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HUD/FHA-Insured Homeowners and Properties in End-Stage Default and Foreclosure: National Context and Experiences in Massachusetts

HUD and Beyond: Legislation, Litigation, and Innovative Local Efforts to Reduce Foreclosures

Rachel G. Bratt

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Abstract

This Issue Brief first reviews several noteworthy legislative and legal approaches aimed at redressing illegal or unfair lender/servicing procedures related to homeowners (and their tenants) in end-stage default or going through foreclosure. It also discusses how regulatory oversight by the Federal Reserve Board and by various governmental bodies, which resulted in the National Mortgage Settlement, both provided financial compensation for abusive mortgage-lending and servicer practices pertaining to foreclosure. Important, too, is a key court case that argues this simple point: the mortgagee must be the owner of record before it can foreclose.

The Brief then presents a short summary of innovative local efforts that provide additional protections to homeowners and tenants in end-stage default and foreclosure. Two nonprofit organizations that have purchased nonperforming loans from HUD have been more successful modifying these loans, than the record for the loans in the overall portfolio, most of which were purchased by for-profit firms. Following this, the Brief summarizes the current health of the FHA's Mutual Mortgage Insurance Fund (MMIF), the fund that compensates lenders for the balance due on foreclosed mortgages. In view of the resources in the MMIF, this summary provides further evidence that HUD/FHA has some leeway that should allow them to more aggressively assist homeowners in default.

Series Introduction

By Erin M. Graves* and Chris Herbert**

This series of Issue Briefs was being finalized just as the coronavirus pandemic was beginning. Beyond our current and pressing concerns about health, mortality rates, personal financial distress, and impacts on businesses and the national economy, we will likely soon be facing an increase in loan defaults and foreclosures, as significant numbers of people are unable to make their mortgage payments.

Policy makers and financial institutions have taken several immediate steps to help homeowners who have lost income during this period. The Department of Housing and Urban Development (HUD) took action by placing a 60-day moratorium on foreclosures for loans insured by the Federal Housing Administration (FHA). In addition, the Federal Housing Finance Administration (FHFA) ordered Fannie Mae and Freddie Mac loan servicers to lower or suspend borrowers' mortgage payments for up to 12 months if homeowners have lost income because of the pandemic. Under the Coronavirus Aid, Relief, and Economic Security Act, borrowers can initiate a 180-day forbearance and foreclosure moratorium for any federally-backed mortgage loan. Private non-government-backed lenders and servicers also have volunteered mortgage relief.

These short-term actions may relieve some financial distress and forestall some foreclosures and, in the longer term, the economy hopefully will recover. However, that recovery will likely be uneven and the financial challenges for millions of families could continue as workers struggle to regain a foothold. In addition, those who contracted the virus may experience long-term effects that will impact their ability to work. Should these challenges come to pass, there likely will be a spike in foreclosure rates over the next several years. Other households, unable to afford their mortgage payments, may be able to avoid foreclosure, but they may find themselves forced into a rushed sale and a destabilizing move. And, as always, those who will be hit hardest will be households with less secure employment and fewer assets, a pattern that parallels the disproportionate impact of the disease itself. This situation will therefore likely have a disparate and more serious impact on households of color and on more fragile neighborhoods.

The Federal Reserve Bank of Boston and the Joint Center for Housing Studies of Harvard University are pleased to be presenting this Issue Brief series at a time when the insights drawn from this research may be of great value as policymakers look to craft a response to this latest economic crisis. Since the research and writing for this series of Briefs were done during a period of declining foreclosures for both FHA-insured and conventional loans, the author of the Briefs, Rachel Bratt, points out that this relatively calm stretch provided "a good time to explore the extent to which a number of HUD/FHA default and foreclosure policies and procedures are serving the public interest and to identify opportunities for improvement."

These Issue Briefs offer a number of insights about HUD's regulations and procedures concerning mortgages that are close to foreclosure, or end-stage default through the lens of mortgage market upheaval following the Great Recession. Also drawing on the experiences of local and state governments, as well as several nonprofit organizations, a number of thoughtful and innovative suggestions are offered for how homeowners in end-stage default can be assisted to retain their homes, thereby promoting family and neighborhood stability. Now is a good time to consider how to apply the lessons learned in order to safeguard the hardest-hit households and communities facing foreclosures in 2020 and beyond.

*Erin M. Graves is a senior policy analyst and advisor at the Federal Reserve Bank of Boston.
**Chris Herbert is managing director of the Joint Center for Housing Studies of Harvard University.

Introduction

As the economy weakened in the late 2000s, the sharp increase in foreclosures gained attention. (See Issue Brief No.1.) A key focus was subprime mortgage loans, which are made to borrowers with poor credit histories and who would not otherwise qualify for a loan. These loans typically had higher interest rates with terms that allowed interest rates to be significantly adjusted upward, often making them unaffordable for the mortgagors. Not surprisingly, these loans were riskier and more prone to foreclosure than loans made to more credit-worthy borrowers. As concerns mounted about the increasing foreclosure rate among this group of loans, as well as the overall stock of FHA-insured and conventional loans, the federal government attempted to address the foreclosure problem by supporting counseling initiatives and promoting loan modification programs. These efforts did not assist nearly as many homeowners as had been predicted or hoped. (See Issue Brief No. 3.) As one article summarized, it was "too little, too late, and too timid."[1] Other attempts to respond to the problem include several noteworthy legislative and legal approaches, as well as a number of innovative local efforts.

Also important in this discussion is an assessment of the overall financial health of the Mutual Mortgage Insurance Fund (MMIF), which is the fund through which the Federal Housing Administration (FHA) compensates lenders/servicers for the principal balance due on the foreclosed loan and other costs associated with foreclosure. It would appear that the sounder the MMIF's financial footing, the more leeway the U.S. Department of Housing and Urban Development (HUD) has to use a portion of the MMIF's funds to enable homeowners in default to remain in their homes and thereby avoid foreclosure.

This Issue Brief addresses three main questions. First, what federal, state, and local laws, as well as legal and regulatory actions, have been enacted, proposed, or administered that protect homeowners and tenants from eviction and help homeowners avoid foreclosure? Second, what are the experiences with innovative local efforts to assist homeowners in end-stage default and foreclosure? And third, what is the current state of the MMIF, and could HUD more aggressively assist homeowners in default?

To address the three questions raised above, I used a multimethod approach. First, I surveyed the existing written work, using document analysis to understand the relevant laws, court cases and the financial status of the MMIF. Second, using a case study approach and drawing on published accounts, I examined several innovative programs that have been developed across the country to address end-stage default and foreclosure issues. Lastly, I conducted interviews with legal-services lawyers and with staff at nonprofit organizations that work on the issues discussed in this inquiry.

Legislation, Litigation and Regulatory Oversight to Protect Tenants and Homeowners Experiencing Foreclosure

The following is an overview of legislative and legal initiatives aimed at redressing illegal or unfair lender/servicing procedures related to homeowners—and their tenants—in end-stage default or going through foreclosure. This section focuses primarily on national and Massachusetts-based efforts. Although there is a brief discussion of some important court cases in Maine, a more comprehensive review of other states' laws and litigation was beyond the scope of this effort.

