STUDY SESSION DATE: April 13, 2009

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Krutko

SUBJECT: STUDY SESSION ON FORECLOSURE MITIGATION

DATE: April 2, 2009

Approved [signature] Date 4-3-09

COUNCIL DISTRICT: City-Wide

PURPOSE OF STUDY SESSION

The purpose of this study session is to provide information to the City Council on current foreclosure mitigation efforts by the City and its industry and nonprofit partners.

BACKGROUND

San Jose has experienced a 140% increase in foreclosures over the past two years, from 5,838 in 2007 to 13,989 in 2008. Much of the foreclosure activity is concentrated in neighborhoods in Central San Jose, East San Jose, and the southern stretch of the Monterey Highway. During this same period, San Jose has experienced a 39% drop in housing values.

In an effort to respond to the rapid increase in foreclosures, the City has partnered with Don't Borrow Trouble (DBT), a consortium of fair housing and legal services groups and real estate and mortgage representatives that was established to provide education, outreach, and referral services on predatory lending issues. A Foreclosure Prevention Task Force has been convened to expand the services to include coordinating existing resources and developing a comprehensive approach for the delivery of foreclosure mitigation services to families and communities. The Task Force has adopted an aggressive and comprehensive strategy that includes prevention, intervention, family re-stabilization, and neighborhood stabilization activities. The Foreclosure Prevention Task Force has created the ForeclosureHELP Program, a program that provides wrap-around services with the goal of preventing foreclosures and maintaining family and neighborhood stability.

ANALYSIS

This study session has been scheduled to provide the City Council with a full understanding of the foreclosure mitigation efforts that have been developed by City staff and their partners, as well as to obtain feedback on the direction this effort is taking. The study session will consist of three panels.

The first panel will review the *Current State of the Real Estate Environment* and will include a discussion of the foreclosure impact on the community, its people, and the real estate market.

Statistical information about the neighborhoods most impacted, and the impact on various populations will be presented.

The second panel will discuss issues related to *Neighborhood Stabilization.* This panel will discuss efforts being taken to stabilize neighborhoods that have been hardest hit by foreclosures. Discussion will include a description of activities funded by the federal Neighborhood Stabilization Program and other programs targeting foreclosures. This panel will also review coordinated neighborhood outreach efforts by Neighborhood Housing Services Silicon Valley, the Strong Neighborhood Initiative, and PACT. Code Enforcement staff will review proactive efforts being taken to respond to foreclosures in the City's neighborhoods.

The third panel will review *Prevention and Intervention Programs for Homeowners.* Panelists will discuss the services offered by ForeclosureHelp, including streamlined intake and packaging, providing support to the 10 county-wide HUD-certified foreclosure prevention counselors, and referrals to re-stabilization services. This panel will also share information about bank loan modification programs and review federal and State programs available to assist homeowners and tenants impacted by foreclosure.

A Question and Answer period will follow each panel session. Attached to this memorandum is the agenda, as well as relevant background information that you might find helpful in advance of the study session discussion.

LESLYE KRUTKO
Director of Housing

Attachments
1. Agenda
2. Foreclosure Mitigation Information Memo dated February 20, 2009
3. Other Publications of Interest
    - The Foreclosure Prevention Provisions of the Housing and Economic Recovery Act of 2008
    - Guide to Neighborhood Stabilization Program (NSP) Eligible Uses
    - Summary Guidelines on "Making Home Affordable" Program
    - Law Alert! 2009 California Law Amends Loan Foreclosure Procedures
    - 3-12-09 USA Today – Most Foreclosures Pack into a Few Counties
    - 3-16-09 MSNBC – Mortgage Fraud Reports Up 26%
    - 4-1-09 Mercury News Opinion – How to Right the California Housing Market

For questions please contact SANDRA MURILLO, HOUSING POLICY AND PLANNING ADMINISTRATOR, at (408) 975-4415.

Sent to Council: Distributed on:

FEB 23 2009

by City Manager's Office

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Krutko

SUBJECT: SEE BELOW

DATE: February 20, 2009

Approved [signature] Date 2-23-09

COUNCIL DISTRICT: Citywide

INFORMATION

SUBJECT: UPDATE ON THE STATUS OF FORECLOSURES IN SAN JOSÉ AND EFFORTS TO RESPOND TO THE FORECLOSURE CRISIS

This memorandum provides an update on the impact of foreclosures in San Jose, and describes the City's response.

In recent months, the number of properties in San Jose subject to foreclosure has increased significantly. Although San Jose's foreclosure rate continues to be at about 1.7%-- in other words, of all the homeownership units in the City 1.7% are in some state of foreclosure-- much of the foreclosure activity is concentrated in neighborhoods in Central San Jose, East San Jose, and the southern stretch of the Monterey Highway. As a result, these neighborhoods are seriously impacted.

Based on the increased number of recorded Notices of Defaults, and the high number of adjustable mortgage loan resets that are anticipated to peak in 2011, there is concern that the number of foreclosures in San Jose will continue to rise. With each loan reset, homeowners typically experience a significant increase in their monthly mortgage payment. For many families, even those who can afford the increased payment, refinancing to decrease the mortgage to a sustainable level is not an option as falling home values result in a situation where they owe more than their house is worth.

In San Jose, we have experienced a steep drop in housing value. The median price of single family homes sold in San Jose fell from $699,000 in December 2007 to $420,000 in December 2008, a 39% decline. During the same time period, the median price of condominiums/townhomes sold dropped from $452,000 to $262,000, a 43% decline. Housing observers generally agree that this trend will continue until the market reaches a bottom in late

2009 to early 2010. However, instead of a "V-shaped" recovery where housing prices begin to rise soon after a bottom is reached, experts predict an "L-shaped" recovery where housing prices stay depressed for some time.

Nearly everyone is impacted by the foreclosure crisis, whether they are having difficulties holding on to their homes themselves, have a friend or family member facing default or foreclosure, have vacant houses in their neighborhood, or have seen their home values fall. City employees are not immune. Many employees have expressed concern that their adjustable rate mortgages are about to reset, and fear that they will be unable to make the higher payments.

FORECLOSURE STATISTICS

For the three month period between October 1 and December 31, 2008, 3,016 San Jose homes received a new foreclosure filing. Of this number, 50% (1,508) received a default notice, 25% (749) were slated for auction sale, and 25% (759) were repossessed by a bank or lender.

In total, San Jose has 3,988 homes in the foreclosure process, a figure that includes homes receiving a foreclosure filing before October 1, 2008. This is higher than the 3,016 figure indicated above for two primary reasons. First, some of the homes that were repossessed by the bank (an "REO") before October have not been resold and continue to sit on the market. Second, some of the homes received a notice of default or were subject to an auction sale before October but did not receive any subsequent filings after October, nor have they been cured of their default status. Thus, while these homes did not receive a foreclosure filing between October 1 and December 31, 2008, they nevertheless remain in the foreclosure process.

While no area of the City is immune from foreclosures, they are concentrated in certain geographic areas as illustrated by Table 1 (zip codes 95111, 95116, 95122, and 95127). In these zip codes, the rate of foreclosure filings ranges between 3.0% and 4.9% of owner-occupant households (column 3). Found primarily in East San Jose (Districts 2 and 5) near the 680/101 freeway interchange and along Highway 101 going south, these areas are experiencing foreclosure rates at two to three times the Citywide average. This is consistent with the experience of other cities throughout the nation where a high incidence of foreclosures is found in lower-income neighborhoods, where households stretched to buy homes on insufficient incomes and/or with subprime mortgages. The resulting foreclosures are often, but not always, caused by predatory lending practices targeted specifically at lower-income or minority households.

There has been an increase in the number of complaints and proactive observations by Code Enforcement Division staff about vacant and neglected houses. Between September 2008 and January 2009, Code Enforcement staff received complaints and actively identified 110 vacant houses that were in violation of the City's *Neglected Vacant House Ordinance*. Of these, 17 homes needed to be boarded up by the Code Enforcement staff. Forty-two percent were confirmed to be bank owned, with the remainder appearing to be in some stage of the foreclosure process. Since November 2007, Code Enforcement has inspected 415 vacant homes/structures.

Table 1. Top 10 Zip Codes for Foreclosures (October 1 to December 31, 2008)

Total Foreclosure Filings	Rate of Foreclosure Filings (% of All Households)	Rate of Foreclosure Filings (% of Owner-occupied units)
95111 (353)	95122 (2.7%)	95116 (4.8%)
95127 (330)	95111 (2.5%)	95122 (4.6%)
95122 (318)	95127 (2.1%)	95111 (3.8%)
95123 (273)	95116 (2.1%)	95127, 95110 (3.0%)
95116 (248)	95121 (2.0%)	95121 (2.6%)
95121 (182)	95148 (1.6%)	95133 (2.3%)
95148 (174)	95138 (1.5%)	95112 (2.2%)
95112 (119)	95133 (1.4%)	95123, 95148 (1.9%)
95136 (106)	95123 (1.3%)	95138 (1.7%)
95132 (100)	95139, 95110 (1.2%)	95139 (1.5%)

FORECLOSURE RESPONSE

Federal Efforts

In October, former President Bush announced the new federal HOPE for Homeowners (H4H) program, which was designed to help troubled homeowners refinance their unsustainable mortgage payments. Any mortgage that was originated prior to January 1, 2008 is eligible under this program. However, the maximum loan amount of $550,440 and the requirement that borrowers have at least ten percent equity in their homes has limited its applicability in San Jose. Unfortunately, most of the families facing foreclosure have lost significant value in their homes and cannot meet the 90% Loan to Value requirement. And because many of these borrowers also had second mortgages, they found that, while their first mortgage lender was willing to work with them, the second mortgage holder was not because they were positioned to take the full impact of the loss.

On February 18th, President Obama announced the Homeowner Affordability and Stability Plan, which is intended to help up to seven to nine million families restructure or refinance their mortgages to avoid foreclosure. It is important to note that this Plan does not help families who are already facing foreclosure. Rather, it helps responsible homeowners who have kept current on their obligations, but who find themselves either "upside down," where they owe more than their house is worth, or facing interest rate adjustments that they cannot afford.

The key components of this Plan are:

(1) Assisting four to five million homeowners to refinance their mortgages, reducing their payments to affordable levels. Homeowners who qualify are those who have conforming loans that are owned or guaranteed by Fannie Mae or Freddie Mac.
(2) Creating a $75 Billion "Homeowner Stability Initiative" that reduces the amount homeowners owe each month to sustainable levels. Program components include: reducing interest rates to ensure that mortgage payments don't exceed 38% of a borrower's income; providing financial incentives to servicers for modifying loans; providing financial incentives to borrowers to stay current on their loans; and creating an insurance fund to discourage lenders from foreclosing now over fears that home prices will continue to fall. Additionally, as part of this initiative, the Treasury will develop uniform guidance for loan modifications across the mortgage industry. Other measures include: increased oversight and reporting, allowing judicial modifications of mortgages during bankruptcy, $1.5 billion in funding for relocation and other forms of assistance to renters displaced by foreclosure, $2 billion in Neighborhood Stabilization funding, and improvements to the Hope for Homeowners Program and Other FHA Programs to modify and refinance loans for at-risk borrowers.
(3) Strengthening confidence in Fannie Mae and Freddie Mac by increasing investment through, among other things: purchasing mortgage-backed securities, increasing the size of their retained mortgage portfolios and allowable debt, and support to State Housing Finance Agencies.

