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Mortgage Foreclosures: A Review of Trends in Arkansas and Strategies Used by States and Communities to Respond

The rising rate of mortgage delinquencies and foreclosures is a growing concern for every state and the nation overall, as the extensive coverage of this issue recently in the media has highlighted. Data show that millions of Americans have lost their homes or are in the process of potentially losing their homes to foreclosure. [1]

Clearly, this is a problem that the nation, states, and local communities must pay attention to and, more importantly, find ways in which to respond. This brief examines mortgage delinquency and foreclosure rates nationally and in Arkansas. The data show that mortgage delinquencies and foreclosures are a growing problem here in the state.

The brief also examines the strategies other states and communities have adopted to respond to this problem, with the intent of highlighting potential options for state and local policymakers and other stakeholders in Arkansas.

Mortgage Category Definitions

Different mortgage products are credited with sparking the current delinquency and foreclosure growth. The majority of the blame is placed on subprime and/or adjustable-rate mortgage products. However, other types of loans—such as prime and fixed-rate mortgages—have seen changes in the rate of default and foreclosure as well.

Prime mortgages are considered conventional and are traditionally available to borrowers with a good credit history and who are able to make down payments. In contrast, subprime mortgages are customarily provided to borrowers who have less than perfect credit or are unable to pay a more traditional down payment. These products tend to have higher interest rates and may include terms such as prepayment penalties or balloon payments. [2]

Both prime and subprime mortgages can have either fixed or adjustable interest rates. Fixed-rate mortgages (FRMs) maintain the same interest rate throughout the life of the loan. Adjustable-rate mortgages (ARMs) tend to have low introductory rates that reset after a period of time and will result in substantially different monthly payments. [3]

National Delinquency and Foreclosure Trends

Between the fourth quarter of 2004 and the fourth quarter of 2006, the national rate of delinquencies increased for all types of loans highlighted in this brief. Adjustable rate mortgages (ARMs) experienced higher increases in delinquencies and foreclosures than fixed rate mortgages (FRMs). Foreclosure rates for prime and subprime fixed-rate mortgages either remained stable or decreased between the fourth quarters of 2004 and 2006.

The chart below shows the national percentage change in mortgage delinquencies and foreclosures between the fourth quarter of 2004 and the fourth quarter of 2006:

National percentage change in mortgage delinquencies and foreclosures between 4th quarter 2004 and 4th quarter 2006

	Total Past Due	30 Days Past Due	90+ Days Past Due	Foreclosures*
Prime FRMs	10.8%	10.6%	11.1%	0%
Prime ARMs	63.4%	49.1%	120.8%	136.8%
Subprime FRMs	11.2%	11.4%	10.5%	-9.1%
Subprime ARMs	49.8%	31.4%	98.9%	95.4%

*Represents foreclosure inventory at the end of the quarter
Adapted from the Mortgage Bankers Association, National Delinquency Survey from Fourth Quarter 2004 and Fourth Quarter 2006

On average, delinquencies and foreclosures for all adjustable-rate mortgage products increased approximately 1000 percent more than for all fixed-rate mortgage products. Prime ARMs saw a 137 percent increase in foreclosure alone between the fourth quarter of 2004 and 2006 while subprime ARMs saw an approximate 95 percent increase during the same period. When looking at the percent of prime ARMs and subprime ARMs in foreclosure during the fourth quarter of 2006, it becomes clear that significantly more subprime ARMs (15.5 percent) are in foreclosure than prime ARMs (3.7 percent).[4]

All these trends suggest that ARMs have been a significant, contributing factor in the current mortgage crisis. Recently ARMs have begun to reset from the introductory rates at a rapid pace. As more adjustable-rate mortgages reset, it has been forecasted that the rate of delinquencies and foreclosures for these products will continue to grow.[5] These trends also suggest that subprime mortgages, at least with regard to ARMs, are being affected more than prime mortgages.

Arkansas Delinquency and Foreclosure Trends

Arkansas is experiencing a rise in mortgage delinquencies and foreclosures that is similar to national trends, but also unique. Chart A below shows the percentage change in mortgage delinquencies and foreclosures in Arkansas between the fourth quarter of 2004 and the fourth quarter of 2006. To provide a different perspective, Chart B highlights the percent of mortgages in delinquency or foreclosure in Arkansas during the fourth quarter of 2006.

