

TESTIMONY

MARK SEIFERT

EXECUTIVE DIRECTOR, EMPOWERING & STRENGTHENING OHIO'S PEOPLE (ESOP)

OHIO SENATE COMMITTEE ON FINANCE AND FINANCIAL INSTITUTIONS

02/02/2010 -- COLUMBUS, OHIO

Mr. Chairman and members of the Committee, Thank you for the opportunity to address you today on the ongoing foreclosure crisis in Ohio. I am Mark Seifert, the Executive Director of ESOP, Empowering & Strengthening Ohio's People. We are a HUD Certified foreclosure prevention and counseling agency with 11 offices throughout Ohio, serving communities large and small, urban and rural. ESOP, formerly known as the East Side Organizing Project, started as a community organizing group working on safety and education issues.

We have been on the frontlines of Ohio's foreclosure epidemic since 1999. In the last two years, as a result of government funding that recognized the need for foreclosure counseling prevention in Ohio, our organization has grown from a staff of three in Cleveland to almost 60 statewide. During the last five years, we have helped more than 13,000 families save their homes. Almost 8,000 of those families have walked through our doors in the last year alone. We know all too well the toll this crisis CONTINUES to exact on struggling families.

That is the focus of my testimony today – the unending state of the foreclosure crisis and the continued and desperate need to fund foreclosure prevention counseling in particular.

CURRENT STATE OF THE FORECLOSURE CRISIS

Let me start by saying: This hearing could not come at a more important time as the foreclosure crisis is far from over. Towards the end of 2009, the Mortgage Bankers Association announced record-breaking foreclosure filings and delinquency rates in Ohio.¹ Fifteen percent – or 226,140 – of loans serviced in Ohio are in foreclosure or past due. That's a thirteen percent rise since the start of 2009; and a spike of fourteen percent since the second quarter.

A deeper look at these statistics proves even more troubling. For example, the number of loans past due not just by one month – but by 90 days -- has doubled from a year ago. As we all know, a 30-day delinquency is much easier to correct, as perhaps the homeowner is a few weeks late due to a one-time car repair. But the meteoric climb in 90-day defaults strikes at the heart of what is nothing less than a second foreclosure crisis in Ohio: one caused by long-term factors like job loss, health issues, divorce and the like.

In fact, 90-day defaults are becoming the new barometer of this crisis, especially of how banks are still finding ways to skirt responsibility on non-performing loans. Let me explain. In my opinion, when it comes to homeowners in 90-day default, banks are deciding that given Ohio's soft housing market and

¹ MBA, "Delinquencies Continue to Climb in Latest MBA National Delinquency Survey," Nov. 19, 2009. See Appendices.

low home values, they will fare better by keeping these mortgages on their books – versus filing for foreclosure or releasing their interest/liens – until the market improves. Meanwhile, homeowners dig themselves deeper and deeper into the default hole, with unpaid monthly payments piling up and no idea whether the lender intends to file foreclosure and kick them out. A foreclosure purgatory, if you will. Such behavior by the banks does nothing to stabilize neighborhoods or help families get on solid ground.

Two years since the foreclosure crisis first rocked the country, all signs point to an ever-growing problem of foreclosures that won't even PEAK until late 2010, according to the real estate data firm Realty Trac.²

IMPACT OF FORECLOSURE PREVENTION COUNSELING

In this landscape, ESOP's foreclosure prevention and counseling services have emerged as a lifeline for homeowners who don't know where to turn or get lost in the process when they do respond to notices from their lender or servicer.

Last year, ESOP welcomed almost 8,000 families facing foreclosure through our 11 statewide offices. Nearly 6,500 of them will receive affordable loan modifications – a success rate of over 80 percent that has made ESOP a leader in the state.

Testament to our work comes from the homeowners we help every day. After one Chase borrower learned in October that she had just received an affordable workout after months of waiting, she wrote to ESOP Counselor Robert King. "Somebody pinch me!! Is this the end? Because of ESOP, we get to keep our roof over our heads."

All this has been achieved through an annual budget of just \$2 million, the majority of which is money channeled through NFMC, the Federal National Foreclosure Mitigation Counseling Program.

FUNDING HOUSING COUNSELORS

But the NFMC money has been cut by almost half – from an original allocation of \$180 million to \$65 million this latest round.

