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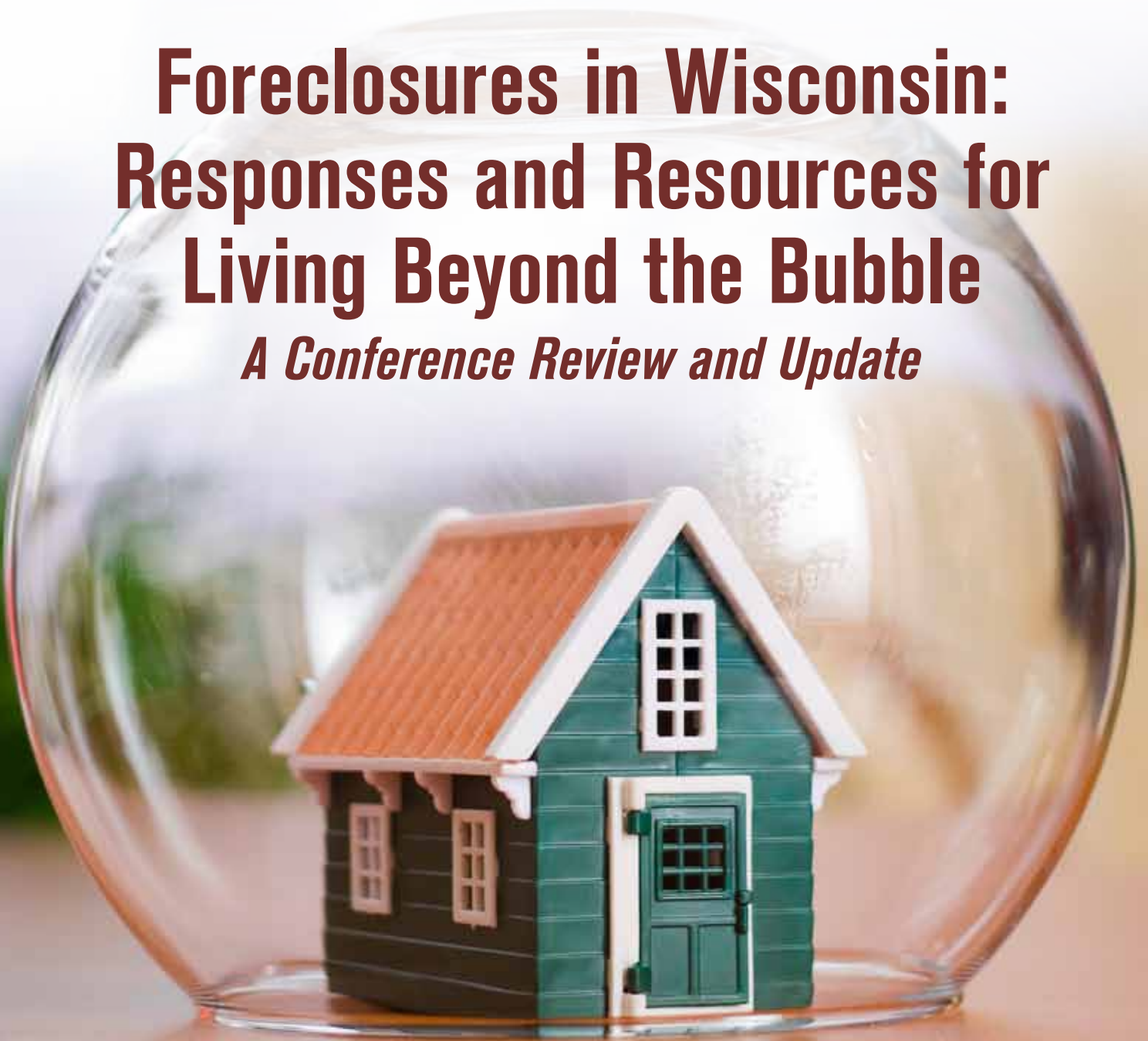
Spotlight!

Published by the Consumer and Community Affairs Division

September 2010

Foreclosures in Wisconsin: Responses and Resources for Living Beyond the Bubble

A Conference Review and Update



Profitwise

News and Views

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Foreclosures in Wisconsin: Responses and Resources for Living Beyond the Bubble

by Steven Kuehl

In November 2009, the Federal Reserve Bank of Chicago's Consumer and Community Affairs division convened "Foreclosures in Wisconsin: Responses and Resources for Living Beyond the Bubble." This conference was one in a series that have been held over the past several years to help address Wisconsin's escalating residential mortgage foreclosures. The conference featured experts from the lending industry, nonprofits, government, policy institutions, and the judicial system to discuss how Wisconsin might best deploy resources to respond to the aftermath of the housing bubble and stem foreclosures.

The objectives of the conference were to learn the progress of the Making Home Affordable (MHA) Program; document lessons from the first round of the Neighborhood Stabilization Program (NSP); assess mediation efforts in Wisconsin's (court-based) foreclosure process; hear recommendations of the Speaker's Taskforce On Preventing (S.T.O.P.) Home Foreclosures and their progress on legislative steps; consider the social impacts of foreclosure and the need for related research; and discuss the future of housing policy, alternatives to current practice, and the "new normal." The conference also provided an opportunity to hear from elected and appointed Wisconsin officials on solutions to the foreclosure crisis. This article condenses the essential ideas raised at the conference and updates on developing issues.

Making home affordable – brief summary and update¹

Steve Schaffer, of Fannie Mae, described the latest efforts of the federal government to slow the tide of foreclosures nationwide through the Making Home Affordable (MHA) Program. MHA is designed to reach 9 million home owners, and offers two mortgage programs for home owners: the Home Affordable Refinance Program (HARP) and the Home Affordable Modification Program (HAMP).