<u>State Efforts</u>

The State has taken action to help those households who have fallen behind on their payments. Last summer, the State legislature enacted SB 1137 to curb the number of foreclosures. Among other provisions, this new law: (1) requires lenders to contact homeowners who have fallen behind on their payments to explore options for avoiding foreclosure at least 30 days prior to filing a notice of default; (2) gives residential tenants who reside in a foreclosed home 60 days notice to vacate the property; and (3) requires that owners of foreclosed properties maintain the property exterior. This legislation applies to loans made to borrowers between January 1, 2003 and December 31, 2007; the vast majority of foreclosures have involved loans that were taken out during this period. Code Enforcement staff report that the vast majority of mortgage lenders are adhering to the SB 1137 requirement to maintain the property exterior.

In November, Governor Schwarzenegger announced a plan called "Keeping Californians in Their Homes," which included the following provisions:
(1) A 90-day stay of the foreclosure process for each owner-occupied home with a first mortgage in default;
(2) A Safe Harbor for lenders allowing them to be exempted from the 90-day stay procedure if they can document that they have an aggressive loan modification in place; and

(3) A loan modification model that is based on a 38% debt-to-income ratio.

Among the many bills considered by the Legislature as part of the just approved State budget package was SBX27 (Corbett). This bill establishes a 90-day moratorium on foreclosures for homes where the first mortgage was recorded between January 1, 2003 and January 1, 2008. There is an exception to this rule for loans that are held by a servicer that has put in place a State-approved loan modification program that has a 38% debt to income ratio, and that provides some combination of interest rate reductions, loan term extensions, deferral of unpaid principal, reduction in principal, or other factors as determined by the lender's state regulator. There is concern by some advocates that this bill actually weakens requirements as it isn't as stringent as a similar Federal Deposit Insurance Corporation program that many lenders have already implemented.

City staff continues to actively review and analyze State and federal legislative efforts that address the foreclosure crisis, as well as any programs that are proposed to help families save their homes and protect renters impacted by foreclosure.

Bank Efforts

In October 2008, major banks, including Chase (Washington Mutual), Bank of America (Countrywide), and Wells Fargo (Wachovia), announced their participation in the Governor's Keeping Californians in Their Homes Plan, agreeing to a 90-day moratorium on foreclosures of owner-occupied residences. On February 11th, major banks announced that they would extend this moratorium to allow the Obama Administration to release detailed guidelines for the Homeowner Affordability and Stability Plan.

Locally, banks are increasing their staffing dedicated to performing loan modifications, and have agreed to participate in foreclosure prevention and resource fairs.

Local Efforts

The City is stepping up its efforts to address foreclosures in order to aggressively respond to the increase in activity. Following is a discussion of the actions the City has taken or is taking.

(1) **Assigned a Point Person**-- Sandra Murillo, Housing Policy and Planning Administrator and CDBG Program Manager, has been assigned as the point person for foreclosures, and is working with other City staff to coordinate the City's efforts. Staff from the Housing Department, Strong Neighborhood Initiative (SNI), and Code Enforcement Division make up the team formed to assist with policy analysis, neighborhood information, and outreach coordination. Key to this coordination effort is the participation of the Neighborhood Housing Services of Silicon Valley (NHSSV), which is funded by the City

and Redevelopment Agency to provide neighborhood outreach and foreclosure counseling to San Jose residents.

(2) **Convened a Foreclosure Prevention Task Force--** The City has been working with Don't Borrow Trouble (DBT), a consortium of fair housing and legal services groups and real estate and mortgage representatives that was established to provide education, outreach, and referral services on predatory lending issues. A Foreclosure Prevention Task Force (FPTF) has been convened to expand the DBT services to include coordinating existing resources and developing a comprehensive approach for the delivery of foreclosure mitigation services to families and communities. The Task Force will identify existing services spread throughout the City and County and create easy-access repositories of multi-lingual information and services for homeowners in foreclosure or at risk of foreclosure. In addition to the current DBT member organizations, participation on the Task Force has been expanded to include representatives from local community advocacy groups, the faith community, family counseling services, and education.

The Task Force has adopted a comprehensive strategy that includes the following features:

a. **Prevention--** Prevention works to preserve homeownership by providing early intervention and addressing financial crises in the earliest possible stages. Services provided include financial literacy, legal and credit counseling, and foreclosure prevention counseling.
b. **Intervention--** Intervention efforts assist families who are in the process of foreclosure and require more intense foreclosure prevention counseling and loan modification assistance.
c. **Re-Stabilization--** Re-Stabilization includes a host of social services that assist family stabilization during and after the prevention and intervention stages. These services include a relocation strategy if homeownership is unsustainable, family counseling, and short-term emergency financial assistance.
d. **Stabilization**—In addition to family stability, focused efforts will be made to address neighborhood stabilization. Several SNI neighborhoods have been impacted by the large number of vacant homes in their communities, which can result in increased neighborhood blight, including deteriorated landscaping, vandalism, and crime and gang activity. It is important to ensure that the positive impact the SNI and Code Enforcement efforts have made to these communities are not reversed. An effort to re-occupy vacant homes through re-sale helps mitigate neighborhood deterioration and re-stabilizes communities that have been adversely impacted by this foreclosure crisis.

To assist in the stabilization efforts, the City will implement the $5.6 million Housing and Economic Recovery Act 2008-Neighborhood Stabilization Program (NSP), which was approved by the U.S. Department of Housing and Urban

Development (HUD) on February 2, 2009. At the present time, the City is awaiting the HUD contract so it can begin to implement its efforts. Once funding is announced, the City intends to apply for additional funding through the State NSP program and the additional federal NSP funding available through the 2009 federal Economic Recovery Package.

(3) **Assessed Needs**-- To facilitate this effort, staff has met with a number of stakeholders and organizations to inventory available resources and to complete a needs assessment to identify community needs and resource gaps. Within Santa Clara County, there are four HUD-approved nonprofit agencies with a total of ten HUD-certified Foreclosure Prevention Counselors that provide foreclosure prevention counseling. The most critical needs identified were:

- Additional HUD-certified counselors to address the increased demand
- Outreach and Marketing, including information and referral resources
- Emergency short-term financial assistance to homeowners/renters
- Family counseling resources

On January 29th, 28 individuals representing various stakeholder organizations, including the County and other local jurisdictions, met to develop a plan to address these needs. Immediate outcomes include:

a. **Volunteers**-- The availability of over 100 Volunteers experienced in loan intake and packaging will supplement the ten certified foreclosure prevention counselors now available. This assistance will enable the certified counselors to focus on the more critical foreclosure prevention counseling and loan modification assistance.
b. **Certified Counselors**-- The Santa Clara County Association of Realtors, Project Sentinel, and Neighborhood Housing Services of Silicon Valley are working to bring HUD Foreclosure Prevention Counseling training to Santa Clara County to increase the number of HUD-certified Counselors.
c. **Outreach and Marketing**— Multi-lingual neighborhood outreach activities, focused on the neighborhoods that are hardest hit by foreclosures, will be coordinated by SNI staff in conjunction with NHSSV by engaging the community at the neighborhood, faith, and education levels. Marketing activities coordinated by City staff will include public service announcements, information and referral flyers, a dedicated telephone line, and an interactive website. Additionally, a survey has been developed to reach out to church members in impacted areas to gather input on the impact of foreclosures.
d. **Foreclosure Prevention Fair**-- The second Foreclosure Prevention Fair is now scheduled for April 23rd, with details to follow. This Fair will bring together lenders and borrowers in one location to perform loan modifications or workouts, with the intent that a newly underwritten mortgage will allow the family or individual to make affordable monthly payments and allow them to keep their homes. The City's first foreclosure fair held in August 2008 drew large crowds.

e. **Lenders' Meeting**—The Task Force is investigating the potential for a "Lenders' Meeting," where major banks would meet to discuss opportunities to cooperate and collaborate, especially in the timely processing of loan modification approvals.

Other outcomes with initial discussions and plan of actions are:

a. **Funding**-- Identify current sources of Emergency Financial Assistance offered by nonprofits and local government, and create a simplified referral process. Research other funding opportunities.
b. **Simplified Referral Process**-- Collaborate with family counseling services and create a simplified referral process.

In addition to these actions, City staff is preparing a workshop for City staff concerned about their housing situation to answer questions and help educate them about their options. Information regarding this workshop will be forthcoming.

CONCLUSION

It is expected, given the nature of subprime, exotic, and adjustable-rate lending during the housing boom, that foreclosures may continue through 2011. The current economy, where job loss is increasing and retirement funds are decreasing, is adding to the crisis. This spillover effect may compound the impact of foreclosures in San Jose by dragging down a previously unaffected group of homeowners. Additionally, we are awaiting the inevitability of a new wave of potential foreclosures as interest rates reset higher in the next year or two.

The City is working with its partners to address foreclosures in San Jose, with the goal of preventing foreclosures and maintaining family and neighborhood stability.

LESLYE KRUTKO
Director of Housing

For questions please contact Leslye Krutko, Director of Housing, at 408-535-3851.

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August 4, 2008

The Foreclosure Prevention Provisions of the Housing and Economic Recovery Act of 2008

by Ernest T. Patrikis, Randi Lane Maidman and Nicholeen S. DePersis

Much has been written this week about the Housing and Economic Recovery Act of 2008, which, among other things, establishes an independent agency to oversee Fannie Mae, Freddie Mac and the federal home loan banks; streamlines government-sponsored enterprises' affordable housing goals; and establishes the Hope For Homeowners Program. These provisions, however, comprise only Division A of the act. Division B, which focuses on foreclosure prevention, should be of equal interest to the banking community. Division B would amend the longstanding National Housing Act (NHA) in several significant ways, as well as amending the Servicemembers Civil Relief Act and the Truth in Lending Act. Also of interest is Division C, the Housing Assistance Tax Act of 2008, which contains the tax-related provisions.

The key provisions of the Divisions B and C of the Housing and Economic Recovery Act of 2008 are summarized below.

