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REDUCING HOME MORTGAGE FORECLOSURES IN A PREDATORY LENDING ENVIRONMENT: A CASE STUDY OF MID-SIZED CITY IN CENTRAL NEW YORK

Sandra Phillips

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REDUCING HOME MORTGAGE FORECLOSURES IN A PREDATORY LENDING ENVIRONMENT: A CASE STUDY OF A MID-SIZED CITY IN CENTRAL NEW YORK

Sandra Phillips[*]

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INTRODUCTION

As the new millennium was ushered in, home sales exploded. The year 2000 proved to be a banner year for home purchases, and by the end of 2004 more Americans owned homes than at any other time in history.[1] However, this positive momentum soon took a turn for the worse, starting

[*] M.B.A., Ph.D. Assistant Professor, Department of Finance, Whitman School of Management, Syracuse University. The author wishes to acknowledge Kelly Besaw of HomeHeadquarters, Inc. who provided data and the initial framework for the study. Her insight into the problem of predatory lending in Central New York has been invaluable.

1. *See* Peter Coy, *The Housing Bust's Latest Blow; New Research Shows the Recent Jump in the Rate of Homeownership Was Tied Largely to Loose Lending*, BUS. WK., Nov. 5, 2007, at 34; *Homeownership Rates Fall as Mortgages Tighten*, REALTOR MAG., Nov. 2, 2007, http://www.realtor.org/rmodaily.nsf/0/b0143b04b4d5fa8586257387004e1fe8?OpenDocument.

in the summer of 2004, when short-term interest rates rose dramatically.[2] The housing bubble began to burst.[3] Almost immediately, home prices fell,[4] and subsequently home sales have slowed significantly.[5] According to the National Association of Realtors, as of June 2008, existing home sales declined 15.5% over the year before and dropped 2.6% from the previous month.[6] Concurrently, interest rates continued to rise and now many people with variable-rate mortgages are unable to make their mortgage payments.[7] Events such as a housing bubble and burst, plunging home values, declining home sales, and increasing interest rates each has the potential to amplify loan defaults. Further, when combined with nefarious tactics of predatory lenders, loan defaults quickly become mortgage foreclosures.

In areas where predatory lending practices occur, the impact is not only devastating to the families involved but also poses a larger threat to the community as a whole because the homes targeted typically remain vacant for prolonged periods of time and are poorly maintained. Uninhabited homes are breeding grounds for crime, which fosters neighborhood instability, in part because businesses are reluctant to locate to these areas.[8]

Part I of this Article illustrates the common and growing problem of predatory lending, especially in low-income, inner-city, neighborhoods and demonstrates why we should take steps to change current practices. Part II of this Article presents a case study of communities in Syracuse, New York; documents mortgage lending activities and foreclosure patterns in central New York; and reinforces the need for continued education throughout the home-buying process. Although there are a number of studies that focus on predatory lending in large urban areas and one study with a focus on rural communities, this study provides additional novel insight

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2. *See Victimizing the Borrowers: Predatory Lending's Role in the Subprime Mortgage Crisis*, KNOWLEDGE@WHARTON, Feb. 20, 2008, http://knowledge.wharton.upenn.edu/article.cfm?articleid=1901.

3. *See id.*

4. *See id.*

5. *See* News Release, Nat'l Ass'n Realtors, *Existing-Home Sales Down in June* (July 24, 2008), *available at* http://www.realtor.org/press_room/news_releases/2008/07/ehs_down_in_june.

6. *See id.*

7. *See* Press Release, Mortgage Bankers Ass'n, Delinquencies and Foreclosures Increase in Latest MBA National Delinquency Survey (Sept. 5 2008), *available at* http://www.mortgagebankers.org/NewsandMedia/PressCenter/64769.htm; *see also Mortgage Crisis Bailout: Relief for Some, Risk for Others*, KNOWLEDGE@WHARTON, Mar. 5, 2008, http://knowledge.wharton.upenn.edu/article.cfm?articleid=1912.

8. DEBORAH GOLDSTEIN, JOINT CTR. HOUS. STUDIES OF HARVARD UNIV. & NEIGHBORHOOD REINVESTMENT CORP., UNDERSTANDING PREDATORY LENDING: MOVING TOWARD A COMMON DEFINITION AND WORKABLE SOLUTIONS 5, 5-7 (1999), *available at* http://www.jchs.harvard.edu/publications/finance/goldstein_w99-11.pdf.

into this pervasive problem by examining a smaller urban area, and describing a program that reduced foreclosures in low-income urban neighborhoods. Part II also identifies red flags so that those involved in the eradication of predatory lending will be alerted and can take corrective action. Part III discusses recent federal legislation to strengthen mortgage lending guidelines and reduce foreclosures.

