveland, Ohio and Surrounding Areas



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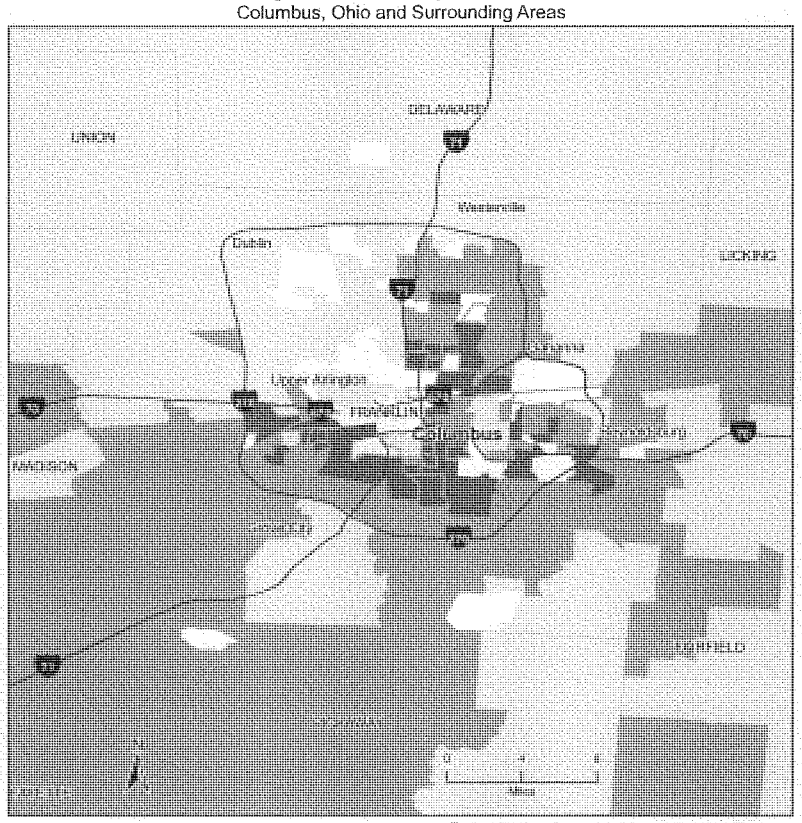
Source: Home Mortgage Disclosure Act (HMDA) data for 2004 through 2006 and U.S Postal Service address data for December 2005 and March 2008.

High Risk Loans with Change in Vacancy Rate
through March 2008 by Census Tract
Columbus, Ohio and Surrounding Areas



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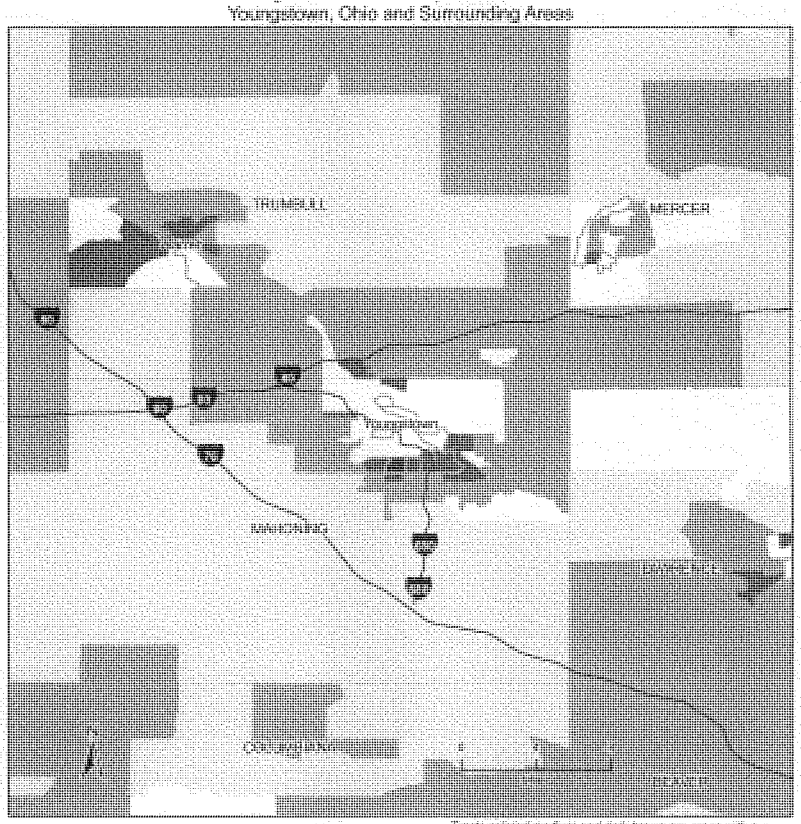
Source: Home Mortgage Disclosure Act (HMDA) data for 2004 through 2006 and U.S Postal Service address data for December 2005 and March 2008.

High Risk Loans with Change in Vacancy Rate through March 2008 by Census Tract

Youngstown, Ohio and Surrounding Areas



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THE MORNING JOURNAL
FRIDAY, JUNE 6, 2008 MorningJournal.com 50 CENTS

1 in 51 homes in foreclosure

Frequency for county was four times the national average

By MATT SUMAN
Morning Journal Writer

ELYRIA — Foreclosures in Lorain County are up again and the frequency during 2007 was four times the national average, Ron Nabakowski, county clerk of courts, said yesterday. One in 51 homes in the county is in foreclosure, Nabakowski said, compared to the national average of one in 201 homes.

"We're four times as bad as the national average," he said.

Through the end of this May, there have been 1,009 foreclosures in the county; more than the 933 in 2007 through May, Nabakowski said. Foreclosures have proportionally hit Sheffield Lake the hardest, with one in 28 homes being in foreclosure, he said.

The next four Lorain County cities that with high foreclosures rates are Lorain, Amherst, Elyria and North Ridgeville.

Foreclosures do not only hurt those who have fallen victim to the debt, Nabakowski said. Every

See FORECLOSURE, Page A2

The top Lorain County cities for ratios of foreclosures per number of homes in 2007

- Sheffield Lake — 1 in 28
- Lorain — 1 in 38
- Amherst — 1 in 41
- Elyria — 1 in 46
- North Ridgeville — 1 in 48

The number of foreclosures in the first five months of the year has risen each year since 2004

- 2004 — 584
- 2005 — 640
- 2006 — 923
- 2007 — 933
- 2008 — 1,009

Numbers provided by Lorain County Clerk of Courts Ron Nabakowski

FORECLOSURE

From the front page

home near a foreclosed property loses 1.4 percent of its value, he said. Ohio is the second worst state when it comes to amount of money banks lose to foreclosures, he said.

"Banks are losing a ton of money on these foreclosures," Nabakowski said.

The county clerk of court's office and the county auditor's office have been working together to set up a system to provide notice to a building department in a given community when a home is in foreclosure. The goal is to give notice to the building department within a week of the foreclosure to thwart the possibility of people gutting copper pipes and other valuables from the homes, he said.

"We're in the process of developing that (the system to notify building departments)," Nabakowski said.

Another problem is that the defendants in foreclosure complaints typically do not have an attorney to represent them in a court proceeding, he said. Only 8 percent of foreclosure defendants in the county have attorneys representing, according to Nabakowski.

"People feel very poor, so they don't talk to a lawyer," he said.

Common reasons why people have become vulnerable to foreclosure are death of a spouse, loss of a job, a divorce or credit card debt, Nabakowski said.

The average age of a mortgage in which a home is being foreclosed upon is 3.7 years, according to Nabakowski.

Some advice Nabakowski offered:

- Contact your lender's mitigation department at the first sign of difficulty with making a mortgage payment
- Contact a housing counselor approved by the U.S. Department of Housing and Urban Development

Foreclosure prevention on the Web: www.savethedream.ohio.gov/ or www.yourmoneynowonline.org/

Table 4
New Foreclosure Filings by Ohio County, 1995 and 2005-2007

County	1995 Filings	2005 Filings	2006 Filings	2007 Filings	Change 2006-2007	Rank in Growth, 2006-2007	Change 1995-2007	Rank in Growth, 1995-2007
Adams	25	118	107	116	8.4%	46	364.0%	66
Allen	164	591	647	715	10.5%	38	336.0%	72
Ashland	30	238	235	266	13.2%	30	786.7%	17
Ashtabula	111	588	723	760	5.1%	57	584.7%	33
Athens	21	128	157	206	31.2%	3	881.0%	13
Auglaize	34	174	201	217	8.0%	47	538.2%	37
Belmont	40	209	200	202	1.0%	70	405.0%	62
Brown	62	300	308	336	9.1%	43	441.9%	54
Butler	447	2,032	2,580	2,783	7.9%	48	522.6%	40
Carroll	35	122	130	157	20.8%	13	348.6%	69
Champaign	45	208	246	288	17.1%	21	540.0%	38
Clark	144	926	1,113	1,060	-4.8%	82	636.1%	27
Clermont	182	812	988	1,130	14.4%	26	520.9%	41
Clinton	36	216	234	297	26.9%	5	725.0%	21
Columbiana	258	599	558	654	17.2%	20	153.5%	86
Coshocton	19	150	180	192	6.7%	51	910.5%	12
Crawford	31	255	277	281	1.4%	68	806.5%	15
Cuyahoga	3,345	11,120	13,943	14,946	7.2%	49	346.8%	71
Darke	45	212	259	273	5.4%	54	506.7%	44
Defiance	22	120	170	172	1.2%	69	681.8%	23
Delaware	130	483	720	897	24.6%	7	590.0%	32
Erie	75	371	441	529	20.0%	15	605.3%	30
Fairfield	110	622	765	910	19.0%	16	727.3%	20
Fayette	16	167	195	195	0.0%	74	1118.8%	4
Franklin	1,459	6,597	8,876	9,145	3.0%	64	526.8%	39
Fulton	17	141	176	192	9.1%	44	1029.4%	7
Gallia	42	84	82	94	14.6%	24	123.8%	87
Geauga	81	260	313	380	21.4%	10	369.1%	65
Greene	242	528	671	669	-0.3%	75	176.4%	84
Guernsey	50	183	167	225	34.7%	2	350.0%	68
Hamilton	1,490	5,068	5,879	6,416	9.1%	42	330.6%	74
Hancock	84	309	375	395	5.3%	56	370.2%	64
Hardin	39	158	218	202	-7.3%	85	417.9%	60
Harrison	11	63	60	72	20.0%	14	554.5%	36
Henry	7	94	109	120	10.1%	39	1614.3%	1
Highland	31	286	317	334	5.4%	55	977.4%	10
Hocking	37	123	142	138	-2.8%	80	273.0%	78
Holmes	15	105	81	125	54.3%	1	733.3%	19
Huron	30	252	334	431	29.0%	4	1336.7%	2
Jackson	63	149	184	205	11.4%	34	225.4%	82
Jefferson	57	245	281	255	-9.3%	86	347.4%	70
Knox	195	267	298	350	17.4%	19	79.5%	88
Lake	301	918	1,141	1,395	22.3%	9	363.5%	67
Lawrence	42	223	206	241	17.0%	22	473.8%	49
Licking	89	862	1,081	1,185	9.6%	41	1231.5%	3
Logan	69	271	313	292	-6.7%	84	323.2%	75
Lorain	413	1,656	2,252	2,401	6.6%	52	481.4%	46

Table 4

New Foreclosure Filings by Ohio County, 1995 and 2005-2007

County	1995 Filings	2005 Filings	2006 Filings	2007 Filings	Change 2006-2007	Rank in Growth, 2006-2007	Change 1995-2007	Rank in Growth, 1995-2007
Lucas	1,165	2,903	3,618	3,796	4.9%	58	225.8%	81
Madison	96	176	213	252	18.3%	17	162.5%	85
Mahoning	321	1,692	1,949	1,880	-3.5%	81	485.7%	45
Marion	92	433	495	505	2.0%	66	448.9%	52
Medina	140	607	729	859	17.8%	18	513.6%	43
Meigs	13	65	83	56	-32.5%	88	330.8%	73
Mercer	21	91	132	147	11.4%	35	600.0%	31
Miami	81	427	521	578	10.9%	37	613.6%	29
Monroe	12	34	45	37	-17.8%	87	208.3%	83
Montgomery	949	4,050	5,076	5,119	0.8%	72	439.4%	55
Morgan	8	36	43	45	4.7%	59	462.5%	50
Morrow	54	194	230	225	-2.2%	79	316.7%	76
Muskingum	78	395	501	557	11.2%	36	614.1%	28
Noble	5	25	25	29	16.0%	23	480.0%	47
Ottawa	42	145	185	211	14.1%	28	402.4%	63
Paulding	24	95	121	126	4.1%	60	425.0%	56
Perry	26	195	221	243	10.0%	40	834.6%	14
Pickaway	29	219	308	307	-0.3%	76	958.6%	11
Pike	31	101	108	106	-1.9%	78	241.9%	80
Portage	143	617	725	775	6.9%	50	442.0%	53
Preble	96	234	307	348	13.4%	29	262.5%	79
Putnam	16	80	86	81	-5.8%	83	406.3%	61
Richland	128	580	752	849	12.9%	31	563.3%	34
Ross	74	293	399	413	3.5%	62	458.1%	51
Sandusky	42	232	303	341	12.5%	32	711.9%	22
Scioto	63	312	327	330	0.9%	71	423.8%	57
Seneca	79	226	263	301	14.4%	25	281.0%	77
Shelby	44	203	252	254	0.8%	73	477.3%	48
Stark	380	2,167	2,802	2,864	2.2%	65	653.7%	25
Summit	745	3,744	4,835	4,920	1.8%	67	560.4%	35
Trumbull	254	1,197	1,575	1,563	-0.8%	77	515.4%	42
Tuscarawas	56	346	401	417	4.0%	61	644.6%	26
Union	26	237	266	304	14.3%	27	1069.2%	5
Van Wert	18	147	149	162	8.7%	45	800.0%	16
Vinton	10	40	43	52	20.9%	11	420.0%	59
Warren	112	938	1,029	1,243	20.8%	12	1009.8%	9
Washington	33	190	230	285	23.9%	8	763.6%	18
Wayne	41	356	426	475	11.5%	33	1058.5%	6
Williams	17	144	185	191	3.2%	63	1023.5%	8
Wood	106	352	442	553	25.1%	6	421.7%	58
Wyandot	14	72	102	108	5.9%	53	671.4%	24
Total	**15,975**	**64,193**	**79,435**	**84,751**	**6.7%**		**430.5%**	

Data on state court filings came from the Ohio Supreme Court. Policy Matters Ohio reviewed filings in U.S. District Courts in Ohio. Federal filings exclude cases removed to federal court from state court, reopened cases, and those for which proceedings were not available. We classified one 2007 case listed in both Champaign and Clark counties as being in Champaign, based on the address.

Table 5

Foreclosure Filing Rates in Ohio Counties 2007

Counties	2007 Population	2007 Filings	2007 Filings/1,000 Pop.	Rate Rank
Adams	28,160	116	4.1	73
Allen	105,233	715	6.8	25
Ashland	54,902	266	4.8	59
Ashtabula	101,141	760	7.5	17
Athens	63,275	206	3.3	80
Auglaize	46,429	217	4.7	62
Belmont	67,908	202	3.0	84
Brown	43,956	336	7.6	12
Butler	357,888	2,783	7.8	10
Carroll	28,516	157	5.5	48
Champaign	39,522	288	7.3	19
Clark	140,477	1,060	7.5	16
Clermont	193,490	1,130	5.8	41
Clinton	43,071	297	6.9	22
Columbiana	108,698	654	6.0	38
Coshocton	36,341	192	5.3	52
Crawford	44,227	281	6.4	33
Cuyahoga	1,295,958	14,946	11.5	1
Darke	52,205	273	5.2	53
Defiance	38,543	172	4.5	67
Delaware	160,865	897	5.6	46
Erie	77,323	529	6.8	24
Fairfield	141,318	910	6.4	30
Fayette	28,308	195	6.9	23
Franklin	1,118,107	9,145	8.2	6
Fulton	42,562	192	4.5	66
Gallia	30,841	94	3.0	82
Geauga	95,029	380	4.0	74
Greene	154,656	669	4.3	70
Guernsey	40,409	225	5.6	47
Hamilton	842,369	6,416	7.6	13
Hancock	74,204	395	5.3	50
Hardin	31,650	202	6.4	32
Harrison	15,506	72	4.6	63
Henry	28,931	120	4.1	72
Highland	42,653	334	7.8	8
Hocking	28,959	138	4.8	61
Holmes	41,369	125	3.0	83
Huron	59,801	431	7.2	20
Jackson	33,314	205	6.2	35
Jefferson	68,730	255	3.7	78
Knox	58,961	350	5.9	40
Lake	233,392	1,395	6.0	39
Lawrence	62,609	241	3.8	76
Licking	156,985	1,185	7.5	15
Logan	46,279	292	6.3	34
Lorain	302,260	2,401	7.9	7

Table 5

Foreclosure Filing Rates in Ohio Counties 2007

Counties	2007 Population	2007 Filings	2007 Filings/1,000 Pop.	Rate Rank
Lucas	441,910	3,796	8.6	4
Madison	41,499	252	6.1	37
Mahoning	240,420	1,880	7.8	9
Marion	65,248	505	7.7	11
Medina	169,832	859	5.1	56
Meigs	22,895	56	2.4	86
Mercer	40,888	147	3.6	79
Miami	101,038	578	5.7	42
Monroe	14,258	37	2.6	85
Montgomery	538,104	5,119	9.5	2
Morgan	14,613	45	3.1	81
Morrow	34,520	225	6.5	29
Muskingum	85,333	557	6.5	28
Noble	14,096	29	2.1	88
Ottawa	41,084	211	5.1	55
Paulding	19,182	126	6.6	27
Perry	34,839	243	7.0	21
Pickaway	53,809	307	5.7	43
Pike	27,918	106	3.8	77
Portage	155,869	775	5.0	58
Preble	41,739	348	8.3	5
Putnam	34,635	81	2.3	87
Richland	125,679	849	6.8	26
Ross	75,398	413	5.5	49
Sandusky	60,997	341	5.6	45
Scioto	75,958	330	4.3	69
Seneca	56,705	301	5.3	51
Shelby	48,834	254	5.2	54
Stark	378,664	2,864	7.6	14
Summit	543,487	4,920	9.1	3
Trumbull	213,475	1,563	7.3	18
Tuscarawas	91,398	417	4.6	65
Union	47,234	304	6.4	31
Van Wert	28,889	162	5.6	44
Vinton	13,372	52	3.9	75
Warren	204,390	1,243	6.1	36
Washington	61,576	285	4.6	64
Wayne	113,554	475	4.2	71
Williams	38,378	191	5.0	57
Wood	125,399	553	4.4	68
Wyandot	22,471	108	6.1	60
Ohio	**11,466,917**	**84,751**	**7.4**	

Data on state court filings came from the Ohio Supreme Court. Policy Matters Ohio reviewed filings in U.S. District Courts in Ohio. Federal filings exclude cases removed to federal court from state court, reopened cases, and those for which proceedings were not available. We classified one 2007 case listed in both Champaign and Clark counties as being in Champaign, based on the address.