Legislation Protecting Foreclosed Homeowners and Tenants

The federal Protecting Tenants at Foreclosure Act (PTFA), which was in effect from 2009 through 2014, and then made permanent in 2018, protects tenants facing displacement because of foreclosures against their landlords. The act requires any entity acquiring title to a foreclosed property to honor the terms of an existing lease, including granting tenants the right to stay in the residence until the end of the lease, except when the property is sold to a purchaser who is going to occupy it as a primary residence.[2] In addition, the new owner has to provide a 90-day notice to tenants to vacate, but only after the owner acquires title to the property. Under all circumstances, PTFA provides protection for tenants in compliance with their leases, by allowing them to occupy their homes for at least 90 days after foreclosure.[3]

Some states have their own similar laws.[4] For example, in Massachusetts, the Tenant Protections in Foreclosed Properties Act, enacted in 2010 is somewhat analogous to the PTFA: it prohibits evictions of tenants of foreclosed properties, except for cause, such as nonpayment of rent. The state has also displayed an interest in providing similar protections to foreclosed homeowners, with the Attorney General's Office recommending that lenders and servicers develop rental programs to enable homeowners to remain in their former properties paying a fair market rent following a foreclosure.[5] The recommendation was based on evidence that "uniformly demonstrates that it is feasible for large banks to allow foreclosed homeowners to continue to occupy and rent their homes after foreclosure until their homes are purchased by a third party as a primary residence."[6] Although several bills promoting protections for homeowners following a foreclosure have been introduced in the state legislature, none has been enacted. Interestingly, though, Freddie Mac and Fannie Mae offer similar programs, in which qualified, former owner-occupants and tenants are given the option to lease the foreclosed property acquired by Freddie Mac or Fannie Mae. It is not clear, however, how often the option has been offered to foreclosed homeowners.[7]

Another Massachusetts law, An Act Preventing Unlawful and Unnecessary Foreclosures (2012), requires lenders and servicers to make good-faith efforts to avoid foreclosing on borrowers with subprime mortgage loans that are deemed to be unfair. In a lawsuit filed by the Attorney General's Office and settled in early 2018, Nationstar, a very large mortgage company, was required to pay $500,000 in principal reductions to a group of borrowers who had gone through foreclosure. In addition, the settlement required the servicer to "provide the loan modification review protections required by state law for borrowers who fall into default in the future."[8]

Regulatory Oversight by the Federal Reserve Board, the National Mortgage Settlement and Litigation

During the foreclosure crisis, it became clear that certain mortgage-lending and servicing practices harmed borrowers. In April 2011, the Federal Reserve Board launched a review of the foreclosure procedures of four large mortgage servicers. The goal was to assess whether there had been errors, misrepresentations, or other deficiencies in foreclosures that were initiated, pending, or completed during 2009 or 2010.[9] Borrowers who believed that they had experienced financial hardship during a mortgage foreclosure process carried out by one of these four entities could request an independent review of their files and potentially receive compensation.[10] The findings were alarming:

> The reviews found critical weaknesses in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party law firms and other vendors. These weaknesses involve unsafe and unsound practices and violations of applicable federal and state laws and requirements, and they have had an adverse effect on the functioning of the mortgage markets. By emphasizing speed and cost efficiency over quality and accuracy, examined servicers fostered an operational environment contrary to safe and sound banking practices.[11]

Not surprisingly, deficient foreclosure processes and controls can have negative outcomes for borrowers, making it more difficult for them to bring their loans current. Specific problems may include, for example, inaccurate documentation and fees assessed and violations of state foreclosure laws designed to protect consumers.[12] At the same time, loss-mitigation options may be curtailed "because of dual-track processes that result in foreclosures even when a borrower has been approved for a loan modification."[13] In addition to harming borrowers, the flawed foreclosure processes were problematic for servicers and investors. Beyond the costs related to correcting procedural errors and refiling documents, servicers may encounter legal costs if there are disputes concerning the ownership of the mortgage note. Any uncertainty about legal ownership is of particular concern to investors of securitized mortgages. Confusion about note ownership, along with the other weaknesses in foreclosure processes, also may strain the judicial system as the courts seek to clarify the situation, as discussed below.[14]

As part of the Federal Reserve Board's investigation, servicers were directed to review the file of every borrower who submitted such a request, as part of the Independent Foreclosure Review. However, according to the Federal Reserve Board, after nearly two years of reviews, it became clear that the process was taking substantially longer than expected and required more resources to complete, which was resulting in delayed remediation to borrowers affected by foreclosures.[15] File reviews were taking an average of 44 hours per case.[16] Of the 103,820 file reviews completed by the independent consultants, only about 4.5 percent were found to involve errors by servicers that caused financial harm for the homeowners.[17] Error rates were found to vary by servicer, and consultants pointed out that this "reflected both differences in methodologies for reporting errors and differences in review procedures among the independent consultants."[18]

Following this initial review process, a payment plan known as the Independent Foreclosure Payment Agreement was jointly negotiated by the Federal Reserve Board and the Office of the Comptroller of the Currency. Some 15 mortgage loan servicers agreed to make cash payments to foreclosed mortgagors and to provide funding for various types of foreclosure prevention assistance, such as loan modifications. Overall, the loan servicers committed to pay about $10 billion, with about $3.9 billion going directly to households that had been adversely impacted by inappropriate foreclosure processes.[19]

The payment agreement involved placing each of the more than four million potentially affected households into one of 11 categories, with criteria specifying various types of servicer-related problems.[20] The approximately 1,100 foreclosed owners who had experienced what were rated as the most serious problems each received $125,000. The great majority, about 75 percent, received only token payments, in the range of $300–$800.[21]

Advocates were quick to observe that people were expecting more than a few hundred dollars and that there were lingering questions about how, exactly, affected borrowers had been assigned to the specific compensation categories.[22] The Government Accountability Office similarly noted that there was "limited information on the processes used, such as how decisions about borrower payments were made … [and] in the absence of information on the processes, regulators face risks to public confidence in the mortgage market, the restoration of which was one of the goals of the file review process."[23] The Federal Reserve Board directed servicers to correct deficiencies in their loan servicing and foreclosure practices going forward.[24]

As the foreclosure crisis gained attention and the focus turned to the role of mortgage servicers, one seriously flawed practice stood out: "robo-signing," which involved bank employees signing thousands of foreclosure affidavits without confirming the validity or accuracy of the information contained in those documents. A Maine lawyer played an important role in uncovering the seriousness and pervasiveness of this abuse. In 2010, Thomas A. Cox was working with a local legal-assistance organization. He "realized almost immediately that [a particular foreclosure file] did not look right. The documents from the lender, GMAC Mortgage, were approved by an employee whose title was 'limited signing officer,' an indication … that his knowledge of the case was effectively nonexistent."[25] In a court filing, Cox outlined the specific complaints against the GMAC employee, Mr. Stephan:

> When Stephan says in an affidavit that he has personal knowledge of the facts stated in his affidavits, he doesn't. When he says that he has custody and control of the loan documents, he doesn't. When he says that he is attaching 'a true and accurate' copy of a note or a mortgage, he has no idea if that is so, because he does not look at the exhibits. When he makes any other statement of fact, he has no idea if it is true. When the notary says that Stephan appeared before him or her, he didn't.[26]

At about the same time, government investigations were revealing that the problem of robo-signing extended beyond Maine: it was a nationwide problem. Those investigations were also uncovering other unfair and abusive mortgage-servicing practices that seemed to be contributing to unnecessary foreclosures. Abuses were investigated through the joint efforts of 49 state attorneys general, state banking regulators, and numerous federal agencies. After nearly a year of negotiations between the country's five largest mortgage servicers and a coalition of state and federal governments, the National Mortgage Settlement was reached in 2012.[27]

It is not clear how many FHA-insured loans were impacted by robo-signing, and the problem of robo-signing was not specifically identified by the FHA commissioner in his testimony before Congress. However, he did note that an area of interest was whether servicers were verifying the validity of the various documents involved in the foreclosure process.[28]

Touted as the "largest consumer financial protection settlement in US history," the National Mortgage Settlement has provided benefits to borrowers in 49 states[29] and the District of Columbia whose loans are owned by the settling banks, as well as to many of the borrowers whose loans they service.[30] The 2012 settlement provided $315 million of assistance to Massachusetts; about 70 percent of this money helped borrowers make mortgage loan modifications, often in the form of principal reductions. People who had lost their homes to foreclosure between January 1, 2008, and December 31, 2011, and who experienced abusive servicing practices could receive more than $14 million in cash payments.[31] A portion of Massachusetts's settlement money was used to help start the HomeCorps program and hotline.[32]

As of March 2014, the five banks involved in the settlement had completed their obligations, having provided more than $50 billion to more than 600,00 families across the country.[33] Although Urban Institute researchers were disappointed that more REO (real estate–owned) properties were not donated, since they believe that such programs benefit both communities and individuals, they also concluded that overall the settlement "shaped bank behavior in a way that achieved impressive results."[34]

One of the problems noted above, ascertaining the legal ownership of the mortgage note, became the focus of a closely watched court case in Massachusetts, *U.S. National Bank Association v. Antonio Ibanez*. The case underscored a point that would otherwise seem obvious: "you need to own the mortgage before you can foreclose,"[35] based on the information at the registry of deeds. At the height of the mortgage crisis, mortgages were packaged and sold to investors as bulk pools of assets. (See Issue Brief No. 2.) Although the purchaser of loans may have been clear about who owned a given mortgage, the loan documentation records on file at the registry of deeds often lagged many months behind, thus causing ambiguity about the loan's ownership.