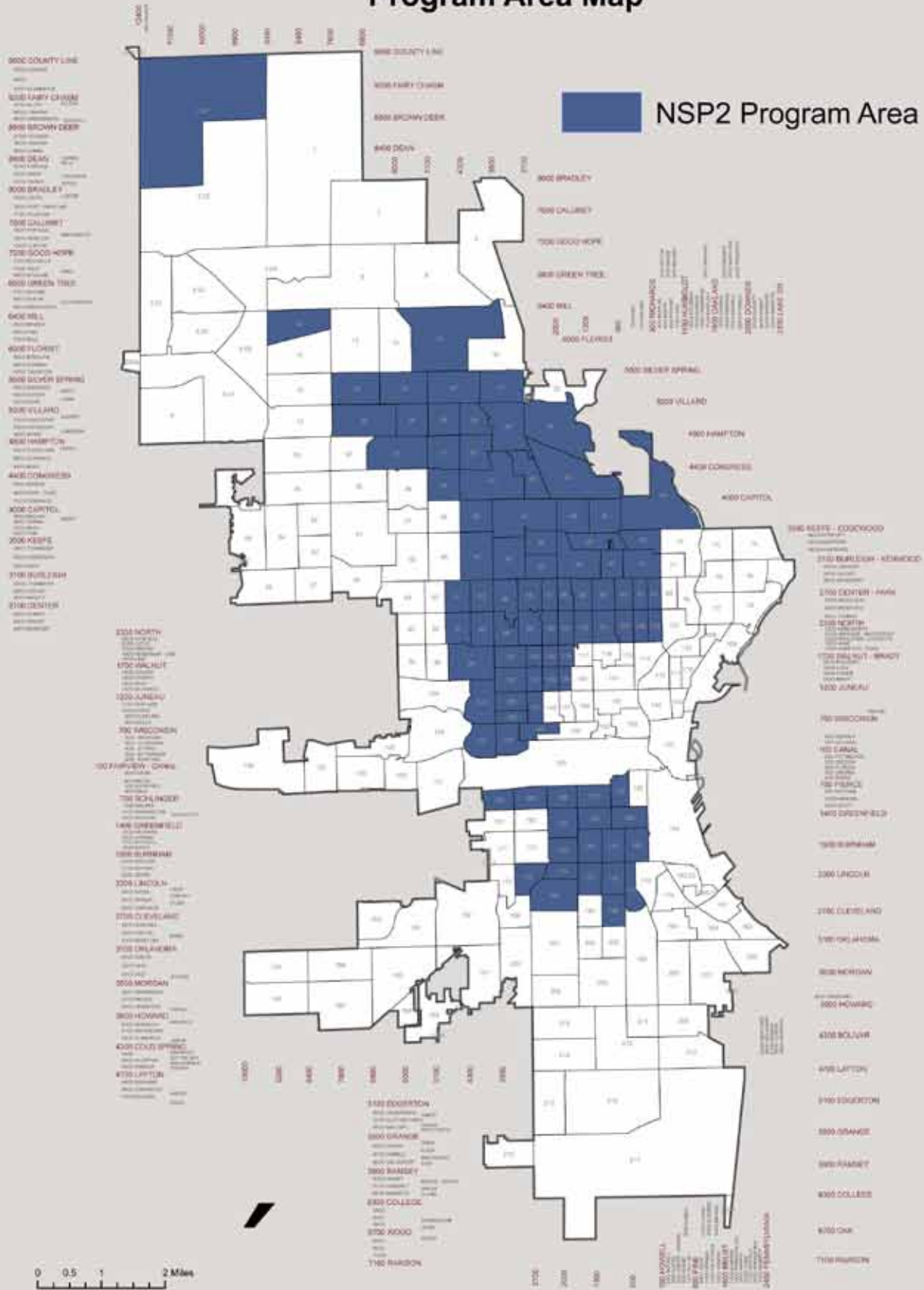
HARP provides refinancing (with reduced payments) for borrowers with solid payment histories but little or no home equity. According to Schaffer, HARP is primarily for Freddie Mac and Fannie Mae (government sponsored enterprises, or GSEs) and gives the GSEs the flexibility to refinance mortgages up to 125 percent of property value, up from 105 percent when the program first rolled out.² As of October 31, 2009, there were 136,271 loans (nationally) refinanced under the program.³ HARP is scheduled to close in June 2011.

HAMP offers mortgage modifications for borrowers in distress; those either already in default or close to it. HAMP provides guidelines and incentives to encourage lenders and servicers to modify at-risk loans. Schaffer stated that nothing on the scale of HAMP has ever been attempted before. HAMP modifications are potentially available to approximately 85 percent of all GSE or non-GSE mortgage loans, across 2,300 Fannie and Freddie approved servicers. In January, Treasury and HUD provided an

update on HAMP.⁴ As of December 31, 2009, more than 110,000 permanent modifications had been approved, including 66,000 that borrowers have accepted and 46,000 awaiting only the borrowers' signatures. Roughly 850,000 home owners with trial modifications had a median payment reduction exceeding \$500. Later in the month, Treasury updated guidance for participating HAMP servicers to expedite conversions of trial modifications to permanent ones.⁵

Schaffer also discussed the Second Lien Program (SLP), which is designed to assist the approximately 1.5 million home owners who have second mortgages and qualify for HAMP.⁶ Under the SLP, the second lien can be modified only once. When servicers initiate a HAMP loan, payments are reduced on the second lien set to a pre-set protocol. For amortizing loans, Treasury will share the cost of reducing the interest rate down to 1 percent. For interest-only loans, Treasury will share the cost of reducing the rate on the second lien to 2 percent. The SLP's next steps are to extend the term to match the term of the first lien and secondly, to forebear principal in the same proportion as on the first lien. (No liens beyond a second are eligible for the SLP.) Under the SLP, the lenders or the investors have the option to extinguish the second lien in return for a lump sum payment. If they are not the same lender, borrowers must consent to share first lien modification data with their second mortgage lender. Like HAMP, the program includes incentive compensation to servicers, borrowers, and investors.

City of Milwaukee Neighborhood Stabilization Program 2 Program Area Map



Panel discussion – challenges, successes, and lessons learned from using the first round of neighborhood stabilization funds

The Neighborhood Stabilization Program (NSP), authorized under the Housing and Economic Recovery Act of 2008, provides \$3.92 billion in emergency assistance to state and local governments to acquire and redevelop foreclosed properties that may otherwise become sources of blight. Panelists discussed recent developments and their impact on stemming rising foreclosures, steadying the current turmoil in housing markets, and improving foreclosure prevention.

Suzanne Dennik, of the University of Wisconsin Cooperative Extension and the City of Milwaukee, provided a general outline of the NSP. She explained that funds were allocated to various state and local governments based on the number of foreclosures, subprime loans, and defaults, as well as delinquency and vacancy rates. Areas of greatest need received the funding. NSP funds must be obligated within 18 months of signing the grant agreement, and 25 percent of the funds must benefit those individuals under 50 percent of area media income. Allowable uses of NSP funds include the direct purchase of abandoned or foreclosed residential property for sale, rental, or redevelopment; establishment of financing mechanisms for purchase and redevelopment of foreclosed homes; land banking of foreclosed homes; demolition of blighted structures; and redevelopment of demolished or vacant property.

Kate Blood is the NSP Grant Administrator working with the Wisconsin Department of Commerce. Blood provided an overview on NSP usage and the processes in Wisconsin. NSP funds coming into the Wisconsin Department of Commerce have totaled approximately \$38.8 million. Funds were allocated across eight regions, incorporating all areas of highest need in the state. The Wisconsin Housing and Economic Development Authority (WHEDA), which is serving as

the financing mechanism for the program, was awarded \$5.8 million. The bulk of NSP funds went to statewide regional allocations, and totaled approximately \$27 million. Funds totaling \$2 million were held back for a second round of allocations, and approximately \$4 million was allocated to administrative funding (costs related to administrative and technical assistance for carrying out the NSP).

Wisconsin's statewide regional allocations provided home ownership and rental opportunities to households with incomes at or below 120 percent of the area median income, including the improvement and reuse of vacant and abandoned properties. Awardee activities included: the acquisition, rehabilitation, rental, or resale of property that is purchased by the program administrator or grantee (e.g., a nonprofit organization or other entity administering the grant for the community), rehabilitated to meet the program standards, and resold or rented to an income eligible household; direct purchase by an income eligible household, with NSP assistance (following an inspection of the property), which is then rehabilitated; and demolition of a blighted house, with a new house built on the site and sold or rented to an income qualified household. Blood stated that the regional allocations were a very effective method to process unused units into affordable housing (opportunities).