Building American Homeownership Act of 2008[1]

Effective January 1, 2009[2], the limits for FHA-insured loans are increased from 95% to 115% of the median price for a one-family house in the relevant area. For 2-, 3- and 4-family homes, the limits for FHA-insured loans are increased to 107%, 130% and 150% of the median price for the relevant area.[3]

To qualify for FHA insurance, all loans are capped at 150% of the government-sponsored enterprise (GSE) variable limit, which is currently $625,500 for a one-family residence. In addition, in order to qualify, loans may not exceed 100% of the appraised value of the property.[4]

Buyers must make a down payment of at least 3.5% of the property's appraised value to qualify under this program. The down payment may be borrowed from family members as long as it is secured by a lien on the property subordinate to the insured mortgage, and as long as the family loan plus the mortgage do not exceed 100% of the appraised value of the property, plus any initial service charges, appraisal, inspection, and other fees in connection with the mortgage. The down payment may not come from the seller, any person or entity that benefits from the transaction, or any third party reimbursed by either of them.[5]

For buyers without sufficient credit history to determine creditworthiness under traditional guidelines, a temporary pilot program would be established to determine creditworthiness using information such as rent, utilities and insurance payment histories. The program would be limited to no more than 5% of the aggregate number of mortgages for 1- to 4-family residences insured by the FHA in the preceding year. This section contains a five-year sunset provision.[6]

The Building Homeownership Act also expands the eligibility criteria for those receiving homeownership counseling under NHA grants, to include not just those facing a reduction in household income due to loss or reduction of employment, but also due to:

- a death in the family;
- an increase in expenses due to medical problems, divorce, or damage to property not covered by insurance or a large tax increase; or
- simply because the household income is determined to be low or moderate.[7]

Finally, the Building Homeownership Act creates a three-year pre-purchase homeownership counseling program to test the effectiveness of alternative forms of counseling. The alternative forms specified in the Act are telephone counseling, individualized in-person counseling, web-based counseling, and counseling classes, along with any other forms of counseling that the Secretary of Housing and Urban Development may deem appropriate. The counseling program will be available to no more than 3,000 first-time home-buyers per year who have been approved for a home loan with a loan-to-value ratio of 97% to 98.5%. Incentives, such as the reduction of insurance premiums, may be provided to induce homebuyers to receive counseling.[8]

Manufactured Housing Loan Modernization Act[9]

The main purpose of this Act is to increase the limits for manufactured-home loan insurance (limits that have remained the same for 16 years) and annually index the limits for future inflation. This Act also makes significant provisions of the Real Estate Settlement and Procedures Act of 1974 applicable to the sale of manufactured homes financed with FHA-insured loans or extensions of credit, and to services rendered in connection with those transactions.

Mortgage Foreclosure Protections for Service Members[10]

For the remainder of calendar year 2008, the maximum loan guaranty amount for certain housing loans guaranteed by the Veterans Administration is increased to 25% of the *higher* of (a) the Home Loan Mortgage Corporation Act purchase limits or (b) 125% of the area median price for a single-family residence, but in no case to exceed 175% of the Home Loan Mortgage Corporation Act amount.[11,12]

The Secretary of Defense is instructed to develop and implement a program to advise members of the Armed Forces returning from active duty abroad on how to prevent mortgage foreclosures.[13]

The Service Members Civil Relief Act is amended to prohibit lenders from starting a foreclosure proceeding against a solder returning from active duty abroad for nine months after the solder's return. Currently, lenders must wait 90 days. Lenders would also be prevented, both during the period of military service and for one year after, from increasing the interest rate on a mortgage held by a service member. This provision sunsets on December 31, 2010, at which point the amended sections of the Service Members Civil Relief Act would return to the way they were before the foreclosure prevention act.[14]

Emergency Assistance for the Redevelopment of Abandoned and Foreclosed Homes[15]

The HERA would appropriate $4 billion for use by state and local governments for the redevelopment of abandoned and foreclosed properties.[16] However, pursuant to section 2305, this amount is reduced by $80 million and that $80 million is transferred to Title IV of Division B of HERA (discussed below) so long as $30 million of the Title IV funds are used for certain specified counseling purposes detailed below. Allocation of these funds is to be done by a formula, to be established by the Secretary of Housing and Urban Development, which would take into account the number and percentage of home foreclosures, subprime mortgages and homes in default or delinquency (but in no event shall any state receive less than 0.5% of the funds). The funds are required to be disbursed within 30 days of the establishment of the formula and used within 18 months of disbursement.

Funds may be used only in one of the following four ways: (1) to establish financing mechanisms for purchase and redevelopment of foreclosed-upon homes and residential properties: (2) to purchase[17] and rehabilitate homes and residential properties that have been abandoned or foreclosed upon for sale,[18] rent or redevelopment; (3) to establish land banks for homes that have been foreclosed; (4) to demolish blighted structures; or (5) redevelop demolished or vacant properties. In addition, funds may not be used for any project that uses eminent domain for economic development that primarily benefits private enterprise.[19] Funds under this title and Title IV (discussed below) may not be distributed to any organization that has been indicted for a violation of federal law related to an election for federal office or an organization employing, contracting with or using an agent that has been so indicted.[20]

Any revenue generated from use of these funds must be reinvested for a similar purpose. Finally, all funds under this section may only be used for those whose income does not exceed 120% of the area median income, and 25% of the funds must be used for the purchase and redevelopment of abandoned or foreclosed-upon homes to house those whose income does not exceed 50% of the area median income.

Housing Counseling Resources[21]

$100 million is appropriated for the Neighborhood Reinvestment Corporation to be used no later than December 31, 2008, for foreclosure mitigation. In addition, pursuant to section 2305, an additional $80 million is allocated to the NRC as long as $30 million is used specifically to hire attorneys to assist with legal issues directly related to a homeowner's foreclosure, delinquency or short sale.

Mortgage Disclosure Improvement Act of 2008[22]

Truth in Lending Act ("TILA") disclosures would be required seven days prior to closing and would now be required for refinancing transactions as well as purchases. In addition, lenders would now be required to disclose the maximum monthly payments possible under a loan. Finally, damages for TILA violations would increase tenfold.

Tax-Related Provisions

Division C of HERA is the Housing Assistance Tax Act of 2008, which contains a series of tax provisions, several of which are of significant importance.

First, two new provisions will aid first-time home buyers and homeowners. First-time home buyers (after April 8, 2008 and before July 1, 2009) are eligible for a refundable tax credit equal to 10% of the home cost up to $7,500.[23] The credit would be repaid to the IRS as if it were a 15-year interest-free loan and will phase out at specified income levels. A new standard deduction for real property taxes is added for homeowners who do not itemize deductions on their federal income tax returns. The deductions would be limited to $500 for single filers and $1000 for those filing jointly and would only apply for 2008.[24]

Second, municipal bonds guaranteed by the federal home loan banks used for projects other than financing of housing programs will temporarily qualify as tax-exempt bonds. Moreover, $11 billion in federal tax-exempt housing bonds will be authorized to be used to help first-time home buyers, to finance construction of low-income rental housing, and to help homeowners refinance subprime loans.[25] Interest on these bonds would be exempt from the alternative minimum tax.[26]

Third, significant changes will also be made to the rules governing low-income housing tax credits. For an in-depth analysis of the changes to the low-income housing tax credit provisions see our client alert, "New Congressional Changes to the Low-Income Housing Tax Credit."

Other tax law changes include (i) real estate investment trust (REIT) modernization provisions, (ii) casualty loss relief provisions for victims of Hurricanes Katrina, Rita, and Wilma, (iii) a relief provision authorizing refunds of alternative minimum and research and development tax credits to businesses that make investments but are unable to benefit from bonus depreciation due to losses and (iv) assistance for individuals purchasing new homes in Presidentially declared disaster areas.

The tax provisions are fully offset by four revenue raisers. First, credit and debit card processors will be required to report annually to the IRS a merchant's aggregate gross payment card receipts, subject to a de minimis exception. Second, gain from the sale of a principal residence will no longer be eligible for the $250,000 exclusion ($500,000 for joint filers) to the extent that the home was not used as a principal residence (i.e., as a vacation home) after 2008. Third, the global interest expense allocation created by the American Jobs Creation Act of 2004 will be delayed, prohibiting use until 2011. Fourth, estimated corporate tax payments for corporations with assets of $1 billion or more will be accelerated for July, August and September 2013, and previously enacted accelerated payments for July, August and September 2012 were repealed.

Live Links

New Congressional Changes to the Low-Income Housing Tax Credit, Pillsbury Client Alert, 29-Jul-2008 (PDF, 3 pages)

Housing and Economic Recovery Act of 2008; July 22, 2008 (PDF, 694 pages)

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[1] Housing and Economic Recovery Act of 2008 (HERA) Division B, Title I, Subtitle A, Sections 2111-2133.

[2] This is the first date after the provision of the Economic Stimulus Act of 2008 covering the same issue expires. HERA, Section 2112(c).

[3] HERA Section 2112(a)(1)(A)(i).

[4] HERA Section 2112(a)(1)(A)(ii).

[5] HERA Section 3113.

[6] HERA Section 2124.

[7] HERA Section 2127.

[8] HERA Section 2128.

[9] HERA Division B, Title I, Subtitle B, Sections 2141-2150.

[10] HERA Division B Title II, Sections 2201-2203.

[11] The current amount is $93,750 for a single-family home. This amount is indexed for inflation on January 1 of each year.

[12] HERA Section 2201.

[13] HERA Section 2202.

[14] HERA Section 2203.

[15] HERA Title III, Sections 2301 - 2305.

[16] HERA Section 2302.

[17] Such a purchase is required to be at a discount. HERA section 2301(d)(1).

[18] Such a sale must be at an amount equal to or less than the cost to acquire and redevelop or rehabilitate the property. HERA section 2301(d)(3).

[19] HERA Section 2303.

[20] HERA Section 2304.

[21] HERA, Division B, Title IV, Section 2401-2402.

[22] HERA, Division B, Title V, Sections 2501-2504.

[23] HERA Section 3011.

[24] HERA Section 3012.

[25] HERA Section 3021.

[26] HERA Section 3022.

Guide to Neighborhood Stabilization Program (NSP) Eligible Uses

This Guide is designed to present the activities that are eligible to be assisted under the Neighborhood Stabilization Program (NSP) found in Title III of Division B of the Housing and Economic Recovery Act of 2008. For guidance on how to apply for NSP funds, consult the NSP Quick Guide for Grantees and the Application and Checklist.

I. GENERAL INFORMATION

1. LOW AND MODERATE INCOME REQUIREMENT

(Housing and Economic Recovery Act §2301(f)(3)(A)(i) and (ii))

Requirements for the use of NSP funds:

(1) All of the funds made available under this section are to be used with respect to individuals and families whose incomes do not exceed 120% of area median income.

(2) Not less than 25% of these funds are to be used for the purchase and redevelopment of abandoned or foreclosed upon homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50% of area median income.