In the Ibanez case, the deed showing U.S. Bank as the mortgage owner was not recorded for more than a year after the foreclosure process had started. Thus, lawyers for Mr. Ibanez argued that "U.S. Bank had no standing to foreclose because it lacked any evidence of *ownership* of the mortgage and the loan at the time it started the foreclosure."[36] After years of litigation in lower state courts, in 2017 the Massachusetts Supreme Judicial Court ruled in favor of Mr. Ibanez, finding that U.S. Bank didn't have the authority to foreclose since it wasn't the mortgage holder at the time.

A judge in the case noted "the utter carelessness with which the plaintiff banks documented the titles to their assets." [37] And, while there was "no dispute that the mortgagors of the properties in question had defaulted on their obligations, and that the mortgaged properties were subject to foreclosure … There was no apparent actual unfairness here to the mortgagors … [but] Massachusetts law has always required that it proceed strictly in accord with the statutes that govern it."[38] Thus, the foreclosure process was negated on what appears to have been a technicality: the ownership of the loan at the time the foreclosure was started had not yet been recorded in the registry of deeds. The original reasons for foreclosure were uncontested.[39]

In another recent court case, the Maine Supreme Court held national mortgage companies accountable for fraudulent and abusive practices against homeowners across the state. In *Federal National Mortgage Association (Fannie Mae) v. Deschaine*, the Maine Supreme court upheld a lower court's dismissal of a foreclosure action brought by Fannie Mae and barred it from bringing another foreclosure suit against the mortgagor. The lower court's dismissal had been based on Fannie Mae's failure to comply with a court order to file witness and exhibit lists.[40] According to Thomas A. Cox, this case has important implications. Regardless of how many times a loan has been transferred, if there was “an adjudication on the merits in a prior owner’s hands and that barred future actions… [then] the new buyers [don’t have] any greater rights than the outfit had when they lost the case the first time.”[41]

Favorable court decisions for homeowners notwithstanding, lengthy legal processes are costly, both financially and emotionally. For homeowners threatened with foreclosure, trying to remain in their homes throughout is likely to be very difficult as eviction notices are stressful and intimidating. For the moment, Attorney Cox is optimistic about the future. He notes that he “doesn’t have nearly as many judicial sanctions against mortgage servicers for misbehavior as he used to” and feels the servicers have “shaped up and they’ve learned how to do it right.”[42] Of course, the downswing Attorney Cox notes may simply be the result of fewer foreclosure actions being initiated across the country as the economy has improved. Only time will tell whether, in the event of a new wave of foreclosures, mortgage servicers will adhere to prescribed and required foreclosure processes and regulatory oversight will be quick to find any abuses.

Innovative Local Efforts to Assist Homeowners in End-Stage Default or Foreclosure

A number of nonprofit organizations across the country have developed innovative programs to deal with end-stage mortgage default and foreclosure and to help homeowners avoid displacement by arranging a new loan or creating a new ownership structure. This section offers a summary of a sampling of illustrative programs; it does not purport to provide a comprehensive listing or evaluation of all such initiatives.[43] The various programs reviewed are grouped into three categories: state-mandated mediation prior to foreclosure, nonprofit purchases of distressed loans and loan modification assistance to original owner, and nonprofit purchases of homes and resale to original owners. Each program discussed embraces a central assumption: that it is desirable for the existing owners to continue to occupy their homes, if possible, and that creative ways can be found to better protect homeowners in default and better preserve the neighborhoods in which they live. These programs grew out of a policy void in which that assumption was largely absent.[44]

State-Mandated Mediation Prior to Foreclosure

The importance of communication between lenders/servicers and homeowners is at the heart of state-mandated mediation programs. These efforts provide further evidence of the importance of HUD’s requirement, although often ignored, that the servicer offer the mortgagor a face-to-face interview. (See Issue Brief No. 4.) While there are dozens of such programs across the country, with evaluations reporting positive results, programs in Philadelphia and Maine are particularly noteworthy.[45]

Residential Mortgage Foreclosure Diversion Program, Philadelphia

Because Pennsylvania is a judicial-foreclosure state, the court is involved in the foreclosure process. (See Issue Brief No. 4.) The Residential Mortgage Foreclosure

Diversion Program, created in 2008 in response to a growing number of foreclosures, provides a further opportunity for homeowners and lenders to try to reach an agreement just before the court's approval to foreclose. The preforeclosure conciliation conference requires that the homeowner, the owner's housing counselor, and the representative for the plaintiff lender all be present in the same room. If a payment plan, loan modification, or refinancing plan cannot be developed, the foreclosure will go ahead. The program has reportedly saved more than 10,000 homes and is touted as a win-win-win initiative—more efficient for the courts, more predictable for lenders, and providing more opportunities for homeowners to keep their homes.[46] This program provides further support for the proposition that better oversight and enforcement of HUD's face-to-face interview requirement is needed. It also underscores the importance of housing counseling.

Foreclosure Diversion Program, Maine

In 2009, as foreclosures escalated in Maine, the legislature passed An Act to Preserve Home Ownership and Stabilize the Economy by Preventing Unnecessary Foreclosures. The act authorized the creation of a foreclosure mediation process between lender and borrower that had to be completed (unless there was good cause, a waiver, or other exempting circumstances) before a foreclosing party could proceed with the process. The goal is to work out a repayment plan that is acceptable to both parties. After the first year, there was a modest (21 percent) success rate.[47] Yet a 2013 investigation found that despite the state law, national mortgage servicers operating in Maine "repeatedly missed foreclosure mediation deadlines, acted in bad faith in processing loan modifications and even forced homeowners into default through improper escrow charges because lucrative fees that mortgage servicers charge delinquent homeowners have given servicers more incentive to foreclose than to modify the loans."[48] While state-mandated mediation efforts appear promising, the Maine experience underscores the importance of rigorous regulatory oversight to ensure that lenders/servicers are following the mandated procedures. Further, a key question is how the Philadelphia and Maine types of initiatives could be scaled to assist the hundreds of thousands of households across the country facing foreclosure at any given time.[49]

Nonprofit Purchases of Distressed Loans and Loan Modification Assistance to Original Owners

As discussed throughout this series of Issue Briefs, a key strategy for assisting homeowners in end-stage default or foreclosure is loan modification. The five nonprofits highlighted below have a record of success purchasing distressed loans and modifying the loans to help prevent displacement of homeowners and tenants.

ReStart Program, New Jersey Community Capital (NJCC), and Its Subsidiary, National Community Capital (NCC)

NJCC is a nonprofit community-development financial institution (CDFI) that has been successful in purchasing distressed loans from HUD, as well as from Fannie Mae, Freddie Mac and other sellers, and then renegotiating the terms with homeowners to enable them to avoid foreclosure and remain in their homes. Launched in 2012, the

ReStart program offers both foreclosure-prevention counseling and principal debt reductions.