I. PREDATORY LENDING: FEATURES AND TACTICS

Predatory lending is a complicated issue currently debated among academics, real estate professionals, legislators, the Federal Reserve, and consumers. Although there is no consensus on a single definition of predatory lending, several common features are recognized. Predatory lending typically entails unfair lending terms and tactics which limit or distort information, and in some instances involve outright deceit and fraud.[9] It strips potential or current homeowners of their most valuable asset and is characterized by pressure tactics, false advertising, exorbitant fees, and inordinately high interest rates.

Predatory lenders usually target vulnerable members of society: women, the elderly, and low-income and minority populations.[10] Although predatory lending occurs more often in the subprime market, it can and does take place in the prime market as well. Perpetrators can be found among mortgage brokers, lenders, home improvement contractors, appraisers, attorneys, and hybrid practitioners.[11]

One common predatory practice occurs when lenders send a replica of a check in the mail with instructions to sign it, return it, and receive $10,000. Or they may sponsor commercials that say: "Bad credit? No problem. We'll give you a loan guaranteed!" The advertisements appeal to people with low income, the elderly, and minorities who either cannot get loans from traditional banks or simply feel they would be turned down by a traditional lender. Loans of this nature are set up for failure. Eventually, the borrower falls behind either on the loan payments or on taxes. When this occurs, the predatory lender will often pay the delinquent amount and, in compensation to itself, raise the customer's monthly payment by hundreds

9. *Id.* at 8-9.

10. Elizabeth Renuart, *An Overview of the Predatory Mortgage Lending Process*, 15 HOUSING POL'Y DEBATE 478 (2004).

11. *See id.*; *see also* U.S. DEP'T OF HOUS. & URBAN DEV. & U.S. DEP'T OF THE TREASURY, CURBING PREDATORY HOME MORTGAGE LENDING 37 (2000).

of dollars.[12] The borrower is faced with payments she can no longer afford and foreclosure proceedings typically ensue.

Another tactic used by predatory lenders is that they will originate a mortgage loan without regard to income, looking instead to the equity in the home to justify making the advance. The reported equity is not based on the fair market value of the property but rather on appraisals that contain an inflated price for the home. The lender will validate making the loan based on the falsely reported asset value. In other instances, the lender will fraudulently change the income reported by the loan applicant, thereby giving the impression that the applicant has sufficient income to meet mortgage payments.[13] At loan closing, since most victims of predatory practices do not have an attorney present, loan terms may be changed on documents to include numerous infractions such as higher-than-agreed-to interest rates, additional fees, balloon payments, mandatory credit insurance, and prepayment penalties.[14] After closing, the high-pressure sales tactics return in an attempt to coerce the borrower to refinance the loan, thereby generating additional interest and fees to the mortgage broker. The opposite may also occur wherein the loan will carry stiff pre-payment penalties making it nearly impossible for the mortgage holder to refinance if interest rates decline.[15]

During loan servicing, mortgage payments may be held in a suspense account before being applied to a customer's account. The result is that the customer's payment is posted as late and the servicer creates additional fee income for itself.[16]

Each of these infractions in isolation is problematic, but in combination, which is often the case, they result in the "mammoth transfer of wealth

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12. CTR. FOR RESPONSIBLE LENDING, UNFAIR AND UNSAFE: HOW COUNTRYWIDE'S IRRESPONISBLE PRACTICES HAVE HARMED BORROWERS AND SHAREHOLDERS 2 (2008) [hereinafter UNFAIR AND UNSAFE], *available at* http://www.responsiblelending.org/pdfs/unfair-and-unsafe-countrywide-white-paper.pdf.

13. *Subprime Mortgage Crisis in California: A Community Hearing to Examine Solutions and Mitigation Efforts: Hearing Before the Cal. Assembly Banking and Finance Comm.*, Informational 2007 Leg. (Cal. 2007) (testimony of Paul Leonard, Cal. Office Director, Ctr. for Responsible Lending); ELLEN SCHLOEMER ET AL., CTR. FOR RESPONSIBLE LENDING, LOSING GROUND: FORECLOSURES IN THE SUBPRIME MARKET AND THEIR COST TO HOMEOWNERS 3 (2006), *available at* www.responsiblelending.org/pdfs/foreclosure-paper-report-2-17.pdf; Kathleen C. Engel & Patricia A. McCoy, *Turning a Blind Eye: Wall Street Finance of Predatory Lending*, 75 FORDHAM L. REV. 2039, 2043-44 (2007); Jonathan L. Entin & Shadya Y. Yazback, *City Governments and Predatory Lending*, 34 FORDHAM URB. L.J. 757, 760-61 (2007).

