From: Advocates for Basic Legal Equality, Stanley Hirtle

Subject: HMDA - Notice of Public Hearings

Comments:

August 20, 2010

regs.comments@federalreserve.gov.

Jennifer J. Johnson, Secretary,
Board of Governors of the
Federal Reserve System,
20th Street and Constitution Avenue, N.W.,
Washington, DC20551.

Re: Docket No. OP-1388; Home Mortgage Disclosure Act.

Dear Ms. Johnson:

Advocates for Basic Legal Equality thanks you for your questions on how to strengthen the Home Mortgage Disclosure Act.

Advocates for Basic Legal Equality is a not-for-profit law firm that provides free legal services in civil matters to the low income and elderly who can not afford to pay for a lawyer. We serve 32 counties in Northwestern Ohio, roughly from Daytonto Toledoto Mansfield, from offices in Daytonand Toledo. We work closely with Legal Aid of Western Ohio which serves the same area. We provide assistance in matters of family, housing, consumer, civil rights and economic opportunity. ABLE is a participant in Ohio's "Save the Dream" program, where we provide legal assistance in order to save the homes of borrowers in foreclosure. We and our predecessor legal services programs also have years of experience helping clients who received predatory mortgage loans.

OHIO'S FORECLOSURE CRISIS SHOWS THE NEED FOR SCRUTINY OF LENDING PRACTICES THAT
IMPACT MINORITY COMMUNITIES

Ohio has been in a foreclosure crisis for years. Since 1995, the number of foreclosure filings has at least quadrupled in all but a few of Ohio's counties and has quintupled statewide.[1] In 2009, there were 89,053 foreclosures filed in Ohio. Of these 21,125 were in our service area, including 4703 foreclosures filed in MontgomeryCounty(Dayton), 4,491 in LucasCounty(Toledo), and 1,104 in ClarkCounty(Springfield)[2] 2010 figures appear to be as high or higher. Nationally mortgage loan default rates remain high. While we hope that some of this slight decline in filings reflects a willingness of loanholders to modify mortgages through the federal government's HAMP and other programs, results have so far been disappointing. People are losing their homes in large numbers. Loss of homes is a tragedy to a family that has staked its dreams on homeownership. But it is also a tragedy to the surrounding community.

Here and throughout the country, the foreclosure crisis has been particularly harmful to minority communities.[3] Subprime mortgage lending, with its high costs and often predatory features, was particularly concentrated in minority communities.[4] Dayton's Santa Claraneighborhood is the 9th most vacant in the country at 40.5% vacancies, as reported by the Associated Press[5]. Several other similar neighborhoods are found in Ohio. Minority neighborhoods are also particularly vulnerable to abandonment and so-called "bank walkaways" (where mortgage holders do not follow through with sheriff's sales in foreclosure or try to bid on the properties at foreclosure sale, leaving them technically in the name of the former owner). Vacant houses result in crime, fires,[6] deteriorating property values and unpaid taxes. [7]. Local communities must therefore cope with higher costs while being less able to adequately fund services such as police, fire and schools[8]. In a community like Dayton, which has long been a highly divided community racially, the foreclosure crisis has exacerbated the perceived unattractiveness of its minority areas to outsiders.

HMDA MUST COLLECT DATA ON THE NUMBER AND QUALITY OF MORTGAGE LOANS IN MINORITY COMMUNITIES

Repeated evidence of widespread racial disparities in lending has been found in auto and home mortgage financing, as well as payday lending.[9] Exploitative behavior, including discriminatory behavior, occurs when loan originators have discretion to vary loan terms.[10] As HMDA disclosures have become more detailed, they have provided more convincing evidence that discrimination occurs in mortgage lending.[11]

If HMDA data is not required to be adequately specific, HMDA data actually provides legal and political cover for discriminatory practices. The legal system is too willing to turn a blind eye to realities, presume a lack of discrimination and place burdens on victims to prove that discrimination occurs. Victims must also cross a threshold of a showing that a plausible case exists before they are allowed to conduct the kind of discovery that reaches the required standard of proof. Since evidence of discrimination is often not publicly accessible in a systematic way, it can be impossible to meet this burden even when discrimination exists. And if victims do meet this burden, they may not be able to afford the cost of reaching the stage of litigation where discovery is possible, and then of conducting the discovery

HMDA data is also important to policy makers and governments, as well as to communities and community groups. It is important that HMDA data be as thorough and accurate as possible, to allow them to evaluate what is happening in the marketplace and what might be done.

