9-19-2010

Associate Director of the California Reinvestment Coalition, Kevin Stein Written Testimony Before the FCIC

Kevin Stein

September 19, 2010

Financial Crisis Inquiry Commission
Field Hearing, Sacramento, California
September 23, 2010

Re: *Testimony of Kevin Stein of the California Reinvestment Coalition*

Dear Chairman Angelides, Vice Chairman Thomas, and members of the Commission,

My name is Kevin Stein. I am the Associate Director of the California Reinvestment Coalition. CRC thanks the Commission very much for this opportunity to testify and to share our perspective on the causes of the financial crisis.

<u>California Reinvestment Coalition</u>

The California Reinvestment Coalition advocates for the right of low-income communities and communities of color to have fair and equal access to banking and other financial services. CRC has a membership of 280 nonprofit organizations and public agencies across the State.

Over the last decade, CRC has warned financial institutions, regulators, legislators and the public about the dangers of subprime, nontraditional and predatory lending, as well as the devastation resulting from the ensuing failure of banks and other loan servicers to work with homeowners to avoid wide scale foreclosures which have destabilized families and their communities in the Sacramento region and throughout our state.

<u>Cycle of Abuse: From Redlining to Re redlining</u>

CRC believes that bank practices have harmed California communities through a cycle of abuse that began with the redlining of low-income neighborhoods and neighborhoods of color. These neighborhoods, starved for credit, were later flooded with subprime and option ARM loans. Predictably, these communities have been disproportionately impacted by foreclosures. While servicers have generally failed to help homeowners stay in their homes across the board, CRC is concerned that neighborhoods of color and borrowers of color are having greater difficulty in obtaining sustainable loan modifications. Finally, CRC analysis suggests that residents in these neighborhoods are now experiencing a more difficult time accessing new loans, suggesting a potential return to redlining.

While residents of Sacramento and California have suffered as a result of bad banking practices, the banks have managed to suffer few consequences. This dynamic continues, as banks and other servicers continue to make mistakes in foreclosing too quickly on homeowners and denying loan modifications to those who actually qualify for assistance. The only ones to suffer for these mistakes are homeowners and their neighborhoods. There are no consequences for banks' failures to do as they have promised to help working families.

<u>Outline of testimony</u>

At the suggestion of Commission staff, I will focus these remarks on the following:

1. CRC's account and analysis of the type and extent of predatory lending in the Sacramento region and Northern California in the years leading up the crisis
2. The interaction and exchange of information between CRC and the Federal Reserve and other regulators
3. The impact of the financial crisis on communities and families, including foreclosures and the failure to modify loans
4. CRC recommendations

1. <u>CRC's account and analysis of the type and extent of predatory lending in the Sacramento region and Northern California in the years leading up the crisis</u>

What happened? In answer to the question of what happened to instigate the current crisis, CRC has identified a few factors:

- The focus of large banks and Wall Street on short term profit in the form of originating, financing and betting on problematic lending at the expense of community stability, consumer protection, and even safety and soundness,
- Securitization and the home loan financing system which created perverse incentives for all industry players to sell and fund loans, even when that was not in the interest of the consumer,
- The abject failure of the federal and state regulators to crack down on abusive lending when it was flourishing,
- The policies of the Office of Thrift Supervision and Office of the Comptroller of the Currency to preempt the application and enforcement of state and local laws and regulations to federally chartered financial institutions, and
- The failure of policy makers to impose serious consequences and penalties on banks and loan servicers for making and financing abusive loans on the front end, and for proceeding with foreclosures on a broad scale without working in earnest to modify loans and keep families in their homes on the back end.

Problematic Lending, Problematic Lenders

Subprime and option ARM loans saturated California communities, in particular minority neighborhoods, in the early years of this decade. At the apex of the subprime lending frenzy, California had more subprime loans than any other state, and the most option ARMs in the country. Many of these loans were concentrated in neighborhoods of color, came with terms that were difficult for borrowers to understand and repay, and would help plunge the United States and the world into our current financial crisis.

In many cases, borrowers were overburdened not only by the high cost of these loans, but also by other onerous loan terms, such as prepayment penalties that trapped borrowers into unaffordable loans, Yield Spread Premiums that paid brokers more compensation to deliver higher interest rate loans, and exploding Adjustable Rate Mortgages (ARMs) and pay option ARMs which guaranteed that borrowers would later experience extreme payment shock as difficult payments grew dramatically and became impossible to repay.

As one important example, predatory mortgage lending was so systemic **that Sacramento County's largest lender, Countrywide Home Loans, was sued in 2008 by the state Attorney General for engaging in a pattern and practice of defrauding California borrowers into taking out loans they could not afford and did not understand**. The Attorney General complaint alleged that in 2004 the company "set out to double Countrywide's share of the national mortgage market to 30% through a deceptive scheme to mass produce loans for sale on the secondary market," without regard to the ability of borrowers to repay the loans. The Attorney General further alleged that "due to Countrywide's lack of meaningful underwriting guidelines and risk layering, Countrywide's deceptive sales tactics, Countrywide's high pressure sales environment, and the complex nature of its Pay Option and Hybrid ARMs, a large number of Countrywide loans have ended in default and foreclosure, or are headed in that direction."[1]

Two of the largest subprime lenders in Sacramento County during this period were New Century Mortgage and Fremont Investment and Loan. Before filing for bankruptcy, New Century account agents are alleged to have coached loan brokers on how to draw up fake business cards for borrowers getting stated income loans. And a Massachusetts court agreed with that state's Attorney General that many of Fremont Investment & Loan's loans were "presumptively unfair" and should not be allowed to proceed to foreclosure through the normal court process.[2] Fremont Investment & Loan was previously subject to a rare cease and desist order from the FDIC. These are the kinds of loans that are sitting in the Sacramento region and California communities.

Subprime Loans and Fair Lending Issues

CRC analysis of 2005 HMDA data found:

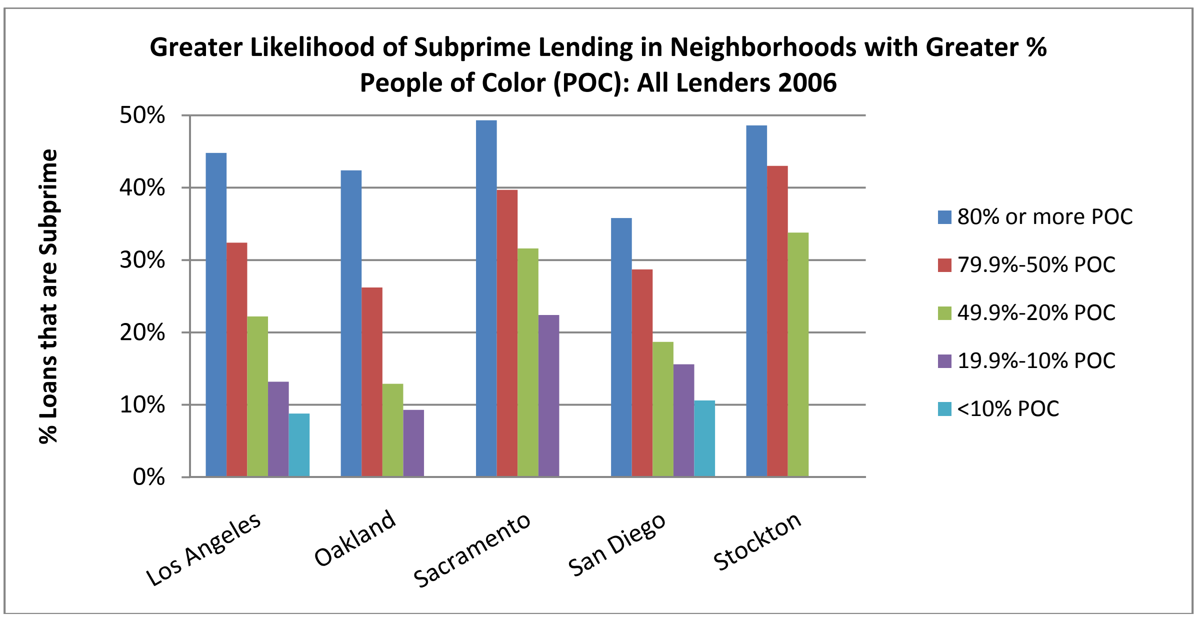
- 573,492 subprime loans were originated that year in California, more than twice the number of subprime loans made in 2004 in our state;

[1] The People of the State of California v. Countrywide Financial Corporation et al, in the Superior Court of the State of California for the County of Los Angeles County, Northwest District, First Amended Complaint for Restitution, Injunctive Relief, Other Equitable Relief, and Civil Penalties, July 17, 2008

[2] See, Commonwealth of Massachusetts v. Fremont Investment & Loan and Fremont General Corporation, Superior Court Civil Action, No. 07.4373-BLS 1.