Chart A
Percentage change in mortgage delinquencies and foreclosures in Arkansas between 4th quarter 2004 and 4th quarter 2006

	Total Past Due	30 Days Past Due	90+ Days Past Due	Foreclosures*
Prime FRMs	24.8%	24.1%	17.2%	-11.1%
Prime ARMs	43.3%	27.1%	-29.5%	87.1%
Subprime FRMs	15.8%	15.6%	17.2%	-7.7%
Subprime ARMs	32.9%	20.0%	54.4%	59.2%

*Represents foreclosure inventory at the end of the quarter
Adapted from the Mortgage Bankers Association, National Delinquency Survey from Fourth Quarter 2004 and Fourth Quarter 2006

Chart B
Percentage of mortgage in delinquency or foreclosure in Arkansas during 4th quarter 2006

	Total Past Due	30 Days Past Due	90+ Days Past Due	Foreclosures*
Prime FRMs	2.8%	2.1%	0.3%	0.4%
Prime ARMs	5.7%	3.8%	0.7%	1.5%
Subprime FRMs	13.9%	7.3%	4.2%	3.0%
Subprime ARMs	19.4%	10.3%	4.9%	5.2%

*Represents foreclosure inventory at the end of the quarter
Adapted from the Mortgage Bankers Association, National Delinquency Survey from Fourth Quarter 2004 and Fourth Quarter 2006

The data indicate the following key trends in Arkansas:

- Delinquencies and foreclosures for all ARM mortgage products increased approximately 200 percent more than for all FRM mortgage products between the fourth quarter of 2004 and 2006 (Chart A).
- On average, ARM mortgage products (both prime and subprime) in Arkansas had 40 percent more delinquencies and foreclosures than FRM mortgage products during the fourth quarter of 2006 (Chart B).
- Delinquencies and foreclosures for prime and subprime ARMs have significantly increased, although not as much as the national average. Prime ARMs saw an 87 percent increase in foreclosure alone between the fourth quarter of 2004 and 2006 while subprime ARMs saw a 59 percent increase during the same period (Chart A).
- In 2006, 5.2 percent of subprime ARMs were in foreclosure compared to 1.5 percent of prime ARMs (Chart B).
- In 2006, subprime mortgages overall (both fixed-rate and adjustable-rate) experienced, on average, approximately 200 percent more delinquencies and foreclosures than prime mortgages (both fixed-rate and adjustable rate) (Chart B).
- Arkansas has experienced a faster increase in both prime and subprime FRM delinquencies between the fourth

quarters of 2004 and 2006 than the nation on average. On average, delinquencies for prime FRMs in Arkansas increased about 100 percent more than the U.S. while subprime FRMs delinquencies increased about 50 percent more than the national average. However, foreclosures for prime FRMs are actually decreasing in Arkansas while increasing nationally, and foreclosures for subprime FRMs are decreasing at about the same rate as the national average (Chart A).

In summary, Arkansas is experiencing a significant rise in delinquencies and foreclosures for prime and subprime ARM products, similar to but not quite as high as national increases. Subprime ARMs in particular are experiencing high rates of delinquency and foreclosure, over three times the rate of prime ARMs. Overall, subprime mortgages (ARMs and FRMs) are experiencing a much greater percent of delinquencies and foreclosures than prime mortgages. What is most unique about Arkansas is that delinquencies for prime and subprime FRMs are increasing at rates significantly above the national average. These trends suggest Arkansas is certainly experiencing a delinquency and foreclosure problem similar to the national problem. More specifically, they suggest ARMs and subprime mortgages overall are contributing most to the problem.

To draw more specific conclusions about why ARMs and subprime mortgages in Arkansas are experiencing relatively high rates of delinquency and foreclosure, more specific data on the characteristics of these types of loans is needed. ARMs and subprime loans are not faulty products by nature. National data on these loans have identified some common characteristics such as high loan-to-value ratios, reduced documentation, etc, which suggest other contributing factors to these loans' delinquency and foreclosure rates. [6] Unfortunately, this kind of data gathering and analysis is beyond the scope of this brief. But this analysis is needed to better understand all the dynamics involved in the current foreclosure situation and more importantly help determine a comprehensive set of solutions to help homeowners.