14. Renuart, *supra* note 10, at 483-84.

15. Engel & McCoy, *supra* note 13, at 2044; Entin & Yazback, *supra* note 13, at 760-61; Renuart *supra* note 10, at 480-87.

16. *See* UNFAIR AND UNSAFE, *supra* note 12, at 7-9; Renuart, *supra* note 10, at 484.

from middle- and lower-income families to the purveyors of debt" and "[t]he result of the equity stripping is that the wealth-building capacity of blacks and Hispanics may be permanently eliminated."[17] The impacts are injurious not just to the current victim but also for future generations. The lost equity can never be recaptured and is certainly not available to be passed on to heirs.

Although academics and community groups have been sounding the alarm for years, regulators and legislators finally stepped in to curb some of the abuses outlined above. On July 15, 2008, the Federal Reserve System ("the Fed") enacted new rules that will apply to all types of mortgage lenders and should lead to more responsible lending in the future. The following is a description of the rules, as detailed by Chairman of the Board of Governors of the U.S. Federal Reserve Ben Bernanke in his semiannual monetary report to Congress:

> The final rules prohibit lenders from making higher-priced loans without due regard for consumers' ability to make the scheduled payments and require lenders to verify the income and assets on which they rely when making the credit decision. Also, for higher-priced loans, lenders now will be required to establish escrow accounts so that property taxes and insurance costs will be included in consumers' regular monthly payments. The final rules also prohibit prepayment penalties for higher-priced loans in cases in which the consumer's payment can increase during the first few years and restrict prepayment penalties on other higher-priced loans Other measures address the coercion of appraisers, servicer practices, and other issues.[18]

If fully implemented, these amendments will greatly diminish the number of home mortgage foreclosures.

II. SYRACUSE CASE STUDY

A. Neighborhood Characteristics/Area Examined

This study examined mortgage lending and foreclosure patterns in one community in Syracuse, New York.[19] Its residents are generally low-

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17. Renuart, *supra* note 10, at 485.

18. *Semiannual Monetary Policy Report to the Congress: Hearing Before the H. Comm. on Financial Servs.*, 110th Cong. (2008) (testimony of Ben S. Bernanke, Chairman, Board of Governors, U.S. Federal Reserve), *available at* http://www.federalreserve.gov/newsevents/testimony/bernanke20080715a.htm; Truth in Lending, 72 Fed. Reg. 44031, 44032 (Aug. 7, 2007) (to be codified at 12 C.F.R. pt. 226).

19. The area investigated consists of the following year 2000 census tracts in the city of Syracuse: 30, 38, 39, 40, 42, 52, 53, 54, 58, and 59. *See* map *infra* app A.

income and the majority are African American. The neighborhood boundaries are clearly defined by a railroad, major streets, Onondaga Creek, and interstate Route 81.[20] This Article will refer to these areas as "SUN" neighborhoods. SUN stands for Syracuse United Neighbors, a grassroots community organization whose goal is to improve conditions by creating safe neighborhoods that attract families.

According to the 2000 census, 24,809 residents inhabited this area in 8,625 homes.[21] This represents a decline of over 6,300 people from the 1990 census, or 20% of the area's population. Thirty-one percent of the homes in SUN's target area were owner-occupied: this figure varied by census tract from a low of 6% to a high of 51%. By comparison, the homeownership rate in the entire city of Syracuse (including SUN neighborhoods) was 40%, while Onondaga County (in which Syracuse is located) had a homeownership rate of 64%; nationwide, the percentage of families who owned their home in 2000 was 66%. The national homeownership rate has consistently declined over the past three years, from a high of 69% in 2004 to 68.1% as of the second quarter of 2008.[22] The expectation is that rates will continue to decline due to the rise in the number of foreclosures and the slumping housing market.

In November 2001, there were 1,103 unoccupied homes in the city of Syracuse, representing a 240% increase in vacancies from the June 1993 total of 324. Although the target area contained only 15% of the city's households, it accounted for 53% of vacant homes (588). Vacant houses contribute to crime, violence and trash build-up. Such negative consequences combine to force responsible neighbors out, and as a result discourage potential investors.

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20. *See infra* app. A.

21. *See* U.S. Census Bureau, Onondaga County, New York by Census Tract (2000), http://factfinder.census.gov (go to "data sets"; go to "Census 2000 Summary File 1 (of 1) 100-Percent Data"; follow Geographic Comparison Tables"; select "County"; select "New York"; select "Onondaga County"; then select "County Census Tract").

22. *See* Press Release, U.S. Census Bureau News, U.S. Dep't of Commerce, Census Bureau Reports on Residential Vacancies and Homeownership, CB08-108 (July 24, 2008), *available at* http://blueprod.ssd.census.gov/hhes/www/housing/hvs/qtr208/files/q208press.pdf.