- The average subprime borrower in California paid over $600 more per month for mortgage payments than the average California prime borrower;
- People of color paid over $1 billion more a year than they would have if they obtained lower cost prime loans at the same rate as white borrowers;
- Statewide, residents of minority neighborhoods were nearly 4 times as likely as residents of white neighborhoods to receive higher-cost home purchase loans;
- Many of these higher-cost loans were made by some of the then largest banking and financial services companies in the world, including: General Electric, Washington Mutual, Countrywide, H&R Block, AIG, and Wells Fargo.
- **In Sacramento, most of the home purchase loans originated to both African American (57.9%) and Latino borrowers (56.3%) were higher cost subprime loans.**
- **In nearby Yuba City in the Sacramento region, over half of all home purchase loans originated to Latino borrowers was subprime (52.4%).**[3]

In looking at lending patterns in 2006, the height of subprime lending and loose underwriting, these patterns are confirmed. In each of five California cities surveyed, subprime lending comprised a greater share of all loans in neighborhoods with a greater percent of residents of color. **In Sacramento and Stockton, for example, nearly 50% of all loans made in neighborhoods of color were subprime.**



[3] See, "Who Really Gets Higher Cost Home Loans," California Reinvestment Coalition, December 2006.

Option ARMs, ARMs, and Low Doc Loans

With a plethora of subprime lenders and problematic brokers located in California, and an affordability crisis that made it hard for borrowers to purchase homes yet lucrative for lenders and brokers to sell loans, conditions were ripe for Californians to be victimized. But subprime lending only tells part of the story in California. While predatory and fraudulent lending helped precipitate the current foreclosure crisis, a wave of a resetting option ARM loans threatens to keep the state immobilized by foreclosure through 2010 and beyond.

Beginning in 2004, the signs were growing that option ARM loans were being sold in much greater numbers to consumers who could not afford and did not understand them. The lending industry began to look to option ARMs as an "affordability product" to enable working class Californians to purchase homes that were really beyond their means. Through comments to federal and state regulators, and through hearings, community groups in the state warned policy makers of the impending crisis that would result from such abusive lending.[4]

Last year, Moody's Investors Service estimated that there was $500 billion in outstanding option ARM loans in the nation and that 54% of outstanding option ARM loans that have been securitized were made to borrowers in California.[5] These loans, subject to the most significant payment shock, are most likely to lead to foreclosure. A report from federal bank regulators noted that "payment option adjustable rate mortgages performed the worst, making up 16% of seriously delinquent loans and 11.9% of foreclosures in process."[6]

Analyzing loan level data collected for investors in securitized mortgage pools[7] sheds some light on the kinds of loans wreaking havoc in our communities.[8] Adjustable Rate Mortgage (ARM loans) impacted a large number of Californians who could not meet resetting and rising payment obligations, triggering our current crisis. Californians were more likely to be stuck with ARM loans than the rest of the country.

For example, over the last few years, sample securitized mortgages in Stockton were much more likely to come with adjustable rates. 71.55% of loans in our sample in Stockton were ARMs, as were 68.45% of loans in Sacramento, compared to 53.51% of all loans in the entire U.S. sample coming with adjustable rates.[9]

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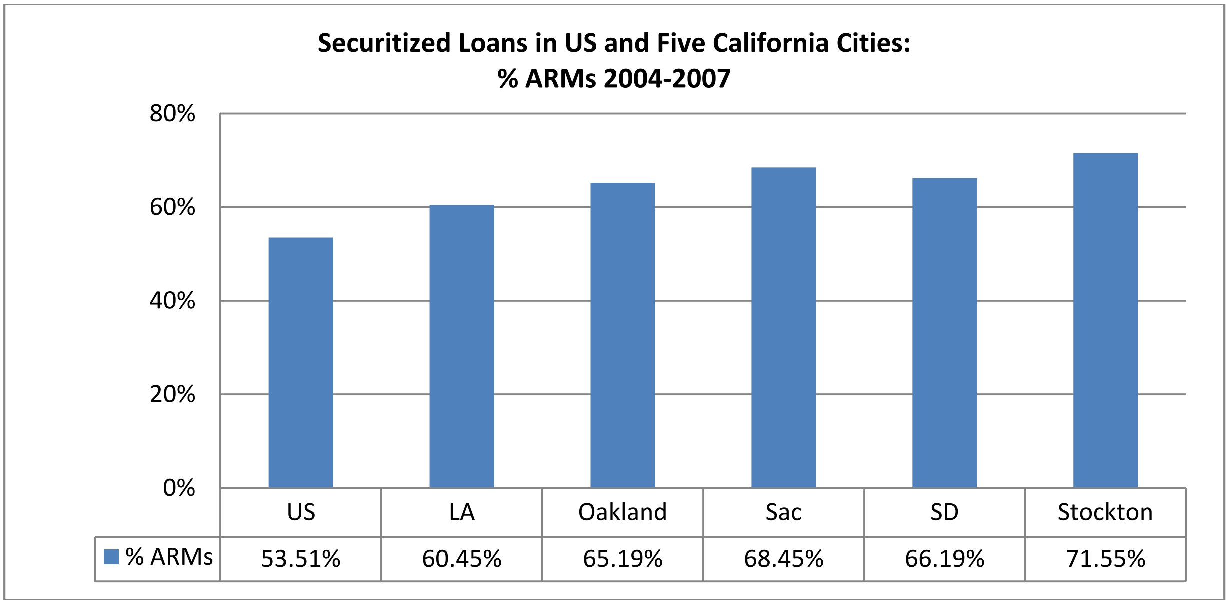
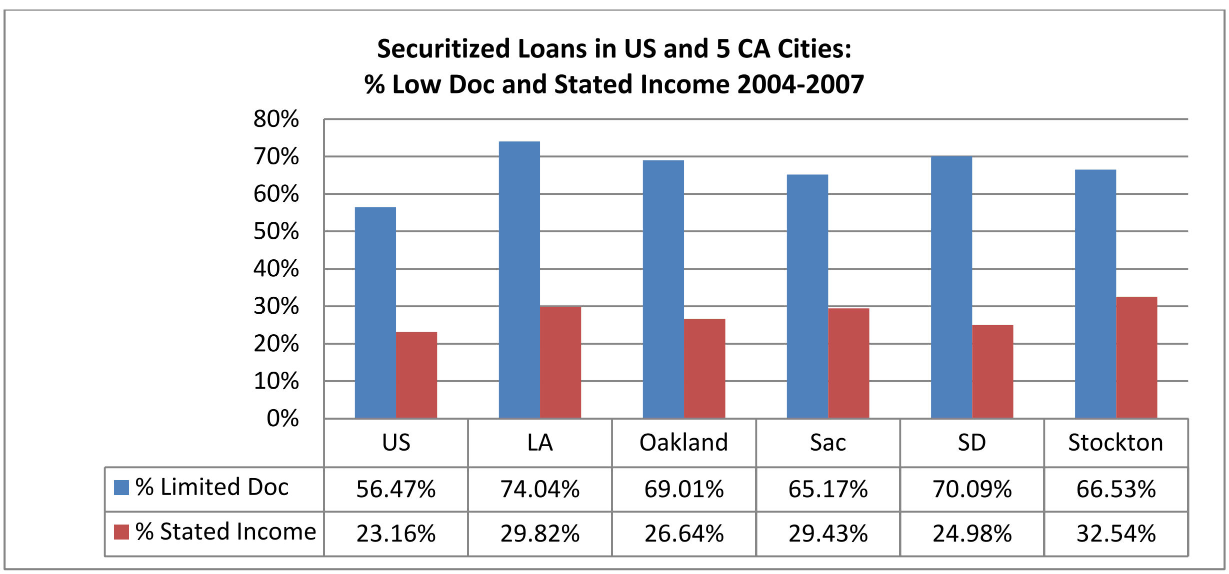
[4] See, for example, Heidi Li and James Zahradka, "Viewpoint: Mortgage Hearing Shows Need for Better Regulation," American Banker, July 7, 2006.
[5] "Conflicts Hinder Option ARM Modifications," Inside B&C Lending, December 18, 2009.
[6] Cheyenne Hopkins, "Housing Markets Still Struggling," American Banker, December 22, 2009
[7] Professor Alan White of Valparaiso Law School has determined that this data set contains more than 3.5 million subprime and alt-A mortgages, including about one-sixth of all foreclosures pending, and about 20% of the monthly total modifications in November 2008. See, "Deleveraging the American Homeowner: The Failure of 2008 Voluntary Mortgage Contract Modifications," Connecticut Law Review, Vol. 41, p. 1107, 2009, Alan M. White, Valparaiso University Law School.
[8] CRC is grateful to PhD candidate Jesus Hernandez for his assistance in analyzing this data.
[9] California Reinvestment Coalition, From Foreclosure to Re Redlining, March 2010.