Homeownership Preservation Foundation (888-995-HOPE) is a non-profit organization based in Minneapolis that is dedicated to foreclosure prevention and the preservation of homeownership. In partnership with NeighborWorks®, HPF's foreclosure prevention hotline will be available to NeighborWorks® nation-wide network of organizations. The Homeownership Preservation Foundation's Hotline is available 24 hours a day and provides budget counseling and negotiation with lenders when necessary. In some instances, the more complicated cases are referred to local organizations for further assistance.

Source:
http://www.nw.org/network/newsRoom/pressReleases/2005/netNews112205.asp

The next section explores the range of strategies that have been implemented by states and communities to respond to the mortgage delinquency and foreclosure problem in other parts of the country. As indicated below, there are a range of responses that state and local communities in Arkansas can consider to help homeowners facing mortgage delinquencies and foreclosure. Some of these responses deserve immediate consideration, such as homeowner education and debt restructuring, while others are best considered in the context of the additional research and analysis suggested above.

State and Local Responses to Rising Foreclosure Rates

Responses have been developed at both the state and local levels to protect homeowners from rising delinquency and foreclosure rates. These responses can be grouped into five categories: homeowner education and debt restructuring; prohibition of predatory lending practices; regulation of mortgage brokers and originators; consumer protection from foreclosure "rescue" scams; and slowing of the foreclosure process. Below are brief descriptions of each category coupled with some specific examples of state and local responses in each category.

Homeowner Education and Debt Restructuring

Homeowner education and debt restructuring involves counseling for homeowners facing foreclosure, mortgage loan restructuring (including but not limited to refinancing), and access to emergency funds to help borrowers stay in their homes or pay delinquent bills. The following are some specific examples of this response.

Ohio Home Rescue Fund and Opportunity Loan Refinance Program

The Ohio Home Rescue Fund and the Opportunity Loan Refinance Program were developed and implemented based on the recommendations of a task force initiated by Ohio's governor. The Ohio Rescue Fund program is funded by the Ohio Department of Development and is administered by local non-profit organizations. It provides assistance to homeowners in partnership with the Homeownership Preservation Foundation (HPF) Hotline (see textbox on page 3 for more information) that is available 24 hours a day. Families in danger of foreclosure may also qualify for as much as $3,000 in emergency assistance to save their homes. [7]

The Opportunity Loan Refinance Program is run by the Ohio Housing Finance Agency and is receiving funding through taxable bonds. Homeowners who qualify can refinance to a 30-year, fixed-rate mortgage or a 20-year, fixed-rate second mortgage. In order to qualify, the homeowner must be up-to-date with current loan payments, earn less than 125 percent of the county's median gross income, and own his or her home of residence. Qualifying individuals must also attend at least four hours of HUD-approved counseling to receive refinancing assistance. [8]

Home Owners Preserving Equity, Maryland

Maryland has introduced Home Owners Preserving Equity through an initiative sponsored by Maryland's governor. This program assists homeowners facing foreclosure that focuses on financing and education primarily funded through private capital. The "Lifeline" Refinance Mortgage Program is administered by the Department of Housing and Community Development and will help about 500 families refinance their unaffordable mortgages. Additional private capital will be used to assist another 1,000 households with mortgages in need of refinancing or debt restructuring. Home Owners Preserving Equity also offers foreclosure prevention activities such as counseling and outreach. [9]

Beyond Housing, St. Louis, Missouri

Beyond Housing, a non-profit organization in St. Louis, provides both face-to-face and over-the-phone counseling in partnership with the HPF Hotline. All cases begin by contacting an HPF credit counselor. The more complicated cases are referred to Beyond Housing, which then attempts to develop a workout plan with the loan servicer. A small emergency fund is available to borrowers who need short-term assistance paying their mortgage, utility payments, or other bills. Beyond Housing also offers educational workshops that are aimed at preventing foreclosure and include topics such as avoiding predatory loans, personal finance education, refinancing a mortgage, and home maintenance. [10]

Neighborhood Housing Services, New York City

Neighborhood Housing Services (NHS) of New York City, a partner of NeighborWorks America, has developed a Homeownership Preservation Program that provides counseling, rescue loans, and foreclosure prevention workshops. Over-the-phone counseling is provided in partnership with the HPF Hotline and the more complicated cases are handled by NHS. Neighborhood involvement is encouraged through grants to local clubs that organize community financial education events. Foreclosure prevention workshops are offered on credit repair, borrower's willingness and ability to pay, and loss-mitigation. Homeowners who have been victims of predatory lending may qualify for loans that can pay their delinquent balances until their mortgages can be refinanced. [11]