If this funding gap is not closed through legislative action, let me be clear: The documented impact of foreclosure prevention counseling on Ohio's ongoing foreclosure crisis will vanish in coming months.

Counselors are trained advocates, not volunteers. When homeowners face the strong-armed loan servicing and collection departments of banks, often it's counselors who serve as the informed advocate homeowners need to negotiate the best, most sustainable loan resolution.

At ESOP, counselors get into hand-to-hand combat with lenders notorious for employing untrained staff and repeatedly losing documents. When you hear of the dismal record of federal programs like Making Home Affordable, or HAMP, it's because there has been no funding or mandate to include counselors in the process.

It costs ESOP approximately \$200 to serve each family in foreclosure that comes to us. With the funding cuts looming, in 2010, instead of serving 8,000 families or more, we will only be able to assist about 4,000 families. Keep in mind that by Ohio closed the year 2009 with more than 80,000 foreclosure filings. That number is projected to rise even further to 90,000 in 2010.

² "Foreclosures in 3rd quarter up nearly 23% from 2008," USA Today, Sept. 10, 2009. See Appendices.

As Ohio's unemployment rate hovers near 11 percent, ESOP's trained and experienced housing counselors are effective at reducing the overall effect of this recession on homeowners. In lieu of sustainable loan modifications, ESOP's housing counselors frequently obtain forbearances for homeowners, allowing them and the economy more time to rebound, to recover, to get back on their feet and stay in their home.

If the Ohio legislature wants to reverse the ongoing economic downturn, it is imperative that the Ohio legislature find ways to fund foreclosure prevention counseling. The best way ESOP sees to do so is to approve increasing the fee for lenders and servicers for each foreclosure filing.

COUNSELING VS. MEDIATION

There are many solutions before you to tackle the foreclosure crisis. But I guarantee that foreclosure prevention counseling is the key that unlocks them all. Take court mediation, for example, as proposed in SB 197. In Ohio, a handful of counties already use judicial mediation in a variety of ways. That means once a foreclosure filing occurs, the judge refers a homeowner to certified mediation services.

A recent study of such mediation services in Cuyahoga County found that out of nearly 2,500 foreclosure filings approved for mediation, only 240 were settled through the mediation process.³ The study concludes that public funding of housing counseling will drastically improve the outcomes for mediation.

Similarly, research commissioned by the Florida Supreme Court on local mediation practices found that "foreclosure counseling is a critical step in the process, because empirical evidence demonstrates that cases that have received foreclosure counseling are much less likely to re-default."⁴

OHIO'S "SAVE THE DREAM"

As you may well know, Ohio's Save the Dream, a multi-state-government-agency effort that funds a hotline, operators, marketing and outreach and a website, has been recognized as one of the best in the nation. Save the Dream operators refer callers to counseling agencies, and also to their respective lenders and servicers.

About 65 percent of ESOP's caseload comes from Save the Dream referrals. Without future NFMC funding, however, Save the Dream will have few to zero agencies left for homeowner referrals. The tragic irony here is that the average response rate of the top 15 lenders and servicers also getting Save the Dream referrals in 2008 was only 30 percent. Major banks like Chase, US Bank and Wells Fargo had a less than 1 percent response rate.

These lender response rates are not our numbers. They are what banks are self-reporting to the state of Ohio. **LESS THAN ONE PERCENT!** This alone should demonstrate the amplified need for federal funding of foreclosure prevention counseling agencies like ESOP.

³ "State and Local Foreclosure Mediation Programs: Can They Save Homes?" National Consumer Law Center, September 2009, p. 23.

⁴ "Final Report and Recommendations." Florida Supreme Court, Task Force on Residential Mortgage Foreclosure Cases, August 17, 2009, P. 34.

HAMP

The Obama Administration's Making Home Affordable Program, also known as HAMP not only holds great promise, but has also wreaked great havoc.

Since mid-June, when HAMP finally sprung into action, much of ESOP's caseload has turned into potential HAMP loan modifications.

Homeowners who finally end up at ESOP come with horror stories. Communications from lenders trying to offer HAMP trial modifications often only provide 800 numbers, sending borrowers into automated loops. When borrowers do gather paperwork and send it in themselves, it is almost certain to get lost in a maze of disorganization and bureaucracy that constitutes the loan modification arms of most banks.