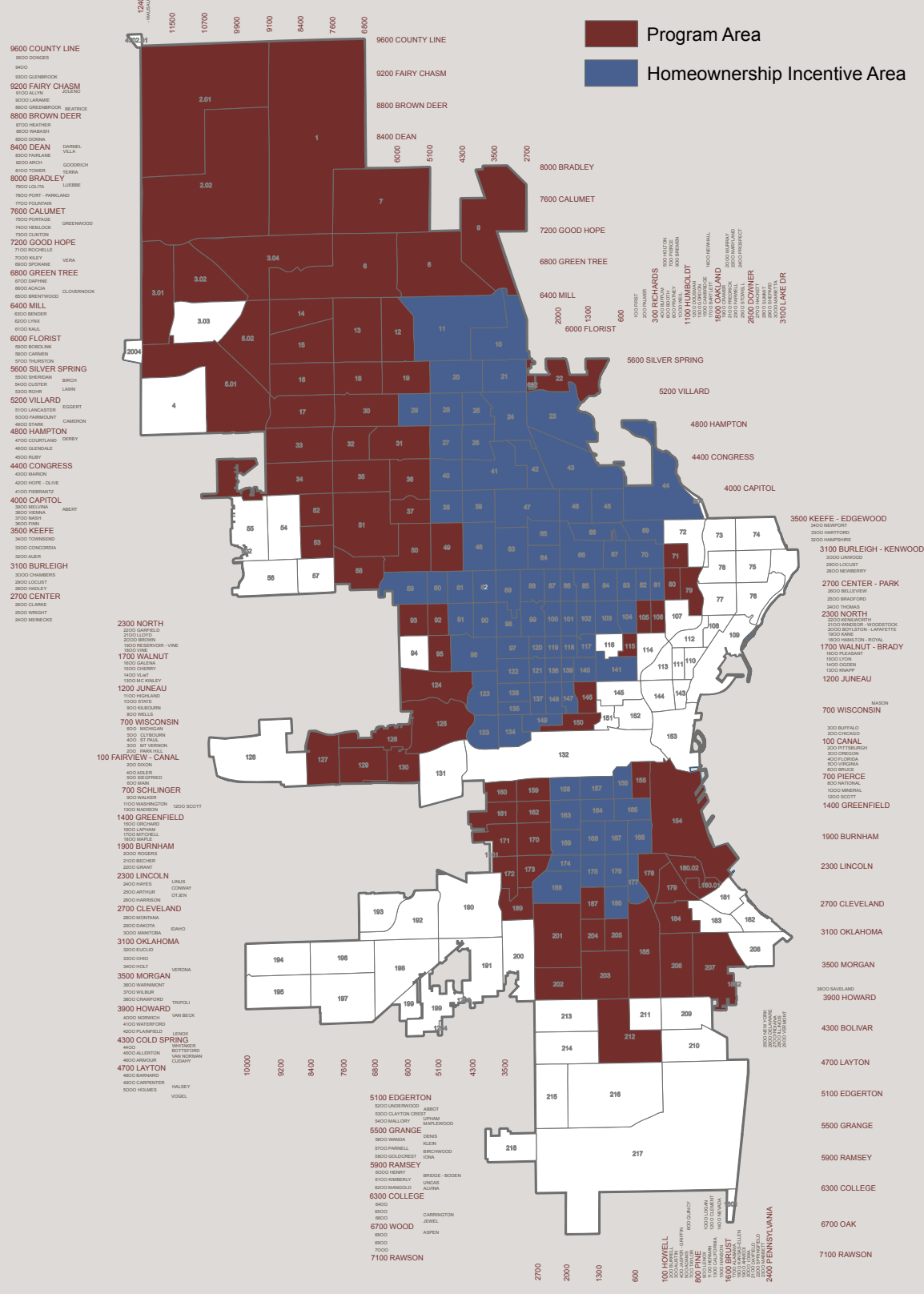
NSP grantees have experienced many challenges in working with the program and disbursing funds. The biggest challenge has been operating in a volatile real estate market where credit availability, property conditions, appraised values and prices are in flux. NSP grantees are beginning to experience greater competition from investors and speculators, who buy up foreclosures believing that the real estate market has bottomed. Also, some grantees have had difficulty finding foreclosures in the census tracts identified in their applications. Blood explained that in the recent past, bottom tier houses comprised most foreclosures; whereas currently

foreclosures are more common in middle and upper-tier markets. She also stated that some grantees have noted at least a temporary decrease in the number of foreclosures and an increase in sale prices, which is good for the market, but problematic for NSP grantees. Blood summarized by stating that there are fewer total numbers of foreclosures, but more in census tracts outside of the ones identified in their applications, and there is more competition as more buyers enter the market.

Cindy Jensen, manager of Single Family Origination at WHEDA, discussed WHEDA's Wisconsin Advantage Home Program (WAHP). As mentioned above, WHEDA was allocated approximately \$5.8 million in NSP funds, and chose to use those funds to set up a loan loss reserve for the WAHP. The WAHP is available in five counties (Brown, Kenosha, Milwaukee, Racine, and Rock) for the purchase of foreclosed and vacant homes, as well as to pay for limited home repairs. The loan is for low- to moderate-income borrowers. Jensen cited two challenges. First, loan activity heading into winter months was expected to drop because some exterior repairs cannot be completed until spring, though borrowers would still get pre-approved and receive counseling during this time. The second challenge is to meet the mandates of the Secure and Fair Enforcement for Mortgage Licensing Act (the SAFE Act⁷), which requires extensive licensing and registration for originators of residential mortgage loans. According to Jensen, the SAFE Act will, with some restrictions, impact any nonprofit or governmental agency that provides down payment assistance. WHEDA has formed a task force with several other agencies to seek an exception for governmental agencies.

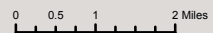
Maria Prioletta, of Milwaukee's Department of City Development, works with local developers, lenders, and community based organizations to promote residential development and revitalization in neighborhoods throughout the City of Milwaukee.⁸ A key

City of Milwaukee Neighborhood Stabilization Program Area



Produced by:
 Department of City Development Information Center, RTW
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Visit <http://mkedcd.org/foreclosures/> to check whether a specific property falls within the Program Area,



to Milwaukee's strategy to combat foreclosures is the Milwaukee Foreclosure Partnership Initiative (MFPI), a public-private partnership of lenders, foundations, and community stakeholders committed to foreclosure prevention and neighborhood stabilization.

In January 2009, Milwaukee was allocated \$9.2 million in NSP funds. To facilitate greater impact in the areas of the city hardest hit by foreclosures, a smaller subset of the NSP Area will receive a greater level of assistance. The funds will be used to acquire and rehabilitate foreclosed properties, demolish houses that cannot be renovated, redevelop vacant lots, and acquire property for future development through land banking. In conjunction, the city developed several specialized loan programs with specialized, non-traditional underwriting guidelines derived with input from lenders, counseling agencies, and realtors.

Prioletta stated that the largest challenge is the deteriorating condition of vacant property. Vacant properties are neglected and vandalized, which makes them significantly more expensive to redevelop. The city's Department of Neighborhood Services and Building Inspection wrote two new ordinances, both of which passed the Milwaukee Common Council. The first requires lenders to inspect, secure, and maintain properties when they start the foreclosure action – not when they take ownership. The second requires property owners to register any and all property that has been vacant for more than 30 days with the city. According to Prioletta, these ordinances have helped to maintain and secure vacant property.

