EXAMINING LOCAL EFFORTS TO ADDRESS THE CONTINUING FORECLOSURE CRISIS: PERSPECTIVES FROM CLEVELAND, OH

HEARING

BEFORE THE

SUBCOMMITTEE ON DOMESTIC POLICY

OF THE

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

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EXAMINING LOCAL EFFORTS TO ADDRESS THE CONTINUING FORECLOSURE CRISIS: PERSPECTIVES FROM CLEVELAND, OH

MONDAY, DECEMBER 7, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON DOMESTIC POLICY,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
Cleveland, OH.

The subcommittee met, pursuant to notice, at 10:14 a.m., at the Carl B. Stokes Federal Courthouse, 801 West Superior Avenue, Cleveland, OH, Hon. Dennis J. Kucinich (chairman of the subcommittee) presiding.

Present: Representatives Jordan and LaTourette.

Staff present: Jaron R. Bourke, staff director; Yonatan E. Zamir, counsel; Christopher Hixon, senior counsel; Joseph Benny, Office of Representative Kucinich; Laurie Rokakis, Office of Representative Kucinich; Martin Gelfand, Office of Representative Kucinich; Marian Carey, Office of Representative Kucinich; Morris Pettus, Office of Representative Kucinich; and Steve Inchak, Office of Representative Kucinich.

Mr. KUCINICH. Thank you for being here. This meeting is going to come to order.

I want to begin by thanking my colleague, the ranking member from Ohio, Representative Jordan, for his work with me throughout the financial crisis. Mr. Jordan and I have worked together, he is a ranking member of our subcommittee on just a wide range of economic policy issues and I appreciate your presence here today.

My partner in the Cleveland area longstanding has been Congressman Steve LaTourette. And Congressman LaTourette and I have worked together on every major economic issue that's affected the county, the State and the country, and I am very grateful for his presence here and without objection, Congressman LaTourette will be considered as a member of this subcommittee for the purposes of this hearing.

The hearing today is entitled "Examining Local Efforts to Address the Continuing Foreclosure Crisis: Perspectives from Cleveland, OH." Our first panel, we are going to hear from State Representative Mike Foley; State Senator Tim Grendell; Councilman Michael Dudley of Garfield Heights; Daryl Rush, the Director of Community Development, city of Cleveland; Treasurer of Cuyahoga County, Jim Rokakis; and Ms. Phyllis Caldwell who is the chief of home ownership preservation and the officer for the Department of Treasury.

Today's field hearing is part two of a series of hearings intended to examine the local characteristics of the ongoing residential foreclosure crisis.

Without objection, the Chair and ranking member will have 2 minutes to make an opening statement, followed by opening statements not to exceed 2 minutes by any other Member who receives recognition and without objection, Members and witnesses may have 5 legislative days to submit a written statement or extraneous materials for the record.

The economic recession that has hit the U.S. economy and the residential foreclosure crisis that has accompanied it have devastated communities across the nation. Nationally, the foreclosure rate is four times the historical average and predictions are that 10 to 12 million homes will be foreclosed on before this crisis subsides. For some time, the crisis was synonymous with the predatory subprime mortgage loans, which were given disproportionately to African-Americans and other minorities. But now the crisis has spread. Foreclosures are occurring on homes financed with prime loans in communities and neighborhoods that have previously viewed home foreclosure a strange aberration. Now what is fueling this crisis is unemployment. Nationwide joblessness is at a 25-year high. Today one in eight Americans and one in four children rely on food stamps.

For the people of the Cleveland metropolitan area, the crisis has been particularly acute because depressed housing prices and widespread unemployment have not been limited to the past 2 or 3 years. The Cleveland metropolitan area was passed over by the housing boom of the earlier part of this decade, experiencing high rates of foreclosures as early as the year 2000. Yet, northeast Ohio still suffered from a wave of predatory lending and lax regulatory action that characterized the housing boom elsewhere. According to economist George Zeller, Cuyahoga County alone has lost nearly 110,000 jobs since 2000. The result, unsurprisingly, has been that wave after wave of foreclosures have left nearly 11,500 vacant homes in Cleveland alone.

When this subcommittee began holding hearings on foreclosure in March 2007, Cleveland was the epicenter of the crisis and the window onto the future troubles that would rapidly overtake the entire nation. Today we return to Cleveland to find out what local officials, advocates and organizers of this region have done to address the phenomenon. What more can be done and what role must the Federal Government play? Today we hope to learn the answer to these questions and start to build a record that we hope will shape policy and how to most effectively address the devastating effects the foreclosure crisis has had on these neighborhoods.

Among the excellent witnesses we will have at today's hearing we will hear from the Federal Government: An official from the Treasury Department will discuss the Federal response to the overwhelming number of foreclosures. The Treasury administers the administration's primary response to the crisis known as the Home Affordable Modification Program. This program, which was unveiled in March of this year, has been far too slow in accomplishing its stated goal: Giving loan servicers a monetary incentive to modify as many home mortgage loans as possible so that millions of more people do not end up in foreclosure. The simple fact is that nationally the pace of foreclosures continues to outpace the rate of mortgage modifications and the same is true for this region.

Treasury will no doubt tell us that their latest initiative announced last week will finally change this scenario for the better. But there are millions of Americans who are unemployed or underemployed, whose incomes are vastly reduced and whose homes are worth less than the mortgage they owe. For many Americans things are not expected to change anytime soon. The question is: What must government do to reverse the cycle of borrower default, foreclosure, vacant and abandoned housing, and even more depressed housing values.

The subcommittee has come to Cleveland today to bear witness to the turmoil caused by the housing foreclosure crisis and resulting economic devastation to its communities. The subcommittee is working to shape the reform of the existing regulatory structure that allowed this crisis to envelope our nation. And we also intend to ensure that this administration upholds its promises to provide relief to distressed homeowners and hold banks and their loan servicers accountable requiring them to do everything in their power to keep homeowners in their homes.

We look forward to the important testimony we are going to hear today. At this time I recognize the distinguished ranking member of this subcommittee, Mr. Jordan of Ohio. You may proceed.

Mr. JORDAN. Thank you, Mr. Chairman. I appreciate the chairman's comments. We do have—when chairman talked about our working relationship, he wasn't just talking like a politician; it's true. And I appreciate the passion he brings to this process and the many issues you had a chance to work on this past year. It's also great to have our colleague, Mr. LaTourette, who does a great job for our State as a member of the Appropriations Committee as part of this hearing today as well.

Mr. Chairman, thank you for calling today's hearing. It's important for our committee to hear from people across the country suffering this recession, including the fine people of Ohio. Across the Nation and in the Cleveland area, more families are losing their home to foreclosure than at any other time in history. The national foreclosure rate more than tripled from 2005 to 2008 and only six States were hit harder than the State of Ohio in the year 2008.

The Federal Government is a primary culprit in this national nightmare, in my judgment. Federal laws push banks to make unsound loans. Fannie Mae and Freddie Mac starting in 2004 bought $1.6 trillion worth of risky mortgage loans which provided artificial demand. House prices collapsed, foreclosures soared and families are suffering because of the well-intentioned but misguided Federal intervention into the marketplace. The Federal Government can't run the economy and we cause disasters when we try.

The administration is trying to fight the foreclosure wave with the same demanding control philosophy that caused it. We spent $75 billion to modify mortgage loans. The administration's program applies a one-size-fit-all net present value calculation to every family anywhere in this country who applies for a modification. The Treasury Department has kept its net present value calculation model a secret. The public doesn't know when a modification will be offered and when it won't. Other Federal agencies who run mortgage modification programs have published their net present value tests, but Treasury continues to resist transparency and accountability.

This committee has learned a large truth. Despite the intent of the program, these efforts are failing. While the administration promised the American people that the program would be resolved in 3 to 4 million modified loans, we've recently learned from the congressional oversight panel that the program has accomplished fewer than 2,000 permanent mortgage modifications. This isn't the first time the government mortgage modification program has completely flopped.

The HOPE for Homeowners refinancing program which started in 2008 was supposed to help 400,000 families, but when the congressional oversight panel examined the program this fall, HOPE for Homeowners had closed only 94 loans, 94 loans.

The only true solution for the families who are in danger of losing their homes is a broad-based economic recovery. Economic recovery is the only solution that will work for everybody, not just a narrow slice of families who pass the Treasury Department's net present value test. Economic recovery is the only solution that won't just postpone the hardship that many homeowners are feeling. An economic recovery will not come from government efforts that spend billions of dollars and pour them into a one-size-fits-all program that simply doesn't work. Instead, Mr. Chairman, economic recovery will only come when government gets out of the way of job creation.

Thank you again for calling today's hearing and I look forward to hearing from the witnesses and asking questions.

Mr. KUCINICH. I thank the gentleman for his statement.

The Chair recognizes Congressman LaTourette of Ohio. You may proceed.

Mr. LATOURETTE. Chairman Kucinich, thank you very much for, one, letting me participate in this hearing and thank you also for having this hearing. And I just echo the comments that you made. I'm entering my 15th year in Congress and you came in a little bit after I did, but I have enjoyed working with you and I think that, as the country cries out for bipartisanship and wonders why it is people fight all the time rather than getting solutions done, I think our partnership has been a good one, and so much so that we've even been able to bicycle together.

Mr. JORDAN. And that's quite significant.

Mr. LATOURETTE. And I would just also indicate that this is one of the few times that I'll be on your left during the course of our moving forward.

I also want to welcome Jim Jordan to Cleveland. Jim represents the West Side of our State and a newer Member of the U.S. Congress. And Congressman Jordan has already made his mark, and to be a ranking member of the subcommittee so early in your career, that's a wonderful accomplishment and you deserve it.

Less than a month ago, the Mortgage Broker's Association issued a report on where foreclosures were and what's been going on and the news is not good. It says that one out of every six Ohio homeowners finds themselves in foreclosure, the national average is one in seven. And so we are behind the national average.

And the landscape is changing and I think both of my colleagues are correct. This is no longer a situation where people bought houses for greater than they could afford, it's no longer a situation where people were just looking at subprime loans, where people were taken advantage of by predatory lending. Things are now growing with homeowners who have good, low-rate home loans. The report also indicates that the foreclosure rate probably won't peak until the end of 2010 at the earliest, and while so much emphasis has been placed by the Federal response on subprime people that have been under water, we now have, when you put on top of it, the fact that we have 5½ million people who have lost their jobs in this year, you have people that can't make their mortgage payments. And my grandmother used to call it "bass ackwards."

Some of the programs that have been crafted in Washington will come in and assist the homeowner who is under water and who has been delinquent for 3 months or more, but there is no small part of the calls that I get from my office, and I'm sure it's the same for you, Dennis and Jim, are from people who want to pay their mortgage but the breadwinner has lost their job. They are not behind yet 3 months and so there's no program to give them a hand. And we just had a couple call the office the other day, an elderly couple, and they are struggling to make their mortgage. And when they called the bank and the Federal arm, they said you got to be behind 3 months.

Now, you know it would be a strange piece of advice for any of us as Congress-people to advise their constituents not to pay their mortgage for the next 2 months so they can become eligible for one of the Federal programs. So, clearly, we not only have to continue the response and deal with the subprime mess and predatory lending, but we also have to deal with those people that are now hit with this savage unemployment that is going through the economy.

And I'd just like to throw out one germ of an idea that's certainly perking around my head and when we get back to Washington later today or tomorrow, I think I'm going to draft a piece of legislation. And it seems to me that something like the student loan program would be in order in this situation in that in the student loan program, you have the ability to defer the principle. If you pay your interest, and Rokakis will be happy to pay your taxes still, but you could defer the principle. And unlike some of the other ideas like moratoriums and stopping things and everything else, the bank isn't a loser because you just extended the term on the loan, you still have to pay for the house that you live in, but getting relief until you get a job and your financial situation improves might be one way that we can help everybody, rather than those that just find themselves in the subprime mess.

So I look forward to this hearing. I look forward to hearing from our elected officials and others. I want to thank you for letting me participate.

And just as a parochial note, I really think that, I was on the radio this morning, and they said "give me some good news." I think the good news here, at least some of the good news in Cleveland, is for the first time we had Glenville and Chagrin Falls in the State football championships. And although that didn't work out, we are all proud of both the city of Cleveland School and the school from out where I'm from. And I thank you.

Mr. KUCINICH. Thank you very much, Congressman LaTourette. There is also good news in the LaTourette household. Congressman and Mrs. LaTourette have just had the blessing of their second child, so congratulations, Congressman.

And I look forward to working with you on any of the proposals that can bring relief to people who are trying to save their homes.

Before I swear in our witnesses, I want to acknowledge the presence of City Councilman Anthony Brancatelli. You have really done tremendous work at the ward level in trying to do everything you can to help the people in the Slavic Village area, an area that I was privileged to represent one time in the city council. So I want to thank you very much for your presence here and the work that you've done.

We are going to move now to the witnesses and I want to start by introducing our witnesses. Representative Mike Foley has been representing constituents in Brookpark, Parma Heights and Cleveland Wards 19, 20 and 21 since 2006. He is formerly the executive director of the Cleveland Tenants Organization and now in the Ohio Legislature, he continues to focus on housing issues, the environment and consumer rights, among other important issues.

Representative, or the Honorable Senator Tim Grendell has been a State senator from Ohio's 18th District since 2004, representing constituents in Lake and Geauga Counties, as well as Cuyahoga County communities of Gates Mills, Mayfield Heights, Mayfield Village and Highland Heights. He serves as chair of the Judiciary Criminal Justice Committee and his legislative focus has been on such issues as sex offender registration laws and comprehensive eminent domain reform.

Councilman Michael Dudley Senior is council member for ward one of the city of Garfield Heights and has been serving since 2007. He also served as a staff sergeant in the U.S. Army from 1978 to 2007.

Mr. Daryl Rush is the director of community development of the city of Cleveland under the administration of Mayor Jackson. His department administers Federal funding from the Department of Housing and Urban Development, provides financing and assistance for housing development and offers housing services to residents.

Jim Rokakis has served as Cuyahoga County treasurer since 1997 and under his leadership, the office took an early role in combating the foreclosure crisis, particularly in regard to abandoned parties and the creation of the county land bank. He helped to create and oversee the County's "Don't Borrow Trouble" mortgage foreclosure prevention program. And I have to say that more than any county official in America, you really have been on top of this, Mr. Treasurer, and I just want to thank you for the leadership that you've shown.

Ms. Phyllis Caldwell was recently named the chief of the Homeownership Preservation Program for the U.S. Department of Treasury where she implements administration policies designed to address the needs of homeowners. Prior to this appointment, Ms.

Caldwell was president of the Washington Area Women's Foundation and also headed community development banking at Bank of America. Thank you for being here.

It's the policy of the Committee on Oversight and Government Reform to swear in all witnesses before they testify. I would like to ask the witnesses, if you please rise and raise your right hands.

[Witnesses sworn.]

Mr. KUCINICH. Let the record reflect that the witnesses answered in the affirmative.

I ask that each of the witnesses now give a brief summary of your testimony. I would like you to keep the summary to 5 minutes in duration. Your entire written statement will be included in the record of the hearing so try to help us out and hold to that.

I'm going to call on Mr. Foley and thank him for the many different programs that we worked on together and for your advocacy for people, which has always been very strong, and I'm grateful that you are here, and you may begin with your testimony.

STATEMENTS OF MIKE FOLEY, OHIO STATE REPRESENTATIVE, 14TH LEGISLATIVE DISTRICT; TIM GRENDELL, OHIO STATE SENATOR, 18TH LEGISLATIVE DISTRICT; MICHAEL DUDLEY, SR., COUNCIL MEMBER, GARFIELD HEIGHTS WARD ONE; DARYL RUSH, DIRECTOR OF COMMUNITY DEVELOPMENT, CITY OF CLEVELAND; JIM ROKAKIS, TREASURER, CUYAHOGA COUNTY; AND PHYLLIS CALDWELL, CHIEF HOMEOWNERSHIP PRESERVATION OFFICER, U.S. DEPARTMENT OF TREASURY

STATEMENT OF MIKE FOLEY

Mr. FOLEY. Thank you, Chairman Kucinich, and I appreciate the opportunity to, for the last 10 or 15 years, be able to work with you as an advocate on affordable housing issues and now as a State Representative.

Good morning, Chairman, members of Domestic Policy Subcommittee of the House Oversight and Government Reform Committee. I would like to thank Congressman Kucinich for allowing me to provide testimony on the foreclosure crisis in Ohio.

As a State Representative and chairman of the Ohio House Housing and Urban Revitalization Committee, I have had the opportunity to see and hear firsthand the effect that this crisis has had on Ohioans, while also working on legislation that hopes to prevent both foreclosures and the negative consequences they have on homeowners, neighborhoods and cities. From my experience, I can tell you this: The Ohio House of Representatives has taken this crisis seriously. Today I would like to touch on a few of the bills that we are working on as they wind their way through the legislative process, the statehouse or have already been enacted. Foreclosure in Ohio follows a judicial, not an administrative, process and depending on the circumstance, can take anywhere from 4 to 12 months. The bills introduced at the State level seek to address the foreclosure issue at several stages along the process and are best discussed as they take place within this process. Our goal is to first do what we can to help keep homeowners in their homes, and if that is not possible, to move them through the process as fast and with as much transparency as possible while minimizing the effect vacant, foreclosed properties have on neighbors and the communities.

In February 2009, State Representative Denise Driehaus and I introduced House Bill 3, the Foreclosure Prevention Act, which is a fairly comprehensive act. In addition to keeping borrowers in their homes, it helps to protect the loss of investment dollars by maintaining home values, encouraging payment workouts that guarantee greater returns than sheriff sales. Many of the provisions in this bill are temporary and are intended to provide flexibility during an extraordinary time when inactions have allowed many thousands of homes to fall into foreclosure displacing countless Ohioans and washing away the property value of their communities.

This bill has four primary components: A conditional, 6-month moratorium on certain foreclosure judgments, a licensing on regulation package for mortgage servicers, an information package which includes a mortgage servicing data base, foreclosure notification requirements and transparency requirements during foreclosure proceedings, and a foreclosure filing fee that would provide funding for data base administration, community redevelopment, financial education and, I think most importantly, credit and foreclosure counseling. House Bill 3 passed out of the House in May 2009 and is currently awaiting its first hearing in the Ohio Senate.

While the relationship between homeowners and lenders is well discussed, renters are too often direct and unnecessary victims of foreclosure crisis. House Bill 9 is a bill that Representative Ted Celeste and I introduced and passed out of the House in May 2009 also. It would basically protect tenants in the foreclosure process, give them more time and notice that the foreclosure is occurring and allow them to become month-to-month tenants at the end of their tenancy, at the end of the foreclosure process.

Recently we've been seeing problems that happen after the foreclosure judgment occurs. In 2007 and 2008, Representative Lou Blessing from Cincinnati and I passed House Bill 138 which required sheriffs to file foreclosure deeds after a foreclosure had occurred. In all too many circumstances, foreclosures were occurring, deeds were being prepared by the sheriff, given to the lenders but not being filed so we didn't know who owned property. This bill passed in House in 2008 and we think it's been fairly effective at the back end of the foreclosure process.

That back end has now moved up, however, and Representative Dennis Murray is bringing or brought a bill that basically would force lenders to use their judgments after a foreclosure judgment or lose it. Right now we are seeing that lenders are getting foreclosure judgments, but are not filing to go to sheriff sales, so they've moved up this kind of process of not marking their title or not filing the title. Representative Murray has been working diligently with a number of the folks in this room to make sure that we are able to figure out who owns property and that lenders aren't engaging in our foreclosure process but not using—going through the full fruition of what they should be doing.

Last, we think that one of the most important things that Ohio needs to do is develop a comprehensive land bank system. Last year Cuyahoga County was able to develop a land bank process that Treasurer Rokakis has been very good at implementing. Every other city and county in the State wants this, for the most part, the larger cities in the county want this ability to do land banking, to be able to take the vacant properties that are sitting foul and affecting the property values of every other property in their system, to bring it back in and reuse those properties in a more logical, rational way.

Representative Kucinich, I appreciate your having these hearings. It's very important, it's very timely and it's stuff that we think that needs to happen at both the State and the Federal level. Especially I just want to say that servicers who are in the middle of this kind of whole process, this bureaucracy of the foreclosure process, really need regulation and really need Federal regulation. We look to the Federal Government to engage in that. Thank you.

[The prepared statement of Mr. Foley follows:]

Testimony
Of
Mike Foley
State Representative

Domestic Policy Subcommittee
Oversight and Government Reform Committee

Carl B. Stokes Federal Courthouse
Monday, December 7, 2009
10:00 a.m.

Good Afternoon Chairman, and Members of the Subcommittee I would like to thank Chairman Kucinich for allowing me to provide testimony on the foreclosure crisis in Ohio. As a State Representative and Chairman of the Ohio House Housing and Urban Revitalization Committee, I have had the opportunity to see and hear first-hand the effect this crisis has had on Ohioans, while also working on legislation that hopes to prevent both foreclosures and the negative consequences they have on homeowners, neighborhoods, and cities. From my experiences I can tell you this; the Ohio House of Representatives has taken this crisis seriously. Today, I would like to touch on a few of the bills that have been enacted or are working their way through the legislative process at the statehouse.

Foreclosure in Ohio follows a judicial process, and generally takes 4-6 months, but can go longer. The bills introduced at the state level seek to address the foreclosure issue at several stages along the process, and are best discussed as they take place within this process. Our goal is first to do what we can to keep homeowners in their homes, and if that is not possible, to move them through the process as fast and with as much transparency as possible, while minimizing the effect vacant, foreclosed properties have on neighbors and the communities.

In February of 2009, myself and State Representative Denise Driehaus introduced House Bill 3, the Foreclosure Prevention Act. HB3 is comprehensive. In addition to keeping borrowers in their homes, it helps to protect the loss of investment dollars by maintaining home values and encouraging payment workouts that guarantee greater returns than sheriff sales. Many of the provisions in this bill are temporary, and are intended to provide flexibility during an extraordinary time when inaction has allowed many thousands of homes to fall into foreclosure- displacing countless Ohioans and washing away the property value of our communities.

This bill has four primary components:

- A conditional, six-month moratorium on certain foreclosure judgments;
- A licensing and regulation package for mortgage servicers;
- An information package, which includes a mortgage servicing database, foreclosure notification requirements, and transparency requirements during foreclosure proceedings;
- A foreclosure-filing fee that would provide funding for database administration, community redevelopment, financial education, and credit and foreclosure counseling.

House Bill 3 passed out of the Ohio House in May of 2009. It is currently waiting its first hearing in the Ohio Senate.

While the relationship between homeowners and lenders is well discussed, renters are too often direct and unnecessary victims of the foreclosure crisis and rarely heard from. Under current law, if a property falls into foreclosure a landlord is under no obligation to inform tenants of the foreclosure at any time during the process. I've personally heard stories of tenants leasing properties unaware that the property had been in foreclosure for over seven months prior to signing the lease. As a result, many tenants only become aware that the property has been sold at sheriff sale when they are served an eviction notice. To that end, I've introduced a House Bill 9 with State Representative Ted Celeste, which would require notifications to the tenant within 60 days of the foreclosure filing, and 21 days of the sheriff sale. In addition, upon sheriff sale, the renter's contract will automatically convert to a month-to-month lease, allowing the homeowner a chance to renegotiate a new lease with the new property owners, or additional time to find a new residence and move. Because of the federal Protecting Tenants at Foreclosure Act of 2009, this minimum 30 days has been extended to 90 days, and I applaud Congress and the President for passing this legislation earlier this year. House bill 9 also passed out of the Ohio House in May of 2009 and it is also still waiting for its first hearing in the Ohio Senate.

There are certainly situations where homes are in foreclosure and at that point it's imperative that the property moves through the foreclosure process as fast as possible. It began becoming apparent that in our state, lenders would buy back the property at sheriff's sale, and then fail to file the deed for several months, leaving responsibility for the property in a grey area. In early 2007, I introduced House Bill 138, which created several provisions in Ohio law making it easier to determine who owns a property following a foreclosure. Judicial foreclosure sales also became more efficient – in part by requiring sheriffs to file deeds with the county recorder within 14 days of a foreclosure sale. This bill was passed by both the Ohio House and Senate and signed by Governor Strickland in June of 2008.

Recently, we've begun seeing a similar problem that House Bill 138 sought to resolve actually occur one step earlier in the foreclosure process. Lenders that have received a foreclosure judgment in their favor are failing to take property to foreclosure. Instead, they leave ownership of the property in a grey area, where homeowners have already vacated the property thinking they have lost it to foreclosure, when in actuality they are still the legal titleholders. As the vacated property begins to deteriorate, homeowners are often sent code violations and delinquent tax notices, unaware that they are still responsible for the property. This situation has been more commonly referred to as "bank walk-aways". The vacant property has then become so run-down and has lost so much value that the property is unwanted, and creates what has been coined a "toxic title". These vacant properties have a negative effect on surrounding property values and general neighborhood quality of life. Several months ago State Representative Dennis Murray introduced House Bill 323, an effort to combat both these issues. This bill will do several things includes several provisions to combat this issue, require a foreclosure to go to sale within 60 days of a judgment, or the lien holder forfeits their right to the lien. This bill has had several hearings in the Housing and Urban Revitalization Committee and we hope to vote it out of committee within the next week.

As a final component of the foreclosure crisis, we have sought to help lift the burden that vacant and abandoned properties leave on the landscape of cities. As mentioned earlier, these vacant properties lower property values, lead to criminal activity, and pose serious fire and safety risks. At the end of last year we created a pilot 'land-bank' program for Cuyahoga County. Based on a successful program in Genesee County, Michigan, this new Cuyahoga County land bank acted as a legal and financial mechanism to convert vacant and abandoned properties back to safe, available, and useful lots. This program has been up and running in Cuyahoga County for less than a year, and we've already heard from other counties wanting to take advantage of a land bank of their own. Representatives Ujvagi and Winburn answered those calls by introducing House Bill 313, which would extend the opportunity to establish a land bank to any county with over 100,000 in population. This bill has currently has had four hearings in the House Local Government committee and should be voted out of committee in the next two weeks.

These bills seek to address foreclosures at all stages in the process, from preventing foreclosures from happening where possible, to protecting the rights of renters and homeowners when they do happen, and finally from moving foreclosures through our judicial system as efficiently and transparently as possible, while providing redevelopment and maintenance tools for the vacant and abandoned properties that often result from foreclosure.

While I cannot speak directly to the affect of the federal foreclosure efforts, I will recommend one action the Congress should take. A serious federal licensing and regulation effort of mortgage servicers must take place. All mortgage servicers play a similar role in the mortgage industry: they collect, process, and relay mortgage payments from borrowers (homeowners) to lenders, investors, local governments, and insurance companies, who have an interest in the real estate value, principle, or interest represented by a mortgage property. Structurally, servicers are at the crux of the mortgage industry, largely being the only channel of communication between lenders and homeowners. Irregularities, deficiencies and a lack of oversight compound the difficulty that many servicers have in fulfilling their obligations in a state that processed over 85,000 foreclosures last year. Because of the critical role that servicers play, standards of conduct through licensing servicers needs to be met. While doing this at the state level is possible (HB 3 has a servicer licensing plan) it is limited in who it affects as many servicers are branches of federally regulated banks. If there is one suggestion I could make to Congress regarding the foreclosure crisis, it would be this.

Mr. Chairman, Members of the subcommittee, I hope I provided some insight as to what is happening at the state level in terms of the foreclosure crisis. If all these bills are enacted, I believe Ohio will be seen as a leader in fighting the foreclosure problem, with some of the strongest, most effective laws in place to combat it. I would like to thank you again for allowing the opportunity to speak to you, and would be happy to answer any questions you may have.

Mr. KUCINICH. All right. Thank you, Gentlemen.

Senator Grendell, thanks for being here. You worked with Congressman LaTourette and I on some major matters relating to city hospitals and steel mills. You've really been a champion of the people and I just want to thank you for making the kind of bipartisan cooperation that we know is a possible reality. So thank you for being here and you may proceed for 5 minutes.

STATEMENT OF TIM GRENDELL

Mr. GRENDELL. Good morning, Chairman Kucinich, ranking member of the former Ohio Senate and colleague Congressman Jordan and my Congressman, Congressman LaTourette. And I want to thank you, Chairman Kucinich, for bringing Congress to Cleveland and for providing me with this opportunity to address the foreclosure and finance issues that now contribute to our State's and country's financial problems.

While currently I have the privilege of serving in the Ohio Senate, I have also over 22 years of legal experience representing home buyers, home builders and developers and have negotiated numerous real estate financing transactions from simple home loans to multi-million dollar development homes. I have also represented the parties in foreclosure lawsuits. As a State legislator, I have been actively involved in the passage of land banking legislation, to which I applaud Jim Rokakis, and consumer protection legislation.

While the national foreclosure crisis is generally dating to the beginning of the late 2006, early 2007, the seeds for that crisis were planted in 2000 when Federal law changes invited the broadening of access to home purchase financing, which, in turn, contributed to the loan crisis.

Because of the scope and personal nature of the current foreclosure situation and its contribution to the decline of national and State financial institutions, there is a tendency to paint these issues with a broad brush or to seek more government intrusion into the free market lending process. The loosening of the home loan process promoted by Federal intervention may have been motivated by the admirable policy goals of increasing individual homeownership. However, admirable policy cannot override reasonable economic principles. If someone cannot afford to buy a home, a home should not be purchased. Traditionally, individuals were required to make attempt at a 10 to 20 percent down payment. Those individuals saved their money and made a substantial equity investment when they purchased their home, usually with a 15 to 30-year fixed rate mortgage.

This millennium, individuals were able to purchase homes with little or no equity and with a variety of variable rate loans. In Cleveland, some speculators were able to borrow excess dollars based on friendly or inflated appraisals and actually profit from their home purchase. Often these properties were then rented out.

While some foreclosures resulted from involuntary events such as the unexpected job loss, others resulted from the abandonment of overinflated valued buildings purchased on non-recourse terms or by insolvent buyers. To the extent more job losses contributed to the foreclosure problem, focus should be on reducing taxes and regulatory burdens on business to promote economic development and new job creation.

There are several factors that invited and fueled this unfortunate situation. These include Federal encouragement of high-risk home financing, overly aggressive lending fueled by the subprime loan investment market, failed regulatory oversight and a lack of personal responsibility by borrowers who were encouraged to borrow beyond their means.

A strong argument can be made that the last factor is the most important because no one can be forced to borrow money, especially if such a loan is beyond the borrower's economic ability. Simply put, an individual who enters into a contract to borrow money is and must be expected to be bound by the contract. To hold otherwise, threatens the sanctity of private contracts, which forms the foundation of our free market economic system.

Especially because of the scope and the publicity involved with the current foreclosure situation, there is a tendency to pursue further government intervention; however, prudence is warranted. No action should be taken that interferes with private contract rights. For example, forced restructuring of private loan agreement terms, or private contract enforcement rights, for example, delay or moratorium of foreclosures. The idea that private contracts can be rewritten or suspended by government in times of crisis is dangerous and potentially destructive to America's democratic free enterprise economic system.

Moreover, it's important that the Federal Government should comply with the 10th amendment to the U.S. Constitution and refrain from interfering with the peoples' right to real property ownership and the banks' right to foreclosure.

I respectfully submit that the current foreclosure and financial crisis results from a deviation from fundamental free market principles and that a return to free market principles, not more governmental intervention would be the appropriate way to work our way out of this crisis.

To the extent Federal policies encouraged or pushed lenders into making bad loans or that the resulting access to easy money encouraged borrowers to enter into bad loans, government intervention exacerbates the process. More government intervention will only further degrade the situation.

With this in mind, I respectfully make the following suggestions: One, the Federal Government should immediately cease and repeal any policies that encourage lending to unqualified buyers as determined by sound financial practices. Two, the Federal Government should resist the impulse to pass legislation that jeopardizes the enforceability of private contracts. Three, the Federal Government should recognize and honor the 10th amendment to the U.S. Constitution taking no action that interferes with the rights of the States to enact their own respective real property laws and foreclosure procedures as spelled out by Representative Foley. Four, return to free market principles which recognize that property values are based on what a willing buyer is willing to pay a willing seller and loan decisions should be made by a prudent lender to a qualified borrower based on sound economics and the borrower's likely ability to perform its contractual repayment obligation.

At the end of the day, the goal should be a return to a free market system with minimum reasonable regulatory oversight. Lenders and borrowers must both act responsibly and the individuals must appreciate that they will be held responsible for meeting their contractual obligations. Neither Congress nor State Legislature should absolve those folks from those obligations no matter the scope or publicity or political benefit such legislation intervention may generate.

President Dwight D. Eisenhower said it best, “without free enterprise, there can be no democracy.” The solution is more jobs, not more government. Thank you for the opportunity to address the Congress today.

[The prepared statement of Mr. Grendell follows:]

Timothy J. Grendell
State Senator, 18th District

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Committees
Agriculture
Environment and Natural Resources
Government Oversight
Judiciary – Civil Justice
Judiciary – Criminal Justice, *Chair*
State and Local Government and Veterans' Affairs
Joint Committee on Agency Rule Review

Testimony of State Senator Timothy J. Grendell
18th Ohio Senate District
(Lake, Geauga, and part of Cuyahoga County)

Before

Committee on Oversight and Government Reform
Subcommittee on Domestic Policy

Honorable Dennis Kucinich, Chair

December 7, 2009

Good morning Chairman Kucinich, Ranking Member Jordan, and members of the subcommittee. Thank you for providing me with this opportunity to address the foreclosure and financing issues that now contribute to our state's and country's financial problems. While currently I have the privilege of serving in the Ohio Senate, I also have over twenty-two years of legal experience representing home buyers, home builders, and developers, and I have negotiated numerous real estate financing transactions from a simple home loan to multi-million dollar development loans. I also have represented parties in foreclosure lawsuits. As a state legislator, I have been actively involved in the passage of land banking legislation and consumer protection legislation.

While the national foreclosure crisis is generally dated to beginning in late 2006 or early 2007, the seeds for that crisis were planted in 2000 when federal law changes invited the broadening of access to home purchase financing which, in turn, contributed to the loan crisis.

Because of the scope and personal nature of the current foreclosure situation and its contribution to the decline of national and state financial institutions, there is a tendency to paint these issues with a broad brush or to seek more governmental intrusion into the free market lending process.

The loosening of the home loan process promoted by federal intervention may have been motivated by the admirable policy goal of increasing individual homeownership. However, admirable policy cannot override reasonable economic principles. If someone cannot afford to buy a home, a home should not be purchased.

Traditionally, individuals were required to make a 10%-20% down payment. Those individuals saved their money and made a substantial equity investment when they purchased their home, usually with a 15-30 year fixed rate mortgage.

This millennium, individuals were able to purchase homes with little or no equity and with a variety of variable rate loans. In Cleveland, some speculators were able to borrow excess dollars based on friendly (inflated) appraisals and actually profit from their home purchase. Often, these properties were then rented out.

While some foreclosures resulted from involuntary events such as an unexpected job loss, others resulted from the abandonment of overinflated value buildings purchased on nonrecourse terms or by insolvent buyers.

There are several factors that invited and fueled this unfortunate situation. These include:

1. Federal encouragement of high risk home financing;
2. Overly aggressive lending, fueled by the subprime loan investment market;
3. Failed regulatory oversight;
4. A lack of personal responsibility by borrowers, encouraged by access to easy money;

A strong argument can be made that the last factor is the most important because no one can be forced to borrow money, especially if such a loan is beyond the borrower's economic means. Simply put, an individual who enters into a contract to borrow money is and must be expected to be bound by his or her contractual obligation. To hold otherwise, threatens the sanctity of private contracts, which forms the foundation of our free market economic system.

Especially because of the scope and publicity involved with the current foreclosure situation, there is a tendency to pursue further government intervention; however, prudence is warranted. No action should be taken that interferes with private contract rights (e.g. forced restructuring of private loan agreement terms) or private contract enforcement rights (e.g. a delay or moratorium of foreclosures). The idea that private contracts can be rewritten or suspended by government in times of "crisis" is dangerous and potentially destructive to America's democratic free enterprise economic system.

Moreover it is important that the Federal Government should comply with the Tenth Amendment of the United States Constitution and refrain from interfering in the peoples' right to real property ownership and the banks right to foreclosure.

I respectfully submit that the current foreclosure/financial "crisis" results from a deviation from fundamental free market principles and that a return to free market principles, <u>not</u> more governmental intervention, is the appropriate way to work our way out of this "crisis."

To the extent federal policies encouraged or pushed lenders into making bad loans or that the resulting access to easy money encouraged borrowers to enter into bad loans, governmental intervention exacerbates the process. More governmental intervention will only further degrade the situation.

With this in mind, I respectfully make the following suggestions:

1. The federal government should immediately cease and repeal any policies that encourage lending to unqualified buyers, as determined by sound financial practices.

2. The federal government should resist the impulse to pass legislation that jeopardizes the enforceability of private contracts.
3. The federal government should recognize and honor the 10^{th} Amendment to the U.S. Constitution (see the attached Ohio Senate Resolution) by taking no action that interferes with the right of the states to enact their respective real property laws and foreclosure procedures.
4. Return to free market principles which recognize that (a) property values are based on what a willing buyer is willing to pay a willing seller, and (b) loan decisions should be made by a prudent lender to a qualified borrower based on sound economics and the borrower's likely ability to perform its contractual repayment obligations.
5. Maintain the sanctity and enforceability of private contracts, which are fundamental to commerce and our State and national economic system.

At the end of the day, the goal should be a return to a free market system, with minimum reasonable regulatory oversight. Lenders and borrowers both must act responsibly, and individuals must appreciate that they will be held responsible for meeting their contractual obligations. Neither Congress nor State legislatures should absolve them of those obligations no matter the scope of the publicity or political benefit such legislation intervention may generate.

President Dwight Eisenhower said it best: "...without free enterprise there can be no democracy." Thank you again for the opportunity to address you this morning. I am happy to take any questions you may have.

As Adopted by the Senate

128th General Assembly
Regular Session
2009-2010

S. C. R. No. 13

Senators Grendell, Faber

Cosponsors: Senators Gibbs, Buehrer, Cates, Hughes, Schuler, Schuring, Carey, Goodman, Harris, Husted, Niehaus, Patton, Schaffer, Seitz, Wagoner, Widener, Jones

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CONCURRENT RESOLUTION

To claim sovereignty over certain powers pursuant to the Tenth Amendment to the Constitution of the United States of America, to notify Congress to limit and end certain mandates, and to insist that federal legislation contravening the Tenth Amendment be prohibited or repealed.

BE IT RESOLVED BY THE SENATE OF THE STATE OF OHIO (THE HOUSE OF REPRESENTATIVES CONCURRING):

WHEREAS, The Tenth Amendment to the Constitution of the United States reads: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people"; and

WHEREAS, The Tenth Amendment defines the total scope of federal power as being that specifically granted to the federal government by the Constitution of the United States and no more; and

WHEREAS, The scope of power defined by the Tenth Amendment signifies that the federal government was created by the states specifically to be an agent of the states; and

WHEREAS, Today, in 2009, the states are often treated as agents of the federal government; and

WHEREAS, Many federal laws directly contravene the Tenth Amendment to the Constitution of the United States; and

WHEREAS, We believe in the importance of all levels of government working together to serve the citizens of our country, by respecting the constitutional provisions that properly delineate the authority of federal, state, and local governments; and

WHEREAS, The Tenth Amendment assures that we, the people of the United States and each sovereign state in the Union of States, now have, and have always had, rights the federal government may not usurp; and

WHEREAS, Article IV, Section 4 of the Constitution of the United States, states in part, "The United States shall guarantee to every State in this Union a Republican Form of Government," and the Ninth Amendment to the Constitution of the United States states that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"; and

WHEREAS, The United States Supreme Court ruled in *New York v. United States*, 505 U.S. 144 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the states by compelling them to enact and enforce regulatory programs; and

WHEREAS, the United States Supreme Court, in *Printz v. United States/Mack v. United States*, 521 U.S. 898 (1997), reaffirmed that the Constitution of the United States established a system of "dual sovereignty" that retains "a residuary and inviolable sovereignty" by the states. The majority of the United States Supreme Court noted in that case (521 U.S. 898, 921-922):

"As [President] Madison expressed it: '[T]he local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere.' The Federalist No. 39, at 245.