B. Bank Performance

1. Conventional Mortgage Lending

Regulation C, promulgated under the Home Mortgage Disclosure Act[23] ("HMDA"), requires banks to file an annual report detailing their business activities in communities.[24] Information is readily available on race, income, and residence of borrowers and whether they received or were denied a mortgage loan. Tables 1 and 2 represent lending patterns of the five largest traditional lenders in the city of Syracuse. The HMDA data show an overall pattern of disinvestment in the SUN target area over the four-year period examined.

Table 1. Number of Conventional Mortgage Loans made in SUN's Neighborhoods

Year	M&T	Key Bank	Chase	Fleet	HSBC	Total
1997	16	2	0	0	2	20
1998	6	4	4	0	0	14
1999	6	3	1	0	1	11
2000	2	1	4	1	0	8
Total	30	10	9	1	3	53

Table 2. Number of Conventional Mortgage Loans made in Syracuse in 2000. The "cities" category includes SUN neighborhoods.

Locality	M&T	Key Bank	Chase	Fleet	HSBC	Total
SUN	2	1	4	1	0	8
City	39	92	43	77	23	274
Suburbs	137	282	100	388	105	1,012

Table 1 shows that M&T Bank produced the most loans in SUN's neighborhoods, originating a total of thirty conventional mortgage loans from 1997 to 2000, while Fleet Bank produced the least, with only one loan. Overall, the number of conventional mortgage originations steadily declined in SUN's neighborhoods from twenty loans in 1997, to fourteen in 1998, eleven in 1999 and eight in 2000, ultimately resulting in a 60% drop in three years.

23. Home Mortgage Disclosure Act of 1975, Pub. L. No. 94-200, 89 Stat. 1125 (codifed at 12 U.S.C. § 2501 (2006)).
24. Home Mortgage Disclosure Act (Regulation C), 12 C.F.R. § 203.2(c) (2002).

In 2000, as shown in Table 2, conventional mortgage bank lending by the five largest banks in SUN's census tracts was low compared to mortgage lending in the city of Syracuse and its suburbs. Although SUN's neighborhoods made up 15% of the city's households in the 2000 census, its neighborhoods received 0.6% of the conventional home loans made by the leading traditional lenders in the area.

Moreover, as Table 3 reveals, banks' cumulative loans are very low in SUN neighborhoods. The number of conventional loans by all lenders in SUN's ten census tracts was 207 in 2000; however, there were 2,081 total mortgage loans in the city of Syracuse and 8,058 in the suburbs. Whereas traditional lenders made less than half of all loans in SUN's neighborhoods, they made 75% of the loans in the city and 85% of all loans in the suburbs. This is significant because, as shown in Table 3, when traditional lenders leave an area, subprime and predatory lenders step in to fill the void.

Table 3. 2000 Lender Activity

	Traditional		Subprime		Total
	Loans Made	Market Share	Loans Made	Market Share	
SUN	101	48.79%	106	51.21%	207
City	1,561	75.01%	520	24.99%	2,081
Suburbs	6,838	84.86%	1,220	15.14%	8,058

In addition to low loan originations, the denial rates for racial minorities and residents of the south and near west neighborhoods are high. As shown in Table 4, more than half of all loan applicants in SUN's census tracts were denied conventional mortgage loans. In 1999, 55% of African American, 72% of Hispanic, and 55% of white loan applicants were denied loans. In 2000, 61% of African Americans, 50% of Hispanics, and 49% of whites did not receive conventional mortgages.[25]

25. Home Mortgage Disclosure Act of 1975, 12 U.S.C. § 2801 (2000).

Table 4. Denial Rates by Race and Income in SUN's Territory, 1999 and 2000. Income level for all categories are based on the U.S. Census definition

AFR. AMERICAN	1999		2000	
Income Level	Denied Loans	Denial Rates	Denied Loans	Denial Rates
Low	36	55.38%	38	61.29%
Moderate	44	55.00%	37	63.79%
Middle	24	60.00%	25	65.79%
Upper	8	44.44%	11	47.83%
Total	112	55.17%	111	61.33%
City	256	55.25%	247	47.18%
Suburbs	55	51.00%	49	44.70%
HISPANIC	1999		2000	
Income Level	Denied Loans	Denial Rates	Denied Loans	Denial Rates
Low	6	85.71%	4	50.00%
Moderate	5	71.43%	5	45.45%
Middle	1	50.00%	1	33.33%
Upper	1	50.00%	2	100.00%
Total	13	72.22%	12	57.20%
City	31	70.00%	12	42.30%
Suburbs	9	19.86%	12	27.62%
WHITE	1999		2000	
Income Level	Denied Loans	Denial Rates	Denied Loans	Denial Rates
Low	33	60.00%	15	51.72%
Moderate	33	49.25%	22	51.16%
Middle	20	66.67%	14	50.00%
Upper	11	45.83%	7	36.84%
Total	97	55.11%	58	48.74%
City	541	33.94%	462	30.44%
Suburbs	1,667	26.39%	1,409	24.69%