Note that NSP redefines and supersedes the definition of "low- and moderate-income" of the CDBG program by allowing households whose incomes exceed 80% but are no greater than 120% of area median income to qualify for NSP funds. HUD will refer to this new income group as "middle income," but continue to use the CDBG definitions of "low-income" and "moderate-income." HUD will use the term "low-, moderate- and middle-income" (LMMI) to refer to the national objective of the program.

For more information on the 120% of area median income requirement consult http://www.huduser.org/publications/commdevl/nsp.html.

Meeting the National Objective:

NSP allows for the use of *only* the LMMI national objective.

- Activities may NOT qualify under NSP using the "prevent or eliminate slums or blight" or "address urgent community development needs" objectives as allowed in the overall benefit provisions of the HCD Act and the CDBG regulations.

- Note that although NSP changes the low and moderate income requirement level of the CDBG program, the remaining requirements of 24 CFR 570.208(a) and 570.483(b) regarding area benefit, housing, and limited clientele benefit remain unchanged.

Examples of how funds can be used to meet the national objective:

Housing Activities: Providing or improving permanent residential structures that will be occupied by a household whose income is at or below 120% of area median income (LMMH).

- Acquisition, Rehabilitation, Rental, Sale, Conversion, Construction of Housing Units
- Homeownership Assistance
- Infrastructure for housing as part of redevelopment
- All Units must be occupied by those meeting the low- and moderate-income requirement.

Area Benefit Activities: Benefiting all the residents of a primarily residential area in which at least 51% of the residents have incomes at or below 120% of area median income (LMMA).

- Grantees must identify the service area of each NSP-funded activity.
- HUD will provide data on the percentage of low-, moderate- and middle income persons, by census tracts and block groups.
  See http://www.huduser.org/publications/commdevl/nsp.html
- Demolition, Acquisition, Lank Banks if maintenance and demolition also take place
- No use of the "upper quartile" provision for exception criteria communities.

Limited Clientele Activities: Serving a limited clientele whose incomes are at or below 120 % of area median income (LMMC).

- Housing counseling for prospective purchasers/tenants

- Public facilities such as emergency shelters, group homes

Meeting the 50% of area median income requirement:

- The requirement applies to each grant, not to the NSP program as a whole, nor each project or activity, nor each subrecipient.

- Compliance based on dollars, not number of units

- Principal way to comply will be through rental housing:
  - New construction or conversion
  - Acquisition
  - Rehabilitation

2. PRIORITY FOR AREAS OF GREATEST NEED

(Housing and Economic Recovery Act §2301(c)(2))

- In distributing NSP funds, grantees are to give priority emphasis and consideration to those metropolitan areas, metropolitan cities, urban areas, rural areas, low- and moderate-income areas, and other areas with the greatest need, including those—

  (A) with the greatest percentage of home foreclosures;
  (B) with the highest percentage of homes financed by subprime mortgage related loan;
  (C) identified by the State or unit of general local government as likely to face a significant rise in the rate of home foreclsosures.

- HUD has developed a foreclosure and abandonment risk score to assist grantees in targeting the areas of greatest need within their jurisdictions. Grantees may wish to consult http://www.huduser.org/publications/commdevl/nsp.html

3. CONTINUED AFFORDABILITY

- Grantees shall ensure, to the maximum extent practicable and for the longest feasible term, that the sale, rental, or redevelopment of abandoned and foreclosed upon homes and residential properties under this section remain affordable to individuals or families whose incomes do not exceed 120 percent of area median income or, for units originally assisted with funds under the requirements of section 2301(f)(3)(A)(ii), to remain affordable to individuals and families whose incomes do not exceed 50 percent of area median income.

- HUD will consider any grantee adopting the HOME program standards at 24 CFR 92.252(a), (c), (e) and (f), and 92.254 to be in minimal compliance with this affordability standard and expects any other standards proposed and applied by a grantee to be enforceable and longer in duration.

- If NSP funds assist a property that was previously assisted with HOME funds, but on which the affordability restrictions were terminated through foreclosure or transfer in lieu of foreclosure pursuant to 24 CFR part 92, the grantee must revive the HOME affordability restrictions for the greater of the remaining period of HOME affordability or the continuing affordability requirements of this notice.

4. <u>TIMELY USE AND EXPENDITURE OF FUNDS</u>

(Housing and Economic Recovery Act §2301(c)(1))

- Grantees must use NSP funds within eighteen months of receipt.

<u>Relevant Definition:</u>

Use for the purposes of section 2301(c)(1). Funds are used when they are obligated by a state, unit of general local government, or any subrecipient thereof, for a specific NSP activity; for example, for acquisition of a specific property. Funds are obligated for an activity when orders are placed, contracts are awarded, services are received, and similar transactions have occurred that require payment by the state, unit of general local government, or subrecipient during the same or a future period. Note that funds are not obligated for an activity when subawards (e.g., grants to subrecipients or to units of local government) are made.

- A grantee will be deemed to have received its NSP grant at the time HUD signs its NSP grant agreement (or amendment thereto if funds are later reallocated to the grantee).

- Grantees must be expend on eligible NSP activities an amount equal to or greater than the initial allocation of NSP funds within four years of receipt of funds.

5. <u>INFORMATION FOR STATES</u>

- Unlike the CDBG program, states may distribute funds to or within any jurisdiction within the state (e.g. entitlement communities and Indian tribes) that is among those with the greatest need, even if the jurisdiction is among those receiving a direct formula allocation of funds from HUD under the regular CBDG program or NSP.

- Also, unlike the State CDBG program, a state receiving NSP funds may carry out NSP activities directly for some or all of its assisted grant activities in the same manner that entitlement communities are permitted under 24 CFR 570.200(f). Such activities include, but are not limited to, carrying out activities using its own employees, procuring contractors, private developers, and providing loans and grants through nonprofit subrecipients (including local governments and other public nonprofits such as regional or local planning or development authorities and public housing authorities).

II. ELIGIBLE USES

(Housing and Economic Recovery Act §2301(c)(3))

1. FINANCING MECHANISMS

§2301(c)(3)(A) establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate- income homebuyers;

Relevant Definition:

Foreclosed. A property "has been foreclosed upon" at the point that, under state or local law, the mortgage or tax foreclosure is complete. HUD generally will not consider a foreclosure to be complete until after the title for the property has been transferred from the former homeowner under some type of foreclosure proceeding or transfer in lieu of foreclosure, in accordance with state or local law.

Correlated Eligible Activities from the CDBG Entitlement Regulations

- As part of an activity delivery cost for an eligible activity as defined in 24 CFR 570.206.
- Financing mechanisms used to carry out CDBG eligible activities listed below.

2. PURCHASE AND REHABILITATION

§2301(c)(3)(B) purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties;

Relevant Definitions:

Abandoned. A home is abandoned when mortgage or tax foreclosure proceedings have been initiated for that property, no mortgage or tax payments have been made by the property owner for at least 90 days, AND the property has been vacant for at least 90 days.

Current market appraised value. The current market appraised value means the value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to an offer made for the property by a grantee, subrecipient, developer, or individual homebuyer.

Acquisition:

- Section 2301(d)(1) of HERA requires any purchase of a foreclosed-upon home or residential property under NSP be at a discount from the current market-appraised value of the home or property. Such discount shall ensure that purchasers are paying below-market value for the home or property.

- For mortgagee foreclosed properties, grantees must seek to obtain the "maximum reasonable discount" from the mortgagee, taking into consideration likely "carrying costs" of the mortgagee if it were to not sell the property to the grantee or subrecipient.

- Section 301 of the URA, regarding just compensation, does not apply to voluntary acquisitions.

- All acquisitions of property under NSP require an appraisal for purposes of determining the statutory purchase discount.

- For individual purchase transactions, the purchase discount is to be at least 5% from the current market appraised value of the home or property.

- For purchase transactions in the aggregate, the average purchase discount depends on how the purchase discount for an individual property is determined.

    - The average purchase discount shall be at least 10% if the State, unit of general local government, or subrecipient determines the discount for each purchase transaction through use of a methodology that results in a discount equivalent to the total carrying costs that would be incurred by the seller if the property were not purchased with NSP funds (provided the discount is at least 5%).

        - Such methodology shall provide for an analysis of the estimated holding period for the property and the nature and amount of the carrying costs of holding the property for this period.

        - Carrying costs shall include, but not be limited to: taxes, insurance, maintenance, marketing, overhead, and interest.

    - If this methodology is not used, the minimum average discount shall be at least 15%.

- An NSP recipient may NOT provide NSP funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay the necessary and reasonable costs related to the appraisal and transfer of title.

- Grantees that are contemplating using NSP funds to assist an acquisition involving an eminent domain action are advised to consult legal counsel before taking action, as this may present problems with the Takings Clause of the Fifth Amendment to the U.S. Constitution and prior Supreme Court rulings.

- HUD is not specifying alternative requirements to the relocation assistance provisions at 42 U.S.C. 5304(d).

- Grantees are encouraged to acquire and redevelop FHA foreclosed properties. HUD provides information on such properties at http://www.hud.gov/offices/hsg/sfh/reo/reohome.cfm. Grantees may also contact their local HUD FHA office for further information.

Rehabilitation

- Any rehabilitation of a foreclosed upon home or residential property shall be to the extent necessary to comply with applicable laws, codes and other requirements relating to housing safety, quality, and habitability, in order to sell, rent, or redevelop such homes and properties. In their substantial amendment, grantees must define their housing rehabilitation standards that will apply to NSP assisted activities.

- Funds may be used for preservation, improving energy efficiency or conservation, or providing renewable energy source(s).

    - HUD encourages grantees to strategically incorporate modern green building and energy efficiency improvements to provide for long-term affordability and increased sustainability and attractiveness of housing and neighborhoods.

- Grantees may fund costs, such as sales costs, closing costs, and reasonable developer's fees, related to NSP-assisted housing, rehabilitation, or construction activities.

- NSP funds may be used to redevelop acquired property for nonresidential uses, such as a public parks or mixed residential and commercial use.

- Grantees may rehabilitate property to be operated as rental housing by the grantee, by a subrecipient, by a lessee or by a purchaser. Grantees should note that the costs of purchase, rehabilitation, conversion and sale of such properties are eligible NSP activities, but the expenses of actually operating the rental housing (such as maintenance, insurance, deficits in monthly operating income) and tenant-based rental subsidies are not eligible NSP activities.

