



**GREATER ROCHESTER  
COMMUNITY REINVESTMENT COALITION  
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**TESTIMONY OF BARBARA VAN KERKHOVE**

**STATE OF NEW YORK DIVISION OF THE BUDGET  
PUBLIC HEARING REGARDING THE 2008-09 BUDGET**

**November 17, 2007**

**Rochester, NY**

Good afternoon, my name is Barbara van Kerkhove and I am a policy analyst at the Rochester office of the Empire Justice Center. As part of my work, I co-convene the Greater Rochester Community Reinvestment Coalition (GRCRC), a coalition of over 30 locally based not-for profits and individuals.

The Greater Rochester Community Reinvestment Coalition was established in 1993 in an effort to generate discussion about the lending patterns in Rochester. Since then, the Coalition has released nine analyses of home mortgage, small business and subprime lending data. We have used the analyses to identify strengths and weaknesses in lending patterns and to generate ongoing discussion with the banks in question. Our more recent analyses have taken advantage of the expansion in the HMDA data since 2004. The data now includes information on whether each origination exceeds certain annual percentage rate thresholds and would thus be a “high cost” loan.

In addition to monitoring and analyzing lending patterns and practices, the Coalition also monitors local compliance with the Community Reinvestment Act (CRA) requirements of Bank of America, JP Morgan Chase, Citigroup, Canandaigua National Bank and Trust, M&T Bank, HSBC and Citizens Bank. The Coalition submits comments about the banks’ CRA compliance, based on our data analysis, to the appropriate state and federal regulators who have oversight of the banks.

Several GRCRC members, including Empire Justice Center, are on the City of Rochester’s Foreclosure Task Force and are members of New Yorkers for Responsible Lending (NYRL). NYRL is a state-wide coalition of more than 130 member organizations that promotes access to fair and affordable financial services and the preservation of assets for all New Yorkers and their communities.

Our mortgage lending data analyses, my work with GRCRC, NYRL and the City Foreclosure Task Force and the foreclosure prevention clients represented by Empire Justice Center inform the comments I am making today. As such, I will focus on how the Governor’s budget can help keep New York homeowners out of foreclosure.

## The current crisis

There is no doubt that foreclosures are on the rise in New York. According to Realtytrac.com, 72,339 foreclosures have been filed in New York between January and August of this year; and 13,246 were filed in August, compared to 10,531 in June.<sup>1</sup> While foreclosure filings were down nationally in September, they were still double the number of filings in September 2006. Moreover, analysts are saying that it's still too soon to say that foreclosures are peaking.<sup>2</sup> According to FDIC Chair Sheila Bair, "Merrill Lynch estimates that if home prices decline by just 5 percent, a quarter of subprime loans may enter default, resulting in losses of almost \$150 billion."<sup>3</sup>

How do we get a handle on the extent of the current "mortgage mess" in New York communities? Currently, the only way to determine the extent of subprime and nontraditional lending in our communities is through the publicly available HMDA mortgage lending data, which I mentioned earlier, that includes information on which loans are "high cost."

The term "high cost loan" refers to a loan whose APR (annual percentage rate) exceeds a certain threshold when compared to the interest rate on a U.S. Treasury Security of the same maturity; that threshold is 3 percent for first lien loans and 5 percent for subordinate lien loans. So a 10 year first lien loan which is 3 percent higher than the yield of a 10 year US Treasury bill would be reported in the HMDA data as a high cost loan. It should be noted that these "high cost" loans are not the universe of all subprime loans. High cost loans as defined here and captured in the publicly available HMDA data is really only a subset of loans that are considered subprime and nontraditional home loans. The whole category of loans that are potentially unaffordable and causing the current foreclosure crisis is much larger than reflected in the HMDA data.

So, why should we look at these high cost loans? Well, they are really the best estimate we have of subprime and nontraditional lending trends, particularly by small geographies and by borrower characteristic. And, as we have been reading in the news over the past 10 months, it is in the subprime and nontraditional lending markets where the "mortgage meltdown" and the bulk of foreclosures are occurring.