This separation of the two spheres is one of the Constitution's structural protections of liberty. 'Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front.' . . . To quote [President] Madison once again:

'In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.' The Federalist No. 51, at 323"; and

WHEREAS, A number of proposals by previous administrations, some now pending proposals by the present administration, and some proposals by Congress may further violate the Tenth Amendment restriction on the scope of federal power; now therefore be it

RESOLVED, That the State of Ohio hereby acknowledges and reaffirms its residuary and inviolable sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the Constitution of the United States; and be it further

RESOLVED, That this resolution serves as notice to the federal government as agent of the states, to end federal mandates that are beyond the scope of the constitutionally delegated powers; and be it further

RESOLVED, That all compulsory federal legislation that directs states to comply under threat of civil or criminal penalty or sanction or that requires states to enact legislation or lose federal funding be prohibited or repealed; and be it further

RESOLVED, That the Clerk of the Senate transmit authenticated copies of this resolution to the President of the United States, the President Pro Tempore of the United States Senate, the Speaker of the United States House of Representatives, the Speaker of the House of Representatives and the President of the Senate of each state's legislature, and each member of the Ohio Congressional delegation.

Mr. KUCINICH. Thank you very much, Senator Grendell.

The Chair recognizes Councilman Dudley of Garfield Heights. We appreciate your presence here. You may proceed for 5 minutes.

STATEMENT OF MICHAEL DUDLEY, SR.

Mr. DUDLEY. Well, thank you, Mr. Chairman. I'd like to thank the Committee of Oversight and also Government Reform.

I honestly would like to be able to say that you never know what the feeling is until you get an opportunity to feel it firsthand what it is to have your house go in foreclosure. I got that opportunity to know how it was several years ago. When I was first elected, my second job didn't materialize as I had to leave my State job because the city of Garfield, OH councilman position is a part-time position. You do everything that a full-time representative will have to do. One, not being able to be able to work in the second job, it didn't materialize, I found myself in foreclosure, me and my wife and my family.

We can sit here and we can talk about rules and regulations and how government shouldn't get involved, but I'm going to tell you that's not true. You need the government at some point to be getting involved in helping people. When you can walk around in the neighborhoods and you can see how many people are going to lose their home or how many people say—a good example is modification. Modification is OK to a certain extent, but we also lack the education to the people. That's the main concern. People are not being educated about the modifications. You can go into a modification in the month of March and don't know what your circumstances are going to become the month of August. Say the month of August you lose your job or you lose the second job you didn't actually acquire. Now you cannot go back and get a modification, they put you into what they call a forbearance plan. The word "bear" in that plan explains itself. You are not going to be able to bear to make those payments. So you are surely being lined up to lose your property or give your home, once again, turn it back in to the lender.

I don't think enough is being done. I think we need to find some programs out there, we need to get something to educate these people. Nothing is being done about that. I think when we turn around and we actually give billions of dollars to these lenders and we don't put no stipulations on there as to how the money will be spent, but they have to be fair.

Let's say the lender gives $3½ billion. They go and they put it into the Federal Reserve on Friday, from working with a company called Brink's, Inc., I know they are going to make some big interest on that money on that weekend. But when it comes time to get a loan to an individual such as myself and others who are out there living in the community, they want to give us 6.7. They want to give us 8.

I had a senior, she is about 67 years old. Her modification says she will get 4.25 percent for 4 years. At the end of the 4-years, she is going to more than 8½ percent on that loan. In 4 years she's going to lose her home. She can barely make the payment that they got her now at 700-something dollars, what's she going to do when that 8½ is due? She is gone.

There's a lot of people. My community such as I live in ward one area, we got more homes what they call the grass cutting, than the entire six other wards put together. I have seen people say they were just tired of going through, should I say, the so-called modifications or not being dealt with what I say good faith by some of the lenders and a lot of them are just walking away from their homes. Some of them just can't take the pressure no more.

Some of these cities, like when I say Cleveland, Garfield is basically right there on the border of Cleveland, so we feel the same pain that they're feeling in Cleveland. We are turning there cities and the suburban areas that surround Cleveland almost into ghost towns.

A lot of them say, "Mike, now our home is not even worth the value that the lenders are charging us for it." The lenders turn around in a particular modification plan and they tell you don't send no money until your modification is due. That's 6, 7, sometimes 8 months down the road. At the same time, you are being penalized and they are not educating the people once again, telling the people you're going to pay a penalty for not sending no money in. By the time that $600 a month and 8 months later, you don't owe them $3,000 or whatever it takes and they bill $3,200 whatever, you end up owing 7,000 or more. So now that payment that you couldn't afford at $700 before is now a $900 payment. So tell me how can a homeowner who couldn't pay 600 is going to be able to pay 900. They are setting us up for failure. It's not helping us.

And I would like to say that we do need some more government funding. Some funding has been given to organizations, our communities shares, ESOPs and other organizations out there. The key is not you don't have to keep bailing the people out, but you have to educate the people, let them know what they are getting into. They are fighting for modification, they don't have no attorneys to go pay and take them to. It should be somewhere that they can take this at no cost to them, have somebody to review it and give them an opportunity to let them know do they want to go through with it because most of them is just signing so they can buy time and have a place to live. And that's what it's really about.

We can sit up here and we can read a bunch of statements and stuff, but when you go back to the community where people are hurting the most, they are the ones without jobs. They are the ones without medical benefits, paying out of their pockets to go to the doctor today. In the process of paying to go to the doctor and buy food, sometimes they can't make the house payment. And you see most of them, the people who end up on the street, the shelters can't keep the families together no more.

So I'm asking that somehow, some way to find some money to put into a program that can educate and help these people so they don't keep losing their homes. We need to do something. These are the same people who elected us to office, we do not elect ourselves. We are there to represent them and we have to look out for their best interests. And I thank you.

[The prepared statement of Mr. Dudley follows:]

Summary of Testimony of:
Michael D. Dudley, Sr.
Councilmember, Garfield Heights, Ohio Ward One

Before the Domestic Policy Subcommittee of the House Committee on Oversight and Government Reform
Cleveland, Ohio

December 7, 2009

Mr. Chairman and members of the Subcommittee, Thank you for the opportunity to address you today.

I have experienced first hand what it's like to have a home in Foreclosure. I have had the opportunity to talk with families, who have chosen to walk away because the Funding for support and Education for Homeowners is not there. Lenders receive Billions for Bailouts. They place this money in Federal Reserve Bank, and get rich on the interest. They delay home modification 6 to 12 months or more. They tell families not to pay until they receive the new Modification, while still charging families interest, penalties and they collect interest from the government Bailout deposited in the Federal Reserve Bank.

A senior in my community is being charged 4.25% for 4 years with a monthly payment of $750.00. When it doubles to about 8.5% she may lose her home. Our city list for vacant home grass cutting shows half of the entire list is in Ward 1, my Ward. We must provide more funding help educate current and future homeowners and make the lenders who receive these Bailouts, provide lower interest rates. We must do more to keep people in their homes. Education and Funding is the key and solution to this problem.

Mr. KUCINICH. Thank you very much for your communication to us. We appreciate that very much.

Mr. Rush, you are representing the city of Cleveland. Please let Mayor Jackson know that we are grateful for your attendance and we are grateful for your service as the director of community development. You may proceed for 5 minutes.

STATEMENT OF DARYL RUSH

Mr. RUSH. Thank you, Mr. Chairman. And good morning, Mr. Chairman and representatives of the committee, fellow panel members and members of the audience. I'm honored to be before you to represent the city of Cleveland and its mayor, Mayor Frank G. Jackson for today's hearing on the ongoing residential crisis.

Let me first point out that yes, while Cleveland has been known as being at the epicenter of the crisis, what is not as well-known is that the city, under the leadership of the mayor, has taken an aggressive posture in responding to the challenges. And the subject today is about the ongoing foreclosure crisis. But it is imperative that we locally look, not as a crisis of foreclosure, but as a collapse of the housing market and the housing structure. And our approaches, as you will hear from some of our partners today, are comprehensive and multifaceted. In order for us to dig out of the hole locally, we have to address all of the weakness in the entire housing system.

Cleveland battled the exploitation of the housing market as it changed from flipping to predatory lending to foreclosure to dumping. It is imperative to acknowledge that the tricks deployed for profiteering evolve. Our response locally has to evolve as the impact on the market changes because of the actors and the approaches that they take.

My comments that I'll make this morning are more detailed than my written comments, but will I describe not only the impact on the local market, but also the approaches that we are taking and some of challenges that we face. It is important to note that, as the city of Cleveland has tried to battle the foreclosures and the impact of the foreclosure crisis, it was during the period where our revenue from HUD and other programs was declining. So the impact on our budget is two-fold. One, we have increased funding for nuisance abatement by a factor of two between 1995 and last year. We spent $890,000 just on nuisance abatement. That's board-ups, that's debris removal. We have also increased our funding for demolition from 1.8 million in 2004 to, with the assistance of NSP, to 15 million this year. This is not enough, even with those funds.

We conducted a survey of vacant, distressed properties last year and we have 8,009 throughout the city of Cleveland. That is less than the vacant properties that are largely the result of foreclosure, but those are the ones that are screaming to have action, either to be put back on line or to be demolished. We are updating that survey. It will be done by the end of the year.

But we have to come up with approaches that will fit within the budgetary constraints that the city has. The decline in property tax and revenue as a result of the foreclosures further impedes the resources, the effective use of the resources that we have available to us.

What we have done locally is to buildupon the strength of our local infrastructure to design approaches that will not only address and prevent the foreclosure itself, but also the aftermath. What do we do with the house, whether it's demolished or whether it's rehabbed and put back on line, how to get people to be in a position to buy the house or to rent the house. The entire delivery system has to be addressed in order for us to have effective resolution of the problem locally.

We have a lot of partners within the delivery systems locally. The county, we have strength in our relationship with the county. City council. We have a non-profit infrastructure and a neighborhood infrastructure of non-profit organizations referred to as CDCs. It's an all-hands-on-deck approach that we have taken locally to be able to respond to the crisis.

We have created, using NSP funds, an operation prevent program for the department of urban housing to be more aggressive with going after illicit and illegal dumping of properties locally. We have increased our data management so that we can have a better sense of the extent of the problems, what is the impact on the market and how we can identify the people who own properties, the people that are flipping and dumping property. We worked with Case Western Reserve University in their NEO CANDO system in order to get a better handle on our data.

Our strategies are based on a neighborhood typology which allows us to look at the relative market strengths of each neighborhood at a block group level. What is important is there have been several comments about intervention. Government intervention is necessary in working with the people to stay in their houses and throughout the rest of the process.

As we continue to fight the impact of foreclosure locally, we will continue to be creative in how we come up with responses and continue to work with our partners to be effective. Thank you.

[The prepared statement of Mr. Rush follows:]

Submitted
By
Daryl Rush
Director
Department of Community Development for the City of Cleveland

Domestic Policy Subcommittee
Oversight and Government Reform Committee

Monday, December 7, 2009
10:00 a.m.

Cleveland Strategies for a Housing Recovery

Introduction

Good Morning Mister Chairman and Members of the Subcommittee, fellow panel members and members of the audience. I am honored to be before you to represent the City of Cleveland and our Mayor, Frank G. Jackson, for today's hearing on the ongoing residential foreclosure crisis. It is beyond debate that Cleveland has been hit hard by foreclosures. What is not as well known is that the city – under the leadership of Mayor Jackson – has taken an aggressive posture in responding to challenges.

Cleveland has battled the exploitation of the housing market as it changed from flipping to predatory lending to foreclosure to dumping. It is imperative to acknowledge that the "tricks" deployed for profiteering evolve. Thus, the responses, to be effective, must change as well. My comments herein will describe the local efforts to combat a crisis that has undoubtedly expanded way beyond foreclosures. Corrective measures must, therefore, address weakness along the entire "housing" process.

Since 1995, Ohio's counties saw a 400% increase in foreclosures.[1] The primary cause for foreclosures in Cleveland was predatory lending.[2] In 2002, when Mayor Jackson was President of City Council, the city passed legislation to prevent predatory loans, but the city was blocked from enforcement. The waves of foreclosures increased in the early part of the decade and escalated dramatically from 2005 forward.[3]

Year	Number of Foreclosures Per Year	Number of Foreclosures Per Month (Avg.)
2005	1926	160.5
2006	7369	614.1
2007	7623	635.3
2008	7088	590.6
2009 (Jan-Nov 30)	5555	505
Total	29,561	501

As grim as the foreclosure numbers are, the community is determined to fight back. Today, you will hear testimony from members of the two panels who are involved in what has emerged as an integrated team to coordinate our local response.

<u>The Local Landscape & The Impacts of the Housing Crisis</u>

The City of Cleveland has a slow-growth economy. The population is estimated at 438,403 people.[4] As the result of the economic recession, the city is wrestling with an unemployment rate that is 2% higher than the state rate, and 4% higher than the national rate. Most of the city's census tracts meet the guidelines for low-mod census tracts as determined by the Department of Housing and Urban Development (HUD).

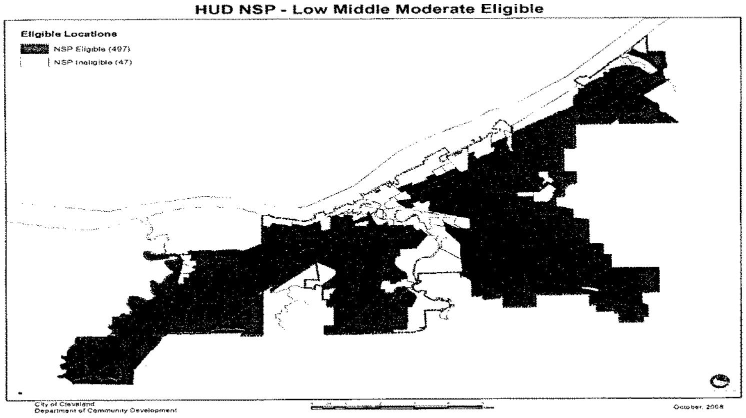
[1] Policy Matters, *Foreclosure Growth in Ohio 2009*, page 6, Rothstein, March 2009. Policy Matters Ohio is a nonprofit, nonpartisan research group in Ohio. It provides real-world policy analysis regarding economic issues that affect low- and moderate-income families.

[2] See e.g., *Policy Matters, Home Insecurity: Foreclosure Growth in Ohio, page. 9, Sopko, Oct. 2004.*

[3] For the escalation of foreclosures see e.g, *Foreclosure Growth in Ohio – 2009, by Policy Matters.* "Housing foreclosures have a detrimental affect on working families, draining incomes and depleting savings. Communities are also negatively impacted as tax revenues are depleted, social services are in higher demand, and dozens of intangible effects ripple outward." *Testimony to Cleveland City Council, February 2, 2008.* See Policy Matters reports on foreclosure at http://www.policymattersohio.org/pdf/ForeclosureGrowth2009.pdf

[4] *City of Cleveland Community Reinvestment Area Housing Survey*, August 12, 2009, citing statistics from the American Community Survey estimates.

HUD NSP - Low Middle Moderate Eligible

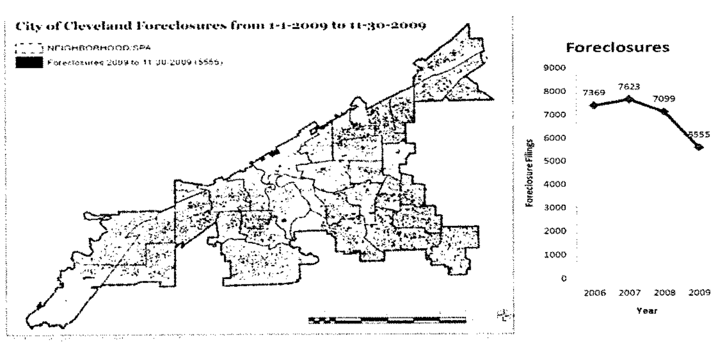


The impact of foreclosures on our communities has significantly undermined our strong history of neighborhood revitalization. Our community development objectives are to develop viable urban neighborhoods that include:

- decent housing
- a suitable living environment, and
- expanded economic opportunities - principally for persons of low and moderate income.

Each of the above elements has been adversely affected by foreclosures. The below map of foreclosure filings demonstrates that none of the 36 neighborhoods in the city have been spared.

City of Cleveland Foreclosures



Virtually every foreclosed house sits vacant at some point during the foreclosure. Once vacant, they are frequently damaged, vandalized or used for criminal activity, resulting in real and perceived health and safety threats to the surrounding homes. Frank Ford will discuss the devastating impacts in his testimony.

Foreclosures reduce the value of the foreclosed property as well as the value of surrounding properties. The reduced value decreases the assessed property tax value. Seventeen cents of each dollar paid for property taxes supports the city's operating expenses, and 9% of the city's general fund is based upon property taxes. According to Case-Shiller, the property values in the Cleveland area have declined 3.7% over the past year.[5] While that rate is lower than the decline in value in some cities, the values in Cleveland were not inflated as in cities such as San Francisco, Las Vegas or Phoenix. To make matters worse, the city's Finance Department projects a 12% decline in property value in 2010.

Lower property tax revenues cause a gap in the city's budget that is compounded by the added expenses related to vacant properties such as demolition, debris removal and other nuisance abatement tasks. The city has almost doubled nuisance abatement expenditures from Community Development Block Grant (CDBG) funds to $890,000 since 2004. That increase in expenditures for vacant properties has come during a period when block grant funds were declining.[6] The city has also dramatically increased the number of demolitions since 2004 when CDBG funds were used to demolish 225 houses. In 2009, the city expects to demolish 1,700 structures. The amount expended for demolition has increased from $1.8 million in 2004 to $6.million in 2008. In 2009, the city committed over $15,000,000 of its Neighborhood Stabilization Program (NSP) funding for demolition. Even this increase is not capable of addressing the 8,009 structures identified as "vacant and distressed."

As painful as the decrease in revenue coupled with increased expenses are for the city, the dire financial condition of the former homeowner, after suffering through a foreclosure, is worse. Financial counseling agencies have stated that it takes *at least* 2 years for a family to restore their financial circumstances and re-build their credit after a foreclosure. This estimate has been corroborated by local financial institutions.

A Comprehensive Local Response

The wave of local foreclosures required that we "re-think" our strategies for community development. The local approach may be described as comprehensive, strategic, practical and designed for the local market. Cleveland has a long history of public-private partnerships, particularly in the realm of community development. The participants include government, philanthropic, non-profit organizations, community development corporations (CDCs) and the corporate community. We have expanded upon that infrastructure to design and coordinate our recovery strategies.

The recovery strategies are comprehensive because they are intended to reinforce threats or weakness in the housing market, including:

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[5] It may also be argued that the decline in the city is greater than the Case-Shiller study area.
[6] The city received $30 million of CDBG funds in 2000. The award was $27.4 million in 2005. The 2009 allocation was $23.9 million, a small increase over the $23.6 million allocation in 2008.

1. Data collection & management: data collecting, research, tracking & monitoring,
2. Outreach and intervention with homeowners,
    a. Foreclosure prevention counseling,
    b. Financial literacy & home ownership counseling,
3. Code Enforcement,
4. Demolition,
5. Tracking and acquisition of foreclosed and vacant houses, and
6. Rehabilitation.

I will briefly discuss strategies related to each of the categories above and explain its relationship to foreclosures and vacant property. Please note that a common thread to virtually every strategy to combat foreclosures and vacant property is a collaborative effort. There is local coordination between the Mayor and city council, the city and the county, the judiciary, foundations, city-wide non-profit organizations, neighborhood organizations and universities.

For example, for over three years the Vacant and Abandoned Property Action Council (VAPAC) has been convened by Neighborhood Progress, Inc, and includes the City, the County, Housing Court, the Cleveland Neighborhood Development Coalition (the trade association for the local CDCs), the First Suburbs Consortium, NEO CANDO.

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Data Collection & Management: We had to first reorganize how we view the city and manage information. There is currently a more robust data collection and exchange structure for information to move from the academic (CWRU, CSU), government (City and County), and non-profit entities.

Claudia Coulton will discuss the significance of aggregating and disseminating data for research, analysis and planning. Her management of the NEO CANDO[7] system for collecting data and providing broad-based access is important because NEO CANDO serves a central role for accessing and sharing collected data. The NEO CANDO web-based access enables information to flow between the city, county, non-profit development agencies or policy and research organizations, such Policy Matters or The Housing Advocacy & Research Center.[8]

Property data is the lynchpin to the city's Neighborhood Typology, upon which the city as well as non-profit and philanthropic partners have based our programmatic strategies. The typology identifies market conditions based upon 9 real estate related variables in order to ascertain relative strength.[9] In areas of weak market strength we have adopted a

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[7] NEO CANDO is operated by the Case Western Reserve University, Mandel School of Applied Social Sciences, Center on Urban Poverty & Community Development. http://neocando.case.edu/cando/index.jsp

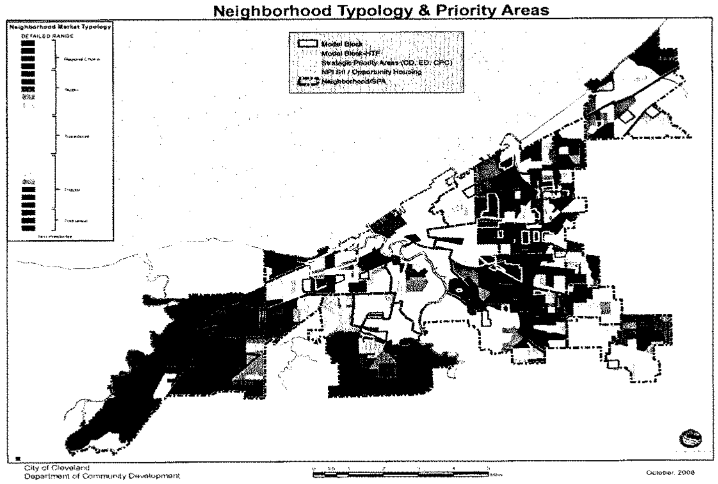
[8] The Housing Research & Advocacy Center works to eliminate housing discrimination and assure choice in Northeast Ohio by providing those at risk with effective information, intervention and advocacy. The city has used HRAC research for lending analyses. http://www.thehousingcenter.org/

[9] The Neighborhood Typology uses data for 9 variables that is aggregated to a block group level: median assessed value of parcels with 1-3 family structures, change in median value of 1-3 family homes between a baseline (1989-1991) and 2005-2008, net change in the number of 1-3 family homes from 1990-2008, percent of 1-3 family homes transferred by sheriff's deed, homeownership rate, boarded & condemned homes, percentage rated "fair" or worse by the County Auditor in 2007, percentage of homes surveyed as vacant & distressed in 2008, demolition rate from 2006-2008. http: cd.city.cleveland.oh.us

focused or targeted approach in order to better insure desired outcomes and impact. The targeted areas, called model blocks, strategic investment areas or opportunity housing areas are where programs and investments are more heavily focused. This approach is reflected in the city's NSP and NSP2 applications. The map on the next page reflects the results of the Typology analysis and indicates the priority areas.

The priority area concept is reflected in the Opportunity Housing Program that is central to the Neighborhood Stabilization Program (NSP). Opportunity Housing combines, in 6 neighborhood target areas, demolition of 300 houses, rehab of at least 150 houses for sale, rehab of up to 100 houses for lease-purchase housing for low-income families, and counseling for foreclosure prevention. The effort involves Neighborhood Progress, Inc. Cleveland Housing Network, ESOP, 6 community development corporations, the city, and funding from the State of Ohio and NSP funds.[10] The concept is also reflected in the NSP-2 proposal submitted by a consortium that includes the Cuyahoga County Land Reutilization Corp. (CCLRC), Cuyahoga County, the City, and the Cuyahoga Metropolitan Housing Authority (CMHA).

Neighborhood Typology & Priority Areas



The table below reflects how program resources would be expected to be distrtibuted relative to the Typology.

[10] The NSP Plans for the NSP awards from HUD and the Sate of Ohio are available at http://cd.city.cleveland.oh.us/

Strategy Matrix

	Regional Choice	Stable	Transitional	Fragile	Distressed
Code Enforcement Action	X	X			
Senior Initiative	X	X	X	X	X
Rehab – conv. And widely avail	X	X			
Rehab - subsidized		X	X target	X target	
Exterior		X	X	X	
Vacant Affordable		X	X target	X target	
Large scale projects - strengthen asset base		X	X	X	X
Demo and Landbank			X target	X target	X

The growth of our data infrastructure locally is an important tool to identify problems, plan strategies, track activity and to measure impact. While there have been great strides in how data is collected and organized, we continue to seek better ways to collect data and organize it for analysis.

Outreach, Intervention and Counseling: Data has assisted with efforts to assist families threatened with losing their homes to foreclosure. Statistics indicate that time is a factor in avoiding foreclosure. In the Opportunity Homes areas, canvassers from ESOP used data to identify families who have adjustable loans that are about to re-set. Those families were approached and advised to seek counseling to re-work their loans. Mark Seifert will discuss in his testimony, the efforts of ESOP as it has evolved from a local advocacy organization to a state-wide organization with one of the best track records in the country for mortgage loan workouts. ESOP is one of several local organizations that is involved with foreclosure counseling.

The United Way First Call for Help at 211 line can refer homeowners to agencies funded by the county for foreclosure prevention counseling. The State's Save the Dream effort operates in a similar manner.[11] The city also uses an average of $400,000 per year of CDBG funds to support efforts of the City's Department of Consumer Affairs and several agencies for counseling services.

As important as foreclosure prevention counseling is, there are other critical counseling needs. We firmly believe that unless people have a greater understanding of financial literacy, wealth building and homeownership counseling, Cleveland residents will have difficulty rising above precarious financial circumstances. This belief compelled the City and the County to initiate what has become the Northeast Ohio Coalition for Financial Literacy.[12] This coalition of over 35 government, non-profit organizations, universities and financial institutions is organized to inform, provide resources and assist people to

[11] http://www.com.ohio.gov/SavetheDream/

[12] http://www.neocfs.org/

become better educated about making wise financial decisions. The coalition is also evaluating ways to improve the standards and outcomes for people who participate in counseling programs.

While the need for continued foreclosure prevention counseling is important, counseling in wealth building and home ownership is necessary for sustainable improvement in our neighborhoods.[13]

Code Enforcement: Code enforcement becomes a factor after the foreclosure is filed and the resident leaves the premises. In 2008, the city identified 8,009 1to 3 family properties as vacant and distressed properties. The City's Department of Building and Housing has restructured its code enforcement approach to improve the partnership with CDCs for identification of problem properties. The City is also duplicating the vacant & distressed property survey that was undertaken in 2008. It will be completed by the end of the year. Building & Housing will also use $350,000 of NSP funds for "Operation Prevent," which will strengthen its efforts to prosecute those responsible for flipping, bulk sales and dumping vacant property. Operation prevent will enable Building & Housing to staff the Vacant Property Unit with additional inspection staff, legal staff and IT staff . The funds will also support strengthening the data system required to track transfers of foreclosed property. The identification of responsible parties is made more difficult by frequent transfers and avoidance of recording of deeds. Housing Court has aggressively fined buyers of bulk sale properties.

Demolition: Demolition is the likely outcome for most of the houses that are vacant. The city surveyed other mid-western and weak market cities and noted that most were able to rehab only 10% of vacant houses. The balance were slated for demolition. While we desire to salvage as many that we can within our strategic framework, we recognize that the volume of demolition will be high.

The Department of Building and Housing has developed strategies for both code enforcement and demolition. Demo priorities are "the worst first," those near schools, parks and playgrounds, houses in strategic areas, and those viable for deconstruction pilot programming. The strategies take into account that the need for demo will stretch the resources.

Tracking and acquisition of foreclosed and vacant houses: The sources of vacant homes are HUD, Fannie Mae, and Bank REO portfolios. That said, identifying the owner or responsible party for a particular house is more complicated. Through the Case Western Reserve University NEO CANDO program, we have improved our ability to track foreclosure filings, ARM resets, vacant property inventories, REO holdings, properties sold from REO, and demolitions on a parcel by parcel basis.

Next, is the task of gaining control of vacant and abandoned property for reuse. The establishment of the CCLRC and the consortium created for the NSP-2 proposal is integral to managing vacant properties. CCLRC will coordinate and fund a regional

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[13] A parallel need is to restrict predatory consumer loans as evidenced by the debate in Ohio over Pay Day lenders. See generally, *Policy Matters & Housing research and Advocacy Center, Trapped in Debt: The Growth of Pay day Lending in Ohio*, Rothstein and Dillman, Feb. 2007

approach to acquire, rehabilitate, demolish and maintain homes left vacant or abandoned because of foreclosure or the weakened market created by the economic crisis. With the substantial increase in real estate holding, REOs, banks and servicers began to dump REO properties on the housing market in Cuyahoga County through bulk sale and auction. Many of these properties were purchased by vacant property wholesalers which sold the property without improvement to other investors. The result is a rapid, well documented decline in average sales prices throughout Cuyahoga County. The table below shows the volume of sales and average prices for the entire county for the years 2000, 2004 and 2008.

Cuyahoga County Total Sales and Volumes

	2000	2004	2008
Number of Sales	23,162	24,734	18,579
Mean Sale Price	126,418	143,732	99,850

The CCLRC brings new resources and capacity to the problem. Specifically, (i) it has a greater ability to acquire, hold and dispose of improved and vacant property than any other consortium member; (ii) it can be the mechanism to drive hard bargains with REO holders and bank servicers and meet the property transaction timetable required by successful negotiation; and (iii) it is able to act quickly to return a salvageable property to productive use.

The CCLRC will strategically acquire and "mothball" housing units. These units may consist of individual houses, or of vacant lots resulting from demolition. Houses will be properly secured and maintained so as not to create damage to the housing market while they are being held. Holding of this real estate will take place with a maximum of ten year disposition strategy.

The CCLRC is a platform for innovation and the most nimble of the NSP-2 Consortium members. It presents the best opportunity to turn policies of the other consortium members into action in a collaborative fashion. County Treasurer Rokakis will provide more detailed testimony about the CCLRC.

Rehabilitation:

The strategy is to use either private and non-profit developers to restore homes. The traditional non-profit partners are participants in planning and implementation. The city has added over 50 re-qualified for-profit developers who have made a commitment to quality rehabilitation of homes. Through NSP funds, the City offers an 80% construction loan to redevelopers of 1-4 family homes in target areas to overcome credit access issues. In addition, the City offers gap support to bridge between the current market and the cost of quality restoration to mitigate developer risk in a fragile market.

It is recognized that houses being brought back onto the market will require additional incentives from the up-front development "gap" financing referenced above. In the NSP-2 proposal, a homebuyer credit enhancement will be provided for each home sold to income eligible buyers. This is expected to be in the form of a second mortgage of $20,000 at 0% interest, forgivable over a ten year period.

The strategies outlined today reinforce and advance the plan to create neighborhoods of choice that Mayor Jackson has developed including:

- Varying the development approach in neighborhoods based on the need and market potential of each,
- Jump starting investment in our existing housing stock and communities through expanded rehabilitation and development of model block investment areas,
- Eliminating blighting conditions that should not exist in any community and that threaten , not only the quality of life in an area but the safety of area residents,
- Supporting the markets in stable areas, and
- Redeveloping neighborhoods in a sustainable and environmentally sensitive manner.

I hope that the discussion above frames the extent of the destruction that the crisis has created. I have also outlined that the local partners are working on coordinated approaches to attack each problem area.

Challenges

The overarching challenge we face locally is that the "foreclosure crisis" is broad and changes. We must have a multifaceted response. We must also be nimble in recognizing shifts in conduct that require modification of programs. We are forced to anticipate and respond to problems, and strive to be diligent in preventing further abuse.

In pursuing those ideals, we seek assistance from state and federal policy makers:

1. Financial Counseling: Support for counseling is ongoing. There remains a high volume of loans with suspect terms that threaten borrowers. That is compounded by economic related challenges caused by job loss. The tightening of credit adds to the financial counseling need to help people improve their financial acumen.

   As Mike Seiferrt will explain, the HAMP program is hampered by process inefficiencies – even though it is much better than previous programs.

   In NSP, counseling was not permitted as a program expense, but was allowed as an admin expense. Counseling is critical to minimize further foreclosures, and is imperative to create pools of buyers for rehabilitated homes. It is a necessary program activity.

2. Property Disposition: The HUD disposition agreement with the city is dramatically better than the previous process. It should be expanded. HUD's REO contractor needs to improve its management of property in its portfolio. The number of HUD properties in deplorable condition remains too high.

Surrounding homeowners should not be subjected to open and vandalized homes with debris strewn around them.

3. Demolition: The volume of vacant houses tests our ability to find funds for demolition. The availability of NSP funds have allowed the city to significantly increase demolition over levels we had already increased. The newly formed CCLRC creates another resource for demolition, but the volume of deteriorated vacant houses will continue to test local resources. That reality is aggravated when all sources of vacant property attempt to dump deteriorated houses on municipalities.

   For example, HUD's agreement with the city is beneficial; however, HUD should assist with the cost of demolition – particularly where the property deteriorated under HUD's control. The same situation exists for HUD financed multi-family properties that default on HUD loans.

   The same is true for Fannie Mae, lenders and servicing firms. The city is frequently told "use your NSP money for demo." That response (1) shirks responsibility – often for weak management of REO portfolios, and (2) overlooks the NSP and NSP legislative intent that preferred to limit the use of funds for demolition – despite statistics that would dictate that most vacant homes should be demolished.

4. Financing: Anyone who gets a loan can get relatively good interest rates. The question is who can get a loan? Financial institutions remain disengaged with prevention and recovery. Loss mitigation efforts leave a lot of room for improved performance. Further, there is little predictability about what is needed for a "yes" decision for a home purchase loan. The same ids true for business loans. They are extremely difficult , particularly for construction related businesses. Local contractors attempting to rehab houses wrestle with access to credit.

   Credit uncertainty for construction and for buyers tests our ability to rehab vacant houses, even though we are using NSP funds to plug the gap, such a remedy is limited. Limited availability of financing creates the risk of needing to demolish houses that could have been salvaged.

<u>Conclusion</u>

The City of Cleveland, its residents and businesses have been victimized by unscrupulous actors extracting equity and value from our housing market. As the crisis undermined 20 years of progress in community revitalization, we may be bloody but our heads are unbowed. We have coalesced around the shared objectives of creating comprehensive strategies for not only combating the combined foreclosure/housing/economic crisis, but we are determined to re-build and strengthen our communities.

I have discussed issues that may seem to be separate from foreclosure, but they are not. The foreclosure problem infected the entire housing production system - on its way to sinking the economy. Our belief is that the remedy requires reinforcing the housing production system in order to be effective - a challenging task that must engage all sectors. I hope I have demonstrated that Cleveland area has accepted the challenge. We will continue to need assistance from the State and Federal governments. Thank you again for the opportunity to present my testimony today.

Mr. KUCINICH. Thank you very much, Mr. Rush.

Mr. Rokakis, you may proceed for 5 minutes. And I'm very grateful for your presence here. Please continue.

STATEMENT OF JIM ROKAKIS

Mr. ROKAKIS. Mr. Chairman, members of the committee, thanks for the opportunity to address you today about the impacts of the foreclosure crisis on this county, Cuyahoga County, where I serve as treasurer.

This is, I believe, the fourth time I've had the honor to appear before a congressional committee.

It's sad to say that this State and this county have never been in worse shape, never. Worse yet is the fact that things will worsen and that we have not bottomed out. People talk about endless wars these days in Congress. Mr. Chairman and members of the committee, this is an endless war. We've been in the middle of a foreclosure crisis here since the late 1990's. We are losing that war.

Consider these facts: Serious delinquencies, not foreclosures, but properties that are delinquent 90 days and beyond, are at an all-time high. If you look at this chart, you can see from the graph loans that are at least 90 days late, 90 days in arrears, we call them zombie loans, we talked about zombie bankers, zombie loans as well, loans that aren't curing and will never cure. Banks have simply stopped filing foreclosures on these properties. They don't want them, they refuse to compromise on these loans either guaranteeing they get into that category of 90-day-late loans.

This growing number of 90-day plus delinquencies hides the sad truth. Supreme Court statistics in Ohio show that foreclosures in the State are up 1½ percent over last year, but if you include these delinquencies in the foreclosure filings, it would push Ohio's filings to over 100,000. And it's right there on the chart.

If you take a look at where we are today, that's more than twice the number we saw back in 2000. I believe there's another chart, Steve, and Paul you got to get up. You have the other chart there. Take a look at that, look at the 90-day plus that are foreclosure filings in the State of Ohio. It's more than twice the number we had in 2000, the first year Ohio led the court file on foreclosure filings, more than twice the number in 2001 and 2002.

This is no longer a city problem. More and more this foreclosure crisis is a suburban problem. I'd like to show in the next graph which will show you that filings now in the suburbs far outstrip filings in the city of Cleveland.

The increase in unemployment in this region has led to a historic increase in foreclosures and delinquencies, as you said, Mr. Chairman, now on prime rate loans. The historic cure rate on delinquent prime loans, those are prime loan borrowers that catch up on their delinquencies, have fallen from 45 percent in 2000 to 2006. Again, that's the percentage of people who are in foreclosure back on prime rate loans, 45 percent of those folks who cure fall into just 6.6 percent in the August study by Fitch Rating Services.

To complete the perfect storm, we are now in the situation where declining home values have trapped thousands of our county homeowners in upside down mortgages where the value of the home is less than the value left on the mortgage. These people are effectively tied to the land, not very different from serfs under the feudal economic system. People who have to sell their homes for a new job or transfer are simply out of luck. The same is true for people who lose their homes, people who lose their jobs or have their hours cut back as the councilman stated.

Three of Ohio's metropolitan areas are ranked in the top 50 for cities with mortgages under water. The Home Affordable Modification Program [HAMP], has failed here in Ohio. You will hear details from others, but suffice it to say, the program here has flopped with the fourth worst loan modification rate in the country right here in Ohio. Why do we continue in government to tout failed programs like HAMP? Why? Why don't we just admit that the program is a failure and start over with a program that actually works?

What does actually work, Mr. Chairman, is foreclosure counseling, not 800 numbers, but a sit-down, face-to-face counseling session where a trained counselor helps troubled homeowners navigate muddled foreclosure waters. We know that counseling works. For 3 years we have had our own local prevention efforts here monitored by the Center for Community Planning and Development at Cleveland State. We've had hard data to back up that assertion. When delinquent homeowners work with counseling agencies here in Cuyahoga County, 53 percent of the time foreclosures can be averted. This is a remarkable success rate, but the number of needful homeowners still far exceeds the capacity of our local non-profit groups that serve them. Counseling is a long and hard slog. It's not easy, fast, but it's effective and relatively inexpensive, especially when weighed against the staggering costs to our communities. When a foreclosure proceeds to judgment sale, we know what the cost is to the community. We need to make the investment in solutions that experience demonstrates actually works and stop relying on the lending industry to solve the problem that they helped to create in the first place.