Sale

- If an abandoned or foreclosed upon home or residential property is to be sold to an individual as a primary residence, no profit may be earned on such sale.
- Section 2301(d)(2) directs that the sale of such property shall be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition.
- The maximum sales price for a property is determined by aggregating all costs of acquisition, rehabilitation, and redevelopment (including related activity delivery costs, which generally include, among other things, costs related to the sale of property).
- In determining the sales price, HUD will NOT consider the costs of boarding up, lawn mowing, maintaining the property in a static condition, or, in the absence of NSP-assisted rehabilitation or redevelopment, the costs of completing a sales transaction or other disposition to be redevelopment or rehabilitation costs.
- Each NSP-assisted homebuyer is required to receive and complete at least eight hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan.
- Grantees must ensure that homebuyers obtain a mortgage loan from a lender who agrees to comply with the bank regulators' guidance for non-traditional mortgages.
- Grantees are cautioned against providing or permitting homebuyers to obtain subprime mortgages for whom such mortgages are inappropriate.

Correlated Eligible Activities from the CDBG Entitlement Regulations

- 24 CFR 570.201
  (a) Acquisition
  (b) Disposition
  (i) Relocation
  (n) Direct homeownership assistance to persons whose incomes do not exceed 120% of median income.
- 24 CFR 570.202 Eligible rehabilitation and preservation activities for homes and other residential properties. Note that rehabilitation may include counseling for those seeking to take part in the activity.

3. LAND BANKS

§2301(c)(3)(C) establish land banks for homes that have been foreclosed upon;

Relevant definitions:

Land bank. A land bank is a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property. For the purposes of the NSP, a land bank will operate in a specific, defined geographic area. It will purchase properties that have been abandoned or foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties. If the land bank is a governmental entity, it may also maintain abandoned or foreclosed property that it does not own, provided it charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service.

Lank Bank Uses:

- A land bank may not hold a property for more than ten years without obligating the property for a specific, eligible redevelopment in accordance with NSP requirements. HUD does not believe that holding property alone is sufficient to stabilize most neighborhoods.

- The grantee must determine the actual service area benefiting from a land bank's activities.

- Grantees may pursue other Land Bank activities, however, NSP funds may only be used for acquisition

- For more information on land banks and examples of best practices visit: http://www.hud.gov/offices/cpd/about/conplan/foreclosure/landbanks.cfm

Correlated Eligible Activities from the CDBG Entitlement Regulations:

- 24 CFR 570.201
    - (a) Acquisition
    - (b) Disposition

4. DEMOLITION

§2301(c)(3)(D) demolish blighted structures;

Relevant definition:

Blighted structure. A structure is blighted when it exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare.

General information:

- The national objectives related to prevention and elimination of slums and blight and addressing urgent community development needs (24 CFR 570.208(b) and (c) and 570.483(c) and (d)) are not applicable to NSP-assisted activities.

- NSP grantees will NOT be required to meet the requirements of 42 U.S.C. 5304(d) as implemented at 24 CFR 42.375, which mandates one-for-one replacement of low- and moderate-income dwellings units that are demolished or converted for activities assisted with NSP funds.

Correlated Eligible Activities from the CDBG Entitlement Regulations

- 24 CFR 570.201 (d) Clearance, for blighted structures only

5. **REDEVELOPMENT**

§2301(c)(3)(E) redevelop demolished or vacant properties

- Grantees may fund costs, such as sales costs, closing costs, and reasonable developer's fees, related to NSP-assisted housing, rehabilitation, or construction activities.

- New construction of housing and building infrastructure for housing is an eligible use.

- Grantees may redevelop property to be used as rental housing.

- Grantees are encouraged to acquire and redevelop FHA foreclosed properties. HUD provides information on such properties at http://www.hud.gov/offices/hsg/sfh/reo/reohome.cfm. Grantees may also contact their local HUD FHA office for further information.

Correlated Eligible Activities from the CDBG Entitlement Regulations

- 24 CFR 570.201
    (a) Acquisition
    (b) Disposition
    (c) Public facilities and improvements

(e) Public services for housing counseling, but only to the extent that counseling beneficiaries are limited to prospective purchasers or tenants of the redeveloped properties
(i) Relocation
(n) Direct homeownership assistance (for persons whose income does not exceed 120% of median income)

- 24 CFR 570.204 Community based development organizations

- New housing construction

6. <u>ADMINISTRATION AND PLANNING COSTS</u>
(Housing and Economic Recovery Act §2301(c)(3))

- An amount of up to 10% of an NSP grant provided to a jurisdiction and up to 10% of program income earned may be used for general administration and planning activities as defined at 24 CFR 570.205 and 206.

- For all grantees, including states, the 10% limitation applies to the grant as a whole.

- There is no state match requirement for administrative costs as exists in the CDBG program.

- Activity delivery costs, as defined in 24 CFR 570.206, may be charged to the particular activity performed above and will not count as general administration and planning costs.

- <u>Pre-award Costs:</u> A grantee may incur pre-award costs necessary to develop the NSP Application and undertake other administrative and planning actions necessary to receive the NSP grant, in compliance with 24 CFR 570.200(h). States may allow subrecipients to incur pre-award costs pursuant to 24 CFR 570.489(h).

7. <u>OTHER USES</u>

- If grantees would like to use funds for activities not specifically addressed, grantees must make a written request to their local HUD field office for approval. Such request must demonstrate that the proposed activity constitutes an eligible use under the NSP.

- If not otherwise stated, if an activity is ineligible under CDBG, it is ineligible under the NSP program.

- HUD will not consider requests to allow foreclosure prevention activities, such as refinancing mortgages and paying back taxes; or to allow demolition of structures that are not blighted; or to allow purchase of residential properties and homes that have not been abandoned or foreclosed upon as provided in HERA and defined in this notice

U.S. DEPARTMENT OF THE TREASURY
Washington
March 4, 2009

Making Home Affordable
Summary of Guidelines

Making Home Affordable ***will offer assistance to as many as 7 to 9 million homeowners,*** making their mortgages more affordable and helping to prevent the destructive impact of foreclosures on families, communities and the national economy.

The Home Affordable Refinance program will be available to 4 to 5 million homeowners who have a solid payment history on an existing mortgage owned by Fannie Mae or Freddie Mac. Normally, these borrowers would be unable to refinance because their homes have lost value, pushing their current loan-to-value ratios above 80%. Under the Home Affordable Refinance program, many of them will now be eligible to refinance their loan to take advantage of today's lower mortgage rates or to refinance an adjustable-rate mortgage into a more stable mortgage, such as a 30-year fixed rate loan.

GSE lenders and servicers already have much of the borrower's information on file, so documentation requirements are not likely to be burdensome. In addition, in some cases an appraisal will not be necessary. This flexibility will make the refinance quicker and less costly for both borrowers and lenders. The Home Affordable Refinance program ends in June 2010.

The ***Home Affordable Modification*** program will help up to 3 to 4 million at-risk homeowners avoid foreclosure by reducing monthly mortgage payments. Working with the banking and credit union regulators, the FHA, the VA, the USDA and the Federal Housing Finance Agency, the Treasury Department today announced program guidelines that are expected to become standard industry practice in pursuing affordable and sustainable mortgage modifications. This program will work in tandem with an expanded and improved Hope for Homeowners program.

With the information now available, **servicers can begin immediately to modify eligible mortgages** under the Modification program so that **at-risk borrowers can better afford their payments.** The detailed guidelines (separate document) provide information on the following:

Eligibility and Verification

- Loans originated on or before January 1, 2009.
- First-lien loans on owner-occupied properties with unpaid principal balance up to $729,750. Higher limits allowed for owner-occupied properties with 2-4 units.
- All borrowers must fully document income, including signed IRS 4506-T, two most recent pay stubs, and most recent tax return, and must sign an affidavit of financial hardship.
- Property owner occupancy status will be verified through borrower credit report and other documentation; no investor-owned, vacant, or condemned properties.
- Incentives to lenders and servicers to modify at risk borrowers who have not yet missed payments when the servicer determines that the borrower is at imminent risk of default.
- Modifications can start from now until December 31, 2012; loans can be modified only once under the program.

Loan Modification Terms and Procedures

- Participating servicers are required to service all eligible loans under the rules of the program unless explicitly prohibited by contract; servicers are required to use reasonable efforts to obtain waivers of limits on participation.
- Participating loan servicers will be required to use a net present value (NPV) test on each loan that is at risk of imminent default or at least 60 days delinquent. The NPV test will compare the net present value of cash flows with modification and without modification. If the test is positive

– meaning that the net present value of expected cash flow is greater in the modification scenario – the servicer must modify absent fraud or a contract prohibition.

- Parameters of the NPV test are spelled out in the guidelines, including acceptable discount rates, property valuation methodologies, home price appreciation assumptions, foreclosure costs and timelines, and borrower cure and redefault rate assumptions.
- Servicers will follow a specified sequence of steps in order to reduce the monthly payment to no more than 31% of gross monthly income (DTI).
- The modification sequence requires first reducing the interest rate (subject to a rate floor of 2%), then if necessary extending the term or amortization of the loan up to a maximum of 40 years, and then if necessary forbearing principal. Principal forgiveness or a Hope for Homeowners refinancing are acceptable alternatives.
- The monthly payment includes principal, interest, taxes, insurance, flood insurance, homeowner's association and/or condominium fees. Monthly income includes wages, salary, overtime, fees, commissions, tips, social security, pensions, and all other income.
- Servicers must enter into the program agreements with Treasury's financial agent on or before December 31, 2009.

<u>Payments to Servicers, Lenders, and Responsible Borrowers</u>

- The program will share with the lender/investor the cost of reductions in monthly payments from 38% DTI to 31% DTI.
- Servicers that modify loans according to the guidelines will receive an up-front fee of $1,000 for each modification, plus "pay for success" fees on still-performing loans of $1,000 per year.
- Homeowners who make their payments on time are eligible for up to $1,000 of principal reduction payments each year for up to five years.
- The program will provide one-time bonus incentive payments of $1,500 to lender/investors and $500 to servicers for modifications made while a borrower is still current on mortgage payments.
- The program will include incentives for extinguishing second liens on loans modified under this program.
- No payments will be made under the program to the lender/investor, servicer, or borrower unless and until the servicer has first entered into the program agreements with Treasury's financial agent.
- Similar incentives will be paid for Hope for Homeowner refinances.

<u>Transparency and Accountability</u>

- Measures to prevent and detect fraud, such as documentation and audit requirements, will be central to the program.
- Servicers will be required to collect, maintain and transmit records for verification and compliance review, including borrower eligibility, underwriting, incentive payments, property verification, and other documentation.
- Freddie Mac will audit compliance.

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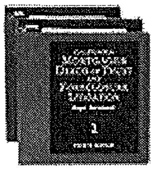
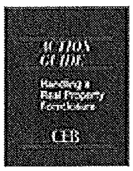
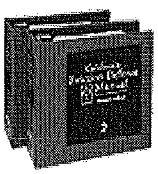






Law Alert!

