

# The Dream Foreclosed: 2008

2008 Legislative Updates, Policy Actions and Opportunities  
Addressing the Mortgage Foreclosure Crisis  
by Susan Motika

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## Introduction

### Context and Background

Homeownership is the bedrock of the "American Dream." However, many lower income homeowners in 2008 have seen the promise of this dream slipping away. The human toll and economic costs of the subprime mortgage crisis are staggering and hard fought gains in homeownership are being systematically eroded. The Center for Responsible Lending<sup>1</sup> has projected a loss of homeownership for almost one million families resulting from subprime loans made between 1998 and 2000. Looking ahead, the forecast is even more troubling:

- According to an April 18, 2008 report by the Pew Charitable Trust, one in 33 current U.S. homeowners with subprime loans could face foreclosure in the next two years<sup>2</sup>.
- People of color have been especially hard hit. In a 2007 study of six metropolitan areas, it was found that African American borrowers were 3.8 times more likely to receive a higher cost loan than white borrowers and that Latino borrowers were 3.6 times more likely than whites to get a high cost loan.<sup>3</sup>
- Over the last eight years, the projected loss of income and wealth for people of color because of subprime loans is estimated to be between \$164 and \$213 billion dollars.<sup>4</sup>
- This loss of wealth is not limited to those who lose their homes through foreclosure. Home values will reduce by an estimated \$519 billion in 2008, bringing the total forecast of lost equity for the nation's homeowners to \$1.2 trillion.<sup>5</sup>

### Impact of Foreclosure

For residents in cities that are part of the Annie E. Casey Foundation's *Making Connections* initiative<sup>6</sup>, threats to their economic stability are real and immediate. Loss of homeownership destroys credit and increases the risk of homelessness.

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<sup>1</sup> The Center for Responsible Lending is a nonprofit, nonpartisan research and policy organization dedicated to protecting homeownership and family wealth.

<sup>2</sup> "Defaulting on the Dream: States Respond to America's Foreclosure Crisis," Pew Charitable Trust, April 16, 2008.

<sup>3</sup> "Paying More for the American Dream: A Multi-State Analysis of Higher Cost Home Purchase Lending," A Joint Report by: California Reinvestment Coalition, Community Reinvestment Association of North Carolina, Empire Justice Center, Massachusetts Affordable Housing Alliance, Neighborhood Economic Development Advocacy Project, Woodstock Institute, March 2007.

<sup>4</sup> "Foreclosed: State of the Dream 2008," United for a Fair Economy, January 15, 2008. This report assesses the impact of the subprime mortgage crisis on people of color. Sources for the report's calculation about wealth loss include: National Community Reinvestment Coalition, "Homeownership and Wealth Building Impeded: Continuing Lending Disparities for Minorities and Emerging Obstacles for Middle Income and Female Borrowers of All Races," p. 8 Graph 1: p. 9, Graph 2: p. 10, Graph 3; Center for Responsible Lending, "Losing Ground: Foreclosures in the Subprime Market and their Cost to Homeowners," December 2006, p. 3 and p. 16 Table 6; "Residential Segregation and Housing Discrimination in the United States, December 2007," Periodic Report of the United States of America.

<sup>5</sup> United States Conference of Mayors, "The Mortgage Crisis: Economic and Fiscal Implications for Metro Areas," Global Insight, November 27, 2007.

<sup>6</sup> A multi-year investment in selected cities which focuses on improving outcomes for children and families in tough neighborhoods.

While the popular media typically trains its lens on adults, foreclosure's impact also falls harshly on children. Parents struggling through the foreclosure process and its aftermath may have children who attend school sporadically and have their academic, social and emotional development interrupted or impaired. This means that foreclosure affects two generations.

The harm extends further, to neighborhoods and cities. As foreclosures sweep through neighborhoods, they cut a wide swath of abandoned housing, lowering property values and thus the homeownership "equity" of the entire neighborhood. These abandoned and blighted properties, which typically generate no tax revenue, lower the tax base for needed public services such as public education and public safety.

Finally, foreclosure causes collateral damage to tenants who are evicted through no fault of their own when rental properties turn over to lenders or new owners. Across the states, few protections exist for tenants facing foreclosure-related evictions.

### **About this Report**

This report provides a snapshot about how selected cities and states are responding to the subprime mortgage crisis. Reform proposals are moving at a lightening pace, so the information contained herein provides a window in time to April 2008. The report considers the impact of foreclosure on lower income communities. As this crisis has deepened, a growing number of communities are responding affirmatively and creatively to change public policy and lending practices. Two examples from this report are illustrative:

- In Kentucky, where *Making Connections* Louisville helped sponsor a groundbreaking report documenting the incidence and impact of foreclosure, the Legislature just wrapped up work on a comprehensive consumer protection bill. This new law will create the Kentucky Homeownership Protection Center and impose a number of limitations on high cost loans. The bill's sweeping provisions represent first-of-its-kind consumer protection for homeowners in Kentucky.
- Massachusetts has also taken a comprehensive approach. There, lenders will be examined and rated for their compliance with fair lending laws and such information will be maintained in a statewide data base. Homeowners will have a 90 day "right to cure" a default on their mortgage. As important, Massachusetts just dispensed \$2 million in grants to government and non-profits across the state that are developing best lending practices to support homeowners and prevent foreclosures.

This report intentionally focuses on recent state legislative strategies that will provide lower income homeowners, tenants, and their allies with practical tools and strategies for achieving law and policy changes in their communities. Why focus on the states? Comprehensive reform at the federal level is unlikely before the new President takes office. Plus, the foreclosure process has traditionally been a function of states and reform efforts are being tailored to the needs of residents in these states. These state strategies include:

- State-sponsored programs that provide loans or grants to aid struggling homeowners in keeping their homes (see page 29);
- Changes to state foreclosure laws which permit extensions of time or moratoriums on the foreclosure process with a goal of helping homeowners achieve "work outs" or loan modifications (see page 25);
- Protections for tenants, including increased notice requirement (see page 17); and
- New laws that regulate "foreclosure rescue consultants" who entice desperate homeowners to give up legal title to their property (see page 33).

In addition, the report provides a window into how two *Making Connections* sites, Providence and Louisville, are confronting this crisis; how Massachusetts is implementing a package of promising practices, how other selected cities and states are responding, and in brief, how Congress is developing new reform proposals.

There are a number of topics, covered in other publications, which are purposely not addressed in this report. Some of these include the causal factors of the foreclosure crisis, a survey of predatory lending laws, an analysis of foreclosure “hotline” programs; strategies for dealing with abandoned properties such as bulk purchase and sale of Real Estate Owned (REO) properties, etc.

### **Looking Ahead**

While the challenges posed by the foreclosure crisis are daunting, opportunities are ripe for innovation, collaboration, and doing business “outside the box.” New coalitions are linking community organizing efforts with a broad cross section of partners – legal aid lawyers and the private bar, funders, private sector lenders and servicers, suburban community activists, and consumer protection advocates. The power of these alliances is now being harnessed to good effect. We hope that this report of promising practices will help spur policy, practice and legislative changes that will help communities reclaim the homeownership dream.

## Spotlight On: Louisville, Kentucky



### **Louisville's Foreclosure Crisis: A Groundbreaking Report of the Metropolitan Housing Coalition supported by *Making Connections* Louisville**

On January 10, 2008 the Metropolitan Housing Coalition (MHC) in Louisville issued a groundbreaking report: *Louisville's Foreclosure Crisis*. This study, supported and funded in part by *Making Connections* Louisville includes:

- An in-depth review of 1,699 foreclosure complaints filed between January 1 and June 30, 2007<sup>7</sup> and in-depth interviews with 26 households going through foreclosure during that same period. For the 1,699 complaints, 38 specific facts were collected from courthouse records regarding the location, loan characteristics, and default history. Additional facts on the property were collected from property valuation assessment records and by locating each home by metro council district, zip code, neighborhood, census block, census tract, and parcel identification numbers.
- A survey of households that were in the process of foreclosure. As MHC director Cathy Hinko explained in the introduction to the report, the interviews yielded rich information:

With few exceptions, our survey participants' stories were complex and usually involved a series of events leading up to the foreclosure action. Medical expenses, health issues and loss of income, as well as unclear and/or questionable mortgage lending practices were some of the primary circumstances resulting in the loans' default. Many of the homeowners also found the servicing of their loans counter-productive. . . with unreturned calls, high fees and generalized confusion by the lender. Perhaps the most shocking piece of information we learned from the 26 households who participated in our survey was that 14 did not have homeowners insurance and/or property taxes included in their monthly mortgage payments. Even more alarming, most of those 14 did not learn about this until they were at the closing table!

Family and Economic Success Coach Jane Walsh offered additional insights about what *Making Connections* Louisville learned from the 2007 report:

We found that 70% of foreclosures involved properties with mortgages of less than \$150,000. We found foreclosure rates for African Americans in the city and white suburbanites to be very similar – both skyrocketing. At every point, from default to foreclosure, people reported that interactions with lenders were difficult to navigate. However, when families in the study were offered services and counseling, they responded and took advantage of them. We believe that if people are actively engaged with services that respond to their needs, that they will accept help.

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<sup>7</sup> MHC has projected that foreclosures will have directly impacted 3,400 households in Louisville in 2007. "The Kentucky Office of Financial Institutions has estimated that in a single year 1.9% of all homeowners in the state will reach the point where a legal action is started to repossess their homes. . . From 1996 to 2007 the annual numbers for which there were "orders of sale" in Louisville has grown over 700%, from 437 in 1996 to 3,187 in 2007." *Louisville's Foreclosure Crisis*, p. 2.

### **Loan characteristics**

The report also provides a snapshot of foreclosure in three metro areas: California, an urban MC Louisville neighborhood; Highview, a suburban neighborhood; and Shively, a municipality within Jefferson County.<sup>8</sup> Comparative information on the loan characteristics of foreclosures in the three areas is also provided. The following information, culled from the report, describes loans in MC Louisville's California neighborhood:

- Investment properties made up more than half of California's foreclosures at 51.3%; 65% of investment properties in foreclosure in the California neighborhood were owned less than five years;
- 15.4% of California owners went into default before their loans were more than one year old;
- 48.7% of the loans in foreclosure in the California neighborhood were refinanced;
- 56.4% of mortgages in the California neighborhood were adjustable rate mortgages (ARMs);
- 48.7% of adjustable rate loans in the California neighborhood had interest rates higher than 7.5%.

### **A Call to Action**

The report contains recommendations reforming aspects of the mortgage industry through legislation; expanding financial products (loans and grants) plus counseling to help struggling homeowners, and developing neighborhood planning strategies to address neighborhoods blighted by abandoned property as a result of foreclosures.

## **2008 Updates and Action**

### **On the Legislative Front**

The publication of *Louisville's Foreclosure Crisis* and follow up advocacy by *Making Connections* Louisville and the Metropolitan Housing Coalition helped spur Louisville's mayor to lead a public awareness campaign about foreclosure prevention and the state legislature to take action on a comprehensive consumer protection bill, House 552, regarding the mortgage industry. House 552 was signed into law by the Governor on April 24, 2008. This new law declares the mortgage and foreclosure crisis "an emergency" causing Kentucky citizens to face financial ruin and loss of their homes.

Kentucky House 552 will:

- Create the Kentucky Homeownership Protection Center which will provide a centralized location for information on public services (e.g. mortgage and utility assistance, NeighborWorks programs) for homeowners in jeopardy of losing their homes.
- Require mortgage loan companies and brokers to be licensed by the state.
- Require mortgage loan originators and processors to be registered with the state.
- Limit prepayment penalties: "No prepayment penalty shall be assessed against the borrower following the third anniversary date of the mortgage or 60 days prior to the date of the first interest rate reset, whichever is less." No prepayment penalty shall

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<sup>8</sup> For each of the three areas, information was collected about the number of households in foreclosure; the number of survey participants from each area, the current property valuation assessments for loans in foreclosure; the length of time between the date owners originally purchased their home and the date they went into default on their loan; time between the closing date of the loan and the date of default; the number of properties in foreclosure with refinanced loans determined by comparing the date the loan was secured to the acquisition date; the number of loans in foreclosure that were first mortgages as compared to second or third mortgages, and, the number of fixed versus adjustable rate loans in each area plus additional details by rate type.

- exceed 3% for the first year; 2% for the second year; and 1% for the third year of the outstanding balance of the loan.
- Make influencing appraisals unlawful.
  - Charge the Office of Financial Institutions with broad enforcement power – licensing, registration and oversight, including the authority to enter “emergency orders,” file administrative complaints and collect civil penalties for violations of the law. Civil penalties collected will be deposited in a “mortgage lending prosecution account.”
  - Impose duties on mortgage brokers to:
    - Exercise good faith and fair dealing, act in the best interests of the borrower, and not compromise a borrower’s right or interest in favor of another’s.
    - Disclose to borrowers all material facts that might reasonably affect the borrower’s rights, interests, or ability to receive the borrower’s intended benefit from the residential mortgage loan.
  - Create the crime of “mortgage fraud,” punishable as a felony.
  - Cap brokers’ fees at \$2,000 or 4%.
  - Define and impose various limitations on high cost loans – e.g., regarding prepayment penalties, the acceleration of indebtedness, payment provisions, interest rate increases after default, and fees.
    - Expand the high cost loan act to all loans under \$200,000.
    - Require lenders to give borrowers a special warning notice regarding a high cost loan and require homeowner counseling before such buyers refinance into a high cost loan.
    - Bar lenders from making high cost loans unless they “reasonably believe,” based on a financial assessment of the borrower, that he or she will have the ability to repay the loan.
    - Impose limitations on late fees on high cost loans--late fees shall not be in excess of 5% of the amount of the payment past due (which must be 15 days or more) or \$10, whichever is greater; no fees shall be charged for a yearly request for a payoff calculation.
    - Bar high cost home loans that fail to require an escrow account for taxes and insurance, that fail to verify the borrower’s income and financial resources, and that allow borrowers to make payments that are applied only to interest and not to principal.
    - Allow the Attorney General, the director of the Office of Financial Institutions or any party to a high cost home loan to enforce the provisions of the law on high cost homes loans.