A similar picture is painted in looking at loans that were not fully documented, allowing brokers and lenders to put borrowers into loans they could not afford. **Over 65% of the loans in the sample from Sacramento and Stockton were subject to limited documentation underwriting, while the figure for the whole U.S. sample was 56.47%.**[10]

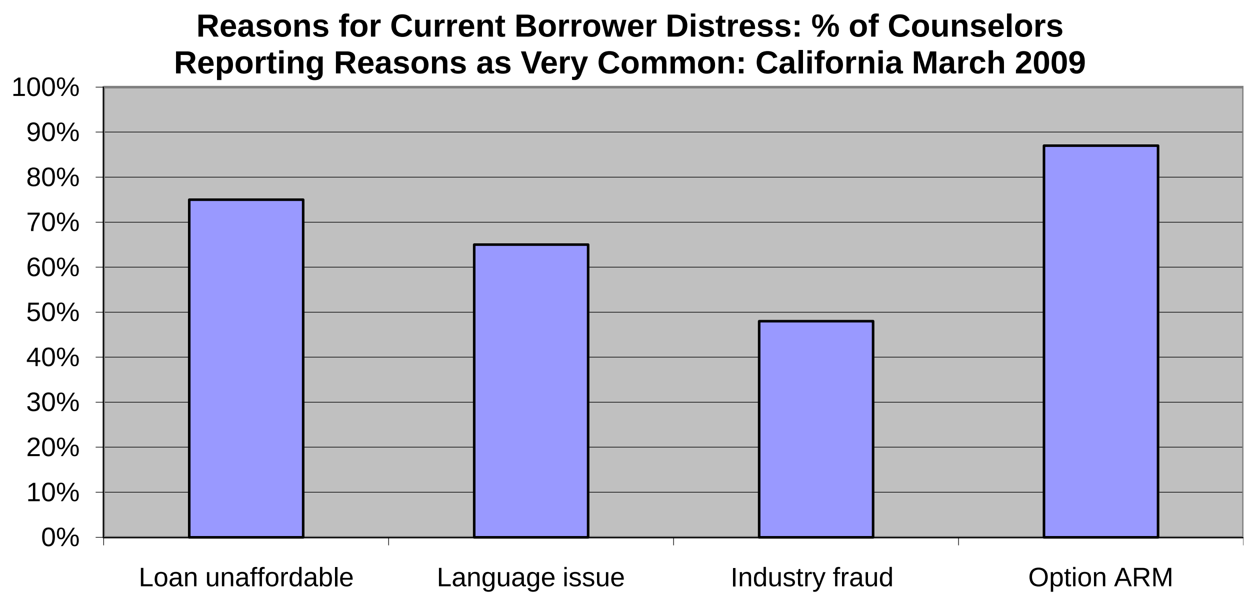
A pernicious subset of limited documentation loans were stated income loans, where lenders did not verify borrowers' income at all. **In Stockton, nearly one-third of loans in the sample were stated income, as were 29.43% of Sacramento loans, compared with 23% for the whole U.S.**[11]



[10] California Reinvestment Coalition, From Foreclosure to Re Redlining, March 2010.
[11] California Reinvestment Coalition, From Foreclosure to Re Redlining, March 2010.

Why would so many low doc loans have been made in California during these years? Perhaps this question was best answered by Bill Dallas, former owner of OwnIt Mortgage Solutions, a subprime lender that was one of the first to go out of business at the end of 2006. "For his part, Mr. Dallas acknowledges that standards were lowered, but he placed the blame at the feet of investors and Wall Street, saying they encouraged Ownit and other subprime lenders to make riskier loans to keep the pipeline of mortgage securities well supplied. 'The market is paying me to do a no-income-verification loan more than it is paying me to do the full documentation loans,' he said. 'What would you do?'"[12]

Additional data about problematic lending has been gleaned from an unlikely source as the effects of these bad loans became evident, and as borrowers in distress started pouring into the offices of nonprofit housing counseling agencies. Statewide, nonprofit housing counselors reported that borrowers in distress in 2009 were likely to have been suffering from option ARMs, unaffordable loans, language barriers and/or industry fraud.



2. <u>The interaction and exchange of information between CRC and the Federal Reserve and other regulators</u>

CRC and its members witnessed the expansion of subprime and predatory lending in local communities over the last few years and advocated for financial institutions, regulators and policy makers to address these challenges before communities were further impacted. CRC communicated its concerns to regulators and lenders in a number of ways this decade.

[12] Vikas Bajaj and Christine Haughney, "Tremors at the Door," New York Times, January 26, 2007.

Research reports – CRC has issued a number of research reports on mortgage lending, financing and servicing issues, and has submitted these to the regulatory agencies. Relevant research included one survey of over 100 subprime borrowers in 2000 and 2001 that highlighted predatory lending practices such as bait and switch tactics, excessive points and fees, prepayment penalties, and fair lending concerns. Five annual reports were developed analyzing HMDA data in California cities from 2002 to 2006 showing clear lending disparities, including by bank affiliates, and calling for the Federal Reserve to investigate subprime subsidiaries of bank holding companies. Four additional HMDA reports have been prepared with national allies looking at the impact of subprime lending and restricted access to prime credit in 7 jurisdictions throughout the country from 2007 through 2010. One of these reports focused on disparities within bank holding company lending channels, and another focused on the concentration of high risk loans by high risk lenders in neighborhoods of color. CRC has also conducted HMDA analysis for cities and counties looking to develop Analysis to Impediments (AI) Plans to secure federal funding. Finally, CRC has implemented 6 surveys of nonprofit housing counseling agencies in the state regarding the failures of loan servicers to help families avoid foreclosure. These reports have been widely distributed and made available to the federal banking regulators.

Comment letters – Since 2000, CRC has submitted well over 20 comment letters to federal regulatory agencies on a variety of issues relating to bank practices, some of which would ultimately lead to the foreclosure and financial crisis we are now experiencing. Such comments were submitted as part of formal rule making processes relating to the Home Ownership and Equity Protection Act, the Home Mortgage Disclosure Act, the Truth in Lending Act, the Community Reinvestment Act, the Real Estate Settlement Procedures Act, the Alternative Mortgage Transaction Parity Act, as well as guidance relating to nontraditional and subprime loans, the financing of predatory loans, and preemption. In these comments, CRC repeatedly argued against preemption’s dilution of state power to regulate bad actors, called for greater scrutiny and regulation of predatory lending practices and provisions, and fair lending enforcement.