The National Foreclosure Mitigation Counseling Program funding for Ohio is being slashed from five million to $2½ million statewide, with some of that money coming in to Ohio going to legal services leaving less than $1.2 million for State counseling. We need that amount here in Cuyahoga County alone. Please, if you do nothing else, please help us at that level of funding.

I saw a report, members of the committee, last week that Chairman Geithner, Treasurer Geithner makes calls on a daily basis to folks on Wall Street, five or six bankers, he touches base to see how the economy is doing. I passed my card out to Ms. Caldwell. I think the Treasury Secretary needs to call people in the counseling programs here in this room. He needs to make calls just once in a while to ask how the programs are doing and I think he'll get the sad truth that they are not working here in northeast Ohio. Thank you.

[The prepared statement of Mr. Rokakis follows:]

JIM ROKAKIS, CUYAHOGA COUNTY TREASURER

DOMESTIC POLICY SUBCOMMITTEE OF THE OVERSIGHT & GOVERNMENT REFORM COMMITTEE CLEVELAND, OHIO DECEMBER 7, 2009 – 10:00 AM

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO ADDRESS YOU TODAY ABOUT THE IMPACTS OF THE FORECLOSURE CRISIS IN THIS COUNTY – CUYAHOGA COUNTY – WHERE I SERVE AS TREASURER. THIS IS THE FOURTH TIME I HAVE APPEARED BEFORE A CONGRESSIONAL COMMITTEE. I AM SAD TO SAY THAT THIS STATE AND THIS COUNTY HAVE NEVER BEEN IN WORSE SHAPE. NEVER. WORSE YET IS THAT THINGS WILL WORSEN, WE HAVE NOT BOTTOMED OUT. PEOPLE TALK ABOUT ENDLESS WARS. MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, THIS IS AN ENDLESS WAR. WE HAVE BEEN IN THE MIDDLE OF THIS FORECLOSURE CRISIS SINCE THE LATE 90'S. WE ARE LOSING THE WAR. CONSIDER THESE FACTS:

- SERIOUS DELINQUENCIES – 90 DAYS AND BEYOND AND PENDING FORECLOSURES ARE AT AN ALL-TIME HIGH.
- AS YOU CAN SEE FROM THE GRAPH, LOANS THAT ARE AT LEAST 90 DAYS IN ARREARS ARE FILLED WITH "ZOMBIE LOANS", LOANS THAT AREN'T CURING AND WILL NEVER CURE. BANKS HAVE SIMPLY STOPPED FILING FORECLOSURES ON THESE PROPERTIES – THEY DON'T WANT THEM, BUT THEY REFUSE TO COMPROMISE ON THESE LOANS EITHER.

- **THIS GROWING NUMBER OF 90 DAY PLUS DELINQUENCIES HIDES THE SAD TRUTH. SUPREME COURT STATISTICS SHOW THAT FORECLOSURES IN OHIO ARE UP 1.5% OVER LAST YEAR, BUT IF YOU INCLUDED THESE OTHER DELINQUENCIES IN THE FORECLOSURE FILINGS, IT WOULD PUSH OHIO'S FILINGS TO OVER 100,000. SEE GRAPH.**
- **THIS IS NO LONGER A CITY PROBLEM. MORE AND MORE THIS FORECLOSURE CRISIS IS A SUBURBAN PROBLEM, AS THIS GRAPH DEMONSTRATES.**
- **THE INCREASE IN UNEMPLOYMENT IN THIS REGION HAS LED TO A HISTORIC INCREASE IN FORECLOSURES AND DELINQUENCIES ON PRIME LOANS. THE HISTORIC CURE RATE ON DELINQUENT PRIME LOANS – LOANS THAT CATCH UP ON THEIR DELINQUENCIES – HAVE FALLEN FROM 45% IN 2000-2006 TO JUST 6.6% ACCORDING TO AN AUGUST STUDY BY FITCH RATING SERVICES.**
- **TO COMPLETE THE PERFECT STORM, WE ARE NOW IN A SITUATION WHERE DECLINING HOME VALUES HAVE TRAPPED THOUSANDS OF OUR COUNTY'S HOMEOWNERS IN UPSIDE DOWN MORTGAGES – WHERE THE VALUE OF THE HOME IS LESS THAN THE REMAINING BALANCE OF THE MORTGAGE. THESE PEOPLE ARE EFFECTIVELY "TIED TO THE LAND", NOT VERY DIFFERENT THAN SERFS UNDER THE FEDERAL ECONOMIC SYSTEM. PEOPLE WHO HAVE TO SELL THEIR HOMES FOR A NEW JOB OR TRANSFER ARE SIMPLY OUT OF LUCK. THE SAME IS TRUE FOR PEOPLE WHO LOSE THEIR JOBS OR HAVE THEIR**

HOURS CUT BANK. THREE OF OHIO'S METROPOLITAN AREAS ARE RANKED IN THE TOP 50 FOR CITIES WITH MORTGAGES UNDER WATER.

THE 'MAKING HOMES AFFORDABLE PROGRAM' ('HAMP') HAS FAILED HERE IN OHIO. YOU WILL HEAR THE DETAILS FROM OTHERS, BUT SUFFICE TO SAY THE PROGRAM HERE HAS FLOPPED WITH THE FOURTH WORSE LOAN MODIFICATION RATE IN THE COUNTRY HERE IN OHIO. WHY DO WE CONTINUE IN GOVERNMENT TO TOUT FAILED PROGRAMS LIKE 'HAMP'? WHY CAN'T WE ADMIT WE BLEW IT AND START OVER WITH A PROGRAM THAT ACTUALLY WORKS?

WHAT DOES ACTUALLY WORK, MR. CHAIRMAN IS FORECLOSURE COUNSELING -- NOT 800 NUMBERS, BUT SIT DOWN FACE TO FACE COUNSELING WHERE A TRAINED COUNSELOR HELPS TROUBLED HOMEOWNERS NAVIGATE MUDDLED FORECLOSURE WATERS.

WE KNOW THAT COUNSELING WORKS. FOR THREE YEARS WE HAVE HAD OUR LOCAL PREVENTION EFFORTS MONITORED BY THE CENTER FOR COMMUNITY PLANNING AND DEVELOPMENT AT CLEVELAND STATE UNIVERSITY AND WE HAVE HARD DATA TO BACK UP THAT ASSERTION. WHEN DELINQUENT HOMEOWNERS WORK WITH COUNSELING AGENCIES, LOOMING AND PENDING FORECLOSURES CAN BE AVERTED 53% OF THE TIME. THAT IS A REMARKABLE SUCCESS RATE, BUT THE NUMBER OF NEEDFUL HOMEOWNERS STILL FAR EXCEEDS THE CAPACITY OF OUR LOCAL NONPROFIT GROUPS TO SERVE THEM. COUNSELING IS A LONG, HARD SLOG. IT'S NOT EASY OR FAST BUT IT IS VERY EFFECTIVE AND RELATIVELY INEXPENSIVE, ESPECIALLY WHEN WEIGHED AGAINST THE STAGGERING

COSTS TO OUR COMMUNITIES WHEN A FORECLOSURE PROCEEDS TO JUDGMENT AND SALE. WE NEED TO MAKE THE INVESTMENT IN SOLUTIONS THAT EXPERIENCE DEMONSTRATES ACTUALLY WORKS AND STOP RELYING ON THE LENDING INDUSTRY TO SOLVE THE PROBLEM THAT THEY CREATED IN THE FIRST PLACE.

Mr. KUCINICH. Thank you, Mr. Rokakis. Excellent suggestion.

I want to thank Ms. Caldwell for being here to represent the Treasury Department, talk about the HAMP program. I look forward to your testimony. You may begin.

STATEMENT OF PHYLLIS CALDWELL

Ms. CALDWELL. Chairman Kucinich, Ranking Member Jordan, Councilman LaTourette, thank you for the opportunity to testify about the Treasury Department's comprehensive initiatives to stabilize the U.S. housing market and support homeowners.

The administration has made strong progress in ramping up the Making Home Affordable programs. Although the number of homeowners being helped continues to grow, we recognize that Making Home Affordable a success faces challenges in converting borrowers to permanent mortgage modifications and fostering effective communication between the servicers and borrowers. We can all do better in ensuring that these programs are a success.

I'd like to briefly address four issues that we are very focused on with the Making Home Affordable program. First is conversion from trial to permanent modification; second, foreclosures; third, the transparency; and fourth, unemployment. On conversion, our most immediate critical challenge is converting Home Affordable Modification or HAMP trial modifications to permanent modifications. Servicers report that about 375,000 trial modifications will be more than 3 months old and eligible to convert to permanent prior to December 31st. The Treasury is implementing an aggressive campaign to increase the number of permanent modifications. We have required conversion plans from the seven largest servicers which account for 85 percent of the market. Treasury and Fannie Mae account liaisons are assigned to these servicers and followup daily to monitor progress. We have engaged 81 HUD field offices and thousands of State and local governments in this effort. We are using our Web site to simplify the modification process through instructional videos, downloadable forms and an income verification checklist. This week we hold our 20th formal event connecting servicers, housing counselors and homeowners.

We understand that foreclosures are a growing concern. In HAMP, any pending foreclosure sale must be suspended and no new foreclosure proceedings may be initiated during the trial period. Foreclosure proceedings may not be initiated or restarted until the borrower has failed the trial period and has been considered and found ineligible for other foreclosure prevention options. We are working with stakeholders to review and develop improvements to the communication between servicers and borrowers and to existing rules so no borrower being evaluated for HAMP is subject to foreclosure.

On transparency, beginning in August, we publicly reported servicer specific results. October's report contained trial modification data by State. The November report scheduled to be released this Thursday will contain permanent modification data by servicer. And beginning in January, reports will include a matrix for selecting servicer performing in categories such as response time for completed applications.

In addition, we are requiring servicers to send borrowers notices that clearly explain to borrowers why they did not qualify for HAMP modification. Borrowers are also able to ask for a second look on their application.

Regarding the transparency of the net present value model, a key component of the eligibility test, we are increasing public access to the net present value white paper, which explains the methodology used in the models. We are also working to increase transparency of the model so that there can be a wider understanding of how it works among housing counselors and borrowers.

Regarding unemployment, HAMP is designed to allow unemployed borrowers to participate. Borrowers with nine or more months of unemployment insurance remaining are eligible to include unemployment insurance in their income for consideration in the modification request. We recognize, however, that some unemployed borrowers will have trouble qualifying, impacting markets facing high unemployment. The Treasury is aware of a number of policy proposals that have been advocated to further assist unemployed borrowers. While our focus is helping as many borrowers as quickly as possible under the current program, Treasury is actively reviewing various ideas to improve program effectiveness in this area.

While we acknowledge those concerns, HAMP is on track to provide a second chance for up to three to four million borrowers by the end of 2012. Based on a recent survey of servicers, we estimate that, as of the beginning of November, up to 1½ million homeowners were both 60 days delinquent and likely to meet the HAMP requirements. This puts the approximately 650,000 borrowers who had begun trial modifications as of the beginning of November in complete context.

As of November 17th, over 680,000 borrowers are in active trial modification. Servicers report that over 900,000 borrowers have received offers to begin trial modifications. On average, borrowers in trial modifications have had their payments reduced by over $550 a month, for a reduction of roughly 35 percent from their prior payment.

Over 230,000 adjustable rate mortgages and nearly 450,000 fixed rate mortgages have been modified on a trial basis to sustainable levels. HAMP has made great strides in less than a year and we look forward to working with you to enhance the program's performance and help keep Americans in their homes. Thank you.

[The prepared statement of Ms. Caldwell follows:]

December 7, 2009

Testimony of
Phyllis R. Caldwell

Chief of the Homeownership Preservation Office
U.S. Department of the Treasury

Before the House Committee on Oversight and Government Reform Subcommittee on Domestic Policy

Examining Local Efforts to Address the Continuing Foreclosure Crisis: Perspectives from Cleveland

Chairman Kucinich and Ranking Member Jordan, thank you for the opportunity to testify today on the Administration's comprehensive initiatives to stabilize the U.S. housing market and support homeowners. The Administration has made strong progress in ramping up the Making Home Affordable programs. Over 650,000 borrowers have entered into trial modifications and are already achieving significant savings. For the program to succeed in the longer run, however, we recognize that we face several key challenges: reaching more borrowers who are eligible for the program, but who often don't know how to get help or are not starting trial modifications even when approved; helping more borrowers in trial modifications convert to permanent modifications so sustainable help can be offered; and continuing to improve transparency and enhance the borrower experience, so the public and homeowners can be confident the program is assisting eligible homeowners as intended. We can all do better in ensuring that the Making Home Affordable programs are a success.

On February 18, the Administration announced the Homeowner Affordability and Stability Plan – a broad set of programs designed to stabilize the U.S. housing market and keep millions of homeowners in their homes.

The Administration has taken broad action to stabilize the housing market, including providing support for mortgage affordability across the market. Continued support for Fannie Mae and Freddie Mac and the Treasury's Mortgage Backed Securities (MBS) purchase program, along with MBS purchases by the Fed have helped to keep interest rates at historic lows. Over 3 million Americans have taken advantage of these lower rates in 2009 to save money through refinancing. For example, on a median house purchase of $200,000, a one-percent reduction in interest rates, on a purchase or refinance, saves the family over $120 per month for the thirty-year life of the loan -- real help for America's homeowners. We are working to provide increased access to financing for state and local housing finance agencies, which provide sustainable homeownership and rental resources in all 50 states, for working Americans. In addition, the first-time homebuyer tax credit has helped hundreds of thousands of responsible Americans purchase a home. The American Recovery and Reinvestment Act also supported the Low Income Housing Tax Credit/Tax Credit market by creating an innovative Treasury Tax Credit Exchange Program (TCEP) and providing gap financing through the HUD Tax Credit Assistance Program (TCAP), in combination these programs are estimated to provide over $5 billion in support for affordable rental housing. The Recovery Act also provided $2 billion in support for the Neighborhood Stabilization Program, which is designed to rebuild value in areas hardest hit by foreclosures, in addition to $4 billion provided for the program in the Housing and Economic Recovery Act.

There are clear signs that our efforts are having a substantial impact. While there are still risks, we are seeing signs of stabilization in housing, as housing inventories continue to fall. House prices measured on a year-over-year basis are declining less rapidly, with some house price measures posting increases in recent months. Conventional 30 year fixed rate mortgages remain near historic lows, and more than three million GSE borrowers refinanced in 2009 into loans with lower interest rates, and have saved $150, on average per month.

The Home Affordable Modification Program (HAMP), which provides eligible homeowners the opportunity to significantly reduce their monthly mortgage payment, is a key part of this effort, designed to help millions of homeowners remain in their homes and prevent avoidable foreclosures. As of November 17, over 680,000 borrowers are in active modifications, saving an average of over $550 a month on their monthly mortgage payments. Servicers report that over 900,000 borrowers have received offers to begin trial modifications.

HAMP is on track to provide a second chance for up to 3 to 4 million borrowers by the end of 2012, and we are averaging over 20,000 trial modifications per week. As with any new program of this size and complexity, HAMP faces a number of challenges; including converting trial modifications to permanent modifications and helping Americans stay in their homes in an environment of elevated unemployment. The Administration is working to address these challenges and to maximize the effectiveness of the HAMP program going forward.

Our most immediate and critical challenge is converting trial modifications to permanent modifications. All mortgage modifications begin with a trial phase to allow borrowers to submit the necessary documentation and determine whether the modified monthly payment is sustainable for them. As the first round of modifications reaches the deadline to convert, Treasury is implementing an aggressive conversion campaign to address the challenges that borrowers confront in receiving permanent modifications.

Currently servicers report that about 375,000 trial modifications will have finished a three month trial period with timely payments before 12/31/2009. Informal servicer survey data indicate that approximately 30% of borrowers in trial modifications have submitted complete documents and need to be decisioned by servicers. Housing counselors and homeowners report that servicers are losing documents, while servicers report that homeowners are not providing documents despite repeated outreach. Thousands of borrowers have successfully converted trial modifications to permanent modifications – but this is a low number compared to the total number of trial modifications. Although we know that not every borrower will qualify for a permanent modification, we are disappointed in the permanent modification results thus far. We all need to do better at converting borrowers to permanent modifications. For that reason, the program's central focus at this point is converting borrowers into permanent modifications where they qualify. As part of our conversion drive, the Administration remains committed to transparency – and to that end we will provide servicer specific data on permanent modifications this Thursday in our monthly public report.

Last week, Treasury kicked off a "Mortgage Modification Conversion Drive" including a number of aggressive actions to increase the number of permanent modifications. Those actions include the following:

- Streamlining the application process for servicers and borrowers. Standardized paperwork makes it easier for borrowers to request a modification and increases the efficiency with which servicers evaluate those requests.
- Publishing servicer-specific conversion rates in the next public report.
- Punitive measures for servicers. Those that do not meet their obligations under the program contracts will be subject to consequences which may include corrective action, withholding or clawbacks of servicer incentive payments and other remedies.
- Increased communication with servicers. On December 7, we held an in-person meeting with servicers in Washington, DC to focus on converting borrowers to permanent modifications where they qualify.
- Requiring each servicer to report to us twice a day on conversion progress.
- The implementation of "SWAT Teams," made up of Treasury staff, as well as staff from Fannie Mae, who have been sent to the largest servicer shops this week to ensure that servicers are processing conversions in a thorough, timely and efficient manner.
- New tools for borrowers have been added to our website, www.makinghomeaffordable.gov to help borrowers submit their documents.
- Engaging key state and local organizations and housing counseling groups in an outreach campaign to help borrowers submit the documents required to convert to permanent modifications.

Mortgage Modification Conversion Drive

We are focused on reaching homeowners who are eligible for permanent mortgage modifications. The mortgage modification conversion drive includes a number of elements mentioned above, but are outlined in more detail below.

- Servicer Accountability. In addition to the Administration's ongoing efforts to hold servicers accountable for their commitment to the program and responsibility to borrowers, the following measures will be implemented during the conversion campaign:
    - We required the seven largest servicers (representing nearly 90% of all active Trial Period Plans) to submit conversion plans demonstrating their ability to reach a decision on each loan for which they have documentation and to communicate either a modification agreement or denial letter to those borrowers on or before December 31, 2009. We also required servicers to submit their strategy for obtaining documentation from borrowers who are currently making payments under a trial period plan but have not submitted all of their documentation. Treasury reviewed the adequacy of these plans and required servicers to correct any deficiencies.
    - To emphasize for servicers the importance that Treasury places on the Conversion Campaign and to assist servicers in successfully transitioning the maximum number of eligible borrowers to permanent modifications, teams comprised of

Treasury and Fannie Mae account liaisons are being assigned to the offices of the top seven servicers. The imbedded teams will monitor daily progress against the servicer's plan and help resolve policy issues that are impeding the conversion process. Daily progress will be aggregated at the end of each business day and reported to the Administration.

- The December MHA Servicer Performance Report will include the number of active trial period modifications that will convert by the end of the year if all borrower documents are received, sorted by servicer and date, and support a permanent modification.

- Servicers will be required to report to the Administration the status of all trial modifications in their portfolio in order to provide a more comprehensive understanding of the program's overall performance and effectiveness.

- Web tools for borrowers. Because the document submission process can be a challenge for many borrowers, the Administration has created new resources on www.MakingHomeAffordable.gov to simplify and streamline this step. A new section of the web site includes comprehensive information about how the trial phase works and what borrower responsibilities are to convert to a permanent modification. Other features include:

    - A new instructional video which provides step by step instruction for borrowers;

    - Links to all of the required documents and an income verification checklist to help borrowers request a modification in four easy steps;

    - A conversion guide for borrowers who are in the trial phase;

    - New web banners and tools for outreach partners to drive more borrowers to the site and Homeowner's HOPE™ Hotline (888-995-HOPE);

    - An outreach toolkit for housing counselors, state, local and community leaders to use in their direct outreach to constituents.

    - Contact information for the U.S. Department of Housing and Urban Development to report suspected housing discrimination.

- Engagement of state, local and community stakeholders. Through the conversion drive, the Administration is engaging all levels of government - state, local and county to both increase awareness of the program and expand the resources available to borrowers as they navigate the modification process.

    - HUD is engaging staff in its 81 field offices to distribute outreach tools. HUD will also encourage its 2700 HUD-Approved Counseling Organizations to distribute outreach information to participating borrowers to ensure that they have the tools to serve as trusted resources

    - By engaging the National Governors Association (NGA), National League of Cities (NLC) and National Association of Counties (NACo), the Administration is connecting with the thousands of state, local, and county offices on the frontlines in large and small communities across the country that are hardest hit by the foreclosure crisis. These offices now have the tools to increase awareness of the program, connect with and educate borrowers and grassroots organizations on how to request a modification and take the additional steps to ensure they are converted to permanent status; and serve as an additional trusted resource for borrowers who are facing challenges with the program.

- In partnering with the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR), state regulators now have enhanced tools to assist borrowers who are facing challenges in converting to a permanent modification and report to the Administration on the progress and challenges borrowers and servicers are facing on the ground. Regulators are now able to work directly with our escalation and compliance teams to ensure that HAMP guidelines are consistently applied.

Operations and Compliance

Compliance

Freddie Mac, Treasury's compliance agent for HAMP, has very robust compliance program in place for HAMP. Freddie Mac began reviewing servicers in July. Recognizing that many of the servicer's processes are newly developed and most modifications are still in their trial periods, these reviews have focused on the servicer's implementation activities, looking to identify process improvements. As loans move into the official modification status and as servicers' processes mature, Freddie Mac's reviews will focus more on risk-based activities and compliance trend issues.

Freddie Mac also began a "second look" review process, where Freddie Mac will review a sample of delinquent loans to ensure that borrowers have been solicited and properly evaluated for HAMP. This "second look" process began in August, and is designed to minimize the likelihood that borrower applications are overlooked or that applicants are inadvertently denied a modification.

Treasury has a compliance committee for HAMP to review and understand servicers' compliance results and determine appropriate remedies. The compliance committee's actions range from requiring improperly denied loans to be re-assessed and the borrower solicited, to operational enhancements, additional servicer oversight or monetary actions. Monetary remedies may include withholding or reducing incentive payments to servicers, or requiring repayments of prior payments made to servicers with respect to affected loans. In addition, underperforming or non-performing servicers may become subject to additional, stricter compliance reviews and monitoring.

Escalation Enhancements

Treasury has made a number of improvements to its escalation process. We have worked with Fannie Mae to set up an escalation call center so that borrowers may seek immediate assistance in completing a modification request, or to report suspected misapplication of HAMP program rules by a servicer. The staff at this center have had training specific to the HAMP program so that they will be able to work with servicers to resolve borrower issues, and to report non-compliance through the appropriate channels. The staff are to review file documentation, review decisions, and connect with servicers to reevaluate HAMP applications. In addition, the escalation team is able to refer cases to our compliance team and/or Treasury to report program violations. Fannie Mae has created a hotline for counselors and government officials who are working on behalf of borrowers and have specific HAMP concerns. Treasury also collects data from the call center to monitor case response times, common problems, and help Treasury monitor the program's effectiveness.

Servicer Metrics & Data

On August 4, we began publicly reporting servicer-specific results on a monthly basis. These reports provide a transparent and public accounting of individual servicer performance by detailing the number of trial modification offers extended and the number of trial modifications underway. As more detailed data is collected from servicers and validated through Treasury's data mart, Treasury will release reports with greater detail on servicer performance. The October report, contained trial modification data by state. The November report, set to be released on December 10th, will contain permanent modifications by servicer. Beginning in January, the reports will include operational metrics to measure the performance of each servicer in categories such as borrower wait time in response to inquiries and response time for completed applications.

Home Affordable Modification Program Design and Goals

HAMP Guiding Principles

HAMP is built around three core concepts, designed to help the large segment of at-risk homeowners where foreclosure is both avoidable and where the homeowner wants to stay in the home.

First, the program focuses on affordability, in an effort to ensure that borrowers who hope to remain in their homes will be able to afford the modified mortgage payment structure. Every modification under the program must lower the borrower's monthly mortgage payment to 31percent of the borrower's monthly gross income. The borrowers' modified monthly payment of 31 percent debt to income (DTI) will remain in place for five years, provided the borrower remains current. We believe HAMP creates newly modified affordable loans that homeowners can both afford and understand.

Second, HAMP's pay-for-success structure aligns the interests of servicers, investors and borrowers in ways that encourage loan modifications that will be both affordable for borrowers over the long term and cost-effective for taxpayers.

HAMP offers "pay for success" incentives to servicers, investors and borrowers for successful modifications. Servicers receive an up-front payment of $1,000 for each successful modification after completion of the trial period, and "pay for success" fees of up to $1,000 per year for three years, provided the borrower remains current. Homeowners may earn up to $1,000 towards principal reduction each year for five years if they remain current and pay on time. HAMP also matches reductions in monthly payments dollar-for-dollar with the lender/investor from 38 percent to 31 percent DTI. This requires the lender/investor to take the first loss in reducing the borrower payment down to a 38 percent DTI, requiring lenders/investors to share in the burden of achieving affordability. To encourage the modification of current loans expected to default, HAMP provides additional incentives to servicers and lenders/investors after current loans are modified.

Third, participating servicers are required to evaluate every eligible loan using a standard net present value (NPV) test. If the test is positive, the servicer must modify the loan. Under HAMP's loan modification guidelines, mortgage servicers are prevented from "cherry-picking" which loans to modify in a manner that might deny assistance to borrowers at greatest risk of foreclosure.

HAMP Goals and Eligible Population

The Administration expects that HAMP can help millions of at risk homeowners remain in their homes, and we are progressing toward our goal of providing assistance to as many as 3-4 million borrowers through the end of 2012.

Today, many borrowers are facing foreclosure or in some stage of the foreclosure process. These homeowners are struggling for a number of reasons, many of them outside the control of the borrower:

- Some were put in unsustainable loans;
- Many have seen their incomes decline;
- And some just bought too much home in the hopes of being able to refinance or sell after further appreciation.

HAMP is intended to help an important segment of these borrowers who are currently at-risk of foreclosure or who will be at risk prior to the end of 2012. The program is targeted to help homeowners who:

- Occupy their home as their primary residence,
- Have a loan balance less than $729,750,
- Took out their mortgage prior to Jan. 1, 2009,
- Have a mortgage payment that is greater than 31% of their gross monthly income, and
- Can afford to make a reasonable payment on a modified mortgage.

Among this target population, we also expected that there would unfortunately still be some borrowers who would not respond to outreach efforts or who would not act on trial modification offers when extended, though every effort was planned to reach out to this population.

Based on a recent survey of servicers, we estimate that as of the beginning of November there were fewer than 1.5 million homeowners who were both 60+ days delinquent and likely to meet the HAMP requirements. This puts the approximately 650,000 borrowers who had begun trial modifications as of the beginning of November in a more complete context. As we have continually stressed, while no one wants to see foreclosures, not all delinquent borrowers will qualify for HAMP modifications.

Borrowers who are in a trial modification, or have moved to permanent are seeing significant benefits:

- Borrowers have had, on average their payments reduced by over $550 per month, a reduction of roughly 35 percent from their prior payment.
- Over 230,000 adjustable rate mortgages, and nearly 450,000 fixed rate mortgages have been modified, on a trial basis, to sustainable levels.

For the millions of homeowners who are eligible for HAMP, the program provides a critical opportunity to stay in their homes. It is providing peace of mind to families who could not stay current on their mortgages or who only recently have fallen behind on payments. It is helping to stabilize home prices for all American homeowners and, in doing so, aiding the recovery of the U.S. economy. However, it will not reach those outside of the eligibility criteria and was not designed to help every struggling homeowner. Even with HAMP expected to help millions of homeowners remain in their homes, we unfortunately should still expect millions of foreclosures for the reasons mentioned above, as President Obama noted when he launched the program in February.

Policy Developments and Challenges:

As with any new program with the size and complexity of HAMP, the program faces a number of challenges, which the Administration is addressing aggressively.

Home Affordable Foreclosure Alternatives

We recognize that any modification program seeking to avoid preventable foreclosures has limits, HAMP included. HAMP does not, nor was it ever intended to address every delinquent loan. In these instances, the borrower may benefit from an alternative that helps the borrower transition to more affordable housing and avoid the substantial costs of a foreclosure. For instance, some borrowers do not have sufficient resources to support a HAMP modification at 31% of their income. For borrowers such as these, the Foreclosure Alternatives Program can help prevent costly foreclosures and minimize the damage that foreclosures impose on borrowers, financial institutions and communities. For those borrowers who meet the eligibility criteria for HAMP but do not successfully complete a Trial Period Plan, or default on a HAMP modification, on November 30 we published guidelines for the Foreclosure Alternatives Program, which provides incentives for short sales and deeds-in lieu of foreclosure where borrowers are unable or unwilling to complete the HAMP modification process. Borrowers are eligible for relocation assistance of $1,500 and servicers will receive a $1,000 incentive for completing a short sale or deed-in-lieu. In addition, investors will be paid up to $1,000 for allowing short sale proceeds to be distributed to subordinate lien holders.

Foreclosure proceedings

We have heard from borrowers that more clarification is needed about the rules regarding foreclosure when borrowers apply for a trial mod and during the trial period. Borrowers have expressed particular concerns about notices regarding foreclosure actions that were begun before they were considered for HAMP. Under the contract that all participating servicers have signed, any pending foreclosure sale must be suspended and no new foreclosure proceedings may be initiated during the trial period. Foreclosure proceedings may not be initiated or restarted until the borrower has failed the trial period and the borrower has been considered and found ineligible for other available foreclosure prevention options. Servicers who violate any of these rules are considered non-compliant. Counselors and borrowers should report violations through the escalation channels. Freddie Mac receives trend information and can view all complaints recorded by Fannie Mae. This complaint information is then factored into Freddie Mac's risk analysis to determine frequency and type of compliance activities to be performed at servicers. If a pattern or significant increase in complaints occur, Freddie Mac will, and has, performed targeted reviews.

In addition, Treasury has convened an integrated working group including servicers, foreclosure attorneys and housing advocacy organizations to review and develop improvements to our existing foreclosure suspension rules, to ensure that no borrower being evaluated for HAMP is subject to foreclosure.

Improving Transparency

Every borrower is entitled to a clear explanation if they are determined to be ineligible for a HAMP modification. Treasury has established denial codes that require servicers to report the reason for modification denials in writing to Treasury. Servicers are now required to use those denial codes as a uniform basis for sending letters to borrowers who were evaluated for HAMP but denied a modification. In those letters, borrowers will be provided with a phone number to contact their servicer as well as the HOPE hotline, which has counselors who are trained to work with borrowers to help them understand reasons they may have been denied a modification and explain other modification or foreclosure prevention options that may be available to them.

Transparency of the Net Present Value (NPV) model – a key component of the eligibility test – is also important. We are increasing public access to the NPV white paper, which explains the methodology used in the NPV model. We are also working to increase transparency of the NPV model, including new tools that counselors can use to assist distressed homeowners applying for modifications. To ensure accuracy and reliability, Freddie Mac, acting as our compliance agent, conducts periodic audits of servicer's implementation of the model. If servicers' models do not meet Treasury's NPV specifications, Freddie Mac will require the servicers to no longer use their own implementation of the model and revert back the NPV application available through the MHA Servicer Portal.

Unemployment

HAMP has been designed to allow unemployed borrowers to participate in the program. Unemployed borrowers who have 9 months or more of unemployment insurance (UI) remaining are eligible to include UI in their income for consideration in the NPV calculation. Unemployed borrowers are also allowed to include other sources of passive income like rental income as well as income from an employed spouse, which will qualify some borrowers for a modification. We recognize, however, that some unemployed borrowers will have trouble qualifying for a modification because their income is insufficient to pass the NPV test.

Treasury is aware of a number of policy proposals that have been advocated to further assist unemployed borrowers, including the model provided by Pennsylvania's Homeowners' Emergency Mortgage Assistance Program (HEMAP), the Foreclosure and Unemployment Relief Plan proposed by academics at the University of Wisconsin, proposals put forward by economists from the Federal Reserve Bank of Boston, and other ideas. While our key focus is on helping as many borrowers as quickly as possible under the current program, Treasury recognizes that unemployment presents unique challenges and is still actively reviewing various ideas and suggestions in order to improve implementation and effectiveness of the program in this area.

Conclusion

In nine months, the Administration has accomplished a great deal and helped homeowners across the country. But we recognize the continued commitment needed to help American families during this crisis and will aggressively continue to build on our progress to date.

Sustained recovery of our housing market, and the mitigation of foreclosures, is critical to lasting financial stability and promoting a broad economic recovery.

We look forward to continuing to work with you to help keep Americans in their homes, restore stability to the U.S. housing market and ensure a sustained economic recovery.

Mr. KUCINICH. Thank you very much, Ms. Caldwell.

The committee is now going to go to the period where we begin to question witnesses. Each one of us will have 5 minutes, and I'm going to begin my 5 minutes right now. A question to Ms. Caldwell: The HAMP program, the Home Affordable Modification Program is strictly voluntary, is it not?

Ms. CALDWELL. It is voluntary to the servicers and we signed up over 71 servicers accounting for a large portion of the market.

Mr. KUCINICH. Investors have shown that they do not—do not want to voluntarily allow a reduction in loan principal. That's, in large part, a way to explain the failure of the Home Affordable Modification Program. Can you say to us today that we can continue to rely on voluntary efforts of loan servicers and expect to see different results?

Ms. CALDWELL. At this point in the program, the focus was really on getting people signed up for the program, which we did, and then it was focused on getting people into trials as quickly as possible. And we now have 650,000 people in a trial modification. Now is the point in the program that we need to focus on converting those trial modifications to permanent modifications.

Mr. KUCINICH. Mr. Rokakis, do you have a response to that as someone who has to deal with——

Mr. ROKAKIS. Mr. Chairman, I would uphold because there are some really, really capable housing counselors back here who are going to be speaking at length about their experience with HAMP, and I think you need to speak with Mark Seifert and others——

Mr. KUCINICH. We'll get to that.

Mr. ROKAKIS. Just from talking to them, Mr. Chairman, I get an entirely different——

Mr. KUCINICH. We'll have a chance to speak with them.

Ms. Caldwell, the data shows that loan servicers have, through their voluntary efforts, made Ohio borrowers among the least likely to receive a loan modification under the program. Ohio ranks 48th out of 50. Why does this program treat Ohioans so unfavorably? What's the business justification? And what's going to change that calculation?

Ms. CALDWELL. The HAMP program has offered trial modifications to over 14,000 residents in Ohio, and while it is approximately 2 percent of the mortgage modifications in a trial period, the State of Ohio accounts for a little over 3 percent of the 60-day plus delinquencies nationally.

Mr. KUCINICH. You are not justifying it, you are explaining it?

Ms. CALDWELL. I'm putting it in context. And then moving on to say that, again, the focus has been to get people in trials as fast as possible and it has not been on a geographically targeted basis. When we get through this conversion phase to see how many trials convert to permanent and begin to report the data on a State-by-State and MSA basis, we will have the ability to look at the program and understand the impact across different States.

Mr. KUCINICH. Thank you. Now, according to the Treasury Department's own data, about 25 percent of borrowers who have been helped under the administration's mortgage modification plan have already fallen behind on their new mortgage payments. It's been said that this program is targeted to the foreclosure crisis as it existed 6 months ago, not as it is today.

Ms. Caldwell, is the Treasury Department ready to admit that the Home Modification Program has been a failure? Don't you think it's time to implement a program that reduces the principal that borrowers owe on their homes rather than just lowering the interest rate and pushing the payments down the road, Ms. Caldwell?

Ms. CALDWELL. The HAMP program was set up to provide affordable monthly payments for homeowners and it is on track to provide a second chance to three to four million homeowners by the end of 2012. While we do understand that foreclosures are a growing concern and we continue to explore ways that we can address the foreclosure crisis, and we have worked with our borrowers and servicers to improve communication in that manner, the program is on track to achieve what it has set out to do in terms of affordable monthly payment adjustments for homeowners.

Mr. KUCINICH. I have time for one more question. A witness on our second panel is Mr. Mark Seifert, the executive director of the ESOP, the statewide organization provides free foreclosure prevention counseling and assists borrowers with the paperwork necessary to request a modification. He has told us that all ESOP modification requests have the full and complete paperwork with them when they are submitted. Yet, as of 400 HAMP trial modification packages ESOP has submitted since the program started, they only have one that's been converted to a permanent modification. ESOP tells us by their calculations, they should have near 300 by now. So ESOP's modifications are waiting and waiting and waiting, then what about the folks who don't have dedicated counselors helping them? Do you have any comment on that?

Ms. CALDWELL. We have acknowledged the issues that servicers have had in ramping up the program to convert borrowers from trial to permanent modification. Part of the reason for the conversion campaign that was announced was to hold servicers accountable for those loans that they had in their office that had documentation and put a plan in place to get those loans through decision and to be held accountable for that. And we will see the results of that at the end of this month.

Mr. KUCINICH. Thank you. The Chair recognizes the ranking member, Mr. Jordan. You may proceed.

Mr. JORDAN. Thank you, Mr. Chairman. Let me also thank our panel for being here today and for your continued public service in your respective areas.

Ms. Caldwell, I want to come back to you, and I think Mr. Rokakis said it right, that the program is a miserable failure, it doesn't work. In fact, let me just start with the basics. How much TARP money, how much taxpayer money has been allocated to be available for this program?

Ms. CALDWELL. The program allocation is $50 billion.

Mr. JORDAN. $50 billion. According to Treasury's most recent TARP transaction report, $27 billion of that has already been allocated; is that correct?

Ms. CALDWELL. That's correct.

Mr. JORDAN. Twenty-seven billion, and according to an October 9, 2009 congressional oversight panel, the panel created by the TARP legislation to oversee how taxpayer dollars were being used, the promise was that three to four million people will be helped in this program. You indicated in your testimony that there were like 600,000 in the trial modification, but according to the congressional oversight panel's report on October 9th of this year, only 1,711 people have actually had modifications, less than 2 percent; is that accurate?

Ms. CALDWELL. That's accurate. And the focus, you know, the conversion from trial to permanent has been a source of disappointment to the Treasury.

Mr. JORDAN. $27 billion of taxpayer money has already been out there, has already been allocated. Less than 2 percent are actually fully in the program, when the promise was some three to four million homeowners would be helped. Isn't it also true, and I'm looking at a story from this weekend, the Washington Post indicates that, of the people who actually make it into the final modification, 40 percent of those folks, as I think some of the other witnesses, by their testimony, would support, 40 percent of those folks are going to redefault. They are not going to be able to even comply with the modifications that have been made, and 22 percent of those don't even make their first payment; is that accurate? This is a story in the Washington Post from this Saturday.

Ms. CALDWELL. I don't have the source of the data for the Washington Post.

Mr. JORDAN. What you have noticed is your redefault rate for the small number who are already in the program?

Ms. CALDWELL. The program has not been up long enough and we have not been reporting redefault rates. But let me go on to say that December is the first month that we have had a large number, a large enough number that have been in the program long enough to convert, and so while we have not been satisfied with the number of permanent modifications converted to date, by the end of December, because we've steady growth in the number of trial modifications through the fall, we have a point where we have 375,000 trial modifications that are reported being eligible for conversion.

Mr. JORDAN. What does your model suggest that the redefault rate might be? The model that, I mean, frankly, we would like to see from your model, and I noticed in your testimony, your written testimony, you said "we are increasing public access to the net present value white paper which explains the present value used in the model. We are also working to increase transparency at the net present value model for new tools that counselors can use to assist distressed homeowners applying for modification." What does all that mean? Why can't you just let the world know what kind of model you are using to make these determinations?

Ms. CALDWELL. We're looking at ways to increase transparency for the net present value model. They are a lot of——

Mr. JORDAN. Why can't you just let us know what model you are using? Why the secrecy?