## ***Making Connections Louisville Looks Ahead***

The following proposals and concepts reflect the likely next steps for the Louisville team in addressing the foreclosure crisis:

### **Increase the capacity of foreclosure counseling agencies to meet demand and achieve successful outcomes**

Homeowner counseling is one area in which the federal government has invested fairly significantly. In Louisville the challenge is how to ensure that existing counselors have the technical skills and expertise to do a job that is ever more complex. For example, how can counselors be available 24/7 via phone or internet? How could a live “chat” counseling system for online sessions be developed? Could Louisville obtain the software<sup>9</sup> that would allow counselors to electronically link to lenders/servicers for the purpose of obtaining significantly quicker responses on requests for workouts and loan modifications?

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<sup>9</sup> This is called the Early Resolution Counseling Portal (ERCP).

**Create loan products that allow residents to refinance Adjustable Rate Mortgages (ARMS) that are scheduled to reset**

*Louisville's Foreclosure Crisis* showed that more than half of foreclosures in 2007 involved resetting ARMs. Working with foreclosure counselors and the Metropolitan Housing Coalition, *Making Connections* Louisville would like to determine whether lenders would agree to either freezing interest rates or reducing the amount of the interest rate hike, and whether a loan product could be developed to "write down" the amount of the qualifying homeowner's mortgage. The homeowner would be refinanced at a lower interest rate on a 30 year fixed product. The write down amount (reflecting the amount of the ARM increase) would be financed as a "silent" second mortgage, repayable only upon sale or transfer of the property.

**Address vacancies and declining property values in the California neighborhood**

Presently, the California neighborhood has at least 100 vacant properties out of 2,000 total units in the neighborhoods. *Making Connections* Louisville is exploring whether Housing Partnership, Inc. and the Land Bank Authority could target acquisition of foreclosed properties in the California neighborhood in order to rehabilitate and resell them as affordable housing.

**Prevent future foreclosures by providing legal representation to low and moderate income first-time homebuyers**

*Louisville's Foreclosure Crisis* dramatized how unprepared many homeowners were for the mortgage closing table. Eleven out of the 26 people interviewed in-depth were unaware at the time of closing that their taxes and insurance were not already included in the monthly mortgage payment. *Making Connections* Louisville would like to find resources for Louisville Legal Services to conduct a pilot project to provide 100 first time homebuyers with legal representation at the time of closing. The goals of the program would be to identify predatory loan characteristics before loan papers are signed; prevent, where possible, potential homeowners from entering into high risk loans; and provide homeowners with more information about the loan terms and their rights and responsibilities as homeowners. Such a pilot program would require extensive neighborhood outreach; in addition to finding the 100 homeowners, this effort could also reach tenants in jeopardy of eviction in foreclosed properties.

**Continue to align data and research with the development of foreclosure prevention strategies**

*Making Connections* Louisville would not be positioned where it is in the foreclosure policy arena absent a strong commitment to research and data collection. *Making Connections* Louisville's preliminary research efforts led to the production of *Louisville's Foreclosure Crisis* which was a catalyst for the systemic changes by the state legislature through House 552. Through the Metropolitan Housing Coalition, *Making Connections* Louisville intends to invest more funds in neighborhood-level research about foreclosures, vacancies, and property value trends.

## Spotlight On: Providence, Rhode Island

Currently, Rhode Island has the highest rate of foreclosures in New England. RealtyTrac reported this state had 782 foreclosure filings for January 2008, a 259% increase from January 2007. Providence County accounted for 718 of the 782 foreclosing filings, with one foreclosure for every 356 households. The city of Providence has seen more than 1,300 homes foreclosed upon since 2006, with half of these units now boarded up.<sup>10</sup>



Providence Mayor David Cicilline advocates a number of bold initiatives to address the blighted and abandoned property left in the wake of foreclosures. "City government cannot control the lending practices of mortgage companies and financial institutions, but we can speed up the process of getting these properties out of the hands of anonymous institutions and into the hands of Providence families," he stated at a January 2008 news conference. The City's strategies include:

### **Abandoned Property Penalty**

This annual levy would impose a financial penalty of \$10 for each \$100 of assessed value of abandoned property. The policy goal is to create a financial disincentive for absentee owners to hold vacant property for long periods of time. (The measure will require City Council approval.)

### **No Interest Loans Through the Housing Trust**

The City is directing \$1 million to the City's Housing Trust to provide no interest loans to working families who have purchased foreclosed homes. The City's loan would help them to defray repair costs of homes that were vandalized or damaged during the time the property was vacant.

### **\$10 Million CDBG Loan Guarantee**

This is a \$10 million "Section 108" loan that would be guaranteed by the City Development Block Grant (CDBG) program and repaid through the city's future CDBG allocations. The loan would help fund the strategic acquisition, rehabilitation and resale of foreclosed homes through no interest and low interest loans. The City Council will vote later in 2008 on whether to authorize the Providence Redevelopment Agency to officially apply for the loan through the CDBG program.

### **Tenant Evictions**

Meanwhile, Providence is seeing another harsh consequence to the foreclosure crisis: the eviction of tenants, through no fault of their own, from foreclosed properties. "There is absolutely no legal requirement that the tenants be notified about anything [regarding foreclosure proceedings or the sale of foreclosed property]" explained Rhode Island Legal Services litigation director Robert Sabel. While under current law, tenants cannot be evicted without a court order, most tenants "don't know their rights," Sabel said.<sup>11</sup> *Making Connections* Providence and other affordable housing allies have advocated for state policy changes to provide more protection for tenants facing loss of their homes due to their landlords' foreclosures. Committees of the General Assembly have heard two bills addressing this problem; both are being "held for further study." (See below, *Spotlight On: Tenants*).

Despite hurdles and setbacks, Providence benefits from the energy, intellectual capital, and willingness of partners across the city and state to begin to cross jurisdictional and turf lines to

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<sup>10</sup> "City works to get foreclosed homes occupied again," *Providence Journal*, March 26, 2008.

<sup>11</sup> "New law would help renters," *Providence Journal*, January 12, 2008.

support homeowners and tenants. "Right now, there's a growing understanding that we have to think more boldly to stand a chance of getting ahead of this crisis. We have to use every tool at our disposal--constantly researching and connecting with promising practices that are going on across the country," explained Ray Neirinckx, a long-time *Making Connections* Providence partner and a coordinator of the State's Housing Resources Commission.

## ***Making Connections* Providence Looks Ahead**

In response to the foreclosure crisis, *Making Connections* Providence has an ambitious agenda for 2008. This includes advocacy on state policy and legislation, the development of various loan and refinance products for homeowners, the potential purchase of foreclosed properties through a land trust, outreach to tenants in jeopardy of eviction, and support for the City's development of a GIS mapping system of properties in various stages of foreclosure. "We're acting on many fronts and being strategic about partnerships that just a few years ago would have been difficult or impossible," explained *Making Connections'* Family Economic Success Coach Bert Cooper, in describing the following action plan:

### **West Elmwood Housing**

West Elmwood Housing (WEH) plays a key role in helping residents to attain and maintain affordable housing. They are a community development corporation (CDC), HUD-approved counseling agency, a community development financial institution (CDFI), and most recently, a non-profit mortgage broker. Through a partnership with the Bank of Rhode Island and Neighborhood Housing Services of America, WEH began to offer mortgage refinancing (30 year fixed) to homeowners whose interest rates were about to adjust. However, at the time this product was offered in 2006, many Providence homeowners were behind on loans that had already reset. To address this and other more recent problems posed by the foreclosure crisis, WEH and *Making Connections* Providence are developing additional products:

- **Rescue Loans**  
Rescue Loans are designed to bring owners current in their mortgage up to a maximum of \$6,000. If the borrower successfully completes a four session homeowner counseling program and is offered and accepts a fixed rate refinance at the end of 12 months, the Rescue Loan would be repaid with 0% interest; otherwise, it becomes a 5% amortizing loan.
- **Rate Subsidy Loans**  
These loans would provide families with temporary relief from ARM rate resets. If a family can be brought up to date and can demonstrate that they can maintain timely payments for 12 months at the original rate, WEH would lend up to \$5000 to cover the difference between the original monthly payment and the reset amount. (This equals a maximum of \$416/month in mortgage assistance.) Like Rescue Loans, this product requires counseling, with a goal of having the family refinance into a 30 year fixed rate loan at the end of 12 months.<sup>12</sup> The repayment terms for this product would be the same as that of the Rescue Loan.
- **Equity Gap Loans**  
This product would address the "upside down" problem where the loan amount exceeds the appraised value of the property. Homeowners would be offered a refinance for 100% of their loan at very favorable terms. A second product would address the "gap" between the loan amount and the value of the property.

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<sup>12</sup> Ultimately, WEH would like families to qualify for WEH's fixed rate, 30 year mortgage.

### **Data Collection by the City**

The City of Providence, supported by *Making Connections* Providence, is planning<sup>13</sup> to develop a state-of-the-art foreclosure tracking system which would be accessible by community development corporations (CDCs) and the general public. This proposed new GIS mapping system would provide up to the minute information on where a property is in the foreclosure process, whether the property is vacant or abandoned, and other key facts, such as the number of police and fire service calls, inspection and enforcement records, tax liens, etc. This new data base could be used to: help CDCs (including WEH) access information in a timely way to purchase properties for resale as affordable housing; support advocacy efforts on foreclosure prevention for homeowners and eviction defense for renters; and increase inspections and enforcement by the City on abandoned properties, thereby reducing blight.

### **Statewide Housing Action Coalition (SHAC)**

SHAC is planning to conduct a door to door survey in *Making Connections* Providence neighborhoods of homeowners and tenants affected by foreclosure and direct them to supportive services, counseling and legal assistance. Interested tenants would also be invited to join SHAC's legislative efforts to gain protections for tenants subject to foreclosure-related evictions. The Resident Leadership Council of *Making Connections* Providence would be tapped as outreach workers and volunteers for this canvass.

### **Social Investments**

*Making Connections* Providence works with a broad cross section of partners, including the Community Housing Land Trust of Rhode Island, to determine the viability of a "Foreclosure Property Recapture Program." This effort would involve the purchase of foreclosed or about-to-be foreclosed properties by the Community Housing Land Trust at discounted rates through bulk purchase. The goal would be to resell or refinance these properties at affordable rates. Under this model, the home and improvements would be "owned" by the homeowner, while the land would be owned by a land trust for a long period (e.g., 99 years). Because the purchase price would exclude the cost of land, a land trust could offer below-market prices, thereby making homeownership accessible to low and moderate income buyers. Funding for this project would come from Rhode Island Housing (through a \$10 million line of credit) and United Way of Rhode Island. Other proposals to national and local funders are also being pursued. Key questions<sup>14</sup> for Providence and other sites exploring such a land acquisition project would include:

- How does such a project fit with the city's overall community revitalization strategies?
- Who are the partners in the city's revitalization strategies and how can they be involved in the proposed project?
- What is the overall goal of acquiring foreclosed homes? Is it to:
  - Turn homes around quickly to new owners?
  - Provide non-profits and CDCs with a source of rental property?
  - Purchase larger parcels for the purpose of reselling to larger developers?
  - Buy and hold property in "perpetuity," that is continuing forever in the same way?
- What strategies will achieve these goals? Is a land bank preferable to a land trust?<sup>15</sup>
- Who will do the acquisition activities?
- What financial resources (subsidy and loans) will support such work?
- If a Program Related Investment<sup>16</sup> is sought, how will the loan be repaid?

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<sup>13</sup> As part of the anticipated, \$10 million loan through CDBG

<sup>14</sup> These questions were culled from a list developed by Christa Velasquez, who directs the Casey Foundation's Social Investment work.

<sup>15</sup> Land banks are governmental entities that convert vacant, abandoned, and tax delinquent lands and buildings into productive use by private or non-profit developers.



## Spotlight On: Massachusetts

On November 30, 2007 Massachusetts Governor Deval Patrick signed into law comprehensive legislation governing the mortgage industry. This groundbreaking new law has been likened to a Community Reinvestment Act (CRA) for mortgage lenders at the state level. What follows is a summary of the law along with a description of the implementation steps Massachusetts is taking, including opportunities for input from the industry and consumers.