To understand the program's principal reduction process, consider the following example. If the unpaid principal balance and arrearages on the loan at the time of acquisition is $200,000, and the loan is purchased for 50 percent of that amount, NJCC will have paid $100,000 for that mortgage.[50] If the current market value of the property is $150,000, then the household has received $50,000 of principal forgiveness and a new unpaid principal balance (UPB) of $150,000. The NJCC-managed fund will service this loan until it is seasoned for at least 12 months and then will look to sell it to a long-term investor, usually a regional bank. The market varies for how much the long-term investor will pay for this loan, but it is generally between 80 percent and 90 percent of the current UPB. Since NJCC paid $100,000 for the loan and is now selling it for $120,000–$135,000, it is able to cover its costs. The original loss in value on the property, before the loan was sold by HUD, is covered by the FHA's MMIF. Once a loan has been sold, HUD is no longer involved in the financial transactions.

As of April 2019, NJCC had purchased about 2,740 mortgages in New Jersey, New York, Florida, Illinois, Maryland, Georgia, Oregon, Washington, and Wisconsin. Of these, 877 were FHA-insured loans, acquired through the Distressed Asset Stabilization Program (DASP), making it one of the two major nonprofit purchasers of DASP loans. (See Issue Brief No. 2.) By working with HUD-certified counseling agencies, NJCC forgives arrearages (which can amount to as much as four years of back payments) and renegotiates a loan that will be affordable. A key goal of the program is to modify loans by bringing the mortgage to an amount not greater than 100 percent of the current value of the property. Taking into account all the pools of mortgages it has acquired (which, as noted above, include not only FHA-insured loans but also loans from Fannie Mae, Freddie Mac, and private sellers),[51] 712 loans have been modified. This represents 26 percent of the total acquired loan pool. And, looking only at the occupied homes, ReStart was able to stabilize 40 percent of those households with modified loans.[52]

According to Scott Fergus, chief executive officer/chief investment officer of NCC, a subsidiary of NJCC, NJCC's success rates with HUD-acquired, FHA-insured loans are similar to its success rates with non-FHA-insured loans, "with the biggest difference being that FHA pools have the highest vacancy rates, which leads to slightly lower modifications as a percent of the total pool of loans."[53] Table 1 show that 49 percent of NJCC's HUD-acquired loans were owner-occupied (compared with 65 percent of their total pool of purchased mortgages) and that of these, about 39 percent of the owners contacted ended up getting modified loans, which is consistent with the ReStart Program's modification percentages for owner-occupied loans overall. However, due at least in part to the greater number of vacant properties in NJCC's portfolio of HUD-acquired loans, the loan modification rate as a percentage of the entire pool is 19 percent, which is below NJCC's overall rate of 26 percent.[54] Nonetheless, this rate is still modestly better than the overall loan modification rate for DASP—12.8 percent. (See Table 1.) One reason for ReStart's higher success rate may be because some 80 percent of NJCC's modified loans have received principal reduction/forgiveness. In contrast, in the overall DASP portfolio, only 37 percent of the modified loans have received principal forgiveness. According to Wayne Meyer, president of NJCC, NJCC's modified loans have had a very low redefault rate, with only two or three new loans across its entire inventory encountering difficulties after refinancing.[55]

Table 1 | Overall DASP, New Jersey Community Capital, and Hogar Hispano Inc. Records of Modifications of FHA-Insured Nonperforming Loans

	DASP	New Jersey Community Capital	Hogar Hispano
Number of nonperforming loans in portfolio	86,696*	877	1,123
Percentage of occupied homes in portfolio	79.0%	430 (49%)	~898 (80%)
Percentage of modified/reperforming loans (out of number of owner-occupied loans)	NA	168 (39%)	~ 449 (50%)
Percentage of modified loans with principal forgiveness	37%	80%	almost 100%
Percentage of modified loans (out of total number of loans in portfolio)	11,107 (12.8%)	168 (19%)	~449 (40%)

**The source report, below, shows 108,864 loans sold through DASP. Presumably, the data presented in this table, which comes from that report, is based on the information available in the reporting system.*

Source: For DASP data: U.S. Department of Housing and Urban Development, Federal Housing Administration, "Report to the Commissioner on Post-Sale Reporting: Distressed Asset Stabilization Program," March 2017, 10, retrieved from https://www.hud.gov/program_offices/housing/comp/asset/hsgloan; "Report to the Commissioner on Post-Sale Reporting: FHA Single Family Loan Sale Program," January 22, 2016, retrieved from https://www.hud.gov/sites/documents/RPRT.12616.PDF. Data for NJCC and Hogar Hispano Inc. comes from the agencies, as noted in the text.

ReStart makes the already vacated homes that it acquires available to local community developers for reuse as affordable housing. Because ReStart does not receive any public subsidies for its operations, NJCC staff believes that the program could serve as a model for revitalizing distressed communities and jump-starting housing markets all across the country. Due to its ability to cover up-front costs and repay investors through the sale of reperforming mortgage loans, the program is expected to be self-sustaining.[56]

Hogar Hispano Inc. (HHI)

This organization was formed in 2004 by UnidosUS (formerly known as National Council of La Raza), which is the largest nonprofit Hispanic civil rights and advocacy organization in the United States.[57] HHI is committed to improving housing and neighborhoods and promoting the economic viability of low-income households. A key part of their mission involves helping households prevent foreclosure. Although HHI is based in Washington, DC, since 2011 it has operated many of its programs, including its distressed mortgage/foreclosure prevention program, out of its office in Phoenix, Arizona.

HHI is the other major nonprofit purchaser of DASP loans.[58] Executive director Marcos Morales reports that his organization has purchased 1,123 nonperforming loans from HUD.[59] Table 1 shows that HHI's portfolio includes about the same percentage of occupied homes as the overall DASP portfolio. Of the 898 owner-occupied homes, HHI has successfully secured loan modifications for 50 percent. Out of the total pool of loans acquired, the overall loan modification rate was about 40 percent.[60] Both NJCC's and HHI's loan modification record is either modestly better or considerably better than the record for the overall DASP portfolio, which is 12.8 percent. (See Table 1 and Issue Brief No. 2.)

Marcos Morales notes two factors that may contribute to his organization's comparatively stronger loan modification rate. First, HHI is most interested in loan pools with a high percentage of occupied homes. As noted above, the likelihood of a loan modification is greatly diminished if the owner is no longer in the property at the time the loan is purchased. While HHI's owner-occupancy rate was about the same as the overall DASP portfolio, a major difference between NJCC's and HHI's portfolios is that the latter reported a considerably higher percentage of occupied homes in their DASP loan pools. A second reason for HHI's impressive loan modification record may be what appears to be an intensely hands-on approach in dealing with the homeowners in default. HHI works closely with each household, and if a HUD-approved counseling agency is not able to modify the loan, Mr. Morales himself reviews the case before a final decision is made regarding abandoning the possibility of a loan modification.[61]

Community Restoration Fund Program, City of New York

In 2016, New York City launched a pilot program, in partnership with a consortium of nonprofit organizations, to assist homeowners facing foreclosure by buying distressed mortgages and assisting homeowners with refinancing. In direct response to reports that loans sold through DASP (see Issue Brief No. 2) were mostly being purchased by speculators, the program aims to prevent properties from being auctioned off to the highest bidders.[62] The partnering nonprofits help homeowners retain ownership by offering principal reductions, which make the mortgages more manageable. If principal reductions are not possible, the properties are rehabilitated and sold to new owners, with long-term affordability restrictions,[63] and assistance is available to help the original owners relocate.