Table 6
State and federal foreclosure filings in Ohio, 2006-2007

County	2006 State Court Filings	2006 Federal Court Filings	2006 Total	2007 State Court Filings	2007 Federal Court Filings	2007 Total
Adams	107	0	107	116	0	116
Allen	647	0	647	715	0	715
Ashland	235	0	235	266	0	266
Ashtabula	723	0	723	741	19	760
Athens	157	0	157	206	0	206
Auglaize	201	0	201	217	0	217
Belmont	200	0	200	202	0	202
Brown	308	0	308	336	0	336
Butler	2,580	0	2,580	2,766	17	2,783
Carroll	130	0	130	156	1	157
Champaign	246	0	246	281	7	288
Clark	1,113	0	1,113	1,059	1	1,060
Clermont	988	0	988	1,123	7	1,130
Clinton	234	0	234	297	0	297
Columbiana	558	0	558	651	3	654
Coshocton	180	0	180	192	0	192
Crawford	277	0	277	281	0	281
Cuyahoga	13,610	333	13,943	14,267	679	14,946
Darke	259	0	259	273	0	273
Defiance	170	0	170	172	0	172
Delaware	720	0	720	897	0	897
Erie	441	0	441	519	10	529
Fairfield	765	0	765	910	0	910
Fayette	195	0	195	195	0	195
Franklin	8,875	1	8,876	8,928	217	9,145
Fulton	176	0	176	192	0	192
Gallia	82	0	82	94	0	94
Geauga	313	0	313	379	1	380
Greene	670	1	671	668	1	669
Guernsey	167	0	167	225	0	225
Hamilton	5,876	3	5,879	6,277	139	6,416
Hancock	375	0	375	395	0	395
Hardin	218	0	218	202	0	202
Harrison	60	0	60	72	0	72
Henry	109	0	109	120	0	120
Highland	317	0	317	334	0	334
Hocking	142	0	142	138	0	138
Holmes	81	0	81	125	0	125
Huron	333	1	334	431	0	431
Jackson	184	0	184	205	0	205
Jefferson	281	0	281	255	0	255
Knox	298	0	298	350	0	350
Lake	1,141	0	1,141	1,382	13	1,395
Lawrence	206	0	206	241	0	241
Licking	1,081	0	1,081	1,183	2	1,185
Logan	313	0	313	292	0	292

Table 6

State and federal foreclosure filings in Ohio, 2006-2007

County	2006 State Court Filings	2006 Federal Court Filings	2006 Total	2007 State Court Filings	2007 Federal Court Filings	2007 Total
Lorain	2,252	0	2,252	2,376	25	2,401
Lucas	3,618	0	3,618	3,735	61	3,796
Madison	213	0	213	252	0	252
Mahoning	1,946	3	1,949	1,860	20	1,880
Marion	495	0	495	505	0	505
Medina	729	0	729	859	0	859
Meigs	83	0	83	56	0	56
Mercer	132	0	132	147	0	147
Miami	521	0	521	577	1	578
Monroe	45	0	45	37	0	37
Montgomery	5,076	0	5,076	5,063	56	5,119
Morgan	43	0	43	45	0	45
Morrow	230	0	230	224	1	225
Muskingum	501	0	501	557	0	557
Noble	25	0	25	29	0	29
Ottawa	185	0	185	211	0	211
Paulding	121	0	121	126	0	126
Perry	221	0	221	243	0	243
Pickaway	308	0	308	307	0	307
Pike	108	0	108	106	0	106
Portage	725	0	725	767	8	775
Preble	307	0	307	348	0	348
Putnam	86	0	86	81	0	81
Richland	752	0	752	849	0	849
Ross	399	0	399	413	0	413
Sandusky	303	0	303	341	0	341
Scioto	326	1	327	330	0	330
Seneca	263	0	263	301	0	301
Shelby	252	0	252	254	0	254
Stark	2,799	3	2,802	2,808	56	2,864
Summit	4,833	2	4,835	4,808	112	4,920
Trumbull	1,560	15	1,575	1,526	37	1,563
Tuscarawas	401	0	401	417	0	417
Union	266	0	266	292	12	304
Van Wert	149	0	149	162	0	162
Vinton	43	0	43	52	0	52
Warren	1,029	0	1,029	1,231	12	1,243
Washington	230	0	230	285	0	285
Wayne	426	0	426	472	3	475
Williams	185	0	185	191	0	191
Wood	442	0	442	553	0	553
Wyandot	102	0	102	108	0	108
Ohio	**79,072**	**363**	**79,435**	**83,230**	**1,521**	**84,751**

Data on state court filings came from the Ohio Supreme Court. Policy Matters Ohio reviewed filings in U.S. District Courts in Ohio. Federal filings exclude cases removed to federal court from state court, reopened cases, and those for which proceedings were not available. We classified one 2007 case listed in both Champaign and Clark counties as being in Champaign, based on the address.

Foreclosure and Beyond:

A report on ownership and housing values following sheriff's sales, Cleveland and Cuyahoga County, 2000-2007

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Foreclosure and Beyond:
A report on ownership and housing prices following sheriff's sales
Cleveland and Cuyahoga County, Ohio, 2000-2007

Summary

Rates of foreclosure have quadrupled since 2000 in Cuyahoga County, primarily as a result of the large numbers of sub-prime loans made earlier in the decade. When a home is sold at sheriff's sale this represents the end point of the foreclosure process, but it may be just the beginning of a series of transitions for the house, the consequences of which may be heightened by the sheer numbers of homes being processed.

This report examines those transitions to determine the degree to which these foreclosed homes are at an increasing risk of vacancy, deterioration and devaluation. We find that the typical foreclosed home spends an extended period in the ownership of a financial institution or real estate organization (i.e. inactive ownership) before it transitions back into productive use as an owner occupied or rented dwelling. As foreclosure rates have increased, the period of inactive ownership and probable vacancy has lengthened. Moreover, increasingly as homes transition back to home owners or investors they have lost more of their value than was the case for foreclosed properties prior to the crisis. For example, homes re-sold in 2007 following sheriff's sales in 2006 brought median sales prices that were 44% of their previous valuation. Moreover, foreclosures, vacancy and declining values are geographically concentrated, reaching very high levels in many of Cleveland's neighborhoods and a few Cuyahoga County suburbs. Under these circumstances, greater efforts are required to protect the growing number of vacant homes and limit spillover effects to surrounding properties. Additionally, policies are needed that can speed the movement of these foreclosed homes into the hands of home owners or landlords who can occupy and maintain the properties. If market circumstances prevent the return of these properties to productive use, effective strategies to hold and maintain property need to be implemented by nonprofit and government agencies.

Introduction

Losing a home to foreclosure and sheriff's sale has become an increasingly common occurrence and can be devastating to home owners and neighborhoods.[1] Foreclosures contribute to neighborhood decline when the circumstances are such that these homes fail to return to their previous level of productive use and value. Homes that are sold at sheriff's sales may sit vacant while the receivers or their representatives process the properties and try to move them back into the marketplace. The longer the homes sit vacant, the more likely they are to deteriorate and lose value. And as foreclosed upon homes accumulate in neighborhoods without reverting to owner occupants or investors who maintain and rent the property, they will have spillover effects, such as becoming nuisances or undermining the desirability and value of the surrounding area.[2]

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[1] Joint Economic Committee (2007). *The subprime lending crisis: The economic impact on wealth, property values and tax revenues and how we got here.* Washington, DC.

[2] The impact of foreclosure on surrounding property values has been demonstrated in Chicago. See Immergluck, D. & Smith, G. (2006). The external costs of foreclosure: The impact of single-family mortgage foreclosures on property values. *Housing Policy Review,* 17, 57-79.

This study focuses on the cumulative effects of increasing foreclosure rates in Cleveland neighborhoods and suburban municipalities of Cuyahoga County and attempts to answer a number of questions: What entities take ownership of these foreclosed properties and for how long do they hold them? Who purchases these homes next, and how do the sales prices compare to the value of the homes prior to the time they entered the foreclosure process? And have these patterns changed as the number of properties being auctioned at sheriff's sale has skyrocketed?

Methodology

This study includes all residential properties (1-family, 2-family, 3-family and condominiums) in Cuyahoga County that had a recorded sheriff's deed[3] between January 2000 and September 2007. Using information recorded with the deed, we determined the party to whom the property transferred at sheriff's sale and the sales price. Additionally, these properties were tracked forward in time to determine when there was a subsequent deed transfer to another party, and the price of that sale. The estimated market value of the property prior to the sheriff's sale was also ascertained. Property values and sales prices are all expressed in constant 2007 dollars.

The study data come from computerized records of the Cuyahoga County Auditor and the Cuyahoga County Recorder that were provided to us by the Center for Housing Research and Policy at Cleveland State University. Deeds recorded in these files contain information on the permanent parcel number, date and type of transfer, the grantee (buyer) and grantor (seller) by name, and the conveyance (sales) amount. We standardized the names of the grantees and then classified them into one the following categories: private individual, community organization (e.g. community development corporation), land bank[4], government or government-sponsored financer (e.g. HUD, VA, Fannie Mae, Freddie Mac, etc.), local bank, other mortgage lender[5], or a real estate organization, such as a broker or real estate investment firm.

Property values prior to sheriff's sales were determined from the estimated market value provided by the Cuyahoga County Auditor. In order to approximate the value of the property prior to foreclosure, we used the auditor's assessed estimated market value for the year closest to and prior to the date of the sheriff's sale. This was chosen in lieu of previous sales price because of the large variation in the length of time since the previous sale among the properties in the study. Additionally, it is possible that some of the very recent sales prices of homes that went to sheriff's sale may have been tainted by speculation or fraudulent activity, making their sales prices poor indicators of actual market value.[6]

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[3] Recorded sheriff's deeds also include tax foreclosures, but most are the result of defaulted mortgage loans.

[4] Land bank properties were excluded from all subsequent analyses because they typically do not have structures.

[5] These are lenders that report under the Home Mortgage Disclosure Act (HMDA), but are not banks with local branches or headquarters. Local branches and headquarters were confirmed by using local directories for the year in question.

[6] The Auditor does a complete reassessment and produces estimated market values every three years. For the period of this study, reassessment was completed in 2000, 2003 and 2006. All values are expressed in constant (2007) dollars.

It should be noted that reliance on recorded sheriff's deeds as the source of data on foreclosures has several limitations. Sometimes owners faced with foreclosure will transfer their deeds to the lender in lieu of foreclosure, and these "near-foreclosures" will not be counted in this study, which focuses on sheriff's sales. Additionally, there is sometimes a lag time between the sheriff's auction and the filing of the sheriff's deed by the grantee.[7] Both of these limitations would result in an underestimate of foreclosure activity in this study. Nevertheless, sheriff's deeds were used because they were a source of complete data covering the study period of 2000-2007 and reflect the end point of the foreclosure process. [8]

Trends in foreclosures

The number of recorded sheriff's deeds has risen dramatically, as can be seen in **Figure 1**. In fact, the number of sheriff's sales in the County more than quadrupled from 2000 to 2007, with a sharp rise that began in 2005. Much of the increased foreclosure activity was concentrated in the City of Cleveland, but suburban municipalities in Cuyahoga County also experienced recent growth of sheriff's sales.

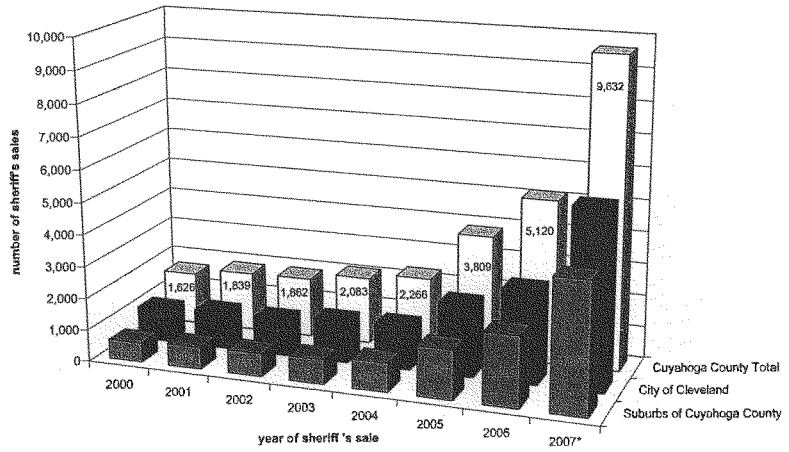
All total, 23,700 residential properties in Cuyahoga County have been involved in a sheriff's sale in Cuyahoga County in the last 7 years. This count represents 8.8% of residential parcels in the City of Cleveland and 3.0% of residential parcels in the suburbs of Cuyahoga County.[9]

[7] As of August 31, 2007 there were approximately 1,700 residential properties that had been auctioned by the sheriff during our study period (January 2000-September 2007), but the sheriff's deeds had not yet been recorded as of October 31, 2007. These properties are, therefore, not in this analysis.

[8] Foreclosure filings in County or Federal court are another source of data that reflect foreclosure activity. We choose not to use this data source for two reasons: The address information was somewhat incomplete and some filings are dismissed or otherwise settled before the foreclosure is completed. Sheriff's sales reflect foreclosures that are completed and go to auction.

[9] These proportions are based on unduplicated counts of single, double, triple and condominium unit properties with recorded sheriff's deeds divided by the number of residential parcels classified as single, double, and triple family units and condominium units.

Figure 1:
Number of Recorded Sheriff's Sale Deeds in Residential Parcels in Cuyahoga County,



*These are annualized numbers based on the first 6 months of 2007.

Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
Source: NEO CANDO (http://neocando.case.edu), Cuyahoga County Auditor

Geographic distribution of sheriff's sales

Some neighborhoods and municipalities within the County have been disproportionately affected by sheriff's sales. (See **appendix Table A** for detailed counts and rates by neighborhood and municipality). The top five neighborhoods (i.e. statistical planning areas) within the City of Cleveland in sheriff's sale rates (the number of sheriff's sales per 100 residential parcels) were Woodland Hills, South Collinwood, Union Miles, Glenville and Corlett. The five suburban municipalities with the highest rates were East Cleveland, Maple Heights, Warrensville Heights, Cleveland Heights and Newburgh Heights. The density of sheriff's sales per square mile has both increased and spread out over the last seven years. This geographic pattern can be seen in the maps below comparing 2000 and 2007. The increasing density is most evident along several pathways edging out from the central city to the inner ring suburbs.

Figure 2, Map 1

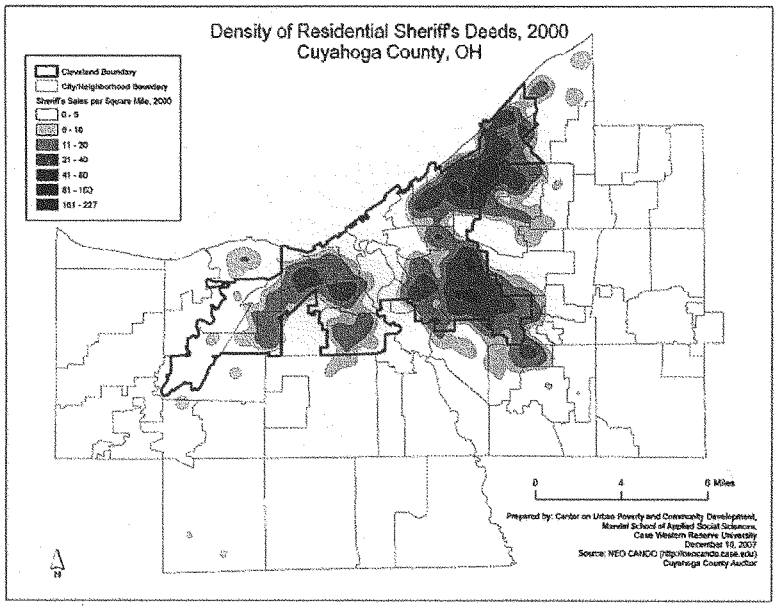
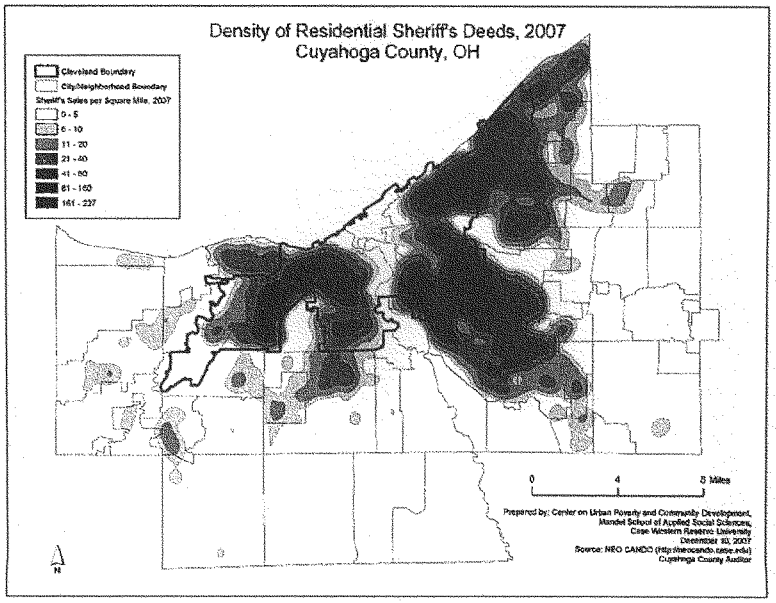


Figure 2, Map 2



Grantees at sheriff's sale

The sheriff's deed identifies as the grantee the entity who purchased the property at the auction. It should be noted that the grantee at sheriff's sale is not necessarily the same entity that originated the mortgage or filed the foreclosure action. Many mortgages are sold to other financial institutions after origination and the grantee in the sheriff's deed may represent investors or be a trustee for another company. Additionally, another party, such as a private individual or investor, may bid on the property and buy it instead of the lender who held the original lien. Nevertheless, the grantee at sheriff's sale is the party that owns the property and going forward will determine its upkeep and future status.