Home Ownership Preservation Initiative (HOPI), Chicago, Illinois

Chicago's Home Ownership Preservation Initiative (HOPI) in partnership with the City of Chicago and Neighborhood Housing Services of Chicago, Inc., provides foreclosure prevention counseling that is available 24 hours a day through the local 3-1-1 telephone hotline. This program offers workshops with lender partners in attempts to prevent mortgage default. Local communities have found that many mortgage fraud cases have been committed by individuals claiming to be members of religious organizations offering mortgage assistance. In order to combat this particular problem, HOPI has enlisted the assistance of Chicago area churches and religious leaders to educate their congregations about these scams. HOPI also has developed a system of purchasing, rehabilitating, and selling abandoned buildings to increase affordable housing options in the city. [12]

Prohibition of Predatory Lending Practices

Another response has been new state laws that prohibit predatory lending practices. These laws aim to provide better regulations on the terms of mortgage loans to eliminate certain practices that have been deemed bad for the borrower. The provisions range from better disclosure of the loan's provisions to banning high fees and other specific terms.

Public Act 094-1029, Illinois

Illinois legislators enacted a predatory lending database pilot program that will operate in Cook County for up to four years. This program will require mandatory reporting by all mortgage originators of specific loans terms designated by the Secretary of Financial and Professional Regulation. The Department of Financial and Professional Regulation will then review all information in order to determine if the borrower requires loan counseling.

If the borrower is required to participate in counseling, he or she must meet with a HUD-approved mortgage counselor. After the meeting, the counselor will report back to the Department. All mortgages must attach a certificate of compliance that is printed from the database at the completion of the reporting process. Any mortgage without this certification cannot be recorded. [13]

Home Loan Protection Act (H.B. 185), North Carolina

North Carolina enacted a new law targeting unscrupulous lending practices by adding protections placed on the terms of subprime mortgages through the Home Loan Protection Act. A few specific protections include a ban on prepayment penalties; a requirement that all lenders document the income of potential borrowers; inclusion of all broker compensation in the determination of a high cost loan; an increase in broker responsibility to serve the best interest of the borrower; and assurance that homeowners have the right to pursue legal action when violations occur. [14]

L.D. 1869, Chapter 273: An Act to Protect Maine Homeowners from Predatory Lending, Maine

Maine also has passed legislation to protect state residents from predatory lending. L.D. 1869 includes provisions regarding both residential and high-rate, high-fee mortgages. Some of the protections on residential mortgages include a lower cap on fees; prohibiting creditor recommendations to default on an existing loan, loan flipping, and prepayment penalties; placing restrictions on the imposition of late payment fees or penalties; and requiring that creditors have a reasonable belief that the borrower can make scheduled payments. If creditors are making high-rate, high-fee mortgage loans, a few protections include certifying that the borrower has received credit counseling prior to making the loan as well as prohibiting increasing interest rates after default. [15]

Home Loan Protection Act of 2006 (H.B. 3597), Tennessee

Tennessee passed an act that prohibits certain lending practices. Mortgage lenders cannot charge prepayment penalties over two percent of the loan balance; participate in loan flipping; incorporate balloon payments into a contract; issue a substantially different interest rate at closing; or encourage borrowers to sign incomplete loan documents. Lenders issuing high-cost home loans are required to provide two pay-off statements upon request per year; report both favorable and unfavorable payment history information every quarter; and have credit counselors available to borrowers.[16]

Regulation of Mortgage Brokers and Originators

Another response among states has been to require stricter licensing and certification of mortgage brokers.