APPLY HMDA TO THE HAMP LOAN MODIFICATION PROGRAM

Now that the subprime mortgage crisis has turned into a foreclosure crisis, HMDA needs to pay attention to efforts to save mortgages. In particular it should collect data on the government's highly flawed Home Affordable Modification Program (HAMP) program. Preliminary data suggests that HAMP has been less effective in modifying mortgage loans and saving the homes of minority residents.[12]

HMDA DATA SHOULD BE COLLECTED FOR ALL LOANS

HMDA data should be collected for all loans. Attempts to separate out "high cost" loan thresholds, as with HOEPA, have not been helpful, as the threshold usually high enough to tolerate predatory activity.

DATA THAT SHOULD BE COLLECTED

Additional data that would be useful in identifying abusive loans include

borrower's age;[13]
credit scores;[14]
loan to value ratios;
debt to income ratios;
balloon payments;
prepayment penalties;
length of loan term;
whether the loan is a "combination loan" where the first mortgage is associated with a high cost second mortgage;
whether the loan is a limited or no documentation loan;
whether the loan is an investor loan;
whether the loan was originated by a mortgage broker;[15]
the amount of broker compensation, including "yield spread premiums[16]" where legal;
whether the loan was securitized or otherwise "sold downstream" within a year or origination;[17]
loan purposes; purchase new construction; purchase existing housing; purchase multifamily; purchase condominium or cooperative; refinance; refinance with cash out (with amount);
Adjustable rate mortgages might be compared with the existing Treasury Inflation Protected Security (TIPS) for a comparable period.

IMPORTANCE OF ADAPTABILITY

HMDA needs the power to adapt itself to whatever predatory lending tactics are being used in the industry, to be sure that minorities are not disproportionately victimized. It is impossible to predict the type of financial devices that may be developed and possibly abused. Regulators need flexibility, without Congressional approval for all changes. Agencies should be vigilant in examining the marketplace and adjusting HMDA requirements accordingly.

For example, many subprime loans charged an initial low teaser rate for two or three years, which was lower than and unrelated to the formula that would determine interest rates for the other 27-28 years. HMDA collected data on the amount of the spread as to the teaser rate but not as to the eventual rate that the borrower would pay after adjustment. Eventually the industry developed "payment option ARMS" which provided even more drastic payment increases.

EXPAND HMDA TO SMALL BUSINESS LENDING

Given the need for small business lending as a vehicle to provide jobs in minority communities, many of which are being abandoned by employers, factories and retail outlets, HMDA should be expanded to cover these areas.

Thank you for considering these comments.

Truly yours,

Stanley A. Hirtle
Advocates for Basic Legal Equality

[1] Z. Schiller and A. Hirsh, Policy Matters Ohio, Foreclosure Growth in Ohio 2009, available online at http:/ /ww w. policymattersohio.org/pdf/ForeclosureGrowthInOhio2009.pdf

[2] New Foreclosure Filings 2005 through 2009, available at online http:/ /ww w. supremecourt.ohio.gov/JCS/casemng/foreclosuresStats.xls

[3] Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, Center for Responsible Lending, Foreclosures by Race and Ethnicity: The Demographics of a Crisis, 9, (June 18, 2010) http:/ /ww w. responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf

[4] Stock (the Center for Business and Economic Research at the University of Dayton), Predation in the Subprime Lending Market: Montgomery County Executive Summary, (October 25, 2001),; Bellamy, the Expanding Role of Subprime Lending in Ohio's Burgeoning Foreclosure Problem (2001), http:/ /ww w. cohhio.org/projects/ocrp/SubprimeLendingReport.pdf studied three urban counties, including Montgomery County, and found that subprime loans generated three times as many foreclosures as prime loans. Id.at 3.