The grantees were classified into several groups as shown in **Table 1**. The groups are ranked according to their numbers of sheriff's deeds in 2007. Mortgage companies top the list, followed by government sponsored agencies and then local banks. A list of the top 20 institutional grantees by name appears in **appendix Table B**.

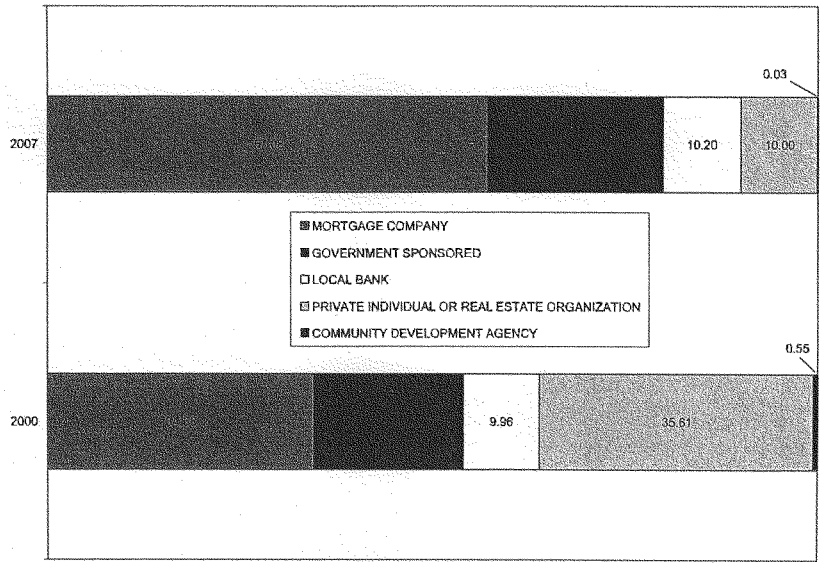
Table 1:
Who is Buying at the Sheriff's Sale: Number of Deeds by Grantee Category, 2000 – 8/31/07

Cuyahoga County Total								
	2000	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
MORTGAGE COMPANY	559	721	709	786	932	1,666	2,568	3,665
GOVERNMENT SPONSORED	316	361	348	398	461	946	1,376	1,457
LOCAL BANK	162	164	233	308	290	447	516	655
REAL ESTATE ORGANIZATION	241	248	273	297	284	388	377	511
PRIVATE INDIVIDUAL	338	322	295	282	295	355	282	131
COMMUNITY DEVELOPMENT AGENCY	9	16	4	8	3	7	1	2
UNKNOWN	1	7	0	4	1	0	0	0
TOTAL	**1,626**	**1,839**	**1,862**	**2,083**	**2,266**	**3,809**	**5,120**	**6,421**
City of Cleveland								
	2000	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
MORTGAGE COMPANY	371	476	479	551	624	1,092	1,629	2,258
GOVERNMENT SPONSORED	164	195	161	185	226	475	641	704
LOCAL BANK	110	112	155	223	205	295	330	412
REAL ESTATE ORGANIZATION	170	171	189	197	176	258	214	304
PRIVATE INDIVIDUAL	196	170	144	137	130	126	96	38
COMMUNITY DEVELOPMENT AGENCY	9	15	3	8	3	7	1	2
UNKNOWN	1	5	0	1	0	0	0	0
TOTAL	**1,021**	**1,144**	**1,131**	**1,302**	**1,364**	**2,253**	**2,911**	**3,718**
Suburbs of Cuyahoga County								
	2000	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**
MORTGAGE COMPANY	188	245	230	235	308	574	939	1,407
GOVERNMENT SPONSORED	152	166	187	213	235	471	735	753
LOCAL BANK	52	52	78	85	85	152	186	243
REAL ESTATE ORGANIZATION	71	77	84	100	108	130	163	207
PRIVATE INDIVIDUAL	142	152	151	145	165	229	186	93
COMMUNITY DEVELOPMENT AGENCY	0	1	1	0	0	0	0	0
UNKNOWN	0	2	0	3	1	0	0	0
TOTAL	**605**	**695**	**731**	**781**	**902**	**1,556**	**2,209**	**2,703**

Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
Source: NEO CANDO (http://neocando.case.edu), Cuyahoga County Auditor

Figure 3 compares the mix of grantees at sheriff's sale for 2000 and 2007. It can be seen that the mix has shifted away from private individuals and real estate companies toward lending institutions. For example, whereas mortgage companies acquired 34% of the sheriff's deeds in 2000 they received 57% in 2007. Local banks, although a relatively small category in the overall picture, remained around 10% in both 2000 and 2007. Government sponsored enterprises, including HUD, VA, Fannie Mae and Freddie Mac, showed a small increase in their percentage of sheriff's deeds. In fact, by 2007 it appears that the private market for properties at sheriff's sales has shrunk considerably relative to the large number of properties at auction.

Figure 3: Proportion of Deeds by Grantee Category in Cuyahoga County, 2000 vs. 2007



Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
Source: NEO CANDO (http://neocando.case.edu), Cuyahoga County Auditor

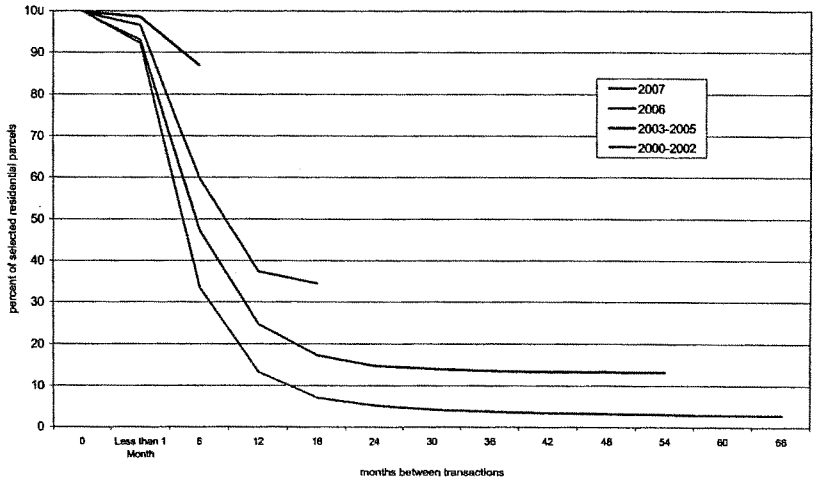
Transition time from sheriff's deed to private owner or investor

The bulk of the sheriff's deeds are now going to mortgage companies, financial institutions or government sponsored entities, but this is a temporary status as these agencies attempt to move the properties along to other owners. While in this inactive institutional ownership status, properties are likely to be vacant and challenging to maintain or protect. Thus, it is important to track how long the properties remain in this distressed inactive ownership status.

Figure 4 focuses on the institutionally owned property and displays the amount of time that elapses between their sheriff's sale and the transfer of the property to a private owner

(either an individual or company).[10] There are four lines in the graph representing the time periods of 2000-2002, 2003-2005, 2006 and 2007. Properties are organized by the year in which they went to sheriff's sale. It can be seen that transitions back into private hands are occurring more slowly for properties sold at sheriff's sale in recent years. For example, among homes sold at sheriff's sale in 2000-2002, 50% were back in private ownership by the fourth month after sheriff's auction. In 2006, it took nearly eight months for half the properties to transition back to the private market. Looking at 2007, it can be seen that the transition speed has slowed considerably and, if it continues, we can expect many homes to be vacant for extended periods. The large numbers of foreclosed properties on the market, as well as other changes in the economy, have arguably contributed to this slow down.

Figure 4: Residential Properties in Limbo: Months from Sheriff's Deed to the Next Deed Transfer*, Cuyahoga County Total, 2000 – 8/31/07



*This figure follows properties purchased at the sheriff's sale by local banks, mortgage companies or government-sponsored entities.

Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
Source: NEO CANDO (http://neocando.case.edu), Cuyahoga County Auditor

Change in valuation

After going through foreclosure, properties are likely to leose some of their pre-foreclosure value. An important question, though, is whether the recent spike in foreclosure rates coupled with the credit squeeze and current economic conditions have worsened the losses. We examine this question by looking at the sales price that is paid

[10] Due to the varying length of time between sheriff sale and deed recording the figures is probably an underestimate of time in inactive ownership.

when the grantees on sheriff's deeds finally sell their properties to a subsequent party.[11] This price is compared to the County Auditor's estimated market value for the property prior to the sheriff's sale.

Tables 2a, 2b and **2c** present the ratio of estimated market value to sales price by year of the sheriff's sale and year of the subsequent sale for all of Cuyahoga County, the City of Cleveland and the suburban municipalities respectively.[12] In every year, the prices paid for the properties tend to be lower than the assessed estimated market value of the property prior to foreclosure and the values fall more the longer the property is on the market before being resold. However, it can be seen that the losses are markedly worsened for properties resold in 2006 and 2007. For example, among all Cuyahoga County properties sold at sheriff's sale in 2006 and resold the next year in 2007, they brought only 44% of their previously assessed estimated market value. This compares to 75% of value that was being recovered for 2000 sheriff's sales resold in 2001. The loss of value is even more severe for the properties resold after sheriff's sale in Cleveland. By 2007, the median resold property brought less than 1/3 of its previous estimated market value. Comparatively, the situation is slightly better for properties in the suburbs where their sale in 2007 was at approximately 58% of the previous estimated market value.

[11] This analysis excludes sales where the conveyance amount is zero or missing, or properties that were transferred a non-profit organization. Properties that were tax abated prior to foreclosure are also excluded because of irregularities in their estimated market value data. Also, only certain deed types were used including: warranty, limited warranty, survivorship, sheriff, administrator, fiduciary, and trustee.

[12] We only include properties resold within two years because by the third and fourth year the numbers are relatively small. Additionally, the comparison becomes more flawed as time elapses due to the failure to take into account overall regional trends in housing values (i.e. appreciation or depreciation). Another limitation is that we do not have data on improvements that may have been done to the property that could account for a price change and make the previous assessed estimated market value a less accurate measure of market value at the time of sale. A full econometric modeling of housing prices was beyond the scope of this paper. Finally, there is likely to be some selection bias, in that the easier to sell properties transitioned more quickly and may not be representative of those that transition later.

Table 2a:
Sales Price Relative to Estimated Market Value (in 2007 dollars), Cuyahoga County

Year of Sheriff's Sale	Year of Next Sale After the Sheriff's Sale: 2000	2001	2002	2003	2004	2005	2006	2007
2000	80% (N=391)	75% (N=261)						
2001		79% (N=421)	72% (N=384)					
2002			80% (N=502)	73% (N=376)				
2003				83% (N=496)	81% (N=533)			
2004					73% (N=562)	75% (N=571)		
2005						70% (N=747)	57% (N=1,383)	
2006							63% (N=1,071)	44% (N=1,384)
2007								44% (N=727)

Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
Source: NEO CANDO (http://neocando.case.edu), Cuyahoga County Auditor

Table 2b:
Sales Price Relative to Estimated Market Value (in 2007 dollars), City of Cleveland

Year of Sheriff's Sale	Year of Next Sale After the Sheriff's Sale: 2000	2001	2002	2003	2004	2005	2006	2007
2000	80% (N=252)	77% (N=164)						
2001		76% (N=282)	70% (N=236)					
2002			79% (N=322)	69% (N=240)				
2003				82% (N=348)	75% (N=343)			
2004					87% (N=396)	69% (N=360)		
2005						64% (N=493)	47% (N=346)	
2006							52% (N=642)	32% (N=825)
2007								29% (N=438)

Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
Source: NEO CANDO (http://neocando.case.edu), Cuyahoga County Auditor

Table 2c:
Sales Price Relative to Estimated Market Value (in 2007 dollars), Suburbs of Cuyahoga County

Year of Sheriff's Sale	Year of Next Sale After the Sheriff's Sale: 2000	2001	2002	2003	2004	2005	2006	2007
2000	80% (N=139)	74% (N=97)						
2001		81% (N=130)	75% (N=148)					
2002			80% (N=180)	76% (N=136)				
2003				85% (N=148)	80% (N=190)			
2004					78% (N=196)	79% (N=212)		
2005						80% (N=254)	70% (N=517)	
2006							78% (N=428)	68% (N=560)
2007								50% (N=280)

Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
Source: NEO CANDO (http://neocando.case.edu), Cuyahoga County Auditor

Conclusion

It appears that the rising rates of foreclosure are overwhelming the systems and markets that ordinarily move properties along. Prior to the current crisis, the foreclosure figures were fairly steady and the impact was relatively isolated. The current trends suggest that these foreclosed properties are accumulating. As they sit longer in the hands of financial institutions and their representatives, and as more new cases flow through the system, valuation is being lost on these properties at an accelerating rate. Because they are concentrated geographically, the steady growth in foreclosed properties is having a disproportionate impact on many communities. Monitoring programs are needed in highly affected areas to prevent vacant properties from becoming a nuisance or deteriorating. Since many of the grantees at sheriff's sale are lenders or their representatives headquartered outside the region, advocacy is required to enforce rules about maintenance and upkeep. Policies are also needed that can address the current market weakness in these communities.

It is unlikely that there will be sufficient buyers in the immediate future, either homeowners or investors in rental properties, to assure that these homes are reoccupied by families. Given the sharp decrease in values, there is the threat that the supply of affordable housing will be lost unless the market is supplemented by activities of non-profit or government organizations who can acquire and maintain some of this housing stock that is stuck in transition.

Finally, it is clear that the sheer numbers of foreclosures and loss of property values are making it a losing proposition not only for the individuals in default but for the lenders,

investors and communities involved. This evidence should tip the balance further in favor of efforts to renegotiate terms or provide other types of assistance to individuals whose loans are in default or at risk of default in order to avoid adding more properties into the pipeline of sheriff's sale and beyond.

Appendix Table A:
Number of Recorded Sheriff's Sale Deeds in Residential Parcels by Cleveland Neighborhood and Suburban Municipality, 2000 - 2007

Cleveland Neighborhood	2000	2001	2002	2003	2004	2005	2006	2007(1)	Cumulative Count, 2000 - 2007 (2)	2000 - 2007 Cumulative Count/ Residential Parcels*100
Brooklyn Centre	11	16	14	18	26	46	49	83	229	7.6
Buckeye-Shaker	34	47	38	31	39	76	93	171	443	11.4
Central	6	7	3	4	12	8	7	35	67	2.6
Clark-Fulton	26	16	34	34	29	62	62	140	347	9.0
Corlett	49	55	57	67	85	116	161	270	710	13.8
Cudell	27	24	31	34	33	52	69	122	339	10.1
Detroit-Shoreway	25	32	27	25	42	70	73	153	379	6.6
Downtown	0	0	0	0	0	0	2	0	2	0.1
Edgewater	11	7	7	7	12	17	22	29	99	4.5
Euclid-Green	14	35	26	13	27	39	65	93	256	13.0
Fairfax	21	26	28	30	27	39	70	129	301	10.3
Forest Hills	48	40	59	57	67	110	144	236	616	13.4
Glenville	74	88	65	98	104	181	233	390	995	14.4
Goodrich-Kirtland Park	2	4	2	2	2	4	4	15	30	1.4
Hough	29	27	36	46	40	55	88	137	383	8.6
Industrial Valley	1	3	3	1	5	2	1	8	20	4.6
Jefferson	20	39	23	50	41	69	102	182	457	6.1
Kamm's Corners	10	12	10	9	15	20	19	53	127	1.6
Kinsman	7	9	13	15	5	15	21	60	115	4.8
Lee-Miles	48	51	55	64	53	79	144	278	640	9.0
Mt. Pleasant	66	82	79	81	81	132	200	387	911	13.4
North Broadway	37	35	32	49	45	72	93	203	456	13.4
North Collinwood	50	35	44	46	46	83	108	236	537	8.1
Ohio City	6	10	11	10	4	15	18	45	102	3.1
Old Brooklyn	48	45	51	56	44	83	118	215	575	4.6
Puritas-Longmead	41	41	36	50	54	84	107	227	546	8.0
Riverside	5	9	3	11	8	17	11	24	79	3.6
South Broadway	52	56	76	87	81	143	185	401	904	12.6
South Collinwood	63	88	57	70	71	150	131	285	755	15.6
St. Clair-Superior	28	29	37	36	44	71	78	180	398	11.4
Stockyards	19	27	27	21	30	42	52	98	270	10.3
Tremont	8	9	12	14	8	18	23	27	108	3.3
Union-Miles	60	71	57	83	91	128	176	315	787	14.7
University	6	5	6	7	4	9	16	26	67	4.0
West Boulevard	27	31	32	34	46	83	90	158	433	8.2
Woodland Hills	42	33	40	42	43	63	76	176	418	15.6
City of Cleveland Total	**1,021**	**1,144**	**1,131**	**1,302**	**1,364**	**2,253**	**2,911**	**5,577**	**13,901**	**8.8**

1 This is an annualized figure based on the first 8 months of 2007.
2 This is an unduplicated count of the properties that had a sheriff sale in 2000 - 2007.