Comments on bank mergers and examinations – CRC also exercised its right to comment to federal bank regulators on several mergers and CRA exams during this time, often raising concerns about fair lending and the disproportionate impact of subprime lending on people and communities of color, as well as the failure of banks to develop predatory screens to stop financing of predatory loans on the secondary market.

Meetings with regulators – CRC has met directly with top officials at the four banking regulatory agencies annually for most of the past decade. During that time, CRC and its members have raised concerns about predatory lending, fair lending, abuse of immigrant and ESL consumers, and the need for the Federal Reserve to examine subsidiaries of bank holding companies and prohibit certain abusive practices as unfair and deceptive. CRC also urged the OCC to re evaluate its aggressive stance on preemption which has served to weaken protections for consumers. CRC urged the OCC and OTS to change overly narrow interpretations of the

CRA so that community reinvestment and fair lending exams would reach the practices of non-bank banks such as Countrywide and H&R Block.

3. Impact of the crisis on communities and families

There can be little doubt that the Sacramento region and California have been particularly hard hit by the current foreclosure crisis. Last week, Realtytrac confirmed that seven California metro areas were again among the top 10 most impacted communities in the nation. The list included **Sacramento at #10**, and communities in neighboring and nearby counties, including **Modesto (#2), Stockton (#3), Merced (#6) and Vallejo-Fairfield (#9)**. Realtytrac estimates that 20% of all U.S. foreclosure activity is occurring in California, and that California saw nearly 70,000 foreclosure filings in August.[13]

But the monthly foreclosure numbers only hint at the much broader impact that this crisis is having on the region and state, namely the rise in tenant evictions, small business closures, job losses and homelessness. As foreclosures rise, more and more children are forced to switch to new schools, vacant properties invite nuisance and criminal activity in communities, neighboring property values decline which pushes other families closer to foreclosure, local governments are able to collect less in much needed tax revenue, and city services and safety net assistance are further stressed.

Too Many Foreclosures, Disproportionate Impact

Disproportionate and targeted subprime and risky lending resulted in a devastating concentration of foreclosures in communities throughout the state. The impacts of foreclosure are profound and broad. The foreclosure crisis has created one of the greatest losses of personal and neighborhood wealth in U.S. history. The NAACP has noted that communities of color could lose $213 billion as a result of subprime lending and foreclosure.[14]

The link between high-risk lending and foreclosure is clear. Researchers from the Federal Reserve Bank of San Francisco confirmed that African Americans and Latinos in California had less access to federally regulated bank lenders and greater access to mortgage brokers and independent mortgage companies, and that these mortgage market channels played an important role in the likelihood of receiving a riskier loan product. No wonder that the default rate for African American and Latino homeowners in that study was more than twice that of whites, and that approximately two-thirds of all foreclosures in California have been among African American, Latino and Asian American borrowers.[15]

CRC analysis of five survey cities found that foreclosure activity was disproportionately taking place in neighborhoods of color. Looking at Bank Owned or REO foreclosures recorded in 2008

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[13] Realtytrac, "Foreclosure Activity Increases 4% in August," September 16, 2010, available at http://www.realtytrac.com/content/press-releases/foreclosure-activity-increases-4-percent-in-august-6041. Other California metro areas rounding out the top 10 include: Riverside-San Bernardino-Ontario at No. 7, and Bakersfield at No. 8.

[14] Washington Bureau NAACP, "NAACP Legislative Priorities for the 111th Congress (2009-2010),"

[15] Carolina Reid and Elizabeth Laderman (2009), "The Untold Costs of Subprime Lending: Examining the Links among Higher-Priced Lending, Foreclosures and Race in California," presented at the Greenlining Homeownership Forum, San Francisco, May 5, 2009

by zip code in each city, neighborhoods of color suffered a larger percentage of citywide foreclosures than their share of all housing units in each of the five survey cities.

Too Few Modifications

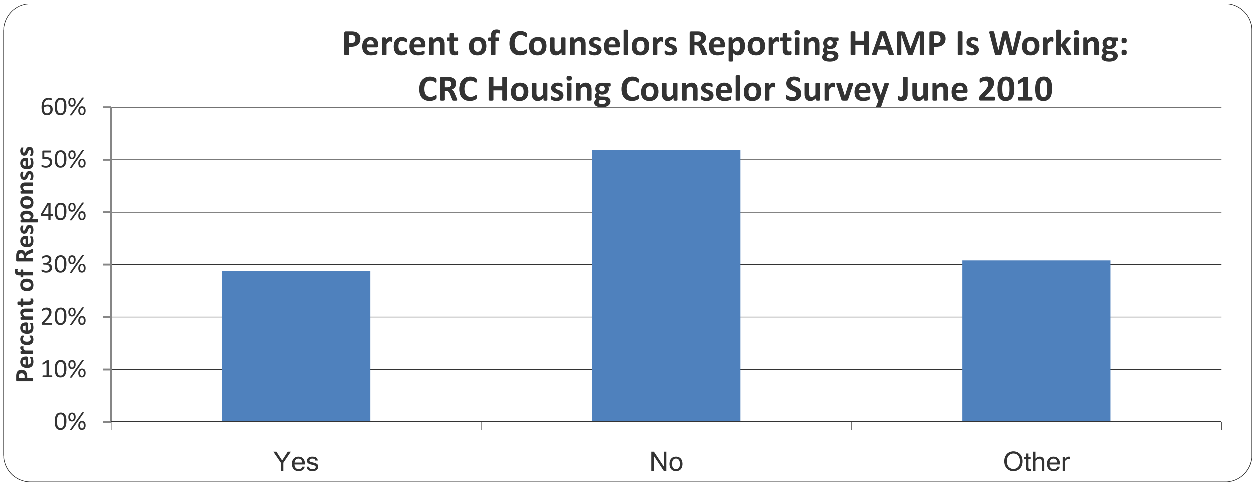
Loan servicers and trustees on pools of mortgage loans have failed struggling borrowers and their communities. Despite all of the pledges of aid, industry initiatives and government programs, the bottom line is that loan servicers are not required to help anyone avoid foreclosure. Indeed, it seems that it is in their interest not to do so.[16]

Data on loan modifications is sparse at best. As the rosy pictures painted by HOPE NOW press releases revealed a large disconnect with the experience of nonprofit housing counselors, CRC endeavored to survey the housing counselors to find out which servicers were actually helping borrowers and which were not. CRC and the housing counselors in California have released six such reports, titled "The Chasm Between Words and Deeds."[17] Approximately 40 counseling agencies seeing over 10,000 consumers in California a month would respond to these surveys. These reports routinely showed that loan modifications were not happening. In the first five reports, the #1 outcome reported by housing counselors for their borrower clients was foreclosure.

HAMP is not working. In the most recent survey released in July of 2010, most of the counselors surveyed state that the federal HAMP is not working. While some counseling agencies report incremental progress in terms of servicer compliance with HAMP, this sixth survey reflects a growing frustration with the pace of servicer performance and the lack of accountability in the system.

Counselor complaints fall into three broad categories: 1) HAMP is too limited in what it set out to do, and doesn't cover enough borrowers; 2) HAMP is not being followed by the servicers; and 3) The Treasury Department is not enforcing HAMP and there are no consequences for servicer failures.