Ms. CALDWELL. We are looking at ways to increase the transparency. Right now it is not available publicly. We are looking at ways, we have put forth the net present value white paper that discusses the assumptions in the net present value model and we are developing a model that can be distributed to the public. The models are generally proprietary and we are committed to increasing transparency.

Mr. JORDAN. I'm running out of time, but let me just summarize if I could, Mr. Chairman. Here is what happened.

Mr. KUCINICH. Take your time to ask the question.

Mr. JORDAN. $50 billion of taxpayer money allocated for this program, $27 billion already spent, already out the door—how it's been spent, we don't know, it's already out the door—on a model we don't even know exactly, you know, how that determination is made, how it's going to work, with a projected redefault rate of 40 percent, to get a grand total of 1,711 families helped. I mean, this is one more example of a big Federal Government program that doesn't work. I mean, we can go on and on and on, but when you start doing things at the Federal Government—and the answer is, as I think several of us have talked about, is we need to get our economy moving again. We don't need another big Federal Government program out there. Mr. Rokakis has talked about how this program doesn't work. That's the concern I have and the focus has to be on those policy changes that are going to actually help our economy grow so people don't lose their jobs, so they do have employment out there so they can continue to make their mortgage and those things that we want to see how they actually happen. And with that, Mr. Chairman, I would go back.

Mr. KUCINICH. Thank you, gentlemen, for those questions.

The Chair recognizes Congressman Steven LaTourette. You may proceed, sir.

Mr. LATOURETTE. Thank you very much, Mr. Chairman.

Ms. Caldwell, I'm going to give you a break and I'm going to talk to somebody else for a couple of minutes.

But, as you know, and also, in an attempt to be a bipartisan basher here, Congressman Jordan talked about the TARP program. The dumbest thing I ever saw in my life, and it started under former President Bush. And his Treasury secretary came to Capitol Hill and I was on Financial Services at the time and I remember he said, "today is Monday, if you don't give us $700 billion by Friday, the world is going to come to an end." So they put the first $350 billion out the door.

Obama's administration came in and thought it was such a good idea. Part of the problem, quite frankly, is that the new guys at the Treasury look a lot like the old guys at the Treasury. And Secretary Geithner is the former head of the New York fed, is at the helm on this thing. And the reason that it's not working is it's not working to get to the problem that Rokakis is talking about and the State legislatures are talking about.

And I can remember when the first tranche of money went out, I wrote an amendment that said that if you are a bank and you get $5 billion and the purpose of that $5 billion is for you to put liquidity in the market and make money available so people can buy homes and/or stay in their homes, you should tell us what you spent it on. And the banks went nuts. They said we take your $5 billion and mix it with our $5 billion and we can't tell you what we did with it. Well, that's just crazy.

And it seems to me that if we provide $5 billion of tax money to an institution, they should be able to say that, because they have to report this quarterly, they should be able to say this month we did $5 billion more in consumer lending. But, you know, at the end, we can talk about all these programs that we want, but what solves a lot of problems in the United States of America, whether it's healthcare or homeownership is a job.

And so the multiplier effect of this spending is it's not like you and I had $700 billion in our mattress and we just pulled the money out and decided we were going to spend it. We borrowed it from people. We borrowed it from China. So you are going to see, not only the crisis cascade, we got to pay that money back. And anybody that doesn't think that there is going to be an inflationary effect on interest rates as we begin to work our way through it is just not thinking clearly.

And what I found, and maybe you both have the same experience, when I go out and talk to people that are trying to employ people, trying to pay them a decent wage, trying to get them healthcare, and they go to the bank, and a lot of these banks have received TARP money, the banks aren't loaning them, they are pulling their lines of credit. And you say what's the matter with that?

And then so what's happening, sadly, with Treasury, in my opinion, is the money is going out and the Wall Street guys are healthy and they are not going to pay some of the money back. But the whole purpose behind the program was for them to lend the money out so that people could have jobs and it's just not working.

And so I do hope, I happen to think the President of United States is a very smart guy, and I do hope that some of these things are rethought.

Treasurer Rokakis, one of the reasons you are my second favorite Democrat behind Kucinich is you tell it like it is. And I can remember at the end of the 1990's, Paul Gillmor, a former colleague who has since passed away, had the first meeting as he saw this thing coming and we had the bank that's run by the Polish guy, Third Federal.

Mr. ROKAKIS. Stephanski.

Mr. LATOURETTE. Stephanski.

They came in and——

Mr. ROKAKIS. Best run bank in Ohio.

Mr. LATOURETTE. And that's what I'm getting to and it gets to your counseling point. We can throw them $27 billion to do this and take care of 1,700 families, but they were bragging on the lowest default rate because they actually sat down with people and he said they had the experience where some people said, you know what, today even though I'd love to have the dream of home ownership, today is not the day. I can't make that nut. And they went through the ARM and they said well today, I can make $700 with this interest rate, but when that thing adjusts 3 years from now, I can't make it. So I couldn't agree with you more. And it's that face-to-face thing that really gets it done and I give you credit for what you've done.

I would just like to ask you as a guy in the front lines, and sort of felt that the sad thing is when I have time, I think of stuff, and this business about, I'm not so crazy about the moratoriums because I think that just kicks the can down the road. And so you can have a 6-month forbearance or a 6-month moratorium on foreclosures, but at the end of the day, you still owe all the principal and the interest and whatever else is just built up.

What if to help the folks that don't qualify for HAMP and haven't been behind for 3 months, we figure out a system that, as I suggested, that you pay the interest and taxes so you are taken care of, but that you don't pay the principal until you get a job again? What do you think?

Mr. ROKAKIS. Mr. Chairman, Congressman LaTourette, not a bad idea. I think the chances of the servicers and the banks going along with that would be about as likely as they are to go along with a forbearance or a moratorium.

Mr. LATOURETTE. And that's a great point, but you know what? Here's the skinny going back to TARP. I understand the importance of the banks. I'm a Republican, we like banks, we like business, but I'm going to tell you something, that if I gave you, Rokakis, $5 billion to get your butt out of trouble, I think I have the right to expect certain things from you. And so those that didn't participate, they don't have to follow the rules. But if you have taken some of the $700 billion that we put out on the street, I think you have an obligation. And I don't think it's unreasonable in that situation and that doesn't violate Grendell's principle that you shouldn't mess around with contracts because you are entering into a new contract. But if you want $5 billion, you've got to do something for that $5 billion. And I don't think it unreasonable to expect people to be part of the solution here.

Last, if I could have your——

Mr. KUCINICH. Go ahead.

Mr. LATOURETTE. To our State Representatives, and Representative Foley, listening to Senator Grendell, I don't think H.R. 3 has passed in the Senate.

Mr. GRENDELL. That's fair.

Mr. LATOURETTE. Just I picked up on that this morning.

I'll tell you the thing that I hear and I know that you hear as you go out and you see your constituents, there's another thing besides TARP that's out there, it's stimulus. The stimulus bill has the same objective, it wasn't to keep people in their homes, but it was to create three million jobs. The report out of the White House said that, in my district which is, you know, we do OK, $100 million was spent of stimulus money to create or save 126 jobs. Now, I could do better than that and I'm not the brightest bulb on the tree, but if you gave me $100 million, I bet I could do better than that.

What I'm hearing is that the money that's come down from the feds in the stimulus bill is stuck in Columbus, that it's stuck at the Ohio Department of Development, that you have men and women who want to create opportunities and employ people. A guy came up to me the other day, his natural gas or electric buses all over the trades, it's clean, it's green, and he wants to build a plant right here in Ohio to build these buses. He can't get people in Columbus to return his phone calls. Not you guys, I'm sure you call people back all the time. But the Department of Development.

No, I know Lieutenant Governor Fisher is not there anymore, but who is in charge and why can't they get this money out to help people, put people back to work so people can stay in their homes and people can have healthcare? Grendell, what do you think.

Mr. GRENDELL. Congressman LaTourette, I'm suffering the same experience you just described in my district dealing with the Department of Development. They seem to be overly cautious in the way they pursue potential projects. It strikes me they want to invest in projects that are already winners and those projects don't need the investment. I suffer the same frustration. I cannot give you a better answer than we've lost several projects in our mutual district because of the inability to get development to put the money out.

Mr. LATOURETTE. Representative Foley, what do you think?

Mr. FOLEY. Congressman, I think that the department started giving money late summer. I think they are doing the best they can, considering they don't have all the staff that they should have to make sure all projects get out in as thorough and efficient time as possible. I do know that I've had contractors in my district who have benefited from this already, they've got jobs and they are working. So I don't think it's perfect but it shows the imagination. I know that there's dollars that still need to be allocated and given out. I know that we just had a clean energy job, a press conference with the Governor last week where at least the Cleveland area is going to receive 7 to 10 projects that are going to be run, advanced energy projects in the Cleveland area. So I think that it's taking a little bit of time and it's complicated. But I think that there's folks trying to do the best they can. I think it's going to take a little bit of time.

Mr. LATOURETTE. Listen, anything you two can go through to sort of goose them down in Columbus, I would appreciate very much because, you know, you talk about contractors, I had a contractor—unemployment out in Ashtabula County is 13 percent—and a contractor calls me and says we got a job ready to go waiting for the stimulus money, but ODOT won't let us start the job until we've had this big ass ugly green sign up for 2 weeks saying that it's paid for. So the sign makers made a lot of money and then they had full employment out in Ashtabula County, but the people that are actually going to build the roads do not. So I thank you.

Mr. GRENDELL. Mr. Congressman, if I can address that for 1 second. Congressman LaTourette, I agree with you on the sign issue and the fact there's legislation to prohibit the State from wasting the over a million dollars they've already wasted on those signs. Thank you, Mr. Chairman.

Mr. KUCINICH. All right. I want to thank my colleagues, Mr. Jordan, Mr. LaTourette for their participation in this panel.

Two things have occurred to me based on the questions that have been asked here. First of all, you are looking at probably the only congressional panel you'll see where every member of the panel voted against the TARP program bailouts.

Now, one of the things that you may be aware of, Mr. Jordan and Mr. LaTourette, is that when the administration, the Bush administration was coming in with the TARP program, there were also people in the incoming—well, at that point the Obama administration was hoping to come in. And the incoming administration actually was arguing against loan modification, so you had an agreement on the part of both the previous president and the incoming president that there would be no loan modification. I mean, that's something to think about in terms of where we are at today and something to think about in terms of continuing to justify the position that those of us took in total opposition to the bailouts.

I want to thank the members of this first panel. You have all made a contribution to our understanding of the issue and to some of the philosophical issues that we are faced with and some of the practical applications of laws that we have to deal with. Cleveland is the epicenter and how you do in Cleveland is really going to tell if your program ever can hope to work.

And I hope that Ms. Caldwell here will take some of the testimony back to Mr. Geithner and that the treasurer will take heart about the experience that the people are having in our community with this program.

I want to thank you for being here. Thank you to the members of the panel.

We are going to start our second panel, if members of the second panel will come forward. First panel is dismissed. Second panel come forward and we are going to move forward with the second panel when they are seated.

[Recess.]

Mr. KUCINICH. Thank you very much. If you are not participating in the second part, I would ask you to kindly leave the room.

I want to introduce our second panel of witnesses. Mr. Mark Seifert is the executive director of ESOP, which is the Empowering and Strengthening Ohio's People Organization, which is a nationally recognized organization fighting predatory lending and providing foreclosure prevention counseling throughout the State of Ohio.

Mr. Robert Grossinger, the senior vice president of Bank of America's Community Affairs Department, he is responsible for coordinating the bank's real estate owned sales process with the cities, counties and States that receive funds under the HUD neighborhood stabilization program.

Claudia Coulton is the Lillian F. Harris professor of urban social research, Mandel School of Applied Social Sciences, as well as the co-director of the Center on Urban Poverty and Community Development at Case Western Reserve University. She has conducted a series of studies on the foreclosure crisis in Cleveland and is a nationally recognized expert on using property data systems to understand the pattern and magnitude of the program.

Mr. Howard Goldberg is renewal administrator in the Department of Community Development, city of Lorain, OH under the leadership of Mayor Tony Krasienko. He has been working in community development for that community for nearly two decades.

And Mr. Frank Ford is the senior vice president for research and development at Neighborhood Progress, Inc. Where he directs a land assembly vacant property reform and foreclosure prevention initiative. Mr. Ford's been working in the field of community development for 33 years.

This is a very important panel. I want to thank each and every one of you for your presence, your willingness to testify.

It is the policy of the Committee on Oversight Government Reform to swear in all witnesses before they testify. I would ask that you rise and raise your right hands.

[Witnesses sworn.]

Mr. KUCINICH. Let the record reflect that each of the witnesses has answered in the affirmative.

As with the first panel, we ask that each witness give a summary of his or her testimony. Please keep this summary to 5 minutes in duration. Your complete written statement will be included in the record of the hearing. We know how important it is and Members read these carefully because they relate to what we know we need to do to try to address the issues that you are raising.

At this point I would like to ask Mr. Seifert if he would proceed.

STATEMENTS OF MARK SEIFERT, EXECUTIVE DIRECTOR, EMPOWERING AND STRENGTHENING OHIO'S PEOPLE; FRANK FORD, SENIOR VICE PRESIDENT, NEIGHBORHOOD PROGRESS, INC.; ROBERT GROSSINGER, SENIOR VICE PRESIDENT FOR COMMUNITY AFFAIRS, BANK OF AMERICA; CLAUDIA COULTON, CO-DIRECTOR, CENTER ON URBAN POVERTY & COMMUNITY DEVELOPMENT, CASE WESTERN RESERVE UNIVERSITY, MANDEL SCHOOL OF APPLIED SOCIAL SCIENCES; AND HOWARD GOLDBERG, RENEWAL ADMINISTRATOR, CITY OF LORAIN

STATEMENT OF MARK SEIFERT

Mr. SEIFERT. Good morning, Chairman and members of the committee. Thank you for the opportunity to address you today on the ongoing foreclosure crisis in Ohio.

I am Mark Seifert, the executive director of ESOP, Empowering and Strengthening Ohio's People. We are a HUD certified counseling, foreclosure prevention counseling agency with 11 offices throughout Ohio serving communities large and small, urban and rural. ESOP, formerly known as the East Side Organizing Project, started as a neighborhood based organizing group working on safety and educational issues, much of it in Chairman Kucinich's neighborhood.

Over the last 18 months, our organization has grown from a staff of three in Cleveland to more than 60 statewide, a direct result of Federal funding recognizing the need for foreclosure prevention counseling in Ohio. We have been on the front lines of Ohio's foreclosure epidemic since 1999. During the last 5 years, we have helped more than 13,000 families save their homes. Almost 8,000 of those families have walked through our doors in the last year alone. We know all too well the toll this crisis continues to exact on struggling families.

That is the focus of my testimony today, the unending state of the foreclosure crisis, the failure of Federal programs meant to reverse course and the possible extinction of foreclosure counseling services in Ohio and around the country.

Let me start by saying this hearing could not come at a more important time. The foreclosure crisis is far from over. Last month the Mortgage Bankers Association announced record-breaking third quarter foreclosure filings and delinquency rates in Ohio. Fifteen percent of loans serviced in Ohio are in foreclosure or past due. Two years since the foreclosure crisis first rocked this country, all signs point to an ever growing problem of foreclosures that won't even peak until late 2010, according to Rich Sharga, a top executive at the real estate firm, Realty Track.

In this landscape, ESOP's foreclosure prevention and counseling services have emerged as a lifeline for homeowners who don't know where to turn or get lost in the process when they do respond to notices from their lender or servicer. This year alone, ESOP will welcome 8,000 families facing foreclosure through 11 statewide offices. We expect to help 6,500 of them receive affordable loan modifications, a success rate of over 80 percent has made ESOP a leader in the State.

All this has been achieved through an annual budget of just $1.8 million, 70 percent of which is money channeled through the National Foreclosure Mitigation Counseling [NFMC] Program, via the Ohio Housing Finance Agency [OHFA], who has been a key partner in our response to this crisis.

Let me be clear, the documented impact of foreclosure prevention counseling on Ohio's ongoing foreclosure crisis is under attack, and without congressional action, will vanish in the first quarter of 2010. To date, NFMC funding has been immediate and effective. It has also been the sole source of Federal dollars for foreclosure prevention counseling. However, in the next funding cycle for the year 2010, NFMC funding for Ohio will be cut by more than half.

I assure you these cuts will severely cripple ESOP's ability to continue to serve the thousands of people who we serve each year. And it costs about $200 per home, it's definitely money well invested. Instead of serving 8,000 families next year, ESOP's cuts will result in only being able to serve approximately 4,000 families.

As you may well know, Ohio's Save the Dream Program, a multiagency State effort that funds hotline operators, marketing and outreach, as well as a Web site, has been recognized as one of the best in the nation. Save the Dream operators refer callers to counseling agencies and also to their respective lenders and servicers.

Approximately 65 percent of our caseload comes from Save the Dream referrals. Without future NFMC funding, however, Save the Dream will have few to zero agencies left for homeowner referrals.

That brings me to the Federal program to assist homeowners in the foreclosure, the Obama administration's Making Home Affordable Program [HAMP]. I save my remarks on HAMP for last as HAMP not only holds great promise, but has also wreaked great havoc. Since mid June when HAMP finally sprung into action, about 55 percent of ESOP's caseload turned into potential HAMP modifications.

Homeowners who finally end up at ESOP come with horror stories. Communications from lenders trying to offer HAMP modifications often only provide 800 numbers, sending borrowers into automated loops. When they do gather the paperwork and send it in, it's routinely lost in a maze of disorganization and bureaucracy that constitutes the loan modification arms of most banks.

The sad truth is that experienced counselors at ESOP are also having trouble working with lenders and HAMP. Take Wells Fargo, for example, it leaves a lot to be desired. For example, conference calls go nowhere, we ask a question, they say "let me check on it." We never hear back from them. Other banks such as J.P. Morgan/ Chase are similar.

There has been much in the news recently about HAMP modifications that have not been converted into permanent workouts. At the end of June through the end of October, ESOP has done more than 400 HAMP trial modifications. By now at least 275 should have been converted to permanent mods, yet we have one example of that at this point.

HAMP has a lot of promise, though. We think HAMP could work. ESOP does the heavy lifting for the lenders. We provide all the paperwork, we give them the complete packages, we provide counseling and as a result of our work, the rate of redefaults dropped significantly. However, without NFMC funding, we won't be able to continue to do that. Thank you.

[The prepared statement of Mr. Seifert follows:]

TESTIMONY
Of
MARK SEIFERT
EXECUTIVE DIRECTOR
EMPOWERING & STRENGTHENING OHIO'S PEOPLE (ESOP)

Field Hearing
DOMESTIC POLICY SUBCOMMITTEE
OVERSIGHT AND GOVERNMENT REFORM COMMITTEE
Carl B. Stokes Federal Courthouse
CLEVELAND, OHIO
Monday, December 7, 2009
10:00 a.m.

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to address you today on the ongoing foreclosure crisis in Ohio. I am Mark Seifert, the Executive Director of ESOP, Empowering & Strengthening Ohio's People. We are a HUD Certified foreclosure prevention and counseling agency with 11 offices throughout Ohio, serving communities large and small, urban and rural. ESOP, formerly known as the East Side Organizing Project, started as a community organizing group working on safety and education issues, much of it in Chairman Kucinich's neighborhood.

In the last two years, our organization has grown from a staff of three in Cleveland to almost 60 statewide – a direct result of federal funding recognizing the need for foreclosure counseling prevention in Ohio. We have been on the frontlines of Ohio's foreclosure epidemic since 1999. During last five years, we have helped more than 13,000 families save their homes. Almost 8,000 of those families have walked through our doors in the last year alone. We know all too well the toll this crisis CONTINUES to exact on struggling families.

That is the focus of my testimony today – the unending state of the foreclosure crisis, the failure of federal programs meant to reverse course and the possible extinction of foreclosure counseling services in Ohio.

CURRENT STATE OF THE FORECLOSURE CRISIS

Let me start by saying: This hearing could not come at a more important time as the foreclosure crisis is far from over. Last month, the Mortgage Bankers Association announced record-breaking third quarter foreclosure filings and delinquency rates in Ohio.[1] Fifteen percent – or 226,140 – of loans serviced in Ohio are in foreclosure or past due. That's a thirteen percent rise over the first quarter; and a spike of fourteen percent since the second quarter.

A deeper look at these statistics proves even more troubling. For example, the number of loans past due not just by one month – but by 90 days -- has doubled from a year ago. As we all know, a 30-day delinquency is much easier to correct, as perhaps the homeowner is a few weeks late due to a one-time car

[1] MBA, "Delinquencies Continue to Climb in Latest MBA National Delinquency Survey," Nov. 19, 2009. See Appendices.

repair. But the meteoric climb in 90-day defaults strikes at the heart of what is nothing less than a second foreclosure crisis in Ohio: one caused by long-term factors like job loss, health issues, divorce and the like.

In fact, 90-day defaults are becoming the new barometer this crisis, especially of how banks are still finding ways to skirt responsibility on non-performing loans. Let me explain. In my opinion, when it comes to homeowners in 90-day default, banks are deciding that given Ohio's soft housing market and low home values, they will fare better by keeping these mortgages on their books – versus filing for foreclosure or releasing their interest/liens – until the market improves. Meanwhile, homeowners dig themselves deeper and deeper into the default hole, with unpaid monthly payments piling up and no idea whether the lender intends to file foreclosure and kick them out. A foreclosure purgatory, if you will. Such behavior by the banks does nothing to stabilize neighborhoods or help families get on solid ground.

Two years since the foreclosure crisis first rocked the country, all signs point to an ever-growing problem of foreclosures that won't even PEAK until late 2010, according to Rick Sharga, a top executive at the real estate data firm Realty Trac. [2]

IMPACT OF FORECLOSURE PREVENTION COUNSELING

In this landscape, ESOP's foreclosure prevention and counseling services have emerged as a lifeline for homeowners who don't know where to turn or get lost in the process when they do respond to notices from their lender or servicer.

This year alone, ESOP will welcome 8,000 families facing foreclosure through our 11 statewide offices. We expect to help 6,500 of them receive affordable loan modifications – a success rate of over 80 percent that has made ESOP a leader in the state.

Testament to our work comes from the homeowners we help every day. After one Chase borrower learned in October that she had just received an affordable workout after months of waiting, she wrote to ESOP Counselor Robert King. "Somebody pinch me!! Is this the end? Because of ESOP, we get to keep our roof over our heads."

All this has been achieved through an annual budget of just $2 million, the majority of which is money channeled through NFMC, the Federal National Foreclosure Mitigation Counseling Program.

NFMC

Let me be clear: The documented impact of foreclosure prevention counseling on Ohio's ongoing foreclosure crisis is under attack and, without congressional action, will vanish the first quarter of 2010.

To date, NFMC funding has been immediate and, effective. It has also been the SOLE source of federal dollars for foreclosure prevention counseling. However, in the next funding cycle, for the year 2010, NFMC funding for Ohio will be cut by more than half.

Ohio remains at the epicenter of the foreclosure crisis going forward, so this reduction in NFMC funding is devastating.

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[2] "Foreclosures in 3rd quarter up nearly 23% from 2008," USA Today, Sept. 10, 2009. See Appendices.

I assure you: these cuts will severely cripple ESOP's ability to continue to serve the thousands of families it does each year. ESOP's budget alone will suffer a projected 50 percent decrease in NFMC funding. It costs ESOP approximately $200 to serve each family in foreclosure that comes to us. This loss of NFMC money means that in 2010, instead of serving 8,000 families or more, as we did this year, we will only be able to assist about 4000 families. Keep in mind that by the end of 2009, Ohio will see close to 80,000 foreclosure filings. That number is projected to rise even further to 90,000 in 2010.

It is imperative that the federal government reinstate NFMC funding at higher amounts for the hardest hit states like ours.

As you may well know, Ohio's Save the Dream, a multi-state-government-agency effort that funds a hotline, operators, marketing and outreach and a website, has been recognized as one of the best in the nation. Save the Dream operators refer callers to counseling agencies, and also to their respective lenders and servicers.

About 65 percent of ESOP's caseload comes from Save the Dream referrals. Without future NFMC funding, however, Save the Dream will have few to zero agencies left for homeowner referrals. The tragic irony here is that the average response rate of the top 15 lenders and servicers also getting Save the Dream referrals in 2008 was only 30 percent. Major Banks like Chase, US Bank and Wells Fargo had a less than 1 percent response rate.

These lender response rates are not our numbers. They are what banks are self-reporting to the state of Ohio. LESS THAN ONE PERCENT! This alone should demonstrate the amplified need for federal funding of foreclosure prevention counseling agencies like ESOP.

HUD

Nevertheless, I am sad to report that ESOP's recent grant application to HUD was denied. The reason is HUD's focus on pre-purchase and post-purchase mortgage, debt and budget counseling. Because ESOP's main emphasis is on foreclosure prevention, our non-profit did not score enough points in HUD's scoring template. But given the ongoing foreclosure crisis and the ongoing recession, it should go without saying that HUD needs to re-order its funding priorities to include foreclosure prevention counseling as well. ESOP sent HUD Secretary Shaun Donovan a letter on Nov. 30 expressing our dissatisfaction and has requested a meeting to discuss all of the above.[3] We have not yet received a response.

HAMP

That brings me to the third and final federal program to assist borrowers in foreclosure: the Obama Administration's Making Home Affordable Program, also known as HAMP. I have saved my remarks on HAMP for last as HAMP not only holds great promise, but has also wreaked great havoc.

Since mid-June, when HAMP finally sprung into action, much of ESOP's caseload has turned into potential HAMP loan modifications.

Homeowners who finally end up at ESOP come with horror stories. Communications from lenders trying to offer HAMP trial modifications often only provide 800 numbers, sending borrowers into automated loops. When borrowers do gather paperwork and send it in themselves, it is almost certain to get lost in a maze of disorganization and bureaucracy that constitutes the loan modification arms of most banks.

[3] ESOP Letter of Appeal to HUD Secretary Shaun Donovan, Nov. 30, 2009. See Appendices.

As a brief aside, my sister is experiencing a hardship. She is current with her mortgage. I walked her through what she needed to do to participate in HAMP. I told her to expect it to take about an hour or so. She later called me to tell me that while she doesn't have anything in writing yet and spent 4.5 hours on the phone, she "thinks" she will qualify for a modification and is waiting for the paperwork.

The sad truth is that experienced counselors at ESOP are also having trouble working with lenders and HAMP. Take Wells Fargo, for example, a bank whose loan modification process leaves a lot to be desired. Conference calls go nowhere; Wells Fargo representatives rarely get back to ESOP with answers on specific files. We hear, "Let me check on that," but they never do. Wells Fargo executives have shunned repeat overtures by ESOP to meet their own homeowners and sort out the larger structural problems.

Then there's JP Morgan Chase. Since ESOP organized a statewide protest against Chase in June, ESOP has had two face-to-face meetings with Chase representatives. While Chase is coming to terms with its shortfalls, more than Wells Fargo, Chase's HAMP processes are still too slow and inefficient.

These two banks are not alone. ESOP is finding that major banks' new servicing arms are ill-equipped to handle or understand the HAMP modification tidal wave. Often times ESOP counselors are the ones explaining HAMP rules to lenders. Banks like Chase have confessed that ESOP is a crucial link between lender and homeowner when it comes to facilitating HAMP modifications.

There has been much in the news lately about how few trial HAMP modifications have been converted into permanent workouts. To date, ESOP has done more than 400 HAMP trial modifications. By now at least 275 should have been converted to permanent modifications. Yet, we have just ONE example of that.

Trying to get permanent modifications through HAMP is the heavy-lifting ESOP does every day on behalf of homeowners – and lenders and servicers. We do this because HAMP has some excellent principles we believe in – the 31 percent debt-to-income ratio and overall goal of stabilizing neighborhoods by keeping people in their homes.

Moreover, we go above and beyond HAMP's requirements. At ESOP, we further counsel all our homeowners on their entire debt portfolio. We routinely look at what caused the default in the first place: predatory lending, hardships like lack of employment, medical bills, etc; discretionary spending that needs to be adjusted, etc. We also refer our homeowners to other services like HEAP and ODJFS so they can couple our foreclosure prevention counseling with other community services. To not provide such holistic counseling means that the 31 percent benchmark will not result in an affordable monthly mortgage payment.

Furthermore, ESOP's counseling work ensures a solid HAMP workout the FIRST time, reducing the rate of re-default.

None of this is required under HAMP, only encouraged. Without such counseling, however, I predict that 80 percent or more of HAMP modifications will re-default. I beg you to restructure HAMP to mandate and fund foreclosure counseling.

In light of the dismal permanent modification rates, the U.S. Treasury and HUD last week put HAMP on steroids, via a conversion drive. Lenders and servicers will now have to wait to receive an initial $1,000 until after trial modifications turn permanent. They can still collect an additional $3,000 in federal TARP money if the modification survives for three years. And the Administration has said it is going to aggressively track conversion performance and publish these numbers, in an attempt to publicly shame banks to work faster and better.

The Administration acknowledges that increased awareness and understanding of HAMP is sorely needed and that the HAMP documentation process is challenging at best for individual homeowners. To wit, the Administration is encouraging counseling agencies like ESOP to help achieve HAMP's potential. I am extremely discouraged, however, that the Administration has remained silent on how it expects ESOP and other agencies to pay for continued assistance and outreach to borrowers who need HAMP modifications.

I am extremely troubled that there is no provision in HAMP to share any part of the total $4,000 allotted for each HAMP modification with counseling agencies. As a non-profit providing free foreclosure prevention services, we spend $200 counseling each homeowner – a mere fraction of the bank's $4,000 recompense. Congress has an obligation and power to change the rules and insist that instead of the entire initial $1000 payout of TARP money going to the lender/servicer, at least $500 of it be directed to the agencies working in the trenches, agencies like ESOP closest to those affected, to ensure that we have the resources to continue to be part of the solution and bring homeowners timely, affordable and successful HAMP modifications.

I cannot stress enough how urgent and pressing the funding issue is for ESOP. Unless HAMP is reworked within the next 30 days to provide funding for foreclosure counseling agencies, make no mistake: ESOP will begin to lay off counselors and close its statewide offices one by one. Unfortunately, I am the one who will make that decision and it will start with our remote, rural locations where we are the only counseling resource available but where we can no longer maintain the cost overheads when ESOP's very survival is at stake.

In closing, the need for foreclosure prevention counseling in Ohio has never been greater. But without immediate increased federal funding for this work, similar to legislation that gave rise to NFMC, the biggest losers will be Ohio's homeowners and Ohio's economy.

HAMP's fundamental flaws – its lack of holistic debt counseling and silence on foreclosure counseling funding – leave Ohio vulnerable to nothing less than a second foreclosure crisis. This amounts to an utter failure of HAMP and its mission to stabilize neighborhoods on the brink of economic and foreclosure-related collapse. HAMP's complexity, ineffectiveness and unfunded mandates are why Ohio is in a state of continuing crisis.

If Ohio is to turnaround, the federal government must support the work of counseling agencies like ESOP by changing HAMP, reinstating NFMC to reasonable levels in Ohio and re-ordering HUD's funding priorities.

Thank you and I ask that my testimony be entered into the record and look forward to your questions.

APPENDICES

MORTGAGE BANKERS ASSOCIATION
investing in communities

Title: Delinquencies Continue to Climb in Latest MBA National Delinquency Survey

Source: MBA

Date: 11/19/2009

WASHINGTON, D.C. (November 19, 2009) — The delinquency rate for mortgage loans on one-to-four-unit residential properties rose to a seasonally adjusted rate of 9.64 percent of all loans outstanding as of the end of the third quarter of 2009, up 40 basis points from the second quarter of 2009, and up 265 basis points from one year ago, according to the Mortgage Bankers Association's (MBA) National Delinquency Survey. The non-seasonally adjusted delinquency rate increased 108 basis points from 8.86 percent in the second quarter of 2009 to 9.94 percent this quarter.

Top Line Results

The delinquency rate breaks the record set last quarter. The records are based on MBA data dating back to 1972.

The delinquency rate includes loans that are at least one payment past due but does not include loans somewhere in the process of foreclosure. The percentage of loans in the foreclosure process at the end of the third quarter was 4.47 percent, an increase of 17 basis points from the second quarter of 2009 and 150 basis points from one year ago. The combined percentage of loans in foreclosure or at least one payment past due was 14.41 percent on a non-seasonally adjusted basis, the highest ever recorded in the MBA delinquency survey.

The percentage of loans on which foreclosure actions were started during the third quarter was 1.42 percent, up six basis points from last quarter and up 35 basis points from one year ago.

The percentages of loans 90 days or more past due, loans in foreclosure, and foreclosures started all set new record highs. The percentage of loans 30 days past due is still below the record set in the second quarter of 1985.

Increases Driven by Prime and FHA Loans

"Despite the recession ending in mid-summer, the decline in mortgage performance continues. Job losses continue to increase and drive up delinquencies and foreclosures because mortgages are paid with paychecks, not percentage point increases in GDP. Over the last year, we have seen the ranks of the unemployed increase by about 5.5 million people, increasing the number of seriously delinquent loans by almost 2 million loans and increasing the rate of new foreclosures from 1.07 percent to 1.42 percent," said Jay Brinkmann, MBA's Chief Economist.

"Prime fixed-rate loans continue to represent the largest share of foreclosures started and the biggest driver of the increase in foreclosures. 33 percent of foreclosures started in the third quarter were on prime fixed-rate and loans and those loans were 44 percent of the quarterly increase in foreclosures. The foreclosure numbers for prime fixed-rate loans will get worse because those loans represented 54 percent of the quarterly increase in loans 90 days or more past due but not yet in foreclosure.

"The performance of prime adjustable rate loans, which include pay-option ARMs in the MBA survey, continue to deteriorate with the foreclosure rate on those loans for the first time exceeding the rate for subprime fixed-rate loans. In contrast, both subprime fixed-rate and subprime adjustable rate loans saw decreases in foreclosures.

"The foreclosure rate on FHA loans also increased, despite having a large increase in the number of FHA-insured loans outstanding. The number of FHA loans outstanding has increased by about 1.1 million over the last year. This increase in the denominator depresses the delinquency and foreclosure percentages. If we assume these newly-originated loans are not the ones defaulting and remove the big denominator increase from the calculation results, the foreclosure rate would be1.76 percent rather than 1.31 percent reported.

"Once again the states of Florida, California, Arizona and Nevada have a disproportionate share of the mortgage problems. They had 43 percent of all foreclosures started in the third quarter, down only slightly from 44 percent both last quarter and the third quarter last year. They had 37 percent of the nation's prime fixed-rate loan foreclosure starts and 67 percent of the prime ARM foreclosure starts. As of the end of September, 25 percent of the mortgages in Florida were at least one payment past due or in foreclosure.

"The outlook is that delinquency rates and foreclosure rates will continue to worsen before they improve. First, it is unlikely the employment picture will get better until sometime next year and even then jobs will increase at a very slow pace. Perhaps more importantly, there is no reason to expect that when the economy begins to add more jobs, those jobs will be in areas with the biggest excess housing inventory and the highest delinquency rates. Second, the number of loans 90 days or more past due or in foreclosure is now a little over 4 million as compared with 3.9 million new and previously occupied homes currently for sale, although there is likely some overlap between the two numbers. The ultimate resolution of these seriously delinquent loans will put added pressure on the hardest hit sections of the country."

Change from last quarter (second quarter of 2009)

The seasonally adjusted delinquency rate increased 43 basis points for prime loans (from 6.41 percent to 6.84 percent), 107 basis points for subprime loans (from 25.35 percent to 26.42 percent), and two basis points for VA loans (from 8.06 percent to 8.08 percent). The delinquency rate for FHA loans decreased six basis points (from 14.42 percent to 14.36 percent). The non-seasonally adjusted delinquency rate for FHA loans however, increased 134 basis points this quarter (from 13.70 percent to 15.04 percent).

The non-seasonally adjusted percentage of loans in the foreclosure process increased 20 basis points for prime loans (from 3.00 percent to 3.20 percent), and increased 30 basis points for subprime loans (from 15.05 percent to 15.35 percent). FHA loans saw a 34 basis point increase in foreclosure inventory rate (from 2.98 percent to 3.32 percent), while the foreclosure inventory rate for VA loans increased 22 basis points (from 2.07 percent to 2.29 percent).

The non-seasonally adjusted foreclosure starts rate increased 13 basis points for prime loans (from 1.01 percent to 1.14 percent), increased 16 basis points for FHA loans (from 1.15 percent to 1.31 percent), and increased 19 basis points for VA loans (from 0.68 percent to 0.87 percent). This rate decreased 37 basis points for subprime loans (from 4.13 percent to 3.76 percent).

The seriously delinquent rate, the non-seasonally adjusted percentage of loans that are 90 days or more delinquent, or in the process of foreclosure, was up from both last quarter and from last year. This measure is designed to account for inter-company differences on when a loan enters the foreclosure process.

Compared with last quarter, the rate increased 82 basis points for prime loans (from 5.44 percent to 6.26 percent), 216 basis points for subprime loans (from 26.52 percent to 28.68 percent), 89 basis points for FHA loans (from 7.78 percent to 8.67 percent), and 37 basis points for VA loans (from 4.69 percent to 5.06 percent).

Change from last year (third quarter of 2008)

The seasonally adjusted delinquency rate increased 250 basis points for prime loans, 639 basis points for subprime loans, 144 basis points for FHA loans, and 80 basis points for VA loans.

The foreclosure inventory rate increased 162 basis points for prime loans, 280 basis points for subprime loans, 100 basis points for FHA loans, and 83 basis points for VA loans.

The foreclosure starts rate increased 35 basis points overall, 53 basis points for prime loans, 36 basis points for FHA loans, and 28 basis points for VA loans. The starts rate decreased 47 basis points for subprime loans.

The seriously delinquent rate increased 339 basis points for prime loans, 912 basis points for subprime loans, 262 basis points for FHA loans, and 161 basis points for VA loans.

If you are a member of the media and would like a copy of the survey, please contact Carolyn Kemp at ckemp@mortgagebankers.org or Melissa Key at mkey@mortgagebankers.org. If you are not a member of the media and would like to purchase the survey, please call (800) 348-8653.

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The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nations residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

Foreclosures in 3rd quarter up nearly 23% from 2008

By Stephanie Armour, USA TODAY
Foreclosures are continuing at a rapid-fire pace that may accelerate in 2010, driven by rising unemployment and more adjustable-rate loans resetting to higher monthly payments.

Foreclosure filings were reported on 937,840 properties in the third quarter, an increase of nearly 23% from the third quarter of 2008, according to a report today by RealtyTrac.

The number of properties in some stage of foreclosure was 5% higher than in the second quarter.

One in every 136 U.S. housing units received a foreclosure filing during the quarter, the highest quarterly foreclosure rate since RealtyTrac's reports began in the first quarter of 2005.

"We'd hoped this year would be the peak as far as foreclosures, but we've since concluded it will not be," says RealtyTrac's Rick Sharga. "We should see a peak in foreclosures at the end of 2010."

Several factors are behind the expected rise in foreclosures. Many lenders have opted not to pursue foreclosures while they consider delinquent homeowners for a mortgage modification. As those moratoriums end, more borrowers who don't qualify for modifications are likely to face foreclosures.

A large number of adjustable-rate loans are slated to reset, which means they can bring higher monthly payments for homeowners. Higher payments, coupled with a 9.8% unemployment rate that is expected to rise above 10%, could also cause a growing number of borrowers to lose their homes.

This could amount to a sizable second wave of foreclosures.

There are presently 2.8 million active interest-only home loans with an outstanding principal balance of $908 billion, according to First American CoreLogic. Interest-only loans produce low monthly payments based on the loan's interest for five to seven years, but then payments jump when the principal is included.