(continued, next page)

Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
Source: NEO CANDO (http://neocando.case.edu), Cuyahoga County Auditor

Appendix Table A, continued

Suburban Municipality	2000	2001	2002	2003	2004	2005	2006	2007(1)	Cumulative Count, 2000 - 2007(2)	2000 - 2007 Cumulative Count/ Residential Parcels*100
Bay Village	3	1	6	4	10	11	16	23	65	1.0
Beachwood	3	1	2	4	3	2	7	15	31	0.8
Bedford	13	10	16	19	28	39	58	84	235	4.5
Bedford Heights	9	15	14	12	13	26	34	77	169	5.2
Bentleyville	0	0	0	0	0	0	1	0	1	0.3
Berea	7	8	13	20	12	32	44	51	165	2.5
Bratenahl	2	3	1	4	0	3	1	6	17	2.0
Brecksville	3	1	5	3	5	10	5	26	49	0.9
Broadview Heights	0	2	3	5	3	6	7	27	44	0.7
Brookpark	12	11	10	11	14	28	44	51	161	1.9
Brooklyn	4	3	3	3	2	12	17	17	54	1.3
Brooklyn Heights	0	1	1	1	0	0	2	0	5	0.6
Chagrin Falls Township	0	0	0	0	0	0	0	0	0	0.0
Chagrin Falls Village	1	3	2	0	1	1	0	5	11	0.6
Cleveland Heights	60	85	69	74	113	144	236	380	984	6.2
Cuyahoga Heights	1	0	0	0	2	0	0	0	3	0.6
East Cleveland	107	104	122	123	111	196	244	485	1,171	17.3
Euclid	50	63	69	75	85	160	219	408	962	5.3
Fairview Park	7	7	8	8	15	17	27	30	109	1.6
Garfield Heights	34	27	46	49	57	112	165	293	665	5.4
Gates Mills	1	0	2	0	0	1	5	3	11	1.0
Glenwillow	0	0	0	0	0	0	0	8	5	2.4
Highland Heights	2	2	2	2	0	3	3	8	19	0.6
Highland Hills	0	1	0	0	0	1	3	6	9	4.3
Hunting Valley	0	0	0	0	0	0	1	0	1	0.4
Independence	0	1	0	2	0	1	3	5	10	0.3
Lakewood	25	35	28	31	38	71	82	204	438	2.5
Linndale	0	0	0	0	0	0	0	2	1	0.8
Lyndhurst	3	7	9	2	6	7	23	30	77	1.1
Maple Heights	57	68	81	61	89	150	200	428	962	9.0
Mayfield Heights	3	2	5	7	9	19	16	41	88	1.4
Mayfield Village	1	0	1	0	1	1	3	6	11	0.8
Middleburg Heights	2	2	3	5	5	3	10	20	43	0.7
Moreland Hills	1	2	0	1	0	0	3	8	12	0.9
Newburgh Heights	0	5	5	6	4	10	8	21	50	5.6
North Olmsted	13	15	12	17	13	33	42	71	190	1.5
North Randall	1	0	0	1	1	2	0	9	10	3.7
North Royalton	11	11	16	10	16	18	23	51	136	1.4
Oakwood	3	10	0	7	10	22	19	24	82	5.2
Olmsted Falls	2	6	6	4	7	18	30	41	100	3.0
Olmsted Township	3	3	1	6	3	8	16	21	54	1.8
Orange	0	0	2	2	2	3	9	8	23	1.8
Parma	26	28	38	33	55	99	139	215	556	1.8
Parma Heights	10	5	3	11	14	18	28	65	131	1.9
Pepper Pike	2	1	2	3	3	5	5	14	30	1.2
Richmond Heights	3	6	7	5	5	12	14	47	82	2.4
Rocky River	2	2	6	7	5	14	16	14	61	0.7
Seven Hills	1	2	2	6	5	4	10	14	39	0.8
Shaker Heights	23	32	29	32	42	48	94	153	387	3.9
Solon	11	9	9	7	5	15	9	47	96	1.2
South Euclid	22	29	15	32	28	44	85	167	362	3.9
Strongsville	18	19	17	17	12	25	32	59	176	1.1
University Heights	9	10	10	10	9	25	29	69	144	3.3
Valley View	0	0	1	0	0	1	2	0	4	0.3
Walton Hills	0	0	1	0	1	3	1	0	6	0.5
Warrensville Heights	24	30	19	29	33	54	94	174	380	7.8
Westlake	10	6	9	8	7	19	22	36	105	0.9
Woodmere	0	1	0	0	0	0	3	2	5	2.3
Unknown	0	0	0	2	0	0	0	0	2	6.3
Suburbs of Cuyahoga County	**605**	**695**	**731**	**781**	**902**	**1,556**	**2,209**	**4,055**	**9,799**	**3.0**
Cuyahoga County Total	**1,626**	**1,839**	**1,862**	**2,083**	**2,266**	**3,809**	**5,120**	**9,632**	**23,700**	**4.9**

1 This is an annualized figure based on the first 8 months of 2007.

2 This is an unduplicated count of the properties that had a sheriff sale in 2000 - 2007.

Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
Source: NEO CANDO (http://neocando.case.edu), Cuyahoga County Auditor

Appendix Table B:
Top Institutional Grantees at Sheriff's Sale in Cuyahoga County, 2006 and 2007

	Number of Properties Received at Sheriff's Sales	% of Total Properties Received at Sheriff's Sales
DEUTSCHE BANK NATIONAL TRUST	1,365	11.8
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)	1,340	11.6
FANNIE MAE	1,003	8.7
WELLS FARGO	906	7.9
US BANK NA	530	4.6
JP MORGAN CHASE BANK	482	4.2
LASALLE BANK NATIONAL ASSOCIATION	401	3.5
BANK OF NEW YORK	384	3.3
FREDDIE MAC	344	3.0
HOUSEHOLD REALITY CORP	261	2.3
HOMECOMINGS FINANCIAL NETWORK	223	1.9
WACHOVIA BANK	213	1.8
THIRD FEDERAL SAVINGS & LOAN	148	1.3
U.S. DEPARTMENT OF VETERANS AFFAIRS (VA)	146	1.3
HSBC BANK USA	141	1.2
BANK ONE	137	1.2
KEY BANK	129	1.1
EMC MORTGAGE CORP	127	1.1
NATIONAL CITY BANK	122	1.1
CITIFINANCIAL	120	1.0
TOTAL	**8,522**	**73.8**

Notes: An additional 315 institutional grantees were involved in 22.6% of the purchases. In addition, 413 properties were bought at sheriff's sales by private individuals in 2006 and 2007, accounting for 3.6% of total properties purchased. Also, the grantee at sheriff's sale may not be the same as the originator of the mortgage because many mortgages are bundled and sold to investors.

Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
Source: NEO CANDO (http://neocando.case.edu), Cuyahoga County Auditor

SUBPRIME LENDING, REAL ESTATE FLIPPING AND THE FORECLOSURE CRISIS IN SLAVIC VILLAGE 2003-2008

Prepared by:
The Slavic Village Vacant and Abandoned Property Task Force

With the support of
Neighborhood Progress Incorporated
Slavic Village Development

Introduction

During the past year, "sub-prime" has entered the lexicon as a byword for irresponsible lending. Today a casual reader of the business pages knows the broad contours of the financial crisis linked to the sub-prime mortgage industry, and while the full extent of the damage to the global financial system remains unclear, the local impact of such lending in Cleveland has been visible for years in the steadily increasing number of abandoned and vacant homes that are tied to foreclosures. This is particularly true in the collection of southeast Cleveland neighborhoods known as Slavic Village, which have attracted international attention as the epicenter of the nation's foreclosure crisis.[1]

It is now generally recognized that many of these foreclosures were the result of a series of irresponsible practices occurring at all stages of the sub-prime mortgage pipeline. Moreover, it is clear that these practices revolved around the banks' lax underwriting standards. These standards were the hallmark of the sub-prime market segment and flourished in a climate in which loosely regulated mortgage lenders—with the assistance of investment banks and bond rating agencies— bundled low quality mortgages into high-grade securities, thereby transferring the risk of these dubious loans to investors worldwide.

Starting in approximately the year 2000, the home mortgage market in Slavic Village came to be dominated by sub-prime lenders. This fact is best illustrated by the extraordinarily high number of high-cost mortgages made in the area. During the period 2005-2006, for example, fully 68 percent of all Slavic Village loan originations reported under the Home Mortgage Disclosure Act (HMDA) were classified as high cost (1245 out of 1808 initial purchase and refinance mortgages).[2] By contrast, among all HMDA-reported loans nationally, 28 percent fell under the definition of high cost in 2006, and 26 percent in 2005.

The results of this sub-prime wave can be seen in the number of Slavic Village home foreclosures, which have increased six hundred percent since 2000. During this period, Slavic Village has also witnessed a dramatic increase in the number of abandoned and vacant homes. Until now, however, it has not been possible to connect the damage inflicted on Slavic Village to the specific lenders responsible for originating bad loans. Similarly, while real estate "flipping" is widely assumed to make up a significant share of the housing foreclosure problem, there has been no detailed study of the role of such speculators and the extent of their responsibility for the crisis we now face.

For purposes of this report, the term "Slavic Village" refers to the area served by Slavic Village Development (SVD). The SVD service area includes the South Broadway,

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[1] Indeed, the postal zip code that includes Slavic Village now holds dubious distinction of having the largest number of housing foreclosures in the United States. See, e.g., CNN Money, Top 500 Foreclosure Zip Codes, June 19, 2007, at http://money.cnn.com (documenting a recent study by RealtyTrac, which lists the zip code 44105 and includes most of Slavic Village, as number one in foreclosures)

[2] The Federal Reserve defines high cost loans as those with yields that are 3% greater than the yield on Treasury securities of comparable duration on first-lien loans and 5% greater than on subordinate liens.

North Broadway and portions of the Industrial Valley neighborhoods and is home to more than 30,000 residents.

This analysis draws upon data from the Cuyahoga County Recorder's Office, the Office of the Auditor, the Court of Common Pleas and other public records compiled in the NEO CANDO database developed and maintained by the Center on Urban Poverty and Community Development at the Case Western Reserve University's Mandel School of Applied Social Sciences. The Committee also examined other records such as Certificates of Disclosure and Building Permit Applications maintained by the City of Cleveland, Department of Building and Housing.

Section I: Mortgage Lending in Slavic Village

An analysis of recorded Sheriff Deeds for the SVD Service Area shows that despite economic recessions in the mid-1970s, early 1980s and early 1990s, the Slavic Village housing market remained remarkably stable in terms of foreclosures. Between 1976 and 1999, the average annual number of completed foreclosure actions in Slavic Village (as measured by recorded Sheriff Deeds) was 41; in no year during this period did foreclosures reach 90.

Unfortunately, as shown in **Table 1: Recorded Sheriff Sale Deeds 1997-2007 and Foreclosure Filings 2006-2007 SVD Service Area,** the number of foreclosures climbed to 108 in 2000, reached 268 by 2005, and is now at the previously-unimaginable level of 633 completed foreclosures for 2007. Moreover, based on 2007 foreclosure filings—a leading indicator for Sheriff Sales—the number of recorded Sheriff Deeds in Slavic Village is expected to increase substantially in 2008.

To determine the causes of this exponential growth in foreclosures, the Vacant and Abandoned Property Task Force conducted an analysis of property transaction and loan origination data for the years 2003 to 2006. This period was chosen on the assumption that the spike in the number of foreclosures seen in 2005-2007 was largely the result of defaulted loans that originated in the immediately preceding period. The results of this analysis are provided in **Table 2: Slavic Village Lenders Ranked by Loan Originations 2003-2006,** and **Table 3: Slavic Village Lenders by Foreclosure Filings on Loans Originated 2003-2006.**

Table 2 shows that during 2003 to 2006, lenders made nearly 5000 loans secured by mortgages on residential property in Slavic Village, totaling more than $343 million. Because the data reflect both first and subsequent mortgages secured by a single property, the number of loan originations shown in Table 2 substantially exceeds the number of affected parcels. This fact, however, has no impact on the *market share* for the institutions making loans during the period 2003-2006, or on the *rates of foreclosure* for these loans.

The largest lender during the survey period in Slavic Village was Argent Mortgage (and its affiliated company, Ameriquest), an out-of-state bank that is now notorious for its

lending practices in the sub-prime mortgage market. With more than $51 million in loans, Argent/Ameriquest by far held the largest market share in terms of dollar volume (14.9%), loan originations (14.7%), and foreclosures (25%). Of the 726 loans originated by Argent during the survey period, an astounding 335 (46%) had defaulted and were foreclosed as of February 2008.

This pattern is repeated for almost all of the sub-prime lenders. These out-of-state institutions, which generally did not operate local branch offices and instead originated loans through independent mortgage brokers, accounted for the majority of loans made during the survey period and an even higher share of defaults, as demonstrated by foreclosure rates of up to 60%. Worse, because of the significant lag between origination and the filing of a foreclosure action, and the fact that many of these lenders continued to make loans throughout 2006, these already high foreclosure rates will continue to rise.

By contrast, state-chartered and locally operated lenders had much lower rates of foreclosure. For example, the lender with the second-largest market share, Third Federal Savings and Loan, had a foreclosure rate of only 7.5% - a striking contrast to Argent's foreclosure rate of 46%. Unfortunately, traditional banks such Third Federal proved to be the exception: Of the top twenty lenders by loan originations during the survey period, ten are traditional state-chartered institutions with local offices, ten are out-of-state banks associated with the sub-prime market. The traditional lenders' combined market share was 26% (1300 loans), of which approximately 10% (144) ended in foreclosure[3]. The ten leading sub-prime lenders' market share was 34% (1699 loans), of which 52% (704) ended in foreclosure.

Section II: Speculator Activity in the SVD Service Area 2003-06.

For purposes of this report, the term "flipper" is used to denote a speculator engaged in the purchase and quick resale of property at a large markup over the initial purchase price. Although this report does not attempt to define what constitutes flipping with any precision, or to identify every potentially qualifying transaction, these transactions tended to have the following common characteristics:

- The property being sold was frequently the subject of a prior foreclosure, acquired from the foreclosing lender.
- The sale price was often significantly higher than the flipper paid and higher than the County's assessed "Fair Market Value" (FMV).
- Most of the properties were never occupied by the purchaser or anyone else.
- There was little or no evidence of repairs or improvements made to the properties. Building permits were rarely applied for by the seller or buyer.
- The lender in the vast majority of cases we identified was a lender on the Sub-prime Lender List compiled and published by the U.S. Department of Housing and Urban Development (HUD).

[3] One local lender, National City Bank, did have a significantly higher foreclosure rate (24%) than most of its local counterparts. However, even with this exception, the top 10 lenders with local offices still averaged foreclosure rates far below those of the 10 leading sub-prime lenders.

- The majority of these properties ended up in foreclosure – in many cases this represented a second foreclosure since the flipper often acquired the property at a Sheriff Sale that was the result of a prior foreclosure.

The research that follows demonstrates that property flipping in Slavic Village is widespread and accounts for a disproportionate share of foreclosures during the reporting period.

The transactions included on **Table 4: Selected Flipper Transactions in SVD Service Area 2003-2006** do not constitute a comprehensive accounting of speculative property transfers in Slavic Village, but have been selected as examples of flipping activity in the neighborhood, as defined under the broad criteria noted above.

These transactions were chosen from a much larger list of property transfers occurring during the survey period in which the sale price and/or mortgage loan on the property was significantly in excess of the county assessed value. In reviewing these transactions with a high price-to-assessed-value ratio, the Task Force noted a small group of buyers who had who purchased more than one property within a short period of time. In many cases, these "multiple buyer" sales were financed by a 90% first mortgage from a sub-prime lender, and a 10% second mortgage taken by the seller. It also appeared that a high proportion of multiple buyer transactions ended in foreclosure.

Many of these multiple buyers, in turn, purchased from "multiple sellers" who sold the properties in question at a markup of between 200%-600% over the initial purchase price. Based on these characteristics, the Committee considered these transactions to be speculative in nature, and the properties in question to qualify as "flipped."

Further review of these flipped property transfers shows that that some of the multiple sellers in these transactions may be affiliated by business or family ties. The Committee also obtained the Certificates of Disclosure filed with the City of Cleveland for most of these transactions; these reveal that many of the speculator transactions involved the same mortgage broker, appraiser and title company. A brief description of these affiliations is provided in **Appendix 1.**

Finally, our review showed that in most cases, the City of Cleveland Department of Building and Housing issued no permits on these properties between the initial purchase of the properties and the subsequent sale at a high markup. A detailed examination of five of the transactions listed in Table 4 is provided in **Appendix 2.** The examples shown in Appendix 2 further demonstrate that after a foreclosed property are taken back by a lender at Sheriff Sale, it often ends up in the hands of a flipper / speculator, becoming the subject of another foreclosure. Thus we see that not only did sub-prime lending practices result in far too many homeowners losing their homes, they also set the stage for future instability as new speculators move in to begin again the destructive cycle of foreclosure, abandonment and neighborhood deterioration.

Section III: Foreclosure Activity Flowing From Sub-prime Lending and Speculator Activity in the SVD Service Area 2003-06.

As demonstrated in Sections I and II of this report, sub-prime loan originators were the common element linking real estate flipping, high foreclosure rates and property abandonment in Slavic Village. Thus, for example, we note that the ten leading sub-prime lenders, who held a combined market share of 34%, financed nearly all of the flip transactions identified in Table 4. Moreover, of these 126 transactions, 95 (75%) ended in foreclosure, and 44 (34%) of the flipped houses are now vacant, boarded or demolished.