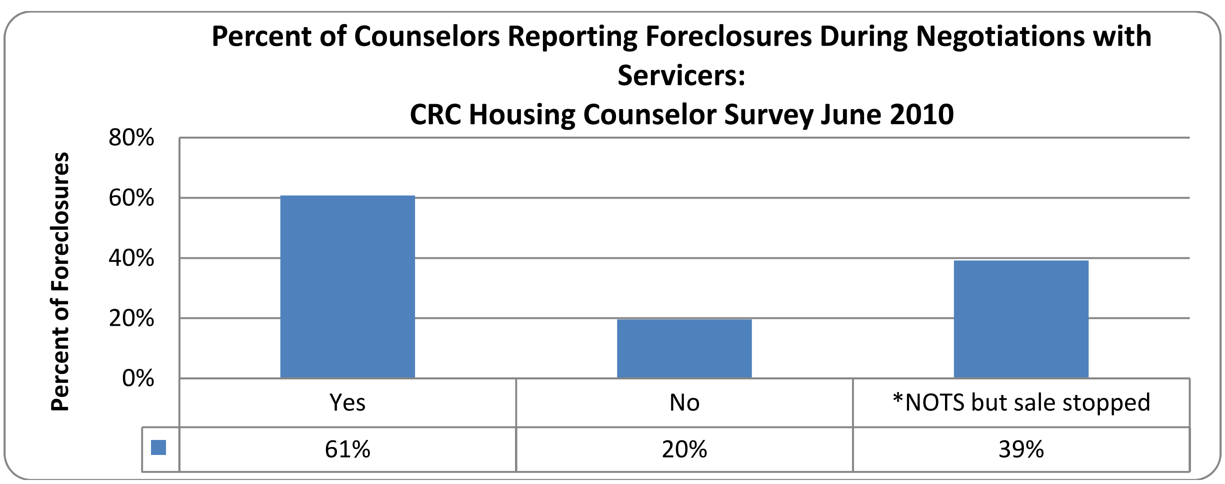
[16] See for example, Peter Goodman, "Lucrative Fees May Deter Efforts to Alter Troubled Loans," New York Times, July 29, 2009 (noting that by pushing borrowers to delinquency and then leaving them there, servicers can collect significant fees), and Renae Merle, "Foreclosures Are Often In Lenders' Best Interest: Numbers Work Against Government Efforts to Help Homeowners," The Washington Post, July 28, 2009 (citing a study that posited that one category of borrowers will get caught up on payments and therefore not need a loan modification, and that another category of borrower will never get caught up, even with a modification).
[17] Available at www.calreinvest.org



Foreclosures during negotiations. Given the complexity of both the foreclosure process and HAMP, there is ample opportunity for errors to occur. But HAMP appears to be failing at the most basic level, as servicers are unable or unwilling to prevent foreclosures from occurring while borrowers are in the midst of trying to secure a loan modification with them.

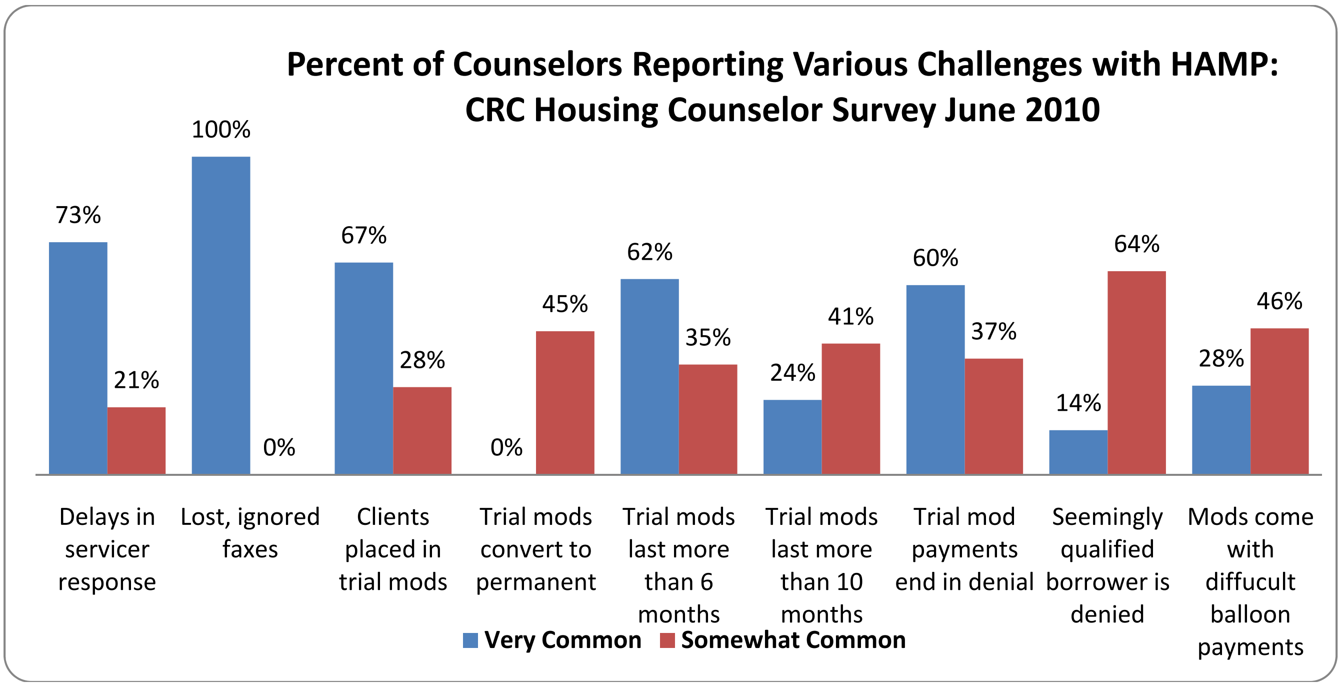
Over 60% of housing counselors responded that they have had clients who suffered foreclosure while negotiating with their loan servicer. Nearly 40% of responding counselors noted they were able to help stop a scheduled sale of a home for a borrower who was already working with the loan servicer. A number of counselors replied both that clients had lost their homes AND that they were able to stop such sales. Only 20% of respondents said they had not seen this problem of foreclosure while negotiating.

But as with all aspects of current foreclosure prevention policy, 100 percent of the consequences for servicer error fall on struggling homeowners. Borrowers who have done everything right in reaching out to their servicer, providing all requested documents and negotiating in good faith have still lost their homes.



HAMP challenges. Counselors responded unanimously to only one question in this survey: 100% said that it is very common for servicers to request documents that the counselors had already submitted. On its own, this is extremely frustrating, is indicative of the systemic problems with servicer operations, and it results in a huge drain on the limited resources of housing counseling agencies and borrowers alike.

But combined with the fact that 78% of counselors said it is also very common for servicers to deny loan modifications because they claim not to have received all borrower documents and we have to question the validity of servicer modification denials. A recent Treasury report on HAMP progress also cites incomplete documentation as a major cause of trial modifications.[18]



Poor outcomes. This is the first survey in which foreclosure is not identified as the most common outcome. Instead, borrowers stuck in trial modifications is the most common status reported. For many borrowers, the trial modification period has lasted six months, nine months, or longer.

And the low conversion rate of trial modifications to permanent ones suggests that many of these borrowers currently in trial modifications will eventually fall into foreclosure. As of the end of May 2010, servicers had converted only 347,000 temporary modifications (31% of the total