High rejection rates pose similar risks to individuals and neighborhoods as do low commercial bank loan originations. Smaller governments and civic organizations should pay attention when denial rates are high and traditional lenders leave an area en-masse because these factors serve as red flags that the neighborhood is changing and may be in decline. In such cases, an intervention is necessary so that individuals are not burdened with mortgages, issued by predatory lenders, that they cannot afford.

2. *Subprime Mortgage Lending*

In 1993, subprime loans accounted for 2% of the mortgage loans made in SUN areas—only four loans. However, in 2000, 28 subprime lenders made a total of 106 loans, or 51% of the loan volume in SUN's neighborhoods.[26] This is a concern because these loans tend to have high interest rates and exorbitant fees, making it difficult, if not impossible, for homeowners to make monthly payments based on income.

In a study completed by The National Predatory Lending Task Force, minority status was found to be significantly related to subprime lending, and nationwide, subprime lending was five times higher in predominately black neighborhoods than in predominately white neighborhoods.[27] Another study states that even at upper-income levels, blacks received three times as many subprime loans as their upper-income white counterparts.[28]

The problem with subprime lending is that it increases the likelihood that the loan will result in foreclosure. Elizabeth Renuart posits that in the Chicago area, subprime loans were twenty times more likely to be foreclosed than prime loans.[29] Since predatory loans are more often subprime loans, the impact on foreclosures may be even greater. A study by Anthony Pennington-Cross determined that subprime loans are at least ten times more likely than prime loans to be ninety days or more delinquent, or in foreclosure.[30]

Foreclosure rates are related to property risk and credit quality.[31] The key to successful lending is to place the emphasis on traditional criteria in the evaluation of credit risk.[32] This includes ensuring that borrowers can afford their loan payments (comprising escrows for homeowner's insurance and property taxes) based on income.[33] In addition, an affordable loan should carry a fixed payment, exclude penalties for prepayment, and be based on a legitimate market value for the property. When lenders make loans without regard to income or inflate prices of homes in order to justify making a loan, the borrower is particularly vulnerable to potential loss.

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26. *See supra* tbl.3.

27. Paul S. Calem et al., *Neighborhood Patterns of Subprime Lending: Evidence from Disparate Cities*, 15 HOUSING POL'Y DEBATE 603, 603-22 (2004).

28. Renuart, *supra* note 11, at 477.

29. *Id.* at 478.

30. Anthony Pennington-Cross, *Subprime Lending in the Primary and Secondary Markets*, 13 J. HOUSING RES. 31, 48 (2002).

31. *See* Calem et al., *supra* note 25, at 620.

32. Larry Meeker & Forest Myers, Fed. Reserve Bank of Kansas City, *Community Reinvestment Act Lending: Is it Profitable?*, 1996 FIN. INDUSTRY PERSP. 13, 26, *available at* http://www.kansascityfed.org/PUBLICAT/FIP/prs96-2.pdf.

33. *See* SCHLOEMER ET AL., *supra* note 13, at 32.

According to the Center for Responsible Lending ("CRL"), 7.2 million families hold subprime mortgages and 14.44% of these loans are in default.[34] One in five subprime mortgages made in 2005-2006 is projected to end in foreclosure. Entire neighborhoods have been engulfed by the ravaging effects of foreclosure.[35] The CRL estimates that nationally, homeowners living near foreclosed properties can expect to see their property values decrease by $5000, on average, for a total decline in neighborhood value of $202 billion, affecting 40.6 million homes.[36] The impact on lower-income neighborhoods is deemed to be even higher than the national average, generally estimated at a decrease of over $8,000 in property value.[37]

C. Foreclosure Findings

In the Syracuse community studied, a detailed review of Circuit Court records in Onondaga County was undertaken to assess the number of foreclosures occurring in the community. Kelly Besaw, a community representative, collected foreclosure data from the County Clerk's office documenting addresses, dollar amount of loans, dates of loans, dates of foreclosures, and lending institutions for all properties in SUN's target areas. Ms. Besaw examined each foreclosed property file and tracked the data for this study. Business foreclosures were not evaluated, as the assessment focused on residential foreclosures.

A preliminary study of foreclosures in SUN neighborhoods was conducted beginning with fiscal year 2001, which looked at results from June 1 through December 31, 2001. Data showed that there were a total of seventy-one homes in SUN's target area that suffered foreclosure in seven months of 2001.[38] An examination of these properties showed that thirty-six (53%) were vacant.

