

**The American Dream Lost:
Foreclosures
In Pima County, Arizona**

Southwest Fair Housing Council
September 20, 2004

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The Southwest Fair Housing Council is solely responsible for the content of this report, including the accuracy of the data. The statements and opinions expressed in this report may not reflect the view of any funding source, cooperating agency or contributor. It is not stated nor is it implied anywhere in this report that a high rate of foreclosures for any particular lender is due to predatory or abusive lending tactics. However, SWFHC believes that a high rate of foreclosure is a cause for concern and warrants investigation.

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Forward

The release of this study has had a long and circuitous route and its history is almost as telling as the study itself. In the summer of 2003, in response to a number of complaints regarding predatory lending and a precipitous increase in foreclosures, the Southwest Fair Housing Council (SWFHC) undertook what was to be a study of predatory lending in Pima County. This study was conducted in two parts. SWFHC subcontracted the first part to the Southwest Center for Economic Integrity (SCEI) because of their experience in abusive practices in the area of consumer loans. This first report focused on the dramatic increase of the Payday Loan industry in Pima County over the last few years and was released in December of 2003.

The second part of the study, conducted by SWFHC, was to focus on predatory lending in the home mortgage industry in Pima County. The intent of the study was to go beyond the sparse but dramatic anecdotal information available and to better understand the nature, pervasiveness and source of the predatory practices that were being reported. However, early in the research SWFHC hit a brick wall in trying to obtain information on predatory lenders. Requests for information from lenders and trade organizations proved futile; they were invariably unresponsive. The public records that were feasibly available contained virtually nothing regarding the terms and conditions of loans or in the case of court records, were financially and legally beyond our ability to attain. Attempts to get a large number of case studies also were fruitless. Most cases of predatory lending go unreported. The culture of our economy imposes personal shame and guilt to financial difficulty or failure and victims usually are unwilling to come forward and discuss it. Organizations or agencies that conduct loan counseling do not often reveal these kinds of problems because of legal restrictions and the privacy rights of clients.

As a result of these obstacles SWFHC decided early in the study that a new tack was needed and that was to focus on foreclosures. This decision was made for a number of reasons. First, although there is not a one to one relationship between foreclosures and predatory lending, a relationship nevertheless exists.² If we cannot get at predatory lending directly it may be possible to approach it obliquely through foreclosures. Second, foreclosures are harmful in themselves and whether they are caused by predatory lending or other factors their impact is similar to predatory lending in that they are devastating to the well being of families, neighborhoods and communities. Third, there is sufficient information available through public record to do a meaningful study of foreclosures.

² See the discussion on page 13 regarding the relationship between foreclosures and predatory lending.

Perhaps the most telling part of the story of this study is the response of lenders once preliminary information was released. This is discussed in the section on methodology. In general it reveals that information regarding lenders is closely guarded, hard to get and when it is provided tends to be obscured in abstruse formulas and formats available and decipherable only by the lender itself or regulators.³ It also brings home the fact that community advocates are at an overwhelming disadvantage when the interests of lenders and communities conflict. The paltry resources available to communities through such sources as CDBG are a ridiculously poor match for lenders who can measure their assets in billions and spend millions on lawyers and lobbyists.

Finally, a word on the style of this report is warranted. This report is a summation of the results of a more expansive report that was submitted as a Thesis in completion of a Masters Degree by Ari Posner, a research assistant for SWFHC and co-author of this study. The intent of this version of the report is to be journalistic rather than academic in style, easily read, succinct and accessible to a wide audience. While the results presented here are consistent with the findings presented in the longer version, this report attempts to be more user friendly and does not include the tables of regression analyses and other statistical analyses that it was thought would weigh it down and deter readers.⁴

³ See an example of a Lenders "standard" methodology in Exhibit A.

⁴ The full version is available under the same name as this report through the University of Arizona Library System.