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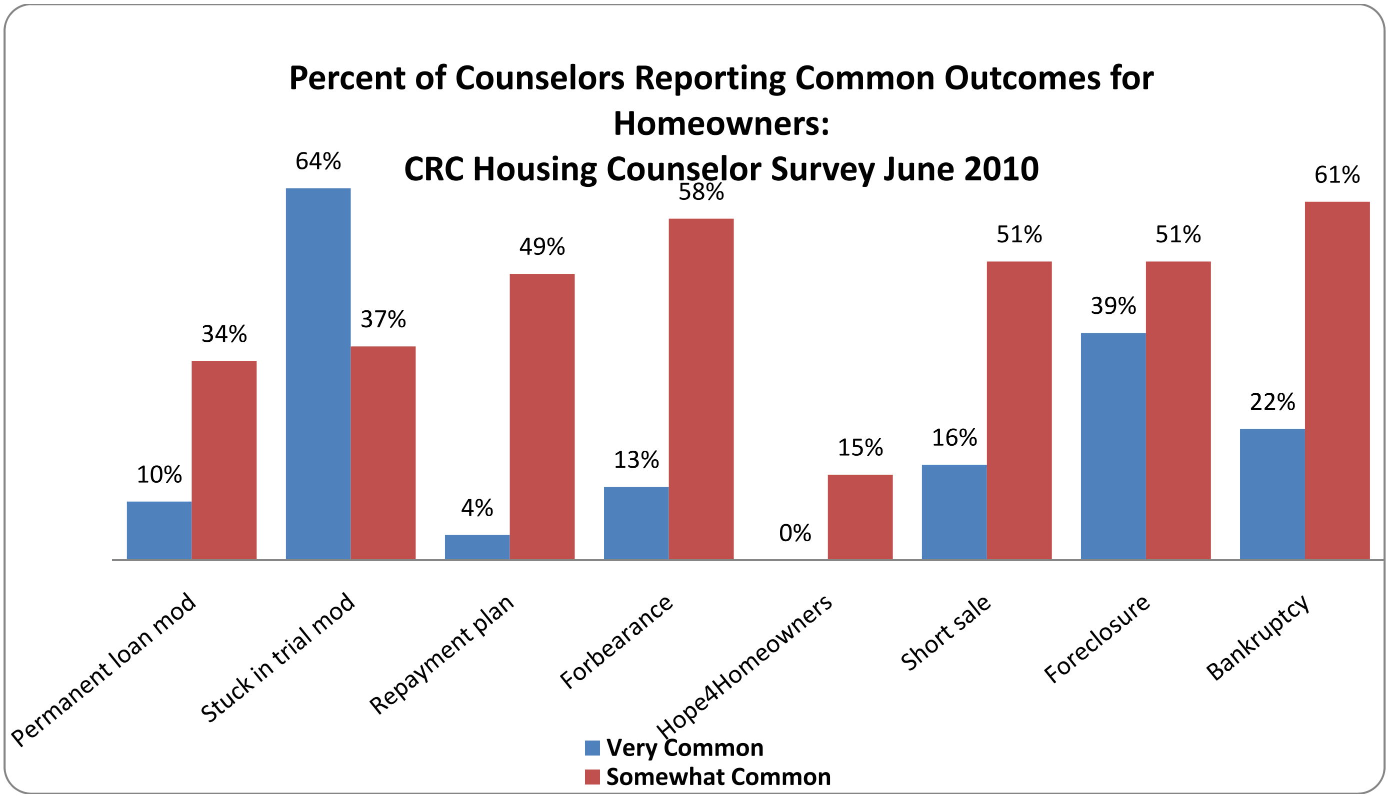
[18] "The most common causes of cancellations include incomplete documentation, missed trial payments, or mortgage payments already less than 31% of homeowner's income." Department of the Treasury, "Making Home Affordable Program: Servicer Performance Report Through June 2010," July 20, 2010, p. 1.

eligible) to permanent status, while 430,000 trial modifications had been cancelled.[19] In addition, as servicers focused on conversions, the number of new trial modifications declined.

After trial modifications, the second most common outcome for borrowers cited by responding counselors was foreclosure. Only 10% of counselors reported permanent loan modifications to be very common, and a whopping 56% said permanent loan modifications were not common.

The chart below reflects the percentage of responding counselors who reported one or more outcomes as very common, somewhat common, or not common. Unfortunately, it is likely that the experience of the majority of borrowers who are unable to secure the assistance of a nonprofit housing counselor is worse than the results reported here.



Low loan mod ratios. Analyzing loan level data collected for investors in securitized mortgage pools[20] sheds additional light on impact of servicer non responsiveness on communities.[21] Reviewing loan modifications and REOs over a 12-month period reveals that California cities experienced fewer loan modifications per number of foreclosed loans than the U.S. as a whole, for our large sample of securitized loans.

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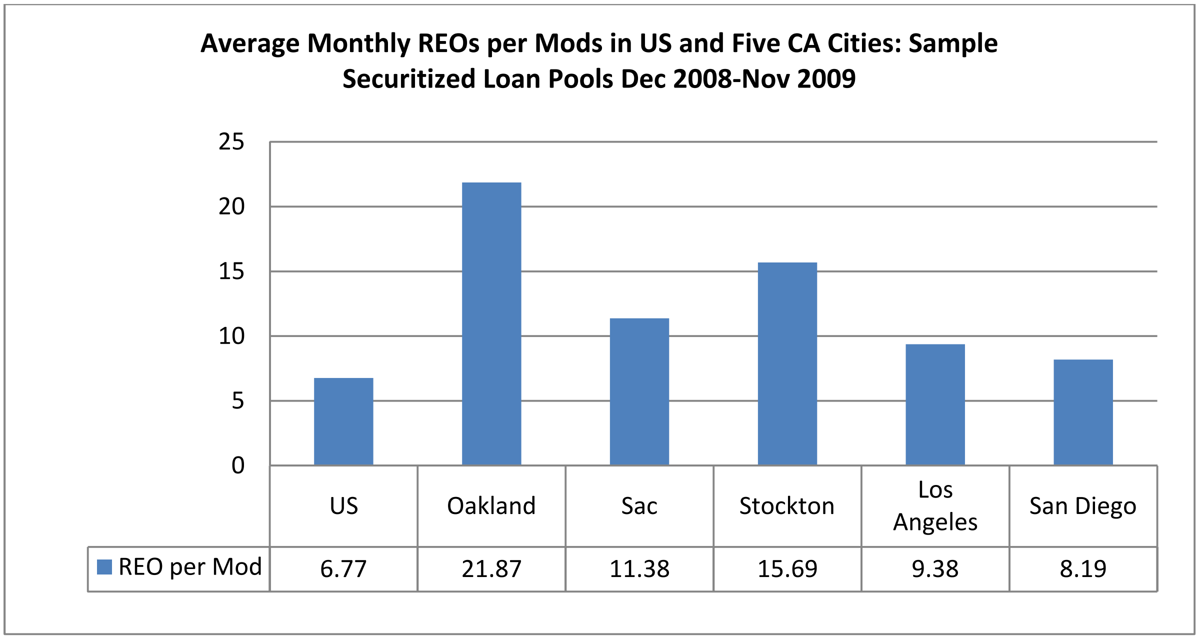
[19] United States Government Accountability Office, “Troubled Asset Relief Program: Further Actions Needed to Fully and Equitably Implement Foreclosure Mitigation Programs,” June 2010, p. 10.

[20] Professor Alan White of Valparaiso Law School has determined that this data set contains more than 3.5 million subprime and alt-A mortgages, including about one-sixth of all foreclosures pending, and about 20% of the monthly total modifications in November 2008. See, “Deleveraging the American Homeowner: The Failure of 2008 Voluntary Mortgage Contract Modifications,” Connecticut Law Review, Vol. 41, p. 1107, 2009, Alan M. White, Valparaiso University Law School.

[21] CRC is grateful to PhD candidate Jesus Hernandez for his assistance in analyzing this data.

In Sacramento for example, there were an average of 15.69 foreclosed properties per month for every loan modification made per month in the sample, compared to only 6.77 for the U.S. as a whole. In other words, during any month in 2009, Sacramento had nearly 16 properties in foreclosure for each loan modification made per month, or 9 more properties in foreclosure for every loan modification made per month than the U.S. rate. In each of the California cities surveyed, the ratio of properties in foreclosure status to loan modifications made per month was worse than for the U.S. as a whole.



Additionally, anecdotal evidence suggests that borrowers are not being treated equally. In a March 2009 survey by the California Reinvestment Coalition, two-thirds of housing counselors reported that they believed borrowers of color were receiving worse foreclosure prevention outcomes than white borrowers. Counselors were not certain why this was the case, though a majority of respondents cited language issues as a possible factor.[22] These results were confirmed in a more recent survey of housing counselors conducted in May and June of 2010.

Similarly, the National Community Reinvestment Coalition (NCRC) surveyed homeowners seeking loan modifications and found that the foreclosure process was quicker for African American borrowers than white borrowers, and that white HAMP-eligible borrowers were more likely to receive a loan modification than African American and Latino HAMP-eligible borrowers.[23]

The Treasury Department is to be commended for collecting detailed race and ethnicity data from servicers,[24] but should make this data public and aggressively pursue fair lending violations to ensure that tax payer funds affirmatively further fair housing.