On January 14, 2010, Milwaukee announced that it will directly receive \$25 million in NSP-2 funds (the second round of allocations).⁹ The new funds will ostensibly return approximately 1,000 foreclosed and abandoned residential units to productive use. Milwaukee's funds will be targeted to an area bounded roughly by Mill Road, 51st

Street, Richards Street, and Lincoln Avenue. As of January 1, 2010, that area contained approximately 800 foreclosed properties and more than 2,700 properties at some stage of the foreclosure process. Of the properties currently in foreclosure, more than 1,600 are owner-occupied. Also announced, was an additional \$6.2 million in federal funds to Habitat for Humanity, Inc., to increase their capacity to assist affordable housing in the targeted areas of Milwaukee.

Panel discussion: court-referred foreclosure mediation

Mediation alternatives in foreclosure proceedings have become an increasingly popular method for achieving a balanced outcome for both lenders and borrowers. Daniel Idzikowski, of Marquette University Law School, moderated. The panel explored the application of mediation in Wisconsin's court-based foreclosure process, including legal authority, assessment of need, elements of a successful program, and desired outcomes. Panelists also shared thoughts about this model's applicability in other Wisconsin jurisdictions.¹⁰

Natalie Fleury and Debra Tuttle, both of Marquette University Law School, provided background on the Milwaukee Foreclosure Mediation Program, including its origin and current operation. The mediation program was an outgrowth of the Milwaukee Foreclosure Partnership Initiative. Fleury noted the foundational principle of mediation: separate parties share a set of common interests. A common belief is that lenders reject mediation as a means to prevent foreclosure because they believe they have little to gain. However, Fleury pointed out that lenders generally sustain a significant loss in foreclosing, and they are not in business to lose money; while home owners obviously want to stay in their homes, so this confluence of interests forms the basis for a better potential outcome for both. Fleury stated

that this is the primary mission of the Milwaukee Foreclosure Mediation Program – to work together to reach a mutually agreeable, reasonable solution that is sustainable for both lender and home owner.

The mediation process is voluntary for borrower and lender. The mediator facilitates communication and helps determine whether a compromise can be reached within 45 to 60 days of receipt of the application for mediation. On July 22, 2009, a directive by Chief Judge Jeffrey A. Kremers, of Wisconsin's First Judicial District, went into effect in Milwaukee County. The directive orders that a notice of the mediation program be attached to all summons and complaints served on the defendant/home owner when a foreclosure action is filed. Each participant is required to pay a \$100 fee seven days before the mediation takes place. Tuttle noted the mediation process requires commitment, and by paying the fee, each party becomes invested in the process.

Home owners are required to meet with a housing counselor prior to the mediation session so that they have a clear idea of their financial situation. That information, coupled with a modified payment schedule or other proposed course of action, is then submitted to the lender's representative at least a week prior to the mediation session.

Foreclosure mediation often results in a loan modification based on the home owner's income. However, in those cases where the home owner cannot remain in the property, the process can help mediate a graceful exit or a less damaging transition, giving the home owner a sense that they have control over a situation that for many defaulted borrowers feels completely out of their control.

Nelle Rohlich, of the Wisconsin Department of Justice Consumer Protection Unit (DOJ), began by outlining the attorney general's (AG) responsibilities related to foreclosure actions. The AG works closely with both

the Department of Financial Institutions and the Department of Trade and Consumer Protection. DOJ has brought enforcement actions related to loan modification, fraud foreclosure, and Real Estate Settlement Procedures Act fraud.

Rohlich was the state's lead attorney in an action against Countrywide Financial Corporation. The litigation was important because it demonstrated the state's commitment to stemming predatory lending and to consumer protections. The case yielded a judgment of \$1.6 million, half of which went directly to borrowers. The other half helped fund (along with funds from the City of Milwaukee) the Milwaukee Foreclosure Mediation Program. Rohlich concluded that DOJ is now working with Marquette University Law School and other interested parties, judges in particular, to expand foreclosure mediation programs statewide.

Kate Nardi Sullivan, a home ownership coordinator at the Dane County Housing Authority, leads the agency's first-time home buyer and foreclosure prevention programs. She offered a practical perspective on working with home owners and lenders to prevent foreclosures. Nardi Sullivan pointed out that early in the crisis, more home owners fell behind due to loan terms. More recently the cause is unemployment or reduced hours. She described how borrowers attempting to modify their loans were having little success through their servicers. Many home owners expressed frustration with servicer call centers, and many sent documents only to be asked to resubmit the same paperwork, or received no response at all. Nardi Sullivan commented that the HAMP's new standardized guidelines and structure have helped to bring order to the modification process. She also emphasized the value of mediation as it is a scalable method, and offers an (ostensibly equitable) alternative to modification or refinancing.

Chief Judge William Dyke, of the Iowa County Circuit Court, described why and how he came to be the first judge in the

State of Wisconsin to order foreclosure mediation. Dyke received a report from Wisconsin Chief Justice Shirley Abrahamson, who was concerned about rising foreclosures. The report provided foreclosure data for all Wisconsin counties. Iowa County also had been experiencing rising foreclosures and Dyke had firsthand knowledge from the proceedings in his court room. Like Nardi Sullivan, Dyke found that defaulted home owners in his court reported difficulties with lender bureaucracy. Dyke found a Depression-era law that required mediation in foreclosure cases. The 1935 law had long ago expired due to a sunset provision, but Dyke found that another Wisconsin statute (802.12) authorizes mediations. In addition to the state statute, Dyke also drafted a local court rule to compel lenders, when they file papers, to give notice to the home owner that foreclosure mediation is available. After receiving much input from local practitioners, Dyke put the rule into effect on January 1, 2009.

Keynote addresses

Mayor Tom Barrett, of the city of Milwaukee, provided the first keynote address. He began by stating that the current situation represented the most serious housing crisis that we have faced in our lifetime. He cautioned that because rising foreclosures were becoming an everyday headline, the public needs to guard against becoming complacent and always keep fresh in their minds that foreclosures have a devastating and tragic human impact. He discussed how he has been through Milwaukee homes that were vacant, foreclosed, or simply abandoned, citing the potential for arson, prostitution, drug dealing or gang activities, and ultimately neighborhood blight. He visited several homes where he was able open the front door and simply walk right in. There were no locks, and sometimes no doors. Copper piping and anything of value had been removed, making them very difficult to sell. In one case there were still toys and children's shoes and clothes strewn about one of the bedrooms on the second floor. A

family forced from their house faces major financial and emotional disruption. Barrett emphasized the need to recognize the human impact of the foreclosure crisis, and ensure that this aspect is included in the public debate.

While acknowledging the role that speculators played in the crisis, Barrett stated that a relatively small minority of the city's foreclosures can be attributed to speculators. The majority of subprime loans were made to people who had an ordinary first mortgage on their home and then were enticed by unscrupulous mortgage lenders using aggressive marketing tactics to refinance their home with a mortgage whose terms were affordable only in the short term, if that.

Barrett stated his hope for further federal assistance to be channeled through financial institutions into the mortgage market. At the state level, there is help from legislators working to help create a mediation program, and locally there are ongoing efforts by the Legal Aid Society of Milwaukee and Marquette University Law School, among others. Barrett noted lenders' aversion to taking possession of foreclosed property, and a significant issue has been the inability to hold owners responsible for maintenance of vacant property. He had signed legislation earlier in the day to facilitate identifying owners and holding them responsible for the maintenance of vacant homes. Barrett stated that Milwaukee couldn't allow its neighborhoods to deteriorate further as a result of homes that had been abandoned or foreclosed.