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Introduction

Foreclosures have a deleterious effect on families, neighborhoods and communities. First, they uproot families and children, and destroy credit thus locking them out of the housing market and well as other credit markets; many families are never able to own a home again. A foreclosure immediately consumes assets and savings, diminishes the education opportunities for children and impedes future savings and reduces the ability of the family to support itself as member's age. Second, foreclosures destabilize neighborhoods, weakening the ties between neighbors that protect neighborhoods from crime, drugs and gangs. Foreclosures signal this instability and not only invite criminal activity but can also lead to disinvestment by other lenders who see unstable neighborhoods as a risk. With lower property values all neighborhood residents suffer and the neighborhood can begin to deteriorate. Third, foreclosures increase costs for communities by negatively impacting the tax base and increasing services such as police protection, rent subsidies such as Section 8 and funding to combat homelessness. In addition, foreclosure depress homeownership rates; they can grab private and public subsidies provided by home ownership programs and thus prevent this money from recycling and helping other families become homeowners.

Between 1995 and 2002 Pima County experienced a dramatic increase in the number of home foreclosures, almost 150%. As the number of foreclosures has increased so has community concern, particularly in regard to the role that abusive and predatory lending may be playing in these increases. While there are many causes for foreclosures, abusive lending is one and an increase in foreclosures have many community advocates worried that this may be a red flag signaling a rise in abusive practices.

Purpose of the Study

The purpose of this study is to gather and present information regarding the problem of foreclosures in Pima County. It is anticipated that this data will permit informed discussion, focused planning, and directed decision-making regarding the problem. More specifically, this report seeks to do the following:

1. Call attention to the increasing problem of foreclosures in Pima County.
2. Provide information regarding foreclosures in terms of both aggregate and lender specific data.
3. Provide specific recommendations to inform a plan of action that can alleviate increases in foreclosures.

4. Provide a basis for further research as to the relationship between predatory lending and foreclosures and facilitate the monitoring of questionable lending practices.

The Study on Foreclosures in Pima County

Methodology

Rationale for the Methodology that was used:

There were a number of factors that determined the methodology used in this study. First, early in this study it was apparent that information regarding foreclosures in Pima County was closely guarded and protected by the lending industry. Requests for information were either met with refusals or no response. The information that was available from national regulatory and private research sources was aggregate data and non-localized. Second, the funding available for this study was extremely limited. Third, there was virtually no precedent for the type of study that was being attempted.

Because of these problems, SWFHC took a common sense approach to the methodology used in this study. Communities such as ours need to be able to monitor and evaluate lenders in regard to their performance on such a critical issue as foreclosures. The overriding methodological consideration was developing a way to do this: First, limited funding meant that the data needed to be readily retrievable. Retrieving and analyzing the data could not depend upon methods that required costly researchers or analysts. Second, the data needed to be verifiable beyond the lenders themselves or federal regulators. Community based researchers need to be able to assure the veracity of the information it is working with. Third, the methodology needed to be replicable both for follow-up in subsequent years and for organizations in other communities. For example, at some point a study in Maricopa County would prove valuable both in itself and for comparison. Finally, the methods used needed to collect data that was meaningful for our purposes.

It was not until information had been gathered and some of the results released to the lenders named in the study in a preliminary draft that a few lenders provided some internal information regarding foreclosures. While some of the comments by lenders were helpful and are incorporated in this report, the information on foreclosures and the methodology it was based on was not since they met none of the data and methodological criteria that we had set for this study. This is discussed in more detail in the final section of this report and illustrated in Exhibit A.

Specific Methods:

SWFHC researchers reviewed all the foreclosures reported to the Pima County Recorders Office in the year 2002; a total of over 3,400. The information available from the Recorder's Office included the following: 1) Name of lender that originated the loan; 2) name of borrower; 3) date of loan origination; 4) date that the foreclosure was filed; and, 5) location of property, including zip code. Unfortunately the reason for foreclosure and information regarding the loan documents are not recorded at the Recorder's Office nor were they available for this study from other sources. However, the information that was available allowed us to determine the following:

1. Number of foreclosures in 2002, both in the aggregate and by lender originating the loan.
2. The time between foreclosure and loan origination in the aggregate and by lender.
3. Number of foreclosures for Hispanic borrowers in the aggregate and by lender⁵
4. The location of foreclosures by zip code.
5. The proportion of Hispanic property owners foreclosed on to total population, in the aggregate and by zip code.
6. The ratio of Hispanic foreclosures to Hispanic population in the aggregate and by zip code.

A review of HMDA data for 2002 also allowed researchers to collect additional information, such as number of loans for reporting lenders.