### **An Act Protecting and Preserving Homeownership: Chapter 206 of the Acts of 2007**

This new law:

- **Creates the first-in-the-country state Community Reinvestment Act (CRA)** for mortgage lenders.<sup>17</sup> Lenders of 50 or more home mortgage loans will be rated on their practices in assisting low and moderate income residents. Mortgage lenders, after a review by the banking commissioner, will be assigned one of the following ratings for meeting the mortgage loan credit needs of Massachusetts communities: outstanding; high satisfactory; satisfactory; needs to improve; or, substantial non-compliance. The failure of mortgage lenders to receive positive ratings under this monitoring system may result in denial of a license renewal.
- **Requires loan originators to be licensed by the Division of Banks** and allocates \$3 million from the General Fund to the Division of Banks to implement the new law.
- **Establishes ten education centers across the state to run pilot programs for best lending practices and first-time homeowner counseling** for non-traditional loans, funded by \$2 million in grants.<sup>18</sup>
- **Provides that tenants of foreclosed properties be granted “tenant at will status”** which in Massachusetts means the provision of a “notice to quit” and the requirement of a civil court process (“summary process”) before the tenant can lose possession of the premises.
- **Requires a 90 day “Right to Cure”** and that a notice of the Right to Cure be filed with the Division of Banks. Requires that written notices of foreclosure contain specific facts and terms. Requires that to cure a default a mortgagor “shall not be required to pay any charge, fee, or penalty attributable to the exercise of the right to cure a default.”
- **Prohibits most subprime adjustable rate mortgages for first time homebuyers** unless the borrower “affirmatively opts in writing for the variable or adjustable rate subprime loan and receives certification from a counselor. . . that the mortgagor has received counseling in person on the advisability of the loan transaction.”
- **Requires a pilot program involving best lending and borrowing practices** for consumers and mortgagees, in cities or towns with:
  - Housing units within low or moderate income census tracts or
  - High residential foreclosure activity affecting 1 to 4 family units.

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<sup>16</sup> A long term loan by a foundation at favorable terms, typically to non-profits, that will produce a financial return and a social return, thus achieving a “double bottom line.”

<sup>17</sup> Lenders making 50 or more home mortgage loans annually will be examined for: Compliance with fair lending laws, such as the Equal Credit Opportunity Act, Home Mortgage Disclosure Act, and the Predatory Home Loan Practices Act; the origination of loans and other efforts to assist low and moderate income residents to obtain or retain affordable housing at reasonable rates; the origination of loans that show an “undue concentration and a systematic pattern of lending resulting in the loss of affordable housing”; efforts to work with delinquent residential mortgage customers to facilitate a resolution of the delinquency; and other facts, including testimony and written comments about the mortgage lender.

<sup>18</sup> The sum of \$5 million (\$3 million for the Division of Banks and \$2 million for the pilot program) will be raised from revenue received from administrative fees associated with licensure and from civil administrative penalties.

- **Provides guidelines for best practices** that:
  - Attain a minimal risk of high cost lending;
  - Have a demonstrated ability to avoid foreclosures;
  - Have a demonstrated record of pricing that ensures uniformity of lending;
  - Avoid a disparity of pricing in low and moderate income census tracts; and
  - Maintain foreclosure prevention practices that meet or exceed standards set by government sponsored entities.
- **Establishes a foreclosure database** at the Division of Banks with all preliminary "Right to Cure" or foreclosure filing notices and all final foreclosure sale information.<sup>19</sup>

### **Two Additional Laws Enacted**

On December 28, 2007, two additional bills were signed:

- **Expanding supervision of the mortgage industry, regulation of mortgage loans**, mortgage brokers, multi-state licensing systems and sharing of regulatory information and records. (H 3845, now Chapter No. 223 of the Acts of 2007)
- **Establishing licensing of mortgage loan originators** including criminal background history checks back to juvenile data. (H 4407 now Chapter No. 224 of the Acts of 2007)

### **Agencies' Rapid Actions Put Teeth in New Law**

The Massachusetts Division of Banks, Consumer Affairs and Business Regulation office took two notable steps within weeks of the signing of Chapter 206.

1. Published and posted online a user-friendly "Frequently Asked Questions on Chapter 206" aimed at the public and loan professionals alike. As an example, the FAQ features a practical explanation of the "90 Day Right to Cure" as follows:

<b>90-Day Right To Cure</b>
<p><b>Q. Do I now have a statutory right to cure a default on my mortgage loan?</b>            A. Yes. Chapter 206 establishes a 90-day Right To Cure a default on a residential mortgage loan.</p> <p><b>Q: When does my 90-day Right To Cure begin?</b>            A. Under the law, the 90-day Right To Cure begins when you receive a Notice of Default and Right To Cure from your lender or when the lender mails the notice to your last known address.</p> <p><b>Q. How often am I entitled to a 90-day Right To Cure on my mortgage loan?</b>            A. Chapter 206 provides that the 90-day Right To Cure a default shall be granted <u>once</u> in any 5 year period regardless of the mortgage holder.</p> <p><b>Q. Am I entitled to a 90-day Right To Cure immediately?</b>            A. No. Under the law, the provision for the 90-day Right To Cure is effective May 1, 2008.</p> <p><b>Q. What if I cure my default during the 90-day period?</b>            A. Your loan would be current.</p> <p><b>Q. May a mortgage lender charge me a fee for curing the default?</b>            A. Chapter 206 prohibits any charge, fee, or penalty attributable to the Right To Cure from being charged to the borrower.</p> <p><b>Q. Can I be charged attorneys' fees relating to my default during the 90-day Right To Cure?</b>            A. No. The law prohibits attorneys' fees from being charged to the borrower during the 90- day Right To Cure.</p>

2. Sought input from the industry and consumers about the drafting of regulations on community reinvestment act requirements for mortgage lenders.<sup>20</sup>

<sup>19</sup> The data base shall include, but not be limited to, "foreclosure activity by mortgage lenders, mortgage holders and mortgage servicers. . ." The commissioner of the Division of Banks shall produce a report annually "to track development and trends of mortgage foreclosures on residential property in the commonwealth including, but not limited to, an analysis of the pre-foreclosure notices submitted to the commissioner compared to the final foreclosure notices, and any trends or patterns relative to the geographic location of the residential properties and interest rates."

In addition, on April 3, 2008 the Governor announced \$2 million in grant awards to 11 Foreclosure Education Centers as well as 24 Counseling and Education Programs.<sup>21</sup>

### **Launch of Nationwide Mortgage Licensing System**



On January 2, 2008 The Massachusetts Division of Banks helped to inaugurate the Nationwide Mortgage Licensing System ("NMLS"). NMLS is a collaborative effort among state regulators to bring greater efficiency and accountability to the supervision of the mortgage industry. In seven states (Idaho, Iowa, Kentucky, Massachusetts, Nebraska, New York and Rhode Island) companies must submit license applications and amendments to the state Division through the NMLS. Fifteen states are currently using the uniform licensing application forms and 42 state agencies have signed a Statement of Intent to do so.<sup>22</sup> Massachusetts companies holding a *Mortgage Broker License* or *Mortgage Lender License* had until April 15, 2008 to complete and submit these applications.<sup>23</sup>

### **The Mortgage Summit Working Group**

*"Recommended Solutions to Prevent Foreclosures and to Ensure Massachusetts Consumers Maintain the Dream of Homeownership."* The Working Group, led by the Commissioner of Banks, included nearly 50 participants from government agencies, non-profit organizations and the mortgage lending industries who convened to develop a comprehensive foreclosure prevention strategy. Their consensus report, released June 2007, is credited with setting the stage for the legislative and the executive actions of the past ten months.<sup>24</sup>

### **Attorney General Regulations**

In the consumer protection arena, the Office of the Massachusetts Attorney General has been among the most vigilant and activist in the nation. The Massachusetts Attorney General promulgates regulations under the state consumer protection law, Massachusetts General Laws, Chapter 93A. Massachusetts consumers have a private right of action under these regulations.

During the summer and fall of 2007, Attorney General Martha Coakley solicited public input in drafting new regulations<sup>25</sup> governing mortgage lending and brokers. The new regulations, found at 940 CMR 8.00, became effective on January 2, 2008 and:

- Prohibit mortgage brokers or lenders from making a loan if they do not have a reasonable belief that the borrower will be able to repay the loan;
- Restrict the abuse of no-documentation or "stated income" loans;
- Prohibit mortgage brokers from arranging or processing loans that are not in the borrower's interest and prohibit brokers from brokering loans if the broker's financial interest conflicts with the borrower's interest.

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<sup>20</sup> Mass. Division of Banks. "Division Seeks Comments on CRA Requirements for Mortgage Lenders. February 11, 2008. <[www.mass.gov](http://www.mass.gov)>

<sup>21</sup> Massachusetts Executive Office of Economic Development. "Governor Patrick Announces \$2 Million in Grants..." April 3, 2008.

<[http://www.mass.gov/?pageID=pressreleases&agId=Ehed&prModName=ehedpressrelease&prFile=080403\\_foreclosure.xml](http://www.mass.gov/?pageID=pressreleases&agId=Ehed&prModName=ehedpressrelease&prFile=080403_foreclosure.xml)>

<sup>22</sup> NMLS. 4/11/2008.

<[http://www.stateregulatoryregistry.org/NMLS/AM/Template.cfm?Section=Participating\\_States1](http://www.stateregulatoryregistry.org/NMLS/AM/Template.cfm?Section=Participating_States1)>

<sup>23</sup> Nationwide Mortgage Licensing System. Announcement, accessed April 13, 2008.

<<http://www.stateregulatoryregistry.org/NMLS//AM/Template.cfm?Section=Home3>>

<sup>24</sup> MA Executive Department. News Release, June 11, 2007.

<[http://www.mass.gov/?pageID=pressreleases&agId=Agov3&prModName=gov3pressrelease&prFile=agov3\\_pr\\_07061\\_1\\_mortgage\\_fraud\\_legislation.xml](http://www.mass.gov/?pageID=pressreleases&agId=Agov3&prModName=gov3pressrelease&prFile=agov3_pr_07061_1_mortgage_fraud_legislation.xml)>

<sup>25</sup> The amended regulations expand the scope of the previous version, which applied solely to home improvement loans.

- Prohibit mortgage lenders from steering borrowers to loan products that are more costly than those the borrower qualifies for, and prohibits lenders from discriminating between similarly qualified borrowers.

In summary, the numerous, fast-paced steps taken in the past four months illustrate the unusual collaboration among public, non-profit and private sector stakeholders in Massachusetts.

## Spotlight On: Tenants

### Suffering Collateral Damage from the Foreclosure Fallout

As the mortgage foreclosure crisis intensifies, its damage is extending beyond homeowners to rent-paying tenants. In Congressional testimony to the House Committee on Financial Services on September 20, 2007, housing attorney Judith Liben described the hardships tenants are facing: "As more information comes to light, it is now clear that, nation-wide, tenants who did nothing wrong except to rent from a defaulting owner are suffering harsh collateral damage from the mortgage fallout." Liben, an attorney for Massachusetts Law Reform Institute, is part of a coalition of legal services and housing advocacy organizations working to shield tenants from the foreclosure crisis fallout.<sup>26</sup>

Generally throughout the country, rental agreements and leases do not "survive" or take precedence over state foreclosure laws.<sup>27</sup> Liben reports that post-foreclosure, tenants are receiving as little as three to fourteen days notice to move.<sup>28</sup> In addition, many lenders or new property owners are not following the special termination of tenancy requirements that are part of the federal Section 8 voucher program.<sup>29</sup> Tenants, both private and Section 8, are moving out pursuant to "eviction" notices, without the lender or new owner filing a court complaint and obtaining a court judgment for possession of the premises. In some cases, tenants are offered "cash for keys" in exchange for moving out quickly. Problems occur when new owners renege on an oral promise to pay or when a small cash payment significantly underestimates the tenant's moving and new apartment acquisition expenses. Utility shut offs are another negative byproduct of foreclosure. Post foreclosure, landlords stop paying utility bills for the property and new owners see no legal responsibility to assume this task. "We shouldn't have to suffer because of the foreclosure. As a tenant, our water bill and garbage bill is included in our rent," Oakland tenant Ida Hancox told ABC news in February.<sup>30</sup>

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<sup>26</sup> In Massachusetts, there is a strong coalition that supports this work--Boston's Rental Housing Resource Center, Greater Boston Legal Services, ACORN Housing, Harvard Legal Aid Bureau, Boston Housing Court, Massachusetts Land Court, and the Medical-Legal Partnership for Children. "It appears that the evictions based upon foreclosures are up around 55% from 2006," Robert Lewis, clerk of the Boston Housing Court, told *Banker and Tradesman*, August 13, 2007. And in nearby Providence, Rhode Island, banks and mortgage companies have filed more than 400 eviction cases in District Court during the first three months of 2008. *Providence Journal*, April 1, 2008. According to the California Apartment Association, about one fourth of foreclosed single family properties are occupied by tenants. (Bill analysis, Assembly Committee on Judiciary, April 1, 2008, citing the *Los Angeles Times*, "Shadow Victims of the Mortgage Crisis: Renters," February 13, 2008.

<sup>27</sup> It is generally held that a foreclosure terminates an existing tenancy "by operation of law."

<sup>28</sup> Liben reported in her Congressional testimony that Oregon tenants were receiving a 14 day notice to quit from the lender and that Nevada tenants were receiving a three day notice.