Barrett closed by calling upon the mortgage lending community to work in cooperation with the city and others to keep people in their homes when possible, and otherwise reach the least damaging compromise, while sharing some of the financial burden.

Antonio Riley, executive director of WHEDA, also offered a keynote address. He spoke on behalf of Governor Jim Doyle, and presented an update on the

Obama Administration Plan to help the housing finance agencies. He began by stating that the best way to prevent foreclosures is to provide home buyers with education and counseling before they purchase, and to supply them with a fixed rate, affordable mortgage. WHEDA has successfully followed that strategy for many years. Despite the foreclosure crisis, the foreclosure rate for WHEDA mortgages remains below 1 percent.

Riley stated that since the 2008 capital markets collapse, WHEDA has been without a mortgage product. However, the agency has been optimistic and resourceful. The theme of the conference, "Responses and Resources for Living Beyond the Bubble," described what WHEDA had been doing for the previous several months. For example, in May 2009, WHEDA introduced the Wisconsin Neighborhood Advantage Loan product when it leveraged \$6 million in NSP funds into a \$33 million loan pool with a private investor. That loan is designed for the purchase and the rehabilitation of foreclosed properties in cities, including Milwaukee, Racine, Kenosha, Beloit, and Green Bay.

In late 2009, the Obama Administration, through the U.S. Treasury Department, announced a plan that will provide state housing finance agencies access to much needed capital (for lending). Riley stated that WHEDA is not immune to market conditions, and will adapt to the new operating environment. He anticipates that new underwriting guidelines will include a slightly higher credit score requirement and lower rates, possibly below market. However, the new WHEDA Advantage loan will allow a higher loan-to-value ratio, as high as 100 percent financing, for borrowers with high credit scores.

Riley acknowledged that the recent economic turmoil has taken its toll on people's savings and credit scores; however, WHEDA has made allowances and is able to assist home buyers as they prepare for home ownership, including obtaining a mortgage in a more

constrained lending environment. Riley hopes to expand WHEDA's home buyer assistance resources through statewide access to housing, home owner education, and credit workshops, as well as a monthly credit monitoring service.

He closed by saying that thoughtful and creative foreclosure interventions have kept people in their homes, and emphasized the need for continued innovation to protect (the investments of) all home owners. WHEDA aims to stay on top of the current situation and provide a range of innovative services, lending options, and continue its long-term commitment to quality control and sustainable home ownership for the future.

Perspective from the University of Wisconsin-Extension, Cooperative Extension

David Wilson, chancellor of the University of Wisconsin Colleges and University of Wisconsin-Extension (UW), addressed the conference via a pre-recorded message. He described his personal contacts with many people who are losing their homes. Foreclosures, he stated, continue to threaten the foundations of our communities. The University's work to address the crisis has included the development of a database using county court records to track foreclosure trends from the year 2000 to the present in all Wisconsin counties. The database is being used by county governments to track and analyze the number and geographic distribution of foreclosures, and at the state level, to determine how best to allocate resources.

In early 2006, the Milwaukee and Racine County Extension Offices identified a need in their local communities to support foreclosure intervention and information programs. The University's co-sponsorship of foreclosure conferences is one aspect. Another is a unique partnership with the City of Milwaukee, where the UW is providing expertise to both the City of

Milwaukee and the Foreclosure Partnership Initiative. The UW will continue to explore new and innovative ways to bring transformational education to communities across the state for long-term, sustainable home ownership.

Speaker's Taskforce on Preventing (S.T.O.P.) home foreclosures

To address the growing number of home foreclosures in the state of Wisconsin, Mike Sheridan, speaker of the Wisconsin State Assembly, created the Speaker's Taskforce on Preventing Home Foreclosures. Daniel Imhoff, of the State Bank of Cross Plains, presented the conference with some background information and discussed the task force's recommendations and legislative progress.

Imhoff stated that the goals of the task force were to identify innovative methods and practices, and make recommendations to the Assembly. The task force was comprised of lawmakers from both political parties, as well as a diverse group of professionals from the legal, realty, housing, nonprofit, and financial services industries. Public hearings were held around the state where people were encouraged to come forward and share their experiences and ideas.

Based on the ideas of the membership, as well as from feedback received at the public hearings, the task force then organized itself into three subcommittees: Lending Best Practices; Education and Outreach; and Recovery. The Lending Best Practices subcommittee identified both sound and unsound conventional loan products and analyzed the characteristics of the latter to understand the contribution each may have had to the foreclosure crisis. The Education and Outreach sub-committee identified personal/family budgeting and first-time home buyer education as the two most important topics that need to be addressed. The Recovery sub-committee discussed what should happen when an actual foreclosure is

carried out. It identified individual and family counseling as a great need, as well as notice to the community due to the high impact of foreclosures and abandoned properties on neighborhoods. Further, it identified ways to keep up with property maintenance. Lastly, this sub-committee found that rental options need to be forthcoming so that people can move from their home into a rental environment in a manner that maintains their dignity.

The full S.T.O.P. committee made the following four recommendations to the legislature:

- Mortgage and foreclosure education standards need to be established and integrated into the public education system so potential buyers better understand the financial risks associated with their mortgage.
- Wisconsin remains one of only four states that does not require mandatory regulation and licensing of real estate appraisers. Therefore, the state should require home appraisers to have a license and conform to Uniform Appraisal Standards of Professional Appraisal Practice.
- County clerks should be required to provide an abandonment notification to municipal clerks when a home is declared vacant.
- A fiduciary duty should be imposed on mortgage brokers to act in the best interest of their clients.

The task force is still ongoing and is currently identifying appropriate requirements for mandatory mediation between lending institutions and borrowers in foreclosure. Secondly, the task force is discussing a formal requirement throughout the state where the first-time home buyer must obtain education and a certificate confirming satisfactory completion of that education. The task force is determining if a third party should monitor compliance, with WHEDA possibly being that third party.

Panel discussion – social impacts of foreclosure

Donna-Lou Hertz, the homeless coordinator for HUD and panel moderator, stated that behind each foreclosure is a family, or multiple families, whose lives will be changed forever. People are afraid. They don't know what to do. Foreclosure can represent a loss of stability, a feeling of failure, shame and guilt. And it can lead to fear, anxiety, confusion and, often, destructive behaviors. This panel focused on what we know about the way that foreclosures impact families, neighborhoods, communities, crime, health, homelessness, and more. An overview of the recent Protecting Tenants at Foreclosure Act of 2009 was presented and panel members provided suggestions on the need for additional research and how to address the crisis at the local level.

The first question Smith discussed was: Where do households move? Although there is ongoing research utilizing housing counselors, the short answer is that no one really knows. However, a related question is: How does the quality of housing someone left compare to where they have moved? Here, there is an answer, but it's not encouraging. Smith pointed out that people caught in foreclosure are in a financial decline, so their next housing option will be of lesser quality. Also, if someone is moving from owned housing to rental housing, rental housing of a comparable quality is usually more expensive than owned housing. So if someone's making the shift from owner to renter, given the same budget, they are usually trading down in quality. Further, research has shown that low-income families, particularly when they are making a housing choice under financial duress, often make poor choices and consequently, the quality of housing suffers.