The analysis of individual lenders in the study focused on all lenders with 25 or more foreclosures in 2002. This totaled 22 lenders and is referred to in this report as the "focus group" or "targeted lenders".

Table 1, located in the appendix to this report, indicates the myriad of data derived from the research. While, to date, important findings have been made and are reported here, analysis continues. In addition, the information provided by this study offers a base of data for others to use to conduct further analysis.

⁵ Spanish surnames were used to determine ethnicity. This only approximates national origin since Hispanics may not necessarily have Spanish surnames.

Findings:

The following is a summary of the findings from this research:

1. The dramatic increase in foreclosures in Pima County in the last seven years parallels the increase in sub-prime lending during that time.

- From 1995 to 2002 foreclosures increased by 144.9 %, an annual average of over 20.7%.⁶ During the same period of time sub-prime lending increased over 488%⁷

Table 2. Increase in Foreclosures in Pima County

Year	Number of Foreclosures	Change from Previous Year	Annual Percentage of Increase	Percentage of Increase Since 1995
1995	1399	-	-	-
1996	1641	+242	17.3%	17.3%
1997	2108	+467	28.5%	50.1%
1998	2230	+122	5.8%	59.4%
1999	2540	+310	13.9%	81.6%
2000	2684	+144	5.7%	91.9%
2001	3134	+450	16.8%	124.1%
2002	3426	+292	9.3%	144.9%

2. 770 different lenders initiated all of the home foreclosures reported in Pima County in 2002.

Of these 770 lenders, 273 or 35.5% were individuals, not institutional lenders. A total of 497 different lending institutions reported home foreclosures in 2002 and these were the lenders that SWFHC looked at in this study.

⁶ There was a parallel increase in the number of registered Mortgage Brokers in Arizona. From 1999 to 2003 the number of brokers in the State of Arizona increased from 374 to 907, an increase of 142.5%

⁷ ACORN releases an annual report on sub-prime lending that includes data aggregated on the national level as well as more specific information in a number of states and metropolitan areas. ACORN isolated the data on subprime lending in Arizona, including Pima County, and presented this in a separate release titled Predatory Lending in Arizona. This report is the most comprehensive to date on sub-prime lending in Arizona and provides information relevant to this study.

3. The increase in the total number of loans in Pima County during this period (160%) was roughly the same as foreclosures (144%).

While increases in foreclosures appear to parallel increases in the number of loans to accept this as a rationale for the dramatic increase in foreclosures would be misleading for a number of reasons:

- **The nature of lending in Pima County has changed.** In 1997, 47% of loans in Pima County were refinances. In 2002 over 68% were refinances. Reflective of this, homeownership rose by only 64% compared with 144% for foreclosures. Sub-prime loans have increased dramatically and are a much greater proportion of all loans. By all indications predatory lending is increasing in Pima County. We need to understand how specific factors impact on foreclosures, project these into the future, and develop strategies to ameliorate damaging trends.
- **The foreclosure rate was unacceptably high in Pima County in 1995 and remains so today.** Evidence suggests that the Pima County foreclosure rate is higher than the national average. Remedies such as pre-purchase homebuyer counseling and consumer education, while perhaps stemming an increase, have not reduced this high foreclosure rate.
- **There are disturbing racial, ethnic, income, and age disparities in the nature of foreclosures which are masked by aggregate statistics.** Foreclosure rates are growing at a faster rate among minorities, in minority neighborhoods and in lower income families. The fact that unscrupulous brokers and lenders may be targeting vulnerable populations is of great concern because of the broad negative impact it has on neighborhoods and communities.

4. Relatively few lenders were responsible for a large percentage of foreclosures.

Twenty-two (22) of the total of 497 institutional lenders (about 4%) reported over 25 foreclosures and they were responsible for over 37% of all foreclosures reported in 2002.

5. There were wide disparities in the ratios of foreclosures to loans among Pima County Lenders in 2002.⁸

The study was not able to determine the ratio of foreclosures to loans for all the lenders in our focus group of 22 lenders. SWFHC researchers derived the

⁸ See discussion of foreclosure ratio versus foreclosure rate in the addendum to this report.

number of loans for each lender from the 2002 HMDA reports and 10 of these lenders did not file reports. Table 3 shows the percentage of foreclosures to loans for the 12 of the 22 targeted lenders filing HMDA reports. Table 4 shows only the total number of foreclosures for the 10 lenders who did not file HMDA reports.