As a brief aside, my sister is experiencing a hardship. She is current with her mortgage. I walked her through what she needed to do to participate in HAMP. I told her to expect it to take about an hour or so. She later called me to tell me that while she doesn't have anything in writing yet and spent 4.5 hours on the phone, she "thinks" she will qualify for a modification and is waiting for the paperwork.

The sad truth is that experienced counselors at ESOP are also having trouble working with lenders and HAMP. Take JP Morgan Chase. Since ESOP organized a statewide protest against Chase in June, ESOP has had two face-to-face meetings with Chase representatives. While Chase is coming to terms with its shortfalls, more than Wells Fargo, Chase's HAMP processes are still too slow and inefficient.

ESOP is finding that major banks' new servicing arms are ill-equipped to handle or understand the HAMP modification tidal wave. Often times ESOP counselors are the ones explaining HAMP rules to lenders. Banks like Chase have confessed that ESOP is a crucial link between lender and homeowner when it comes to facilitating HAMP modifications.

Trying to get permanent modifications through HAMP is the heavy-lifting ESOP does every day on behalf of homeowners – and lenders and servicers. We do this because HAMP has some excellent principles we believe in – the 31 percent debt-to-income ratio and overall goal of stabilizing neighborhoods by keeping people in their homes.

Moreover, we go above and beyond HAMP's requirements. At ESOP, we further counsel all our homeowners on their entire debt portfolio. We routinely look at what caused the default in the first place: predatory lending, hardships like lack of employment, medical bills, etc; discretionary spending that needs to be adjusted, etc. We also refer our homeowners to other services like HEAP and ODJFS so they can couple our foreclosure prevention counseling with other community services. To not provide such holistic counseling means that the 31 percent benchmark will not result in an affordable monthly mortgage payment.

Furthermore, ESOP's counseling work ensures a solid HAMP workout the FIRST time, reducing the rate of re-default.

None of this is required under HAMP, only encouraged. Without such counseling, however, I predict that 80 percent or more of HAMP modifications will re-default.

This is another reason why I cannot stress enough how urgent and pressing the counseling funding issue is for Ohio's homeowners. Without an infusion of funds: ESOP will begin to lay off counselors and close its statewide offices one by one. Unfortunately, I am the one who will make that decision and it will start with our remote, rural locations where we are the only counseling resource available.

In closing, the need for foreclosure prevention counseling in Ohio has never been greater. But without immediate increased funding for this work, the biggest losers will be Ohio's homeowners and Ohio's economy.

If Ohio is to turnaround, the state government must support and fund the work of counseling agencies like ESOP. I urge you to approve increased fees for foreclosure filings and use this revenue source to fund foreclosure prevention counselors.

Thank you and I ask that my testimony be entered into the record and look forward to your questions.

APPENDICES



Title: Delinquencies Continue to Climb in Latest MBA National Delinquency Survey

Source: MBA

Date: 11/19/2009

WASHINGTON, D.C. (November 19, 2009) — The delinquency rate for mortgage loans on one-to-four-unit residential properties rose to a seasonally adjusted rate of 9.64 percent of all loans outstanding as of the end of the third quarter of 2009, up 40 basis points from the second quarter of 2009, and up 265 basis points from one year ago, according to the Mortgage Bankers Association's (MBA) National Delinquency Survey. The non-seasonally adjusted delinquency rate increased 108 basis points from 8.86 percent in the second quarter of 2009 to 9.94 percent this quarter.

Top Line Results

The delinquency rate breaks the record set last quarter. The records are based on MBA data dating back to 1972.

The delinquency rate includes loans that are at least one payment past due but does not include loans somewhere in the process of foreclosure. The percentage of loans in the foreclosure process at the end of the third quarter was 4.47 percent, an increase of 17 basis points from the second quarter of 2009 and 150 basis points from one year ago. The combined percentage of loans in foreclosure or at least one payment past due was 14.41 percent on a non-seasonally adjusted basis, the highest ever recorded in the MBA delinquency survey.

The percentage of loans on which foreclosure actions were started during the third quarter was 1.42 percent, up six basis points from last quarter and up 35 basis points from one year ago.