2009 California law amends loan foreclosure procedures

On February 20, 2009, California enacted the **California Foreclosure Prevention Act (SBX2 7)**, adding 90 days to the 3-month period currently required in Civil Code §2924 between the notice of default and the notice of sale for a nonjudicial foreclosure. The Act is applicable to loans recorded between January 1, 2003, and January 1, 2008, that are first liens on owner-occupied principal residences. Depending on the date of implementing regulations, the Act will take effect in early June 2009. Consumer advocates argue that wide loopholes will prevent the legislation from significantly slowing foreclosures. State regulators must grant an exemption from the extended foreclosure period if the lender has put a mortgage modification program in place that meets a satisfactory combination of specified features, including deferral of a portion of the principal, a reduced interest rate for at least 5 years, or an extended amortization period. To be exempt, the modification program must additionally include an adjustment in monthly mortgage payments so that these do not exceed 38 percent of the borrower's gross income-a ratio more favorable to the lender than the 31 percent ratio of the federal Homeowner Affordability and Stability Plan. Significantly, SBX2 7 does not require the lender to actually grant the loan modification to in order to be exempt from the additional 90-day period, but only to put a complying program in place.

On July 8, 2008, California signed into law **SB 1137** as urgency legislation, effective immediately. The new law (1) establishes detailed procedures as part of the foreclosure process requiring lenders to contact homeowners in default on their mortgages to assess the homeowner's financial situation and explore options for avoiding foreclosure; (2) requires a purchaser to maintain under the building codes vacant residential property purchased at a foreclosure sale and authorizes local governmental entities to impose civil fines and penalties for violations of up to $1000 per day; and (3) gives a tenant or subtenant, in possession of a rental housing unit at the time the property is sold in foreclosure, 60 days instead of 30 days to vacate the unit.

For guidance from CEB:

- **California Mortgages, Deeds of Trust, and Foreclosure Litigation** (4th ed Cal CEB 2009)
- **Handling Real Property Foreclosures** (Cal CEB Action Guide May 2008)
- **California Landlord-Tenant Practice** (2d ed Cal CEB 1997)
- **California Eviction Defense Manual** (2d ed Cal CEB 1993)

Sent to Council: Distributed on:

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

FEB 2 3 2009
by City Manager's Office

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Leslye Krutko

SUBJECT: **SEE BELOW**

DATE: February 20, 2009

Approved [signature] Date 2-23-09

COUNCIL DISTRICT: Citywide

INFORMATION

SUBJECT: UPDATE ON THE STATUS OF FORECLOSURES IN SAN JOSÉ AND EFFORTS TO RESPOND TO THE FORECLOSURE CRISIS

This memorandum provides an update on the impact of foreclosures in San Jose, and describes the City's response.

In recent months, the number of properties in San Jose subject to foreclosure has increased significantly. Although San Jose's foreclosure rate continues to be at about 1.7%-- in other words, of all the homeownership units in the City 1.7% are in some state of foreclosure-- much of the foreclosure activity is concentrated in neighborhoods in Central San Jose, East San Jose, and the southern stretch of the Monterey Highway. As a result, these neighborhoods are seriously impacted.

Based on the increased number of recorded Notices of Defaults, and the high number of adjustable mortgage loan resets that are anticipated to peak in 2011, there is concern that the number of foreclosures in San Jose will continue to rise. With each loan reset, homeowners typically experience a significant increase in their monthly mortgage payment. For many families, even those who can afford the increased payment, refinancing to decrease the mortgage to a sustainable level is not an option as falling home values result in a situation where they owe more than their house is worth.

In San Jose, we have experienced a steep drop in housing value. The median price of single family homes sold in San Jose fell from $699,000 in December 2007 to $420,000 in December 2008, a 39% decline. During the same time period, the median price of condominiums/townhomes sold dropped from $452,000 to $262,000, a 43% decline. Housing observers generally agree that this trend will continue until the market reaches a bottom in late

2009 to early 2010. However, instead of a "V-shaped" recovery where housing prices begin to rise soon after a bottom is reached, experts predict an "L-shaped" recovery where housing prices stay depressed for some time.

Nearly everyone is impacted by the foreclosure crisis, whether they are having difficulties holding on to their homes themselves, have a friend or family member facing default or foreclosure, have vacant houses in their neighborhood, or have seen their home values fall. City employees are not immune. Many employees have expressed concern that their adjustable rate mortgages are about to reset, and fear that they will be unable to make the higher payments.

FORECLOSURE STATISTICS

For the three month period between October 1 and December 31, 2008, 3,016 San Jose homes received a new foreclosure filing. Of this number, 50% (1,508) received a default notice, 25% (749) were slated for auction sale, and 25% (759) were repossessed by a bank or lender.

In total, San Jose has 3,988 homes in the foreclosure process, a figure that includes homes receiving a foreclosure filing before October 1, 2008. This is higher than the 3,016 figure indicated above for two primary reasons. First, some of the homes that were repossessed by the bank (an "REO") before October have not been resold and continue to sit on the market. Second, some of the homes received a notice of default or were subject to an auction sale before October but did not receive any subsequent filings after October, nor have they been cured of their default status. Thus, while these homes did not receive a foreclosure filing between October 1 and December 31, 2008, they nevertheless remain in the foreclosure process.

While no area of the City is immune from foreclosures, they are concentrated in certain geographic areas as illustrated by Table 1 (zip codes 95111, 95116, 95122, and 95127). In these zip codes, the rate of foreclosure filings ranges between 3.0% and 4.9% of owner-occupant households (column 3). Found primarily in East San Jose (Districts 2 and 5) near the 680/101 freeway interchange and along Highway 101 going south, these areas are experiencing foreclosure rates at two to three times the Citywide average. This is consistent with the experience of other cities throughout the nation where a high incidence of foreclosures is found in lower-income neighborhoods, where households stretched to buy homes on insufficient incomes and/or with subprime mortgages. The resulting foreclosures are often, but not always, caused by predatory lending practices targeted specifically at lower-income or minority households.

There has been an increase in the number of complaints and proactive observations by Code Enforcement Division staff about vacant and neglected houses. Between September 2008 and January 2009, Code Enforcement staff received complaints and actively identified 110 vacant houses that were in violation of the City's *Neglected Vacant House Ordinance*. Of these, 17 homes needed to be boarded up by the Code Enforcement staff. Forty-two percent were confirmed to be bank owned, with the remainder appearing to be in some stage of the foreclosure process. Since November 2007, Code Enforcement has inspected 415 vacant homes/structures.

Table 1. Top 10 Zip Codes for Foreclosures (October 1 to December 31, 2008)

Total Foreclosure Filings	Rate of Foreclosure Filings (% of All Households)	Rate of Foreclosure Filings (% of Owner-occupied units)
95111 (353)	95122 (2.7%)	95116 (4.8%)
95127 (330)	95111 (2.5%)	95122 (4.6%)
95122 (318)	95127 (2.1%)	95111 (3.8%)
95123 (273)	95116 (2.1%)	95127, 95110 (3.0%)
95116 (248)	95121 (2.0%)	95121 (2.6%)
95121 (182)	95148 (1.6%)	95133 (2.3%)
95148 (174)	95138 (1.5%)	95112 (2.2%)
95112 (119)	95133 (1.4%)	95123, 95148 (1.9%)
95136 (106)	95123 (1.3%)	95138 (1.7%)
95132 (100)	95139, 95110 (1.2%)	95139 (1.5%)

FORECLOSURE RESPONSE

Federal Efforts

In October, former President Bush announced the new federal HOPE for Homeowners (H4H) program, which was designed to help troubled homeowners refinance their unsustainable mortgage payments. Any mortgage that was originated prior to January 1, 2008 is eligible under this program. However, the maximum loan amount of $550,440 and the requirement that borrowers have at least ten percent equity in their homes has limited its applicability in San Jose. Unfortunately, most of the families facing foreclosure have lost significant value in their homes and cannot meet the 90% Loan to Value requirement. And because many of these borrowers also had second mortgages, they found that, while their first mortgage lender was willing to work with them, the second mortgage holder was not because they were positioned to take the full impact of the loss.

On February 18th, President Obama announced the Homeowner Affordability and Stability Plan, which is intended to help up to seven to nine million families restructure or refinance their mortgages to avoid foreclosure. It is important to note that this Plan does not help families who are already facing foreclosure. Rather, it helps responsible homeowners who have kept current on their obligations, but who find themselves either "upside down," where they owe more than their house is worth, or facing interest rate adjustments that they cannot afford.

The key components of this Plan are:

(1) Assisting four to five million homeowners to refinance their mortgages, reducing their payments to affordable levels. Homeowners who qualify are those who have conforming loans that are owned or guaranteed by Fannie Mae or Freddie Mac.
(2) Creating a $75 Billion "Homeowner Stability Initiative" that reduces the amount homeowners owe each month to sustainable levels. Program components include: reducing interest rates to ensure that mortgage payments don't exceed 38% of a borrower's income; providing financial incentives to servicers for modifying loans; providing financial incentives to borrowers to stay current on their loans; and creating an insurance fund to discourage lenders from foreclosing now over fears that home prices will continue to fall. Additionally, as part of this initiative, the Treasury will develop uniform guidance for loan modifications across the mortgage industry. Other measures include: increased oversight and reporting, allowing judicial modifications of mortgages during bankruptcy, $1.5 billion in funding for relocation and other forms of assistance to renters displaced by foreclosure, $2 billion in Neighborhood Stabilization funding, and improvements to the Hope for Homeowners Program and Other FHA Programs to modify and refinance loans for at-risk borrowers.
(3) Strengthening confidence in Fannie Mae and Freddie Mac by increasing investment through, among other things: purchasing mortgage-backed securities, increasing the size of their retained mortgage portfolios and allowable debt, and support to State Housing Finance Agencies.

State Efforts

The State has taken action to help those households who have fallen behind on their payments. Last summer, the State legislature enacted SB 1137 to curb the number of foreclosures. Among other provisions, this new law: (1) requires lenders to contact homeowners who have fallen behind on their payments to explore options for avoiding foreclosure at least 30 days prior to filing a notice of default; (2) gives residential tenants who reside in a foreclosed home 60 days notice to vacate the property; and (3) requires that owners of foreclosed properties maintain the property exterior. This legislation applies to loans made to borrowers between January 1, 2003 and December 31, 2007; the vast majority of foreclosures have involved loans that were taken out during this period. Code Enforcement staff report that the vast majority of mortgage lenders are adhering to the SB 1137 requirement to maintain the property exterior.

In November, Governor Schwarzenegger announced a plan called "Keeping Californians in Their Homes," which included the following provisions:
(1) A 90-day stay of the foreclosure process for each owner-occupied home with a first mortgage in default;
(2) A Safe Harbor for lenders allowing them to be exempted from the 90-day stay procedure if they can document that they have an aggressive loan modification in place; and

(3) A loan modification model that is based on a 38% debt-to-income ratio.