Table 3
Percentage of Foreclosures to Loans
For Targeted Pima County Lenders filing HMDA reports in 2002

Loan Originator	Total Foreclosures in 2002	Total Loans in 2002	Percentage of foreclosures to loans*
New Century Mortgage Corp	66	203	32.51%
American Home Mortgage	31	91	31.31%
Long Beach Mortgage Co.	37	140	26.43%
Centex Finance Co.	27	153	17.65%
Option One Mortgage Co.	39	250	15.60%
Ameriquest Mortgage Co.	31	202	15.35%
Chase Manhattan Mortgage	78	1,195	6.53%
Bank One	89	1,450	6.14%
Sterling Capital Mortgage	30	862	3.48%
Bank of America	51	2,270	2.25%
Wells Fargo Bank	57	4,401	1.30%
Countrywide Funding Corp.	34	3,407	1.00%
TOTAL	570	14,624	3.90%

- Shading indicates lenders above the average percentage of foreclosures to loans in Pima County.

Based on this data, many lenders in Pima County exhibited a disturbing ratio of foreclosures to loans in 2002. As stated previously, this does not necessarily mean that predatory tactics were responsible for these foreclosures. However because of the damage that foreclosures inflict on individuals, families and communities and the role that predatory lending tactics can possibly play in foreclosures, high ratios of foreclosures to loans are problematic and warrant further investigation to determine the reasons. Even if predatory lending is not a factor in a high ratio of foreclosures, the high ratio itself is cause for the development of preventative strategies and action by community advocates.

Table 4
Top 22 Lenders in Foreclosures in Pima County
Not filing HMDA reports in 2002

Loan Originator	Foreclosures in 2002
Nova Financial and Investment	167
Charter Funding	40
Equicredit Corp.	36
Fleet Mortgage Corp.	36
Washington Mutual Bank	35
Home American Mortgage	34
North American Mortgage	34
Kaufman & Broad Mortgage Corp	32
Starr Pass Golf Suites	31
Associates Financial Services Co.	29
TOTAL	474

6. Sub prime lenders were responsible for a majority of foreclosures reported by all lenders with 25 or more foreclosures in 2002.

Of the 22 lenders with more than 25 foreclosures, 16 were identified by HUD as being sub-prime lenders. These 16 lenders were responsible for 700 of 1044 or 67% of the foreclosure for the 22 targeted lenders. These 16 subprime lenders were also responsible for about 21% of all foreclosures in Pima County in 2002. These results are consistent with those nationally.

7. Foreclosures in Pima County in 2002 tended to be within a relatively short time from origination.

For the top 22 lenders reporting foreclosures in 2002 approximately 56% of foreclosures occurred within three years of loan origination, 36% within two years and about 15% within one year (see Table 5 at the back of this report).

8. Foreclosures tend to be concentrated in specific zip codes

- Slightly less than 11% of zip codes, containing about 20% of the total number of households, accounted for over 33% of all foreclosures.
- The three zip codes with the most foreclosures accounted for 27% of all foreclosures but only 16% of households, a disparity of almost 60%. In addition, an average of 64% of residents within these zip codes were Hispanic.

- Zip codes with high rates of poverty are twice as likely to have high foreclosure rates.

9. Hispanics are more likely to be foreclosed on than Anglos.

- Hispanics accounted for 34.7% of foreclosures reported in 2002, while they accounted for only 11.9% of home loans made that year.
- Similarly, 18.7% of all homeowners were Hispanic while, again, they accounted for 34.7% of foreclosures, a disparity of almost 2 to 1.

10. Ratios of Hispanic foreclosures are higher in largely white zip codes than in largely Hispanic zip codes.

- In zip codes with Hispanic populations above the County median there were 21 foreclosures for every 1,000 homeowners and 26 Hispanic foreclosures for every 1,000 Hispanic homeowners. A difference of about 20%.
- In zip codes with below average Hispanic populations the proportion of foreclosures for all homeowners was 12 foreclosures for every 1000 homeowners and for Hispanic homeowners 24 foreclosures for every 1000 households. A difference of 100% or a disparity of 2 to 1.