<sup>29</sup> Greater Boston Legal Services (GBLS) uses, depending upon the facts and law of individual cases, the following types of defenses for a motion to dismiss a summary process (eviction) case involving a subsidized tenancy:

1. The notice to quit fails to state just cause for termination of tenancy as required by federal law [citations omitted] and the parties' lease.
2. The notice fails to include language which is mandated by the parties' lease for the termination of tenancy notice.
3. The notice was not given by the plaintiff to the housing agency administering the Section 8 subsidy, as required by federal law [citations omitted] and the parties' lease.

However, the defenses to a foreclosure-related eviction for Section 8 tenants are not without hurdles. For example, once the public housing authority (administering the Section 8 program) is notified of a change in ownership, rental payments will stop absent a signed "assignment form" from the new owner (in most cases, the lender). Bank representatives are reluctant to sign these forms for fear of creating a new tenancy.

<sup>30</sup> See also *Rocky Mountain News*, "No heat, no water, no answers for renters," May 3, 2008.

## State Legislative Actions

In the last six months, state legislatures are beginning to provide more protection to tenants who are facing foreclosure-related eviction:

### New Laws

- In **Massachusetts, Chapter 206 of the Acts of 2007**, signed by the Governor on November 30, 2007, states that “[f]oreclosure shall not affect the tenancy agreement of a tenant whose rental payment is subsidized under state or federal law.” This law also provides that a tenant who is occupying a unit<sup>31</sup> at the time of the foreclosure sale shall be deemed a “tenant at will.” To evict such tenants, new property owners are now required to provide a 30 day notice to quit, institute a “summary process” court action, and obtain a judgment for possession of the rental premises.
- **Illinois Public Act No. 95-262**, which took effect on January 1, 2008, allows tenants who are (and who remain) current in their rent to retain possession of the property covered in their rental agreement for 120 days.<sup>32</sup>
- **North Carolina’s Session Law Number 2007-353**, which took effect on October 1, 2007, requires that tenants receive the notice of sale in foreclosure proceedings and 30 days’ notice of an application for an order of possession of rental premises in property that has been foreclosed upon.
- **Washington’s Senate Bill 5378**, signed by the Governor on March 25, 2008, requires in the “Notice of Trustee’s Sale” regarding foreclosed property, the following notice to tenants: “The purchaser at the sale is entitled to possession of the property on the 20<sup>th</sup> day following the sale. . . After the 20<sup>th</sup> day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act, chapter 59.12 RCW.” This means that the purchaser must still file a complaint and obtain a judgment for possession under Washington’s eviction law.
- **Minnesota Senate 2908**, signed by the Governor on April 4, 2008, requires that “[i]f the person entered into a lease after the date of notice of the foreclosure. . . and before expiration of the time for redemption or termination, the notice requirements in current law are changed from one month to two months.”<sup>33</sup> (emphasis added) Also, **Minnesota, Senate Bill 2910**, signed by the Governor on April 4, 2008, provides for “mandatory expungement” of eviction records for tenants who vacated property subject to foreclosure prior to the commencement of the eviction action or who failed to receive a notice to vacate prior to the commencement of the eviction action.

### Pending Bills

- **California Assembly Bill 2586** would provide a number of important tenant protections, including:
  - Expanding California’s definition of “landlord” to include “any successor or successors in interest to the landlord’s interest in the property,” including an interest acquired through foreclosure.
  - Prohibiting a public utility company from terminating service for non-payment without first notifying the tenant in the same manner that a person responsible for payment would be notified. Authorizing a tenant or occupant who has made payment to a public utility to deduct the amount of the payment from the rent when due.

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<sup>31</sup> Under “an unexpired term for years or a lease for a definite term.”

<sup>32</sup> Following the notice of a hearing on a supplemental petition about possession of the rental premises, or through the duration of the lease, whichever occurs sooner.

<sup>33</sup> Bill Summary, S.F. No 2908 “Tenant Notice Requirements,” Senate Counsel and Research, February 29, 2008.

- Requiring a landlord to either return the tenant's security deposit to the tenant or to transmit the security deposit to the new "successor in interest" upon the landlord's loss of the property through foreclosure.
  - Requiring a mortgagee to provide to tenants a "Notice of Possible Foreclosure Sale" at least 20 days prior to the sale. Tenants would be permitted to move out with three days notice, irrespective of lease or statutory requirements.<sup>34</sup>
  - Providing tenants with a 60 day written notice to quit before court eviction procedures could commence. This would expand California's current 30 day notice period in cases where the property occupied by the tenant has been sold.
  - *Note:* On April 15, this bill passed Assembly Utilities and Commerce Committee (having passed the Judiciary Committee on April 1, 2008.) It was been sent to the Appropriations Committee.
  - **Ohio House Bill 440**, amending section 5321.20 of the Revised Code, would provide: "The foreclosure of a landlord's mortgage does not, through operation of law, terminate a rental agreement with respect to the property that is the subject of the foreclosure action. Any successor in interest to a property pursuant to a foreclosure action shall assume that property interest subject to any rental agreement. . ."
  - **Connecticut House Bill 5552**. "Foreclosure shall not affect the rental agreement of a tenant whose rental payment is subsidized under state or federal law or who occupies premises that are subject to a state or federal loan or assistance contract."
  - **Rhode Island House Bill 7518** would permit a "bona fide" tenant of a foreclosed mortgaged estate to assume a month to month periodic tenancy which would be subject to Rhode Island eviction law, chapter 18 of Title 34 of the general laws. Also, **Rhode Island Senate Bill 2110** would require mortgagees to: provide to "bona fide" tenants, at the same time notice is provided to mortgagors, a written notice stating that the real estate is scheduled to be sold at foreclosure and providing the date, time and place of the sale; inform tenants of the availability and advisability of counseling and information services, and provide the name, address, and telephone number of Rhode Island Legal Services and HUD approved counseling agencies. This bill also would require:
    - In cases where a foreclosed mortgagor had provided essential utilities, for the successor in interest to continue to provide the same essential services under the same terms and conditions to the tenant
      - A 60 day written notice to quit to tenants where the successor in interest wishes to evict the tenant.
- Note: Both the Rhode Island bills have been sent to a study committee.
- In **Massachusetts**, a "just cause" eviction law was proposed on March 24, 2008. This bill would require institutional foreclosing lenders to have "just cause" for eviction of tenants. "Just cause" reasons would include non-payment of rent, criminal behavior, refusing access to the owner and similar tenant breaches.

Note: The National Low Income Housing Coalition (NLIHC) has recently established a State Internet Research Repository which seeks to disseminate the research of state partners to a wider audience. Current postings on foreclosure include slideshows from Ohio and Nevada. See [www.nlihc.org](http://www.nlihc.org).

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<sup>34</sup> This right would be limited in time to six months from the proposed date of the sale or until the property is sold, whichever occurs sooner.

## Trends, Updates, and Action

This section focuses on quick updates which demonstrate the range of creative and promising practices being tried around the country. It includes some state updates and also action by municipalities, foundations, the private bar, non-profit organizations, and the state attorneys general.<sup>35</sup>

### California

#### **New Loan Product for Oakland, California Residents**

OneCalifornia Bank and OneCalifornia Foundation (both partners of *Making Connections* Oakland) are implementing a "Community Homeownership Loan Fund" (the Fund) to prevent foreclosures among moderate income families in Oakland. The goal is to help Oakland families restructure their loans to leave them with a reasonable level of equity. Eligible homeowners must live in a single family residence, have had no bankruptcy in the last ten years, be current on existing loans, but be unable to continue mortgage payments or have had a recent delinquency because of an interest rate/payment amount reset. The homeowner must also be willing to participate in intensive and continuing financial literacy education classes approved by OneCalifornia Foundation. The first mortgage holder or servicer must agree to reduce part of the principal owed. This will take the form of a 2 to 1 cash buy down from the Fund on behalf of the borrower. For example, if the Fund contributes \$25,000, the lender will be required to write down \$50,000 for a total loan principal reduction of \$75,000. The note will then be restructured as a 30 year, fixed rate loan with no prepayment penalties. OneCalifornia Bank will file a second mortgage on the property which will reflect the amount that was invested to save the homeowner from foreclosure. The term of this loan will be 25 years, 10 years of interest only payments, followed by 15 years of fully amortizing principal and interest payments. According to Jennie Mollica, *Making Connections* Oakland's project manager, OneCalifornia has the new loan product up and running and a large pool of applicants has already applied.

#### **California Reinvestment Coalition (CRC)**

CRC, a key partner of *Making Connections* Oakland, is supporting a package of fair lending and anti predatory lending bills<sup>36</sup>:

- **Assembly Bill 69**: Would require lenders and servicers to report to the Department of Corporations on the number of loans in default or foreclosure, the number of modifications to loans offered to troubled borrowers, and the results of these "workouts."
- **Assembly Bill 1830**: Would require that lenders make high cost loans only where there is evidence of ability to repay the loan at the fully indexed rate; prohibit "stated income" loans, prepayment penalties, and "yield spread premiums" which financially benefit brokers for putting borrowers in more expense loans.
- **Assembly Bill 2359**: Would make subsequent holders or assignees of high cost mortgages subject to all claims and defenses that the borrower could have brought against the original lender.
- **Assembly Bill 2740**: Would establish that home loan servicers owe a duty of good faith and fair dealing to borrowers; would regulate the imposition of certain fees; and would require loan servicers to respond within 10 days to a borrower's request for information or dispute resolution.
- **Senate Bill 1137**: Would require lenders to contact homeowners and provide loan restructuring options for homeowners in jeopardy of foreclosure; take steps to reduce neighborhood blight caused by foreclosed properties; and provide additional protections to tenants living in investor-owned properties.

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<sup>35</sup> The following section, *State Legislative Roundup*, deals exclusively with state legislative strategies, particularly those that would assist lower income homeowners.

<sup>36</sup> The following summary of bills is drawn from an April 7, 2008 letter to the California Assembly from CRC's Kevin Stein.

## Colorado

### **City of Denver Releases “Understanding Mortgage Foreclosures in Denver”**

This study, covering a period from 2000 to 2007, provides in-depth and up-to-date data collection and analysis of foreclosure trends in the City and County of Denver. It addresses “specific issues and characteristics of the key players in any mortgage transaction, namely: borrowers, lenders, loans, and houses and neighborhoods.”<sup>37</sup> Some of the report’s key findings include:

- The foreclosure rate in Denver increased from 0.8 percent in 2000 to 5.9% in 2007.
- The current foreclosure epidemic is due to a proliferation of nontraditional loan products.
- Non-depository institutions originate a disproportionate share (61%) of high priced loans in Denver.
- Based on information from two of the three major law firms handling foreclosure cases, 56.6 percent of foreclosure filings in 2006 and 2007 resulted in a homeowner losing his/her home through a Public Trustee sale.
- Census tracts with higher foreclosure rates from 2000 to 2007 have higher proportions of African American and Hispanic residents than Denver as a whole.
- Census tracts with higher than average foreclosure rates from 2000 to 2007 have a higher than average proportion of residents who speak Spanish at home.
- Census tracts with high foreclosure rates tend to have households with lower median and average household incomes, and larger household sizes than average for Denver.<sup>38</sup>

### **Colorado’s Foreclosure Hotline**

Established in October 2006, the Colorado Foreclosure Hotline’s call volume this year is projected to exceed last year’s 20,363 calls by 60%. Data collected from the fourth quarter of 2007 revealed the following outcomes for the hotline’s callers: 14% do a “short sale” where the property is sold for less than is owed; 2% refinance; 8% modify the loan; 8% receive forbearance and a repayment plan; 1% obtain a second mortgage; 9% bring the loan current; 11% file for bankruptcy; 2% arrange a deed in lieu of foreclosure; 25% are still receiving foreclosure counseling; 10% go into foreclosure; and for 10%, the outcome is unknown. Ryan McMaken, of the Colorado Division of Housing, explained that counselors provide “level 3” counseling which is long-term and face-to-face. He reported that Colorado’s hotline will be receiving \$1.5 million from the National Foreclosure Mitigation Counseling Program, funded by Congress and administered by NeighborWorks.

### **Colorado Implements Five Laws Passed in 2007**

Last summer, the Governor signed five bills into law:

- House Bill 1322--requiring brokers to act for the benefit of the borrower, including making reasonable inquiry into the borrower’s financial situation and using best efforts to obtain a loan that is financially appropriate for the borrower.
- Senate Bill 85—prohibiting brokers from trying to influence the judgment of a real estate appraiser through coercion, intimidation, or compensation.
- Senate Bill 203—requiring mortgage brokers to be licensed by the Division of Real Estate, with requirements about training, testing and continuing education and prohibiting brokers from engaging in 24 specified activities that deal with misrepresentation, fraud, conflicts of interest, and conduct to consumers.

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<sup>37</sup> Understanding Mortgage Foreclosure in Denver, City of Denver, Office of Economic Development, March 28, 2008, p. 3 (hereafter, “Mortgage Foreclosure Report”).

<sup>38</sup> These findings were culled from the Mortgage Foreclosure Report at p. 6-7.

<[http://www.milehigh.com/resources/custom/pdf/MortgageForeclosuresInDenver\\_Mar\\_2008\\_Final.pdf](http://www.milehigh.com/resources/custom/pdf/MortgageForeclosuresInDenver_Mar_2008_Final.pdf)>

- Senate Bill 216—imposing on mortgage brokers a statutory duty of good faith and fair dealing to borrowers.
- Senate Bill 249—directing the Division of Insurance to provide annual reports on market trends, investigation and enforcement efforts regarding title insurance.