Among the many bills considered by the Legislature as part of the just approved State budget package was SBX27 (Corbett). This bill establishes a 90-day moratorium on foreclosures for homes where the first mortgage was recorded between January 1, 2003 and January 1, 2008. There is an exception to this rule for loans that are held by a servicer that has put in place a State-approved loan modification program that has a 38% debt to income ratio, and that provides some combination of interest rate reductions, loan term extensions, deferral of unpaid principal, reduction in principal, or other factors as determined by the lender's state regulator. There is concern by some advocates that this bill actually weakens requirements as it isn't as stringent as a similar Federal Deposit Insurance Corporation program that many lenders have already implemented.

City staff continues to actively review and analyze State and federal legislative efforts that address the foreclosure crisis, as well as any programs that are proposed to help families save their homes and protect renters impacted by foreclosure.

Bank Efforts

In October 2008, major banks, including Chase (Washington Mutual), Bank of America (Countrywide), and Wells Fargo (Wachovia), announced their participation in the Governor's Keeping Californians in Their Homes Plan, agreeing to a 90-day moratorium on foreclosures of owner-occupied residences. On February 11th, major banks announced that they would extend this moratorium to allow the Obama Administration to release detailed guidelines for the Homeowner Affordability and Stability Plan.

Locally, banks are increasing their staffing dedicated to performing loan modifications, and have agreed to participate in foreclosure prevention and resource fairs.

Local Efforts

The City is stepping up its efforts to address foreclosures in order to aggressively respond to the increase in activity. Following is a discussion of the actions the City has taken or is taking.

(1) **Assigned a Point Person**-- Sandra Murillo, Housing Policy and Planning Administrator and CDBG Program Manager, has been assigned as the point person for foreclosures, and is working with other City staff to coordinate the City's efforts. Staff from the Housing Department, Strong Neighborhood Initiative (SNI), and Code Enforcement Division make up the team formed to assist with policy analysis, neighborhood information, and outreach coordination. Key to this coordination effort is the participation of the Neighborhood Housing Services of Silicon Valley (NHSSV), which is funded by the City

and Redevelopment Agency to provide neighborhood outreach and foreclosure counseling to San Jose residents.

(2) **Convened a Foreclosure Prevention Task Force--** The City has been working with Don't Borrow Trouble (DBT), a consortium of fair housing and legal services groups and real estate and mortgage representatives that was established to provide education, outreach, and referral services on predatory lending issues. A Foreclosure Prevention Task Force (FPTF) has been convened to expand the DBT services to include coordinating existing resources and developing a comprehensive approach for the delivery of foreclosure mitigation services to families and communities. The Task Force will identify existing services spread throughout the City and County and create easy-access repositories of multi-lingual information and services for homeowners in foreclosure or at risk of foreclosure. In addition to the current DBT member organizations, participation on the Task Force has been expanded to include representatives from local community advocacy groups, the faith community, family counseling services, and education.

The Task Force has adopted a comprehensive strategy that includes the following features:

a. **Prevention**-- Prevention works to preserve homeownership by providing early intervention and addressing financial crises in the earliest possible stages. Services provided include financial literacy, legal and credit counseling, and foreclosure prevention counseling.
b. **Intervention**-- Intervention efforts assist families who are in the process of foreclosure and require more intense foreclosure prevention counseling and loan modification assistance.
c. **Re-Stabilization**-- Re-Stabilization includes a host of social services that assist family stabilization during and after the prevention and intervention stages. These services include a relocation strategy if homeownership is unsustainable, family counseling, and short-term emergency financial assistance.
d. **Stabilization**—In addition to family stability, focused efforts will be made to address neighborhood stabilization. Several SNI neighborhoods have been impacted by the large number of vacant homes in their communities, which can result in increased neighborhood blight, including deteriorated landscaping, vandalism, and crime and gang activity. It is important to ensure that the positive impact the SNI and Code Enforcement efforts have made to these communities are not reversed. An effort to re-occupy vacant homes through re-sale helps mitigate neighborhood deterioration and re-stabilizes communities that have been adversely impacted by this foreclosure crisis.

To assist in the stabilization efforts, the City will implement the $5.6 million Housing and Economic Recovery Act 2008-Neighborhood Stabilization Program (NSP), which was approved by the U.S. Department of Housing and Urban

Development (HUD) on February 2, 2009. At the present time, the City is awaiting the HUD contract so it can begin to implement its efforts. Once funding is announced, the City intends to apply for additional funding through the State NSP program and the additional federal NSP funding available through the 2009 federal Economic Recovery Package.

(3) **Assessed Needs**-- To facilitate this effort, staff has met with a number of stakeholders and organizations to inventory available resources and to complete a needs assessment to identify community needs and resource gaps. Within Santa Clara County, there are four HUD-approved nonprofit agencies with a total of ten HUD-certified Foreclosure Prevention Counselors that provide foreclosure prevention counseling. The most critical needs identified were:

- Additional HUD-certified counselors to address the increased demand
- Outreach and Marketing, including information and referral resources
- Emergency short-term financial assistance to homeowners/renters
- Family counseling resources

On January 29th, 28 individuals representing various stakeholder organizations, including the County and other local jurisdictions, met to develop a plan to address these needs. Immediate outcomes include:

a. **Volunteers**-- The availability of over 100 Volunteers experienced in loan intake and packaging will supplement the ten certified foreclosure prevention counselors now available. This assistance will enable the certified counselors to focus on the more critical foreclosure prevention counseling and loan modification assistance.
b. **Certified Counselors**-- The Santa Clara County Association of Realtors, Project Sentinel, and Neighborhood Housing Services of Silicon Valley are working to bring HUD Foreclosure Prevention Counseling training to Santa Clara County to increase the number of HUD-certified Counselors.
c. **Outreach and Marketing**— Multi-lingual neighborhood outreach activities, focused on the neighborhoods that are hardest hit by foreclosures, will be coordinated by SNI staff in conjunction with NHSSV by engaging the community at the neighborhood, faith, and education levels. Marketing activities coordinated by City staff will include public service announcements, information and referral flyers, a dedicated telephone line, and an interactive website. Additionally, a survey has been developed to reach out to church members in impacted areas to gather input on the impact of foreclosures.
d. **Foreclosure Prevention Fair**-- The second Foreclosure Prevention Fair is now scheduled for April 23rd, with details to follow. This Fair will bring together lenders and borrowers in one location to perform loan modifications or workouts, with the intent that a newly underwritten mortgage will allow the family or individual to make affordable monthly payments and allow them to keep their homes. The City's first foreclosure fair held in August 2008 drew large crowds.

e. **Lenders' Meeting**—The Task Force is investigating the potential for a "Lenders' Meeting," where major banks would meet to discuss opportunities to cooperate and collaborate, especially in the timely processing of loan modification approvals.

Other outcomes with initial discussions and plan of actions are:

a. **Funding**-- Identify current sources of Emergency Financial Assistance offered by nonprofits and local government, and create a simplified referral process. Research other funding opportunities.
b. **Simplified Referral Process**-- Collaborate with family counseling services and create a simplified referral process.

In addition to these actions, City staff is preparing a workshop for City staff concerned about their housing situation to answer questions and help educate them about their options. Information regarding this workshop will be forthcoming.

CONCLUSION

It is expected, given the nature of subprime, exotic, and adjustable-rate lending during the housing boom, that foreclosures may continue through 2011. The current economy, where job loss is increasing and retirement funds are decreasing, is adding to the crisis. This spillover effect may compound the impact of foreclosures in San Jose by dragging down a previously unaffected group of homeowners. Additionally, we are awaiting the inevitability of a new wave of potential foreclosures as interest rates reset higher in the next year or two.

The City is working with its partners to address foreclosures in San Jose, with the goal of preventing foreclosures and maintaining family and neighborhood stability.

LESLYE KRUTKO
Director of Housing

For questions please contact Leslye Krutko, Director of Housing, at 408-535-3851.

Most foreclosures pack into a few counties

By Brad Heath, USA TODAY

WASHINGTON — More than half of the nation's foreclosures last year took place in 35 counties, a sign that the financial crisis devastating the national economy may have begun with collapsing home loans in only a few corners of the country.

Those counties, spread over a dozen states, accounted for more than 1.5 million foreclosure actions last year, a USA TODAY analysis of figures compiled by the real estate listing firm RealtyTrac shows — more than were recorded in the entire United States just two years earlier. They were the epicenter of a wave of foreclosures that have left leading banks teetering and magnified the nation's economic problems.

MILLIONS COULD GET HELP: But is foreclosure plan fair?
GOOD NEWS: Foreclosures down 10%
STATE-BY-STATE GRAPHIC: Foreclosures in 2008

"This crisis was triggered by foreclosures, and a lot of those were in a very small number of areas," says William Lucy, a University of Virginia professor who has studied the link between lenders and faltering home loans. Banks spread the risk and "it became like a car with no reverse gear. Once it starts to go over the cliff, it's gone."

In other parts of the country, the foreclosure wave was barely a ripple — at least until it started swamping major banks that had invested heavily in mortgages. Banking giant Wachovia Corp., for example, was hammered after California and Florida customers of one mortgage firm it bought began defaulting at high rates. The risks of such lending were spread so broadly among financial institutions that, when the loans went bad, it drove the national credit crisis, says Christopher Mayer, who studies real estate at Columbia Business School.

A few of the 35 counties leading the foreclosure boom are in already-distressed areas around Detroit and Cleveland. But most are clustered in places such as Southern California, Las Vegas, Phoenix, South Florida and Washington, where home values shot up dramatically in the first half of the decade, then began to crumble.

RealtyTrac's counts of foreclosure actions include default notices, auctions and repossessions by lenders, and can sometimes count the same property twice. As a result, they tend to be higher than estimates from other tracking firms. But they remain one of the best geographic measures of the nation's housing collapse.

The Obama administration on Wednesday detailed a $75 billion plan to keep more homeowners from slipping into foreclosure by helping them refinance loans or reduce their monthly payments. But that effort could face political challenges because most of the foreclosure problem has been so concentrated in a few areas, says Brookings Institution researcher Alan Mallach.

The worst-hit counties are home to about 20% of U.S. households, but accounted for just over 50% of the nation's foreclosure actions last year, driving most of the national increase. And even among those places, a few stand out: Eight counties in Arizona, California, Florida and Nevada were the source of about a quarter of the nation's foreclosures last year.

In more than 650 other counties — about a fifth of the nation — the number of foreclosure actions actually dropped since 2006.