The data here appear to tell us at least two things. First, while the overall rate of foreclosure is highest for Hispanics in predominantly Hispanic neighborhoods, the proportion of foreclosures for the Hispanic population is much higher in predominantly Anglo neighborhoods. In other words, if you are a Hispanic homeowner and living in a predominantly Hispanic neighborhood you are about 20% more likely than your neighbor to be foreclosed on. However, if you are a Hispanic homeowner residing in a predominantly Anglo neighborhood, you are twice as likely as your neighbor to be foreclosed on.

Second, Hispanic ancestry appears to be a more powerful factor in foreclosures than income.⁹ The overall rate for Hispanic foreclosures remained fairly consistent across all zip codes, at around 25 per thousand Hispanic homeowners, despite the median income of those zip codes. In other words, the data indicates that if you are a Hispanic home owner with a household income of \$60,000 per year, you are just as likely to be foreclosed on as a Hispanic homeowner with a household income of \$30,000 a year.

⁹ This was supported by regression analyses contained in the full report.

Relationship of Foreclosures to Predatory Lending

While there are many factors that may combine to contribute to foreclosures, numerous studies indicate that predatory lending is a significant one. This is no less true for Pima County and includes the following:

- Parallel rates of increase in the rise in sub prime lending, predatory lending practices, number of mortgage brokers in Arizona, number of lenders, and foreclosures.
- Testimony from local victims of predatory lending.
- Evidence that predatory lenders are in the market and their presence is growing. This includes statements from victims, media ads, mailings, telemarketing and spam.
- A substantial decrease in the average time between loan origination and foreclosures since 1995.
- Limited and confusing protection provided by existing lending laws and weak enforcement.
- In an expanding real estate market foreclosures can be a tempting windfall for lenders. Assumptions that lenders lose money in foreclosures are often not true, particularly in neighborhoods where property values are rapidly increasing or the value of the house has been inflated. Foreclosures can be an expedient way to strip equity and realize profit.¹⁰ In addition, the speculation in foreclosed properties is becoming a profitable industry itself that may be acting to exacerbate the proclivity of lenders to foreclose.

Recommendations

*"We believe that when addressing the problem of predatory mortgage lending, the emphasis should be on **stopping the problem, not preserving credit**. Preserving access to credit is not the problem in today's market. There is so much access to credit that American consumers are overwhelmed by it. Too much credit is not a good thing. Too much credit drives loss of equity, bankruptcies, insolvencies, and foreclosures. Too much credit only benefits the creditors - not the consumers"*

*Margot Saunders,
Managing Attorney, National Consumer Law Center.*

Based on the research that was conducted the following recommendations are offered:

¹⁰ An egregious and often overlooked type of predatory home lending in Arizona is cases of Contracts for Deed. The testimony of victims indicates that the practice of "flipping" contracts - foreclosing for minor or unsubstantiated violations of contracts and then re-contracting with another buyer - is common in Pima County.

1. More information is needed to be able to identify and monitor foreclosures and their relationship to predatory lending in Pima County.
2. Advocates for fair lending in Pima County need to collaborate with activists at the state level to support a state anti-predatory lending law.
3. Pima County does not have the authority to enact a local ordinance addressing this issue and therefore is required to defer to the State. However, the City of Tucson is not so restricted and could consider a local anti-predatory lending ordinance.
4. Anti-predatory prevention programs, mortgage counseling, financial literacy training, and partnerships with fair lenders should be expanded.
5. A community based fair lending committee should be established to contact and open discussions with lenders with high foreclosure rates to explore collaborative strategies that can reduce the number of foreclosures.
6. A Predatory Lending Remediation Program (PLRP) should be established.
7. More research needs to be conducted into Contracts for Deed in order to better identify abuses and develop county-wide regulations to prevent them.

Require information on the terms and conditions of loans to be submitted in foreclosure actions:

One of the greatest impediments to understanding the nature of predatory lending in Pima County, the causes of foreclosures, and the development of effective preventative and remedial measures is the lack of information. More investigation needs to be conducted to determine when, what and how information regarding the terms and conditions of loans can be required to be submitted when actions such as foreclosures are taken. Other communities have been able to record much of this information without infringing on the legal rights of individuals to privacy and Pima County can review these as models.