## Indiana

### Indiana's Hotline

In November 2007, the Indiana Foreclosure Prevention Network and the Indiana Community Development Agency (ICDA) launched a foreclosure hotline and website. After assessment by phone counselors, homeowners are referred to a certified foreclosure intervention specialist at one of 18 nonprofit agencies across the state. These counselors, who have over 60 hours of special training, work to obtain forbearance, a refinance or loan modification, or a short sale to avert foreclosure. The free hotline has been up and running 12 hours a day, seven days a week since November 7, 2007, with 6,900 people contacting counselors through the hotline or website<sup>39</sup> through March 31, 2008. ICDA will be teaming up with HOPE Now on April 22, 2008 at a major community event in Indianapolis where homeowners will meet with lenders, servicers and foreclosure counselors to jump start loss mitigation and work out strategies. The hotline's January media campaign, "Don't let the walls foreclose in on you," was very successful, with over 3,000 contacts from the public in that month alone. In June 2008, ICDA will be sponsoring a public service campaign with AARP, designed for seniors. David Kaufman, policy and research manager of ICDA, reported that through NeighborWorks America and the National Foreclosure Mitigation Counseling Program, ICDA will be receiving \$450,000 for foreclosure counseling to supplement state funding sources.

Indiana's Governor Signed House 1359 on March 24, 2008. This new law requires:

- The attorney general to provide a toll free hot line for the reporting of mortgage fraud;
- Loan brokers to undergo FBI background checks;
- First lien mortgagors to be licensed and regulated by the Department of Financial Institutions;
- A creditor, servicer or agent to acknowledge a written offer made in connection with a proposed short sale of property--not later than 10 business days after the date of the offer;
- Real estate appraisers to submit fingerprints and undergo FBI background checks as part of an application process for licensure or certification;
- The Department of Insurance to establish an electronic system for the collection and storage of mortgage transaction data, to be submitted electronically by all closing agents;
- Various state agencies to form the "Mortgage Lending and Fraud Prevention Task Force" to coordinate state efforts;
- That civil penalties collected from closing agents and title companies be directed to housing counseling, including foreclosure prevention counseling;
- The ICDA to submit by November 1, 2008 a report about new and existing funding sources for refinancing existing mortgages and a plan for the rehabilitation of areas in Indiana adversely affected by foreclosures.

## Iowa

### Iowa's Citizens for Community Improvement (CCI)

CCI, a partner of *Making Connections* Des Moines, recently finished reviewing 599<sup>40</sup> foreclosure filings in Polk County from January 1, 2007 to October 9, 2007. CCI found that four zip codes in Des Moines (50317, 50315, 50313, and 50316) comprised approximately 50% of all

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<sup>39</sup> The website captures information regarding the homeowner's mortgage situation through a series of questions embedded in a 20 minute program.

<sup>40</sup> This represented all foreclosure filings during that period.

foreclosure filings. The top lenders filing foreclosure notices were: Wells Fargo (17%); Deutsch Bank (12%); Bank of New York Mellon (8%); Countrywide (7%); US Bank (7%); CitiMortgage (7%); HSBC Bank (5%); LaSalle Bank (4%); Bank of America (3%); and Nationwide (2%). As a follow up to this research, CCI is reaching out to homeowners in the Des Moines area through mailings, community meetings, and referrals, urging people with mortgage payment problems to contact CCI for assistance and to join with other residents to advocate for fair lending practices. CCI is also working as a liaison between lenders and homeowners in jeopardy of foreclosure on subprime mortgages. Homeowners fill out a CCI "HOT SPOT Card" which asks a series of questions about the service of the lender, the reasons for delinquency, the financial status of the homeowner, and the characteristics of the loan. CCI uses this form to assist homeowners in achieving workouts, which community organizer Danny Wagener estimates occur in 75-80% of cases. CCI is presently collecting data on the results of these workouts, specifically those which result in: tacking on the arrearage to the end of the loan and extending the term of the loan; spreading out arrearage payments over a six to 12 month period, and lowering the interest rate or writing down the principal.

## **Ohio**

### **Ohio Lawyers Volunteer**

The last quarter of 2007 found Ohio with the worst foreclosure rate in the nation, according to the Mortgage Bankers Association. In a generous response, nearly 1,100 Ohio attorneys have volunteered to provide free legal services to qualified homeowners in jeopardy of foreclosure. In March, nearly 350 pro bono attorneys attended foreclosure training conducted by the Ohio State Bar Association. Local bar associations and the Ohio Legal Assistance Foundation will conduct subsequent classes. OSBA President Rob Ware said, "These 1,100 lawyers—and more will join their ranks—are being assigned to local legal services providers to be matched with qualified clients and will work with lower income Ohioans who could not otherwise afford legal counsel." In a related development, the Ohio Supreme Court has developed a foreclosure mediation program that includes best practices, related documents, forms and other resources for state court personnel. The model allows the court to assess information provided by the homeowner and the lender to determine if the foreclosure case is appropriate for mediation. "Mediation will assist courts in managing the explosion of foreclosure cases on their dockets, while assisting Ohio's most vulnerable homeowners facing the prospect of losing their homes," said Chief Justice Thomas J. Moyer. The model is first of its kind in the nation.

### **City of Cleveland Sues Mortgage Bankers**

A study by Case Western Reserve University tracked thousands of houses sold at auction from January 2000 through September 2007 and found that foreclosed homes in Cleveland were sold by banks at less than one-third their previous value. In the last seven years, 8.8% of Cleveland residential properties were sold through foreclosure sales. The City of Cleveland sued 21 mortgage bankers in January 2008, under the state's public nuisance law, for subprime mortgage practices that undermined property values and city tax collection efforts. The lawsuit targets the firms that bundled loans into securities that were then divided into shares and sold on the stock exchange when interest rates were low, fees were high, and housing was booming. Cleveland's drop in population and tax revenue became so severe that in December 2007, the city was unable to borrow money.

## State Attorneys General

Eleven state attorneys general and several state banking regulators released a report in February 2008<sup>41</sup> outlining the shortcomings of subprime mortgage loan servicers in responding to the foreclosure crisis. They found that servicers assisted only 30% of seriously delinquent borrowers and only nine percent of borrowers had received loan modifications. Surprisingly, ARMs were delinquent in significant numbers before the rate jumped to a higher amount, suggesting weak underwriting or fraud. Homeowners themselves caught up on most delinquent loans resolved in October 2007, without assistance from servicers.

On April 22, 2008 this group issued a second report, covering the performance of servicers from October 2007 through January 2008.<sup>42</sup> Some of the findings include:

- In major respects, the subprime servicing data for January 2008 is nearly unchanged from October 2007. The collective efforts of servicers and government officials have not translated into meaningful improvement in foreclosure prevention outcomes.
- Seven out of ten seriously delinquent borrowers are still not on track for any loss mitigation.
- Loss mitigation departments are severely strained in managing the current workload. These departments need substantial increases in staffing and resources.
- For those homeowners receiving loss mitigation assistance, more are receiving loan modifications. Many servicers are replacing their use of repayment plans in favor of loan modifications, which is a positive trend for struggling homeowners.

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<sup>41</sup> “Analysis of Subprime Mortgage Servicing Performance, Data Report No. 1, February 2008,” State Foreclosure Prevention Working Group. The State Working Group consists of representatives of the Attorneys General of 11 states (Arizona, California, Colorado, Iowa, Illinois, Massachusetts, Michigan, New York, North Carolina, Ohio and Texas); two state banking regulators (New York and North Carolina); and the Conference of State Banking Supervisors.

<sup>42</sup> “Analysis of Subprime Mortgage Servicing Performance, Data Report No. 2, April 2008,” State Foreclosure Prevention Working Group.

# State Legislative Roundup

## Moratoriums on Foreclosure, Extending Time Periods and Providing Additional Notice

The foreclosure process is complex. Homeowners can be in denial about their loan default, facing multiple calls from creditors and finding their mailboxes stuffed with foreclosure rescue solicitations. When homeowners do call lenders or servicers they can find disconnected numbers or circular referral loops, leading nowhere. While foreclosure "hotlines" have greatly expanded and improved in quality, they can't keep pace with demand.

Because foreclosure procedures are a state function, the legal framework for them varies widely from state to state. Most homeowners are unaware of the steps in the foreclosure process and their options narrow with each missed legal deadline. Over a 20 year period, federal funding for legal services programs has been systematically cut, making difficult the triage of even the most basic tenant and unemployment cases, much less foreclosure actions. Against this backdrop, state lawmakers are seeking ways to "level the playing field" and lengthen the legal process for foreclosure to allow homeowners more time for negotiations and workouts. A number of these moratorium-related bills require homeowners to keep making some form of mortgage payment to the lender to preserve the rights of the parties during negotiation. Whether the various efforts to extend time periods will withstand legal challenge remains to be seen. The United States Supreme Court considered and upheld a Minnesota mortgage moratorium in Home Building and Loan v. Blaisdell, 290 U.S. 398 (1934) at the darkest point in our country's economic history.

Legislatures are also determined to provide more notice and better notice to homeowners of complex legal procedures. Many of the laws or bills cited below contain verbatim consumer notices and warnings developed by legislators.

### New Laws

**District of Columbia Bill 167.** This law prescribes a mortgage disclosure form for non-conventional loans in which the math formulas and calculations showing the progressively steeper payment obligations of homeowners are plainly set forth.

**Georgia Senate 531.** This law requires that "notice of the initiation of proceedings to exercise a power of sale in a mortgage. . . shall be given to the debtor by the secured creditor no later than 30 days before the date of the proposed foreclosure." However, a limitation of this new law is that the secured creditor shall not be required "to negotiate, amend, or modify the terms of a mortgage instrument."

**Maryland House Bill 365/Senate Bill 216.** Signed on April 3, 2008 by Governor O'Malley, this law lengthens the foreclosure process from 15 days to approximately 150 days.

Specifically the new law provides:

- That an "action to foreclose" shall not be filed until 90 days after the homeowner's default.
- That 45 days before an "action to foreclose," is filed, a "Notice of Intent to Foreclose" must be sent.
- That a foreclosure sale of residential property may not occur until at least 45 days after service of process of the "Notice of Intent to Foreclose."
- That the homeowner has the right to cure the default "by paying all past due amounts, payments, penalties, and fees [to] reinstate the loan at any time up to 1 business day before the foreclosure sale occurs."

**Washington House Bill 2770.** This new law, requested by Governor Gregoire to implement the recommendations of her Task Force for Homeowner Security:

- Requires that 30 days before a notice of sale, a written notice of default shall be transmitted to the homeowner, with a special notice (excerpted in part below) going to owner occupied properties:

**NOTICE OF DEFAULT**

- You should take care to protect your interest in your home. This notice of default (your failure to pay) is the first step in a process that could result in you losing your home. You should carefully review your options. For example:
- Can you pay and stop the foreclosure process?
- Do you dispute the failure to pay?
- Can you sell your property to preserve your equity?
- Are you able to refinance this loan with a new loan from another lender with payments, terms and fees that are more affordable?
- Do you qualify for any government or private homeowner assistance programs?
- Do you know if filing for bankruptcy is an option?
- Do not ignore this notice because if you do nothing, you could lose your home at a foreclosure sale. No foreclosure sale can be held any sooner than ninety days after a notice of sale is issued and a notice of sale cannot be issued until 30 days after this notice. Also, if you do nothing to pay what you owe, be careful of people who claim they can help you. There are many individuals and businesses that watch for the notices of sale in order to unfairly profit as a result of borrowers' distress. . .

- The new law also:
  - Requires additional disclosure to mortgage brokers.
  - Prohibits prepayment penalties that extend beyond 60 days prior to the initial reset of an adjustable rate mortgage.
  - Prohibits negative amortization<sup>43</sup> for a borrower in a residential loan.
  - Prohibits the steering of consumers into higher cost loans.
  - Establishes penalties for mortgage fraud crimes (prosecution as a class B felony).

### Pending Bills

**California Senate Bill 1137.** This bill would be in effect until 2013 and would affect residential mortgages made from 2003 to 2007. Mortgagees would be required to wait 30 days after contact was made with the borrower before filing a notice of default. The bill requires that the mortgagee contact the borrower to assess foreclosure avoidance options; advise the borrower that he/she may request a subsequent meeting within 14 days; and provide the borrower with a toll free number to HUD certified counseling. As part of the notice of default, the mortgagee would be required to include a "specific declaration" about contact with the borrower.

**Colorado House Bill 1402.** *This bill was introduced on April 21, 2008.* The bill as drafted would have authorized the court to extend the foreclosure sale date for 90 days if it found that service of notice on the debtor was defective<sup>44</sup> or that the lender did not engage in "good faith

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<sup>43</sup> Negative amortization occurs when a borrower makes a minimum payment that does not cover the interest that is due; this increases the loan's balance. The loan amount owed by the borrower can increase, rather than decrease, every month.