An analysis of Sheriff Sale data also shows that responsibility for the foreclosure and property abandonment epidemic in Slavic Village does not end with the lenders who made the bad loans. Accountability also extends to the purchasers and/or servicers of the loans who foreclosed on the defaulted mortgages and thus served as the immediate cause of abandonment. These institutions, which are listed in **Table 5, Leading Slavic Village Foreclosure Plaintiffs (2003-2007),** help to illustrate the role of the secondary market in the present crisis. While the three leading sub-prime lenders in Slavic Village—Argent, New Century and Long Beach—held a combined 34% loan origination market share, these lenders appear as foreclosure plaintiffs in under 4% of the Sheriff Sales occurring since 2003. Conversely, many of the lenders who appear as foreclosure plaintiffs made no loans in Slavic Village. Deutsche Bank, for example, filed the most foreclosures at 224, but made no loans in Slavic Village.

Our research also revealed some surprising results. In its role as an originating lender, US Bank had a very low rate of foreclosure – only 4.62% of the 65 loans it originated went into foreclosure. On the other hand, US bank served as one of the major investors in bad loans in Slavic Village and was the fourth highest foreclosing lender with 120 foreclosures filed in Slavic Village.

These results should come as no surprise. It has been a common practice for lenders to "securitize" mortgages and sell them on the secondary market within days after making the loans. As a result, a foreclosure action on a sub-prime loan is rarely filed by the same financial institution that made the loan. Nevertheless, with foreclosure rates now approaching 60%, it should have been obvious long ago to anyone familiar with the sub-prime industry that the underwriting practices of lenders such as Argent and Long Beach were grossly negligent. Therefore, we consider the investment banks, bond rating agencies and servicing banks, whose actions facilitated the sale of these mortgages and whose lack of due diligence enabled the sub-prime lenders' negligent practices to continue, to be as complicit in the damage inflicted on Slavic Village as the sub-prime lenders themselves. Therefore, both the originators and the subsequent purchaser/servicers must be held accountable.

Conclusions

Our investigation supports the following four conclusions:

1) Irresponsible lending by sub-prime lending institutions has resulted in unconscionably high rates of foreclosure in the Slavic Village neighborhood – five times higher than the foreclosure rates for loans made in Slavic Village by lending institutions that are locally-based.

2) The irresponsible lending of these institutions fueled and enabled speculative flipping which in turn led to even higher rates of foreclosure on flipped properties.

3) The abandonment of homes in Slavic Village – through judicial foreclosure – is being done by financial institutions that recklessly invested in bundled pools of risky sub-prime loans.

4) Properties foreclosed on, and then taken back by the lender at Sheriff Sale, are often sold to flippers/speculators whose practices frequently result in another foreclosure, perpetuating a cycle of abandonment.

Call for Action

With a foreclosure toll now reaching into the thousands; with hundreds of homes left vacant, abandoned, vandalized, condemned and slated for demolition; with property values for the many well-kept neighboring homes in decline, the abusive sub-prime lending practices and resulting foreclosures documented in this report have been a catastrophe for Slavic Village.

We call upon City, County, State and Federal government officials, as well as civic, philanthropic and financial institution leaders to join with us in seeking the enactment of the following reforms. While the experience of Slavic Village may be more severe than other communities, we believe the corrective actions we are calling for would benefit the entire region.

1. Creation of an Electronic Certificate of Disclosure Database. The Building and Housing Department of the City of Cleveland should create an electronic database, accessible to citizens, of the Certificates of Disclosure filed with the Department. The information provided by these Certificates (i.e., the name of appraiser, mortgage broker and title company involved in a property transfer) is not available through any other public record. We spent hundreds of hours in a painstaking review of the hard copy forms filed over the past several years and this information was pivotal to our investigation of flipping. This information should be streamlined in an electronic database so that it can be widely put to use by citizens and public officials.

2. Countywide Certificates of Disclosure. The Cuyahoga County Recorder should mandate that the filing of deeds of transfer for property located in the City of Cleveland be accompanied by the City of Cleveland's Certificate of Disclosure.

3. Point of Sale Inspections for Vacant Property. Cleveland City Council should enact a Point of Sale ordinance that requires that vacant residential structures be inspected to document the existence of code violations at the point of sale or transfer.

4. Prosecution. We call upon City, County, State and Federal officials to devote increased resources to the prosecution of sellers, buyers, mortgage brokers, appraisers, title companies, lenders and others who participate in fraudulent flipping or fraudulent mortgage lending.

5. Stricter Regulation of Licensed Real Estate Professionals. We call upon the State of Ohio's Department of Commerce and the Attorney General to more aggressively monitor and regulate mortgage brokers, appraisers, title companies and other real estate professionals that participate in fraudulent flipping and fraudulent mortgage lending.

6. Increased Funding for Demolition and Repair of Vacant Property. We call upon City, County, State and Federal officials to increase funding for demolition and repair of vacant property – and to use all leverage at their disposal to encourage foreclosing lenders to make grant funds available for the demolition or repair of properties in their "Real Estate Owned" (REO) inventory.

7. Responsible REO Disposition by Lenders. We call upon foreclosing lenders to stop their practice of "dumping" foreclosed vacant properties with flippers, speculators and irresponsible and uncooperative real estate brokers.

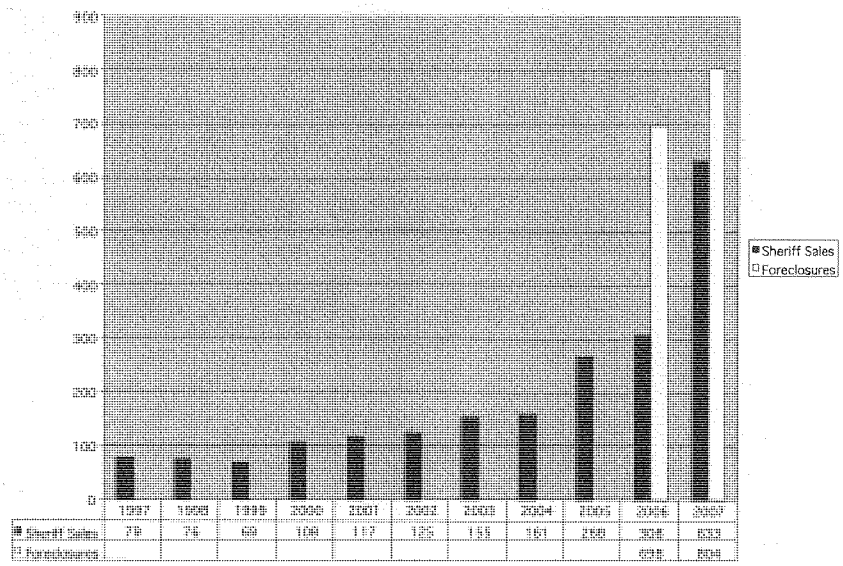
8. Implementation of a Demolition Bond for Condemned Property. Cleveland City Council should enact an ordinance requiring an owner of condemned property to post a bond with the City's Building and Housing Department to secure the funding for demolition.

9. Creation of a County Land Bank. We call upon the Ohio Legislature to move quickly to enact the necessary legislation to enable County governments to create Land Banks that can accept title to vacant foreclosed property, manage it, and plan for its beneficial redevelopment.

10. Imposition of a Foreclosure Moratorium. Drawing upon the legal precedent established by the U.S. Supreme Court in 1934, we call upon the Ohio Legislature and the U.S. Congress to enact legislation that would impose a one-year moratorium on the filing of mortgage foreclosure on occupied property. Vacancy from foreclosure is a cancer that is killing our neighborhoods. This action is needed to stabilize neighborhood economies and protect the welfare of neighborhood residents.

TABLES AND APPENDICES

Table 1: Recorded Sheriff Sale Deeds 1997-2007 and Foreclosure Filings 2006-2007
SVD Service Area



	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
Sheriff Sales	78	76	69	108	117	126	155	161	258	304	833
Foreclosures										698	804

Source: Cuyahoga County Auditor and Cuyahoga County Court of Common Pleas, accessed via NEO CANDO (http://neocando.case.edu), Feb 19, 2008

Table 2: Slavic Village Lenders Ranked by Loan Originations
2003-2006
(Minimum 10 originations)

LENDER	Number of Mortgage Originations 2003-2006[i]	Foreclosures on Loans Originated 2003-2006	Foreclosure Rate	Average Loan Amount	Total Amount Loaned	Market Share by originations	Market Share by dollar volume	Share of all foreclosures
ALL LENDERS	**4942**	**1350**	**27.32%**	**$69,696**	**$343,738,613**	**100.00%**	**100.00%**	**100.00%**
ARGENT /AMERIQUEST[ii]	726	335	46.14%	$73,483	$51,291,074	14.69%	14.92%	24.81%
THIRD FED S&L ASSN	412	31	7.52%	$67,586	$27,845,510	8.34%	8.10%	2.30%
NEW CENTURY MORT CORP	237	111	46.84%	$73,349	$17,383,613	4.80%	5.06%	8.22%
NATIONAL CITY BANK[iii]	212	51	24.06%	$86,910	$18,424,916	4.29%	5.36%	3.78%
PEOPLES CHOICE HM LN INC	183	77	42.08%	$64,741	$11,847,577	3.70%	3.45%	5.70%
CHARTER ONE BANK	158	19	12.03%	$38,778	$6,126,950	3.20%	1.78%	1.41%
COUNTRYWIDE HM LOANS[iv]	109	17	15.60%	$60,091	$6,549,956	2.21%	1.91%	1.26%
LONG BEACH MORTGAGE CO.	101	61	60.40%	$77,672	$7,844,850	2.04%	2.28%	4.52%
FIFTH THIRD BANK[v]	98	10	10.20%	$53,112	$5,205,022	1.98%	1.51%	0.74%
AMERICAS WHOESALE LENDER	90	27	30.00%	$64,233	$5,780,925	1.82%	1.68%	2.00%
HUNTINGTON NATL BK	87	9	10.34%	$45,592	$3,966,536	1.76%	1.15%	0.67%
FIRSTMERIT BANK[vi]	85	7	8.24%	$62,688	$6,143,469	1.72%	1.79%	0.52%
AEGIS FUNDING CORPORATION	75	26	34.67%	$61,881	$4,641,050	1.52%	1.35%	1.93%
KEYBANK NATL ASSN	74	6	8.11%	$269,547	$19,946,446	1.50%	5.80%	0.44%
CHASE BANK[vii]	66	12	18.18%	$54,199	$3,577,195	1.34%	1.04%	0.89%
US BANK[viii]	65	3	4.62%	$46,583	$3,027,892	1.32%	0.88%	0.22%
WELLS FARGO BANK	60	27	45.00%	$66,001	$3,960,063	1.21%	1.15%	2.00%
UNION NATIONAL MORT CO	57	7	12.28%	$72,541	$4,134,849	1.15%	1.20%	0.52%
ZAREMBA CLEV CMNTY	52	1	1.92%	$7,260	$377,520	1.05%	0.11%	0.07%
AMERICAN HOME MORT[ix]	52	11	21.15%	$59,743	$3,106,657	1.05%	0.90%	0.81%
CITY OF CLEVELAND[x]	51	9	17.65%	$11,032	$562,620	1.03%	0.16%	0.67%
BNC MORTGAGE	50	20	40.00%	$72,008	$3,600,406	1.01%	1.05%	1.48%
DOLLAR BANK	47	2	4.26%	$46,748	$2,197,168	0.95%	0.64%	0.15%
HOUSEHOLD RLTY CORP	47	7	14.89%	$77,578	$3,646,184	0.95%	1.06%	0.52%
FINANCE AMERICA, LLC	46	28	60.87%	$70,834	$3,258,356	0.93%	0.95%	2.07%

Table 2: Slavic Village Lenders Ranked by Loan Originations
2003-2006
(Minimum 10 originations)

LENDER	Number of Mortgage Originations 2003-2006[xi]	Foreclosures on Loans Originated 2003-2006	Foreclosure Rate	Average Loan Amount	Total Amount Loaned	Market Share by Originations	Market Share by Dollar Volume	Share of All Foreclosures
FIRST PLACE BANK	46	13	28.26%	$62,096	$2,856,414	0.93%	0.83%	0.96%
WASHINGTON MUTUAL BANK	43	9	20.93%	$65,952	$2,835,932	0.87%	0.83%	0.67%
AAMES FUNDING CORPORATION	38	18	47.37%	$63,288	$2,404,940	0.77%	0.70%	1.33%
BENEFICIAL	37	9	24.32%	$67,410	$2,494,184	0.75%	0.73%	0.67%
NOVASTAR MORT INC	35	21	60.00%	$72,444	$2,535,525	0.71%	0.74%	1.56%
LEHMAN BROS BANK	31	11	35.48%	$56,832	$1,761,802	0.63%	0.51%	0.81%
CCO MORTGAGE CORP	29	2	6.90%	$42,991	$1,246,735	0.59%	0.36%	0.15%
INDYMAC BANK	28	4	14.29%	$59,064	$1,653,800	0.57%	0.48%	0.30%
OHIO SAVINGS BANK	27	2	7.41%	$57,085	$1,541,304	0.55%	0.45%	0.15%
REAL ESTATE MORT CORP	26	1	3.85%	$77,752	$1,943,792	0.53%	0.57%	0.07%
DELTA FUNDING CORPORATION	25	10	40.00%	$71,675	$1,791,875	0.51%	0.52%	0.74%
GREENPOINT MORT FUNDING INC	25	7	28.00%	$51,986	$1,299,650	0.51%	0.38%	0.52%
SOUTHSTAR FUNDING	24	8	33.33%	$71,565	$1,717,550	0.49%	0.50%	0.59%
EQUITY TRUST CO	23	8	34.78%	$47,309	$1,088,098	0.47%	0.32%	0.59%
SKY BANK	22	2	9.09%	$68,898	$1,515,755	0.45%	0.44%	0.15%
HSG & URB DEV SECY OF	21	2	9.52%	$39,600	$831,603	0.42%	0.24%	0.15%
DECISION ONE MORTGAGE	20	5	25.00%	$81,841	$1,636,810	0.40%	0.48%	0.37%
AMERICAN MIDW MORT CORP	19	7	36.84%	$77,594	$1,474,293	0.38%	0.43%	0.52%
FIRST HORIZON HOME LOAN	18	9	50.00%	$63,766	$1,147,787	0.36%	0.33%	0.67%
PARK VIEW FED SAV BK	18	5	27.78%	$109,275	$1,966,950	0.36%	0.57%	0.37%
SUNTRUST MORT CO	18	5	27.78%	$41,594	$707,100	0.36%	0.21%	0.37%
CLEVELAND HOUSING NETWORK	17	0	0.00%	$302,313	$4,837,000	0.34%	1.41%	0.00%
AMERICAN BROKERS COND CORP	16	2	12.50%	$50,863	$813,805	0.32%	0.24%	0.15%
ENCORE CREDIT CORP	16	8	50.00%	$73,496	$1,175,935	0.32%	0.34%	0.59%
YORK MGMT GROUP LLC	16	14	87.50%	$9,513	$152,200	0.32%	0.04%	1.04%
AEGIS WHOLESALE CORP	15	0	0.00%	$56,367	$845,503	0.30%	0.25%	0.00%
FREEDOM MORT CORP	15	1	6.67%	$68,362	$1,025,428	0.30%	0.30%	0.07%
ACCREDITED HOME LENDERS	14	5	35.71%	$97,961	$1,371,448	0.28%	0.40%	0.37%
GEAUGA SAVINGS BANK	14	4	28.57%	$60,732	$850,250	0.28%	0.25%	0.30%

Table 2: Slavic Village Lenders Ranked by Loan Originations
2003-2006
(Minimum 10 originations)

LENDER	Number of Mortgage Originations 2003-2006[xi]	Foreclosures on Loans Originated 2003-2006	Foreclosure Rate	Average Loan Amount	Total Amount Loaned	Market Share by Originations	Market Share by Dollar Volume	Share of All Foreclosures
LAKESIDE MORT INC	14	1	7.14%	$60,893	$852,506	0.28%	0.25%	0.07%
REAL ASSET FUND LLC	14	13	92.86%	$48,679	$681,500	0.28%	0.20%	0.96%
HOMECOMINGS FINL NETWORK	13	2	15.38%	$70,120	$911,560	0.26%	0.27%	0.15%
REPUBLIC BANK	13	1	7.69%	$549,746	$7,146,700	0.26%	2.08%	0.07%
SAXON MORTGAGE	13	4	30.77%	$69,677	$905,795	0.26%	0.26%	0.30%
FIRST MAGNUS FINANCIAL CORP	12	0	0.00%	$54,867	$658,400	0.24%	0.19%	0.00%
FIRST NAT BANK OF ARIZONA	12	3	25.00%	$59,379	$712,550	0.24%	0.21%	0.22%
REAL LIVING MORT LLC	11	1	9.09%	$64,203	$706,233	0.22%	0.21%	0.07%
STRATEGIC MORT CO	11	5	45.45%	$69,302	$762,326	0.22%	0.22%	0.37%
UNION FED BK OF INDIANAPOLIS	11	3	27.27%	$70,822	$779,047	0.22%	0.23%	0.22%
WORLD SAVINGS BANK	11	2	18.18%	$62,518	$687,701	0.22%	0.20%	0.15%
GRTR CLEVE FIRE FIGHTERS CU	10	1	10.00%	$20,250	$202,500	0.20%	0.06%	0.07%
MORTGAGEIT INC	10	3	30.00%	$57,231	$572,310	0.20%	0.17%	0.22%

[i] Source: Cuyahoga County Recorder and Common Pleas Court. (Foreclosure filings are through February 7, 2008)
[ii] Includes originations by Argent Mortgage (698) and Ameriquest (28), which were owned by ACC Capital Holdings.
[iii] Includes National City Bank (200), National City Bank of Indiana (7) and National City Mortgage Co.(5)
[iv] Includes Countrywide Bank (16) and Countrywide Home Loans (93)
[v] Includes Fifth Third Bank (48) and Fifth Third Mortgage Co.(50)
[vi] Included FirstMerit Bank (76) and Firstmerit Mortgage Co.(22)
[vii] Includes JP Morgan Chase Bank (32), Chase Home Finance (1), Chase Bank USA (14), Chase Manhattan Mortgage Corp. (11), Chase Manhattan Bank (8)
[viii] Includes US Bank of North Dakota (17) and US Bank (48)
[ix] Includes American Home Mortgage (29) and American Home Mortgage Accept Inc. (23)
[x] Includes the City of Cleveland and the Cleveland Department of Community Development.
[xi] Source: Cuyahoga County Recorder and Common Pleas Court. (Foreclosure filings are through February 7, 2008)
[xii] Source: Cuyahoga County Recorder and Common Pleas Court. (Foreclosure filings are through February 7, 2008)