As of mid-July 2016, the city had bought 24 mortgages in a special sale from HUD, with a total of 41 residential units.[64] Funding for the $13 million project came from city funds, Goldman Sachs's Urban Investment Group, the Local Initiatives Support Corporation, and the National Mortgage Settlement.[65]

Community Restoration Fund, State of New York

Modeled on the above-cited initiative in New York City, a similar program was launched in 2017 at the state level. With funding from Morgan Stanley, as part of the National Mortgage Settlement, the state purchased 398 nonperforming loans in high-foreclosure communities. In partnership with NJCC, the program aims to help as many homeowners as possible avoid foreclosure and retain their homes through one-on-one counseling and attempts to modify the loan. As in the city program, if it is not possible for the homeowner to keep the home, assistance is available to help the household to relocate, and the property is resold as affordable housing.[66] Once again, the program emphasizes the importance of face-to-face encounters between the mortgagor and lender/servicer facilitated by a third-party counselor. (See Issue Brief No. 4.)

ReClaim Project, Community Resolution Corporation (CRC)

Touted as "a customized solution" for "low-value, often vacant properties that stagnate in pre-foreclosure status," ReClaim is a national-level program based in Washington, DC, that strives to keep homeowners in their homes through a new affordable loan that includes principal reduction.[67] If this is not possible, CRC arranges a short sale or a deed-in-lieu-of-foreclosure process. Speed is an important priority, so that the length of time that homes are unattended is minimized, thereby reducing the adverse impacts caused by vacant structures. Homes that are not retained by the original owners are conveyed to local affordable-housing nonprofit organizations for renovation and reuse.[68]

The CRC was formed by the Housing Partnership Network and the National Community Stabilization Trust, along with several foundation and institutional partners, and relies on servicers donating pools of distressed loans and making cash contributions to cover the various costs associated with resolving the status of the properties. Contribution size reflects the amount a servicer saves by avoiding the costs of foreclosure and marketing or demolishing the property.[69]

Nonprofit Purchases of Homes and Resale to Original Owners

Purchasing homes with the intent to sell them back to their owners on more manageable terms is another strategy to help homeowners in end-stage default or foreclosure. Two nonprofits who employ this tactic are highlighted below.

Loan Refinancing Assistance Pilot Project, Oregon

This program is aimed at homeowners who are in danger of losing their homes because of financial hardship and who have incomes below 150 percent of the state median income and substantial negative equity in their homes. Households must be able to afford a payment based on a mortgage at the current value of their home. Through a short-sale process, foreclosure is avoided and the home is then resold to the original owner at its current market value. Renegotiated loans are then bundled and sold to investors, and the proceeds from these sales are reinvested in new mortgages.[70] As of September 2017, some 238 borrowers had received assistance through this program.[71]

Stabilizing Urban Neighborhoods Program (SUN), Boston Community Capital (BCC, Now Blue Hub Capital)

BCC was formed in 1985 to provide capital for a variety of housing, community development, and economic development initiatives, with the mission of building healthy communities where low-income people live and work.[72] It is now one of the nation's CDFIs. The SUN program was created in 2009 to prevent the displacement of families who are seriously delinquent, facing foreclosure or eviction, or have already lost their homes. It also helps to prevent the associated problems of vacant and abandoned buildings and neighborhood destabilization, which often result from foreclosure. (See Issue Brief No. 4.)

Through negotiations with the lender or servicer, SUN strives to acquire occupied foreclosed or about-to-be foreclosed properties at or below the distressed market value and then sells the homes back to their existing occupants with new, affordable mortgages. Despite an above-market interest rate, the new loans represent a significant reduction in the principal balance and a reduced monthly payment. As noted in Issue Brief No. 4, HUD has been resistant to the SUN program due to its regulations about post-foreclosure sales to the original owner. Nevertheless, since its inception, the organization has helped stabilize over 1,000 families facing foreclosure or eviction by providing affordable fixed-rate 30-year mortgages.[73] The considerable praise for the program notwithstanding,[74] SUN recently has been the subject of criticism. In February 2020 a group of homeowners filed a class action lawsuit alleging that they were not aware of the shared appreciation aspect of the SUN mortgage and protesting the need to pay SUN a large sum of money (SUN's share in the appreciation of the home's value) upon refinancing their mortgage or selling their home.[75]

One challenge SUN has faced when attempting to purchase properties from HUD is that HUD will not sell any property with FHA insurance to SUN if the property is occupied and has already been through foreclosure. HUD is only willing to sell the houses to the nonprofit after it has evicted the homeowner. This policy is an obstacle to SUN's goal of stabilizing communities by encouraging families to remain in their homes even after foreclosure. (See Issue Brief No. 4.) It will be recalled that HUD's intransigence appears to relate to concerns about the "moral hazard" of possibly offering leniency to homeowners who are actually capable of meeting their mortgage payment obligations.

SUN also has encountered problems when trying to negotiate a fair (i.e., discounted) price for FHA-insured properties through short sales, thereby trying to avoid foreclosure. While a short sale would result in a loss to the FHA's MMIF, losses are expected following a foreclosure, and HUD has been willing to sell loans at deep discounts through the DASP, with the buyers of these loans most often being for-profit firms. (See Issue Brief No. 2.) Thus, one way or another, funds from the MMIF are needed to cover the losses associated with a foreclosure. This suggests that HUD could better assess its options, since losses to the MMIF are a certainty. It could more aggressively help homeowners avoid foreclosure by providing direct funding to nonprofits to help mediate defaults and by facilitating transactions aimed at providing stability and continuity of residency for homeowners and tenants in homes facing foreclosure.

Two overriding questions remain: How can HUD better work with nonprofit organizations and mortgagors in default to enable homeowners and tenants to stay in their homes, using innovative ownership or refinancing mechanisms? To what extent might money accumulated in the MMIF help to cover these costs? At least part of the answer to the second question relates to the financial health of the MMIF, discussed below.

Health of the Mutual Mortgage Insurance Fund (MMIF)

The financial solvency of the MMIF is a central responsibility of HUD/FHA (as noted in Issue Brief No. 2). If the MMIF is in a strong position, the FHA and its servicers should have the leeway to more aggressively assist homeowners in end-stage default.

Although the health of the MMIF was a considerable concern following the mortgage crisis, the situation has improved markedly in recent years. In 2018, the economic net worth of the MMIF was $34.86 billion, with a capital ratio of 2.76.[76] That was the fourth year in a row that the ratio was above the 2.0 percent statutory minimum requirement.[77] Another analysis found that in 94 of 100 alternative economic scenarios ranging from highly stressed economic conditions to robust positive growth in the economy and housing market, the MMIF capital ratio would remain at or above 2.0 percent.[78] Indeed, an actuarial review of the MMIF prepared for HUD in 2016 predicted that over the following seven years, the financial strength of the fund would continue to improve.[79]

Meanwhile, the creditworthiness of FHA-insured homeowners "has shown significant improvement" compared with the recent past, with an expectation that the credit quality will gradually return to mid-1990s levels, before the expansion of the subprime market.[80] This has positive implications for the MMIF: "the improved credit-risk profile compared to historical levels significantly improves the projected performance of the Fund,"[81] which provides more justification for greater assistance to homeowners struggling to retain their homes. (See Table 2 for additional policy implications and questions.)

Conclusion

A central goal of this inquiry has been to provide a deeper and clearer understanding of how HUD has operated with respect to the foreclosure process. It has explored how, going forward, the agency could provide greater protections and opportunities to homeowners in serious mortgage default or who have recently lost their homes due to foreclosure, and to the neighborhoods and municipalities in which foreclosed homes are located.

My overarching observation, which I have developed in various ways throughout this Issue Brief series, is that there are substantial ethical, conceptual, and practical concerns regarding how HUD/FHA has discharged its duty to protect the needs of consumers and neighborhoods while also safeguarding the solvency of the MMIF. Each Issue Brief in the series lists relevant policy implications and suggestions at its end, as well as questions for future research.