The percentages of loans 90 days or more past due, loans in foreclosure, and foreclosures started all set new record highs. The percentage of loans 30 days past due is still below the record set in the second quarter of 1985.

Increases Driven by Prime and FHA Loans

“Despite the recession ending in mid-summer, the decline in mortgage performance continues. Job losses continue to increase and drive up delinquencies and foreclosures because mortgages are paid with paychecks, not percentage point increases in GDP. Over the last year, we have seen the ranks of the unemployed increase by about 5.5 million

people, increasing the number of seriously delinquent loans by almost 2 million loans and increasing the rate of new foreclosures from 1.07 percent to 1.42 percent,” said Jay Brinkmann, MBA’s Chief Economist.

“Prime fixed-rate loans continue to represent the largest share of foreclosures started and the biggest driver of the increase in foreclosures. 33 percent of foreclosures started in the third quarter were on prime fixed-rate and loans and those loans were 44 percent of the quarterly increase in foreclosures. The foreclosure numbers for prime fixed-rate loans will get worse because those loans represented 54 percent of the quarterly increase in loans 90 days or more past due but not yet in foreclosure.

“The performance of prime adjustable rate loans, which include pay-option ARMs in the MBA survey, continue to deteriorate with the foreclosure rate on those loans for the first time exceeding the rate for subprime fixed-rate loans. In contrast, both subprime fixed-rate and subprime adjustable rate loans saw decreases in foreclosures.

“The foreclosure rate on FHA loans also increased, despite having a large increase in the number of FHA-insured loans outstanding. The number of FHA loans outstanding has increased by about 1.1 million over the last year. This increase in the denominator depresses the delinquency and foreclosure percentages. If we assume these newly-originated loans are not the ones defaulting and remove the big denominator increase from the calculation results, the foreclosure rate would be 1.76 percent rather than 1.31 percent reported.

“Once again the states of Florida, California, Arizona and Nevada have a disproportionate share of the mortgage problems. They had 43 percent of all foreclosures started in the third quarter, down only slightly from 44 percent both last quarter and the third quarter last year. They had 37 percent of the nation’s prime fixed-rate loan foreclosure starts and 67 percent of the prime ARM foreclosure starts. As of the end of September, 25 percent of the mortgages in Florida were at least one payment past due or in foreclosure.

“The outlook is that delinquency rates and foreclosure rates will continue to worsen before they improve. First, it is unlikely the employment picture will get better until sometime next year and even then jobs will increase at a very slow pace. Perhaps more importantly, there is no reason to expect that when the economy begins to add more jobs, those jobs will be in areas with the biggest excess housing inventory and the highest delinquency rates. Second, the number of loans 90 days or more past due or in foreclosure is now a little over 4 million as compared with 3.9 million new and previously occupied homes currently for sale, although there is likely some overlap between the two numbers. The ultimate resolution of these seriously delinquent loans will put added pressure on the hardest hit sections of the country.”

Change from last quarter (second quarter of 2009)

The seasonally adjusted delinquency rate increased 43 basis points for prime loans (from 6.41 percent to 6.84 percent), 107 basis points for subprime loans (from 25.35 percent to 26.42 percent), and two basis points for VA loans (from 8.06 percent to 8.08 percent). The delinquency rate for FHA loans decreased six basis points (from 14.42 percent to 14.36 percent). The non-seasonally adjusted delinquency rate for FHA loans however, increased 134 basis points this quarter (from 13.70 percent to 15.04 percent).

The non-seasonally adjusted percentage of loans in the foreclosure process increased 20 basis points for prime loans (from 3.00 percent to 3.20 percent), and increased 30 basis points for subprime loans (from 15.05 percent to 15.35 percent). FHA loans saw a 34 basis point increase in foreclosure inventory rate (from 2.98 percent to 3.32 percent), while the foreclosure inventory rate for VA loans increased 22 basis points (from 2.07 percent to 2.29 percent).

The non-seasonally adjusted foreclosure starts rate increased 13 basis points for prime loans (from 1.01 percent to 1.14 percent), increased 16 basis points for FHA loans (from 1.15 percent to 1.31 percent), and increased 19 basis points for VA loans (from 0.68 percent to 0.87 percent). This rate decreased 37 basis points for subprime loans (from 4.13 percent to 3.76 percent).