"Foreclosures should remain really high as long as unemployment is rising, and that is through next spring," says Mark Zandi of Moody's Economy.com. "They should be very high into spring."

Zandi estimates there were 3.8 million notices of default filed this year and that in 2.1 million cases, borrowers will lose their homes to foreclosures, short sales or banks taking their deeds in lieu of foreclosure. He expects notices of default to decrease next year but foreclosures to rise.

Some geographic areas are seeing notably high rates now.

California, Florida, Arizona, Nevada, Illinois and Michigan accounted for 62% of the nation's foreclosure activity in the third quarter, according to RealtyTrac.

A federal program announced in March to help homeowners get more affordable monthly payments has now put 500,000 borrowers into three-month trial modifications.

But foreclosure filings were reported on 343,638 properties last month alone, giving September the third-highest monthly total behind July and August. The number of properties receiving foreclosure filings last month did drop 4% from August.

"These programs are having trouble keeping up with the problem," Sharga says.

ESOP

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a member of SHARES

November 30, 2009

Mr. Shaun Donovan, Secretary
U.S. Department of Housing & Urban Development
451 7th Street S.W.,
Washington, DC 20410

Dear Mr. Donovan:

ESOP (East Side Organizing Project, dba Empowering and Strengthening Ohio's People) is disappointed to learn that our recent application for housing counseling funding has been declined.

This is surprising as ESOP has become the single largest provider of housing counseling and loan modifications in the state of Ohio. ESOP's success rate and our cost-effectiveness is unsurpassed. . And ESOP has garnered widespread support for the unique service delivery model employed for foreclosure prevention.

As ESOP's Executive Director and Board President, we hereby appeal the decision declining the ESOP funding application. Moreover, we wish to meet with you and U.S. HUD leadership and inform you about the successful model of foreclosure prevention used by ESOP.

Currently, ESOP's governmental partners, the City of Cleveland, Cuyahoga County and the state of Ohio, all concur that the ESOP service model and our capacity for foreclosure prevention is an excellent investment. ESOP is also funded by the two largest foundations in greater Cleveland, as well as several mortgage and servicer corporations, including Third Federal Savings and Loan (via their foundation), PNC Bank, Citi Financial, Ocwen Financial and Bank of America. Additionally, faith-based funders, such as the Catholic Campaign for Human Development, support ESOP and our approach to community outreach and foreclosure prevention.ESOP satellite offices now operate in several locations across every quadrant of Ohio.

Even if the evaluation of the ESOP funding application to HUD was properly scored, we are convinced that further face-to-face discussion will beget a better understanding on your part of the ESOP foreclosure prevention model and our capacity to work with direct HUD funding.

Please contact us at your earliest convenience so we may schedule a meeting to discuss our interest in being a funding partner of HUD. ESOP is a leader in foreclosure prevention for the state of Ohio and are on track to assist more than 7,500 families save their home this year.

Respectfully Submitted,

Mark Seifert, Executive Director Inez Killingsworth, Board President

Cc: David Stevens, FHA Commissioner

Mr. KUCINICH. Thank you, Mr. Seifert.

The Chair recognizes Mr. Ford. You may proceed for 5 minutes. Thank you.

STATEMENT OF FRANK FORD

Mr. FORD. Thank you, Mr. Chairman, members of the committee. I do have a short video, 2½ minutes. Can we dim the lights just slightly, I think? And I can control it from here.

Mr. KUCINICH. What's the video about?

Mr. FORD. It's a vacant house. It's a walk-through. A picture says a hundred words, a video says a thousand.

This is a house in the St. Clair, Superior neighborhood of Cleveland.

[Videotape being played.]

[The following are statements made on videotape.]

Mr. FORD. My name is Frank Ford. I'm executive director of Cleveland Housing Renewal Project, a subsidiary of Neighborhood in Progress, Inc.

I'm standing out here in front of 1232 Addison in the St. Clair, Superior neighborhood in the city of Cleveland. It is May 8th, approximately 12:30 p.m. This is a house owned by Wells Fargo. And when I was out here last Saturday, it was wide open and vacant. It's serviced by Home Eq. There's some stickers on the window from Home Eq. And when I was out here before, the side window, side door was wide open and there was water rushing in the basement. The side door is still wide open. And that's a Burger King bag.

I think I'm going to go inside. Anybody here? I think you can hear the water rushing in the basement, the basement door. Probably not enough light to see. I'm holding the camera over the basement stairs. And I think that's it. I don't think I want to be here too much longer.

I'm going to take a look at the back of the house here. So, anyway, this is a house owned by Wells Fargo, wide open, clearly a danger to anybody who lives near this house, anybody who's got children certainly. That's it.

[Videotape ends.]

Mr. FORD. Thank you. Now I've limited myself to a minute and 50 seconds so I'm going to have to talk very fast, but I thought that a walk through the inside of a property brings home the stark reality of what is happening.

It was said earlier by a witness that it would be dangerous to consider loan modifications. That's dangerous (indicating) for the people who have to live near it if they have children.

I think we have two major problems still facing us, one is we have to find out how to stop the continual pipeline of foreclosures, and it's not working as other people have testified. We have a great foreclosure prevention system in Cleveland, stops 50 percent of the foreclosures of people who get into that system, but only 20 percent of the people are getting into the system. We really do need stronger action, either—now, maybe a moratorium is not palatable to people, but then some other pressure, whether it's regulatory pressure, certainly the idea of using the TARP or any bailout money connecting that to greater willingness to do loan modification, that's the first problem.

The second problem we have is the damage being done by the veritable tsunami of vacant property that's flooding our neighborhoods. And this is stemming from three—stemming from irresponsible behavior on the part of the lenders. It really comes from three things. First of all, they are not maintaining these properties up to code, they are not complying with city laws. Second, they're dumping these properties irresponsibly to flippers and speculators from out of State; and third, the latest thing is they're walking away. They are filing the litigation, pursuing it to judgment, but then not taking it to sheriff's sale, which means they can avoid liability and responsibility for the physical condition. We need to have some way of holding lenders accountable for the condition of these properties at the minute they file a foreclosure.

And I see I have 3 seconds left, so I'm probably going to stop. I could continue, but I won't. Your pleasure.

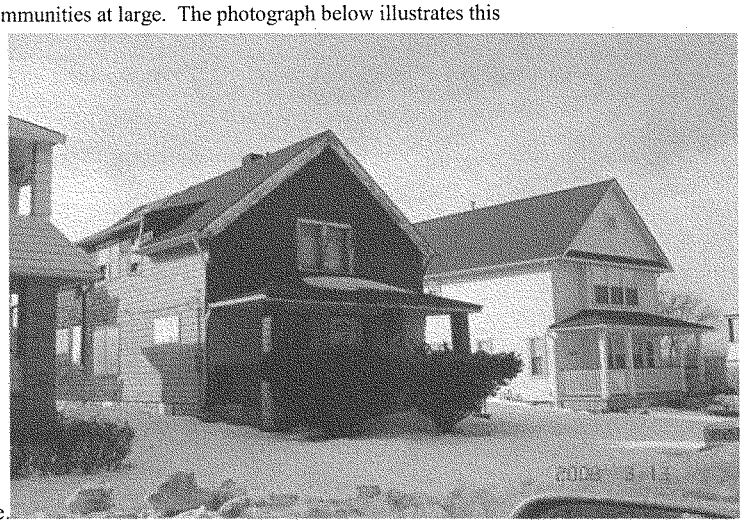
[The prepared statement of Mr. Ford follows:]

Statement
Of
Frank Ford
Senior Vice President for Research and Development
Neighborhood Progress, Inc.

Domestic Policy Subcommittee
Oversight and Government Reform Committee
Field Hearing – Cleveland, Ohio
Monday, December 7, 2009
10:00 a.m.

Cleaning Up After The Foreclosure Tsunami: Confronting Bank Walk-Aways and Vulture Investors

The story of the American foreclosure crisis begins with reckless and abusive lending that led to the wholesale emptying out of homes. But that's not the end of the story. Like a tsunami, each annual tidal wave of foreclosures has left in its wake hundreds of thousands of vacant, blighted, and vandalized properties. The immediate damage—the disrupted lives resulting from the emptying of homes—has been followed by collateral damage to neighboring homeowners, and their communities at large. The photograph below illustrates this



damage.

The house on the right was built in 2004 by the Buckeye Area Development Corporation, a local nonprofit community development corporation (CDC) in Cleveland, Ohio and was sold to a homeowner for $141,000. In 2006 Wells Fargo foreclosed on the house on the left and took the property at a Sheriff Sale, and that house became vacant. Wells Fargo let it sit vacant for two years, while it was broken into and vandalized. Wells Fargo then sold the damaged house to an investor in 2008 for $1,200.00 and the investor continued to let it sit vacant and deteriorating. The owner of the house on the right, a single mother with two children, could only watch while the value of her home plummeted – if she had to sell she'd be lucky to get $80,000 for her home.

The full measure of the post-foreclosure damage is understood only when one considers that every blighted house could negatively impact five or six other houses near it. In Cleveland today there are an estimated 11,500 vacant houses[1] so those vacant homes could easily impact the market value of 60,000 occupied homes. Speaking to scale, if each home lost $10,000 in value, it would equate to a $600,000,000 loss of homeowner equity. Further, that loss in value inevitably results in a loss of property tax assessment and lost tax revenue for publicly supported schools, police, fire and social services.

This is doubly tragic because of how it has undermined, and continues to undermine, a highly regarded community development system in Cleveland that was making steady progress through the 1990s and the early part of the 2000s. Unfortunately, while that system injected homeownership equity into the front door of neighborhoods, by way of responsible local lenders, there were irresponsible subprime lenders and Wall Street investment bankers who mined neighborhood equity and extracted it out the back door.

Much of the news coverage over the past several years has focused on the reckless acts of financial institutions that led to wholesale foreclosures—making bad loans or recklessly buying thousands of those loans without exercising any due diligence to determine what they were buying.

In the case of those financial institutions that bought the mortgages, specifically the servicers and trustees who manage the loan pools, it appears that the same irresponsible decision-making that brought us the foreclosures in the first place is now compounding the problem by the manner in which it's handling post-foreclosure vacant property—what banks refer to as REO property, or "real estate owned" by the financial institutions.

In this regard, Cleveland may serve as a useful illustration, and to some extent, as a warning, to other cities that may not yet have experienced a severe post-foreclosure problem. Any city, regardless of how strong its real estate market might appear, could suffer a market failure if it

[1] Estimate provided by the NEO CANDO data system, Center for Urban Poverty and Community Development at Case Western Reserve University, as of October 1, 2009. (http://neocando.case.edu/cando/index.jsp)

reaches a critical mass of foreclosures. For hundreds of years foreclosures have worked as a successful debt recovery mechanism, when there is an isolated foreclosure surrounded by otherwise stable occupied homes. The foreclosed home can be quickly re-marketed, re-sold and the loss minimized. But when lenders flood neighborhood markets with bad loans, and then flood the same neighborhoods with foreclosures, the system breaks down completely. Streets in Cleveland that had no foreclosures five years ago, now have four or five. Streets that had a few foreclosures now have 10 to 20.

The growth of this problem in the past few years, and its impact on properties values, is illustrated by a study recently done by Case Western Reserve University[2]. In 2005 less than 10 percent of REO property in Cleveland was sold by banks for less than $10,000. By 2008, 65 percent of the REO sales by banks were for less than $10,000—such as the house in the photo above, sold by Wells Fargo to an investor for $1,200. A $1,200 sale would appear to be no bargain for the bank. But consider that the house (pictured) probably has $50,000 or more in code violations. After sitting for two years and being repeatedly vandalized, the damage could require all new mechanical systems, new plumbing, new wiring, mold remediation and more. Moreoever, if the city were to demolish the home, the vacant lot would then have a $10,000 demolition lien against it. Vacant lots in Cleveland typically sell for $500 to $1500, often more than foreclosed homes in poor condition. A vacant lot with a $10,000 demolition lien against it is a liability with a negative value.

What we now have taking place in Cleveland is an "REO Race", i.e. can financial institutions "unload" or "dump" their liability before the local municipal code enforcement officials catch up with them? In their race to dump property, the banks are making no effort to screen the buyers.

So who's buying these properties and what are they doing with them? The buyers range from inexperienced individuals who watch late-night infomercials and are captivated by the promise of making millions from real estate, to a new niche industry that seems to have sprung up in the past decade – companies, most of which are out of state, that specialize in making bulk purchases of vacant foreclosed homes. Their business models vary – some merely act as wholesalers and flip a package of 10 to 20 homes to another investor for a small markup; some post them on Ebay without making any repairs; some make a bulk purchase only to acquire one decent prospect, assuming they may abandon the other properties.

The best of the REO investors actually do some renovation, but all too often it amounts to only cosmetic work followed by putting the house back on the market without addressing more

[2] "Beyond REO: Property Transfers at Extremely Distressed Prices in Cuyahoga County 2005-2008", Center on Urban Poverty and Community Development, Case Western Reserve University, December 2008 [I still need to add an internet link].

serious issues. This was made clear to me last Summer when I had the opportunity to join with other colleagues to spend a day meeting with two out of state investors to discuss their business goals and objectives. One of the most striking admissions came when one of them said "if we had to bring these properties up to code, our business model wouldn't work." In other words, they were saying "we're going to come into your community and we plan on violating your housing codes".

Evidence of intent to evade local housing laws is made abundantly clear by the docket of the Cleveland Municipal Housing Court. In the period beginning January 1, 2009 through October 23, 2009, the Court levied $1.5 million in fines to 11 REO investors for failing to show up for court hearings.

Foreclosure litigation itself is not the true cause of damage to neighborhood markets. The real damage is being done when tens of thousands of homes are emptied out, and those doing the emptying take no responsibility for the physical condition of the vacant home.

The vast majority of foreclosures are being initiated by out-of-state financial institutions. They want the privilege of using Ohio's legal apparatus to bring foreclosure actions, but they don't want to be held accountable for state and local laws pertaining to health and safety codes. Moreover, foreclosing financial institutions want the privilege of offloading their liability for public nuisance property by dumping those defective assets to investors demonstrating similar disdain and contempt for Ohio's laws.

Cleveland's urban and suburban civic leaders – from both the public and community development sectors – are fighting back in two ways. First, they're *changing the economics of foreclosure and vacant property ownership*. Second, they're creating tools and programs for *responsible management and redevelopment of abandoned foreclosed property*.

Changing The Economics Of Foreclosure And Vacant Property Ownership. Following the age old axiom that behavior doesn't change until it hits the pocketbook, civic leaders have taken a number of steps to shift financial responsibility to the banks and REO investors.

- Threat of Demolition. The City of Cleveland has substantially ramped up its demolition effort. In the years leading up to 2006 the City inspected, condemned and demolished 200 homes per year. In 2007 and 2008 the City demolished 1,000 homes each year and is on track to take down 1,700 by the end of this year. The City is also imposing demolition liens and pursuing the collection of an average $10,000 per house demolition cost. The prospect of having a vacant lot with a $10,000 demolition lien can be a powerful motivator.

- Prosecuting Code Violations. The City of Cleveland and inner ring suburbs are also prosecuting banks and REO investors for violations of criminal housing codes. In addition, the Cleveland Municipal Housing Court has issued arrest warrants for bank presidents, and has levied stiff penalties against irresponsible investing in abandoned property. A $140,000 fine was levied in 2008 against an investor from Oklahoma, and, just weeks ago, an extraordinary $850,000 fine was imposed against an investor from California.

- "Private" Code Enforcement. In addition to government-led code enforcement, "private code enforcement" has been spearheaded by Neighborhood Progress, Inc. (NPI) in the form of Public Nuisance lawsuits brought against two of Cleveland's largest REO owners – Wells Fargo and Deutsche Bank. NPI's lawsuits allege that owning and dumping vacant REO property is a public nuisance which threatens the health and safety of neighbors and damages property values. In a major victory for NPI, the Cleveland Housing Court issued an injunction against Wells Fargo, *ordering them to bring their entire inventory – about 150 houses – up to code*. Wells, reeling from that ruling, appealed to the Ohio Court of Appeals. That decision, which could be handed down soon, will have a profound impact – either positive or negative – on the future of bank-owned REO property throughout the state.

- Combating Bank Walk-Aways. As efforts escalate to hold foreclosing banks accountable, lenders are beginning to adopt a new strategy – litigating the foreclosure case to judgment, but not taking title at Sheriff Sale. This tactic, commonly referred to as a "Bank Walk-Away", allows them to obtain whatever insurance or accounting benefit is available by documenting the loss, but leaves them immune from responsibility for the damage caused by a vacated property. To counter this latest development, State Representative Dennis Murray has introduced a bill in the Ohio House of Representatives (HB 323) that would make foreclosing lenders accountable for nuisance conditions in properties they are foreclosing on, even prior to taking title.

- Innovative New Jersey Statue. New Jersey actually paved the way for this by enacting Senate Bill 2777 last May (2009), which states that if a property goes vacant at any time after filing a foreclosure, the foreclosing lender shall be responsible for code violations to the same extent as if they were the owner.

Creating Tools And Programs For Responsible Management And Redevelopment Of Abandoned Foreclosed Property. In its 40 year history with community development, Cleveland has consistently exhibited two major strengths. First, it's a city steeped in community organizing traditions, and civic and community leaders have not been shy about holding banks and investors accountable – as noted in the examples above. But this is also a city of innovation, as witnessed by the Cleveland Housing Court, the Cleveland Housing Network (one of the first scattered site lease-purchase programs in the country), and the publicly accessible "NEO CANDO" property data system at Case Western Reserve University. Civic leaders have been no less creative in addressing the current crisis of post-foreclosure vacant property.

- Integrating Rehab with Neighborhood Stabilization. More than a year before the Federal government announced Neighborhood Stabilization Programs 1 and 2, NPI partnered with the Cleveland Housing Network (CHN) to develop "Opportunity Homes" which rehabs vacant foreclosed property in strategically targeted areas to leverage existing assets and investments. Rehabbed homes are supported by other neighborhood stabilization activities on the same streets - blight remediation, demolition (for homes beyond rehab), home repair and landscaping. In what may be the most innovative aspect of this program, the Case Western Reserve University "NEO CANDO" property data system identifies occupied homes near rehabbed homes that are at risk of foreclosure. Using both public and proprietary data sources, every occupied home with a subprime loan or an adjustable rate mortgage is targeted for door-to-door outreach and loan modification assistance.

- Re-imagining Cleveland. Although Cleveland is in the midst of a battle to stabilize housing markets – combating foreclosure, flipping and the dumping of abandoned property – the City is also looking forward 3 to 5 years and planning now for the productive, sustainable and responsible re-use of the thousands of vacant lots that are accumulating throughout the City and its suburbs. The "Reimagining Cleveland" Project is a partnership between NPI and the City of Cleveland, funded by the Surdna Foundation, which is proactively engaging block clubs, civic organizations and local institutions in short term utilization and long term planning for the redevelopment of vacant property.

- Land Banking. At the end of the day, faced with a growing flood of post-foreclosure vacant property, the most important objective is getting control of that property, keeping it out of the hands of irresponsible investors, and preventing it from doing more damage to neighborhoods. Cleveland needed a safe and responsible place to "park" these properties, and triage them for immediate demolition, rehab, or in the case of viable properties, mothball them responsibly until market conditions are conducive to redevelopment. None of the local non-profits have the capacity to acquire and hold a large inventory of vacant property. The City of Cleveland's Land Bank owns thousands of vacant *lots*, but does not have the financial resources to manage and maintain vacant *structures*. Cleveland leaders found a model to follow in the Genesee County Land Bank, based in Flint, Michigan. Culminating in a legislative campaign led by Cuyahoga County Treasurer Jim Rokakis, the Cuyahoga County Land Reutilization Corporation was formed in April of 2009. The key to its anticipated success – what differentiates it from the City Land Bank or local non-profits – is that it will have an expected annual budget of 6 to 8 million dollars derived from spin-off revenue from fees and penalties collected on late property tax payments. This new County Land Bank is just getting off the ground, but has already begun negotiations with major REO property holders.

Cleveland was hit hard by the foreclosure crisis and hit earlier than many other cities. Because of this Cleveland has had time to develop a variety of innovative approaches which other cities could learn from. The Cleveland experience can be distilled down to several major lessons learned. First, ramp up code enforcement to control the ownership and irresponsible transfer of post-foreclosure vacant property - in other words, *change the economics of owning vacant property*. Second, while fighting the immediate battle, be forward-thinking and start planning ahead for the sustainable reuse of accumulating vacant property. Third, and critically important, establish an entity, such as a Land Bank, that can receive and responsibly hold vacant property. However, any land bank will only be useful if it has the *financial resources* to undertake this task. Linking land banks to excess spin-off property tax revenue, as first developed by the Genesee County Land Bank, may be the single most important innovation in urban redevelopment in recent years.

What should the Federal Government Do To Help? Federal policy makers, lawmakers, and regulators can make a tremendous difference in helping cities like Cleveland confront these challenges.

1. **Increase Federal efforts to stop or slow new foreclosure filings.**
   - Foreclosures may finally peak in Cleveland in 2009, but there will likely be several more years of high foreclosure filing rates.
   - Although Cuyahoga County has one of the best foreclosure prevention systems in the country, documented by Cleveland State University to have a 50% success rate of stopping foreclosure, only about 20% of the foreclosure victims are seeking help.
   - A system that relies on the victim to take pro-active steps will not likely ever reach scale.
   - Banks & servicers have improved their loan modification performance from 3-5 years ago, but the improvement is relatively small – the financial community still operates in a "business as usual" manner, and too few borrowers are getting modifications; modifications that are offered are not sustainable, i.e. too few lenders are willing to consider principal write-down.
   - Congress and Federal Regulatory Agencies should do everything in their power to compel financial institutions and loan servicers to ramp up their modification efforts and keep homes occupied.
   - Foreclosure prevention and counseling programs, like the proven ones in Cuyahoga County, need increased financial resources to continue; Congress should appropriate additional funding to insure that successful programs like this can continue.

2. **In their role as the two prominent public and quasi-public financial institutions, HUD and Fannie Mae should set the "gold standard" for the management and disposition of post-foreclosure vacant property.**

    - In its role as an insurer of mortgages, HUD has became a major owner of post-foreclosure vacant property, yet HUD has hidden behind its governmental immunity and refused to be subject to local housing and safety codes and has even threatened municipalities that dared to demolish its unsafe property.
    - HUD cannot continue to be both a leader in Neighborhood Stabilization and at the same time one of the worst offenders when it comes to managing vacant blighted property.
    - On a positive note, HUD must be praised for its recent arrangement with the City of Cleveland to transfer vacant property to the City and discontinue the prior practice of "dumping" blighted property to flippers and investors.
    - This arrangement must be continued and expanded to include more of HUD's post-foreclosure vacant property in Cleveland, and in other municipalities.
    - Fannie Mae should be encouraged to cease its practice of dumping post-foreclosure vacant property to flippers and investors, and follow HUD's lead to divert these properties to municipalities, land banks and other entities committed to beneficial reuse. [Note: A recent agreement between Fannie Mae and the new Cuyahoga County Land Bank may mirror the HUD- Cleveland agreement, but Fannie Mae should be encouraged to cease the practice of dumping vacant property while this new agreement is being rolled out.]

3. **Beyond merely setting the example for management of post-foreclosure property, the Federal Government and its regulatory agencies should do everything in their power to hold lenders accountable for the condition of post-foreclosure property, and reign in the "dumping" of REO property to irresponsible flippers/investors.**
    - Banks are winning the "REO Race" – successfully offloading their vacant foreclosed property before municipal code enforcement officials can catch them.
    - Of the 11,500 vacant properties in Cleveland, only 22% are now held by banks.
    - However, more foreclosed properties are on the way, and efforts need to be stepped up to stop the dumping.
    - We need stronger laws, perhaps national in scope, that hold financial institutions accountable for the condition of foreclosed property ***as soon as the foreclosure is filed*** – prior to taking title at Sheriff Sale. [As noted above New Jersey became the first state to adopt this in May 2009, and in Ohio Rep. Dennis Murray has proposed a similar measure (HB323)].
    - Financial institutions should not be rewarded with Troubled Asset Relief Funds (TARP) when they proceed to irresponsibly manage and "dump" those assets like garbage in American cities; receipt of Federal financial support should be conditioned upon financial institutions agreeing to a "Code of Conduct" with respect to the ownership and disposition of foreclosed property. [A sample Code is available from the Cleveland Vacant and Abandoned Properties Action Council].

- If financial institutions knew they would be held accountable for the consequences of creating housing abandonment, they might be more apt to consider meaningful loan modification rather than foreclosure.

4. **Increase Federal financial resources for municipalities to ramp up housing code inspection, enforcement and blight elimination.**
    - Although cities across the country are attempting to strengthen their efforts to address a flood of vacant blighted property, they need greater financial resources to meet this challenge.
    - The Neighborhood Stabilization 1 and 2 Programs are an important step, but together they are still insufficient to meet the need; Congress should appropriate additional "disaster relief" funding for cities like Cleveland that are struggling to keep pace with the post-foreclosure clean-up.

5. **Return to basic Community Reinvestment Act (CRA) lending: "fair" access to credit with "safe and sound" underwriting.**
    - Federal regulatory agencies should make a distinction between responsible CRA lending – that experienced low rates of default – and subprime lending, which led to the current crisis.
    - As regulatory reform is considered for financial institutions, don't "throw the baby out with the bath water"; CRA provided homeownership opportunities through safe and sound loan underwriting, and did so with minimal default and foreclosure.
    - Community efforts at market stabilization and recovery will be severely undermined if neighborhood residents and qualified homebuyers cannot get access to credit.

Mr. KUCINICH. I appreciate that you brought the video here and I can say that, Mr. Rokakis, we have unfortunately seen a lot worse. You know, Slavic Village, I don't know if Mr. Brancatelli is still here, we went on a tour last year, it's incredible. But I appreciate you being able to bring a video here and point out how just simple things like securing a property are not happening and we all know what the implications are from that lack.

Mr. Grossinger, you may proceed for 5 minutes. Thank you.

STATEMENT OF ROBERT GROSSINGER

Mr. GROSSINGER. Thank you, Chairman Kucinich and Ranking Member Jordan. Thank you for giving me the opportunity to speak today. My name is Rob Grossinger. I'm the Senior Vice President of Bank of America. I do, as a sort of full-time job, coordinate the bank's REO work with cities, counties and States that receive money under the stabilization program. I also have worked on a number of pilot projects dealing with some of the subjects we've talked to today with respect to loan modification, customer outreach and again on the vacant building problem.

I do want to quickly update you on the bank's loan modification efforts. I will say that, though I'm going to give you some statistics and our support for the HAMP program, I would be remiss without saying that we all do not feel it's a total success right now and are hoping for better days ahead in terms of its success.

We do support Make Homes Affordable. We do voluntarily comply. We have, to date since January 2008, modified 600,000 customers, only 150,000 of those have been under HAMP, the other 450,000 were under our own programs. The 150,000 I referred to with respect to HAMP are in trial modification. We are now increasing our efforts to pull people through.

I think the discussion in the first panel around the, what everyone would agree was the dismal performance of moving people into permanent. Last week alone we sent out 50,000 pieces of mail to 50,000 of our customers asking them, with specific statements about which documents we still needed to pull them through, asking them to get those documents in so we could move them into permanent modification.

With respect to customer outreach, we are also participating in a number of efforts nationally. We are a sponsor and helped form the Alliance for Stabilizing Communities, which is a partnership with the National Counsel of LaRaza, the National Urban League and the National Coalition for Asian Pacific American Community. We will be holding 40 housing rescue fairs with that alliance over the next year-and-a-half in 24 communities. We have done 215 community outreach events in 30 different States.

I would like to turn the remainder of my time to some of the pilot efforts we are doing because, quite frankly, this is new to a servicer. This issue has blossomed to the point where any creative thinking is necessary at this point. So, for example, in Chicago we have piloted in four zip codes an outreach effort working with two community organizations. We have turned over the names under, of course, anonymous disclosure agreement, with 1,500 of our customers who are 60 days delinquent and beyond. The community organizations are door knocking those customers and will continue to door knock until those customers hopefully respond in some way. Those that seek help will receive actual counseling. We have created the dedicated staff to work with those counselors so that documents won't be lost, documents won't go into cyberspace. It will be a direct relationship between our staff and these counselors.

But finally, and actually in reference to Congressman Jordan's comments from the first panel, we are going to be doing an analysis of every declination. The NPV model is a bit of a mystery to everybody, especially when it comes to inner city communities. And so we want to see with our community partners what effect it has by having to use statewide averages, for example, on the REO discount provision of the NPV model. If we were to look at actual census tract data or city data versus statewide, would the NPV decision come out differently? We don't know the answer to that, we want to partner with these organizations to learn that and will be using this pilot as a learning laboratory on that question.

The second piece of this pilot is homeowners who we can't help under any scenario. Could we consider renting back to those homeowners while we market the property? We are going to be looking at that with these groups. We feel those homeowners will need counseling. The groups have agreed to provide the counseling.

Another opportunity which we are looking at in Detroit is possibly selling those homes to not-for-profit organizations who could then enter into lease to purchase with the homeowners. There are a lot of creative potential solutions out there that require an honest assessment without prejudging results, and the bank is looking at every opportunity to do that because again, as I stated before, we are all learning at this. This is a massive issue. We are a servicer, we are not a social service organization, so we have to partner with those that are to reach the conclusions that we all hope to reach.

Finally, I want to talk about neighborhood stabilization. We talked about, in some of the statements earlier, about let servicers not finishing the foreclosure process—we are working in Chicago, we are voluntarily providing an Excel spreadsheet of every vacant property, whether we foreclosed on it or not, to the city. We are registering everything we can under the MERS system. And I would highly encourage every city to adopt MERS as a registration for vacant property. But because the city requires us to have property insurance on properties in order to register with their system and we can't have property insurance on something we don't own, we are voluntarily giving them a spreadsheet of everything, whether we foreclosed or not, we are taking responsibility for maintaining them, for stabilizing them.

And most importantly, we ventured into a property preservation contract with a local organization that does job training and they are doing the property preservation for us and doing a phenomenal job so far. So we are going to expand their work into the rest of the parts of the city. We believe that that sort of property preservation has to happen on the ground, using local groups who have a belief that the community, that that's an asset to the community that can be saved, if the property can be saved.

And I've met with Mayor Daley twice in the last month. If it's a frame house, he grew up in brick bungalows, if it's a frame house that presents a danger, he wants us to demolish it, and if it's to that extent, we will. We will actually pay for the demolition.

So that's some of the things that we are looking at doing on a creative basis, we have to continue that and we hope to get that support from local community groups as well.

[The prepared statement of Mr. Grossinger follows:]

TESTIMONY OF

ROBERT S. GROSSINGER
SENIOR VICE PRESIDENT, COMMUNITY AFFAIRS
BANK OF AMERICA CORPORATION

Before the
DOMESTIC POLICY SUBCOMITTEE
of the
U. S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

CLEVELAND, OHIO

DECEMBER 7, 2009

Chairman Kucinich, Ranking Member Jordan, and members of the Subcommittee, thank you for the opportunity to testify today on Bank of America's ongoing efforts to work with individuals impacted by the residential foreclosure crisis.

I am Robert Grossinger, Senior Vice President, with Bank of America's Community Affairs department. I coordinate the Bank's real estate owned (REO) sales process with the cities, counties and states that receive funds under the HUD Neighborhood Stabilization Program (NSP), and work on pilot projects designed to increase outreach to troubled mortgage borrowers. Prior to assuming this role, I worked in community reinvestment and have held positions with various state and national housing and legal assistance organizations.

Today I will provide you with an update on Bank of America's efforts to assist borrowers with mortgage loan modifications and will also discuss other efforts to assist borrowers and tenants who live in homes that cannot be saved by a loan modification and ultimately go into foreclosure.

Bank of America strongly supports the Administration's Making Home Affordable programs, as evidenced by our industry leadership position in completing the highest number of refinances under the Home Affordable Refinance Program (HARP) and the highest number of both active trial modifications and offers extended under the Home Affordable Modification Program (HAMP).

Since January 2008, Bank of America has helped more than 600,000 customers with a loan modification through our own programs and with trial modifications through HAMP. This includes over 150,000 customers who have entered into HAMP trial modifications and an additional 450,000 customers we have helped through other non-HAMP loan modification programs.

As the country's largest mortgage servicer, we are a major partner in the Home Affordable Modification Program and understand the responsibilities that are associated with that leadership role. To that end, we are fully committed to supporting HAMP and have made it the centerpiece of our loan modification efforts. Bank of America continues to work on transitioning at risk homeowners into trial modifications and converting existing trial modifications to completed permanent modifications. Last week, Bank of America notified more than 50,000 of our own customers who have made their trial period payments that we have not yet received all required documents. We have also employed representatives of Bank of America in key markets to attempt face to face outreach to customers who have failed to send in required documents.

We continue to strongly encourage Bank of America customers to respond to our attempts to contact them. This includes carefully reviewing mail from Bank of America and responding to attempts from a notary to schedule an appointment for document signatures on Bank of America's behalf. There are no fees for these services and our customers will incur no costs.

In cases where customers cannot meet the requirements of the government programs, Bank of America will make every effort to complete a modification through our own programs. As noted earlier, Bank of America has completed non-HAMP loan modifications for more than 450,000 customers since January 2008. This includes our National Homeownership Retention Program (NHRP), announced in October 2008, created to assist nearly 400,000 Countrywide borrows with subprime and pay option adjustable rate mortgage products. This program alone has already provided mortgage relief to 100,000 eligible customers. According to the bank's most recent quarterly progress report, more than 31,000 customers received assistance under this program in the third quarter -- the largest three-month program total so far. We have dedicated substantial resources to these efforts including the expansion of our default management staffing to nearly 13,000 – a 40% increase since the beginning of the year.

We have increased our other customer outreach efforts as well. Since January of this year, Bank of America has participated in more than 215 community outreach events to assist distressed borrowers in 30 states. We also have partnered with three national nonprofits, the National Council of La Raza, the National Urban League, and the National Coalition for the Asian Pacific American Community, in the creation of the Alliance for Stabilizing Communities. We provided funding in support of this national coalition and its work to hold 40 housing rescue fairs over the next two years in 24 communities hardest hit by the foreclosure crisis.

Further, we have implemented innovative new methods to reach borrowers, including door-to-door campaigns and a pilot Customer Assistance Center to provide face-to-face counseling.

In September, we launched a Bank of America Home Loans Assistance website to provide our customers easy online access to gain answers to their questions about the loan modification process – http://homeloans.bankofamerica.com/homeloanhelp.

We continue to critically look at our loan modification process, and to listen to our customers, community partners, and other stakeholders about how we can improve.

It is important to note that in cases where a borrower is not eligible for any type of loan modification, we consider whether they are eligible for some other workout program that will allow them to continue to own the home. Our goal is to keep as many customers in their homes as possible. We will exhaust every available option including HAMP, our NHRP and other loan modification solutions, as well as short sales and deeds in lieu, when a homeowner chooses to sell their property or has no other option except foreclosure.

We recognize that some borrowers will not be able to avoid a foreclosure and; therefore, we are also developing programs to assist the occupants of those homes. We are addressing both tenants living in foreclosed properties as well as current owner occupants.

You also asked that we speak to pilot programs designed to "rentback" foreclosed properties. I will provide you with an explanation of some of the programs we are piloting. These programs are in their infancy, and we plan to build upon the lessons learned from each as we develop additional programs to assist these individuals.

Recognizing the negative impact on tenants when the property they rent goes into foreclosure, Bank of America recently began a pilot program with the City of Boston to identify 2 to 4 unit properties within a certain neighborhood where the lawful tenants were present in a property recently foreclosed upon by the bank. The City has agreed to purchase these properties from the bank using either city funds or Neighborhood Stabilization Program funds with the specific intent of maintaining the property as rental and keeping those lawful tenants in place. This is a new partnership and we cannot point to specific results. Nevertheless, we anticipate this process will result in multiple buildings being retained as rental housing while saving the current tenants from dislocation.

In Chicago, many buildings were fraudulently converted to condominium buildings while the tenants living in the building were totally unaware of the conversion. Bank of America has recently agreed to sell one of these condominiums at a reduced price to a community development organization hoping to jump start a process that will permit the owners to "de-convert" the property back into a rental property and keep the current tenants in place.

Recognizing the need for increased rental options and the likelihood of certain properties in certain neighborhoods to remain unsold for extended periods of time, the bank has begun a pilot effort to set aside 20 REO properties in parts of California to serve as rental properties for the foreseeable future. Tenants are currently being sought for these properties.

To accommodate the 309 jurisdictions throughout the country receiving Neighborhood Stabilization Program funding, the bank has established a separate staff within its REO department to work with these communities to efficiently and cost effectively purchase our REOs within the regulatory framework of NSP. Working both directly with NSP recipients and sub-recipients and through the National Community Stabilization Trust, the bank now partners with over 270 different NSP recipients. To date, under NSP, the bank has sold over 200 REO properties and currently has over 200 more in escrow. The bank offers these properties both listed and pre-listed to NSP recipients and provides training to all partners on both use of the bank's tools and on the general workings of the REO market.

Here in Cleveland, the bank has entered into a partnership with the REO Clearinghouse, the City, the County and many community organizations to address the issue of abandoned, REO properties. Bank of America works with the Clearinghouse to identify properties desirable to the city or county that have little or no value on the market, and transfer these properties by sale or donation to the city, the county, the land bank or other organizations designated by the governmental entity. To date, Bank of America has offered 9 properties through the clearinghouse.

Included with my testimony is a copy of Bank of America's latest Lending and Investing Initiative Quarterly Impact Report, which details work we are doing in communities across the country to support the economic recovery. This report touches on several important areas. In addition, to our home loan modification efforts, which I have already covered, this report highlights efforts to support municipalities and nonprofits, small business lending, and ongoing efforts to provide clear and fair consumer products to our customers. This report highlights over $130 billion in consumer lending this year to date, while serving one out of every two U. S. households. It also references more than $4 billion in credit extended to small businesses, and more than $41 billion in total credit outstanding. And through a combination of lending, investments, and philanthropy, we continue to support vital community resources including nonprofits and government entities. This is in addition to other loans and investments helping revitalize low to moderate income areas through our community development banking.

In closing, Bank of America is committed to driving economic growth, strengthening our communities and supporting our customers. Our pledge is to always be a responsible lender and help create successful homeowners - to ensure that our customers can enjoy their homes with confidence today and far into the future. Thank you for the opportunity to speak today.

Mr. KUCINICH. Thank you.

Professor Coulton, you may proceed for 5 minutes.

STATEMENT OF CLAUDIA COULTON

Ms. COULTON. Chairman Kucinich and members of the subcommittee, it's an honor to appear before you today to present research on how the foreclosures crisis has played out here.

The most visible side of the current foreclosure crisis is that foreclosures more than quadrupled in recent years, reaching a peak of more than 14,000 in 2007 and remain as high today. Since 2006 alone, one in five homes have foreclosed in the hardest hit areas of Cleveland, some more than once.

But the seeds of the crisis were sewn in the preceding decade as independent mortgage companies began to dominate local mortgage markets in the city and some inner ring suburbs with subprime loan products. Our study that tracked mortgages from the point of origination found that, holding other factors constant like borrower income and loan-to-value, subprime loans were over eight times more likely to foreclose than prime loans. Many of these loans originated by unregulated independent mortgage brokers were destined to fail at the outset. We found the foreclosure rates peaked at the 12th and 36th month after origination. Just a few companies dominated the market here. For example, one company out of California that is now defunct was a major player. Our studies showed that 65 percent of what they originated here went into foreclosure in the first 24 months.