<sup>44</sup> Such notice would have included: a statement that the loan is in default and a warning that failure to correct the default could result in the loss of the debtor's home; a statement of the amount of the default and how a reinstatement may be obtained; a statement that the holder is prepared to make a reasonable effort to negotiate a fair resolution of the dispute; the name, address, and contact information (including a toll free number) for the holder's loss mitigation contact; the telephone number of the Colorado Foreclosure Hotline; a statement that the debtor should contact a certified

loss mitigation efforts" with the debtor to cure a default. The bill would also have required a lender to give the borrower 30 days advance written notice of a change in the interest rate affecting the size of a payment on a residential mortgage loan. The bill passed the House with significant amendments, passed two committees in the Senate, and as of May 2, 2008, is awaiting further Senate action. The amended bill eliminates the provision regarding extension of the foreclosure sale date, among other changes. It requires the "holder" of a residential mortgage loan debt to provide to the debtor at least 30 days before filing a notice of election and demand and at least 30 days after default, a notice containing the telephone number of the Colorado Foreclosure Hotline and the direct telephone number of the holder's loss mitigation representative or department. (See further discussion of House 1402 in the next section dealing with state emergency assistance, grant and loan programs.)

**Connecticut House Bill 5758.** Connecticut already has a law providing for court ordered homeowner protection from foreclosure. Under current law, unemployed or underemployed homeowners may be eligible for a court-ordered restructuring of the mortgage debt to eliminate the arrearage over a six month period. This bill would increase the period of restructuring from six months to 12 months and allow the court to extend the term of the loan. It also raises the amount by which a restructured loan cannot exceed the property's fair market value from 90% to 120%.<sup>45</sup>

**Illinois Senate Bill 2131.** "A complaint to foreclose on a mortgage shall not be filed before *January 1, 2010* if the subject is residential real estate that is a single family residence. . . and if the mortgagor is paying the current interest on the mortgage note and the current required reserve or escrow payments for real estate taxes and insurance."

**Illinois House Bill 5896.** Before commencing a foreclosure action, the plaintiff must send the mortgagor a notice stating that the mortgage is scheduled to be foreclosed and that an in-person meeting is available where the mortgagor will be advised of "any available options for restructuring or refinancing the mortgage loan." This notice shall also contain a list of HUD-approved counseling agencies. The foreclosure action cannot be commenced until at least 30 days *after* the date of the in-person meeting or 30 days after the notice was served. The foreclosure complaint must include a sworn affidavit showing compliance with these requirements.

**Massachusetts** will be considering a bill providing for a six month moratorium on foreclosures. Supported by the Massachusetts Alliance Against Predatory Lending, the measure would apply to loans that have: ARMs with an introductory period of three years or less; a debt to income ratio in excess of 50% under the fully indexed rate; a "stated income" basis without regard to a borrower's ability to repay; a loan-to-value ratio of 100% or a loan with substantial prepayment penalties; interest only payments; high points, fees or interest in violation of the Predatory Home Loan Practices Act, G.L. c. 183, Section 2. No interest or fees shall accrue against the borrower and no eviction proceedings shall be instituted against tenants in any property subject to foreclosure during the 180 day moratorium. Note: In 1991, Massachusetts passed a foreclosure moratorium to respond to homeowners victimized by home improvement loan scams.

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housing counselor or an attorney; and a list of certified housing counselors in the region where the property is being foreclosed is located, along with the name of a local attorney referral agency and the telephone number of the Colorado Legal Services Office servicing the county in which the property is located.

<sup>45</sup> Connecticut's existing law governing homeowner protection from foreclosure, Section 49-31d, should be carefully analyzed to determine how unemployed or underemployed homeowners could successfully invoke its benefits and protections. Information about House 5758 is drawn from a summary prepared by the Connecticut General Assembly's Office of Legislative Research, which does excellent analysis of pending bills. House Bill 5758 was pending in the House as of April 22, 2008.

**Michigan House Bill 5857.** Would permit, where the court judgment of foreclosure has not been entered, the action to be stayed until one year after the effective date of the bill's enactment. Where the court judgment has been entered but the period of redemption has not expired, the court shall do one of the following: if the property has not been sold, amend the judgment to include a stay of the sale until one year after the effective date of the bill's enactment; or, if the property has been sold, extend the period of redemption until one year after the effective date of the bill's enactment.

**Minnesota House Bill 3612.** "Minnesota Subprime Foreclosure Deferment Act of 2008" would create a foreclosure sale deferment [postponement] period to expire one year following the law's effective date. Every foreclosing lender shall send each borrower who has either a subprime or negative amortization loan a notice of right to deferment that would read:

***Emergency Help for Homeowners in Foreclosure:*** *You are eligible to have the foreclosure of your home stopped until at least [end of deferment period.] The state of Minnesota recently passed a law which lets homeowners stop a foreclosure sale. To qualify, you must currently live at the home in foreclosure and intend to live at the home for at least the next 12 months. You will also need to complete and sign a special form (called an "affidavit") and provide that affidavit to us at the following address. . .*

Borrowers who have deferment rights would be required to make monthly payments to the foreclosing lender.<sup>46</sup>

**Minnesota House Bill 3600.** This law permits an extension of the period of redemption<sup>47</sup> up to *May 1, 2010*, if such period has not yet expired. If the borrower is successful in obtaining an extension of the redemption period, he/she would be required to make payments to the lender.

**New York Assembly Bill 9695.** Would permit a foreclosure action to be "held in abeyance" through a year long moratorium, provided, among other things, that the mortgagor complies with a monthly payment schedule, established by the court.

**South Carolina House Bill 4616.** "There is established a six month moratorium on the foreclosure of mortgages secured by residential real estate located in this State."<sup>48</sup>

### **Headed back from the Governor's desk**<sup>49</sup>

**Virginia Senate Bill 797.** Requires "high risk mortgage lenders or servicers" to provide borrowers with 10 business days advance written notice that the lender/servicer intends to send a "notice of acceleration of the balance due on a high risk mortgage loan." If the borrower contacts the mortgage lender or servicer to request additional time, the lender/servicer shall give the borrower 30 days forbearance before sending the "notice of acceleration."

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<sup>46</sup> Such payment would be the minimum monthly payment of principal and interest on the date the loan was originated or 65% of the minimum monthly payment of principal and interest at the time the borrower defaulted prior to foreclosure. For an eligible foreclosed borrower with a negative amortization loan that is not also a subprime loan, the amount of payment would be the minimum monthly payment on the date the loan was originated. This bill was pending in the House as of April 22, 2008.

<sup>47</sup> The period during which a borrower may reclaim the title and possession of the property by paying the debt owed.

<sup>48</sup> This "joint resolution" was introduced and referred to committee on January 30, 2008, with no further action occurring on the bill as of April 22, 2008.

<sup>49</sup> Note: This bill had been introduced at the request of the Governor and had passed both branches by March 26, 2008. However, on April 11, 2008, the Governor returned an amended bill to the Senate.

## Emergency Assistance and Loan Programs

As foreclosure filings increase, states are under more pressure to develop refinance products and emergency assistance aid to help struggling homeowners. The U.S. Senate's mortgage relief bill would authorize states to issue a total of \$10 billion in tax-exempt housing bonds to finance the various mortgage relief programs. Some states (Delaware, Maryland, Massachusetts, Michigan, New Jersey, Pennsylvania, Connecticut, Ohio, and New York) have already established refinance programs with mixed results.<sup>50</sup> Often, when borrowers apply for these programs, they are months behind on their mortgage, have poor credit due to arrearages on other bills, and are "underwater" or "upside down," that is, they owe significantly more on the mortgage than the appraised value of their home. "Our experience, like the experience of other states, is that refinance programs have limited success," Philip Lentz of the State of New York's Mortgage Agency told the *Wall Street Journal*. Lentz reported that his agency had refinanced just three borrowers since its "Keep the Dream" program began in September 2007. Similarly, the Ohio Housing Finance Agency loosened underwriting requirements and launched an eight week ad campaign to boost applications to its Opportunity Loan Refinance Program. Despite these efforts and Ohio's severe foreclosure problem, only 37 loans have been refinanced, according to an analysis by the *Wall Street Journal* in early April 2008.<sup>51</sup>

Despite these challenges, states are continuing to fashion financial assistance strategies for distressed homeowners:

### New Laws

**Illinois House Bill 2353** (signed on January 29, 2008 as Public Act 95-0710) creates the Illinois Affordable Housing Capital Fund, to be administered by the Illinois Housing Development Authority. The program administrator has the power to "purchase first and second mortgages, to make secured, unsecured or deferred repayment loans. . . ."

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<sup>50</sup> For a good summary of such programs see "State Mortgage Assistance and Refinance Programs," National Governor's Association Center for Best Practices, March 11, 2008, available on the NGA's website at [www.nga.org](http://www.nga.org). See also the Pew Charitable Trust's April 16, 2008 report "Defaulting on the Dream: States Respond to America's Foreclosure Crisis."

Also, see the Pennsylvania Homeowner's Emergency Mortgage Assistance Program (HEMAP), which has been operating since 1983. The following information is taken from a February 21, 2008 Research Report by Soncia Coleman from Pennsylvania's Office of Legislative Research. Pennsylvania requires lenders to send borrowers in danger of default a notice about HEMAP. Borrowers are entitled to a 30 day temporary stay of foreclosure from the date of the notice. During this period, the borrower must attend a "face to face" meeting with a consumer credit counseling agency. Once that meeting occurs, the lender is barred from acting against the borrower for another 30 days. To qualify for HEMAP, the homeowner must be suffering financial hardship due to circumstances beyond his/her control and have had a favorable credit rating before the delinquency. If the Pennsylvania Housing Finance Authority (PHFA) approves the application, a loan secured by the property in question is created to bring the payments up to date. If a homeowner qualifies for a non-continuing mortgage assistance loan, his or her mortgage is brought current to a specified date and the homeowner is responsible for making subsequent monthly payments to the lender along with a monthly payment to HEMAP. Homeowners may also qualify for a continuing mortgage assistance loan. In this case the mortgage is brought current and HEMAP then subsidizes the monthly mortgage payment to the lender. HEMAP loans are limited to a maximum of 24 months from the date of the mortgage delinquency to a maximum of \$60,000, whichever comes first. HEMAP's authorizing law requires that the program not be funded from general PHFA reserves; it is funded by state appropriation and loan repayments. In FY 2007-08, the program received \$11 million and has requested \$13 million for FY 2008-09.

<sup>51</sup> See "States Mortgage Relief Programs Aren't Helping Much," *Wall Street Journal*, Saturday/Sunday, April 5-6, 2008.

**Maryland's Bridge to HOPE Loan Program.** Designed for borrowers with an ARM or negative amortization loan that has reset or is about to reset. Eligible borrowers may obtain a loan for up to \$15,000 to include delinquent mortgage payments, taxes and other arrearages and a monthly subsidy of the mortgage payment for up to 24 months. The monthly subsidy will cover the difference between the borrower's current total debt payment and a resulting debt ratio of 45% of the borrower's gross monthly income. The loan is deferred, repayable at the time the house is sold, transferred, or upon the loan's refinance. The borrower must have "good mortgage/credit history prior to the reset."

**Michigan Senate Bills 948, 950, 951, 1133, and House Bill 5443.** These laws implement the new Michigan "Save the Dream" loan products. ARM Assist Refinance (30 year fixed rate): Proceeds of the refinance will only be used to pay off the existing first mortgage, roll in closing costs and prepaid expenses and satisfy subordinate mortgage liens. The refinance will be at 100% loan to value (based on current appraisal) and require "overall good credit history." Rescue Refinance (30 year fixed rate): Purpose of this loan is to assist individuals who have a delinquency on their mortgage and for whom a loss mitigation strategy is not plausible. Borrowers cannot have more than three, 30 day late payments on their current mortgage within the last 12 months and must be current at the time of application. Proceeds of the refinance are similar to that of the ARM Assist program, described above. The refinance will be at 100% loan to value (based on current appraisal).

**Washington Senate Bill 6711.** The Washington State Housing Finance Commission shall establish the "Smart Homeownership Choices Program" to assist homeowners who are delinquent on their mortgage payments to bring their mortgage payments current in order to refinance into a different loan product. Financial assistance received by homeowners will be repaid at the time of refinancing into a different loan product and homeowners will be required to undergo homeowner counseling. The bill was enacted and signed on April 1, 2008, as Chapter 2008-322.

### **Pending Bills**

**California Assembly Bill 2509:** Would establish the "Homeownership Preservation Mortgage Guarantee Fund" in the State Treasury, administered by the California Housing Finance Agency (CHFA). The bill would allow redevelopment agencies, nonprofit community lenders and small business financial development corporations to accept and approve applications for loan guarantees from borrowers, and to issue loan guarantees to the appropriate lenders that would back the issuance of a new or refinanced loan to the borrower. In the case of refinancing, the original loan must be "at risk of foreclosure" due to an adjustable rate mortgage that is due to increase. The fund shall be established, upon appropriation, with \$50,000,000.

**Colorado House Bill 1402.** This bill would create the "Foreclosure Prevention Grant Fund" which would provide funds to housing authorities or private or public nonprofits "for the sole purpose of providing outreach and notice of foreclosure prevention assistance to persons in danger of foreclosure and to communities with high foreclosure rates." An appropriation in the amount of \$100,000 from the general fund would be allocated for this purpose.

**Connecticut House Bill 5577 "An Act Concerning Responsible Lending and Economic Security"** would create three mortgage assistance programs.