Provide community-based support for a state anti-predatory lending law:

Nationwide, as of January 9, 2004, 25 States, the District of Columbia and 11 localities have passed anti-predatory lending legislation. Several other states are at various stages of enacting anti-predatory lending bills. Arizona is one of these.¹¹

There has been considerable action in the last few years regarding a state anti-predatory lending bill in Arizona. A number of bills have been drafted but only one has been sponsored and gotten out of committee. In the Spring of 2003, anti-predatory lending advocates worked to defeat that bill because they saw it as an industry sponsored bill that not only failed to adequately protect consumers but in fact muddied and possibly weakened federal protection that

¹¹ See the GAO Report, previously cited, for a discussion of this issue.

was already provided by the Home Ownership and Equity Protection Act (HOEPA).

In 2003-2004 the Arizona Attorney General drafted a bill that received broad support from community advocates albeit limited support from the lending industry. However the bill failed to be introduced in the last legislative session for lack of a sponsor. The proposed bill was extensively researched and carefully worded to withstand scrutiny and challenges. It serves not only as a template for future legislation at the state level but could also act as a model for an ordinance at the local level. For these reasons its main provisions are presented here.

Prohibited Practices and Provisions for all Home Loans

- No Financing of insurance
- No loan flipping
- A “no call” provision
- No encouragement of default
- Limitation on late payment fees
- No fees for payoff balances
- Limitation on prepayment penalties

*Prohibited Practices and Provisions Regarding High Cost Loans.*¹²

- Limitations on financing of points or fees
- No refinancing of special mortgages
- No balloon payment
- No negative amortization
- No increased interest rate
- Limitation on advance payments
- Limitation on arbitration clauses
- Mandatory loan counseling
- Restrictions on home improvement contracts
- Limitations on modification or deferral fees
- No points, fees or prepayment penalties charged when creditor refinances its own high-cost home loan
- No lending without providing loan documents in language used by borrower
- No prepayment penalty

There are additional special requirements for high cost loans. The proposed bill also prohibits waivers of rights established under this bill, preempts local

¹² The definition of a high cost loan is consistent with the Home Ownership Disclosure Act (HOEPA) and reads as follows: “first lien loans with interest rates at least 8 points over the yield on U.S. Treasury Securities or subordinate loans with interest of at least 10% over these securities and/or with fees amounting to at least 5% for loans of \$20,000 or more and 8% below \$20,000.”

ordinances regarding loans covered by the act and applies to purchasers or assignees of the loan as well as the originators, but with certain limitations and exceptions.

Relief for borrowers can include damages, forfeiture of interest and fees by the lender, attorneys' fees and a rendering of the loan agreement void.

Anti-predatory lending advocates in Pima County need to actively participate and collaborate with advocates at the State level to support an effective anti-predatory lending state statute. The planning is now going on for the effort in the coming session of the state legislature. Whether Pima County has a voice in the design of a bill and the extent that local needs will be addressed will depend on this effort.

The City of Tucson should explore the establishment of a local anti-predatory lending ordinance:

According to a GAO report released in January 2004, at least 11 local jurisdictions have enacted anti-predatory lending ordinances. These include Chicago, Cleveland, Dayton, Toledo, Cleveland Heights, Atlanta, New York, Oakland, Los Angeles, and DeKalb County in Georgia.¹³ There are several good reasons that Tucson should consider the enactment of an anti-predatory ordinance, including the following:

- A local ordinance can address gaps in protection offered by federal and state lending laws by tailoring regulations to meet the specific needs of the community.
- Having an ordinance in place at the local level would assure the community a voice in proposed state legislation. This is particularly important if the proposed legislation is preemptory.
- The public debate that would occur with a proposed anti-predatory lending ordinance would itself help to build awareness of predatory lending and educate consumers on its nature and impact.

Expand predatory lending prevention programs:

Communities nationwide have found that expanded pre-purchase home ownership and counseling programs as well as the implementation of other measures have helped consumers identify and avoid predatory loans. These include the following:

- The funding of pre-purchase home loan counseling, financial literacy workshops and money management training for sub-prime borrowers
- Better enforcement of existing laws. Pima County and local agencies should initiate discussions with the Attorney General's Office in order to develop a Plan of Action.