Table 3. Slavic Village Lenders by Foreclosure Filings on Loans Originated 2003-2006 (Minimum 5 foreclosures)

Lender	Originations	Foreclosures	Foreclosure Rate
ARGENT/AMERIQUEST	726	335	46.14%
NEW CENTURY MORT CORP	237	111	46.84%
PEOPLES CHOICE HM LN INC	183	77	42.08%
LONG BEACH MORTGAGE CO.	101	61	60.40%
NATIONAL CITY BANK	212	51	24.06%
THIRD FED S&L ASSN	412	31	7.52%
FINANCE AMERICA, LLC	46	28	60.87%
WELLS FARGO BK	60	27	45.00%
AMERICAS WHOESALE LENDER	90	27	30.00%
AEGIS FUNDING CORPORATION	75	26	34.67%
NOVASTAR MORT INC	35	21	60.00%
BNC MORTGAGE	50	20	40.00%
CHARTER ONE BANK	158	19	12.03%
AAMES FUNDING CORPORATION	38	18	47.37%
COUNTRYWIDE HM LOANS	109	17	15.60%
YORK MGMT GROUP LLC	16	14	87.50%
REAL ASSET FUND LLC	14	13	92.86%
FIRST PLACE BANK	46	13	28.26%
CHASE BANK	66	12	18.18%
LEHMAN BROS BANK	31	11	35.48%
AMERICAN HM MORT	52	11	21.15%
DELTA FUNDING CORPORATION	25	10	40.00%
FIFTH THIRD MORT CO	98	10	10.20%
FIRST HORIZON HM LOAN CORP	18	9	50.00%
BENEFICIAL	37	9	24.32%
WASHINGTON MUTL BANK	43	9	20.93%
CLEVELAND CITY OF	51	9	17.65%
HUNTINGTON NATL BANK	87	9	10.34%
ENCORE CREDIT CORP	16	8	50.00%
EQUITY TRUST CO	23	8	34.78%
SOUTHSTAR FUNDING	24	8	33.33%
AMERICAN MIDW MORT CORP	19	7	36.84%
GREENPOINT MORT FUNDING INC	25	7	28.00%
HOUSEHOLD RLTY CORP	47	7	14.89%
UNION NATIONAL MORT CO	57	7	12.28%
FIRSTMERIT BANK	85	7	8.24%
KEYBANK NATL ASSN	74	6	8.11%
STRATEGIC MORT CO	11	5	45.45%
ACCREDITED HOME LENDERS, INC	14	5	35.71%
PARK VIEW FED SAV BANK	18	5	27.78%
SUNTRUST MORT CO	18	5	27.78%
DECISION ONE MORTGAGE	20	5	25.00%

Table 4: Selected Flip Transactions in SVD Service Area 2003-2007

Parcel #	Street #	Street Name	Buyer	Seller	Initial Purchase Price	Initial Purchase Date	Sale Price	Sale Date	sale$-initial$ ratio	County $	sale$-county$ ratio
105-31-066	1056	East 77	Banks, Carl	Grady, Willie	$25,000	5.23.06	$91,000	10.17.06	364%	$74,100	123%
125-26-066	5973	Engle	Bowers, Calvin	Lui, Pak Tim	$25,000	8.06.04	$86,000	8.16.06	344%	$33,800	254%
131-20-041	3465	East 50	Boyd, Lula	Lui, Pak Tim	$61,000	11.03.04	$87,000	5.23.05	143%	$60,000	145%
131-31-076	3460	East 52	Brown, Patricia	Lui, Yan Chang	$24,500	5.28.03	$77,000	6.6.05	314%	$25,200	306%
123-31-150	4922	Anson	Brown, Patricia	Poplar Assoc.	$20,000	11.19.03	$86,000	5.13.05	430%	$23,900	360%
123-31-142	4927	Anson	Brown, Patricia	Lui, Pak Tim	$18,000	8.17.04	$77,000	10.29.04	428%	$18,900	407%
134-06-057	9001	Walker	Brown, Patricia	Poplar Assoc.	$19,000	6.29.04	$80,000	11.24.04	421%	$24,100	332%
133-05-041	3622	East 80	Brown, Patricia	Merlave LTD	$14,000	2.09.05	$84,000	5.9.05	600%	$38,900	216%
131-31-071	3591	East 46	Brown, Patricia	Poplar Assoc.	$24,000	4.29.04	$90,000	8.29.05	375%	$45,500	198%
138-06-021	13913	Edgewood	Brown, Patricia	Hampton, Doris			$95,000	8.29.05		$68,500	138%
131-23-010	4920	Barkwill	Brown, Patricia	Lui, Pak Choong	$19,000	7.14.03	$78,000	4.7.05	411%	$20,000	390%
133-20-065	3819	East 72	Brown, Weldon	Lui, Pak Choong	$20,000	10.03.03	$72,000	12.9.04	360%	$62,300	116%
133-29-049	9123	Cannon	Buck, Eddie	Mei, Fanny	$26,000	2.18.05	$85,000	6.28.05	327%	$53,000	160%
133-15-047	8030	Spafford	Buck, Eddie	Lui, Pak Choong	$15,500	11.30.04	$83,000	7.29.05	615%	$37,700	220%
132-22-116	4114	East 56	Buck, Eddie	Lui, Pak Yan	$25,000	1.03.05	$85,000	6.29.05	340%	$44,500	191%
128-12-079	9702	Sophia	Buck, Eddie	Kwan, Man	$28,900	7.30.04	$98,000	7.29.05	339%	$38,700	253%
131-33-029	3632	East 48	Buck, Eddie	Banonis, Ronald	$30,000	11.23.04	$85,000	10.3.05	283%	$38,700	220%
133-04-081	3554	East 75	Buck, Eddie	Lui, Pak Choong	$13,000	8.14.03	$82,000	6.28.05	631%	$34,200	240%
130-16-093	3986	East 64	Burdine, Brent	Grady, Willie	$33,000	4.11.06	$99,000	7.21.06	300%	$56,900	174%
133-03-053	3588	East 74	Cater, Wayne	Lui, Pak Choong	$33,600	4.17.03	$85,000	7.29.03	253%	$41,500	205%
108-18-029	9007	Empire	Cody, Beverly	Lam, Ken	$34,000	9.28.05	$85,000	11.24.07	250%	$27,550	309%
125-05-043	6315	Roland	Cody, Beverly	Poplar Assoc.	$16,500	11.02.05	$80,000	4.26.07	432%	$31,000	258%
125-28-056	6121	Hinde	Cody, Beverly	Lam, Kingson D	$5,150	3.16.06	$75,000	3.2.07	1456%	$11,795	636%
125-35-062	7311	Ivy	Cody, Beverly	Wong, Keng Ming	$24,000	6.21.04	$88,000	1.16.07	367%	$19,985	430%
125-36-018	3477	East 75	Cody, Beverly	YYL, LLC	$15,500	6.15.06	$80,000	4.27.07	516%	$23,245	344%
132-19-030	3987	East 64	Cody, Beverly	YYL, LLC	$17,000	1.31.07	$23,000	5.15.07	135%	$19,470	118%
137-19-099	13610	Svec	Cody, Beverly	Lui, Pak Yan	$16,000	5.02.07	$21,000	5.15.07	131%	$22,300	94%
134-13-067	7812	Dorver	Cole, Burnell Jr.	Rahmon, Wesley	$43,800	12.20.05	$95,000	10.20.06	218%	$79,200	120%
123-20-036	2985	Nursery	Collins, Manicka	Merlave LTD	$10,000	6.04.04	$71,250	9.23.04	713%	$41,800	170%
123-21-062	4961	Mead	Collins, Manicka	Harris, Rodney	$30,000	5.20.04	$66,000	8.5.04	220%	$40,600	163%
132-01-092	3593	East 71	Cox, Sharon	Lui, Pak Hor	$32,000	9.26.05	$92,000	3.28.06	288%	$43,400	212%
134-21-106	9113	Connecticut	Crosby, David	Banonis, Ronald	$20,000	4.14.03	$95,000	3.2.04	475%	$63,500	150%
125-03-044	2994	East 65	Davis, Lana	Lui, Pak Choong	$13,500	4.01.93	$76,000	2.24.03	563%	$36,700	207%
134-22-076	7816	Rosewood	Deal, Patricia	Lui, Pak Choong	$25,000	9.26.03	$95,000	6.29.04	380%	$52,800	180%
110-19-018	11315/7	Durant	Despanie, Thomas	Lam Development	$0	6.05.06	$95,000	9.11.06		$58,700	162%
131-36-039	5801	Huss Ave	Easley, Marilyn & Floyd	Lam, Kingson D.	$21,000	11.13.06	$95,000	9.28.07	452%	$31,000	306%
131-32-053	3689	East 50	Gaddis, Julius	Lam, Ken	$15,750	1.20.05	$86,000	10.4.05	546%	$41,100	209%
134-05-098	4060	East 80	Gaddis, Julius	Lui, Pak Hor	$30,600	6.10.05	$85,000	10.19.05	276%	$64,200	132%
123-31-152	4928	Anson	Gaddis, Julius	Lam, Ken	$22,500	4.14.05	$86,000	10.19.05	382%	$31,700	271%
131-32-052	3687	East 50	Gaddis, Julius	Lam, Ken	$15,750	1.20.05	$86,000	10.4.05	546%	$24,000	358%
132-11-042	3862	East 55	Gibson, Ann	Lui, Pak Yan	$16,000	9.28.03	$82,000	5.24.05	513%	$49,000	167%
133-07-034	3582	East 82	Grady, Willie	Lam, Ken	$21,000	2.10.04	$86,000	5.19.04	410%	$28,100	306%
132-10-155	3811	East 55	Grady, Willie B Jr	Wong, Keng Ming	$30,000	7.07.03	$88,000	6.25.04	293%	$73,500	120%
125-34-085	3427	E 73RD ST	Grady, Willie B Jr	Lui, Pak Yan	$80,000	10.15.03	$80,000	2.20.04	100%	$71,800	111%
129-27-023	12209	Soka	Greene, Christopher	Davis, E. & S.	$25,000	3.09.06	$85,000	3.9.06	340%	$73,300	116%
131-33-034	3652	E 48TH ST	Harris, Rodney	Lui, Pak Tim	$29,800	7.23.02	$80,000	3.27.04	268%	$38,400	208%
125-35-042	3464	East 73	Harris, Rodney	Ly, Kenny	$19,500	8.06.03	$80,000	12.24.03	410%	$45,800	175%
125-28-080	6179	Morton Ave	Harris, Rodney	Lui, Pak Yan	$20,000	1.30.03	$86,000	11.28.03	430%	$41,900	205%
123-20-025	3017	Nursery	Harris, Rodney	Rahmon, Wesley	$28,000	8.06.07	$78,000	11.28.03	279%	$46,700	167%
125-32-081	3391	East 68	Harris, Rodney	Wong, Keng Ming	$60,000	11.06.03	$80,000	1.13.04	100%	$62,500	128%
133-17-003	3915	East 75	Heard, Erline	Lui, Pak Hor	$30,000	9.14.05	$80,000	6.15.06	267%	$39,900	201%
133-07-031	3576	East 82	Heard, Erline	Lui, Yan Chang	$27,200	12.02.05	$83,000	7.3.06	305%	$43,300	192%
006-29-115	7117	Camden	Heard, Erline	Merlave LTD	$21,000	9.22.05	$90,000	3.17.06	429%	$28,100	320%
138-15-005	12404	Miles	Heard, Erline	Lui, Pak Tim	$36,000	7.28.05	$105,000	2.24.06	292%	$71,800	146%
008-06-008	7811	Elton	Heard, Erline	Merlave LTD	$31,000	10.18.05	$85,000	6.23.06	274%	$50,300	169%
125-28-034	3432	East 65	Heard, Erline	Merlave LTD	$21,000	4.08.05	$85,000	3.27.06	405%	$32,800	259%
123-31-130	5105	Anson	Heard, Erline	Lui, Pak Tim	$11,000	8.02.05	$84,000	3.7.06	764%	$15,800	532%
131-35-089	3727	East 54	Heard, Erline	Wong, Keng Ming	$17,000	7.05.05	$85,000	3.16.06	500%	$60,400	141%
125-32-075	5622	Ovington	Jackson, K & S.	Cody, Beverly C.	$23,000	5.28.06	$89,000	11.27.06	387%	$30,400	293%
132-08-177	3674	East 61	Johnson, Ervin	RJM Home	$15,000	5.30.06	$90,000	10.30.06	600%	$41,500	216%
132-22-066	4068	East 57	Johnson, Ervin	Lui, Pak	$26,667	1.19.06	$86,000	10.10.06	360%	$61,300	157%
016-12-039	3334	West 48	Johnson, Irvin Anthony	RJM Home	$15,500	3.20.06	$83,000	9.15.06	535%	$37,400	222%
018-14-046	3122	West 44	Johnson, Irvin Anthony	Lui, Pak Tim	$15,500	5.25.06	$85,000	9.15.06	548%	$52,100	163%
131-35-129	3691	East 53	Johnson, Irvin Anthony	Poplar Assoc.	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
125-28-037	3412	East 65	Kellog, Jeffrey	Lui, Pak Yan	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

Permit	Appraiser	Mortgage Broker	Title	Mortgage Co.	Foreclosure Case No.	Filed	Case Defendant	February 2008 Survey Status
no	Rahmon, Wesley	Jones, Adriane	Five Star	Equity Trust	CV-07-620534	4/3/07	CARL BANKS ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century	CV-07-643262	11/30/07	CALVIN BOWERS, ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-611372	12/29/06	LULA BOYD ET AL	
no	n/a	Kellogg, Mark	Mountaineer	Aegis Funding	CV-06-588879	4/7/06	PATRICIA BROWN ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Aegis Funding	CV-06-588661	4/7/06	PATRICIA BROWN ETAL	
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent	CV-06-589693	4/20/06	PATRICIA BROWN ET AL	
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent	CV-06-590714	5/3/06	PATRICIA BROWN ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-592857	5/31/06	PATRICIA BROWN ETAL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-592863	5/31/06	PATRICIA BROWN ET AL	Vacant and Open
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-593190	6/5/06	PATRICIA BROWN ET AL	
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Long Beach	CV-06-593246	6/5/06	PATRICIA D. BROWN ET	Partially Boarded
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent	Sheriff's Sale	12/26/06	WELDON BROWN, ET AL	Boarded
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-605699	10/30/06	EDDIE BUCK ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-605814	10/31/06	EDDIE BUCK ET AL	Demo'd
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-607395	11/16/06	EDDIE BUCK ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-607513	11/17/06	EDDIE BUCK ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Aegis Funding	CV-06-609591	12/11/06	EDDIE BUCK ET AL	
no				Finance America	Sheriff's Sale	2/19/08	EDDIE BUCK ET AL	Boarded
no	Rahmon, Wesley	Higgins, Tanya	Five Star	Long Beach	CV-07-622341	4/23/07	BRENT BURDINE ET AL	
no				Southstar Fundin	Sheriff's Sale	9/5/06	WAYNE CATER, ET AL	
no				Assured Mortgage				
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	First Franklin				
no				Option One				
no				America's Wholesale				
no				America's Wholesale				Boarded
no				Pak Lui				Boarded
no				Yan Lui				
no	n/a	Curry, Bethany	Five Star	New Century				
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent	CV-06-601826	9/20/06	MANICKA COLLINS ET AL	Vacant
no	Matovina, Dan	Kellogg, Mark	Mountaineer	Flag Star	CV-06-608722	12/1/06	MANICKA M. COLLINS ET	Boarded
yes				Long Beach				
no				Argent	Sheriff's Sale	1/2/07	DAVID CROSBY AKA DAV	Vacant Not Boarded
yes				People's Choice				
no	Rahmon, Wesley	Little, Sheldon	Five Star	Argent				
no	Rahmon + Assoc	C.J. (Ace Homes)	Quality	n/a	CV-07-632295	8/9/07	THOMAS DESPANIE ET AL	
no				Century Lending				
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-620261	3/30/07	JULIUS GADDIS ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-642052	11/19/07	JULIUS GADDIS, ET AL	Boarded
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-08-649509		JULIUS GADDIS ETAL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach				
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach				
no				Argent	CV-07-617307	3/1/07	WILLIE GRADY, ET AL	
no				Argent	CV-07-618982	2/27/07	WILLIE B. GRADY, JR., E	Boarded
no				Argent	CV-07-626243	6/26/07	WILLIE B. GRADY JR. ET	Boarded
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Aegis Funding	CV-07-627485	5/19/07	CHRISTOPHER GREENE ET AL	
yes				Meritage	CV-06-585135	2/24/06	RODNEY HARRIS ETAL	Boarded
yes				Argent	CV-06-588813	4/10/06	RODNEY HARRIS ETAL	
no				Argent	CV-06-588817	4/10/06	RODNEY HARRIS ETAL	Boarded
no				Argent	CV-06-589006	4/12/06	RODNEY HARRIS ETAL	
no				Argent	CV-06-593138	6/2/06	RODNEY HARRIS ETAL	Boarded
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century	CV-07-615248	2/7/07	ERLINE HEARD ET AL	Boarded
no	Hoover, Bruce T.	Kellogg, Mark	West Park	BNC	CV-07-615514	2/13/07	ERLINE HEARD ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Aegis Funding	CV-07-615903	2/15/07	ERLINE HEARD ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century	CV-07-616501	2/22/07	ERLINE HEARD ET AL	
no	Hoover Appraisal	Kellogg, Mark	Mountaineer	New Century	CV-07-616618	3/6/07	ERLINE HEARD ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-619423	3/22/07	ERLINE HEARD ET AL	Vacant
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Aegis Funding	CV-07-620041	3/29/07	ERLINE HEARD ET AL	Boarded
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-620482	4/3/07	ERLINE HEARD ET AL	Vacant
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century				Demo'd
no	Rahmon, Wesley	Bark, Jamie	Mountaineer	Assured				
yes				New Century				
no	Hoover, Bruce T.	First Metro Mtg Co	Mountaineer	New Century	CV-07-624975	5/21/07	ERVIN ANTHONY JOHNSON III, ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century	CV-07-625218	5/23/07	ERVIN A. JOHNSON III	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century				Vacant
yes				Argent	Sheriff's Sale	3/6/06	JEFFREY KELLOGG, ET A	Boarded