...behind each foreclosure is a family, or multiple families, whose lives will be changed forever.

Robin E. Smith, of The Urban Institute, provided a broad overview of the social impacts of foreclosure. She began by cautioning that there is scant, hard evidence on the impact of foreclosure on families. This lack of hard evidence is due to the crisis being so recent; we're still in the midst of it. Also, due to the very nature of foreclosure, so many families are moving and it's very difficult to track a moving target, making systematic study and follow-up very difficult. Despite the lack of systematic studies, in mid-2008, the Open Society Institute asked the Urban Institute to review available research to assess what is known about the way foreclosures impact families and communities.¹¹ Smith highlighted the report, and also suggested policies and programs to prevent or mitigate those impacts.

Smith then looked at housing instability. During foreclosure, we have credit ratings plummeting, as well as any family financial reserves. Consequently, a lowered credit score makes it more difficult to move to the next step of housing, and with very little ability to make down payments or security deposits, families in foreclosure may be entering a cycle of housing instability.

Housing instability has particularly bad outcomes for both the very young and the very old. For the elderly, moving is very traumatic, and involuntary relocation is especially traumatic. It can trigger a series of emotional and physical setbacks. As health declines, seniors are holding on to place more tightly than others, because this helps them organize their lives and their thinking.

For children as well, multiple moves can be extremely difficult. Lack of a stable home can have a lasting impact. It can negatively affect behavior, and has been shown to negatively affect childhood development. Frequent school change is highly correlated to poor academic performance. What is especially troubling, asserted Smith, is the durability of the effects. Children who move multiple times in their early years have lower graduation rates than their peers in more stable housing.

Repercussions can be felt in other areas, from parenting to self-esteem; all have negative impacts. Smith's research looked at disrupted households and (by extension) relationships. She found that family turbulence inhibits parents' ability to maintain schedules and routines (for meals, homework, bed times, etc.), part of the fabric of family life. Further, during times of housing instability and financial stress, tendencies toward domestic violence and substance abuse also increase. There are further implications for mental health linked with the depression and sense of failure associated with foreclosure. Calls to hotlines and crisis centers have increased markedly during the crisis. Chronic stress (from any source) is known to exacerbate and/or induce certain detrimental conditions. Ironically, poor health leads to a significant number of mortgage defaults; estimates ranging from 22 to 50 percent of foreclosure cases cite poor health (and related costs) as a contributing factor.

Smith concluded that public policy does not need a range of new services to address the impact on families, but rather, a significant expansion of the array of social services that already exist. She cited the passage of the American Recovery and Reinvestment Act (ARRA), which provides for a new \$1.5 billion homelessness prevention fund, as a response targeted to individuals who would otherwise be homeless.

M William Sermons, National Alliance for Ending Homelessness, discussed a

joint report released in June 2009 entitled, "Foreclosure to homelessness 2009: the forgotten victims of the subprime crisis."¹² The report details the difficult circumstances faced by a growing number of renters and home owners who have been caught in the foreclosure crisis, and subsequently became homeless after exhausting their resources.

Sermons provided a snapshot of the homelessness picture in the United States. About 670,000 people are homeless at any point in time, with 1.6 million people using the shelter system each year. About 20 percent of this population meets the chronic definition, which means they have a disability and they have either been homeless repeatedly or for long periods of time (i.e., at least two years). Other non-chronic individuals make up an additional 40 percent, and the balance, almost 40 percent of the remaining homeless population, comprises families. These families, often times, are a mother and one or two children. Beginning in 2008, there was an increase in the percentage of people who were coming into the shelter system from housed situations (i.e., rented/owned or with family or friends), as opposed to other homeless shelters or coming from the streets.

Major findings in the report were that 79 percent of shelter providers indicated that at least some of their clients were homeless due to foreclosure. The overall median response was 10 percent, meaning that, for the nation, 10 percent of the people in a homeless shelter identified their state of homelessness as being caused by a foreclosure. Further, of these people who identified foreclosure as the reason for being homeless, the ratio of renters (people who were renting a property where the landlord was foreclosed upon) to owners, was five to one. After foreclosure, moving in with friends and family was the most common post-foreclosure living arrangement, with emergency shelters being the second. The findings indicated that only a minority of people ended up on the

streets or otherwise outside (e.g., a tent city). The most common services being provided in communities included counseling to prevent foreclosure, free or pro-bono legal assistance, and cash assistance. However, more than half of shelter providers indicated that of the people who had ended up in shelters due to foreclosure, very few had sought out any assistance.

Sermons outlined the most common reasons for homelessness – and foreclosure wasn't on the list. However, job loss was overwhelmingly the most commonly identified reason. He explained that people who experience a job loss view foreclosure as just another event on their long and winding road of economic hardship. It's just part of the cascade of losses they are experiencing, all driven by loss of employment. Drug and alcohol problems were the next most commonly identified cause of homelessness, with this being common in every single community. Being asked to leave by family and friends was third. Sermons stated that although this population is vulnerable, it wasn't necessarily people who had experienced a foreclosure. Finally, family/domestic violence situations and incarceration rounded out the list of most common reasons for homelessness.

Sermons concluded by stating that the solution to homelessness is affordable rental housing. He pointed out that even people with very low incomes, who experience some job losses and situations of temporary employment but who don't necessarily have permanent employment, can avoid homelessness if their housing is truly affordable. Sermons identified affordable rental housing as a key element to ending homelessness, along with robust new job creation.

David T. Rammner, National Housing Law Project, addressed the role of the new Protecting Tenants at Foreclosure Act.¹³ The new federal law, which became effective May 20, 2009, offers protection to tenants who are living in properties undergoing foreclosure and extends

additional protections for tenants with HUD Section 8 vouchers.¹⁴ Rammler explained that during the foreclosure crisis, renters in good standing are being evicted from properties in foreclosure with little or no notice and cited estimates from the National Low Income Housing Coalition that 40 percent of all foreclosed residential properties are occupied by tenants.¹⁵ The new law applies to virtually any foreclosure on any residential property occurring after May 20, 2009. The tenant must fit the statute's definition of a "bona fide tenant," and the lease must call for fair market rent to be charged and be the result of an arms-length transaction. The other proviso of the bill is that this law does not negate or negatively impact local or state laws which provide more protection for tenants. The law effectively separates tenancies into two kinds: tenancies with more than 90 days left on the lease, and tenancies with less than 90 days left on the lease. And it states that if you have more than 90 days left on the lease, you have the right to stay until the end of the lease. In any event, the tenant is entitled to 90 days notice prior to the termination of their lease.

Rammler stated that the law's provisions are "self-executing," so no federal agency (such as HUD) is responsible for making them work. It is up to advocates to make sure that tenants, landlords, public housing authorities, courts, the legal community, and others involved in the foreclosure process are aware of these new rights for tenants. Given the importance of the protections this law provides to tenants, many state and federal bank regulators have issued guidance and examination procedures. The Division of Consumer and Community Affairs at the Board of Governors of the Federal Reserve System issued CA Letter 09-5 on July 30, 2009.¹⁶ This CA Letter instructed examiners, as part of consumer compliance examinations, to evaluate a bank's awareness of the law, its efforts to comply, and its responsiveness to addressing implementation deficiencies. Unless extended, the law expires December 31, 2012.