Subprime lending and foreclosure did not fall evenly on everyone. In fact, the research shows that African-Americans compared with whites of similar income were four times more likely to get subprime loans. Racial disparities in subprime lending translate into the region's highest rate of foreclosure in predominantly African-American neighborhoods.

The foreclosure process typically ends with homes being sold at foreclosure sale. In a typical market, there is a reasonable demand for these properties, but due to huge numbers, they now languish in REO for 12 to 18 months, sitting vacant and unattended often. Properties that get stuck in the foreclosure process itself can be even more problematic. For example, currently more than 5,000 properties have a decree of foreclosure, but more than 180 days have elapsed without a foreclosure sale. Referred to as possible bank walk-aways, the homeowner retains responsibility for the taxes and maintenance of the property but typically doesn't even know it.

The glut of mortgage failures has ignited a downward spiral in the housing market causing enormous loss of equity and value. Properties sold out of REO in Cleveland are going for a mere 13 percent of their previous market value. More than $800 million in equity has been lost so far on these foreclosed homes, and it's not over yet. And that does not count the negative spillover effects on the sales prices of other homes nearby.

Even worse, a very recent trend is for REO properties to be sold off in bulk at extremely distressed prices, we define that as $10,000 or less, mainly to out-of-state corporations and individuals looking for bargains. Unheard of as late as 2005, the practice increased tenfold in just 3 years. On the East Side of Cleveland, it is now the norm. Nearly 80 percent of the REO properties were sold at these extremely low prices. Most of these transactions are coming from just a few big sellers. By and large the buyers are out-of-state corporations or investors who purchase them sight unseen. The properties become tax delinquent and are resold quickly in very poor condition or offered on land contract to unsuspecting home buyers.

At every stage of this distraction, Clevelanders have fought back. Yet despite local efforts and recent help from the Federal Government, the enormity of the devastation is such that the region cannot recover without our assistance with clean-up and policies to stabilize the housing market and neighborhood.

The research suggests more policy issues for your attention. One, implement stronger mechanisms to enforce responsibilities by lenders and servicers to modify loans and to protect properties. Two, strengthen consumer protections on loan products and extend fair lending mandates to more of the industry. Three, preserve affordable housing options including sustainable home ownership, rental opportunities and healthy homes. And four, provide longer-term support for neighborhood stabilization and land reutilization for highly impacted regions. Thank you.

[The prepared statement of Ms. Coulton follows:]

U.S. House of Representatives
Oversight and Government Reform Committee
Domestic Policy Subcommittee

Claudia Coulton
Professor and Co-Director
Center on Urban Poverty and Community Development
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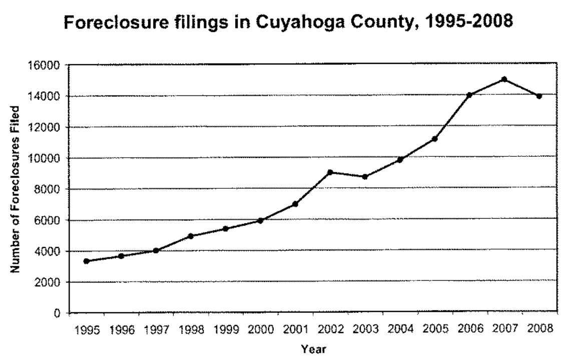
Written testimony prepared for hearing on:
Characteristics of the Ongoing Residential Foreclosure Crisis

December 7, 2009

Chairman Kucinich and members of the subcommittee, it is an honor to appear before you today to present research on how the foreclosure crisis has played out in Cleveland and Cuyahoga County. It is important because Cleveland is one example of historic industrial cities with relatively weak housing markets that have been very hard hit by subprime lending and foreclosure. But Cleveland has fought back, drawing on its longstanding network of nonprofit and government agencies that were engaged in the process of stabilizing neighborhoods before the foreclosure crisis, and readily took action when the crisis hit.

The Foreclosure Crisis in Northeast Ohio

We point to the start of the current crisis as some time between 2003 and 2004, when foreclosure filings in the region began a rapid, sustained spike. As the chart below illustrates, the number of foreclosure filings in Cuyahoga County more than quadrupled between 1995 and 2007 (Schiller & Hirsh, 2008) reaching a peak of more than 14,000 filings per year, higher than any county in Ohio. Since 2006 alone, one in five homes have foreclosed in the hardest hit areas.



Source: Policy Matters Ohio. (2008). Foreclosure filings in Ohio, 1995-2008: Cuyahoga County.

Types of Loans that Foreclose

But the seeds of the crisis were sown early in the decade as independent mortgage companies (IMCs) began to dominate local mortgage markets with subprime loans, particularly on the City's east side and inner ring suburbs. To study characteristics of foreclosed loans, we used matching techniques to link a sample of HMDA mortgage records with locally recorded mortgage documents and foreclosure filings (Coulton, Chan, Schramm, & Mikelbank, 2008). The results showed that the strongest predictor—by far—of a loan foreclosing is its status as a subprime loan (i.e. loan with a high interest rate spread as designated by HMDA). [1] In fact, holding other factors such as buyer income constant, home purchase loans that were subprime *had an 816 percent higher chance of going into foreclosure* than other loans. We estimate that 65 percent of the subprime loans in the study foreclosed within three years of origination. Most of the subprime loans were originated by IMCs through unregulated independent mortgage

[1] *Subprime loan:* If the annual percentage rate (APR) of the loan is more than three percent (or five percent in the case of junior-liens) above the yield of a Treasury security of comparable maturity at the time the loan was made, the loan is classified as high cost. This is a proxy for subprime lending. In the study, we refer to these as subprime loans. It should be noted that such high-cost loans can be made by any lender, not just those classified as subprime lenders by HUD (the Department of Housing and Urban Development). Additionally, there is no other information in HMDA (Home Mortgage Data Act) to indicate whether the loan has other features, such as variable interest or prepayment penalties, that could affect foreclosure.

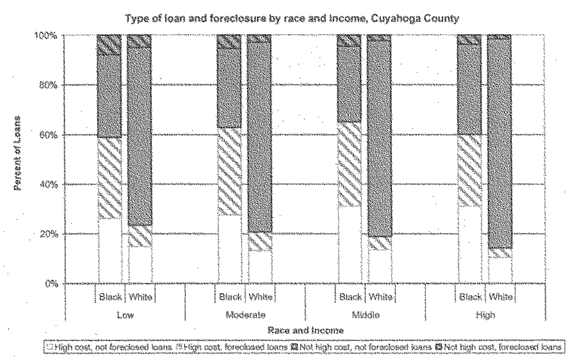
Top 20 originators of subprime loans, 2005-2007, and foreclosure rates within 2 years of origination			
Originator	On HUD subprime list	Percent subprime loans	Percent subprime loans with foreclosure
1 Argent	Yes	87.34	45.74
2 New Century Mortgage	Yes	95.41	55.37
3 Wells Fargo	Certain subsidiaries	36.16	25.02
4 Countrywide	Certain subsidiaries	25.92	22.25
5 National City	Certain subsidiaries	29.00	26.09
6 Aegis	Yes	87.15	47.38
7 Long Beach Mortgage	Yes	99.34	65.22
8 Option One Mortgage	Yes	94.04	43.12
9 BNC	Yes	94.06	46.55
10 People's Choice Financial	Yes	93.52	45.21
11 Novastar Mortgage	Yes	97.96	41.88
12 Accredited Home Lenders	Yes	96.21	34.11
13 Intervale Mortgage	No	87.23	31.95
14 Chase	Certain subsidiaries	96.53	16.45
15 Southstar Funding	Yes	84.67	36.77
16 Indymac Bank	No	55.04	32.27
17 Equifirst	Yes	93.24	27.13
18 Citi	Certain subsidiaries	36.04	5.08
19 Ameriquest Mortgage	Yes	71.17	20.58
20 Aames Funding	Yes	92.88	40.67

Source: HMDA, Loan Origination and Foreclosure Matched Data File
Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
http://neocando.case.edu

brokers. As seen in the table below, a few lenders dominated the market for those subprime loans that foreclosed. In fact, although 223 individual lenders made at least one sub-prime loan, 75% of the subprime loans that foreclosed were made by the top 20 companies listed here. To cite one example, Long Beach Mortgage, whose loan portfolio was made up almost entirely of subprime lending (99.34 percent), originated the 7th-highest number of subprime loans in Cuyahoga County. Of those loans, 65 percent went into foreclosure. Long Beach Mortgage—now defunct, like many of its peers in the industry—operated out of Anaheim, California (Coulton, Chan, Schramm, & Mikelbank, 2008).

Disproportionate Effect on Minorities

Subprime lending and foreclosure did not fall evenly on everyone. In fact, the research reveals marked disparities among races both in the originations of subprime loans and in related foreclosures. African Americans, compared with whites of similar income, held subprime loans two to four times more often than their white counterparts, leading to high rates of foreclosure among this population of borrowers (*see chart*) . In fact, the highest income bracket showed the largest disparity, with African Americans receiving subprime loans 4.2 times as often as whites.



Source: HMDA, Loan Origination and Foreclosure Matched Data File
Prepared by: Center on Urban Poverty and Community Development, Mandel School of Applied Social Sciences, Case Western Reserve University.
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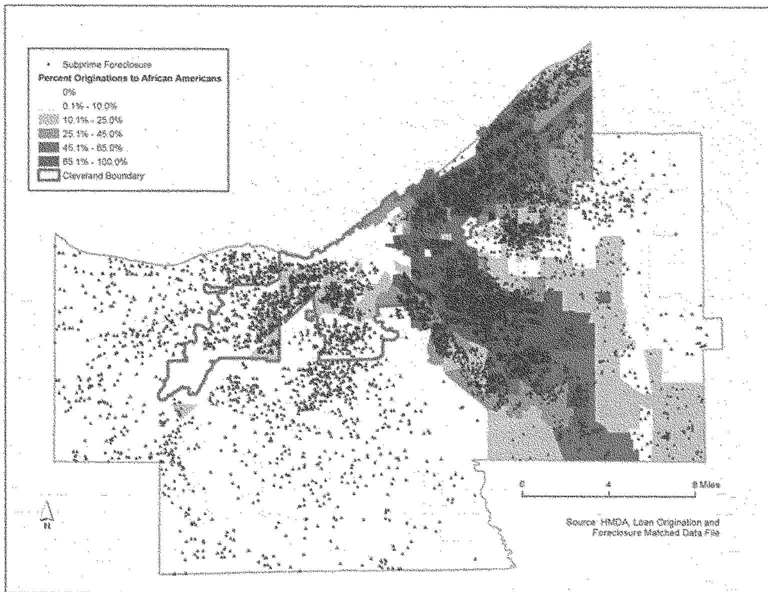
Racial disparities in subprime lending translate into the region's highest rates of foreclosure in predominately African American neighborhoods, which account for nearly half the foreclosures on subprime loans. Below is a map of Cuyahoga County indicating the percent of borrowers that are African American in each census tract, with points representing the locations of the subprime loans that foreclosed. The neighborhoods with large numbers of African American homeowners are the ones that are bearing most of the costs of the crisis going forward, such as loss of property values and the costs of demolition and remediation (Coulton, Chan, Schramm, & Mikelbank, 2008).

Subprime foreclosures by concentration of loans to African American borrowers



Foreclosure sales overwhelm the system

The foreclosure process ends with houses being sold at foreclosure sale. In a typical market, there is a reasonable demand for properties that emerge from the foreclosure process via a public auction. Before the foreclosure crisis, more foreclosed properties were purchased by private buyers (individual people and investors) at foreclosure sale. In 2000, private buyers made up 35 percent of the market for properties at foreclosure sale. Now, almost all properties coming out of foreclosure sale enter REO (real-estate owned) status. REO is the term utilized for a property that is owned by a bank or lender. Where there used to be a sizeable demand for foreclosed properties, there are virtually no private buyers at foreclosure sales any longer; private buyers made up only eight percent of the market for foreclosure sales in 2008. Area banks, too, are largely absent from the local REO picture, which is now almost completely dominated by national lenders and government sponsored entities (Coulton, Mikelbank, & Schramm, 2008).

What that means is, with less private demand for REO properties, these vacant homes often sit idle and untended. Median time in REO is now over a year, while it was closer to 6 months before the crisis (Coulton, Mikelbank, & Schramm, 2008). Properties in REO can be problematic because they are susceptible to vandalism and property devaluation, and also because it can be difficult for neighbors and others to figure out who owns the property, and who should be called or fined when the property is in violation housing codes. In Ohio, property owners are supposed to record their deeds to identify themselves as owner of record for the property. When a property has reverted to a bank in a foreclosure sale, for instance, but the bank has not recorded the deed as a matter of public record, the result is administrative confusion. *Court dockets* will indicate ownership by the financial institution; however, without the deed's being recorded, the *owner of public record* will be the foreclosed-upon homeowner. This discrepancy becomes an issue when properties are cited for code violations and other public nuisances. Notices are misdirected and repairs delayed, which results in these empty structures continuing to decay. In 2008, an Ohio bill[2] was passed that allows sheriff's departments to record foreclosure deeds on behalf of a new owner, usually a mortgage company—a helpful change administratively.

As if having enormous numbers of properties languishing in REO were not enough, properties that get stuck in the foreclosure process itself can be even more problematic. For example, as of November 2009 more than 5,396 properties have a decree of foreclosure but more than 180 days have elapsed without a foreclosure sale. Referred to as possible "bank walk-a-ways," the homeowner retains responsibility for the taxes and maintenance of the property, owing to an Ohio law that stipulates the foreclosed homeowner remains the rightful owner until a home is sold at foreclosure sale and a foreclosure deed granted. With the previous owner gone, this can lead to a number of foreclosed and abandoned properties that are unknown to authorities, and can also lead to troubles for the homeowner.

Huge loss of property value

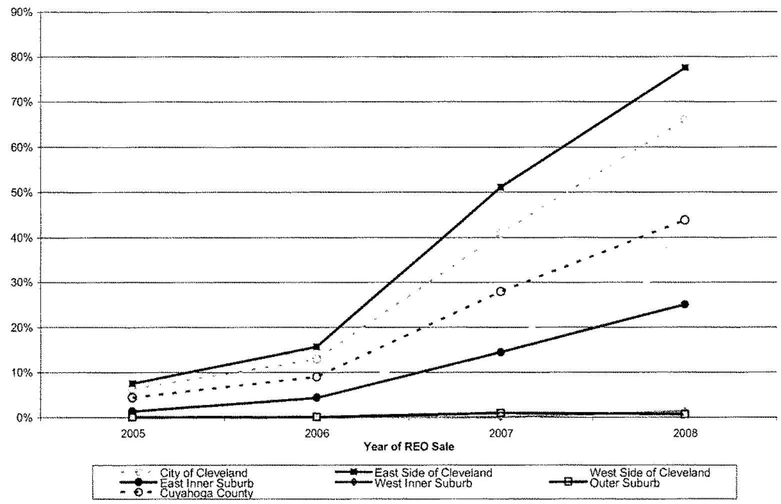
In Cuyahoga County, the City of Cleveland, and Cleveland's suburbs, properties sold out of REO are selling for far less than their estimated market value before foreclosure filing. Back in 2000, for example, properties sold out of REO were purchased for approximately 75 percent of their previous estimated market value. By 2007, however, properties leaving REO in the City of Cleveland were selling for a mere *13 percent of their estimated market value.* In Cuyahoga County and suburban Cleveland, properties selling out of REO in 2007 fared only slightly better, fetching sales prices of 22 percent and 37 percent of their estimated market value, respectively. For a weak market like Northeast Ohio that saw little run-up in housing values in the early 2000s, this precipitous drop in home values is a debilitating blow to neighborhoods, communities, and the entire region (Coulton, Schramm, Hirsh, 2008).

Even worse, REO properties are increasingly being sold at extremely distressed prices—defined as $10,000 or less—mainly to out-of-state corporations and individuals looking for bargains. Between 2005 and 2008, REO properties purchased at these very low prices made up an increasing percentage of all REO properties sold. As shown in the chart below, 4.3 percent of REO properties in Cuyahoga County in 2005 were sold at extremely distressed prices. This proportion skyrocketed to 43 percent in 2008, a ten-fold increase. As is the case with subprime lending, this trend of selling houses at extremely low prices has affected the region

[2] Ohio House Bill 138 in the 127th General Assembly. More information is available at http://www.legislature.state.oh.us/BillText127/127_HB_138_EN_N.pdf

disproportionately. In this case, too, much of the activity is concentrated on Cleveland's east side. In 2005, between 7 and 8 percent of properties on the city's east side coming out of REO were sold for less than $10,000. Three years later, *nearly 80 percent* of the more than 2,770 properties on the east side sold out of REO were purchased at these extremely distressed prices (Coulton, Schramm, Hirsh, 2008).

Percentage of all REO properties sold at extremely distressed prices of $10,000 or less, Cuyahoga County, 2005-2009



Source: Tabulation by Center on Urban Poverty and Community Development of Cuyahoga County Auditor Data

One key finding is that just a few sellers are making most of these sales. The top 5 sellers of REO properties for $10,000 or less accounts for more than 50 percent of these transactions. These companies are Deutsche Bank National Trust, Wells Fargo, U.S. Bank National Association, Fannie Mae and Bank of New York. Another finding, less conclusive, is that houses sold at $10,000 or less are making up substantial percentages of all REO properties sold by a seller. What that means is that some sellers are unloading great quantities of REO properties, and are doing so at extremely low prices. "Dumping" is what some call it. However, this is one area where public record can be deceiving. It is important to note that while public record indicates the party that holds title to a property, it is often the case that a bank or lender has hired a servicer to handle transactions related to the property. Most property sales out of REO are handled by mortgage servicers whose identity does not appear in the public records of the sales transfer, making communication about the property difficult for parties interested in purchasing it or raising concerns about its condition (Coulton, Schramm, Hirsh, 2008).

On the purchasing side, data reveal that there were many buyers of these properties—more than 1,200—with only a handful buying groups of more than 100 properties in the Cleveland area.

Here, too, local records are not always indicative of what's happening. Buyers may purchase properties under many different auspices, for instance, and may own many more properties than public records show. By and large, however, buyers are out-of-state corporations or investors. These investors typically have relationships with sellers of REO properties. Some sellers package properties regionally and sell to their customers in bulk; almost all properties are sold site unseen. These transactions, which are collectively defining and reshaping some neighborhoods in the region, are often being conducted by individuals who have never been to Northeast Ohio (Coulton, Schramm, Hirsh, 2008).

The majority of these properties become tax delinquent. Many are resold quickly in very poor condition with only a small price increase. Some of these bulk purchasers are adopting business models that involve land contracts, direct financing to homebuyers, and other tools that are outside the main real estate market practices (Coulton, Schramm, Hirsh, 2008).

Efforts to Address Foreclosures in Cuyahoga County

In 2005 Cuyahoga County officials found themselves facing a steep increase in foreclosure filings and scores of people losing their homes. The huge volumes overwhelmed the court system, to the point that it was taking three to five years for a foreclosure case to move through the courts. The foreclosures also spawned a surge of related problems, including vacant properties that were lowering neighboring property values, attracting vandals, and reducing the tax dollars that city officials desperately needed to address these very problems. Cuyahoga County officials joined forces with leaders of several municipalities to take up the fight against foreclosures, undertaking two distinct efforts.

The first was a response to the county's critical need to expedite the foreclosure process. County officials devised an overhaul to the judicial foreclosure process, including procedural changes that sped up the process and ultimately cleared a longstanding backlog of foreclosure cases (Weinstein, Hexter, & Schnoke, 2006, 2008).

The second, more strategic effort undertaken by this collaborative of county and municipal officials was broader and more far-reaching than streamlining the foreclosure process. This second effort facilitated partnerships among area agencies and nonprofits to initiate activities, programs, and, where warranted, legal action specifically aimed at preventing further foreclosures. Called the *Cuyahoga County Foreclosure Prevention Initiative*, this effort involves 11 county agencies, nine housing nonprofits, and numerous municipalities, area lenders, and other community advocacy groups.

Coordinating and implementing the various components of the initiative required significant cooperation, skill, and resources. Government agencies collaborated across bureaucratic lines of authority. Public and nonprofit groups conferred to make sure their collective efforts were synchronized and minimally overlapping. And, led by Cuyahoga County officials' example, each of the participating groups demonstrated horizontal and vertical collaboration with each other and with the county.

One critical component of the initiative has been United Way's 2-1-1 First Call for Help, a hotline that directs people to appropriate social services providers for a variety of needs. In collaboration with the foreclosure prevention initiative, 2-1-1 connects callers in foreclosure to participating Northeast Ohio housing counseling agencies. Together, these organizations serve as a vital link between individual homeowners facing foreclosure and their lenders. As of February 2009, the initiative has recorded a 53 percent success rate at preventing foreclosures among homeowners who seek foreclosure counseling. To date Cuyahoga County has invested several million dollars in the foreclosure prevention initiative. Additional financing was secured through a redeployment of assets from existing programs to address the crisis (Hexter & Schnoke, 2009).

From downward spiral to productive reuse

A critical component of any effort to bring vacant properties back to productive use is financing. The federal Neighborhood Stabilization Program (NSP) is a crucial aspect of this equation, allotting funds to localities so they may used to meet that locality's specific needs. NSP funds in Cleveland and Cuyahoga County help support the demolition and remediation of these vacant and abandoned properties. However, given the enormity of the need, NSP will only go so far.

Another critical component of any such restorative effort is connecting REO properties to organizations and people who can bring them back to occupancy or productive use. On a national level, there are two organizations that are beginning to acquire REO properties and connect them to local organizations: The nonprofit National Community Stabilization Trust (NCST) was formed in 2008 by six national nonprofits with expertise in community development and housing. The REO Clearinghouse, a for-profit agency formed by Safeguard Properties, was established in early 2009. Both agencies' purpose is to help stem the decline of communities with high concentrations of vacant and abandoned property, and both work to connect national-level servicers with local community development organizations, offering foreclosed properties to these organizations at discounted rates. Cleveland was one of the first cities to work with NCST and the REO Clearinghouse. Current work is small in scale and strategically focused on very specific areas, and will help inform and direct broader efforts going forward.

On a local level, once an organization establishes a connection with holders of REO properties—a sometimes difficult step—it can employ one of several measures to return properties to viable use. One new approach to cycling vacant Northeast Ohio houses back into productive use is the recently established county land bank, whose primary function is to obtain and make use of tax-foreclosed properties. The county land bank, which is structured as a county land reutilization corporation (LRC), is modeled after a highly successful program in Genesee County, Michigan.

Strategically, the LRC can help further revitalization efforts of individual communities as well as regional efforts. By strategically amassing land, the LRC can help communities implement plans for communal green spaces. Pooling properties in the new land bank will also mitigate the risks associated with land-ownership, which was previously assumed by small, local CDCs. These same area CDCs are expected to play a central role in getting land bank properties back on the market.

Finally, efforts are under way at the neighborhood level to help prevent homes from deteriorating, whether they are occupied or temporarily vacant. Northeast Ohio has many programs which complement the efforts at the city and county level aimed at combating the foreclosure crisis. Cleveland and Cuyahoga County's response to the crisis exemplifies the value of coordination and cooperation among several levels of government coupled with the integral involvement of a large number of non-profit organizations and citizens. A critical component in understanding Cleveland's capacity to handle this crisis is the long history investment in building community capacity. Going back several decades, local and national philanthropic organizations have invested in institution building by providing targeted and sustained resources to the field, particularly through intermediaries, such as Neighborhood Progress Inc., Cleveland Housing Network, Enterprise Community Partners and others, that support housing and community development. Moreover, these foundations have provided essential support to develop a robust capacity among local universities that, in part, through longstanding partnerships with local governments can provide up to date data on housing and neighborhoods.

Looking ahead

The City Planning Commission, working together with Kent State University's Cleveland Urban Design Collaborative, has prepared a comprehensive plan for restructuring the city and making use of blighted, vacant land. This plan, *Re-Imagining a More Sustainable Cleveland*, outlines potential revitalization projects that promote sustainable growth and help preserve home values in neighborhoods within a city that's experiencing a shrinking population. In the midst of this devastating crisis, there is hope. Cleveland has been characterized as "resilient," with collaboration taking place not only horizontally across local communities but also vertically with the county (Swanstrom, Chapple, Immergluck, 2009).

Conclusions and policy considerations

To summarize what the data reveal, Cleveland and Cuyahoga County entered this decade with a modestly appreciating housing market, a manageable number of foreclosures, and a community development system set up to help return vacant properties to productive use. Then subprime mortgages arrived on the scene and, in some sections of the city and suburbs, rapidly supplanted prime rate loans as the primary product for home purchases and refinances. Many of these loans foreclosed relatively quickly and foreclosures reached unprecedented rates. The sheer numbers overwhelmed the system. Neighborhoods with large African-American populations were particularly hard hit by foreclosures and the negative spillover effects.

The data also document a growing number of properties that entered prolonged periods of vacancy, stuck either in the foreclosure process or in REO portfolios of mortgage companies and servicers. Untended properties deteriorated and were vandalized, reducing the likelihood that these houses could be sold and reoccupied. The value of housing stock plummeted, leading speculators to buy properties in some neighborhoods in bulk and for pennies on the dollar.

Intervention is needed in every stage of the process. Some programs are targeted to loan origination, so that solid and workable loan products are made available to buyers at terms they can manage. Other efforts aim to prevent foreclosures by counseling homeowners before they are in default or assist them once foreclosure actions have been filed, seeking resolutions that are preferable to occupants being evicted and properties sitting vacant. Protecting vacant property and minimizing the harm to the rest of the neighborhood is a focus of other programs. And methods of strategically implementing neighborhood stabilization and land reutilization are also underway.

What more is needed to allow communities like Cleveland to weather this crisis and prevent similar situations in the future? Certainly, reform at the national level—in the credit system and in consumer protections—an end to the recession and a strong regional economy will be essential to the revitalization of Cleveland and similar communities across the nation. The suggestions below, on the other hand, focus on policies and tools to support more effective local action in avoiding, mitigating, and dealing with such crisis in the future.

Implement mechanisms to enforce responsibility by lenders and servicers. This research makes clear that foreclosures are disproportionately costly over the long term to the neighborhoods in which they are concentrated while the short term gains went to the lenders and servicers. Spillover costs—which mushroom as houses remain in foreclosure or REO, or are shifted among speculators—are borne by neighbors, local government, and philanthropic organizations. Lenders and servicers, many of which have no local connection, have too little incentive to modify loans, keep occupants in homes as long as possible, protect vacant property, bring houses up to code and seek responsible buyers for these properties. The reality is that foreclosure is very costly, and more of these costs should fall on the lenders and servicers to shift the incentives in the direction of community stabilization. However, if not accompanied by the tools and local capacity for enforcement, these options might simply result in more homes falling through the cracks.

Strengthen consumer protections and continue to promote fair lending. In Cleveland's low income neighborhoods, increased access to credit was mainly provided in the form of subprime loans. The companies originating a large proportion of these loans relied heavily on independent mortgage brokers who had monetary incentives to originate higher cost loans. Moreover, brokers could operate unscreened for criminal records. Thus, in too many instances loans were made based on inflated appraisals and inadequate documentation. African-American borrowers and neighborhoods have borne a disproportionate share of this fallout. Even though local leaders saw the dangers early on they were unsuccessful in passing laws to control predatory lending[3], (that some have labeled "reverse redlining") or preventing this disproportionate impact on minority groups. While it is also true that greater enforcement and awaited anti-predatory lending rules are now in place, there is no doubt that consumers need better protections. In particular, these protections should focus on low income, less sophisticated consumers, operating in an imperfectly competitive market where mortgage products are complicated and risky. Relying on disclosure mandates and financial education programs has proven not to be enough. As the case in Cleveland unfortunately shows, inadequate regulation

[3] This case involved three local ordinances adopted by the City of Cleveland in 2002, pursuant to the home rule amendment, that prohibited various "predatory" practices by consumer lending institutions doing business in the city. Shortly after they were adopted, the Cleveland ordinances were challenged in a court action initiated by the American Financial Services Association ("AFSA"). AFSA asserted that the Cleveland ordinances were in conflict with legislation enacted earlier in 2002 by the Ohio General Assembly, Sub. H.B. 386, which established regulatory guidelines applicable to all residential mortgage lenders doing business in Ohio. One provision in the bill, codified as O. R.C. §1.63, stated the legislature's intent to "preempt" the entire field of mortgage lending regulation for the state and included language barring local governments anywhere in Ohio from enacting local mortgage lending regulations." From McGlinchey Stafford Client Alert: Ohio Supreme Court Decides the Cleveland Predatory Lending Ordinance Case

and perverse incentives are conducive to criminal activity too. Today a Cleveland area task force is engaged in the criminal prosecution of scores of individuals who took advantage of the situation, but in the future these types of criminal enterprises can be prevented by having the tools in place to prevent victimization.

Preserve affordable housing options, including sustainable homeownership and rental opportunities. Many of the housing units that have cycled through an extended period of REO, vacancy and resale at distressed prices will end up in demolition, especially in neighborhoods with high concentrations of foreclosures. Just a few years ago, these units housed low and moderate income renters and homeowners, but in a weak housing market the costs of saving these homes well exceeds the potential return. In many respects demolition presents an opportunity to reduce concentrated poverty and bring the supply of housing more in line with the shrinkage in the number of households, but more is needed to enable low and moderate income families to relocate to decent housing in mixed income areas. Without attention to both the ability of households to pay for housing and the adequacy and location of affordable housing stock, concentrated poverty neighborhoods may simply be re-created elsewhere.

The foreclosure crisis represents an opportunity for the federal government to recommit itself to affordable housing programs. This includes expansion of the Housing Choice Voucher program, increased funding for the Housing Trust Fund and the Low-Income Housing Tax Credit, and more programs to help first time homebuyers who were disproportionately targeted by predatory lenders. At the local level it is time to move beyond a narrowly focused project approach. Coalitions built to address the foreclosure crisis can be harnessed to mobilize a regional approach to affordable housing, using data to realistically calibrate the right mix between demand side and supply side solutions. It is a favorable time for local groups to encourage green building methods and mixed income developments along with help for low-income renters and home buyers to shore up the demand for such units. In places like Cleveland, where many distressed properties have been purchased out of REO and are being recycled back into low cost rentals with only cosmetic changes, attention must also be given to the health hazards that inevitably worsened during prolonged vacancy. Increased resources for health inspections, enforcement and remediation are necessary to protect new occupants.

Support strategic use of resources for neighborhood stabilization and land reutilization in shrinking cities. The clean up from this crisis will take years, but in a shrinking city this work must be done strategically so that the investments will be sustainable. Federal support needs to continue beyond its current authorization for neighborhood stabilization work. Regions like Cleveland also need to maintain data systems that can help identify areas where funds can be targeted for greater effect. Continued, consistent data collection and ongoing research are needed in any community dealing with a problem of this magnitude. Unfortunately, in many regions the collection and provision of foreclosure-related data have been primarily in the realm of for-profit companies. However, an integrated, real-time data system requires cooperation among a number of government agencies, who must be willing to modify how they collect and distribute their own information so that it can be linked with other sources' and used for the common good.

But a community needs more than data-- It needs bold leaders and engaged citizens willing to take action. It also needs the space to have open and honest conversations about the scale and scope of the problem and what can be done about it.

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Mr. KUCINICH. Thank you very much, Professor Coulton.

Mr. Goldberg, you may proceed for 5 minutes.

STATEMENT OF HOWARD GOLDBERG

Mr. GOLDBERG. I would like to thank the honorable members of the subcommittee for allowing me to testify.

We know that Ohio suffered from the worst mortgage origination in the country from 2002 to 2006. This portfolio of loans has yet to reach its peak of defaults. The number of vacant homes will continue to increase. In Lorain, OH, we have expended, designated or committed almost 70 percent of our acquisition rehab and demolition Neighborhood Stabilization Program funds. We will run out of funding very soon as an urban community that will enter into 2010 with no new funding source unless we receive NSP II funds. We are faced with the frustration of fighting this challenge in the trenches house by house. I guess Wall Street and lending institutions cannot possibly cut through the red tape fast enough at its call centers with its asset personnel, even trying to dispose of the normal foreclosed homes, let alone the problem properties that I now respectfully ask for more help from lenders and Congress.

In my community are vacant homes everywhere where the owners have filed bankruptcy and abandoned the home. No one is getting a modification here. They are beyond repair, they have no value except to landlords and speculators. Typically, the lender, through their foreclosure law firms, has dismissed the action or they failed to initiate one. I have personally called foreclosure law firms about dismissed cases and the attorney typically provides me with a 1–800 customer service number for their client. In the meantime, the property sits vacant. I have no cooperation from the lender.

The first request is a change in requirements placed on lenders as follows: If a vacant property has no value and the condition of it is such that its renovation cannot be justified, that the lender offer the local community or a designated local nonprofit with demonstrated capacity the option of an assignment of its mortgage. Let us perfect the foreclosure. The money the lender will save in legal fees, file management and staff time alone will make you a more profitable lender.

I have a case right now, the owner filed bankruptcy. He would gladly quitclaim the deed to us, he abandoned it 2 years ago. I have called, e-mailed and begged the lender that holds the first mortgage. I obtained written release from the owner authorizing my entering the property, permitting me to contact the lender, permitting the lender to discuss the loan, the property, the condition of the home. I had the property appraised, inspected by the health department, and I literally begged the lender to do something about their mortgage. That bankruptcy and loan default is 3 years old. I begged them to assign the mortgage to the city, that we would take the job over. We could save them the fees. Instead, now that they've received the notice of intent to declare it a public nuisance, they have hired an outside servicing company which will run up the costs to the lender and only prolong this problem.

Please find a way to compel lenders on properties that are valueless to assign us the mortgage, let us perfect the foreclosure and wash their hands of this problem the same way cities solve these problems, house by house. I have had some limited success doing it, but it shouldn't take months of calls and e-mails. Cities are financially strapped and have less staff to solve these problems than lenders.

My second request is that Fannie Mae and all of their lenders, with the exception of HUD that is giving cities preferential treatment, contact the cities before homes are marketed, allow us to prove with evidence that a home cannot be renovated for basic quality of living for home ownership, that it be sold to the city for a dollar, taking into account the cost of demolition. Typically, we are competing with landlords to do the bare minimum to a home who will outbid the city. We are expending precious NSP funds in bidding wars to acquire properties for demolition and land banking. In the last 22 homes that I have acquired that will be demolished, my average cost of acquisition is $9,000, the cost of demolition will be at least $8,000. The average loan default was $80,000. And I'm sorry for the lenders that made them; however, cities will run out of money to solve this problem.

Every time I look at a property, whether it's a rehab or demolition, I'm thrown into a multiple-offer situation where we are forced to compete with investors, speculators and landlords and we are having to overpay for these properties. When we run of out NSP funds, and I pray that we don't, and we get more money, we are going to have very little to be able to solve this problem of the repossessed homes.

In conclusion, I respectfully request consideration of four items. Compel lenders to assign us mortgages, compel lenders and Fannie Mae to not make us compete with landlords. If restructuring loans, please make them at market value so that homeowners don't have an incentive to walk. Please fund our NSP II application.

And a famous phrase from the Talmud, "The day is short, the work is much, the reward is great." Thank you.

[The prepared statement of Mr. Goldberg follows:]

Testimony of:
Howard Goldberg
Renewal Administrator, Department of Community Development
City of Lorain, Ohio

Before the Domestic Policy Subcommittee of the House Committee on Oversight and Government Reform
Cleveland, Ohio

December 7, 2009

Honorable Members:

Everyone present here today is passionate about and committed to the cause of preventing the autopilot future of this region's housing stock, and its severe blighting effect on our older urban communities. Without serious intervention and a coordinated effort by all stakeholders for the next decade to stabilize our urban neighborhoods every existing malady will only dramatically increase. The tax base of our schools will continue to diminish and our children will run from this region to find greener pastures. We know that Ohio suffered from some of the worst mortgage origination in the country from 2002 to 2006. This portfolio of loans has yet to reach its peak of defaults. The number of vacant homes will continue to increase.

In Lorain, Ohio, we have expended, designated, or committed almost seventy per cent (70%) of acquisition, rehabilitation, and demolition Neighborhood Stabilization Program (NSP) funds. We will run out of funding very soon and as an urban community that will enter 2010 with no new funding sources, unless we receiver NSP II Funds, we are faced with the frustration of fighting this challenge in the trenches house by house against wall street and lending institutions that cannot possibly cut through the red tape fast enough and lack the manpower at its call centers, with its asset disposition personnel, to even try and dispose of the "normal" foreclosed homes let alone the problem properties that I now respectfully ask for more help from the lenders and Congress.

In my community, there are vacant homes everywhere, where the owner had filed bankruptcy, abandoned the home (does not want a modification), they are beyond repair, have no value except to landlords and speculators, and typically, the lender through their foreclosure law firm has dismissed the foreclosure action, or they have failed to ever initiate one. I have personally called foreclosure law firms about dismissed cases and the attorney typically provided me with the "1-800" customer service number for their client. In the meantime, the property sits vacant, we lack funds for demolition, and I have no cooperation from the lender.

The first request is a change in requirements placed on lenders as follows:
If a vacant property has no value and the condition of it is such that its renovation cannot be justified, that the lender offer the local community or a designated local non-profit with demonstrated capacity the option of an assignment of its mortgage. Let us perfect the foreclosure, the money you will save in legal fees, file management, and staff time alone will make you a more profitable lender. I have a case right now; the owner filed bankruptcy, and would gladly quit claim deed the home to us. He abandoned it two years ago. I have called, emailed, and begged the lender. I obtained a written release from the owner, authorizing my entering the property, permitting me to contact the lender, permitting the lender to discuss the loan, the property, and the conditions of the house with me. I had the property appraised, inspected by our health department, and literally begged the lender, to do something about their mortgage. The bankruptcy and loan default is three years old. I begged them to assign the

mortgage to the city, and that we would foreclose, clear title, and then demolish the property. I could save the legal fees, the costs of securing the property, and the wasted staff time they cannot afford to allocate. Instead, now that they have received a notice of intent to declare it a health nuisance, they have hired an outside servicing company which will run up the costs of this lender and only prolong this problem.

Please find a way to compel lenders on properties that are valueless to assign us the mortgage, let us perfect a foreclosure, and wash their hands of the problem the same way cities solve the problem, **HOUSE BY HOUSE**. I have had some limited success doing this, but it shouldn't take months of calls and emails. Cities are financially strapped and have less staff to solve these problems than the lenders.

My second request is that Fannie Mae and all other lenders (except HUD that does give cities preferential treatment) contact the cities before home are marketed, and allow us to prove with evidence that a home cannot be renovated for a basic quality of living for home ownership, and that if it is classified for demolition that it be sold to the city for $1.00 Dollar (like HUD does in some cases) taking into account the cost of demolition. Typically we are competing with landlords that will do the bare minimum to a home who will out bid the city. We are expending precious NSP funds in bidding wars to acquire properties for demolition and land banking. In the last 22 homes that I have acquired that will be demolished; my average cost of acquisition is $9,000.00. The cost of demolition will at least $8,000.00 (The average loan default was $80,000.00. I am sorry that the lenders made such loans. However, cities will run out of money to solve this problem unless lenders (and Fannie Mae) recognize that maximizing their short term gains will only allow landlords and speculators to continue to plague our neighborhoods. I look at every repossessed home that goes on the market in our city that is under the price of $70,000.00. Whether it is a demolition priced between $9,900.00 and $20,900.00 or a home that is still salvageable priced between $20,000.00 and $70,000, We are competing with landlords from in the city and from out of state, We are thrown into multiple offer situations, and the lender and their asset manager does not care what it will do to the neighborhood. It requires me to spend precious federal dollars just to keep these homes out of the hands of landlords and speculators. When we run out of NSP I funds, and I pray that our NSP II application is funded, we will have little ammunition to fight this war in the trenches. When unemployment is above 10% and local tax dollars cannot sustain basic city services we need the lenders help.