Table 4: Selected Flip Transactions in SVD Service Area 2003-2007 *(Continued)*

Street #	Street Name	Buyer	Seller	Initial Purchase Price	Initial Purchase Date	Sale Price	Sale Date	sale$-initial$ ratio	County $	sale$-county$ ratio
3656	East 50	Kellogg, Jeffrey	Lui, Pak Choong	$0	2.20.92	$75,000	10.24.03		$56,100	134%
3770	East 77	Kiesel, Nichole	Lam, Ken	$25,000	5.16.03	$120,000	11.17.04	480%	$31,000	387%
3270	East 93	Kiesel, Nichole	Comm. Dev. & Inv.	$37,500	5.17.05	$94,000	9.23.05	251%	$19,700	477%
7406	Park	Kiesel, Nichole	Lui, Pak Yan	$28,000	8.29.03	$93,100	9.23.05	333%	$74,200	125%
9112	Harvard	Kiesel, Nichole	Comm. Dev. & Inv.	$37,000	4.07.05	$95,000	7.21.05	257%	$21,700	438%
1313	East 85	Lam, Ken	Kwan, Man	$15,300	4.19.06	$85,000	4.19.06	556%	$14,600	582%
3395	East 65	Lam, Ken	Lui, Pak Choong	$29,000	6.26.03	$58,900	11.3.04	203%	$62,000	95%
569	East 114	Lawrence, Adelbert C.	Grady, Willie	$24,000	10.03.06	$90,000	3.23.07	375%	$41,800	215%
4232	East 110	Lawrence, Adelbert C.	Grady, Willie	$12,000	12.08.06	$97,000	4.23.07	808%	$53,400	182%
3221	East 46	Lee, Bonita	Merlave LTD	$22,500	3.04.05	$85,000	8.8.05	376%	$30,000	283%
4066	East 80	Lee, Bonita	Wong, Keng Ming	$26,000	7.29.04	$85,000	4.5.05	327%	$41,000	207%
9110	Cannon	Lee, Bonita	Poplar Assoc.	$23,500	3.17.05	$85,000	8.22.05	362%	$59,100	144%
5977	Engle	Lee, Bonita	Lui, Pak Tim	$18,300	12.03.04	$85,000	4.4.05	464%	$62,900	135%
2993	East 67	Lee, Bonita	Wong, Keng Ming	$16,000	2.19.04	$86,000	3.10.05	538%	$57,500	150%
7711	Goodman	Lenor, Kimberly	Grady, Willie	$20,000	9.28.05	$92,000	1.25.06	460%	$56,100	164%
3651	East 47	Lowe, Keith C	Lui, Pak Yan	$30,000	12.06.02	$80,000	12.1.03	267%	$41,000	195%
3436	East 73	Miller, Romir	Wieglus, Edward	$10,050	4.28.05	$88,000	1.30.07	876%	$20,000	440%
3982	East 66	Mitchell, Natalie	Lui, Pak Choong	$21,000	6.09.03	$76,000	10.25.04	362%	$66,500	114%
3441	East 69	Mitchell, Natalie	Lui Pak DBA Poplar	$20,000	5.04.04	$80,000	9.9.04	400%	$75,100	107%
3445	Kimmel Rd	Mitchell, Natalie	Lui, Pak Yan	$24,500	8.23.05	$87,000	2.15.06	355%	$57,500	151%
4009	East 86	Mitchell, Natalie	Lui, Pak Choong	$19,500	9.18.03	$70,000	11.12.04	359%	$53,000	132%
3371	East 70	Perkins, F. & M.	Lui, Pak Tim	$22,500	9.07.05	$87,000	5.9.06	387%	$72,200	120%
3441	East 55	Perkins, F. & M.	Poplar Assoc.	$31,000	9.26.05	$87,000	4.26.06	281%	$76,300	114%
3437	East 72	Perkins, F. & M.	Siegel, Edward F.	$18,000	12.20.05	$85,000	3.24.06	531%	$62,800	135%
3859	West 41	Perkins, F. & M.	Poplar Assoc.	$28,000	10.27.05	$91,000	3.24.06	325%	$62,500	146%
3010	Goodman	Perkins, F. & M.	Merlave LTD	$28,800	8.31.05	$85,000	5.1.06	295%	$51,500	165%
6608	Schafter	Perkins, F. & M.	Merlave LTD	$33,500	11.22.05	$89,000	8.15.06	266%	$34,400	259%
3603	Independence	Perkins, F. & M.	Kwan, Man	$33,000	12.02.05	$90,000	5.17.06	273%	$30,600	294%
3726	East 57	Perkins, F. & M.	RJM Home	$15,000	12.13.05	$90,000	5.26.06	600%	$33,000	273%
3901	East 58	Philpotts, Wykeily	Merlave LTD	$39,000	3.15.05	$85,000	7.25.06	218%	$54,600	156%
9103	Cannon	Philpotts, Wykeily	Merlave LTD	$19,200	4.10.06	$84,000	7.25.06	438%	$60,400	139%
4066	East 80	Philpotts, Wykeily	Wong, Keng Ming	$12,500	3.30.06			0%	$11,400	0%
4135	East 102	Philpotts, Wykeily	Williams, Lakiesha	$18,000	5.11.06	$89,000	7.25.06	494%	$31,300	284%
3417	East 52	Rahmon, Wesley	Wong, Keng Ming	$10,000	8.26.05	$85,000	7.24.07	850%	$31,300	272%
6626	Ovington	Reynolds, Demetria	Cody, Beverly C.	$6,000	5.27.07	$85,000	6.31.07	1417%	$38,000	224%
5023	Dalton	Reynolds, Demetria	Cody, Beverly C.	$6,000	4.26.07	$85,000	7.24.07	1417%	$31,200	272%
6606	Ovington	Sadler, Marva	Ly, Kenny	$23,000	9.14.04	$80,000	1.3.05	348%	$30,400	263%
6610	Boston	Scott, Christina	Lui, Pak Yan	$31,000	11.22.04	$85,000	1.31.05	274%	$62,900	135%
7515	Harvard	Scott, Christina	Lui, Pak Choong		11.01.04	$85,000	1.18.05		$43,300	196%
6907	Berdelle	Scott, Christina	Lui, Pak Yan	$30,000	4.18.04	$85,000	1.31.05	283%	$45,200	188%
5804	Huss Ave	Shell, Maureen	Ly, Kenny	$21,334	5.15.03	$77,000	2.28.04	361%	$30,800	250%
5229	Dolloff	Shinkaruk, Nicole	Ly, Kenny	$26,000	8.25.04	$90,000	1.10.07	346%	$29,000	310%
7019	Fullerton	Simmons, Deborah	Wieglus, Edward	$36,900	7.26.03	$88,000	11.30.06	238%	$15,500	568%
5001	Dalton	Smalley, Dawn	Wong, Keng Ming	$14,000	3.30.06	$83,000	6.15.06	593%	$16,300	509%
3845	East 72	Smalley, Dawn	Lam, Kingson D.	$14,500	3.16.06	$85,000	8.25.06	586%	$34,700	245%
3562	Sykora	Smalley, Dawn	Lui, Pak Choong	$20,500	11.2.04	$85,000	8.25.06	415%	$46,000	185%
3616	East 108	Smalley, Dawn	RJM Home	$23,500	4.30.06	$86,000	6.15.06	366%	$68,700	125%
5666	Hamlet	Smalley, Dawn	Lam, Ken	$17,000	10.11.05	$89,000	6.23.06	524%	$59,200	153%
3608	East 46	Smalley, Dawn	Banonis, Ronald	$31,600	9.30.05	$90,000	5.30.06	285%	$36,900	244%
7007	Berdelle	Smith, Dalitia	Wieglus, Edward	$25,000	8.03.06	$90,000	10.16.06	360%	$46,400	194%
3586	East 75	Walker, April	Lui, Pak Tim	$14,500	4.15.05	$81,000	12.5.05	544%	$36,200	224%
3685	East 50	Wells, Pamela	Lui, Hor Pak	$40,000	8.25.06	$90,000	4.23.07	225%	$80,000	113%
3986	East 66	Williams, Alfonso	Lui, Pak Tim	$40,475	6.07.04	$88,000	12.13.04	217%	$63,400	139%
3448	East 51	Williams, Lakiesha	Merlave LTD	$22,500	6.13.05	$85,000	2.24.05	378%	$27,400	310%
3428	Sackett	Williams, Lakiesha	Lui, Pak Choong	$29,000	9.12.05	$89,000	2.6.06	307%	$53,800	165%
7409	Clement	Williams, Lakiesha	Lui, Hou Pak	$35,000	6.11.05	$85,000	2.09.06	243%	$61,600	138%
7409	Clement	Williams, Lakiesha	Lui, Hou Pak	$30,000	6.11.05	$85,000	2.9.06	283%	$4,900	1735%
7420	Spafford	Williams, Lakiesha	RJM Home	$8,000	6.08.05	$72,000	12.9.05	900%	$67,300	107%
4917	Berkwell	Williams, Lakiesha	Poplar Assoc.	$11,000	12.22.04	$82,000	11.23.05	745%	$64,700	127%
3450	East 70	Williams, Lakiesha	Wong, Keng Ming	$18,000	8.18.05	$85,000	12.30.05	531%	$32,900	259%
3664	East 48	Williams, Lakiesha	Lui, Pak Yan	$26,300	2.09.04	$85,000	11.23.05	323%	$35,000	243%

Permit	Appraiser	Mortgage Broker	Title	Mortgage Co.	Foreclosure Case No.	Filed	Case Defendant	February 2008 Survey Status
yes				New Century	Sheriff's Sale	11/5/07	JEFFREY KELLOGG, ET	Boarded
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	People's Choice	CV-07-613382	11/19/07	NICHOLE KIESEL ET AL	Demo'd
no	n/a	Little, Sheldon	Five Star	Intervale Mortgag	CV-07-618656	2/23/07	NICOLE KIESEL AKA NICHOLE KIESEL ET AL	
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent	CV-07-618755	3/15/07	NICHOLE KIESEL ET AL	
no	n/a	Little, Sheldon	Five Star	Consumer Mort.	CV-07-642225	11/20/07	NICHOLE KIESEL ETAL	
no	Lowe, Rayshawn	Mazanec, Mike	Mountaineer	Premier				
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent				
no	Wilkes, Robert	Stevens, Shurrell	Five Star	First Franklin	CV-07-643663	12/4/07	ADELBERT C. LAWRENCE, ET AL	
no	Wilkes, Robert	Stevens, Shurrell	Five Star	Option One				
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-587378	3/23/06	BONITA LEE ET AL	Boarded
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-587548	3/24/06	BONITA LEE ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-592599	5/25/06	BONITA LEE ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-06-600275	8/31/06	BONITA LEE ET AL	Boarded
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Argent	CV-06-608700	12/1/06	BONITA LEE ET AL	
no				Argent				
no				Aames Funding	CV-06-598624	7/19/06	KEITH C. LOWE ETAL	Boarded
no	Rahmon, Wesley	Cunningham, Vane	Five Star	New Century				
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent	CV-06-580822	1/3/06	NATALIE MITCHELL ET A	Boarded
yes				Argent	CV-06-586184	3/9/06	NATALIE MITCHELL ET A	Boarded
no				People's Choice	CV-06-587404	3/23/06	NATALIE MITCHELL ETAL	
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent	Sheriff's Sale	5/14/07	NATALIE MITCHELL, ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	BNC	CV-07-637009	9/26/07	MAURICE PERKINS ET A	Vacant
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-637226	9/28/07	MAURICE PERKINS ETAL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-639365	10/22/07	MAURICE PERKINS ETAL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-639369	10/22/07	MAURICE PERKINS ETAL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-639397	10/23/07	MAURICE PERKINS ETAL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Aegis Funding	CV-07-643593	12/4/07	MAURICE PERKINS AKA GREEN ETAL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	BNC				
yes	Hoover, Bruce T.	First Metro Mtg Co	Mountaineer	New Century				
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century	CV-07-642255	11/20/07	WYKEILY PHILPOTTS, ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century				
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century				Demo'd
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century				
yes				Chase				
yes				Century Lending				
yes				Mich. Mutual				
no	Spahr, Daniel	Destefanis, Brian	Mountaineer	Argent	CV-07-620680	4/4/07	MARVA SADLER ET AL	Boarded
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent	CV-06-594737	8/23/06	CHRISTINA SCOTT ET AL	Vacant
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent	Sheriff's Sale	8/14/06	CHRISTINA SCOTT, ET A	Demo'd
no	Rahmon, Wesley	Kellogg, Mark	Mountaineer	Argent				Vacant
no				Argent	Sheriff's Sale	10/30/06	MAUREEN SHELL, ET AL	Vacant
no	n/a	Premier Mortage	Title Plus	American's Whol	CV-06-611443	12/28/06	NICOLE SHINKARUK ET	Boarded
no	Rahmon, Wesley	Cunningham, Vane	Five Star	Lake Front				
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century	CV-07-615900	2/15/07	DAWN SMALLEY ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-620500	4/3/07	DAWN SMALLEY ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-620503	4/3/07	DAWN SMALLEY ET AL	
no	Hoover, Bruce T.	First Metro Mtg Co	Mountaineer	New Century	Sheriff's Sale	1/7/08	DAWN SMALLEY, ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	West	Aegis Funding				
no	Hoover, Bruce T.	Kellogg, Mark	West	New Century				
yes	Rahmon, Wesley	Cunningham, Vane	Five Star	Country Wide				
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Aegis Funding	CV-06-595231	6/29/06	APRIL YOLANDA ET AL	Boarded
				First Franklin				
no	Spahr, Daniel	Gonzalez, Alfredo	Five Star	Finance America	CV-06-593318	6/6/06	ALFONZO WILLIAMS ET A	Vacant
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	New Century	CV-07-619677	3/26/07	LAKIESHA WILLIAMS ET	Boarded
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-620401	4/2/07	LAKIESHA WILLIAMS ET AL	
no				BNC	CV-07-621899	4/18/07	LAKIESHA WILLIAMS, ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	BNC	CV-07-621899	4/18/07	LAKIESHA WILLIAMS, ET	Boarded
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Argent	CV-07-623091	5/1/07	LAKIESHA WILLIAMS ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach	CV-07-625359	5/25/07	LAKIESHA WILLIAMS ET AL	
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach				Boarded
no	Hoover, Bruce T.	Kellogg, Mark	Mountaineer	Long Beach				

Table 5: Foreclosure Plaintiffs in Slavic Village 2003-2007
(Minimum 5 foreclosures)

Plaintiff Filing Foreclosure	Count	% of Total
ALL LENDERS	**1892**	**100.00%**
DEUTSCHE BANK	224	11.84%
WELLS FARGO BANK	173	9.14%
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS	142	7.51%
US BANK	120	6.34%
JP MORGAN CHASE BANK	93	4.92%
LASALLE BANK	73	3.86%
BANK ONE	66	3.49%
BANK OF NEW YORK	65	3.44%
CITIMORTGAGE	64	3.38%
ARGENT MORTGAGE COMPANY •	63	3.33%
COUNTRYWIDE HOME LOANS	53	2.80%
THIRD FEDERAL SAVINGS & LOAN	41	2.17%
KEY BANK	41	2.17%
WASHINGTON MUTUAL BANK	38	2.01%
HSBC BANK	36	1.90%
CHARTER ONE BANK	27	1.43%
NATIONAL CITY BANK	25	1.32%
ABN AMRO MORTGAGE GROUP INC	23	1.22%
MIDFIRST BANK	18	0.95%
HOUSEHOLD REALTY CORP	18	0.95%
WACHOVIA BANK	16	0.85%
GMAC MORTGAGE CORP	16	0.85%
BANKERS TRUST COMPANY	16	0.85%
OHIO SAVINGS BANK	13	0.69%
MANUFACTURERS & TRADERS TRUST	12	0.63%
FIRST UNION NATIONAL BANK	12	0.63%
WM SPECIALTY MORTGAGE	11	0.58%
HUNTINGTON NATIONAL BANK	11	0.58%
FIRST MERIT BANK	11	0.58%
EQUICREDIT	11	0.58%
BENEFICIAL MORTGAGE CO. OF OHIO	11	0.58%
ATLANTIC NATIONAL TRUST	11	0.58%
FEDERAL NATIONAL MORTGAGE ASSOCIATION	10	0.53%
PRINCIPAL RESIDENTAIL MORTGAGE	9	0.48%
LEADER MORTGAGE COMPANY	9	0.48%
FIFTH THIRD BANK	9	0.48%
BANK OF AMERICA	9	0.48%
INDYMAC BANK	8	0.42%
EMC MORTGAGE CORP	8	0.42%
AURORA LOAN SERVICES	8	0.42%
FLAGSTAR BANK	7	0.37%
FAIRBANKS CAPITAL CORP	7	0.37%
AMERICAN GENERAL FINANCE	7	0.37%
PROVIDENT BANK	6	0.32%
NOVASTAR MORTGAGE	6	0.32%
HOMESIDE LENDING INC	6	0.32%
CENTEX HOME EQUITY	6	0.32%
REPUBLIC BANK	5	0.26%
LONG BEACH MORTGAGE COMPANY	5	0.26%

Appendix 1: Index of Selected Parties Identified on Flipper Transactions Table

Cody, Beverly – Listed as buyer of 7 properties on Flipper Transaction list. One of her properties [PPN: 137-19-096] lists 5801 W. 220 in Fairview Park (PPN: 331-30-016) as her tax mailing address. That property is owned by *Rodney Harris,* who has 6 transactions on the list (5 as a buyer, 1 as a seller, all of which ended in foreclosure). Beverly Cody is also the statutory agent for *Kellogg Dogs, Inc.*

Community Development & Investments LLC. Seller of two properties to *Nichole Kiesel.* The members are *Wesley Rahmon, Sheldon M. Little* and *Willie B. Grady, Jr.*

Grady, Willie. Listed as buyer for 2 transactions, both ending in foreclosure, and as a seller in 5 others. He is also a seller for 2 transactions in his capacity as member of *Community Development & Investment LLC.*

Harris, Rodney – Listed as purchaser for 5 transactions, a seller in 1 transaction, all ending in foreclosure. He owns property at 5801 W. 220 in Fairview Park, which is a tax mailing address for *Beverly Cody.* Member, *RJM Home Investment Developers LLC.*

Hoover, Bruce T. –Certified Residential Real Estate Appraiser (ACR.2005014822). Member, Hoover Appraisal Services LLC, 13413 Graham Road, East Cleveland, OH 44112. Involved in 60 deals on the Flipper Transaction list with *Mark Kellogg* as the mortgage broker.