According to a recent report in the Wall Street Journal, in 2006 there were over 142,000 high cost loans made in New York, and 28 percent of all mortgages were high cost. Of the metropolitan areas examined, Nassau-Suffolk had the highest percentage of loans that were high cost—30 percent, followed by the New York-Wayne(NJ)-White Plains area and Glens Falls with 28 percent.<sup>4</sup> (See attached table for high cost loans in New York Metropolitan Areas.)

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<sup>1</sup> <http://www.realtytrac.com/states/New%20York.html>

<sup>2</sup> <http://www.msnbc.msn.com/id/21229057/>

<sup>3</sup> <http://www.nytimes.com/2007/10/19/opinion/19bair.html>

<sup>4</sup> <http://online.wsj.com/article/SB119205925519455321.html>

In addition, the Wall Street Journal has been keeping track of subprime lenders who either have gone bankrupt, closed, been acquired or stopped making loans.<sup>5</sup> It is very likely that homeowners with loans from these 80 lenders are going to find it much more difficult to work something out with their lender if they are at risk of foreclosure. And, since these are subprime lenders, homeowners with these loans are more likely to go into default than those with loans from prime lenders.

## **Using the Budget to Keep New Yorkers Out of Foreclosure**

### **Build on an Existing Model That Works**

Across the state there is an existing network of housing default counselors that already work with homeowners at risk of foreclosure.

By working with the homeowner, the lender and, in more difficult cases, with a legal services or private attorney, housing counselors have a history of helping borrowers regain control of their household finances, maintain their property and help stave off the decline of local neighborhoods.

After intense one-on-one financial analysis and counseling, a successful home rescue allows the housing default counselor to provide one of the following three services:

- Negotiation directly with the borrower's lender to seek a reasonable and affordable solution to allow the borrower to stay in their home.
- Referral of the borrower to a consumer attorney when the affordable solution is outside of the options the lender is willing to provide or when the borrower needs legal intervention.
- Referral of the borrower to a refinance program when option one and two are not feasible.

This model has been proven to work in communities across the state. For example, Rochester and Monroe County have a very successful foreclosure prevention program at The Housing Council. Of the 608 defaulting borrowers who received counseling at The Housing Council in 2006, **90 percent were successful in avoiding foreclosure**. And despite the fact that mortgage foreclosure **filings** increased in Monroe County between 2004 and 2006, foreclosure **sales** continued to decline. We believe that this consistent decrease in the number of foreclosure sales in Monroe County since 2002 is due to the counseling provided homeowners at The Housing Council backed up by legal assistance.

Such a program like The Housing Council's could be enhanced and replicated throughout New York with appropriate funding and products. So, our first recommendation is to:

1. **Fund Housing Counseling and Education.** *Provide \$5 million in funding to the New York State Banking Department for distribution to HUD-approved housing*

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<sup>5</sup> <http://online.wsj.com/public/resources/documents/info-subprimeloans0706-sort.html>

*counseling agencies with demonstrated capacity to deliver post-purchase, foreclosure prevention counseling; legal services attorneys; and not-for-profit organizations that provide foreclosure preventive outreach and education.* The Banking Department would establish RFP guidelines and encourage organizations in areas with high foreclosure rates to apply for funding.

I'd like to take the opportunity to thank Governor Spitzer and Attorney General Cuomo for their recent decision to provide \$2 million in funds to match private grants to not-for-profit counselors and civil legal services organizations providing foreclosure prevention counseling and legal assistance to homeowners facing delinquency and foreclosure. GRCRC believes this money will help build on an existing model that works in New York.

We urge the Governor to get this program off the ground as soon as possible using the guidelines described above and to work to encourage banks, community foundations and other grant making entities to make private grants are available to these agencies. We also urge the Governor to increase the funding so that the total available is at least \$5 million.