- The **REAL** program is a refinance product that would offer 100% financing at a 30 year fixed rate. Among other requirements, buyers must be less than 60 days past due and have a credit score of 620 or satisfy a two-part credit test.
- The **HERO** program would apply to applicants ineligible for the REAL program or other mortgage refinance products either because of their credit score or because they owe more than their home's appraised value. Loans would be purchased directly from

lenders, and borrowers would be placed on an affordable repayment plan. New mortgages would be up to 100% of the home's value for a 30 year term. The HERO loan could be used to pay off the current mortgage debt, closing costs, prepayment penalties, and delinquent property taxes. HERO would use very flexible underwriting, but borrowers must show sufficient and stable income to support timely repayment of the HERO loan in regular monthly installments and agree to make monthly mortgage payments by automatic payment directly from their bank.

- The **Emergency Mortgage Assistance Program (EMAP)** would be available for borrowers who qualify for neither the REAL nor the HERO programs. EMAP would offer: "non-continuing mortgage assistance loans", where the borrower is brought current but remains responsible for all future mortgage payments and repayment to EMAP; and "continuing mortgage assistance loans", where the borrower makes a monthly payment to EMAP. The Department of Economic and Community Development would then use this amount, plus EMAP funds, to make the full monthly mortgage payment directly to the lender.
- Funding—The bill would require the transfer of \$40 million of CHFA's pre-1986 bond sale proceeds to fund the REAL and HERO programs. For EMAP, the bill would authorize up to an aggregate of \$100 million in state bonding.<sup>52</sup>

**Illinois Senate Bill 1979.** This bill would establish the "Illinois Homeowner's Emergency Assistance Program," which shall pay directly to lenders delinquencies of principal, interest taxes, etc. in an amount not to exceed \$6000 or the sum of three monthly mortgage payments, whichever is less. Funding will be subject to appropriation with the cumulative grants in a calendar year not to exceed \$3,000,000.

**Minnesota House Bill 3346.** Current Minnesota law provides mortgage foreclosure financial assistance, to include up to six months of mortgage payments, property taxes, utilities, etc., capped at \$5,500 per individual or family. This bill would change the amount of the cap to an amount equal to "110% of the greater of the state or metropolitan statistical area median monthly owner cost of owner-occupied housing. . . multiplied by six."

**New Jersey Assembly Bill 2517.** Among the boldest of the pending bills highlighted in this section is Assembly Bill 2517 creating a "Foreclosure Prevention Revolving Trust Fund." The trust would be funded through the payment of \$1 million from the reserves or administrative monies of the New Jersey Housing and Mortgage Finance Agency, plus a \$2000 fee paid by lenders every time a notice of intention to foreclose is issued on a mortgage loan. The bill provides a scale of how the fund's monies would be allocated:

- The first \$5 million collected during a fiscal year shall be allocated to qualified counseling entities for foreclosure counseling and related activities;
- Amounts collected between \$5 million and up to \$20 million shall be allocated as grants to qualified counseling entities for the purpose of making emergency foreclosure prevention assistance loans;
  - The maximum amount of emergency foreclosure prevention assistance to a homeowner shall not exceed \$5000 (with written approval the amount may be increased to \$10,000). Such assistance may include paying the cost of a homeowner's monthly mortgage payment of interest and principal, and paying

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<sup>52</sup> This bill would expand what Connecticut is currently offering through the "CT Families" refinance program (30 year, fixed rate) for subprime borrowers, announced by the Governor on November 8, 2007. The summary of House Bill 5577 is drawn from a bill analysis by the Connecticut Office of Legislative Research. This 13 page analysis includes discussion of the other sections of this bill addressing notice to borrowers, restrictions on subprime loans, fraudulent appraisals, tenant notice requirements, the responsibility of workforce development boards to establish a Mortgage Crisis Job Training Team, to name a few provisions.  
<[http://search.cga.state.ct.us/dtsearch\\_lpa.asp?cmd=getdoc&DocId=24511&Index=I%3a%5czindex%5c2008&HitCount=2&hits=6+160f+&hc=14&req=5577&Item=1](http://search.cga.state.ct.us/dtsearch_lpa.asp?cmd=getdoc&DocId=24511&Index=I%3a%5czindex%5c2008&HitCount=2&hits=6+160f+&hc=14&req=5577&Item=1)>

attorney's fees and other fees and penalties, including prepayment penalties associated with the refinance of a homeowner's mortgage.

- Any amounts collected in a fiscal year in excess of \$20 million shall be allocated to non-profit entities for the purpose of restructuring covered mortgage loans acquired from creditors or restoring properties acquired from creditors to productive use.

**New York Assembly Bill 10083.** Would establish the "New York State Foreclosure Prevention Fund" through an \$180,000,000 appropriation. "The division shall establish a system by which it shall make. . . payments to mortgagees who hold a mortgage secured by an eligible homeowner's real estate. . . when such payments are in support of a negotiated settlement that allow a homeowner to remain in his or her home. . . In no instance shall payments to mortgagees exceed the total amount of the three monthly payments owed by the homeowner before the date the homeowner applied for assistance. . ." An amount not to exceed 50% of the appropriation shall be dedicated, on a competitive basis, "to legal services providers for the provision of legal services related to foreclosure."

**Pennsylvania Senate 486 would amend the existing Homeowners' Emergency Mortgage Assistance Program (HEMAP) and provide:**

- A mortgagee shall not accelerate any mortgage obligation or commence a mortgage foreclosure action until a determination is made on a homeowner's application for Homeowner's Emergency Mortgage Assistance through the Pennsylvania Housing Financing Agency.
- Such emergency assistance to eligible homeowners may include the payment of an arrearage, ongoing monthly payments, or, a "compromise payoff of the balance of the mortgage".
- Mortgagees are required to send homeowners a notice that they may qualify for financial assistance at least 30 days before the loan's acceleration or the commencement of a mortgage foreclosure action. This notice must also be sent to the Pennsylvania Housing Finance Agency (PHFA).
- If the homeowner meets with a consumer credit counseling agency following the notice, the mortgagee is barred from commencing legal action for 30 days from the date of the homeowner's required face-to-face meeting with a consumer counselor.
- The bill passed the Senate, 48-0 on March 11, 2008 and has been sent to the House.<sup>53</sup>

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<sup>53</sup> The House has passed a very similar bill, House Bill 1083 on April 8, 2008. Both the House and Senate have separately passed a package of mortgage reform bills. Minor differences between the House and Senate versions need to be reconciled before the bills could be submitted to Governor Ed Rendell for signature. These bills would bar prepayment penalties on mortgages less than \$197,000; increase the fine from \$1,000 to \$10,000 on appraisers who violate their professional licensing standards; enable the Banking Department to notify the public about enforcement actions against particular lenders earlier than current law allows; and require all mortgage professionals to be tested and licensed, to name a few of the key reform proposals.

## Foreclosure Rescue, Equity Stripping and Equity Skimming

Equity stripping, equity skimming and foreclosure rescue are common terms for a predatory lending practice that involves the taking of title or other mortgage interest in foreclosed properties in exchange for allowing homeowners to occupy the premises as tenants providing that regular payments are made. These transactions tend to be complex, with terms and conditions obscured by legal language. Often homeowners are unaware that they are transferring title to their property and could be subject to eviction because of a failure to meet high monthly payments to the rescue consultant. The following new laws and pending bills are illustrative of the next wave of anti-predatory lending policy-making by state law makers.

### New laws

**Iowa House Bill 2653.** This bill was signed by the Governor on April 25, 2008 and took effect immediately. This is a comprehensive law regulating foreclosure rescue consultant contracts and foreclosure reconveyance transactions. Specifically, the measure defines prohibited practices by foreclosure consultants and foreclosure purchasers; sets forth both consumer notice provisions and substantive requirements and restrictions for consultant contracts and property reconveyance contracts; provides that violation constitutes a “serious misdemeanor”; requires a court to issue a stay of eviction proceedings for foreclosed homeowners under certain conditions; provides for enforcement by the state Attorney General under the state’s consumer fraud statute; and allows homeowners a private cause of action with the ability to obtain punitive damages.

**District of Columbia Bill 101.** This law prohibits people from making money on foreclosure rescue. “It shall be unlawful for compensation or gain or for potential or contingent compensation or gain. . .to engage in, arrange, offer, promote, promise, solicit participation in, or carry out a foreclosure rescue transaction in the District. . .” Homeowners have a private right of action for damages under the act.

**Idaho Senate Bill 1431.** Provides that during the foreclosure period, any contract involving the transfer of any interest in residential real property must be in writing and be accompanied by a written notice “on a separate sheet of canary yellow” paper. The law also prescribes a specific notice regarding foreclosure of the trust deed. The Attorney General is required to prepare and make available Spanish language forms for the foreclosure rescue contract or the notice regarding foreclosure of the trust deed.

**Nebraska Bill L 123.** The “Nebraska Foreclosure Protection Act” provides comprehensive regulation of foreclosure consultants or equity purchasers. It requires that homeowners retain a foreclosure consulting contract for review for at least 24 hours before signing it. This law also contains special requirements for non-English speaking homeowners:

Any equity purchase contract, rental agreement, lease, or option or right to repurchase and any notice, conveyance, lien, encumbrance, consent, or other document or instrument signed by a homeowner shall be written in English and shall be accompanied by a written translation from English into any other language principally spoken by the homeowner, certified by the person making the translation as a true and correct translation of the English version.

**Oregon House Bill 3630.** The “Mortgage Rescue Fraud Protection Act” is a comprehensive Oregon law regulating foreclosure consultants and equity purchasers. The new law also

prescribes specific language for a consumer-oriented “notice of sale” to homeowners who are in default.

### **Pending Bills**

**California Assembly Bill 180.** Would extend the time a homeowner can cancel a contract with a foreclosure consultant from three days to five after signing the contract, and permit such cancellation to be by mail, email or facsimile. Would also require that a contract with a foreclosure consultant be written in the language used by the consultant to describe his/her services and negotiate the contract.

**Maine House Bill 1559.** Requires that a “foreclosure purchaser” must ensure that title is transferred back to the homeowner or that payment is made to the homeowner of at least 82% of the fair market value of the property within 150 days of when the homeowner is evicted or voluntarily gives up the home.

**Rhode Island House Bill 7517.** Would classify foreclosure consultants as “certified personal finance consultants”; subject to regulation by a newly created “Board of Certified Personal Finance Consultants.”

About 4 million, or nearly 8 percent, of the nation’s 52 million first mortgages were delinquent or in foreclosure at the end of last year. Mark Zandi, chief economist at Moody’s Economy.com, estimates that 3.5 million more will run into trouble in 2008 and 2009 as home prices fall, the job market weakens and monthly payments on some loans rise.  
- *New York Times*, April 6, 2008

## Federal Developments

By the spring of 2008, the mortgage foreclosure crisis was rivaling the war in Iraq as a preoccupation of the media, Congress and the presidential campaigns. The following summary tracks a few of the recent developments in Congress since the first of the year.

### The U.S. Congress

#### U.S. Senate: New Housing Aid Package Passes

Both the U.S. House and Senate were highly engaged on foreclosure-related issues in the first few days of April. On April 10, 2008 the U.S. Senate gave overwhelming approval by a vote of 84y to 12n, to a bi-partisan bill widely described as “a modest package of tax breaks and other provisions aimed at easing the nation’s housing crisis.”<sup>54</sup>

The Senate’s “**Foreclosure Prevention Act**”, **S.2636** includes:

- \$10.9 billion in new tax-exempt-bonding authority for state and local housing agencies to refinance troubled mortgages;
- \$4 billion for cities to buy vacant foreclosed properties;
- \$150 million for community groups to offer foreclosure counseling;
- \$30 million for legal services attorneys to help borrowers;
- Expansion of the FHA loan limit by permitting the agency to insure home loans worth as much as \$550,000 (this replaces both the traditional limit of \$362,790 and a temporary, 2008-only loan limit of \$729,750);
- Creation of a \$7,000 tax credit for buyers who purchase owner-occupied foreclosed property within the next 12 months; also creation of a temporary tax deduction of \$500 to \$1,000 for families who cannot deduct their property taxes because they do not itemize their deductions on federal tax returns.
- Provision of \$25.5 billion in tax breaks for banks and home builders.

Partisan wrangling on bankruptcy reform provisions of the bill had led to near deadlock, causing Senate Democrats to reluctantly drop their proposal to permit bankruptcy judges to modify unduly burdensome terms of a mortgage on a homeowner’s primary residence.<sup>55</sup> The day S.2636 passed, Sen. Christopher Dodd (D-Conn.)pledged to hold additional hearings later in the spring on a range of issues, including FHA reform and the bankruptcy reform provision.

In a related development, the White House on April 9, 2008 announced new plans to assist 100,000 homeowners through revisions to its FHASecure program. The program will assist two types of borrowers: 1. Borrowers with ARMs who were late on two consecutive monthly payments or at two different times over the previous 12 months. FHA will require a 97% loan to value ratio for these borrowers. 2. Borrowers with ARMs who were late on three consecutive monthly payments or at three different times over the past 12 months. FHA will require a 90% loan to value ratio for these borrowers to refinance.<sup>56</sup>

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<sup>54</sup> *The Washington Post*. “Senate Approves Housing Package” April 11, 2008 accessed 4/11/08 <<http://www.washingtonpost.com/wp-dyn/content/article/2008/04/10/AR2008041000319.html>>

<sup>55</sup> This reform was supported by the Center for Responsible Lending and a broad cross section of other consumer groups.