Johnson, Ervin Anthony – Purchaser of 5 properties, 2 of which are in foreclosure. Ex-husband of *Lakiesha Williams.*

Kellogg, Mark – Loan Originator/Mortgage Broker for over 70 of the homes on Flipper Transaction List. He is a member of *RJM Home Investment Developers LLC* and *Kellogg Doggs LLC.* Many of his deals were also with *Bruce T. Hoover* as the appraiser; he also did deals with *Wesley Rahmon* as the appraiser.

Kellogg Hot Doggs, LLC. – The hot dog stand at Fleet/Broadway owned by *Mark Kellogg. Beverly Cody* is registered agent.

Kiesel, Nichole – Bought 4 properties from *Ken Lam, Community Development & Investments LLC,* and *Pak Yan Lui,* all of which were foreclosed on. *Wesley Rahmon* was appraiser on 2 deals with *Mark Kellogg* as broker.

Kwan, Man Keung—Listed as seller for 3 transactions.

Lam, Ken – Seller of 6 questionable transactions in Flipper Transaction list (one of which was to *Beverly Cody*). Listed on County Auditor web site as sharing the same tax address as *Pak Yan Lui* for property at 3804 Payne, Cleveland, Ohio 44114 (PPN: 102-39-084).

Appendix 1: Index of Selected Parties Identified on Flipper Transactions Table

Lam Developments LLC. Seller of 1 property on list. Member/Agent Lavelle Gibson, 3715 Warrensville Ctr., Shaker Heights, OH 44122. No apparent connection to *Ken Lam.*

Lam, Kingsdon– Listed as seller in 2 transactions. Tax mailing address is 7461 N. Linden Ln., Parma, OH 44130, a property owned by *Ken Lam.*

Lee, Bonita - Purchased 5 properties from Lui and affiliated parties between March and August 2005, all of which ended in foreclosure within one year of purchase. In March 2003 Bonita Lee filed a Chapter 7 (personal) bankruptcy petition. At that time, she had assets of $6,272 and $14,061 in liabilities. In 2002 she had employment income of $27k. Her debts were discharged in bankruptcy on 6/25/03.

Little, Shelton - One of the members of *Community Development & Investment, LLC.* He is listed as mortgage broker for 2 transactions in which *Community Development & Investment, LLC,* is the seller.

Lui, Pak Hor – Tax mailing address 7294 Rita Dr, Independence, OH 44131-5326. His affiliation with other parties is unclear.

Lui Lopack LTD – members of the corporation are *Edward Siegel, Pak Yan Lui* and *Lee E. Bokar.* The address is currently 5910 Landerbrook Drive, Suite 3200 in Lyndhurst, OH 44124.

Lui, Pak Choong – Seller of 14 properties on list. Resides at 6453 Poplar Dr, Independence, OH 44131. Member, *Poplar Associates LLC, 138 Real Estate LLC.*

Lui, Pak Tim – Listed as seller of 11 transactions in the Flipper Transaction List.

Lui, Pak Yan – Owns a restaurant with *Pak Tim Lui* and *Pak Choong Lui* at 5555 Brecksville Road and also a single family home on East 36th Street with *Pak Tim Lui.* President of *Merlave LTD, Poplar Associates LLC, Louie Construction Company LLC.* Listed as owner of 6368 Pebblecreek Road, Independence, OH. *Keng Ming Wong, Fanny Mei,* and *Man Kwan* all list this Pebblecreek address on at least one disclosure certificate. Pak Yan Lui is also listed affiliated with *Lui Lopack, LTD.*

Mei, Fannie – Listed as seller of 1 property to *Eddie Buck.* Co-defendant with *Pak Yan Lui* in civil action CV-05-575581, *Stephen Miller Enterprises v. Fanny Mei, et al.*

Merlave LTD – Seller of 11 properties on list. The company also appears as an originator of 5 loans on Tables 2 and 3, all of which ended in foreclosure. Member/Registered agent is *Edward Siegel.*

Poplar Associates, LLC. Listed as seller of 10 properties on list. Tax address is the same as that of *Pak Choong Lui,* at 6453 Poplar Ave, Independence, OH 44131. Agent

Appendix 1: Index of Selected Parties Identified on Flipper Transactions Table

Edward Siegel 5910 Landerbrook Drive, Cleveland, OH 44124. He appears as the loan originator for 3 transactions, all of which ended in foreclosure.

Rahmon, Wesley – Licensed Residential Real Estate Appraiser (ALR.2001018430); involved in 21 transactions, 13 of which were brokered by *Mark Kellogg*. Member of *Community Development and Investment LLC*. Also appears on list as a seller in 1 transaction with buyer *Rodney Harris* and appears as the buyer in a sale by *Keng Ming Wong*.

RJM Home Development Investors, LLC – (Members *Mark Kellogg* and *Rodney Harris*); agent address 7208 Ivy, Cleveland, OH 44127. RJM is listed as seller for 5 transactions, 2 of which were brokered by *Mark Kellogg*. Appears as a loan originator for one transaction, which ended in foreclosure.

Siegel, Edward F. – Attorney, Siegel and Associates, 5910 Landerbrook Drive, #3200, 44124. Statutory Agent/member of *Popular Associates LLC, Merlave LTD,* and *Lui Lopack, LTD*. Has represented *Pak Tim Lui* in various cases.

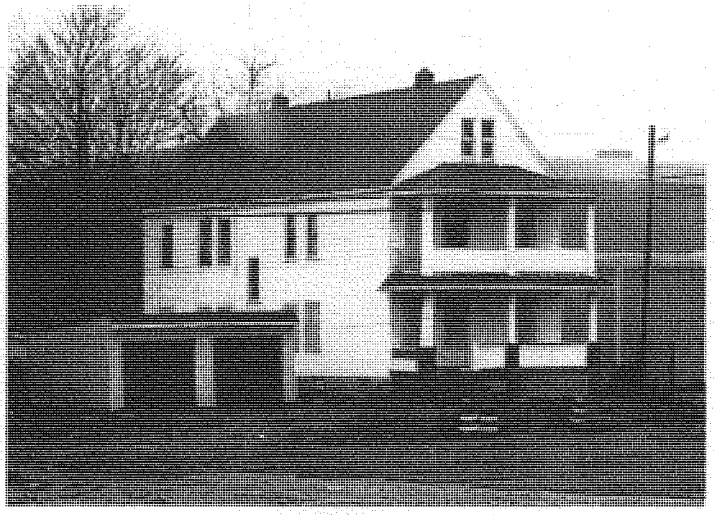
Williams, Lakeisha. Purchaser of 8 properties on list, 5 of which are in foreclosure. Bought all of the properties from various *Pak Tim Lui* affiliates, with *Mark Kellogg* and *Bruce Hoover* as broker and appraiser. Ex-wife of *Ervin Anthony Johnson*.

Wong, Keng Ming – Listed as seller for 10 transactions. Sold properties to *Bonita Lee, Beverly Cody, Lakeisha Williams, Wesley Rahmon and Willie Grady*. *Mark Kellogg, Bruce Hoover* and *Mountaineer Title* are involved in his deals.

Y.Y.L. LLC. - *Pak Yan Lui* is the Managing Partner; sold 2 houses to *Beverly Cody*.

Appendix 2: History of Selected Properties on Flipper Transactions Table

3770 East 77th Street



Pak Yan Lui purchased the above house on April 19th, 2002 for $24,000 from US Bank. On May 16th, 2003 he transferred it to affiliates, Ken & Sendai Lam for $25,000. On November 17th, 2004, Ken & Sendai Lam sold the property to Nichole Kiesel for $120,000. No permits were pulled prior to this sale.

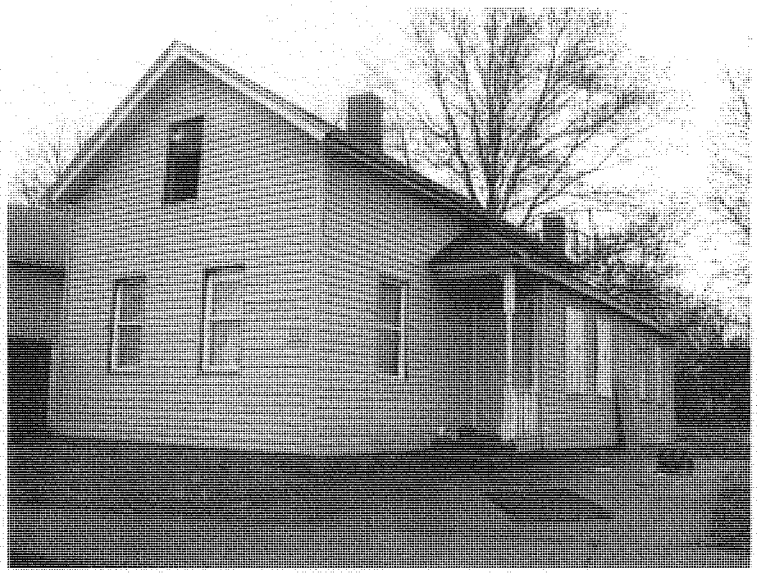
The deal was brokered by Mark Kellogg. The appraiser was Wesley Rahmon. The title company was Mountaineer Title. Nichole Kiesel financed this purchase with a loan of $108,000 from People's Choice Mortgage through MERS, and a second mortgage of $6,000 with Ken Lam.

On August 21st, 2007 a foreclosure action was filed against Nichole Kiesel. The property was offered for sale at Sheriff's auction on March 3, 2008 but was withdrawn.

Both Ken Lam and Pak Yan Lui are associates of Pak Tim Lui. Ken Lam owns property with Pak Yan Lui at 3804 Payne Avenue. Ken Lam is/was married to Sendai Lam and owns property with her in Parma. Ken Lam shows up in several other "flip" transactions on the spreadsheet. Pak Yan Lui owns a restaurant with Pak Tim Lui at 5555 Brecksville Road and also a single family home on East 36th Street in Cleveland. Pak Yan Lui is also president of Merlave LTD and a listed partner of Lui Lopack LTD.

Appendix 2: History of Selected Properties on Flipper Transactions Table

5105 Anson Avenue



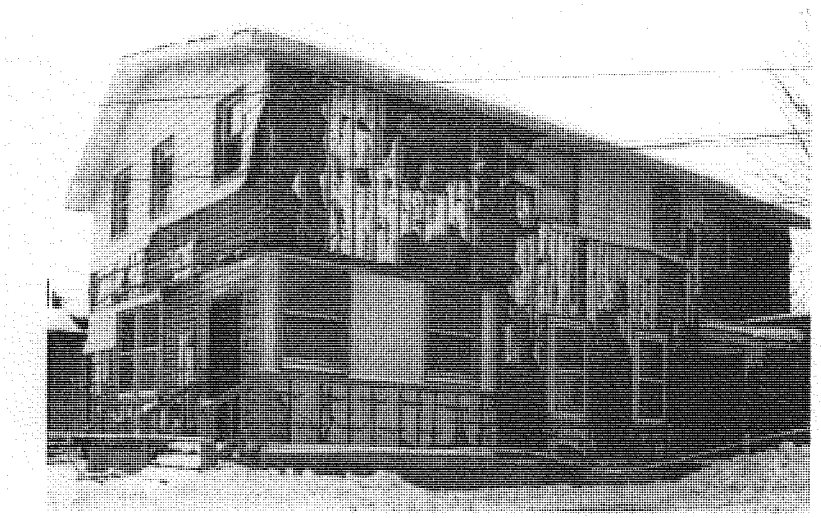
Pak Tim Lui purchased the above house on August 2nd, 2005 for $11,000 from GMAC Mortgage Company. The property was sold approximately 8 months later (on March 7th, 2006) to Erline Heard for $84,000. No permits were obtained prior to this sale.

The deal was brokered by Mark Kellogg. The appraiser was Bruce Hoover. The title company was Mountaineer Title. Erline Heard financed this purchase with a loan of $71,400 from Long Beach Mortgage Company, and a second mortgage of $12,600 with Pak Tim Lui.

On March 29th, 2007 a foreclosure action was filed against Erline Heard. On January 7th, 2008 this property was offered for sale at a Sheriff Auction with a minimum bid of $3,334 and a county appraisal value of $5,000. The property was withdrawn from the sale for lack of bidders.

Appendix 2: History of Selected Properties on Flipper Transactions Table

4080 East 80th Street



Pak Hor Lui purchased the above house on June 10th, 2005 for $30,600 from Federal Home Mortgage Association (Fannie Mae). About 4 months later, on October 19th, 2005 he sold the property to Julius Gaddis for $85,000.

The deal was brokered by Mark Kellogg. The appraiser was Bruce Hoover. The title company was Mountaineer Title. Julius Gaddis financed this purchase with a loan of $76,500 from Long Beach Mortgage Company, and a second mortgage of $8,500 with Pak Hor Lui. On January 24th, 2008 a foreclosure action was filed against Julius Gaddis.

Appendix 2: History of Selected Properties on Flipper Transactions Table

5977 Engel Avenue

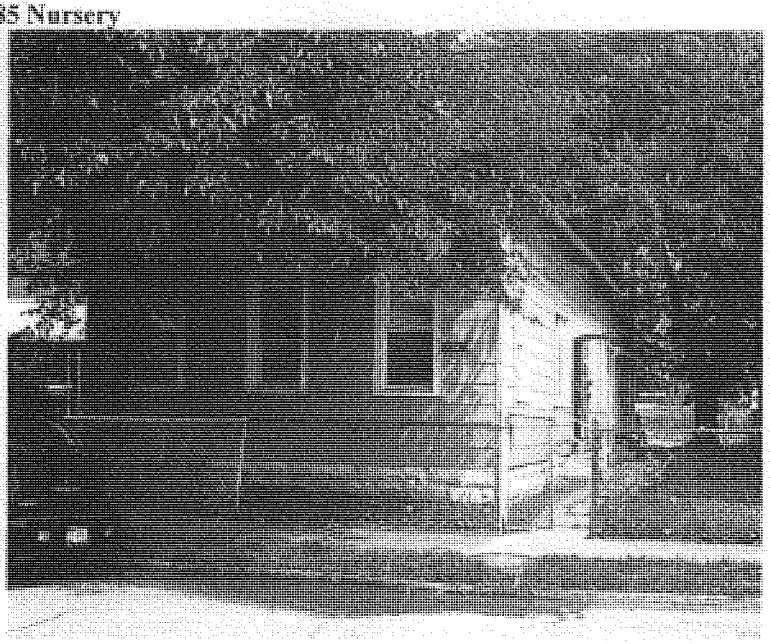
Pak Tim Lui purchased this 1,064 sq. foot house (built 1910) for $18,300 on 12/13/04 from Wells Fargo. On 4/4/05 it was sold to Bonita Lee for $85,000. No permits were obtained prior to this sale. The deal was brokered by Mark Kellogg. The appraiser was Bruce Hoover. The title company was Mountaineer Title. Bonita Lee financed this purchase with a loan of $80,750 from Long Beach Mortgage Company, and a second mortgage of $4,250 with Pak Tim Lui.

This house was one of 5 properties purchased by Bonita Lee from Pak Lui affiliates between March and August 2005. The combined purchase price of the 5 properties was $426,000. Every transaction was 100% financed with first mortgages from either Long Beach Mortgage or Argent, and second mortgages taken by the seller. Kellogg, Hoover and Mountaineer were involved in all 5 transactions. Less than two years before she obtained this financing, Bonita Lee's debts were discharged in bankruptcy.

On 8/31/06 a foreclosure action was filed against Bonita Lee on the mortgage for this property. On 9/10/07 the property was offered at Sheriff Sale for a minimum bid of $20,000. The property was withdrawn from sale for lack of bidders.

Appendix 2: History of Selected Properties on Flipper Transactions Table

2985 Nursery



Merlave LTD purchased this 1,188 square foot house (built 1900) from a private seller on June 4, 2004 for $10,000. On September 23, 2004 Manicka Collins purchased the house from Merlave LTD for $71,250. The deal was brokered by Mark Kellogg. The appraiser was Wesley Rahmon. The title company was Mountaineer Title. Manicka financed this purchase with a loan of $67,500 from Argent on September 23, 2004 and a second mortgage of $3,750 from Merlave LTD. The second mortgage was released on January 18, 2005.

This house was one of 2 properties purchased by Manicka Collins during August and September 2005. The combined purchase price of the 2 properties was $137,250. Mark Kellog was the broker for both transactions, which later ended in foreclosure.

On September 20, 2006 a foreclosure was filed against Manicka Collins for defaulting on the loan. On November 26, 2007 the house went to Sheriff Sale with an appraised value of $10,000. There was a minimum bid of $6,667 and the property was eventually purchased by Wells Fargo for $36,216. The city has cleaned the above location 3 times and has not been paid.