The seriously delinquent rate, the non-seasonally adjusted percentage of loans that are 90 days or more delinquent, or in the process of foreclosure, was up from both last quarter and from last year. This measure is designed to account for inter-company differences on when a loan enters the foreclosure process.

Compared with last quarter, the rate increased 82 basis points for prime loans (from 5.44 percent to 6.26 percent), 216 basis points for subprime loans (from 26.52 percent to 28.68 percent), 89 basis points for FHA loans (from 7.78 percent to 8.67 percent), and 37 basis points for VA loans (from 4.69 percent to 5.06 percent).

Change from last year (third quarter of 2008)

The seasonally adjusted delinquency rate increased 250 basis points for prime loans, 639 basis points for subprime loans, 144 basis points for FHA loans, and 80 basis points for VA loans.

The foreclosure inventory rate increased 162 basis points for prime loans, 280 basis points for subprime loans, 100 basis points for FHA loans, and 83 basis points for VA loans.


The foreclosure starts rate increased 35 basis points overall, 53 basis points for prime loans, 36 basis points for FHA loans, and 28 basis points for VA loans. The starts rate decreased 47 basis points for subprime loans.

The seriously delinquent rate increased 339 basis points for prime loans, 912 basis points for subprime loans, 262 basis points for FHA loans, and 161 basis points for VA loans.

If you are a member of the media and would like a copy of the survey, please contact Carolyn Kemp at ckemp@mortgagebankers.org or Melissa Key at mkey@mortgagebankers.org. If you are not a member of the media and would like to purchase the survey, please call (800) 348-8653.

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The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.



Mortgage Bankers Association of America
1331 L Street, NW Washington, DC 20005 • (202) 557-2700

Foreclosures in 3rd quarter up nearly 23% from 2008

By Stephanie Armour, USA TODAY

Foreclosures are continuing at a rapid-fire pace that may accelerate in 2010, driven by rising unemployment and more adjustable-rate loans resetting to higher monthly payments.

Foreclosure filings were reported on 937,840 properties in the third quarter, an increase of nearly 23% from the third quarter of 2008, according to a report today by RealtyTrac.

The number of properties in some stage of foreclosure was 5% higher than in the second quarter.

One in every 136 U.S. housing units received a foreclosure filing during the quarter, the highest quarterly foreclosure rate since RealtyTrac's reports began in the first quarter of 2005.

"We'd hoped this year would be the peak as far as foreclosures, but we've since concluded it will not be," says RealtyTrac's Rick Sharga. "We should see a peak in foreclosures at the end of 2010."

Several factors are behind the expected rise in foreclosures. Many lenders have opted not to pursue foreclosures while they consider delinquent homeowners for a mortgage modification. As those moratoriums end, more borrowers who don't qualify for modifications are likely to face foreclosures.

A large number of adjustable-rate loans are slated to reset, which means they can bring higher monthly payments for homeowners. Higher payments, coupled with a 9.8% unemployment rate that is expected to rise above 10%, could also cause a growing number of borrowers to lose their homes.

This could amount to a sizable second wave of foreclosures.

There are presently 2.8 million active interest-only home loans with an outstanding principal balance of \$908 billion, according to First American CoreLogic. Interest-only loans produce low monthly payments based on the loan's interest for five to seven years, but then payments jump when the principal is included.

"Foreclosures should remain really high as long as unemployment is rising, and that is through next spring," says Mark Zandi of Moody's Economy.com. "They should be very high into spring."

Zandi estimates there were 3.8 million notices of default filed this year and that in 2.1 million cases, borrowers will lose their homes to foreclosures, short sales or banks taking their deeds in lieu of foreclosure. He expects notices of default to decrease next year but foreclosures to rise.

Some geographic areas are seeing notably high rates now.

California, Florida, Arizona, Nevada, Illinois and Michigan accounted for 62% of the nation's foreclosure activity in the third quarter, according to RealtyTrac.

A federal program announced in March to help homeowners get more affordable monthly payments has now put 500,000 borrowers into three-month trial modifications.

But foreclosure filings were reported on 343,638 properties last month alone, giving September the third-highest monthly total behind July and August. The number of properties receiving foreclosure filings last month did drop 4% from August.

"These programs are having trouble keeping up with the problem," Sharga says.