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[22] California Reinvestment Coalition, "The Ongoing Chasm Between Words and Deeds V: Abusive Practices Continue to Harm Borrowers and Communities in California," March 2009.
[23] National Community Reinvestment Coalition, "HAMP Mortgage Modification Survey 2010," Washington, D.C., 2010.
[24] Home Affordable Modification Program FAQs, P. Government Monitoring Data ("Servicers must request

Difficulty Accessing New Loans

In giving TARP funds to the largest financial institutions, the Treasury Department stated it was limiting capital injections from the Capital Purchase Program (CPP) to healthy institutions so that they could turn around and modify home loans and lend again to homeowners and small business starving for credit.

While banks returned to profitability having received assistance from Main Street taxpayers, Main Street communities continue to face a wall when seeking loans. From October 2008 to September 2009, lending by the largest 20 banks in the CPP decreased by 13.7%.[25] Lending by the biggest four banks decreased by 15% from April to October.[26]

Mortgage lending in 2008 fell for everyone, but even more so for borrowers of color who saw nearly double the rejection rates of whites. With the recession dampening the market and the credit freeze shutting out many new homebuyers, neighborhoods ravaged by foreclosures are becoming increasingly vulnerable to another wave of real estate speculation. In some areas of the country, private investors are snapping up bargain-basement properties by the hundreds for flipping, rental, or other "rent-to-own" schemes.[27]

For neighborhoods of color that have experienced the cycle of predatory lending, concentrated foreclosures and evictions, restrictions to fair financial access and barriers to creditworthy borrowers mean that rebuilding and revitalizing will not happen in the interest of the communities that lived there.

Neighborhoods of color, often those most in need of access to credit in light of the devastating effects of subprime lending and foreclosures, saw a dramatic DECREASE in PRIME loans in 2008. The drop off from 2006 to 2008 is stunning.

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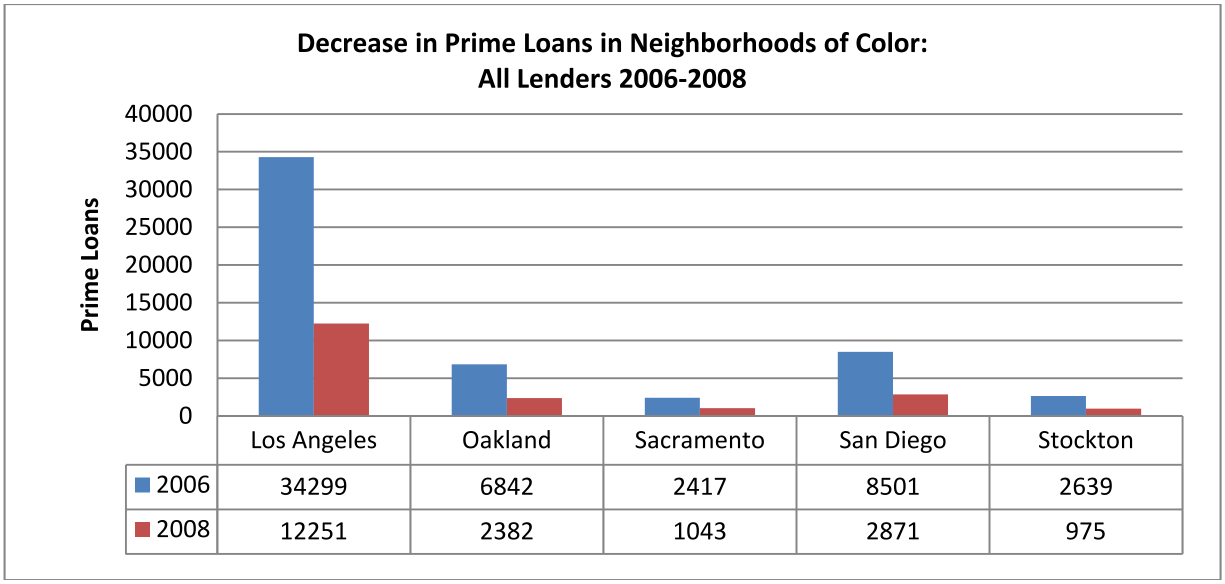
information regarding the race, sex, and ethnicity (Government Monitoring Data) of any borrower (including any co borrower) who seeks a modification under HAMP), Q.84, p. 21, at www.makinghomeaffordable.gov.

[25] Congressional Oversight Panel December Oversight Report, "Taking Stock: What Has the Troubled Asset Relief Program Achieved," December 9, 2009, p. 38

[26] Shahien Nasiripour, "Nation's 4 Biggest Banks Cut Business Lending by $100 Billion Since April," Huffington Post, January 2, 2010, first posted December 16, 2009.

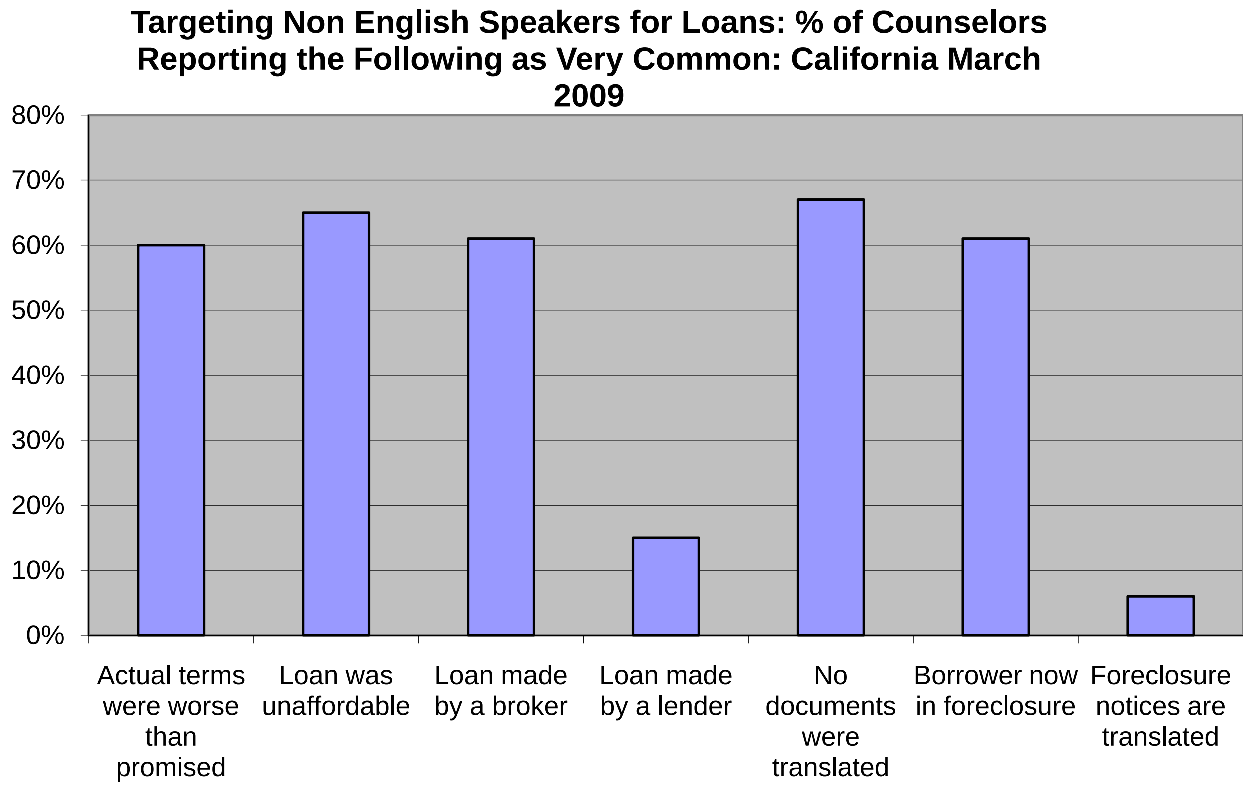
[27] "There Goes the Neighborhood," by Alyssa Katz, The American Prospect, 9/10/09



While lending decreased dramatically from 2006 to 2008 in all neighborhoods, lenders were even LESS likely to offer prime loans in neighborhoods of color. The distribution of prime lending has shifted during this time so that a lower percentage of prime loans originated in 2008 were made in neighborhoods of color than was the case in 2006. This was true for all five survey cities. In other words, the decrease in lower-cost prime lending in 2008 was more pronounced and disproportionately felt in neighborhoods of color.