In conclusions, I respectfully request consideration of four items.

1) Compel Lenders to take the stagnant properties off their accounts by assigning the mortgages to local cities and non profits. Let us foreclose and secure title.
2) Compel Lenders and Fannie Mae to not make cities compete for properties that need to be demolished. The cities should be aloud a sixty day review period before the home is placed on the market to prove that it needs to be demolished. We should not have to be in bidding wars on these houses.
3) If restructuring loans and supporting mortgage modifications. Compel lenders to give the homeowner an incentive not to walk away from the home. The total mortgage amount needs to be lowered so that there is at least 5% equity to the homeowner. If the loan amount isn't reduced to a current market value and the payment isn't affordable on a permanent basis, the lender will only get the home back, and lose more money foreclosing and reselling later.
4) Please fund our multi community consortium NSP II application.

To quote a famous phrase from the Talmud:

"The day is short, the work is much ... the reward is great." (Avot 2:15-16)

Mr. KUCINICH. Thank you very much, Mr. Goldberg.

I'd like to acknowledge the presence in the room of representatives of four congressional offices, Senators Voinovich and Brown are represented here. I would like to thank you for your offices' presence. We also have Congresswoman Fudge and Congresswoman Sutton who are represented here as well. I appreciate the fact that each office has sent a representative and want to acknowledge that.

I also want to acknowledge the fact that Ms. Caldwell of the Treasury Department has remained here to take notes. That's encouraging because often we have these ceremonies and people testify and it wasn't a most receptive audience. Sometimes they leave right away, but you stayed here and that's good and we appreciate that. I just want to note that.

We are going to go to questions of this panel. I would like to start my 5 minutes with Mr. Seifert. Would you tell us what you think about the two or three things that Federal Government should do to stem the foreclosure crisis?

Mr. SEIFERT. Thank you, Chairman Kucinich.

No question funding is critical.

Mr. KUCINICH. Funding what?

Mr. SEIFERT. Funding foreclosure prevention. The simple fact is it's not giving money, it's not giving the homeowner a service, it's not funding the community social service network, it's an investment. If we want these HAMP mods to work, we have to make sure that they are good HAMP mods going forward, up front as opposed to these trial mods and we need to collect these documents, maybe not, maybe look at other expense, maybe not. Counseling provides a good, cold hard look at what the owner can afford and will counsel them on hardships or maybe discretionary spending that needs to be readjusted. Counseling works. We know counseling helps. We estimate the redefault rate at about 25 percent, the national average is about 50 percent. Under HAMP, sir, I guarantee it's going to be 80 or 90 percent.

Mr. KUCINICH. I had talked to, in a previous panel, Ms. Caldwell about this. What do you think is the business justification for the fact that Ohioans rank 48th of 50 in likelihood to receive a loan modification through the HAMP program? What do you think is going on there?

Mr. SEIFERT. Mr. Chairman, I think a house out in California has a mortgage of a half a million dollars and has a value of maybe of $250,000 costs the same amount to modify that mortgage as it does here in Ohio where the house might only be worth $25,000. I think the industry, frankly, is going where they are going to get the biggest bang for their buck. And you look at California, you look at Florida, you look at Texas. Yes, they are hurting, they're devastated, but their values have not tanked quite like Ohio.

Mr. KUCINICH. You know, that raises some interesting questions about equal protection of the law.

Mr. SEIFERT. I agree.

Mr. KUCINICH. And our staff Attorney Marty Gelfand is here. I would like you to talk to Mr. Seifert after this meeting because I would like to pursue that.

I thank you for raising that point.

Finally, can we continue to rely upon the voluntary judgments of loan servicers as this Federal program currently does?

Mr. SEIFERT. If we want the same results, we can. If we want them to actually start modifying loans, it's got to be mandated that they have to be required to do it. And that includes principal reduction, by the way, which they are not doing.

Mr. KUCINICH. Professor Coulton, what should the Federal response be to the tenfold increase in REO bank-owned property in Cuyahoga County?

Ms. COULTON. It's a huge increase in REO and then the problems that are occurring after that, which is the deterioration of the property, the bulk selling of the property for very small amounts and the, what's now emerging as the failure to take the properties all the way to sale and move them forward.

I think that we need, obviously, more policies that hold the parties responsible and put more of the burden on the parties that have to make these decisions. Some of these are State and local policies that need to change, but I think the Federal response is through the TARP, as you called it, a potential contract as far as those dollars.

Mr. KUCINICH. It is amazing, Mr. Jordan, that we can hear testimony such as we are hearing and yet you really still don't see that TARP is addressing it in a meaningful way, which is pretty shocking, actually.

The HAMP program is one thing. Ms. Caldwell, I'm glad you are in Cleveland, but if you had a chance to just go around and just look at some of our neighborhoods here, I think that you would return to Washington with tremendous passion for the cause of our community and communities like it where people are just starving, communities are starving.

So I want to ask Mr. Grossinger, you heard Mr. Goldberg who works for the city of Lorain, OH tell us that we need a mechanism to get lenders and servicers to cooperate and coordinate with municipalities and local governments so that the community does not have to bear the burden of a vacant and abandoned property. Mr. Grossinger, what can Bank of America's model teach us for encouraging lenders and servicers nationwide to act more responsibly?

Mr. GROSSINGER. Well, Mr. Goldberg and I talked previously about the Neighborhood Stabilization Program. I think one of the things we, as an institution, need to do a little bit better, and we are moving in that direction, is the integration between the REO department over here and the group that's handling the loan toward foreclosure over here. When we talk about that set of properties that are preforeclosure, it's being willing to get in there to do an evaluation of its value and determining with the local government whether or not this property is a candidate for demolition. I would take some issue with some of his comments that every single property needs to be, in effect, first looked to the city. It really can't be that way. We are bound by our pooling and servicing agreement to sell these properties if there's some value. So, unfortunately, if an investor is willing to pay more than the city, we are not capable of making that distinction and saying sorry, we can't accept your higher bid because we have to sell it to the city over here.

Mr. KUCINICH. Mr. Goldberg, would you like to respond? You seem to be indicating an interest in doing so.

Mr. GOLDBERG. The problem I have in the trenches is we get outbid all the time.

Mr. KUCINICH. By?

Mr. GOLDBERG. By investors, in and out of State, by the landlords in the community whose names I'll save harmless, and they'll throw paint on the house, do a minimal fix-up and create something that has a three- to 5-year economic life and then we have to go in legally and knock it down anyway. We can't afford to pay a fortune to knock a home down. We are using Federal funds to do it already and lenders who aren't as forthcoming as Bank of America, specifically, are also getting the Federal money to hold onto these properties. So we are paying for it two or three times.

Mr. KUCINICH. Do you have a response, Mr. Grossinger?

Mr. GROSSINGER. There are programs that we could develop. I think, unfortunately, we can't—as a servicer, we can't make a distinction in terms of who we are selling to and specifically we would get sued by our investors on a daily basis if we were to say no, we are going to accept a lesser bid for a social good. I wish we could do that, it's just not in the structure of what we do.

On the other hand, one of the things that cities do and can do, I think Cleveland is doing a pretty good job at this, and I know Chicago is ramping up, using code enforcement and using those tools they have to mark it more in our interest as a servicer to work with them, whether that be toward a demolition or toward a different sale. We do have programs here. We are working with the REO Clearinghouse here in Cleveland on those properties where the fines and fees exceed the value of the house. Right now Cleveland is looking at nine different properties that we would donate to them because we have determined and the city has determined it's in both of our interests for us to do that as opposed to move toward foreclosure and then let it sit, or worst case scenario, not move toward foreclosure.

Mr. KUCINICH. Mr. Goldberg, I'm going to give you the final word on this exchange.

Mr. GOLDBERG. Thank you.

I think those are very laudable efforts. I think they are special. But two things: No. 1, Fannie Mae right now has us in bidding wars on more junk properties than any other lender.

Mr. KUCINICH. We would like a list of that. OK?

Mr. GOLDBERG. We can put it together. It happens all the time.

Mr. KUCINICH. I know, but we are tracking what Fannie Mae is doing.

Mr. GOLDBERG. Right. But the other thing is Congress can compel lenders if they are being given Federal funds through the bailout to have to sell to the cities.

Mr. KUCINICH. Thank you for that suggestion, and you know we will take that under advisement with members of the committee.

We are going to now go to Mr. Jordan for his questions.

Mr. JORDAN. Thank you. Mr. Grossinger, we've had some experience, the chairman and I, with your company in front of our committee on, frankly, numerous occasions.

And I want to talk to you about this: There seemed to be this attitude that somehow lenders aren't complying at all. I want to talk about any pressure that may be exerted on you and other lenders. Let me get the program straight. It's voluntary when you sign up someone on the HAMP program. It's voluntary when you sign up, but once you agree, and I think we heard testimony earlier, close to 70 or 80 percent of the market, of the servicers in the market are signed up for the program; is that right?

Mr. GROSSINGER. Correct, as far as I know.

Mr. JORDAN. OK. Once you sign up and you begin to go through the modification trial or whatever, are there a set of rules you are then obligated to follow? If, for example, this homeowner comes to you and they qualify, whatever that means, we don't know, we haven't seen all the models and the other things that we talked about in today's hearing, once they qualify, are they then obligated to go forward?

Mr. GROSSINGER. I'm going to answer this within—to the extent that I have the expertise, which we are skating on the edge of this because most of my focus is on the vacant property issue, but yes, if we follow the rules of the HAMP program and if somebody is qualified, they get a loan modification.

I will say, and I want to say this publicly, that I'm very encouraged about Ms. Caldwell's appointment, not just because she is a former Bank of America person, but her reputation in community development and caring about communities is longstanding. We actually never overlap, so it's not as though I'm doing this for a friend.

Mr. JORDAN. So the blame can't—I mean, there's going to be blame for this dismal performance of this program, it's—I mean, you have to do it. Once the criteria is met, whatever that criteria happens to be, you have to move forward.

Mr. GROSSINGER. That's correct. I'm not going to say that there isn't some blame that should go to servicers. I don't think Mark would let me walk out of here alive.

Mr. JORDAN. Let me ask you this: What kind of pressure—I was looking at a story from this summer. There was a meeting, and I'm going to read what the New York Times letter demanding that representatives from the top 25 mortgage servicers assemble in Washington on July 28th, it is likely to be every bit as—it's interesting—it is likely to be every bit as painful for them as the pulse of the meeting last October was with the banking CEOs, and we brought that hearing or that meeting up in previous committee hearings. Were you or someone from your company at that meeting on July 28th?

Mr. GROSSINGER. I actually don't know, unfortunately.

Mr. JORDAN. You don't know if anyone from your bank was there?

Mr. GROSSINGER. I would assume there was. Again, it's not where I focus. Unfortunately, I don't know. I would assume so.

Mr. JORDAN. Have you had folks from Treasury say you need to increase staffing, you need to increase call centers, you need to increase the rates you are doing, you have to improve? Have you had that kind of pressure come from the government?

Mr. GROSSINGER. Well, you are characterizing it as pressure. I would say that certainly the Treasury has asked us to do better and do better in all sorts of ways. Whether that's pressure or not is in the eye of the beholder.

Mr. JORDAN. You guys have always been reluctant to use the term in hearings talking about the pressure that was exerted on the CEO to do the Merrill merger, he was reluctant to use that term as well.

Mr. GROSSINGER. Certain terms are just better left unsaid.

Mr. JORDAN. I understand. I mean, you paid the money back then, you can be straightforward, you paid it all back last week, right?

Mr. GROSSINGER. We announced we were paying it back. It was coming out of my account and I haven't yet transferred it. No. We have announced we are going to be doing it.

Mr. JORDAN. Are you at all troubled—frankly, by any of our witnesses. I understand what you expect to come from it and we are all trying to help the families who are in tough situations, but are you at all troubled by what I would characterize, and we will start with Mr. Grossinger and then we will let others jump in if they want, just this unbelievable involvement we now see of the Federal Government in the private market?

We have TARP, we've got HARP, we've got HAMP, we've got stimulus, and I know I'm forgetting a lot, we've got the auto bailout, and now we've got Members of Congress talking about we need to bail out some of the folks in the press, some of the big newspapers. We've got the unbelievable, in my mind, situation now where we have the Federal Government pay czar in the United States of America telling private American citizens how much money they can make. All of that happening, all that spending happening at a time when we've got a $12 trillion national debt, as Mr. LaTourette referred to earlier in his comments. Does that begin to trouble you at all, Mr. Grossinger, what we are seeing happening right now?

Mr. GROSSINGER. It's really irrelevant what I think personally. I will tell you, however, that there are some things, as with everything, there are some very good opportunities for us in the current environment if we put aside sort of the walls that have been created between the different aspects, government, private sector, the not-for-profit world. There are some opportunities to do some good things, but those walls have to come down. What I think about government involvement is irrelevant.

Mr. JORDAN. OK. Anyone else want to comment?

Mr. Ford.

Mr. FORD. What troubles me most is not so much the availability of the bailout money, is that there is no conditioning its receipt upon performance. I think there is sort of a status quo point of view at the financial institutions. And I have been on council with Mr. Grossinger, I respect him quite a bit, but when he said that the lenders simply can't let these the properties go for less money because they are servicing and pulling agreements from priors to be competitive, I've got a list that I can provide the committee of the last 2 years' REO sales. Ninety percent of them are below

$10,000. Eighty percent are below $5,000. The average is only about $3,000.

It's just ludicrous to assume that these properties have to somehow be going to speculators in Omaha. At those prices, they should be going to land banks, nonprofits, municipalities. There's no reason for that. The reality is that the prices are absurdly low and they are going to irresponsible hands.

Mr. JORDAN. Mr. Seifert.

Mr. SEIFERT. When the government wasn't involved, we see what happened. When the government sort of got involved, we see what's happened under the HAMP stuff. For an example, we've done over 400 HAMP trials. We've had one that's been converted because the government is just not clamping down.

Another point on that, though, is all 400 that we've done, we've given them all the paperwork. Ms. Caldwell testified that the whole notion of the trial mod was to give the homeowner an opportunity to turn in all the paperwork. Our mods are going in with good paperwork. We have the pay stubs, we've got the tax returns. That's the heavy lifting we do. Why, out of 400, do we have one that's been permanently modified? And that's because the government hasn't clamped down enough. So, I guess, I'm troubled by some of it, I'm not troubled by that instance.

Mr. GOLDBERG. Lenders are paying somewhere between $1,500 and $2,000 in real estate commissions for a house. They are paying private asset disposition entities and unless they have brought everything in the house, large amounts of money to try and maintain property and manage it, all these additional costs that these entities receive fed funds are not going back to the lender, they are not going back into the bottom line of the banks, they are just being wasted away. When these homes come to us anyway, all that extra money was wasted except we pay Federal funds for the services also. There needs to be a way to deal directly with us on the properties that are just not in condition to be sold anymore. It needs to be expressed. It will save the lenders a large amount of money and time.

Mr. JORDAN. Professor, do you want to add anything?

Ms. COULTON. No. I think it's been said.

Mr. JORDAN. Thank you, Mr. Chairman.

Mr. KUCINICH. Thank you very much, Mr. Jordan. This hearing entitled "Examining Local Efforts to Address the Continuing Foreclosure Crisis: Perspectives from Cleveland, OH" has brought two panels who are very much involved in the day-to-day issues of foreclosures.

In particular, Mark Seifert from ESOP has talked about foreclosure prevention programs that actually work and the need to make sure that they continue to be funded. But why Cleveland? Again, because we see that Cleveland has been the epicenter of the home foreclosures in the United States.

There was a calculated effort on the part of certain lenders to go into minority communities in Cleveland and to sign people up without people really having full knowledge of what was going on, signing them up and then within 2 years to 3 years, they were foreclosed. There was a deliberate effort to circumvent the Community Reinvestment Act where many institutions have an affirmative obligation to loan money into communities. They not only did not meet that obligation, but they came up with these subprime packages that resulted in devastating effects. And it wasn't only the people who lost their homes, it was the people who stayed in the neighborhoods whose property values tanked who lost 30, 40 percent of their property value because everything else around them was falling apart. This has not played out yet.

The reason why we hold this hearing is that one of out every eight homes in the United States is still facing foreclosure, that we are seeing the rate of foreclosure actually start to pick up. This hasn't played out yet. That's why the work of our committee and our subcommittee is so important, because we see that, for whatever Congress thought it was doing in passing the bailouts, we didn't address the problem of what do you do about helping people save their homes. Did not address the problem. And while the administration is making an effort with the HAMP program, it's really trying to play catch-up for something that started years ago.

When I look at my community in Cleveland and I hear the testimony of Professor Coulton how homes have been selling in Cleveland for 13 percent of their estimated market value, think of what that means to people who put their time and energy into those homes, who put a lifetime of work into their homes and invested their own sweat and their money into those homes, only to find that the value of them had been wiped out by these foreclosure schemes.

I agree with Mr. Grendell when he was here about people have to take responsibility, you sign a contract, you have to take responsibility. But it's interesting to know that the foreclosure crisis started in this community where people had, let's say, a disadvantage because they weren't as familiar with the fine print. And I don't care who you are and what your education is, that fine print, you can have a college degree and that fine print can leave you with a foreclosed home if you are not careful.

So we are, this subcommittee is going to continue to track this. Our community's on the line here. Our property values have been dropping. Our schools' funding has been dropping. The demand on local communities such as Cleveland and Lorain have been going up, more police protection, more housing code enforcement, more health and safety issues that abound in areas where there's foreclosed property. We are fighting for our communities' lives. So your testimony here is very helpful.

Mr. Grossinger, I'm glad that Bank of America is stepping up. I appreciate what you've done in Chicago and hopefully some others in your industry will see that it's time for them to step up as well.

This is the Domestic Policy Subcommittee of the U.S. Congress. I'm Congressman Dennis Kucinich of the Cleveland area and chairman of the committee. I want to thank all of you for being here. I thank the staff for its help in organizing this. I also want to thank the presiding judge of the Northern Ohio District Court, Judge James Carr for his indulgence in permitting us to have this room, and also Geri Smith, Clerk of Courts for assistance in all the staffing here.

This committee stands adjourned.
[Whereupon, at 1:31 p.m., the subcommittee was adjourned.]
[Additional information submitted for the hearing record follows:]

CITY OF CLEVELAND
Department of Community Development
Comparison of HUD Budgets
2006 -2009

(000"s Omitted)

PROGRAM	2006 ACTUAL	2007 ACTUAL	2008 ACTUAL	2009 ACTUAL	TOTAL 2006-2009
CDBG	24,565	24,527	**23,601**	**23,928**	**96,621**
HOME	6,411	6,355	**6,117**	**6,763**	**25,646**
Emergency Shelter Grant	1,055	1,059	**1,057**	**1,050**	**4,221**
HOPWA	826	840	**870**	**895**	**3,431**
Neigh. Stabilization (NSP)				**16,143**	**16,143**
Neigh. Stabilization(State)				**9,424**	**9,424**
CDBG-R				**6,409**	**6,409**
Homeless Prev.(HPRP)				**9,801**	**9,801**
TOTAL	**32,857**	**32,781**	**31,645**	**74,413**	**171,696**

12/4/09

Submitted for the record by Robert Grossinger

Lending and Investing Initiative:

Quarterly Impact Report

THIRD QUARTER 2009

Bank of America
Bank of Opportunity

ALMOST $184 BILLION IN CREDIT EXTENDED IN THIRD QUARTER

TOTAL FOR FIRST NINE MONTHS NEARS $578 BILLION

Lewis

TO OUR CUSTOMERS, SHAREHOLDERS, ASSOCIATES, AND FELLOW CITIZENS:

Over the past several months, almost every business day has brought new economic reports showing that home prices are stabilizing, that industrial production is picking up, that inventory stocks are coming down, that job losses are slowing — in short, that our long recession is nearing its end, and that an economic recovery has begun. If true, this is obviously very good news.

Despite such positive trends, though, what is undeniably true is that households and communities across America continue to be under great financial strain. Unemployment and underemployment remain very high and probably will for some time. Demand for credit — and the availability of qualified borrowers — is still very low. This put downward pressure on overall lending levels in the third quarter. Our economy remains fragile and requires the full effort of the nation's financial services industry to build strength and sustainable momentum.

Our first responsibility in this effort is to use the government's investment in our company through the Troubled Assets Relief Program (TARP) wisely and productively. To that end, we have lent nearly $760 billion over the past four quarters. Put another way, we lent almost $17 for each TARP dollar we accepted. At the same time, we are providing U.S. taxpayers a return on their investment. On November 16, we will pay third-quarter dividends, bringing our 2009 dividend payments to the U.S. Treasury to more than $2.54 billion.

In this third installment of our Lending & Investing Initiative Quarterly Impact Report, we detail the work we are doing throughout our communities and across America to support our customers and clients and help drive the nation's economic recovery. There are four areas of work I'd like to highlight.

Home loan modifications — One of our most important ongoing priorities is to accelerate our home loan modification programs to help as many of our customers as possible keep their homes. Over the past 21 months, we've helped modify mortgage loans for 445,000 homeowners or, on average, more than 21,000 each month. In addition to these results through our own programs, we helped move almost 100,000 customers into trial modifications through the Administration's Home Affordable Modification Program (HAMP) in the third quarter. To handle this intense volume and as further demonstration of our commitment to addressing this unprecedented need, we've increased our default assistance staff to more than 11,000, a 55% increase this year.

Supporting municipalities and nonprofits — Even as the federal government disburses stimulus dollars and banks lend as much money as we responsibly can, the financial struggles of local governments and nonprofit organizations continue to hamper their ability to keep pace with local needs. Through our Specialized Industries group, we are providing credit and services to more than 7,500 governmental entities — including local and state agencies. And, we continue to serve more than 1,400 large nonprofit clients across the country.

Small Business — While small businesses represent the backbone of the American economy, they have been especially challenged in this economic cycle. Our small business clients are managing their finances and debt prudently, with demand for credit down by 25% this year. That said, we continue to be responsive to the need for credit. We have extended more than $12 billion in credit to companies with revenues up to $20 million in the first nine months of this year, despite significant loan losses — nearly $2.5 billion in this segment over the same time. We also are working with small business owners who are experiencing financial pressure, by modifying their business card payment structures. By the end of September, we have helped more than 49,000 small business clients improve their cash flows through loan modifications.

(continued on next page)

FAST FACTS: *1/1/2009 – 9/30/2009*

- **Approximately $292B in first mortgages**
- **Nearly $64B in LMI mortgages**
- **215,000 mortgages modified**
- **900,000 U.S. credit cards modified**
- **More than $12B in small business loans**
- **$215B in commercial loans**
- **More than $28B in commercial real estate**

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Clear and fair consumer products — Building on our historic role as a leading advocate for responsible lending practices, we also are responding to our customers' need for simpler, clearer, more transparent products and pricing as they work to stabilize their household finances. Earlier this year, we led the industry with our Home Loans Clarity Commitment™ and our new Basic Visa® Card. Last month, we again led the industry with across-the-board reductions in overdraft fees on deposit accounts. And, we created a new role in the company with the title Consumer Policy Executive, to build on our efforts within each line of business and product group to ensure we are being as responsive as possible to the needs and concerns of our customers and communities.

In all of our work, from loan modifications to new lending and investing, a key theme is quality, not just quantity. The number of customers we serve is important — but making sure that modifications are sustainable, and that new loans satisfy sound underwriting requirements, are equally important. We're working to build a stronger, more stable economic foundation for the future — not a new economic bubble.

As with previous editions, this report provides detailed summaries of our progress in 10 major categories of lending and investing that are key sectors for growth. I hope you find this information useful and informative as we continue to work together to build a stronger, more stable and more prosperous American economy for the future.

Kenneth D. Lewis
Chief Executive Officer

ECONOMIC OUTLOOK

Bank of America Chief Economist Mickey Levy takes a look at the current state of the economy and its eventual recovery. His views of the economic challenges that lie ahead provide useful context for Bank of America's lending and investing initiatives.

Levy

The financial system has stabilized and the economy has begun to recover from deep recession. Real GDP is estimated to have grown at an approximate 3.5% annualized pace in third quarter. Confidence has risen and the outlook has brightened, at least compared to earlier expectations. But the level of economic activity is well below its earlier expansion peak, the recovery is just beginning to unfold, and the lingering effects of the financial crisis and debt overhang remain a constraining influence on household and business behavior.

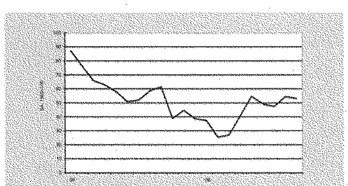
Similar to prior cyclical recoveries, a rebound in housing has led the way. In response to sharp declines in home prices and very low mortgage rates, new and existing home sales have risen significantly — 30.4% and 13.4%, respectively — from their very low January 2009 troughs. And, new housing starts have increased 25%, reflecting in part the perception that home prices are stabilizing.

Typically, economic recoveries are fueled heavily by strong growth in consumer spending, which boosts business confidence and leads to a rise in production, employment and renewed inventory building. To date, the recovery in consumer spending has been lackluster. Despite the government's unprecedented monetary and fiscal stimulus, consumption remains constrained by high unemployment and weak personal income, the need to save money and repay debt, and tighter credit underwriting.

Since early 2008, consumption of services — including medical services, the costs of shelter, personal and business services, etc. — has continued to grow modestly, while consumption of durable goods — autos and household durables — and so-called discretionary spending on luxury goods — remain weak. The government's Cash for Clunkers program generated a spike in auto sales; however, much of that likely "borrowed" from future auto sales and also constrained current non-auto sales.

I expect consumer spending to begin growing moderately on a sustained basis, but until it does, businesses will remain cautious and focus on controlling operating costs rather than production and hiring expansion.

CONSUMER CONFIDENCE



Source: Conference Board/Haver Analytics

This material is prepared and distributed by economists of Bank of America, N.A. It is NOT a product of, or distributed by, the Banc of America Securities LLC–Merrill Lynch, Pierce, Fenner & Smith Incorporated Research Department.

Refer to page 12 for important disclosures regarding this material.

PERFORMANCE UPDATE

We recognize that we have a unique responsibility to contribute to the nation's recovery, and we are pleased to report on our Q3 2009 progress and impact on important sectors.

Note: The results in the Q3 2009 Highlights column demonstrate sector impact, and some numbers may be reflected under multiple categories. Therefore, numbers do not add to a cumulative total.

SECTOR/OVERVIEW	Q3 2009 HIGHLIGHTS (*YTD: 1/01/09 – 9/30/09*)
CONSUMER LENDING Serving one out of every two U.S. households, we are committed to meeting Americans' checking, savings, credit and home loan needs — responsibly.	• **Nearly $96 billion in first mortgages**, helping nearly 450,000 people purchase a home or refinance an existing mortgage (*YTD: approximately $292 billion in first mortgages, more than 1.3 million customers*) • **Nearly $3 billion in home equity and reverse mortgage loans** (*YTD: more than $10 billion*) • **More than $23 billion in mortgages to 154,000 low- and moderate-income (LMI) customers** (*YTD: nearly $64 billion in mortgages to more than 410,000 LMI customers*) • **$4.5 billion in new domestic and small business credit cards** (*YTD: $13.5 billion*) • **Nearly $7 billion in other consumer credit** such as indirect auto loans or student loans (*YTD: more than $18 billion*)
LOSS MITIGATION By modifying terms, refinancing and supporting credit counseling, we help borrowers stay in their homes and manage credit card debt.	• **Provided rate relief or agreed to modified terms for approximately 215,000 mortgage customers** during the first nine months of 2009, compared to 230,000 in all of 2008 for Bank of America and Countrywide • **Approximately 98,000 customers in a trial period modification** and nearly 163,000 are in the process of responding to an offer under the Making Home Affordable Program as of Sept. 30, 2009 • **More than 900,000 U.S. consumer credit card and consumer unsecured loans modified** during the first nine months of 2009, representing more than $8 billion in credit; on average, **card customers' monthly payments were reduced by nearly one-third**
SMALL BUSINESS LENDING Companies with revenues up to $20 million are a critical driver of the U.S. economy. We are committed to supporting them with a suite of credit products and services.	• **More than $4 billion in credit extended:** more than $470 million in Small Business Banking; nearly $3.6 billion in Business Banking (*YTD: more than $12 billion in small business lending*) • More than $41 billion in total credit outstanding • Assisted more than 16,200 small business card clients in improving their monthly cash flows by modifying payment structures (*YTD: more than 49,200 clients assisted*) • Recently ranked #1 in 2009 SBA 504 lending with 366 loans totaling $611 million
COMMERCIAL LENDING Offering integrated solutions including lending, investing and international banking, we are one of the leading U.S. middle-market banks and commercial real estate lenders, serving companies with revenues between $2.5 million and $2 billion.	• **More than $65 billion in commercial non-real estate** loans (*YTD: $215 billion*) • **More than $8 billion in commercial real estate** loans (*YTD: more than $28 billion*)
NONPROFIT SUPPORT Through lending, investments and philanthropy, we support vital community resources: nonprofits, government entities and anchor institutions — such as hospitals and colleges.	• **Almost $7 billion in credit extended to nonprofit, government and anchor institutions** (*YTD: more than $26 billion*) • **Nearly $48 million in philanthropic grants** (*YTD: almost $125 million*) • In 2009, the first year of our 10-year, $2 billion philanthropic goal, we expect to deliver $200 million in charitable investments

SECTOR/OVERVIEW	Q3 2009 HIGHLIGHTS (*YTD: 1/01/09 – 9/30/09*)
"GREEN" FINANCING As part of our 10-year, $20 billion business initiative to address climate change, we promote an environmentally sustainable economy through strategic investments and financing for "green" construction and renewable energy.	• **More than $35 million in "green" commercial real estate debt and equity transactions** (*3/07 – 9/09: more than $2 billion*) • **More than $288 million in "green" energy and power financing** (*3/07 – 9/09: nearly $1.6 billion*) • **In first nine months of 2009, $20 million in strategic environmental investments** (*3/07 – 9/09: $265 million*)
COMMUNITY DEVELOPMENT Our loans and investments help revitalize LMI areas by creating affordable housing and vibrant retail and commercial sites. We invest in Community Development Financial Institutions (CDFIs) that extend credit to LMI families and small businesses.	• **$283 million in Community Development Banking** commercial real estate-based lending (*YTD: more than $1 billion*) • **Almost $78 million in tax credit investments: $75 million in low-income housing; nearly $3 million in historic, new markets and solar** (*YTD: $277 million*) • **Almost $11 million in CDFI commitments** for lending and investments, including **$8 million in Program-Related Investments** (PRIs) (*YTD: almost $85 million in CDFIs, nearly $30 million in PRIs*)
SOCIALLY RESPONSIBLE PRIVATE EQUITY We routinely facilitate the flow of capital from institutional investors to underserved small businesses, including those owned by women or ethnic minorities, those in LMI areas or those that provide services to underserved populations.	• **Managed and advised on more than $968 million in capital** to small businesses fitting "underserved" categories
REAL-ESTATE-OWNED (REO) PROPERTIES To combat the growing number of foreclosed and vacant properties, we are working with those that have received funds under the Neighborhood Stabilization Program (NSP) to help restore these communities.	• **More than $10.5 million** to help with relocation costs for more than 3,300 tenants and owners of foreclosed properties (*YTD: more than $31.5 million and 10,100 people*) • Provided REO technical assistance to more than 70 communities • Provided REO information weekly to 190 jurisdictions and offering properties for sale consistent with NSP regulations
SUPPLIER DIVERSITY We encourage supplier diversity by increasing the amount of products and services we purchase from minority-, women-, veteran-, and disabled person-owned business enterprises.	• **Spent $6.4 billion with diverse suppliers** over the past five years, more than doubling amount spent with diverse suppliers from 1990 to 2003 • Citing our commitment to supplier diversity, *Hispanic Business* Magazine named Bank of America within the top 5 of the "Top 60 Diversity Elite"

VIEWS FROM OUR PARTNERS

By: Mark Pinsky, President & Chief Executive Officer of Opportunity Finance Network (OFN), a leading network of financial intermediaries focused on unconventional markets

Pinsky

Partnering with CDFIs to Help Borrowers Navigate Through Crisis

Community Development Financial Institutions, or CDFIs, are private-sector financial institutions that work just outside the margins of conventional finance to help people and communities join the economic mainstream. In the current economic environment, CDFIs are critically important to the communities they serve — providing loans for housing, businesses and nonprofit organizations. At the same time, CDFIs have become increasingly important to mainstream financial partners, including Bank of America, by helping them expand access to capital in hard-to-reach and traditionally underserved markets.

Today, more than 800 CDFIs operate in all 50 states, working in urban, suburban and rural markets. The CDFI industry has more than $30 billion of financing experience with outstanding — even remarkable — results. With cumulative loan losses comparable to conventional banks operating in markets that are considered much less risky, CDFIs have demonstrated that they are prudent stewards of socially motivated investments.

Bank of America has been an important partner in CDFI growth. The bank is the single largest investor in CDFIs, providing more than $1.1 billion in debt and equity as of Sept. 30, 2009. Much of that financing is in the form of low-cost, long-term loans, called Program-Related Investments (PRIs).

Investing in CDFIs is critically important right now. Seismic shifts in the economy, financial markets and public policy have left gaping crevices in our nation's community development infrastructure even as the number of low-income and low-wealth people is growing at an alarming pace. Community-based organizations are trying to do more with less — public foundations, private philanthropists and local governments are providing less support due to their own constraints. The credit crunch of the past 12 to 18 months has hit CDFIs and their borrowers particularly hard. Liquidity, patience and leadership are the three things that our markets need most, now and for the next 12 to 24 months.

In light of that reality, we welcome two of Bank of America's recent actions:

First, Bank of America announced that it would work with its CDFI clients to allow and encourage them to redeploy their scheduled 2009 and 2010 PRI principal payments into new loans for housing, small businesses and community facilities in low- and moderate-income communities. This is translating immediately into new financing in communities that really need it. The bank estimates that its decision to recycle PRI capital already has provided CDFIs with more than $50 million since June 30, 2009.

Second, Bank of America is working with OFN to create a "CDFI Investor Roundtable." The Roundtable will provide a forum for bank and foundation investors in CDFIs to better understand the challenges and decisions all investors face now and going forward — with the aim of ensuring investors stay engaged in the CDFI marketplace and provide critically needed liquidity.

Over the past 25 to 30 years, CDFIs have built solid balance sheets as a result of disciplined lending and investing. They are partners that provide a solid investment and real returns. OFN's CDFI Market Conditions Report has documented stability in the CDFI market despite increased portfolio and operating stress.

Today, CDFIs are stepping in to provide liquidity where they can — making new loans and extending loans to borrowers who are managing through the crisis.

A financial writer once noted that credit is a financial transaction with a moral lineage — because an extension of credit is a statement of trust in the borrower's future. CDFIs extend that trust to people and places that often get left out of the economic mainstream. Bank of America is extending its trust to CDFIs.

2009 Performance Snapshot (1/1/2009 – 9/30/09)

- Almost $85 million in CDFI commitments for lending and investments, including nearly $30 million in PRIs

FOCUS ON...NONPROFIT FINANCING

2009 Performance Snapshot (1/1/2009 – 9/30/09)

- More than $26 billion in credit extended to nonprofit, government and anchor institutions
- Nearly $125 million in philanthropic grants

Providing Credit So Nonprofits Can Continue to Serve

Organizations with a mission to help people in tough times are having a tough time themselves. As the economic crisis deepened, the situation for nonprofits also deteriorated, with a squeeze from growing demand on one side and dwindling donations and resources on the other.

According to a May 2009 survey by Bridgespan, 92% of nonprofits responding indicated they were being affected by the downturn, up from 75% just six months earlier. And, 49% reported their financial situation had grown worse. No surprise, then, the general collapse of investment assets also has taken a toll. In fact, a June 2009 Johns Hopkins survey revealed 80% of nonprofits with endowments said their investments decreased.

How We Help Nonprofits Move Forward

Many of these organizations are at the core of communities' identities and social safety nets. They are helping to feed the hungry, provide shelter to the homeless and lift the spirits of all through arts and culture. Bank of America has a long history of supporting nonprofits: volunteers, charitable giving (*approximately $125 million through third quarter*), lending, money management and investment advice. In addition to helping to sustain these organizations by bridging gaps through credit, we employ a holistic, advisory approach that is especially critical today to help address financial management needs.

Currently, Bank of America serves more than 1,400 large nonprofit clients across the nation through its Specialized Industries group with more than $10 billion in credit commitments. We provide financial services to 81 of *The NonProfit Times'* Top 100 and 23 of the top 25.

"Bank of America Merrill Lynch and its predecessor firms have built a durable record of success in providing financial services to nonprofit institutions," says Kathy Auda, Bank of America Specialized Industries executive. "This is not a sector we recently discovered. We have built an understanding of their unique financial needs over many decades, and clients come to us because our expertise in the field is known and truly valued by them."

One such client is Woodruff Arts Center (WAC), a leading cultural institution in the southeastern United States. Like so many other businesses and organizations in America, WAC faced declines in financial resources due to investment losses and reduced income. Bank of America helped WAC revise its debt, providing a balanced capital structure and reduced risk.

Some additional examples of how we've recently assisted nonprofits in serving their communities:

- We helped a major children's hospital issue $200 million in new fixed-rate debt as part of a major fundraising campaign, the largest expansion ever by a single children's hospital within a four-year time span. The funding will go toward accelerating advances in cutting-edge research and providing greater access to high-quality care for children.
- We assisted a Franciscan hospital in improving its debt position by providing a $125 million fixed-rate-bond issuance and converting $85 million in financing to a fixed interest rate.
- When a mid-South city parks system sought to purchase hundreds of acres of old growth forest, we helped a nonprofit "friends of the parks" organization achieve its goal with a $6.8 million line of credit.

FOCUS ON...RESPONDING TO CONSUMERS' NEEDS

2009 Performance Snapshot (1/1/2009 – 9/30/09)

- Nearly $292 billion in first mortgages
- More than $10 billion in home equity and reverse mortgage loans
- Nearly $64 billion in mortgages to 410,000 low- and moderate-income (LMI) customers
- $13.5 billion in new domestic and small business credit cards
- More than $18 billion in other consumer loans

Providing Consumers Financial Tools that Are Simple, Clear and Fair

Numerous economists point to consumer confidence and financial stability as the underpinning to our nation's financial recovery. That's why Bank of America is working closely with our customers to ensure they have tools and products, in addition to providing credit, to help them weather the current economic storm, restore confidence and support personal financial stability.

So far this year, we've worked directly with consumers in distress — including helping our deposit customers more than 3 million times through customer assistance and fee refunds. Further, this year we expect to modify the accounts of 1.2 million U.S. credit card customers who are struggling with payments. And, we recently led the industry by announcing we will not increase interest rates on consumer non-variable rate credit cards prior to February 2010, when the CARD Act goes into effect, unless the account is late on two or more payments during 12 consecutive months.

We want customers to have simplicity and clarity in all they do with us. We began in early 2009 by introducing the Bank of America Home Loans Clarity Commitment™ — a simple, one-page summary of a mortgage borrower's loan terms and closing costs. We have now added a Home Equity Clarity Commitment™ and will be introducing our Card Clarity Commitment™ to 40 million customers in December. Building on that, we're continuing to develop products and services that help consumers better understand their options and make informed choices. And, we're analyzing policies and making changes designed to help our customers even more as they manage their money.