The recent Pennsylvania foreclosure study was able to look at all subprime loans originated in certain counties in calendar years 1998 and 1999, and then determine how many were the subject of a foreclosure filing in the four year period from 2000 to 2003 inclusive. The study authors found that subprime mortgages were foreclosed upon at a rate varying from 20% in most counties to 40% in one Philadelphiaarea county. The Reinvestment Fund. Mortgage Foreclosure Filings in Pennsylvania(2005), http:/ /ww w. trfund.com/resource/downloads/policypubs/mortgage-forclosure-filings.pdf.

[5] http:/ /ww w. daytondailynews.com/news/ohio-news/ohio-has-3ohio-has-3-most-vacant-neighborhoods-in-u-s--107025.html

[6] "5-house fire shows risk posed by vacant homes." DaytonDaily News, August 9, 2010.

[7] W. Apgar, M. Duda and R. Gorey, The Municipal Cost of Foreclosures: A Chicago Case Study, at http:/ /ww w. nw.org/network/neighborworksProgs/foreclosuresolutionsOLD/documents/2005Apgar-Du

daStudy-FullVersion.pdf (2005). Community Research Partners and Rebuild Ohio, $60 Million and Counting: The Cost of Vacant and Abandoned Properties to Eight Ohio Cities, at http:/ /greaterohio.org/rebuildohio/FullReport_Nonembargoed.pdf.

[8] A study of eight Ohiocities identified nearly $64 million in costs to local jurisdictions related to vacant and abandoned properties. This included nearly $15 million in city service costs such as code enforcement, boarding, demolition, maintenance, and police and fire services, and over $49 million in lost tax revenues from demolitions and tax delinquencies. Community Research Partners and Rebuild Ohio, $60 Million and Counting: The Cost of Vacant and Abandoned Properties to Eight Ohio Cities, at http:/ /greaterohio.org/files/policy-research/FullReport_Nonembargoed.pdf. See also Alan Mallach , Addressing Ohio's Foreclosure Crisis: Taking the next steps, at http:/ /ww w. brookings.edu/%7E/media/Files/rc/papers/2009/0605_ohio_foreclosure_mallach/0605_ohio_foreclosure_report.pdf

[9] Woodstock Institute, Paying more for the American Dream IV (May 2010) available at http:/ /ww w. woodstockinst.org/ ; Dillman, Hooverand Pleasants, Racial and Ethnic Disparities in 2008 Ohio Mortgage Lending, http:/ /ww w. thehousingcenter.org/Publications/Research-Reports.html ; Mark A. Cohen, Imperfect Competition in Auto Lending: Subjective Markup, Racial Disparity, and Class Action Litigation, (December 2006). available at http:/ /papers.ssrn.com/sol3/papers.cfm?abstract_id=951827; Ian Ayres: Fair Driving: Gender and Race Discrimination in Retail Car Negotiations. 104 Harv. L. Rev. 817 (1991); Wei Li, Leslie Parrish, Keith Ernst and Delvin Davis, Center for Responsible Lending, Predatory Profiling: The Role of Race and Ethnicity in the Location of Payday Lenders in California, (March 26, 2009) http:/ /ww w. responsiblelending.org/payday-lending/research-analysis/predatory-profiling.pdf; Are blacks main target of payday lenders? Columbus Dispatch, September 13, 2007,
http:/ /ww w. dispatch.com/live/content/local_news/stories/2007/09/13/CheckGo.ART_ART_09-13-07_A1_KF7SSMB.html.