Language Access. As noted above, fair lending concerns permeate throughout our analysis of subprime lending concentration, foreclosures, loan modifications, and access to new credit. One subset of this concern centers on issues of language access. Limited English Proficient (LEP) consumers have long been particularly vulnerable to pernicious industry practices. Nowhere is this more plainly and painfully seen than in the mortgage context.

For several years, CRC and our members have tried to lift up this problem in the hopes that industry, regulatory and policy making participants would address it. CRC and allies have raised this issue repeatedly in meetings with financial institutions, in legislative efforts in Sacramento, and in regulatory filings with the Federal Reserve. Memorably, several advocates and consumers testified directly to this issue in the summer of 2006 when the Federal Reserve convened HOEPA hearings in San Francisco. At the hearing, consumers testified to being sold option ARM loans in their primary, non English language, only to be pressured to sign English only documents with significantly worse terms. Some consumers testified to be unable to make their initial payments when they realized their loan documents called for them to make higher monthly payments than they were promised by their broker. A few months after this testimony, the media began to report a new problem of "Early Payment Defaults," borrowers who were defaulting on loans within the first few months of origination. A few months later, subprime lenders started to go out of business as too many of their loans went bad and they became unable to buy-back these loans that their Wall Street benefactors had up to then been craving.



Tenants. Another compelling issue not discussed enough is the impact of the foreclosure crisis on tenants living in properties that go into foreclosure. Often a tenant's first effective notice that something is wrong is when the water stops working, or the electricity is shut off because the landlord has stopped paying for utilities. Tenants are then often forced off of the property by real estate agents hired by national banks to clear out the property.

Tenants Together, California's statewide organization for renter's rights, estimates that over 37% of all residential units in foreclosure in California are rentals, and that over 200,000 tenants in California were impacted by a foreclosure crisis they had nothing to do with.[28] Renters are facing utility shut-offs, eviction, loss of security deposits, and other related problems when their homes go into foreclosure because their landlords fail to pay the mortgage. Due to loopholes in tenant protection laws and lax enforcement of existing laws, renters are living through nightmare situations - even basic rights like the right to running water cannot be taken for granted by renters in foreclosed properties. Banks routinely evict all renters after foreclosure.

Aside from uprooting families with little notice and few prospects to relocate, eviction also makes little sense for the new owners of the property – the investors on the original mortgage that went into foreclosure. National banks acting as trustees on large pools of securitized

[28] Gabe Treves, "2010 Report: California Renters in the Foreclosure Crisis," Tenants Together, May 2010.

subprime and option ARM loans are now bringing foreclosure and eviction actions to clear out properties on behalf of investors who would be better served by allowing the tenants to remain in the property. For one, considerable rental income is being relinquished when trustees and servicers choose to force out good tenants. One estimate suggests that servicers in California could have collected $1 billion in rental income had they leased out to tenants all of the rental units that went through foreclosure in 2008, charging market-rate rents.[29] Further, tenants living in otherwise vacant properties can maintain the properties and prevent blight, discourage gang and criminal activity from moving in, and create a better value for a property the investor wishes to sell. Even industry groups are starting to recognize this.[30]

Tenants Together estimates that in 2009, in Sacramento County, 5,096 out of 13,809 foreclosed units were rentals, and that 13,791 renters were affected.[31]

While much of the abuse of tenants in REO properties may be at the hands of realtors hired by banks and eager to earn commissions selling the homes, the ultimate responsibility for illegal evictions rests with the large loan servicers and the national bank trustees who have not exercised sufficient due diligence and oversight over their agents to ensure that the rights of tenants are respected.

CRC and Tenants Together have raised this issue with the Office of the Comptroller of the Currency and Federal Reserve Board, and with the larger bank servicers and trustees. To date, not one institution has demonstrated a clear plan and commitment to ensure that federal, state and local tenant protections are respected. Nor has any institution expressed yet a willingness to develop policies that favor keeping tenant families in their homes and keeping REO properties occupied by allowing tenants to continue renting, even if the law would permit them to evict.

<u>Recommendations</u>

CRC believes that the Commission should move to support the following recommendations as a way to move policy forward and allow millions of working families and their neighborhoods to recover from the negligent acts of financial institutions and regulators:

- Transparency – A lack of transparency enabled the subprime and foreclosure crises. Going forward, we need to promote transparency to shed light on industry practices with the goal of encouraging more equitable policies and practices.
    - The Treasury Department should release all data it is collecting under the HAMP program, including data regarding the race and ethnicity of all HAMP borrowers, to ensure that the HAMP program is affirmatively furthering fair housing and not allowing for unfair or discriminatory results.

[29] Ari Levy and Dan Levy, "California Foreclosures Jeopardize Renters are Banks Seize Homes," Bloomberg, April 6, 2009.
[30] Jennifer Harmon, "Tenants Maintain Homes," Mortgage Servicing News, June 2009 (quoting Gerald Alt as saying, "Having a responsible tenant is the better choice in keeping these properties safe and secure and in good shape while the lender sells the property,"), and "Website Aims to Turn Vacant Houses in Model Homes," Mortgage Servicing News, June 2009 (describing a for-profit website that links on site home managers with owners of vacant properties to prevent the negative impacts of vacant homes on the value of the home and the neighborhood).
[31] Gabe Treves, "2010 Report: California Renters in the Foreclosure Crisis," Tenants Together, May 2010.

  - The Home Mortgage Disclosure Act rules should be updated by the Federal Reserve and/or the new Consumer Financial Protection Bureau (CFPB) to include loan level data on all borrowers seeking loan modifications, not just under HAMP and not just those successfully obtaining a HAMP modification.
- Accountability – The industry has suffered no significant consequence for failure to perform in the interest of the public, and no meaningful mandate has been imposed in the mortgage or foreclosure prevention context. Voluntary measures are not working.
  - Treasury should impose penalties on servicers who fail to perform under the HAMP program. Penalties should include fines, claw back of HAMP payments already made, loss of the company's ability to sell FHA loans or sell loans to Fannie Mae or Freddie Mac, imposing a moratorium on mergers with other financial institutions, etc.
  - Congress must pass Bankruptcy cramdown legislation to allow federal Bankruptcy Court judges to make common sense determinations as to what relief a borrower in bankruptcy deserves, including the ability to reduce principal loan amounts.
  - The Community Reinvestment Act (CRA) should be strengthened to cover more transactions, more geographies, and more institutions, and it should be placed under the authority of the new CFPB. Dodd-Frank left CRA with the current bank regulators who have failed to update CRA regulations and make CRA meaningful. CRA is the one law that impacts banking in a positive way, and bank investment in neighborhoods is particularly needed now to help communities come back from the devastation inflicted by banking institutions over the last few years.
  - Regulatory agencies need to be held accountable to oversee financial institutions and to protect the public interest. Regulators should offer more opportunity for meaningful and transparent public input during bank mergers and exams.
- Fair Lending – Various improper industry practices have had a disproportionate impact on consumer and communities of color. These neighborhoods will be damaged for years to come.
  - The Department of Justice must investigate and enforce prior violations of Fair Housing, including through the origination, financing, and servicing of mortgage loans. While much of the abuse of the past came from selling unsuitable subprime and option ARM loans, today the issue has become the difficulty certain borrowers are having in accessing new loans. All of these issues must be addressed.
  - The CFPB should determine that selling loans to LEP consumers in a non English language, but providing English-only documents is an unfair and deceptive practice and should be prohibited.