Supporting U.S. Treasury's Direct Deposits Campaign

Direct deposits provide customer convenience. They also save the federal government 93 cents per check. For achieving exceptional results in driving enrollment as part of the U.S. Department of the Treasury's national Go Direct® campaign, we've been named a Go Direct® Champion. The eight-month program promoting direct deposits for Treasury check recipients tracked increases in Social Security and Supplemental Security Income (SSI) direct deposit payments. Our enrollments will help the federal government save approximately $1.1 million per year.

Introducing BankAmericard Basic™ Visa® Card

In response to consumer demand for a product that offers the convenience of credit with simplified rates and terms, we've introduced the BankAmericard Basic™ Visa® card. The new card features one basic rate for all types of transactions, including balance transfers and cash advances. BankAmericard Basic card features one interest rate — U.S. Prime plus a margin of 14% — that means rate increases and decreases only occur if the prime rate changes. The card also offers no over-the-limit fee; an easy-to-understand, single-page disclosure explains terms and conditions; and one flat fee of $39 for late payments.

The Basic card is one of four new cards in a simplified suite of cards offered under the BankAmericard brand. Other cards in the suite include:

- BankAmericard Power Rewards™ Visa, a robust choice of rewards
- BankAmericard Cash Rewards™ Visa, for customers looking exclusively for cash back
- BankAmericard Visa, which includes an introductory promotional rate

Helping customers manage their money

Offering More Options for Checking Account Customers

We've created some new options for our checking accounts to help customers limit overdraft fees and have more control over their finances. Our immediate priority is providing assistance to those customers who regularly overdraw their accounts. The first changes went into effect October 19, with additional changes to be made by June of next year. With the changes, we have increased customers' options in the area of overdrafts, limited daily overdraft fees and significantly reduced fees for those customers who need help the most. We also will increase our proactive outreach to customers to help them better manage their finances and limit their overdraft ability, if necessary.

Changes to Checking Account Options
Beginning October 19, the bank will:
• Not charge overdraft fees when a customer's account is overdrawn by less than $10 in one day
• Not charge fees on more than four overdraft items per day
• Improve the process for customers to opt-out of overdraft capability
• Provide a clarity statement that spells out the specific features and terms of a customer's deposit account
Effective June 2010, the bank will:
• Introduce an annual limit on point-of-sale overdrafts
• Contact customers nearing the annual limit with information to help them better manage their finances
• Limit overdraft capability, and therefore fees, for customers who reach the annual limit
• Provide new customers with the choice to opt-in to overdraft capabilities at account opening

IN THE SPOTLIGHT

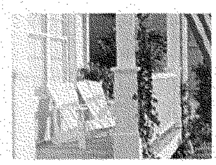
Financing innovative energy projects

Green Financing Turns Forest Decay into Energy and Savings

When it comes to renewable energy sources, it appears that one solution might be where we'd least expect it — right under our feet.

The Savannah River Site (SRS), located near Aiken, SC, serves as a top research hub for scientists and engineers who are working on new solutions in global energy. Primarily fueled with forest residues that currently are left in the forest to rot when timber is harvested, the project includes a biomass cogeneration facility and two smaller biomass heating facilities. It is anticipated that the U.S. Government will realize an estimated $795 million in energy savings over the 19-year contract. Bank of America provided $70 million in financing to help fund this project, which represents the largest energy savings performance and renewable energy contract in the nation's history.

The SRS project is just one example of our lending and investing, through our $20 billion, 10-year business initiative to address climate change to promote an environmentally sustainable economy. Between March 2007 and September 2009, we've placed more than $2 billion in "green" commercial real estate debt and equity and financed nearly $1.6 billion in "green" energy and power.



Enabling customers to stay in their homes

Helping Customers Stay in Their Homes

Bank of America's efforts to help customers stay in their homes gained momentum in the third quarter through the U.S. government's Home Affordable Modification Program (HAMP) and other solutions. As of September 30, Bank of America has extended approximately 163,000 offers for a trial modification under HAMP, with more than 98,000 active trial modifications.

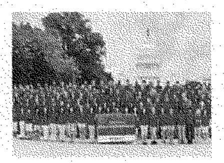
Although HAMP is now the centerpiece of Bank of America's home retention efforts, we have also provided rate relief or agreed to modifications with 445,000 customers since 2008 through the Bank of America and Countrywide loan modification programs — including more than 215,000 completed loan modifications in the first three quarters of this year.

We've also ramped up our outreach efforts to help as many customers as possible. In recent months, Bank of America has:

- Increased default assistance staffing to more than 11,000 — a 55% increase since the beginning of the year
- Participated in more than 200 community outreach events in 30 states
- Implemented new methods to reach borrowers, including a door-to-door campaign targeting 50,000 customers who have failed to respond to phone and mail outreach
- Launched a Home Loan Assistance website: http://homeloans.bankofamerica.com/homeloanhelp

We are proud of our record so far, but understand there is still more work to be done. As long as customers remain in need, our company will maintain the efforts under way to help them.

Investing in Youth to Build the Next Generation of Community Leaders



Student Leaders®

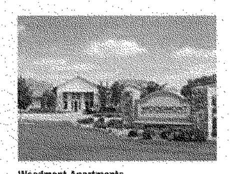
This past summer, 230 outstanding high school juniors and seniors were recognized by Bank of America as Student Leaders® for their civic engagement and passion for service. Over the course of the summer, each teenager participated in a bank-sponsored paid internship with a nonprofit and attended a week-long student leadership summit in Washington, DC.

While in DC, the students participated in a financial education policy discussion with representatives from the Jump$tart Coalition and the U.S. Department of the Treasury. In another session, they met with Congressional members to discuss the recently passed Serve America Act. The students put the spirit of service into action when they volunteered at Rock Creek Park with the National Parks Foundation.

By exposing these accomplished young leaders to critical issues facing their communities and developing their leadership abilities, Bank of America is helping to prepare the next generation of leaders to face the challenges and opportunities of their communities and the country. In 2009, we invested $1.2 million in our Student Leaders® and since the program's inception in 2004, approximately $6.2 million.

The Student Leaders® program is part of the bank's signature philanthropic program, the Neighborhood Excellence Initiative. Through this initiative, we are investing in nonprofit and community leadership to advance the economic and social health of communities today and tomorrow.

Responding to the Need for Affordable Rental Housing



Woodmont Apartments

A fundamental element to strong communities — and a critical need — is quality, affordable housing. Over the past two years, that need has been accentuated by the economic downturn and mortgage crisis, specifically in the rental sector.

At Bank of America, we are continuing to respond to that need. The recently combined Bank of America Merrill Lynch is already building on the tradition inherent in both companies of fostering strong communities through community development lending and investing by creating affordable housing for low- and moderate-income families.

In Rancho Cucamonga, CA, we provided $30 million in tax-exempt bond financing for the construction of San Sevaine, a multifamily housing community consisting of 225 units of affordable and workforce rental housing across 12 acres. These units will rent for an average of 43% below local market rates.

Incorporating green construction features such as solar panels and water-efficient landscaping, San Sevaine will give residents amenities including a 6,500-square-foot community center, swimming pool, play areas and carports. An onsite service coordinator will link residents with job training, continuing education and after-school programs.

In Countryside, IL, we provided $8.1 million in a low-income-housing tax credit investment and $5.5 million in construction financing for the first LEED-certified multifamily apartment building in the city. The Countryside Senior Apartments consist of 70 units of age-restricted (55 years and up) affordable rental housing.

In Fort Worth, TX, by investing more than $23 million, we're helping to make 252 units of affordable family housing a reality at The Woodmont Apartments. Amenities include a clubhouse, swimming pool, fitness center, business center and laundry facility, which are all designed to foster a sense of community. Onsite social and health services will be offered as well.

WE'RE HERE FOR OUR CUSTOMERS

In third quarter 2009, we introduced new options for checking account customers to limit overdraft fees as well as made an industry-leading decision to not increase interest rates on consumer non-variable rate credit cards in advance of the new federal credit card law. We also launched BankAmericard Basic™, which features one basic rate for all types of transactions. And, in December, we'll mail 40 million customers our new Credit Card Clarity Commitment™ — a one-page document that provides each consumer credit card customer with a summary of their interest rates, fees and payment information. Earlier this year, we rolled out our Clarity Commitment™ to home loan customers and have already introduced a similar one-page summary for deposit customers. All of this responds to customers' desire for simple, straightforward information about their financial services and demonstrates our commitment to meeting their needs.

CUSTOMER SERVICE

GENERAL	1.800.432.1000	**SMALL BUSINESS**	1.888.BUSINESS (1.888.287.4637)
CREDIT CARD	1.800.732.9194	**MORTGAGE**	1.800.900.9000

Important Disclosures

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Bank of America
Bank of Opportunity

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Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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MINORITY (202) 225-5074

www.oversight.house.gov

January 11, 2010

The Honorable Timothy Geithner
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Geithner:

I write to you regarding Treasury's efforts to stem the foreclosure crisis that continues to ravage American families and weigh down our economic recovery and to request elaboration on a number of issues covered in Treasury's recent testimony.

Last month, the Domestic Policy Subcommittee of the Oversight and Government Reform Committee heard sobering testimony from state and local public officials as well as nonprofit service providers about the performance of the Administration's hallmark program intended to deal with the crisis of foreclosures. Almost everyone was disturbed by the inadequacy of the Home Affordable Modification Program (HAMP) to meet the challenges of the current foreclosure crisis, and they were disappointed with HAMP's lack of meaningful progress and its philosophical bias in favor of lenders rather than borrowers.

Nevertheless, Treasury seems determined to insist on an optimistic view of HAMP's performance. At our hearing, Phyllis Caldwell, Chief of Treasury's Homeownership Preservation Office, insisted on a positive view of HAMP. About the criticisms, Ms. Caldwell said it was too soon to render any judgments. The day after our field hearing, Assistant Secretary Herbert Allison similarly recited HAMP's accomplishments and prospects in his testimony before the House Financial Services Committee.

If Treasury actually believes the assessment of HAMP it conveyed in its Congressional testimony, I would be seriously concerned that Treasury may be neglecting to confront the difficult problems required to rescue this essential program from failure. The purpose of this letter, then, is to determine whether Treasury is taking appropriate steps and conducting necessary analysis to make meaningful reforms of HAMP.

For instance, HAMP's performance has been marked by an exceedingly low rate of converting trial modifications to permanent modifications. As HAMP was constructed to be a voluntary program, Treasury should be concerned that the low conversion rate may reflect a structural reluctance of servicers to solving the underlying causes of the foreclosure crisis. One possible explanation might be in the unacknowledged existence of a conflict of interest: some of the largest loan servicers are divisions within large lenders that have an ownership interest in second lien notes on properties, the first lien notes of which they are also servicing. Unfortunately, Treasury's testimony does not reflect such a concern.

Additionally, HAMP does not address the problem of negative equity, which has left large numbers of borrowers "underwater." According to testimony given to the House Financial Services Committee by Laurie Goodman, a Senior Managing Director at Amherst Securities Group, negative equity is a more important predictor of future default on a mortgage loan than unemployment. HAMP is ill-equipped to address the issue of negative equity because it lacks an essential component: principal reduction. As Goodman and others have shown, for those large numbers of borrowers who have negative equity in their homes, a "strategic mortgage default" can be avoided in cases where borrowers are able to maintain at least a 20% equity position in the property. For millions of borrowers who are currently underwater, default due to negative equity is a predictable but preventable phenomenon. Furthermore, it may well be true that, depending on the local characteristics of the residential real estate market, principal reduction has a more or less necessary role to play in modifications intended to permanently stave off foreclosure. I can tell you that in my own district, where housing values will only recover exceedingly slowly, principal reduction is an essential tool to keeping people in their homes. In none of its testimony before Congress so far has Treasury demonstrated an awareness of the importance of principal reduction, or even the possibility that different real estate markets require different responses from loan servicers.

I am also particularly concerned with Ohio's ranking in HAMP. Ohio currently ranks 48th out of 51 states (including Washington, D.C.) in terms of the proportion of delinquent mortgage loans that have been addressed by HAMP. Treasury has not adequately explained to Congress the causes for why loan modifications should be so much less frequent in a state such as Ohio, than in states like Arizona or Georgia, which have comparable numbers of seriously delinquent loans. But determining those causes could shed light on corporate decisions made by servicers that impede the success of HAMP. Furthermore, Treasury has not indicated that it has performed any analysis of racial or socioeconomic disparities in rates of modification under HAMP, which, given the history of the mortgage banking industry, is a real risk.

In connection with the Domestic Policy Subcommittee's ongoing oversight of HAMP, I submit the following questions to complete the record of our December 7, 2009 field hearing:

1) In written her testimony to the Subcommittee on December 7, 2009, Homeownership Preservation Office Chief Caldwell mentioned a HAMP compliance program, and specifically described an intention to focus on the servicers' implementation activities as well as a "second look" review process of delinquent loans that were evaluated for HAMP.

a. Please provide a detailed description of the function, mission and makeup of the HAMP compliance program, including the number of personnel dedicated to program function. Also, please explain how and whether the HAMP compliance program coordinates with the efforts of local or regional non-profit housing counseling groups.

b. With regard to servicer implementation activities, please provide a summary of the results of Freddie Mac's HAMP compliance program, along with an explanation of the metrics utilized.

c. With regard to the "second look" review process, please provide a summary of the results of this examination.

d. With regard to all aspects of the compliance program, please indicate whether data is available by state, by race, or by any other measure, and if so, please provide such data.

e. If available, please provide a summary of any socioeconomic or racial data on trial and permanent modifications performed under HAMP.

2) Please provide a summary of the complaints received by Freddie Mac, Fannie Mae and/ or Treasury regarding violations of the Servicer Participation Agreement requiring that all foreclosure actions be suspended during trial modifications. Please specify what consequences are faced by those servicers who are found to be "non-compliant." Please indicate whether there are any monetary fines or penalties assessed against those who are found to be non-compliant.

3) Please provide results of Freddie Mac's compliance audits of servicer implementation of the Net Present Value ("NPV") model, and indicate whether any, and which, servicers have been found to be non-compliant with Treasury's NPV specifications. Please indicate whether said servicers have been required to use Treasury's NPV application in lieu of their own.

4) The Subcommittee has been informed that a potential conflict of interest exists in the form of some of the largest loan servicers being divisions of large lending institutions, which have an ownership interest in second-lien notes on properties that are eligible for HAMP modifications, the first-lien notes of which these large lenders are also servicing. Please indicate whether Treasury is aware of this phenomenon and describe what if any measures the HAMP or Making Home Affordable program has or plans to have in place to address it.

5) Please state the number of loans that have been in "trial" status for three (3) months or longer as of the date of this letter.

6) Please state the status of the "Parallel Second Lien Program" announced in April, 2009, or any other programs or initiatives targeted toward modification of second liens.

The Honorable Timothy Geithner
January 11, 2010
Page 4

7) It has been reported that some borrowers have seen their credit scores drop up to 100 points, due to the fact that loans in HAMP trial modifications and other relief measures stay in delinquent status until the execution of a permanent HAMP modification or successful completion of a repayment or forbearance plan. This drop in credit score occurs even if the borrower makes the payments required by the trial modification agreement. Does the Making Home Affordable program as a whole, and the HAMP in particular, address the issue of adverse impact on credit scores for borrowers in trial modifications? If not, has Treasury taken any action to address this issue?

8) Please provide a narrative discussing the decision not to include principal reduction in the HAMP waterfall process. Please state whether any alternatives to principal reduction (other than the HAMP "waterfall" mechanism which was implemented) were considered, and discuss any other mechanisms currently under consideration for dealing with the widespread issue of negative equity.

9) In testimony to the House Financial Services Committee hearing on December 8, 2009, Bank of America risk management executive Jack Schakett stated ,

> "[...] when they were first setting up HAMP, there was a lot of discussion around whether or not we should require full documentation, partial documentation, or no documentation to start the trial mod period. Obviously, at that time, I think there was a general consensus that we supported, that we have a lot of pent-up demand right now; we need to get the customer started as soon as possible. So people erred on the easy side at the beginning of the program. They could get no documentation, oral commitment to what you make, start the trial period, use that trial period to gather the documentation. Hopefully, that you would actually solve the documentation problem; and at the same time, in parallel with the three-months trial payments."

As Treasury's own reports reveal, lenders/ servicers have been slow to convert borrowers into permanent modifications. Further, according to the Federal Reserve Bank of Boston, 30 to 45 percent of borrowers who receive modifications end up in default within six months. With Treasury's official introduction of the Home Affordable Foreclosure Alternatives ("HAFA") Program on November 30, 2009, and the high number of delinquencies continuing unabated, it appears that Treasury has begun to promote short sales and deeds-in-lieu of foreclosure as the next step in its program. Please state whether, given the above, Treasury now intends for HAFA to become the primary response to the continuing high levels of foreclosure, and specifically intends HAFA to be an alternative to requiring compliance with HAMP servicer agreements, or promoting principal reduction. Further:

a. Does Treasury have plans to reach out to (or to encourage lenders/ servicers to reach out to) those borrowers who have entered into trial modifications of their mortgage but ultimately do not make all required payments under their trial plan, thus making them ineligible for loan modifications under HAMP, and offer them instead participation in the HAFA program?

b. Does Treasury agree with the statement made by Bank of America risk management executive Jack Schakett to the House Financial Services Committee on December 8, 2009 that the total number of borrowers who are today eligible for HAMP modifications is 1.5 million?

The Oversight and Government Reform Committee is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides information on how to respond to the Subcommittee's request.

I request that you provide these documents as soon as possible, but in no case later than 5:00 p.m. on February 1, 2010.

If you have any questions regarding this request, please contact Jaron Bourke, Staff Director, at (202) 225-6427.

Sincerely,

Dennis J. Kucinich

Dennis J. Kucinich
Chairman
Domestic Policy Subcommittee

cc: Jim Jordan
Ranking Minority Member

Barney Frank
Chairman
House Financial Services Committee

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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<u>Domestic Policy Subcommittee Document Request Instruction Sheet</u>

In responding to the document request from the Domestic Policy Subcommittee, Committee on Oversight and Government Reform, please apply the instructions and definitions set forth below.

<u>Instructions</u>

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.

2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Subcommittee.

3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.

4. Each document produced should be produced in a form that renders the document capable of being copied.

5. When you produce documents, you should identify the paragraph or clause in the Subcommittee's request to which the documents respond.

6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.

7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.

8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or

computer backup tape), you should consult with Subcommittee staff to determine the appropriate format in which to produce the information.

10. The Committee accepts electronic documents in lieu of paper productions. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Electronic document productions should be prepared according to the following standards:

    (a) The production should consist of single page TIF files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

    (b) Document numbers in the load file should match document Bates numbers and TIF file names.

    (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

11. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.

12. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances by which the document ceased to be in your possession, custody, or control.

13. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

14. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

15. All documents should be bates-stamped sequentially and produced sequentially. In the cover letter, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. For paper productions, four sets of documents should be delivered: two sets to the majority staff and two sets to the minority staff. For electronic productions, one dataset to the majority staff and one dataset to minority staff are sufficient.

Productions should be delivered to the majority staff in B-349B Rayburn House Office Building and the minority staff in B-350A Rayburn House Office Building. You should consult with Subcommittee staff regarding the method of delivery prior to sending any materials.

17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Subcommittee or identified in a privilege log provided to the Subcommittee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.

4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

HPO Chief Phyllis Caldwell
Questions for the Record
House Oversight and Government Subcommittee on Domestic Policy
December 7, 2009

1. **In her written testimony to the Subcommittee on December 7, 2009, Homeownership Preservation Office Chief Caldwell mentioned a HAMP compliance program, and specifically described an intention to focus on the servicers' implementation activities as well as a "second look" review process of delinquent loans that were evaluated for HAMP.**

   - **Please provide a detailed description of the function, mission and makeup of the HAMP compliance program, including the number of personnel dedicated to program function. Also, please explain how and whether the HAMP compliance program coordinates with the efforts of local or regional non-profit housing counseling groups.**

     The HAMP Compliance Program is designed to ensure that servicers are satisfying their obligations under the HAMP Servicer Participant Agreement (SPA) and associated guidance provided through Supplemental Directives (SDs) in order to provide a well-controlled program to assist as many qualifying homeowners as possible to retain their homes while taking reasonable steps to prevent fraud, waste and abuse. Treasury designated Freddie Mac as the Compliance Agent for HAMP. Freddie Mac established a separate, independent division to conduct its compliance activities: MHA-C. Treasury works closely with MHA-C to design and refine the Compliance Program and conducts quality assessments of the activities performed by MHA-C. Four major activities comprise the Compliance Program, which are conducted and determined by MHA-C using an integrated, risk-based approach. The four activities include:

     - On-site Reviews – These reviews consist of assessing the Servicers' internal controls and processes associated with the implementation of HAMP requirements. For example, the following are some processes which may be included in the on-site review:
       - Solicitation
       - HAMP eligibility determination
       - Documentation tracking
       - Quality Control
       - Borrower payment receipt and incentive payment appropriately applied to borrowers

     MHA-C began reviewing servicer processes in July. Recognizing that many of the servicers' processes are newly developed and most modifications are still in their trial periods, these reviews have focused on the servicer's implementation activities, looking to identify process improvements. As more loans move into the permanent modification status and as servicers' processes mature, MHA-C's reviews will focus more on risk-based activities and compliance trend issues.

- Loan file Reviews – These reviews are conducted on-site or off-site on a sample of loans and will:
    - Assess whether the documentation in the loan file supports the servicers' conclusion regarding HAMP eligibility
    - Compare selected information in the loan files with data in the servicers' systems and *IR2*, the database containing HAMP loan-level information

One component to our loan file reviews is a process known as "second look". "Second look" helps ensure that borrowers are solicited and properly evaluated for HAMP and is designed to minimize the likelihood that borrower applications are overlooked or that applicants are inadvertently denied a modification. Through these reviews, MHA-C gains an understanding on servicers' processes for soliciting borrowers, forestalling foreclosure sales until HAMP eligibility can be determined, determining HAMP eligibility and processing HAMP modifications. The results of these reviews help determine the types of other compliance activities and frequency for which those activities will be performed as well as if further actions are required including training, policy clarification, process remediation, or other remedies.

Additionally, as more modifications become permanent, these reviews will compare data used for calculating and paying incentives to help reasonably ensure the integrity of the data.

- Net Present Value (NPV) testing and assessments – These assessments consist of testing servicers' proprietary systems to determine if HAMP NPV requirements were appropriately implemented. Since NPV calculations are a key component to eligibility, Treasury requires servicers to participate in NPV testing with MHA-C before using the servicers' own applications. MHA-C has created a pre-implementation testing mechanism as well as a post-implementation compliance regime to help ensure servicers' NPV calculations and processes meet HAMP requirements.

- Targeted Reviews – These reviews focus on one or more specific processes or types of reviews listed above based on compliance trends, risk analysis or actual compliance activities results.

MHA-C currently has approximately 200 people (both Freddie Mac employees and contractors) assigned to HAMP Compliance for Treasury. In addition, OFS has established six compliance positions within OFS Compliance (including the Director of Compliance, who has responsibilities for Compliance for all OFS activities). Four positions remain open; one candidate accepted and began on 3/29, and one additional offer will be made within three weeks. Positions have been re-posted and applications are being reviewed for the remaining open positions.

The Compliance function does not typically coordinate activities with the efforts of local or regional non-profit housing counseling groups. The Homeownership

Preservation Office and the Program Administrator, Fannie Mae, typically interact with these groups. However, summary complaints and trends of non-compliance raised by a housing or counseling group are referred to the Compliance Agent for inclusion in the risk-assessment process so that appropriate compliance activities can be conducted.

- **With regard to servicer implementation activities, please provide a summary of the results of Freddie Mac's HAMP compliance program, along with an explanation of the metrics utilized.**

  MHA-C has reported in servicer reviews that quality control activities, anti-fraud programs and other internal controls specific to HAMP continue to develop as the servicers' HAMP-related processes mature during their implementation of the program. Additionally, loan file reviews concentrated on ensuring that those loans not modified were appropriately excluded, and focused on the largest servicers with the ability to affect the most borrowers. Generally, MHA-C found that servicers were following HAMP guidelines. Where anomalies occur, Treasury assesses the severity based on information provided by MHA-C as well as other sources and determines further courses of action (see below).

  NPV pre-implementation testing, as described above, requires the servicers' results to be within strict thresholds before the servicers are allowed to use their own applications. In addition, Freddie Mac conducts post implementation reviews. These reviews have found some anomalies at servicers. Based on the anomalies, servicers are required to revert to the NPV tool available through the HAMP admin portal to ensure borrowers are not disadvantaged.

  As the HAMP program and its requirements have evolved, the servicers are working to meet the requirements within the prescribed timeframes. This has created a challenging environment for the servicers to implement processes and mature their internal controls and monitoring procedures. As the Program and servicers' processes continue to mature, we would expect more robust control environments, processes, and monitoring programs within the servicers.

- **With regard to the "second look" review process, please provide a summary of the results of this examination.**

  Second Look loan file reviews are conducted to assess those loans not offered a HAMP modification, to reasonably ensure the servicers undertook appropriate evaluation steps and correctly concluded that a HAMP modification should not be offered. Generally, MHA-C found that servicers were following HAMP guidelines. Where anomalies occur, Treasury assesses the severity based on information provided by MHA-C as well as other sources and determines further courses of action. The Second Look reviews have been invaluable in assessing servicer performance, and providing indications of when enhanced compliance activities are necessary. Enhanced compliance activities may include additional loan review activities, direct communication with servicers by senior MHA-C and Treasury personnel, or targeted on-site reviews, all of which have occurred as a result of Second Look reviews. It is important to note that the Second Look review is an iterative process, with follow-up required between MHA-C and the servicers when the contents of the servicer file do not allow a conclusion to be formed. During these follow-up communications, servicers are reminded of their obligations not to proceed to foreclosure sales until an effective HAMP evaluation has occurred and been documented. If MHA-C conducts enhanced compliance activities, depending on what is determined by those compliance activities, they may result in direct instructions from MHA-C and Treasury to servicers to change and improve processes in order to ensure that homeowners are properly evaluated for a HAMP modification.

- **With regard to all aspects of the compliance program, please indicate whether data is available by state, by race, or by any other measure, and if so, please provide such data.**

  To date, such data is not available relative to the compliance activities.

- **If available, please provide a summary of any socioeconomic or racial data on trial and permanent modifications performed under HAMP.**

  This data is not yet publicly available. Participating servicers are required to document and report Government Monitoring Data in accordance with the Home Mortgage Disclosure Act (HMDA) for each modification evaluated or entering modification on or after December 1. The Government Monitoring Data includes borrower and co-borrower race, ethnicity, and sex. We estimate that a reliable data set will be available in June 2010.

2. **Please provide a summary of the complaints received by Freddie Mac, Fannie Mae and/or Treasury regarding violations of the Servicer Participation Agreement requiring that all foreclosure actions be suspended during trial modifications. Please specify what consequences are faced by those servicers who are found to be "non-compliant." Please indicate whether there are any monetary fines or penalties assessed against those who are found to be non-compliant.**

With respect to consequences to servicers resulting from complaints, first it is necessary to understand the process. Complaints registered against servicers are generally provided to Fannie Mae in their role as the HAMP Administrator. On an operational level, where Fannie Mae has found that a servicer has executed a foreclosure sale in violation of program rules, they have worked to resolve these cases at the highest levels of the servicer's institution and ultimately reverse the foreclosure sale. The Program Administrator provides a summary report of all complaints to MHA-C and, in certain circumstances (if appropriate) refers complaints directly to the Compliance Agent. This information is included in the risk-assessment process so that appropriate compliance activities can be conducted. To date, several targeted reviews have been conducted as a result of analysis of a variety of types of information, resulting in direction to servicers to alter their processes to become fully compliant with HAMP guidelines.

In addition, Treasury has formed a compliance committee for HAMP to review and understand servicers' compliance results and determine appropriate remedies. The compliance committee's actions range from requiring improperly rejected loans to be modified, to operational enhancements, additional servicer oversight or monetary actions. Monetary remedies may include withholding or reducing incentive payments to servicers, or requiring repayments of prior payments made to servicers with respect to affected loans. In addition, underperforming or non-performing servicers may become subject to additional, stricter compliance reviews and monitoring.

3. **Please provide results of Freddie Mac's compliance audits of servicer implementation of the Net Present Value ("NPV") model, and indicate whether any, and which, servicers have been found to be non-compliant with Treasury's NPV specifications. Please indicate whether said servicers have been required to use Treasury NPV application in lieu of their own.**

As stated above, initial tests of those servicers that chose to re-code the NPV model into their own systems resulted in the production of results within narrow tolerances to the Treasury NPV model, and servicers were not allowed to use these re-coded models until acceptable results are achieved.

During various compliance activities, some servicer practices resulting in incorrect application of the NPV model have been identified. Importantly, these are not indications of shortcomings in the model itself, but rather were the result of operational disconnects within servicer operations, and could also occur for servicers that use the Treasury NPV model. The most common operational miscue results when servicers update information incorrectly when re-running the NPV model when a trial modification is converted to a permanent modification. Where these practices have been identified, servicers have been instructed to change their processes, analyze the impact on borrowers, and where possible reach out to borrowers denied due solely to a negative NPV result to re-evaluate the borrower for HAMP eligibility.

OFS Compliance is currently executing a re-certification process for all servicers who choose to use proprietary NPV models, and analyzing data on Treasury Portal runs to attempt to identify any operational issues in those servicers that use the Portal's NPV model capabilities.

4. **The Subcommittee has been informed that a potential conflict of interest exists in the form of some of the largest loan servicers being divisions of large lending institutions, which have an ownership interest in second-lien notes on properties that are eligible for HAMP modifications, the first lien-notes of which these large lenders are also servicing. Please indicate whether Treasury is aware of this phenomenon and describe what if any measures the HAMP or [the] Making Home Affordable program has or plans to have in place to address it.**

Treasury is aware of the phenomenon you describe and our Second Lien Modification program (2MP) has been designed to address this issue. Under 2MP, when a borrower's first lien is modified under HAMP and the servicer of the second lien is a 2MP participant, that servicer must offer either to modify the borrower's second lien or to accept a lump sum payment from Treasury in exchange for full extinguishment of the second lien. Treasury has enlisted the banks with a majority of second liens on their portfolio in order to help standardize these cost-sharing principles across the industry.

5. **Please state the number of loans that have been in "trial" status for three (3) months or longer as of the date of this letter [January 11, 2010].**

   As of January 11, there were 353,718 loans listed in "trial" status that have first payment due dates prior to October 1.

6. **Please state the status of the "Parallel Second Lien Program" announced in April, 2009, or any other programs or initiatives targeted toward modification of second liens.**

   There have been several challenges to implementing the 2MP initially announced in April. After issuing guidance for the program on August 13, servicers reported concerns about how accounting guidance from the Office of the Comptroller of the Currency would treat loans modified under the program. Revised accounting guidance was issued on December 7 addressing those concerns. Additionally, because there has not been a systematic method of notification to second lien holders when a first lien on the same property is modified, ramp-up for the program has taken some time. Over the last few months, Treasury has been working to create program infrastructure and technology to address these information asymmetries, including a new platform that matches second liens to first liens modified under HAMP. We have made enormous progress and continue to move forward with technological development and program implementation. Four servicers, comprising half of the market for second liens, have entered into the 2MP program and we expect to finalize additional servicer contracts soon.

7. **It has been reported that some borrowers have seen their credit scores drop up to 100 points, due to the fact that loans in HAMP trial modifications and other relief measures stay in delinquent status until the execution of a permanent HAMP modification or successful completion of a repayment or forbearance plan. This drop in credit score occurs even in if the borrower makes the payments required by the trial modification agreement. Does the Making Home Affordable program as a whole, and the HAMP in particular, address the issue of adverse impact on credit scores for borrowers in trial modifications? If not, has Treasury taken any action to address this issue?**

   Though Treasury has no role in regulating the credit reporting industry, the industry has been responsive to concerns that a modification under HAMP should not unnecessarily harm a borrower's credit rating. The precise impact of a loan modification on the consumer's FICO credit score depends on three variables: 1) whether the mortgage servicer reports the modification to the credit bureau; 2) how the servicer chooses to characterize the modification to the credit bureau, and; 3) the consumer's credit profile at the credit bureau prior to the score being calculated. As a general rule, the FICO score regards a mortgage modification as negative because historical data show that the likelihood that people will become seriously delinquent in the near future increases statistically when they are reported as not paying an existing obligation as originally agreed.

   When the HAMP was first announced in February 2009, many lenders began using an existing code "AC" to signal that borrowers were participating in the program. That code indicates that a consumer is participating in a partial-payment program. As you suggest, the presence of the AC code on the credit report can have a negative impact on the FICO scores of borrowers, including borrowers with good credit who have made all of their payments on time. At the time, the AC code was the closest fit, so the credit reporting industry recommended that lenders use it until the industry could develop and implement a new one.

As of November 2009, however, the major credit bureaus began allowing mortgage servicers to report a new comment code ("CN" or "Loan Modified under a Federal Government Plan") that replaces the partial payment comment code once a borrower making trial period payments enters into a permanent modification. The FICO scoring formula currently ignores the CN code (i.e. no substantial impact on FICO credit score). You rightly note that borrowers in a trial period may still experience a drop in credit score, but those effects can be temporary and reversible as long as borrowers were not delinquent before the trial period and successfully proceed to a permanent modification. Additionally, Treasury will be issuing guidance to ensure that servicers report all permanent modifications, including those secured prior to November 2009, with the CN code and not the AC code.

FICO's first opportunity to study the predictive value of the CN code on credit reports will come later in 2010, after one of the national credit reporting agencies sends FICO a new sample of consumer credit reports for its use in redeveloping the FICO scoring models used by that agency.

8. **Please provide a narrative discussing the decision not to include principal reduction in the HAMP waterfall process. Please state whether any alternatives to principal reduction (other than the HAMP "waterfall" mechanism which was implemented) were considered, and discuss any other mechanisms currently under consideration for dealing with the widespread issue of negative equity.**

HAMP is structured with affordability as its primary objective – providing borrowers with reduced monthly mortgage payments that are sustainable over the long term, because we believe that affordability is key to helping homeowners stay in their homes. Research has shown that default tends to occur because of a double trigger (i.e., because the borrower has both a high loan-to-value (LTV) ratio in addition to an increase in mortgage expense or a significant life event (such as serious illness)). Therefore, we believe that focusing on affordability will help many homeowners avoid foreclosure, including many borrowers with negative equity.

We agree that the large number of underwater borrowers in this country is a serious concern, but we also recognize that any large-scale program aimed at assisting borrowers with negative equity would need to address the significant fairness and moral hazard considerations that would be raised. The modification program currently includes methods for servicers to reduce negative equity, including the option to reduce principal at any point in the waterfall and pay-for-success incentives for borrowers that are applied directly to reducing principal. We also expect a second lien program focused on modification or extinguishment of second liens to begin to be implemented soon. In addition, there is no LTV requirement to qualify for HAMP, so distressed borrowers with negative equity can qualify for modifications.

On March 26, 2010, Treasury announced a number of enhancements to HAMP, which include changes designed to encourage servicers to write-down mortgage debt as part of a HAMP modification. Servicers will be required to consider an alternative modification approach that emphasizes principal relief. This alternative modification approach will include incentive payments for each dollar of principal write-down by servicers and investors. The principal reduction and the incentives will be earned by the borrower and lender based on a pay-for-success structure. We anticipate these changes to be implemented over the coming months.

The Administration also announced adjustments to the Federal Housing Administration (FHA) programs that will provide additional refinancing options to homeowners who owe more than their home is worth because of large falls in home prices in their local markets. These adjustments will provide more opportunities for qualifying mortgage loans to be responsibly restructured and refinanced into FHA loans, provided that the borrower is current on the mortgage and the lender reduces the amount owed on the original loan by at least 10 percent. Treasury will provide up to a total of $14 billion in TARP funds to expand the impact of this refinance option through incentives and coverage for a share of potential loan losses. Total TARP support provided through these mechanisms will not exceed $14 billion. We expect this refinance option to be available by the fall.

9. **In testimony to the House Financial Services Committee hearing on December 8, 2009, Bank of America risk management executive Jack Schakett stated,**

> **"[...] when they were first setting up HAMP, there was a lot of discussion around whether or not we should require full documentation, partial documentation, or no documentation to start the trial mod period. Obviously, at that time, I think there was a general consensus that we supported, that we have a lot of pent-up demand right now; we need to get the customer started as soon as possible. So people erred on the easy side at the beginning of the program. They could get no documentation, oral commitment to what you make, start the trial period, use that trial period to gather the documentation. Hopefully, that you would actually solve the documentation problem; and at the same time, in parallel with the three-months trial payments."**

As Treasury's own reports reveal, lenders/servicers have been slow to convert borrowers into permanent modifications. Further, according to the Federal Reserve Bank of Boston, 30 to 45 percent of borrowers who receive modification end up in default within six months. With Treasury's official introduction of the Home Affordable Foreclosure Alternatives ("HAFA") Program on November 30, 2009, and the high number of delinquencies continuing unabated, it appears that Treasury has begun to promote short sales and deeds-in-lieu of foreclosure as the next step in its program. Please state whether, given the above, Treasury now intends for HAFA to become the primary response to the continuing high levels of foreclosure, and specifically intends HAFA to be an alternative to requiring compliance with HAMP servicer agreements, or promoting principal reduction. Further:

- **Does Treasury have plans to reach out to (or to encourage lenders/servicers to reach out to) those borrowers who have entered into trial modification of their mortgage but ultimately do not make all required payments under the trial plan, thus making them ineligible for loan modifications under HAMP, and offer them instead participation in the HAFA program?**

  The Treasury is committed to the goal of homeownership preservation we established at the outset of the program, which is why HAFA guidance directs servicers to consider home retention options prior to evaluating borrowers for foreclosure alternatives. Servicers must evaluate a borrower for a HAMP modification prior to any consideration being given to HAFA options in accordance with the provisions of Supplemental Directive 09-01 and all other supplemental HAMP guidance. Borrowers that meet the eligibility criteria for HAMP but who are not offered a Trial Period Plan, do not successfully complete a Trial Period Plan, or default on a HAMP modification should *first* be considered for other loan modification or retention programs offered by the servicer prior to being evaluated for HAFA. Pursuant to the servicer's policy, every potentially eligible borrower must be considered for HAFA before the borrower's loan is referred to foreclosure or the servicer allows a pending foreclosure sale to be conducted.

  Further, in order to ensure that servicers are executing this policy appropriately, the date and outcome of the HAFA consideration must be documented in the servicer's file and will be subject to compliance assessments by the Treasury's Compliance agent, Freddie Mac.

- **Does Treasury agree with the statement make by Bank of America risk management executive Jack Schakett to the House Financial Services Committee on December 8, 2009 that the total number of borrowers who are today eligible for HAMP modifications is 1.5 million?**

  Mr. Schakett's statement is based on a Fannie Mae survey of servicers that estimated that as of the beginning of November there were fewer than 1.5 million homeowners who were both 60+ days delinquent and likely to meet the HAMP requirements. The most recent survey shows that the number of homeowners meeting these conditions has increased to 1.8 million as of the beginning of February. The figure, which is detailed on page 5 of our monthly MHA Public Report is an estimate of the number of loans that are *today* eligible for HAMP modifications and specifically excludes FHA and VA loans, loans from non-participating servicers, and, of the remaining population, loans with disqualifying characteristics, including non-owner occupancy, jumbo loan value, and debt-to-income ratio below the 31 percent program threshold. Treasury still projects that between 3 and 4 million mortgages will be eligible for HAMP between 2009 and 2012; this figure sums the 1.8 million currently eligible with the remaining number of loans estimated to become eligible over the life of the program.