[10] Alan M. White, Borrowing While Black: Applying Fair Lending Laws to Risk-Based Mortgage Pricing, 60 S.C. L. Rev. 677, 690 (2009). McCoy: A Behavioral Analysis of Predatory Lending (2005), 38 AkronL. Rev. 725. Alan M. White, Risk-Based Mortgage Pricing: Present and Future Research, 15 HOUSING POL'Y DEBATE 503, 509-12 & tbls.1 & 2 (2004) http:/ /papers.ssrn.com/sol3/papers.cfm?abstract_id=1012445.

[11] Debbie Gruenstein Bocian, Wei Li, and Keith S. Ernst, Center for Responsible Lending, Foreclosures by Race and Ethnicity: The Demographics of a Crisis, 9, (June 18, 2010) http:/ /ww w. responsiblelending.org/mortgage-lending/research-analysis/foreclosures-by-race-and-ethnicity.pdf ; Woodstock Institute, Paying more for the American Dream IV (May 2010) available at http:/ /ww w. woodstockinst.org/ ; Dillman, Hoover and Pleasants, Racial and Ethnic Disparities in 2008 Ohio Mortgage Lending, http:/ /ww w. thehousingcenter.org/Publications/Research-Reports.html ;

[12] The National Community Reinvestment Coalition found in a preliminary survey that (1) Loan servicers foreclose upon delinquent Black or African-American borrowers more quickly than delinquent White or Hispanic borrowers. (2) White HAMP-eligible borrowers are almost 50% more likely to

receive a modification than African-American HAMP-eligible borrowers. Only 24.3 percent of African-American respondents and 32.3 percent of Hispanic or Latino respondents received some kind of modification. In contrast, 36.4 percent of HAMP-eligible whites received a modification. National Community Reinvestment Coalition, HAMP Mortgage Modification Survey 2010 (June 2010) http:/ /ncrc.org./images/stories/mediaCenter_reports/hamp_report_2010.pdf

[13] Elderly borrowers have been particularly vulnerable to adjustable rate mortgages with initial teaser rates and equity stripping loans with balloon payments. Many in minority communities can be cash poor, with low fixed incomes, and unable to fund medical costs and home repairs, making their home equity a compelling target to push marketers of abusive mortgages.

[14] Industry advocates usually respond that HMDA data does not reveal credit history information and that credit history rather than race is responsible for lending disparities. Accordingly credit history data, in the form of a credit score, should be required.

[15] The widespread use of independent mortgage brokers saved lenders the costs of origination unless a loan was actually made, but changed the market dynamics so that lenders competed for the business of brokers rather than customers, and resulted in large up front fees that rewarded abusive lending, and were subject to little practical accountability. Similar incentives can exist for in-house sales forces.

[16] Yield Spread Premiums are incentives lenders offer to loan brokers when they arrange a more costly loan than that for which the borrower could have otherwise qualified. The borrower is generally unaware of the arrangement, is not told that he could have received a lower interest rate and believes that the broker is looking out for his interests. Engel & McCoy, A Tale of Three Markets: The Law and Economics of Predatory Lending, 80 TexasLaw Review 1255, 1264 (May 2002) Yield spread premiums allow mortgage brokers to extract excessive payments from many borrowers, particularly the least sophisticated. Howell E. Jacksonand Laurie Burlingame, Kickbacks or Compensation: The Case of Yield Spread Premiums, 12 Stan. J.L. Bus. & Fin. 289, 291-92 (2007). Yield spread premiums may violate RESPA, the broker's fiduciary duty to its customer, and local laws against abusive broker practices. The Board has recently announced significant limitations on this type of broker compensation, which we applaud. http:/ /ww w.
federalreserve.gov/newsevents/press/bcreg/bcreg20100816d1.pdf

[17] The innovative device of securitization brought capital into mortgage lending that permitted more loans to be made, but it also created barriers to accountability for bad actions by loan originators. Originators could pass problems on to "downstream" owners and investors, who in turn sought to exploit legal loopholes to avoid responsibility for fixing problems. The system of incentives exploited conflicts of interest affecting parties charged with maintaining the integrity of the system, such as appraisers, bond rating agencies and regulators. These conflicts and incentives may reappear, in new or old forms, in future marketplaces.