Deborah Blanks, Social Development Commission (SDC), discussed the challenges of delivering social services during the midst of a foreclosure crisis. The SDC serves as a partner and conduit for human service programs for low-income individuals and families in Milwaukee County. During the past year, the SDC has experienced an increase in the aggregate number of people seeking their services, with a noticeable increase coming from middle-income Whites.

To assist with the increasing demand for the SDC's services, the U.S. Department of Health and Human Services awarded the SDC a \$3.3 million grant, which derived from funds appropriated through the ARRA. This award money is designated for use with Community Services Block Grant projects in Milwaukee County. These projects are required to use funds in a manner that meets both the short- and long-term economic and employment needs of low-income individuals, families, and communities in the county. Further, the purpose of these projects is to make meaningful and measurable progress toward the goals of the ARRA, focusing on creating and sustaining economic growth and employment opportunities. As of March 2010, the SDC has awarded over \$2.4 million to local organizations and businesses in Milwaukee County. Some of the projects receiving ARRA funding include: foreclosure outreach counseling in areas with high concentrations of foreclosures; adult transitional employment and job training; as well as a multitude of economic and neighborhood development activities.

Panel discussion – the future of housing finance

Diane Schobert, of WHEDA, moderated this panel of national experts who discussed the current mortgage foreclosure crisis and its impact on the future of housing policy from the perspective of what will our "new normal" look like. The panel presented and discussed alternatives to current practices and contemplated potential

future policies aimed at preventing subsequent foreclosures.

Anthony Pennington-Cross, Marquette University, identified four causes of the current foreclosure crisis and offered four straightforward remedies.

First, he stated that large institutions that finance mortgages are undercapitalized, and therefore don't have a large enough "buffer" to protect them from the vicissitudes of financial markets. He noted that the availability of mortgage lending has moved from traditional banks to non-banks, and the capital in these non-banks often times was comprised of a line-of-credit, which was abruptly cancelled just when these non-banks needed it most. Further, this lack of real capital contributed to a contagion effect whereby insolvency in one very small part of the financial system quickly spread to the entire national mortgage market, and then out into international markets. Pennington-Cross explained that the role of capital is to buffer a financial institution from losses incurred during bad times, so in order to serve its purpose, the capital must be available (i.e., non-cancelable) and liquid (i.e., salable) exactly when it is needed to cover large losses. He remarked that we learned this lesson in the Great Depression and still need capital for our financial institutions today.

Second, he opined that there is inconsistent regulation across the various types of financial institutions. Some are heavily regulated (such as traditional deposit taking banks) while others (such as mortgage brokers) are very lightly regulated. Pennington-Cross favors replacing the current patchwork of regulators with one large national supervisor of both banks and non-banks, and believes this will provide for more consistent regulation and better supervision.

Third, the extensive fraud prevalent in the mortgage origination business during the recent housing boom must be eradicated. Pennington-Cross attributed

the rampant levels of fraud to the large information asymmetries between mortgage consumers and the mortgage lending industry. In other words, because in most situations the mortgage lender has more and/or better information about the entire process than the consumer, this superior advantage can lead to serious abuses by unscrupulous members of the industry. He stated that while consumer education sounds appealing, it is very difficult to educate consumers on a scale large enough to have a substantial positive impact on the problem. Further, although disclosures need to be improved, Pennington-Cross opined that creating disclosures that are coherent and understandable for all potential home owners will also prove to be too difficult a task. The real solution to significantly lowering mortgage fraud is to align the interests of the industry with that of the consumer. For example, practices such as paying a loan officer a bonus, or a yield spread premium, for increasing the mortgage loan's interest rate need to stop. Instead, loan officers should be compensated based on a salary or have bonuses tied to long-term loan performance. A final solution offered was to make shopping for a loan very transparent by requiring every loan originator to offer a basic "plain vanilla" mortgage with a standard 30-year, fixed rate and very low fees.

Fourth, the current situation where Fannie Mae and Freddie Mac account for virtually the entire secondary mortgage market needs to recover so that the private securitization market can be revived. Consumers benefit from a healthy securitization market because it enables lower mortgage rates by providing liquidity and diversity to loan originators and investors. The U.S. government should still play a key role in the securitization process; however, it should seek to divest itself, in an orderly fashion over time, of its enormous portfolio of mortgages and enable the private market to play a larger role.

Sharon Price, National Housing Conference (NHC), stated that the NHC

convened a broad-based task force that considered the future of the housing finance system and the federal government's role in that system. As a result, the task force developed principles for promoting suitable housing in a safe, decent environment. Ms. Price summarized the ten key principles for repairing the U.S. mortgage market and addressing soaring home foreclosure rates:¹⁷

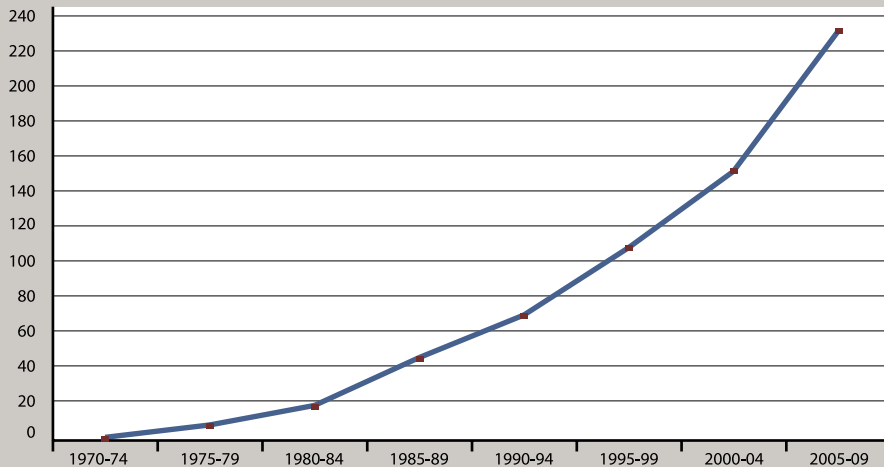
- A healthy, affordable home in a safe neighborhood is the foundation upon which educational opportunities, good jobs, and a civil society rests. These are key elements that comprise a well-functioning economy.
- The federal government role should ensure that the housing finance system works properly and serves the needs of the entire population.
- The rules governing the mortgage market should ensure adequate consumer protections and incentives for sound underwriting. The system should also include appropriate retention of risk by all participants, and there should be an affirmative obligation to serve all households and communities, including those with low and moderate incomes.
- Federal policy should recognize the critical role that rental housing plays and support affordable rental housing serving low-income people.
- The federal government should continue to support key programs that ensure access to credit for owner- and renter-occupied housing.
- The federal government should continue to participate actively in the secondary mortgage market and create subsidies to support housing for very low-income and extremely low-income households.
- NHC supports a market driven environment where competition provides an incentive to lower prices, increased productivity, innovation, and improved customer service. Future

secondary market models should attract private capital and rely on the benefits of a competitive market.