Recently, Congress has been moving away from providing consumer protections in general, but also specifically related to banking practices.[82] Various Trump administration directives have seriously undermined the mission of the Consumer Financial Protection Bureau (CFPB).[83] Created in 2011 by the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFPB quickly became a critical means of protecting consumers from deceptive or misleading practices in the financial sector, particularly mortgage lending. Equally troubling, some new HUD regulations and proposals further conflict with consumer-oriented concerns and, in particular, will negatively impact low-income households and people of color.[84] Compounding this, the Trump administration has a broad antiregulatory approach to government.[85]

The administration's current orientation against consumer protection and regulation makes the kind of efforts discussed in this series of Issue Briefs all the more compelling. The consumer protection legislation, court actions, and state and local efforts discussed provide examples both of how lenders/servicers could be more attuned to consumer needs and how more progressive federal initiatives and regulatory oversight could be adopted when public-policy solutions again become governmental priorities. The financial health of the MMIF suggests that HUD has additional leeway to creatively and thoughtuflly devise strategies that could more aggressively protect homeowners in end-stage default, thereby avoiding foreclosure.

Table 2 | Implications for Further Research and Policy: HUD and Beyond: Legislation, Litigation, and Innovative Local Efforts to Reduce Foreclosures

Observations from the study	Implications for further research	Policy implications for HUD
1) State legislation, legal actions, and regulatory oversight are all viable means of holding mortgage lenders/servicers accountable for following prescribed and required foreclosure processes, and they have all played important roles in filling the policy void via strategies and interventions that support homeowners in default.	1) Additional evaluations of the many innovative efforts would be valuable in developing future policy.	1) HUD should assess the outcomes of the new, promising strategies and decide which could be implemented on a wider scale.
2) The Massachusetts attorney general has found that it is feasible for foreclosed homeowners to remain in their homes, paying rent. Freddie Mac and Fannie Mae have similar programs.	2) How have the Freddie Mac and Fannie Mae programs operated?	2) Based on an evaluation of these programs, is a broader policy intervention recommended?
3) The Mutual Mortgage Insurance Fund loses tens of thousands of dollars on each foreclosed loan. This fund is currently in sound financial health and is forecast to remain sound in coming years.		3) Because the MMIF is used to pay off the outstanding principal balance on defaulted FHA-insured loans as well as related fees, and because the fund “takes a hit” when nonperforming loans are sold to investors, HUD could see its losses due to foreclosure as providing them leeway to provide further assistance to homeowners in default. Going forward, MMIF must continue to function in a financially sound manner, but it should also be willing to use excess funds to help homeowners remain in their homes. Changes to the statute that prohibits HUD from offering principal debt reduction to FHA-insured mortgagors should be considered, but also, principal debt reduction in the form of a repayable loan upon the sale of the home may be a viable policy option. (See Issue Brief No. 4.)

About the Author

Rachel G. Bratt

Rachel G. Bratt recently was a visiting scholar at the Federal Reserve Bank of Boston and is professor emerita at the Department of Urban and Environmental Policy and Planning at Tufts University. She is also a senior research fellow at the Joint Center for Housing Studies of Harvard University and the author of numerous works in the field of housing policy.

Rachel.Bratt@tufts.edu

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[3] National Low Income Housing Coalition, "Congress Permanently Authorizes the Protecting Tenants at Foreclosure Act," May 2018, retrieved from https://nlihc.org/resource/congress-permanently-authorizes-protecting-tenants-foreclosure-act; Office of Comptroller of the Currency, "Protecting Tenants at Foreclosure Act of 2009," retrieved from file:///Users/rachelbratt/Downloads/pub-ch-protecting-tenants-foreclosure-act-2009.pdf.

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[6] Foreclosure Impacts Task Force, "Final Report of the Foreclosure Impacts Task Force," June 2014, 10.

[7] "Freddie Mac and Fannie Mae rent foreclosed homes," retrieved from https://www.needhelppayingbills.com/html/freddie_mac_rent_foreclosed_ho.html.

[8] Office of Attorney General Maura Healey, "AG Healey Secures Millions in Relief for Massachusetts Residents Faced With Unfair Foreclosure and Loan Servicing Practices," news release, January 30, 2018, retrieved from https://www.mass.gov/news/ag-healey-secures-millions-in-relief-for-massachusetts-residents-faced-with-unfair-foreclosure.

[9] Board of Governors of the Federal Reserve System, "Independent Foreclosure Review," January 12, 2018, retrieved from https://www.federalreserve.gov/consumerscommunities/independent-foreclosure-review.htm.

[10] Board of Governors of the Federal Reserve System, "Federal Reserve Board Announces That Borrowers from Four Mortgage Servicers Can Request an Independent Review and Potentially Receive Compensation," news release, November 1, 2011, retrieved from https://www.federalreserve.gov/newsevents/pressreleases/enforcement20111101a.htm.

[11] Federal Reserve System, Office of the Comptroller of the Currency, and Office of Thrift Supervision, "Interagency Review of Foreclosure Policies and Practices," April 2011, 7, retrieved from https://www.federalreserve.gov/boarddocs/rptcongress/interagency_review_foreclosures_20110413.pdf.

[12] Ibid., 5.

[13] Ibid.

[14] Ibid., 6.

[15] Board of Governors of the Federal Reserve System, "Independent Foreclosure Review," July 2014, 13, retrieved from https://www.federalreserve.gov/publications/other-reports/files/independent-foreclosure-review-2014.pdf.

[16] Ibid., 9.

[17] Ibid., 10.

[18] Ibid.

[19] Ibid., 1. See also Board of Governors of the Federal Reserve System, "Independent Foreclosure Review Final Report," August 2019, retrieved from https://www.federalreserve.gov/publications/files/independent-foreclosure-review-2019.pdf.

[20] Board of Governors of the Federal Reserve System, "Independent Foreclosure Review," July 2014, 17–19.

[21] Calculated from data in Board of Governors of the Federal Reserve System, "Independent Foreclosure Review Payment Agreement Details," April 9, 2013, retrieved from https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20130409a1.pdf. A subsequent report issued by the Board of Governors of the Federal Reserve System noted that the lowest amount of compensation was $300, not $500. Board of Governors of the Federal Reserve System, "Independent Foreclosure Review," July 2014, 19.

[22] Julie Schmit, "Foreclosure Settlement a Billion-Dollar Bust," *USA Today,* June 24, 2013, retrieved from https://www.usatoday.com/story/money/business/2013/06/24/independent-foreclosure-review-payments/2390073/.

[23] U.S. Government Accountability Office, "Foreclosure Review: Regulators Could Strengthen Oversight and Improve Transparency of the Process," *GAO Highlights,* April 2014, retrieved from https://www.gao.gov/assets/670/662792.pdf.

[24] Board of Governors of the Federal Reserve System, "Federal Reserve Board Announces That Borrowers from Four Mortgage Servicers Can Request an Independent Review and Potentially Receive Compensation."

[25] David Streitfeld, "From a Maine House, a National Foreclosure Freeze," October 14, 2010, retrieved from https://www.nytimes.com/2010/10/15/business/15maine.html.

[26] Ibid.

[27] See Odette Williamson, "Understanding the National Mortgage Settlement: A Guide for Housing Counselors," National Consumer Law Center, June 2013, retrieved from https://www.nclc.org/images/pdf/foreclosure_mortgage/counseling_resources/nms-guide.pdf.

[28] "Robo-Signing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing," Hearing Before the Subcommittee on Housing and Community Opportunity of the Committee on Financial Services, U.S. House of Representatives," testimony of David H. Stevens, November 18, 2010, retrieved from https://www.govinfo.gov/content/pkg/CHRG-111hhrg63124/html/CHRG-111hhrg63124.htm.