D. Education Program Intervention

With this information in hand, SUN convened a meeting with the Onondaga County Clerk, who agreed to fund a pilot program for fiscal year May 2002–April 2003 to reduce the number of foreclosures in the affected area. The Foreclosure Prevention Program ("FPP") was developed in conjunc-

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34. CTR. FOR RESPONSIBLE LENDING, A SNAPSHOT OF THE SUBPRIME MARKET 1 (2007), *available at* http://www.responsiblelending.org/pdfs/snapshot-of-the-subprime-market.pdf.

35. *See id.*

36. CTR. FOR RESPONSIBLE LENDING, SUBPRIME SPILLOVER: FORECLOSURES COST NEIGHBORS $202 BILLION; 40.6 MILLION HOMES LOSE $5,000 ON AVERAGE 1 (2008), *available at* http://www.responsiblelending.org/pdfs/subprime-spillover.pdf.

37. *See id.*

38. *See* infra tbl.4.

tion with a community organization called Home Headquarters ("HHQ"), and consisted of small grant issuance and mortgage default counseling.[39] In the early phase of the pilot program, more emphasis was placed on granting financial assistance to program participants, but the pilot was retooled mid-year to shift its primary focus to counseling.

The FPP had five major components. First, there was counseling, helping homeowners better understand their household finances, the foreclosure process, and related timelines.[40] Included were intensive budget and credit counseling that better prepared the borrower to deal with financial obstacles that might arise in the future. Second, the program assisted borrowers with loss mitigation by employing foreclosure prevention options.[41] Third, HHQ referred clients to other appropriate organizations that provide services or resources to help homeowners stay in their homes, and litigate when appropriate.[42] Fourth, the FPP involved outreach and preventative activities. An FPP specialist would meet and work with community groups to promote education and participation in the program.[43] Lastly, the program provided assistance to homeowners with the completion of eligibility applications for financial assistance.[44] Although this component of the program was de-emphasized, a small number of clients remained in need of financial assistance to keep their mortgage payments current. HHQ expected that the monies loaned would be repaid. In order to receive funding, a recipient had to be a Syracuse resident, and the property in question had to be the borrower's primary residence.[45] In addition, financial assistance recipients were required to meet Housing and Urban Development ("HUD") income guidelines of 80% or lower, their property taxes could not be more than two quarters behind, and borrowers had to contribute at least 25% of the delinquent amount.[46]

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39. NeighborWorks Am., Winning Strategies in the NeighborWorks Network (2004), http://www.nw2.org/WinningStrategies/display.asp?strategy=1296#.

40. NEIGHBORWORKS CTR. FOR FORECLOSURE SOLUTIONS, PRESERVING HOMEOWNERSHIP: ANALYZING THE ELEMENTS OF LEADING FORECLOSURE PREVENTION PROGRAMS 16 (2007) [hereinafter PRESERVING HOMEOWNERSHIP], *available at* http://www.nw.org/network/neighborworksProgs/foreclosuresolution-sOLD/documents/NWO_Preservationfinal.pdf.

41. *Id.* at 17.

42. *See* NeighborWorks Am., *supra* note 39, at 2.

43. *Id.*

44. *See* PRESERVING HOMEOWNERSHIP, *supra* note 40, at 17.

45. *Id.*

46. *See* NeighborWorks Am., *supra* note 39, at 2; *see also* Home Headquarters, Inc., HUD Income Limits, http://www.homehq.org/improvement/hud.html (last visited Mar. 3, 2009).

Once a homeowner was accepted into the program, a counselor was assigned to work with the homeowner to 1) complete a financial analysis and create a budget that would work for the client; 2) repair credit problems; 3) prepare the client for future financial emergencies; 4) negotiate with the mortgage company to make an affordable payment arrangement; and 5) answer questions about the foreclosure process.[47]

After December 2002, a second study was conducted to assess the effectiveness of the FPP. To foster a more accurate analysis, the foreclosure data were selected to compare the same seven months (June through December) of 2001 and 2002 to account for seasonal variations. The results appear in Table 5.

47. HOME HEADQUARTERS INC., FORECLOSURE PREVENTION PROGRAM: PROGRAM DESCRIPTION AND PARTICIPATION PROCESS, http://www.homehq.org/pdf/FP_Program_Description.pdf#zoom=89.a (last visited Mar. 26, 2009).