<sup>56</sup> Lenders “may voluntarily write down” the outstanding subprime mortgage principal balances to 97% or 90% depending upon the borrower’s circumstances. The refinanced loan amount backed by the FHA would be based upon a new appraisal performed by an FHA-approved appraiser. HUD News Release, “Bush administration to expand mortgage help for struggling families,” April 9, 2008. <http://www.hud.gov/news/release.cfm?content=pr08-050.cfm>. Critics of the current FHASecure program say that its credit requirements are too stiff to help most sub-prime borrowers

## **The U.S. House**

The House Financial Services Committee has taken a series of aggressive steps in the first three weeks of April. The Committee held hearings on April 11, 2008 regarding the authority of bankruptcy judges to modify mortgage terms on a homeowner's primary residence, a proposal similar to the one deleted in the Senate. The Committee Chairman, Rep. Barney Frank (D-Mass.) and Sen. Dodd have said they hope to bring this matter to a vote in their respective chambers by the end of May.<sup>57</sup> Also on April 11, 2008, 16 members of the House Financial Service Committee sent a letter to the Government Accountability Office (GAO), calling for a review of the current state of federal enforcement of the Equal Credit Opportunity Act (ECOA), the Home Mortgage Disclosure Act (HMDA) and the Fair Housing Act (FHA), and other related fair lending laws.<sup>58</sup>

## **New Law Assists Homeowners Who Win Mortgage Debt Write-offs**

Rep. Charles Rangel's (D-NY) bill -- the "**Mortgage Forgiveness Debt Relief Act of 2007** -- was the one substantive foreclosure bill to pass Congress in 2007. It shields financially troubled homeowners from paying tax on mortgage debt write-offs for their principal residence. Without this law, a homeowner might be liable for income taxes on any amount of reduced mortgage debt. Mortgage debt write-off is now a permanent exclusion from gross income, capped at \$2 million per taxpayer. The bill was signed into law by President Bush on December 20, 2007 as Public Law No: 110-142.<sup>59</sup> Because it applies retroactively, the first application of the new law was on April 15, 2008, the IRS tax submission deadline.

## **The Neighborhood Stabilization Act of 2008 (H.R. 5818)**

This act was filed on April 17, 2008 by Rep. Barney Frank.<sup>60</sup> The bill would establish a \$15 billion, HUD-administered loan and grant program for the purchase and rehabilitation of owner-occupied, foreclosed homes with the goal of rapidly stabilizing and occupying them. \$7.5 billion of the funds would be for loans, and the other \$7.5 billion would be for grants.

- Each state's loan and grant authority would be based on the state's percentage of nationwide foreclosures, adjusted to account for the state's relative median home price. States could allocate funds to government entities and nonprofits for the purchase, rehabilitation, and resale of homeownership housing and the purchase, rehabilitation, and operation of rental housing.
- Loans would be zero-interest "non-recourse"<sup>61</sup> loans to finance acquisition and rehabilitation costs. The federal government would be paid back from resale or, in the case of rental properties, refinance proceeds. Loans for homeownership properties must be repaid within two years. For rental properties, the maximum loan term is five years. In addition, the federal government would receive 20 percent of any appreciation a property owner realizes at resale.
- Grant funds could be used toward property taxes and insurance during the pre-occupancy phase; operating costs such as property management fees, property taxes, and insurance during the period a property is rented; property acquisition costs; and

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and that people in FHASecure would have been served anyway through existing federal government insurance programs.

<sup>57</sup> *The Washington Post*. "Senator To Widen Housing Proposal: Dodd to Seek More Mortgage Help for Distressed Owners." April 6, 2008.

<sup>58</sup> Financial Services Committee. April 11, 2008.

<[http://www.house.gov/apps/list/press/financialsvcs\\_dem/press041108.shtml](http://www.house.gov/apps/list/press/financialsvcs_dem/press041108.shtml)>

<sup>59</sup> H.R. 3648: Text and Summary of HR 3648 <<http://thomas.loc.gov/cgi-bin/bdquery/z?d110:HR03648:@@L&summ2=m&>>

<sup>60</sup> Information on this bill is taken from "Economic and Housing Rescue Legislation Introduced in the House," Accessed 4/22/08. <[http://www.house.gov/apps/list/press/financialsvcs\\_dem/press0417083.shtml](http://www.house.gov/apps/list/press/financialsvcs_dem/press0417083.shtml)>

<sup>61</sup> "Nonrecourse loan" means a loan in which the lender cannot claim more than the collateral as repayment in the event that the borrower defaults on the loan.

state and grantee administrative costs. Grants could also cover down payments and closing costs.

- Homes purchased for resale must be sold to families whose incomes do not exceed 140 percent of the area median income (AMI).
- Properties purchased for rental must serve families having incomes at or below AMI. However, states would be required to give preference to activities serving the lowest income families and to homeowners whose mortgages have been foreclosed.
- States would be given explicit authority to provide preferences for veterans, teachers, workforce, and homeless persons.
- At least 50 percent of the grant money must be targeted to house families at or below 50 percent of AMI and not less than half of this money must target families at or below 30 percent of AMI. The bill would also explicitly prohibit discrimination against voucher holders and provide eviction protections for tenants in foreclosed properties.

### **The Federal Housing Authority Housing Stabilization and Homeownership Retention Act (H.R. 5830)**

Rep. Maxine Waters, the Chair of the House Subcommittee on Housing and Community Opportunity filed a companion bill to Rep. Frank's bill on April 17, 2008. H.R. 5830<sup>62</sup> would require lenders or mortgage holders who voluntarily participate to receive a "short payment" on an outstanding balance from the proceeds of a new FHA loan. This would occur if the new loan had terms that the borrower could afford and if the borrower agreed to share future appreciation with the federal government. Lenders would need to accept substantial write downs – accepting as payment in full no more than 85% of the property's current appraised value. Specifically, the bill would:

- Permit FHA, in a voluntary program, to provide up to \$300 billion in new guarantees to help refinance at-risk borrowers into viable mortgages. This \$300 billion would be the total amount of outstanding loans that could be insured under the program. The government would only have liability if a borrower defaulted and the amount recovered in foreclosure was below the outstanding principal.
- Require the following eligibility requirements for existing loans:
  - Borrowers must have a mortgage debt-to-income ratio of no less than 35 percent *as of March 1, 2008*, and must certify that he/she has not intentionally defaulted on existing mortgage(s). This will remove an incentive for borrowers to "purposely default."
  - Participating mortgage holders/investors must waive any penalties or fees on the existing mortgage and must accept proceeds of the new loan as payment in full
  - Existing mortgage holders/investors must accept their losses – taking substantial write-downs sufficient to: (1) establish a 3 percent loan loss reserve for the FHA; (2) pay the origination and closing costs for the new loan up to 2 percent; and (3) bring the loan-to-value ratio on the new FHA-guaranteed loan down to no greater than 90 percent.
- Limit the program's duration to two years (with flexibility for additional 6 month extensions not to exceed two more years).
- Authorize \$200 million dollars for foreclosure counseling, with at least \$30 million targeted to low-income and minority homeowners and \$30 million to assist with legal aid.
- Require the Federal Reserve Board to conduct a study on the need for an auction or bulk refinancing mechanism.

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<sup>62</sup> Information on this bill is taken from "Economic and Housing Rescue Legislation Introduced in the House," April 17, 2008. Accessed online < [http://www.house.gov/apps/list/press/financialsvcs\\_dem/press0417082.shtml](http://www.house.gov/apps/list/press/financialsvcs_dem/press0417082.shtml)>

## Related Policy Developments

### **Chairman Bernanke Supports “Write Downs” of Principal**

The new Congressional legislation and the Administration’s revisions to the FHASecure program rely in part on “write downs” of mortgage principal by lenders. This option gained traction after a speech by Federal Reserve Chairman Ben Bernanke at a bankers’ convention on March 4, 2008:

Lenders tell us that they are reluctant to write down principal . . . However, as I have noted, when the mortgage is “underwater,” [that is, the buyer owes more than the appraised cost of the home] a reduction in principal may increase the expected payoff by reducing the risk of default and foreclosure. In my view, we could also reduce preventable foreclosures if investors acting in their own self interests were to permit servicers to write down the mortgage liabilities of borrowers by accepting a short payoff in appropriate circumstances. For example, servicers could accept a principal writedown by an amount at least sufficient to allow the borrower to refinance into a new loan from another source. A writedown that is sufficient to make borrowers eligible for a new loan would remove the downside risk to investors of additional writedowns or a re-default.<sup>63</sup>

### **Pew Charitable Trust**

With research support from the Center for Responsible Lending, the Pew Charitable Trust on April 16, 2008, issued a comprehensive report on the foreclosure crisis, “Defaulting on the Dream: States Respond to America’s Foreclosure Crisis.” This is the first-ever, comprehensive look at what all 50 states and the District of Columbia are doing to address the subprime mortgage crisis. The report features 50 state fact sheets assessing the scope and severity of each state’s foreclosure problem and the responses that have been developed to date.

### **Brookings Institution**

In mid-March, the Brookings Institution sponsored a high-level roundtable discussion. Attending were U.S. Treasury Secretary Robert Rubin, former U.S. Treasury Secretary Lawrence Summers, NeighborWorks America CEO Kenneth Wade, and three other economic experts. They assessed the subprime crisis, including its broader economic implications, and provided suggestions for reform.<sup>64</sup>

### **Congressional Budget Office Report: Policy Options for the Housing and Financial Markets**

On April 11, 2008, one day after the U.S. Senate passed S. 2636, the Congressional Budget Office (CBO) issued a 38 page report on policy options. Although it is only advisory, the CBO is respected bi-partisan source of facts and analysis.<sup>65</sup>

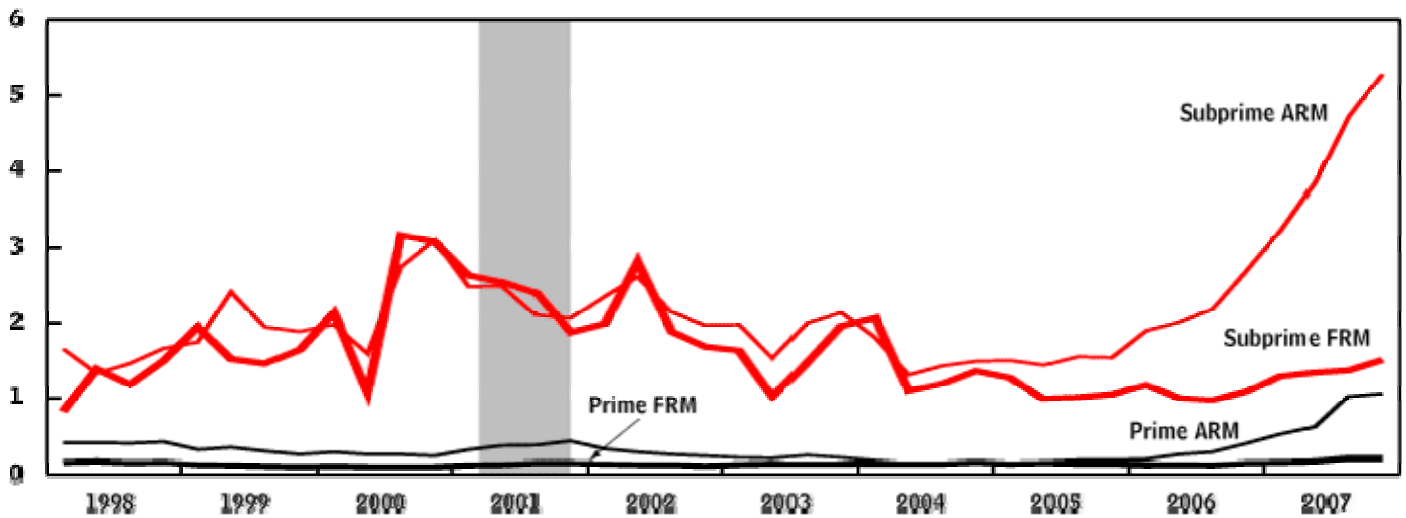
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<sup>63</sup> The Federal Reserve Board of Governors. “Reducing Preventable Mortgage Foreclosures.” March 4, 2008. <<http://www.federalreserve.gov/newsevents/speech/bernanke20080304a.htm>>

<sup>64</sup> The Brookings Institution. “Addressing the Foreclosure Crisis: A Hamilton Project Policy Discussion” March 14, 2008. <[http://www.brookings.edu/events/2008/0314\\_mortgage.aspx](http://www.brookings.edu/events/2008/0314_mortgage.aspx)>

<sup>65</sup> CBO: Report Online Edition: Policy Options for the Housing and Financial Markets. April 11, 2008 <<http://www.cbo.gov/ftpdocs/90xx/doc9078/CoverLetter.shtml>>

Table 1: **Mortgage Foreclosures Initiated** (Percentage of loans)<sup>66</sup>



Sources: Figure 2-3; Congressional Budget Office; Mortgage Bankers Association.

Notes: Data are quarterly and are plotted through the fourth quarter of 2007.

ARM = adjustable-rate mortgage; FRM = fixed-rate mortgage.

Subprime loans are made to borrowers with low credit scores or other impairments to their credit histories.

<sup>66</sup> CBO: Report Online Edition: Policy Options for the Housing and Financial Markets. April 11, 2008, Figure 2-3. <http://www.cbo.gov/ftpdocs/90xx/doc9078/CoverLetter.shtml>