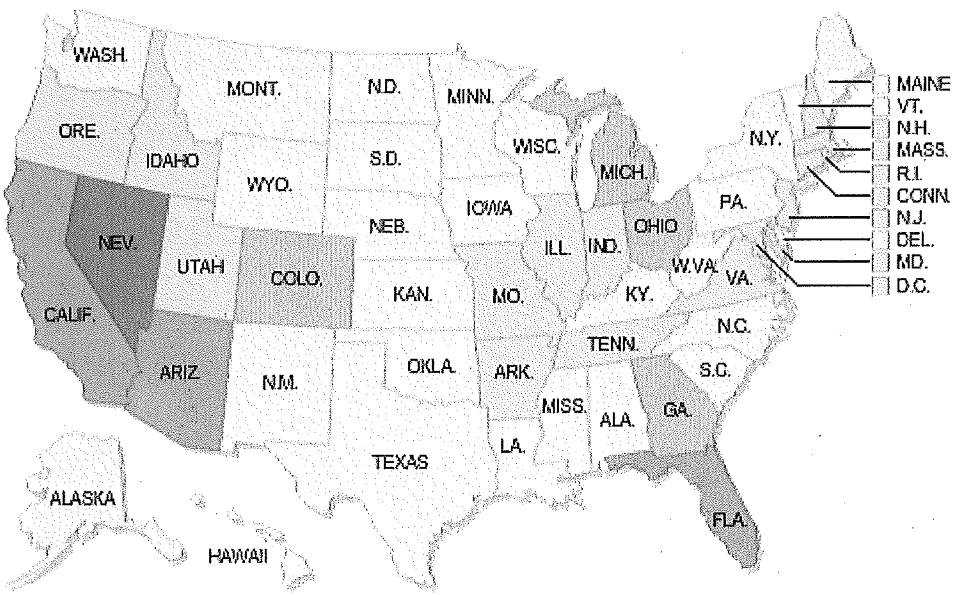
Find this article at:
http://www.usatoday.com/money/economy/housing/2009-03-05-foreclosure_N.htm

☐ Check the box to include the list of links referenced in the article.

Foreclosures on the rise

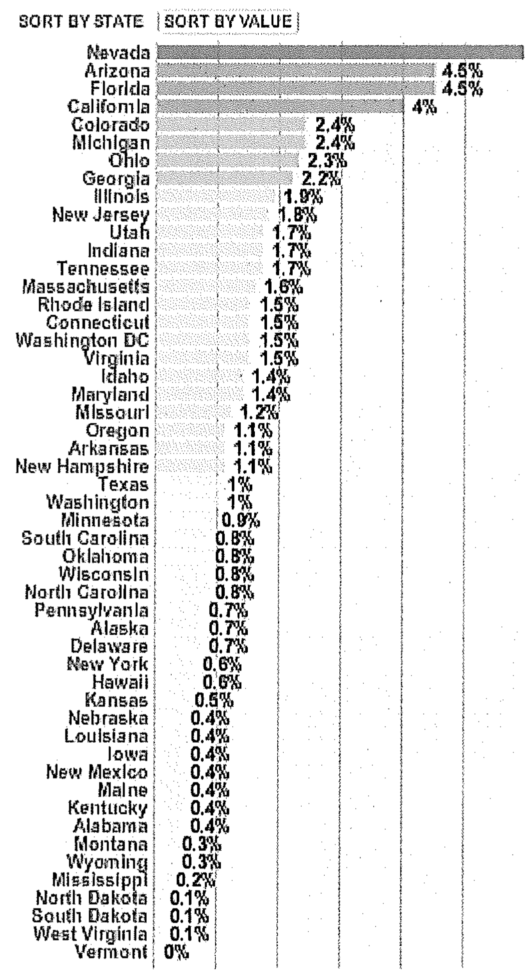
2008 FORECLOSURE RATE | 2008 PROPERTIES WITH FILINGS | CHANGE FROM '07 TO '08

Home foreclosures rose 81% in the U.S. from 2007 to 2008.



United States

2008 FORECLOSURE RATE:	1.8%
2008 PROPERTIES WITH FILINGS:	2,330,483
CHANGE FROM '07 TO '08:	81.2%



Credit: Juan Thomassie, USA TODAY Source: RealtyTrac

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Mortgage fraud reports up 26 percent

Rhode Island makes debut appearance as nation's top fraud hot spot

The Associated Press
updated 1:16 p.m. PT, Mon., March. 16, 2009

WASHINGTON - The mortgage industry, applying far more scrutiny after a tidal wave of defaults, reported a record number of mortgage fraud incidents last year, with Rhode Island making its first appearance as the nation's top fraud hot spot.

The number of mortgage fraud reports among loans made last year grew 26 percent from a year earlier, according to a study released Monday by the Mortgage Asset Research Institute.

The increase came as lenders dramatically tightened their standards, making it more difficult for borrowers to qualify for home loans without large down payments, solid credit and proof of their incomes. With credit far tighter, about $1.4 trillion in home loans were made last year, down about a third from a year earlier, according to trade publication Inside Mortgage Finance.

The recession has also increased pressure on shady mortgage lenders and brokers — as well as borrowers — to lie on loan applications, according to the fraud report. "There's a lot more desperation, with the economy being what it is," said Jennifer Butts, one of its co-authors.

More than 60 percent of mortgage fraud cases last year stemmed from falsified applications, while 28 percent came from tax returns or financial statements, and 22 percent came from appraisals, the study said.

One fast-growing scheme, the report said, is coming from "foreclosure prevention specialists" who offer to rescue distressed borrowers and sometimes trick the borrower to sign over the deed to their house. While some states have recently toughened penalties for such scams, but only a few state attorneys general are able to seek criminal charges and jail time.

During the long housing boom, fraud was easy to conceal as long as home prices kept rising. But with prices sinking, the industry has every incentive to make sure loans are legitimate.

Lenders are getting somewhat better at detecting fraud before loans are made, but "clearly there's still a huge issue out there," said Denise James, director of residential mortgage solutions for LexisNexis, which owns the mortgage research institute.

The information collected in the 11th annual report comes from about 600 mortgage companies, including small community banks, mortgage insurers and mortgage finance giants Fannie Mae and Freddie Mac.

Rhode Island's place at the top of the report was a puzzle to its authors. The most prevalent type of fraud in that state was inflated home appraisals, while fraud on mortgage applications was the most common in the other states.

While reports of mortgage fraud in Rhode Island have been growing somewhat, the jump hasn't been extreme, said Steven Cayouete, Rhode Island's chief bank examiner. The state's No.1 ranking "just doesn't make sense," he said.

Florida, which had been No. 1 for two straight years, dropped to No. 2. Illinois ranked third, followed by Georgia, Maryland, New York, Michigan, California, Missouri and Colorado.

The report does not detail the exact number of fraud cases nationally or by state. Instead, the group calculates a "fraud index" by comparing fraud cases with the number of home loans made in each state. Rhode Island's rate, the report said, was three times expected levels.

John Courson, chief executive officer of the Mortgage Bankers Association, issued a statement calling the report "essential reading for mortgage bankers who need to understand where mortgage fraud is coming from, what to watch for and how to protect our companies and communities."

As awareness of the mortgage fraud problem grows, law enforcement agencies are stepping up their efforts to combat it. The FBI created a Washington-based national mortgage fraud team in December and has more than 1,600 open mortgage fraud investigations, more than double the number of such cases just two years ago.

With so many ongoing cases, FBI investigators are not focusing on individual borrowers but industry professionals generating fraud schemes that could total as much as hundreds of millions of dollars.

URL: http://www.msnbc.msn.com/id/29723423/

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Opinion: How to right the California housing market

By Douglas C. Neff and Gerd-Ulf Krueger

Posted: 04/01/2009 07:51:47 PM PDT

Other than perhaps McDonald's hamburgers, what is selling better today than it did a year ago? Resale homes in California.

Sales in the last six months have gone up 89 percent compared with sales for the same period a year ago, according to the California Association of Realtors. Despite a worsening economy and a media and government afflicted with a bad-news disorder, something strange is happening in the California housing market. There is strong evidence that basic economics is addressing the housing meltdown in a direct manner, which might set the stage for stability and give a hint as to what policies work best.

Resales have been booming in the worst foreclosure markets in the state. Declining prices, severe job losses and pervasive foreclosures are supposed to stifle the market, yet we see record sales and significantly reduced listings in the foreclosure areas. For example, in Stockton, seasonally adjusted resales in December 2008 were up more than 440 percent from September 2007, according to MDA DataQuick, the definitive source for tracking California home sales. That December sales rate was a record for this market. By March, stories continued to abound of strong sales and multiple offers.

Similarly in Moreno Valley/Perris, the heart of the foreclosure badlands in Southern California, resales rose 720 percent to a record high. After steep home-resale declines in 2006 and 2007, the snapback in volume can be observed in the California interior from Chula Vista near the Mexican border to Sacramento.

Although this may all still abate, this is a cyclic novelty in California, where in the past it could take three, four or even five years after a housing recession before a vigorous resale volume recovery occurred.

Despite waves of foreclosures, resale listings have actually declined. The months it takes to burn off the inventory on local multiple listings in the last year have fallen from about 30 to 40 months down to three or four months in Stockton and the Moreno Valley/Perris area. Brokers now complain about the lack of foreclosure listings. In Stockton, 71 percent of foreclosures in the last 18 months have been sold; in Riverside County, it was 67 percent; and in California overall, it was 66 percent, according to MDA DataQuick.

Fortunately, government policy has already done the most important thing to maximize sales of foreclosure properties. It has made FHA and GSE (Fannie Mae and Freddie Mac) loans readily available to buyers who qualify under new and more sustainable standards. And from the amount of demand we're seeing in the California interior, lending doesn't seem to be a problem.

Given the speed and volume of the resale sector's comeback — aided by market forces — getting the government more involved in housing could actually slow things down. And there can be no housing recovery — and maybe no general economic recovery — until the resale market stabilizes.

So what does the government need to fix at this point, when the market has almost completed its pricing adjustment work? Sometimes, simple

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solutions can have a big impact, more so than big government foreclosure bailouts or having bankruptcy judges reduce — "cram down" — the principal on mortgages. More elegant would be if mortgage services and consumers facing foreclosure could freely negotiate loan modifications. They are often hampered because mortgage service's do not have a liability shield against investors.

We have a simple suggestion: Congress or the states could pass laws that protect mortgage security services from lawsuits, giving them the freedom to negotiate new terms with the borrowers if that's what both parties want. That way we leave the question of "to foreclose or not to foreclose" to the wisdom of thousands of voluntary micro-decisions rather than the forms of coercion that have become de rigueur lately.

Economists, politicians and pundits all want something "done" about the mortgage meltdown. The fact is that some very important things tend to get done by tens of thousands of individuals who are already dealing with a huge range of situations: re-pricing housing, investing in the future and clearing the decks for an eventual recovery. It's called Economics 101 at work, and it's setting the stage for stabilization of housing in California.

Douglas C. Neff is president of an Orange County-based company specializing in housing investments, and Gerd-Ulf Krueger is principal economist with Los Angeles real estate consultancy. They wrote this article for the Los Angeles Times.