Table 5. Number of Foreclosures

Month	2001	2002
June	4	12
July	5	3
August	8	13
September	10	7
October	7	16
November	15	3
December	22	8
Total	71	62

Foreclosure patterns comparing the initial pre-FPP period (June–December 2001) with the post-intervention period (June–December 2002) revealed a 12.7% drop overall in the number of foreclosures. The largest decrease took place during the last two months of the year: in November foreclosures declined 80% (from fifteen to three), and in December, 64% (from twenty-two to eight).

A likelihood ratio test was performed to determine whether economic factors (for example, unemployment and poverty rates) contributed to foreclosure findings. Although the results were not statistically significant, there were problems with the analysis including an insufficient number of observations (ten U.S. census tracts in Syracuse's inner city—109 observations) and the short time frame between the two periods.

The pilot program was retooled mid-way through its implementation in October 2002, to emphasize homeowner education. Despite this retooling, there was no noticeable change in economic conditions for the affected area from 2001 to 2002. Therefore, the marked improvement realized in November and December is deemed to be attributable to the FPP counseling program.

With the rapid shift of loans from traditional to subprime lenders, the number of foreclosures will likely increase unless preventative measures are taken. The data show that over a seven-year period, from 1993 to 2000, subprime loans in SUN's census tracts experienced phenomenal growth, from four to 106 loans, an increase of 2,500%. At the same time, lending by conventional operators was negligible, with only eight loans in 2000. More subprime loans often result in more foreclosed loans.

In June 2008, the number of foreclosure filings reported nationwide increased 121% over the previous year, and 14% over the previous quarter.[48] During the same time period, foreclosures in the city of Syracuse rose 155% and 5.75%, respectively.[49] If anticipated increases continue to occur nationwide and in Syracuse, we should expect increases in foreclosures in SUN's communities as well. To safeguard against this prospect, an intervention is crucial. The counseling program implemented in SUN's neighborhoods has shown promising results. During the pilot, foreclosures dropped nearly 13%. Even more dramatic declines (80% and 64%) occurred in the two months following the retooling of the program to provide more homeowner education.

Although the FPP was not funded for 2003-2004, financial support was allocated for fiscal years 2004 and 2005. Data displayed in Table 6 suggest that it was money well spent.

Table 6. FPP Summary. There was no system in place after implementation of FPP to track results by month. Totals in Table 4 (pre fully implemented FPP) were manually recorded.

Fiscal Year	No. Participants	No. Homes Foreclosed
2004-2005	94	12
2005-2006	100	4
2006-2007	102	7

Between May 1, 2004, and April 30, 2005, ninety-four clients attended an initial intake session for the FPP. Forty-eight percent of the lenders were subprime or predatory. With the counseling assistance provided, 44% of the clients were able to keep their homes, resulting in only twelve foreclosures. During fiscal year 2005–2006, the number of clients seeking assistance grew to 100. Fifty-six percent of the lenders involved with these clients were either subprime or predatory. Through early intervention and counseling, of 100 clients interviewed, there were only four foreclosures.[50]

48. Press Release, RealtyTrac Inc., Foreclosure Activity Up 14 Percent in Second Quarter (July 25, 2008), *available at* http://www.realtytrac.com/ContentManagement/pressrelease.aspx?ChannelID=9&ItemID=4891&accnt=64847.

49. *Id.*

50. *See* HOME HEADQUARTERS, INC., ANNUAL REPORT, FORECLOSURE PREVENTION PROGRAM, MAY 1, 2004–APRIL 30, 2005 (2006).

Fiscal year 2006–2007 saw similar positive results, ending the year with a mere seven foreclosures. The FPP in Syracuse has netted consistently positive results and has shown that with each year of implementation, outcomes remain strong. Once the program was fully funded (FY 2004–2005), the number of applicants entering the program increased by over 6% in its first year and the number of homes foreclosures dropped significantly. From 2004–2006 participants experienced foreclosure levels of 13%, 4%, and 7%.[51] The implication is that for the years 2004–2006, 87%, 96%, and 93% of FPP participants were able to remain in their homes.[52] Local leaders should take note of the value of such interventions and should provide adequate funding for such programs so that families and neighborhoods remain intact. The program cost is relatively small ($80,000 to $100,000 per year) compared with the benefits to individuals, neighborhoods and communities. In a December 2006 report completed by the CRL, foreclosures are estimated to have cost homeowners and communities, as much as $164 billion.[53]

III. RECENT FEDERAL LEGISLATION

In an attempt to contain the devastation caused by subprime lending, Congress passed H.R. 3221, the Housing and Economic Recovery Act of 2008, to deal with the mortgage crisis and resultant foreclosures in July 2008.[54] Several components of the bill, signed by President Bush on July 30, 2008, specifically address the needs of struggling homeowners and neighborhoods. Reforms stipulate that under certain conditions, a homeowner facing foreclosure can elect to refinance to a more affordable thirty-year, fixed-rate Federal Housing Administration ("FHA") mortgage.[55] In addition, $180 million has been earmarked for housing counseling and $30 million pledged to help defray legal costs associated with keeping a home.[56] In an effort to decrease the negative impact that vacant buildings have on neighborhoods, $3.9 billion in grants is targeted at communities with the highest foreclosure rates to purchase foreclosed and abandoned properties.[57] While these actions are commendable, implementing finan-

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51. *Id.*

52. *See id.*

53. *See* SCHLOEMER ET AL., *supra* note 13, at 3.

54. Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, 122 Stat. 2654.

55. Melissa Block & John Ydstie, *Housing Bill Would Aid Struggling Homeowners*, NPR, July 23, 2008, www.npr.org/templates/story/story.php?storyID=92836904&ft+1&f=1003.

56. *See* § 2305, 122 Stat. at 2854.

57. *See* Block & Ydstie, *supra* note 55; *see also* 154 CONG. REC. S6354-55 (daily ed. July 7, 2008) (statement of Sen. Dodd).

cial education programs may diminish the need for massive foreclosure prevention policies.

A. Education Is Key

Consumer education is a critical component in the fight against future predatory lending victimization. For example, up to half of all subprime borrowers could have qualified for conventional financing.[58] "[A] lack of financial sophistication may lead borrowers to choose subprime products. This suggests that financial education might be effective in helping people obtain lower-cost credit."[59] Furthermore, failing to provide clients with this information while steering borrowers in minority neighborhoods toward high-cost loans may violate fair lending laws.

Since cities are often unable to take legal action to restrain predatory lending,[60] counseling interventions are all the more important to reduce foreclosures and curb the decay of urban neighborhoods. Kristopher Rengert, the Managing Director of Housing Policy Research at the Fannie Mae Foundation, states that "[e]ducation remains essential to increase the knowledge of both lenders and borrowers."[61] Financial counseling programs at each stage of the mortgage lending process are necessary to prevent the detrimental impacts of imprudent and predatory lending. Players in the mortgage market should be required to disclose all financial products available using financial terms that are clear, concise, and comprehensive so that consumers can make more informed and prudent decisions. Communities must champion financial literacy programs so that homeowners will have a complete understanding of the implications of buying a home. Homeowners must be empowered by becoming knowledgeable about the myriad tactics of unscrupulous lenders. If pre- or post-purchase counseling is not available, evidence suggests that foreclosure-prevention counseling produces positive outcomes for individuals.[62] Community organizations are in the best position to facilitate this process. Legislators must demand that those doing business in their jurisdiction adhere to fair lending laws and treat the citizenry fairly. Otherwise, everyone loses.

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58. Renuart, *supra* note 10, at 475-76.
59. Calem et al., *supra* note 27, at 618.
60. *See* Entin & Yazback, *supra* note 13, at 763-64.
61. Kristopher M. Rengert, *Editor's Introduction*, 15 HOUSING POL'Y DEBATE 449, 450 (2004), *available at* http://content.knowledgeplex.org/kp2/cache/documents/58725.pdf.
62. *See supra* Part II.D.

CONCLUSION

Predatory lending is typically characterized by fraud and abuse, the destructive consequences of which affect not only the victim, but also entire neighborhoods and communities, especially in urban areas. The impact is devastating on many fronts: the individual suffers financial loss and humiliation; inner-city neighborhoods lose out because businesses are reluctant to locate to areas where there is evidence of blight; the city loses a much needed economic injection that results from an improved tax base; and even lenders suffer, who risk facing severe financial loss as they write off unrecoverable loan balances.

The Fed has taken action to close lending loopholes[63] and Congress has implemented policies to aid subprime mortgage holders by allowing them to renegotiate contracts in the hope of stemming the tide of mortgage foreclosures.[64] The plan approved by Congress covers up to $300 billion in mortgages and applies to approximately 400,000 distressed homeowners. Although many homeowners may not be able to benefit from the recent changes, the key to preserving home ownership over the long run is education. The inclusion of financial education and counseling as part of comprehensive housing reform enhances the well being of the nation's citizenry, neighborhoods, and overall economy. At the very least, and for only a nominal expenditure, foreclosure-prevention education can reduce the negative effects of predatory lending so that victims, neighborhoods, and cities are protected. Congress should continue to support such initiatives.

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63. Truth in Lending, 74 Fed. Reg. 5244-01 (Jan. 29, 2009) (to be codified at 12 C.F.R. pt. 226).

64. Housing and Economic Recovery Act of 2008, Pub. L. No. 110-289, § 2402, 112 Stat. 2654, 2855.

APPENDIX A: MAP OF THE SUN AREA OF STUDY.