- Secondary market institutions have an affirmative responsibility to support low- and moderate-income households and communities. The rules governing the secondary market should also require participants to serve the diverse array of mortgage lenders, including housing finance agencies, community development financial institutions, and other not-for-profit lenders, as well as traditional mortgage lenders and insured depositories.
- Securitization is an essential tool for the distribution of risk and for linking primary mortgage markets with capital markets. The recent financial crisis has demonstrated the need to regulate the secondary market and securitization markets more fully, but in ways that allow these markets to function efficiently, while striking a balance between regulation and market incentives that achieves desired outcomes.
- The standards and regulations governing financial services should support the flow of capital to meet the nation's housing needs. International and national capital standards and regulation will affect the availability of capital for mortgage finance. Each year, the country will need to finance single-family and multifamily mortgage originations to accommodate the housing finance needs of a mobile and growing population.

Michael Brown, Burlington Associates in Community Development, LLC,¹⁸ described the growing phenomenon of community land trusts (CLTs) and offered that they are a practical means of preserving permanent housing affordability through a new conceptualization of property and ownership. He questioned what the

Number of CLTs in the U.S.



SOURCE: Burlington Associates in Community Development

legitimate interests of ownership are, and how to balance the rights of the individual with the collective rights of the neighborhood and community. Further, he asserted that our current model of creating affordable housing doesn't make sense long-term because it uses limited public and private subsidies to create a home that is initially affordable, but becomes unaffordable the first time the ownership is transferred. Brown stated that the public interest is better served through CLTs, which preserve limited and scarce subsidies by locking the subsidy into the unit, keeping it affordable forever and thereby creating a stock of permanently affordable housing.

The growth in the number of CLTs over the past ten years has been dramatic, driven primarily by the nature of the housing crisis, with both the run-up in values and now their subsequent deflation. This turbulent housing market has made the CLT model very attractive to local public officials searching for sustainable long-term solutions that create affordable housing. Currently, in the United States there are approximately 250 active CLTs, with more in the development stage. Wisconsin's four CLTs are: Bayfield Home Trust (Bayfield); Madison Area Community Land Trust (Madison); Coulee Community Land Trust (La Crosse); and the Community Land Development Association (Wales).

A community land trust draws a distinction between the ownership of the land and the ownership of the improvements. In a sales transaction, the CLT retains ownership of the land, and the home owner buys his/her own home and has a deed to those improvements in his/her name. The land is recorded in the name of the CLT and then it leases that land back to the home buyer for their exclusive use. Leases are typically 99 years and renewable once. Additionally, CLTs place equity limitations into the ground lease agreement that restrict the resale price of the housing to maintain its long-term affordability. Brown stated that

this is an attempt to balance the competing goals of providing a fair return on the initial owner's housing investment, with assuring that the housing unit is kept affordable for the next buyer. People who buy homes through a CLT are, in essence, selling their right for unlimited market-driven appreciation in exchange for a significant upfront subsidy that allows them to own a home they otherwise could not afford. Through this unique structure, the cost of land in the purchase price of the home is minimized or eliminated. This makes the housing more affordable while simultaneously assuring long-term stability and security for the CLT home owner.

Conclusion

Conference participants agreed that there are no silver bullets to quickly fix the complex foreclosure crisis. In fact, the sweeping depth and long duration of the problem has been a surprise to most experts, as job losses continue to mount. However, the old adage, "How do you eat an elephant – one bite at a time," seems to apply. By breaking this complex crisis down into its separate causes, and developing solutions that address those underlying causes, headway is slowly being made. At the federal level, historic amounts have been appropriated to fund programs such as Making Home Affordable, Neighborhood Stabilization,

Community Land Trusts and the Future of Housing Finance



CLT Separates Ownership of Land From Home

CLT retains ownership of land
Homebuyer buys - and owns - her home
CLT leases land to homeowner

SOURCE: Burlington Associates in Community Development

homelessness prevention, and to provide state housing finance agencies access to capital; in addition, new federal protections have been enacted for tenants who are living in properties undergoing foreclosure. At the state and local level, mechanisms are in place to effectively disburse NSP funds to areas of highest need, loans are being modified, foreclosed properties are being acquired and redeveloped, WHEDA is lending again, and judges are expanding foreclosure mediation programs statewide. Further solutions have been drafted into bills that are currently making their way through the legislative process. Looking to the future, participants agreed that the financial system must lay on a firm foundation of well-capitalized institutions operating in a pro-consumer, streamlined regulatory environment with access to a robust secondary mortgage market populated by healthy, private lenders, and investors. Additionally, financially strapped governments need to look to new models of property ownership that offer a practical means of preserving permanent housing affordability.

Notes:

- 1 The fundamental elements of the Making Home Affordable (MHA) program were covered in detail in an earlier issue of this magazine: Kuehl, Steven. 2009. Examining successful collaborations and ongoing barriers to foreclosure prevention. *Profitwise News and Views*. November. Available online at www.chicagofed.org/webpages/publications/profitwise_news_and_views/2009/prn_v_november2009.cfm. More information about MHA can be found at <http://makinghomeaffordable.gov> and www.financialstability.gov.
- 2 Federal Housing Finance Agency. 2009. News release, July 1. Available online at www.fhfa.gov/webfiles/13495/125_LTV_release_and_fact_sheet_7_01_09.pdf.
- 3 2009. Taking stock: what has the troubled asset relief program achieved? *Congressional Oversight Panel, December Oversight Report*. December 9. Available online at <http://cop.senate.gov/documents/cop-120909-report.pdf>.
- 4 Available online at http://makinghomeaffordable.gov/pr_01192010.html.
- 5 Available online at http://makinghomeaffordable.gov/pr_01282010.html.
- 6 U.S. Department of the Treasury. 2009. News release, TG-108, Parallel second lien program to help homeowners achieve greater affordability, April 28. Available online at www.ustreas.gov/press/releases/tg108.htm.
- 7 2009. The Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act), Interagency Final Rule. November 12. Available online at www.fdic.gov/news/board/2009nov12no8.pdf.
- 8 Detailed information about Milwaukee's foreclosure initiatives, and information about resources available to people and developers who wish to purchase and renovate foreclosed properties, is available online at www.milwaukeehousinghelp.org.
- 9 City of Milwaukee, Office of the Mayor. 2010. News release, Mayor Barrett announces \$36 million in neighborhood stabilization program awards. January 14. Available online at www.ci.mil.wi.us/ImageLibrary/Groups/MayorAuthors/PDFsNewsReleases/2010/011410_NSP_Award_Release.pdf.
- 10 For more information on the Milwaukee Foreclosure Mediation Program, visit their website at <http://law.marquette.edu/foreclosure>.
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- 15 National Low Income Housing Coalition. 2009. News release, Statement on Obama Administration's "homeowner affordability and stability plan." February 19. Available online at www.nlihc.org/detail/article.cfm?article_id=5828&id=48.
- 16 Board Of Governors of the Federal Reserve System, Division of Consumer and Community Affairs. 2009. Information and examination procedures for the "Protecting Tenants at Foreclosure Act of 2009. CA Letter 09-5. July 30. Available online at www.federalreserve.gov/boarddocs/caletters/2009/0905/caltr0905.htm.
- 17 National Housing Conference. 2009. Media release, Statement by Conrad Egan, president and CEO of the National Housing Conference: NHC commissioned industry-wide taskforce outlines "ten key principles" for repairing the U.S. mortgage market and addressing soaring home foreclosure rates. Available online at www.nhc.org/index/News-pr-090909.
- 18 For more information on Burlington Associates in Community Development, LLC, visit their website at: www.burlingtonassociates.com.

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Chicago, IL 60604-1413

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