[29] Oklahoma was the only state that did not participate in the settlement, and therefore borrowers in that state were not eligible for funds through the settlement.

[30] Joint State-Federal National Mortgage Servicing Settlements, "About the Settlement," retrieved from http://www.nationalmortgagesettlement.com/about.

[31] Britte McBride, Laurin J. Mottle, and Lisa Dyen, "HomeCorps," Office of Massachusetts Attorney General Martha Coakley, 2013, retrieved from https://www.chapa.org/sites/default/files/HomeCorpsPPforCHAPA2-7-13-v2.pdf.

[32] HomeCorps was formed in April 2012 to prevent unnecessary foreclosures by increasing the number of loan modification specialists available to help distressed borrowers and by providing a wide range of grant opportunities to help homeowners in trouble, whether or not their mortgages were held by the lenders involved in the settlement. Data from the Massachusetts attorney general's office that is no longer available online had indicated that HomeCorps had prevented more than 1,200 foreclosure auctions, helped secure more than 2,600 permanent loan modifications, and achieved more than $71 million in principal reductions (Attorney General Maura Healey, 2014). Funding for HomeCorps is no longer available and is no longer operating.

[33] Laurie Goodman and Maia Woluchem, "National Mortgage Settlement: Lessons Learned," Urban Institute, April 15, 2014, retrieved from https://www.urban.org/research/publication/national-mortgage-settlement-lessons-learned.

34 Ibid., 8.

[35] Rich Vetstein, "Breaking News: U.S. Bank v. Ibanez Foreclosure Ruling Upheld: An Indictment of the Securitized Mortgage System," *Massachusetts Real Estate Law Blog,* January 7, 2011, retrieved from http://massrealestatelawblog.com/2011/01/07/ibanez-foreclosure-ruling-upheld-an-indictment-of-the-securitized-mortgage-system/.

[36] Ibid.

[37] U.S. Bank National Association, Trustee, vs. Antonio Ibanez (and a Consolidated Case), 458 Mass. 637, October 7, 2010–January 7, 2011, retrieved from http://masscases.com/cases/sjc/458/458mass637.html.

[38] Ibid.

[39] Issue Brief No. 2 also presented an instance of a technicality being employed as a legal strategy to protect homeowners against foreclosure. Specifically, evidence of improper rulemaking related to HUD's single-family note sales program emerged as a possible legal strategy for trying to protect the interests of homeowners in end-stage default.

[40] Andy O'Brien, "Maine Supreme Court Could Provide Relief for Victims of Foreclosure," *Free Press,* October 12, 2017, retrieved from https://freepressonline.com/Content/Home/Homepage-Rotator/Article/Maine-Supreme-Court-Ruling-Could-Provide-Relief-for-Victims-of-Foreclosure-Abuse/78/720/55207.

41 Ibid.

42 Ibid.

[43] For a thoughtful analysis of several regional public-private collaborations that address various stages of the foreclosure process, see Justin P. Steil, "Innovative Responses to Foreclosures: Paths to Neighborhood Stability and Housing Opportunity," *Columbia Journal of Race and Law* 1, no. 1 (2011), 63–117.

[44] Specifically omitted from this discussion are various HUD programs that have focused on the reuse of foreclosed properties without involvement of the original owners, such as the former Neighborhood Stabilization Program and the ongoing Good Neighbor Next Door Program.

[45] See also Alon Cohen and Andrew Jakabovics, "Now We're Talking: A Look at Current State-Based Foreclosure Mediation Programs and How to Bring Them to Scale," Center for American Progress, June 29, 2010, retrieved from https://www.americanprogress.org/issues/economy/reports/2010/06/29/7929/now-were-talking/; J. Michael Collins and Carly Urban, "Mandatory Mediation Laws and the Renegotiation of Mortgage Contracts," August 23, 2011, retrieved from https://ssrn.com/abstract=1917410.

[46] Jayme Wiebold, "Philadelphia's Mortgage Foreclosure Diversion Program Is a Local Policy Success," Wharton Public Policy Initiative News and Updates, August 26, 2017, retrieved from

https://publicpolicy.wharton.upenn.edu/live/news/2093-philadelphias-mortgage-foreclosure-diversion. See also Ira Goldstein, Colin Weidig, and Charles Boateng, "The City of Philadelphia's Residential Mortgage Foreclosure Diversion Program: Addressing the Rising Tide of Foreclosure," *Housing Policy Debate*. 23, no. 1 (2013), 233–258.

[47] Jesse D. Stewart, "Maine's Foreclosure Mediation Program: What Should Constitute a Good Faith Effort to Mediate?" *Maine Law Review* 64, no. 1 (2011), 249–284, retrieved from https://digitalcommons.mainelaw.maine.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1185&context=mlr.

[48] Andy O'Brien, "Maine Supreme Court Could Provide Relief for Victims of Foreclosure."

[49] For example, November 2019 data from RealtyTrac reveals that 375,882 homeowners were in some stage of foreclosure (default, auction or bank owned). More than 700,00 foreclosed homes were listed as for sale. "U.S. Real Estate Statistics & Foreclosure Trends Summary," retrieved from https://www.realtytrac.com/statsandtrends/.

[50] DASP loan sales prices have fluctuated between about 30 percent and 60 percent of the face value of the loan. U.S. Department of Housing and Urban Development, Federal Housing Administration, "Report to the Commissioner on Post-Sale Reporting. Distressed Asset Stabilization Program," March 2017, 1, retrieved from https://www.hud.gov/program_offices/housing/comp/asset/hsgloan.

[51] In November 2017, NJCC won both Community Impact Pool (CIP) offerings in the Fannie Mae 2017-CIP3 auction. This is significant, as the pools are spread out over multiple geographies in distressed communities throughout the country. It is also the first time a "second-look" provision was offered to a qualified nonprofit bidder who had been outbid by a for-profit bidder. NJCC utilized this provision to match the winning bid, after initially placing the second-highest bid.

[52] Private email communication from Scott Fergus, March 2019.

[53] Ibid.

[54] Private email communication from Scott Fergus, April 2019.

[55] Interview with Wayne Meyer, April 2017.

[56] New Jersey Community Capital, "ReStart: Home Preservation Program," retrieved from https://www.newjerseycommunitycapital.org/initiatives/ncc.

[57] UnidosUS, "About Us," June 2018, retrieved from http://publications.unidosus.org/bitstream/handle/123456789/1854/unidosus_aboutus_42418.pdf?sequence=6.

[58] A third nonprofit organization, MRF, also was a purchaser of DASP loans. However, MRF has apparently ceased operations, and their record in loan modifications was not readily identifiable.

[59] Private email communication from Marcos Morales, executive director, Hogar Hispano Inc., March 2019.

[60] Ibid.

[61] Interview with Marcos Morales, executive director, Hogar Hispano Inc., March 2019.

[62] Jessica Gould, "City Launches Foreclosure Buyback Program," *WNYC News*, July 19, 2016, retrieved from http://www.wnyc.org/story/city-starts-foreclosure-buyback-program/.

[63] Ewa Kern-Jedrychowska, "New Foreclosure Buyback Program Seeks to Help Families Keep their Homes," *DNAInfo,* July 19, 2016, retrieved from https://www.dnainfo.com/new-york/20160719/jamaica/new-foreclosure-buyback-program-seeks-help-families-keep-their-homes.

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[65] Jessica Gould, "City Launches Foreclosure Buyback Program."

[66] Governor Andrew Cuomo, "Governor Cuomo Announces $7.6 Million Community Restoration Fund Program to Help Prevent Foreclosure and Strengthen Communities," news release, August 10, 2017, retrieved from https://www.governor.ny.gov/news/governor-cuomo-announces-76-million-community-restoration-fund-program-help-prevent-foreclosure.