### **Helping Other Agencies Work with Homeowners**

While there are several counseling agencies in New York State with the demonstrated capacity to provide foreclosure prevention counseling and legal assistance, our work on Rochester's Foreclosure Task Force suggests there are several areas in New York State where homeowners in default and foreclosure will not be able to find the quality assistance they need. Therefore, our second recommendation is to:

2. **Fund Training and Technical Assistance Around Foreclosure Prevention and Legal Assistance.** *Provide \$2 million in funding to non-profit housing counseling agencies and civil legal services providers to provide foreclosure prevention counseling and legal assistance training and technical assistance to housing counselors and legal services programs.* Training in best practices and effective techniques in combination with direct individual assistance with difficult cases will result in dramatically more efficient advocacy on behalf of homeowners. Providing statewide training and support to local legal services programs and housing counseling agencies will also help to keep advocates up to date on changes in the law, industry practices and new opportunities for homeowners at risk of losing their homes. The Division of Housing and Community Renewal would develop an RFP process to ensure that the organizations providing the training and individual technical assistance have demonstrated success in working with and representing clients in default, in foreclosure and/or with predatory loans.

## **Helping Homeowners Not Eligible for Assistance**

When the default counseling and legal assistance is not sufficient to help a borrower keep their home because either the lender is not willing to negotiate affordable mortgage payments, the loan does not have illegal loan terms for a lawyer to litigate, or the homeowner is not eligible for other loan assistance, such as the SONYMA “Keep the Dream” program, the borrower must have other options that will allow them to refinance out of the unaffordable loan terms. The Governor can provide such an option by including in the budget a:

3. **State Foreclosure Fund.** *Provide \$100 million to establish a foreclosure remediation fund to assist individuals facing foreclosure and not eligible for public or private loan assistance, such as the “Keep the Dream” program. The fund would be implemented using sound eligibility criteria, and serve individuals who received an unaffordable loan on their primary residence and now face foreclosure.*

## **Addressing Foreclosures in the Future**

The current foreclosure crisis makes it clear that New Yorkers, the New York State Banking Department and the Attorney General need a better understanding of the extent of foreclosures in communities across the state. In New York, foreclosure data are currently available only at the county level, and for most counties are unavailable online. One must either purchase the data from private vendors, or undergo laborious data collection at county clerks’ offices. There is no state repository for this data, which should be gathered and made available for analysis and use by state officials and the public. Therefore, we urge the Governor to include in the budget:

4. **Funding for Foreclosure Data Collection.** *Require the Banking Department to collect foreclosure data from counties throughout the state, create a public repository for this data, and adequately fund this process. This would help the Banking Department and Attorney General identify communities and mortgage originators that might be disproportionately represented in the foreclosure data and act swiftly to address the problem.*

Thank you for your leadership on the current foreclosure crisis, and for the opportunity for GRCRC to provide input as to how the 2007-08 budget can help further address it. We look forward to working with Governor Spitzer in saving New York homeowners and communities from foreclosure.

### Number and Concentration of High Rate Loans in New York State Metropolitan Areas (2006)

Metropolitan area	State	High-rate loans		High-rate loan volume	
		Number	As pct. of all mortgages (%)	In dollars (millions)	As pct. of total volume (%)
Ithaca	N.Y.	286	11.8	25	8.9
Albany-Schenectady-Troy	N.Y.	8,657	27.3	964	23.1
Rochester	N.Y.	7,117	23.5	528	18.2
Poughkeepsie-Newburgh-Middletown	N.Y.	7,352	27.5	1,400	27.7
Buffalo-Niagara Falls	N.Y.	6,706	24.3	507	19.7
Glens Falls	N.Y.	1,507	28.3	159	26.1
Syracuse	N.Y.	4,732	24.2	361	20.4
Utica-Rome	N.Y.	2,074	24.8	149	25.0
Kingston	N.Y.	1,701	25.3	267	24.7
Elmira	N.Y.	661	26.1	43	24.8
Binghamton	N.Y.	1,714	26.1	123	24.5
Nassau-Suffolk	N.Y.	34,420	30.3	9,167	28.3
New York-Wayne-White Plains	N.Y.-N.J.	75,107	28.3	22,536	25.3

Source: WSJ research | [Methodology](#)

Source: "The United States of Subprime," by Rick Brooks and Constance Mitchell Ford, The Wall Street Journal, October 11, 2007, as found at: <http://online.wsj.com/article/SB119205925519455321.html>. Graphic for this table found at: <http://online.wsj.com/public/resources/documents/retro-SUBPRIME07.html>.