S.B. 185, Ohio

In Ohio, in order to protect homeowners from false appraisals and dishonest mortgage lending practices, mortgage brokers, loan officers, and real estate appraisers are required to be either licensed or certified to originate, or be involved in the process of originating, a mortgage. This certification process also requires that all appraisers, brokers, and originators undergo a federal criminal background check before becoming certified or licensed. [17]

Consumer Protection from Foreclosure "Rescue" Scams

The newest manner in which states are attempting to protect homeowners is to curb certain practices during the foreclosure process often referred to as foreclosure "rescue" scams. Such scams can be committed through services such as foreclosure consulting, equity purchasing agreements, or pre-foreclosure conveyances. Foreclosure consultants are real estate brokers who advise a homeowner in foreclosure and list the property on the market. Equity purchasing agreements are contracts that allow a buyer to purchase a home in foreclosure that will not be used as a place of residence.[18] Pre-foreclosure conveyances are used when a homeowner transfers either the title or some interest in a property to another party in order to postpone foreclosure. [19]

Chapter 291, Colorado

Colorado passed a law to regulate foreclosure practices in 2006 that requires full disclosure of the costs and services in both foreclosure consulting and equity purchasing contracts. Contracts must include specific notices written by the state concerning the services performed and the homeowner's contract cancellation rights. Specific actions by foreclosure consultants are prohibited such as collecting compensation prior to completing all services or obtaining power of attorney from the homeowner. Equity purchasers may not record a contract or transfer any interest in residence to a third party prior to the end of the cancellation period. Violations of this act are punishable by jail time and/or fines. [20]

This is an example of Colorado's required statements to be included in all foreclosure consulting and equity purchasing contracts.

Notice Required by Colorado Law

(Name) or (his/her/its) associate cannot ask you to sign or have you sign any document that transfers any interest in your home or property to (Him/Her/It) or (His/Her/Its) associate...

If you want to cancel this contract, mail or deliver a signed and dated copy of this notice of cancellation, or any other written notice, indicating your intent to cancel to (name and address of foreclosure consultant, including facsimile and electronic mail address.)…

This is an important legal contract and could result in the loss of your home. Contact an attorney or a housing counselor approved by the Department of Housing and Urban Development before signing.

Source: http://www.leg.state.co.us/clics2006a/csl.nsf/fsbillcount3/D270FC0D5FFAE9AE9AC872570AF007E3BEC?Open&file=071_enr.prd

Chapter 322, New Hampshire

In New Hampshire, a new law targets the practices of foreclosure consultants and pre-foreclosure conveyances that can harm homeowners. Under this law, foreclosure consultants must fully disclose the terms of any rescue agreement and the fees involved; ensure the homeowner is aware of his or her right to cancel the agreement; and may not gain power of attorney. Pre-foreclosure conveyances must communicate to the homeowner the right to cancellation; may not be executed through a power of attorney; and may not attempt to waive the homeowner's rights. Any violation of these provisions is a criminal offense and may be punishable through fines, jail time, and repayment of lost equity to the homeowner. [21]

Slowing the Foreclosure Process

A final response that at least one state has implemented is slowing down the foreclosure process. The slowing of the process can be helpful in allowing homeowners to make delinquent payments, refinance or restructure loans through their lenders, or to sell the property that is about to go into foreclosure.

Case-by-Case Delay of Foreclosure, Massachusetts

With the support of the governor, banks in Massachusetts have been asked to provide a 60- to 90-day delay in the foreclosure process for borrowers who have filed consumer complaints against their mortgage lenders. These delays will be granted on a case-by-case basis and the commissioner of banks believes that this will allow some homeowners the ability to regain control of their financial situations and keep them in their homes. [22]

Conclusion

Arkansas has seen an increase in mortgage delinquencies and foreclosures similar to national trends. In Arkansas, a wide range of mortgage products are being affected, but ARM mortgage products and subprime mortgage products overall are the most affected. Further data and analysis on the characteristics of these kinds of loans is needed to determine more precisely why these loans are the most affected.

These delinquency and foreclosure trends, which are predicted to continue, suggest that Arkansas needs to begin considering ways in which to help the increasing number of homeowners in the Natural State who are facing delinquent or foreclosed mortgage loans. Fortunately for Arkansas, many states and communities have responded, providing policymakers and other stakeholders in Arkansas with a variety of strategies to consider as mortgage delinquencies and foreclosures continue to present a problem for the state. Certain strategies need be considered immediately, such as homeowner education and debt restructuring, while others are best considered in the context of additional data and analysis of delinquent and foreclosed mortgage loans in Arkansas.

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Prepared by Kimberly Reeve DeLong
Senior Policy Analyst
Public Policy Program
1400 West Markham, Suite 400
Little Rock, AR 72201
Phone 501.661.0322 ex. 25

E-mail: kreeve@southerngff.org

www.southerngff.org

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