[67] National Community Stabilization Trust, "The ReClaim Project," March 2016, retrieved from http://www.stabilizationtrust.org/wp-content/uploads/2017/02/ncst-thereclaimproject-fact-sheet-03.31.16-final.pdf.

[68] Ibid.

[69] Ibid.

[70] Oregon Homeownership Stabilization Initiative, "Your Home Matters," 2019, retrieved from https://www.oregonhomeownerhelp.org.

[71] This figure was provided in a private email communication from Nicole Kielsmeier, Oregon Homeownership Stabilization Initiative, September 2017. A report released in 2016 indicated that there had been 231 borrowers, representing some 27 percent of the total number of applicants; the remaining applicants were split almost evenly between those who were denied and those who withdrew their applications. Oregon Homeownership Stabilization Initiative, "OHSI Quarter 4 2016 Report," 13, retrieved from

https://static1.squarespace.com/static/5c6c74d9840b16ed5a8ec51a/t/5c89517c652deac11f274f67/1552503166601/OR_HHF_2016Q4.pdf.

72 Another Boston program, the Coalition for Occupied Homes in Foreclosure (COHIF, now known as Boston Neighborhood Community Land Trust), is focused on helping low-income homeowners remain in their homes following a foreclosure. (See "COHIF Is Now the Boston Neighborhood Community Land Trust," retrieved from http://www.cohif.org/home-2.) COHIF is a last resort for homeowners who cannot repurchase their home through SUN; it also assists tenants. While the SUN program provides a new loan to the original owner, subsidies are needed in the COHIF model to stabilize former owners and tenants in their homes. Given the complexity and funding needs of the COHIF model, the organization has only been able to assist a handful of households.

73 BlueHub Capital, "Keeping Homeowners in Place. Keeping Equity in Neighborhoods," 2018, retrieved from http://www.bostoncommunitycapital.org/programs-services/sun-initiative.

74 For example, former Federal Reserve Chairman Ben S. Bernanke called SUN "an innovative strategy to prevent occupied homes from becoming vacant and creating a strain on the community." "Community Development in Challenging Times," speech presented at the Federal Reserve Community Affairs Research Conference, Arlington, Virginia, April 29, 2011, retrieved from https://www.federalreserve.gov/newsevents/speech/bernanke20110429a.htm. See also Nicole Wallace, "A Nonprofit Group in Boston Sells Foreclosed Homes Back to Their Owners," *The Chronicle of Philanthropy*, July 11, 2011, retrieved from https://www.philanthropy.com/article/A-Boston-Nonprofit-Sells/158041.

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76Economic net worth is the cash available to the MMIF plus the net present value of all future cash outflows and inflows that are expected to result from the mortgages currently insured by the MMIF. The capital ratio is the ratio of capital to the MMIF obligations on outstanding mortgages. This is the number that is required to be at 2.0 or higher. See U.S. Department of Housing and Urban Development, "Annual Report to Congress Regarding the Financial Status of the FHA Mutual Mortgage Insurance Fund, Fiscal Year 2018," 1, retrieved from https://www.hud.gov/sites/dfiles/Housing/documents/2018fhaannualreportMMIFund.pdf.

77 Ibid., 121.

78 Integrated Financial Engineering, "Actuarial Review of the Federal Housing Administration Mutual Mortgage Insurance Fund Forward Loans for Fiscal Year 2016," November 15, 2016, 49, retrieved from https://cdn2.hubspot.net/hubfs/355318/FCMF_Knowledge_Base/2016_ACTUARIALMMIF_FORWARD-2.pdf?t=1518534326259.

79 Ibid., 73.

80 Ibid.

81 Ibid. While acknowledging the data presented in the text indicating that the MMIF is meeting the threshold of financial soundness, a recent HUD report offers a note of caution, presenting data showing that first-time homebuyers receiving FHA-insured loans have a higher risk profile: lower average credit scores (from 687 to 664) and increased loan-to-value and debt-to-income ratios. U.S. Department of Housing and Urban Development, "Housing Finance Reform Plan: Pursuant to the Presidential Memorandum Issued March 27, 2019," September 2019, 8–9, retrieved from https://home.treasury.gov/system/files/136/HUD-Housing-Finance-Reform-Plan-September-2019.pdf.

82 For example, in May 2018, the Economic Growth, Regulatory Relief and Consumer Protection Act was signed and, despite its name, the new law did little to protect consumers. Although the act fell short of repealing or gutting the Dodd-Frank Act, smaller banks (with assets of less than $250 billion, instead of the prior threshold of $50 billion) are now exempt from enhanced regulatory requirements and from mortgage data reporting requirements. On the one hand, and in defense of the exemption, community banks were not blamed for the foreclosure crisis. On the other hand, consumer advocates are concerned that exempting these banks will "weaken the government's ability to enforce fair lending requirements, making it easier for community banks to hide discrimination against minority mortgage applicants and harder for regulators to root out predatory lenders." Erica Werner and Renae Merle, "Senate Passes Rollback of Banking Rules Enacted After Financial Crisis," *Washington Post,* March 14, 2018, retrieved from https://www.washingtonpost.com/business/economy/senate-passes-rollback-of-post-financial-crisis-banking-rules/2018/03/14/43837aae-27bd-11e8-b79d-f3d931db7f68_story.html?utm_term=.eb350c208421.

83 Kate Rabinowitz, "This Watchdog Agency Has Gotten Smaller, Quieter and Less Active Under Trump," *Washington Post,* December 4, 2018, retrieved from https://www.washingtonpost.com/politics/2018/12/04/this-watchdog-agency-has-gotten-smaller-quieter-less-active-under-trump/?utm_term=.889663179725.

[84] For example, the Trump administration has proposed a new rule that would raise rents for households living in subsidized housing. Alicia Mazzara, "Demographic Data Highlight Potential Harm of New Trump Proposal to Restrict Housing Assistance," Center on Budget and Policy Priorities, July 1, 2019, retrieved from https://www.cbpp.org/research/housing/demographic-data-highlight-potential-harm-of-new-trump-proposal-to-restrict-housing. Another Trump administration initiative will make it more difficult for about 700,000 low-income people to qualify for food stamps, by more rigorously enforcing a work requirement. Laura Reiley, "Trump Administration Tightens Work Requirements for SNAP, Which Could Cut Hundreds of Thousands from Food Stamps," *Washington Post,* December 4, 2019, retrieved from https://www.washingtonpost.com/business/2019/12/04/trump-administration-tightens-work-requirements-snap-which-could-cut-hundreds-thousands-food-stamps/. Also very troubling is a proposed HUD rule that would make the enforcement of fair housing laws more difficult, or impossible. By suggesting that plaintiffs in fair housing cases can no longer rely on an action or policy having a "disparate impact" as proof of discrimination, the new rule would require that the perceived fair housing violation have a discriminatory intent, which is very difficult to prove. "Editorial: The Trump Administration Is Trying to Make It Harder to Fight Housing Discrimination," *Los Angeles Times,* August 24, 2019, retrieved from https://www.latimes.com/opinion/story/2019-08-23/trump-hud-disparate-impact-housing-discrimination. A January 2020 proposal would also undermine HUD's longstanding commitment to promoting housing policies that promote racial integration, or affirmatively further fair housing. Shaun Donovan, "The Trump Administration Is Clearing the Way for Housing Discrimination," *New York Times*, January 22, 2020, retrieved from https://www.nytimes.com/2020/01/22/opinion/fair-housing-act-trump.html.

[85] Brookings Institution, "Tracking Deregulation in the Trump Era," Brookings Institution, November 12, 2019, retrieved from https://www.brookings.edu/interactives/tracking-deregulation-in-the-trump-era/. See also Lola Fadulu, "Trump Pulls Back Efforts to Enforce Housing Desegregation," *New York Times,* January 3, 2020, retrieved from https://www.nytimes.com/2020/01/03/us/politics/trump-housing-segregation.html.