¹³ GAO Report, 2004. These are localities that have ordinances that put actual restrictions on lending and are not just resolutions condemning predatory lending.

- Create partnerships with fair lenders to identify predatory practices and develop and fund effective education programs for borrowers.

However, as the Government Accounting Office noted in their recent study, consumer education, pre-mortgage counseling, and loan disclosure requirements are limited in effectiveness and certainly are not a panacea for predatory lending. Because of the complexity of loan documents and disclosure statements, the difficulty in reaching target audiences, counselors' inability to review loan documents, as well as fraud, deceptive statements and high-pressure tactics by abusive lenders, even well informed consumers could become victims.¹⁴

Establish a community-based, fair lending committee and initiate discussions with lenders with problematic records:

Discussions between a community based and public sanctioned committee of concerned citizens and organizational representatives and lenders with high numbers of foreclosures should be initiated for at least two reasons: First they may be able to help us understand the reasons for the high rate of foreclosures in Pima County and thus better address the problem. And, second, it can provide an opportunity to develop specific collaborative strategies with lenders to reduce foreclosures. A vehicle to establish such a committee already exists in the Fair Lending Coalition, which is comprised of community advocates and organizational representatives concerned with unfair lending practices.

Establish a Predatory Lending Remediation Program (PLRP):

Unfortunately, because of the prevalence of predatory lending practices in Pima County, many borrowers find themselves trapped in predatory loans and do not know where to turn for assistance. In addition, many borrowers may be at risk of foreclosure and are not able to identify the exact cause(s) for their situation. Foreclosure is just the final stage of a process that begins with late payments and leads to default. If assistance can be provided early in this process it is more likely that foreclosure can be avoided. Presently assistance that could help in these situations is limited and not easy for consumers to locate or access. In addition, the assistance that is out there is scattered, uncoordinated and unfocused. Other communities have been able to bring remedial assistance together into effective coordinated and focused programs and anti-predatory lending advocates in Pima County can look toward these as models. The following recommendation takes some of the elements of Predatory Lending Remediation Programs and adapts them to the needs of Pima County.

¹⁴ GAO Report, 2004

A Predatory Lending Remediation program (PLRP) for Pima County could include the following.¹⁵

1. Foreclosure and data analysis
2. Technical assistance for consumers
3. A remediation/renegotiation program
4. Post-purchase counseling and training in money management

Contracts for Deed can also be predatory and, based on anecdotal evidence, are a significant problem in Pima County. Thus, PLRP should also assist persons with a Contract for Deed that may have predatory provisions.

Since a number of organizations that do housing counseling come in contact with victims of predatory loans and may assist those in certain ways, the program may best be conducted by a coalition of agencies with one taking the lead and assuming administrative responsibility. A collaborative effort would also increase the base of support, broaden the scope and draw from already existing skills and programs.

In addition, while Pima County can provide seed money for PLRP, on-going funding could be developed from a number of other sources such as the City of Tucson, HUD, the State, Fannie Mae, AARP and local banks and lenders.

Investigate abuses in Contracts for Deed, plan for better enforcement of existing laws, and consider local regulation:

While Contracts for Deed were not a focus of this study nonetheless it has been revealed that abuses in Contracts for Deed are a significant factor in undocumented evictions and foreclosures within Pima County. In 2003, the University of Arizona Departments of Planning and Applied Anthropology conducted a survey in the Old Nogales Highway Colonia located about 10 miles Southeast of Tucson. Over 1,000 surveys were distributed among the 3,500 residents of the 14 square mile community. A number of those surveyed identified abuses in Contracts for Deed as a major concern. In addition, there have been numerous anecdotal reports regarding Contracts for Deeds that include allegations of such practices as unwarranted evictions, balloon payments that almost invariably led to default, undocumented and fraudulent verbal assurances and a host of other complaints. Largely monolingual Spanish speakers appear to be most vulnerable to these practices. Based on this information the following recommendations are offered:

1. Investigate the exact nature and prevalence of the problem of predatory practices by sellers of Contracts for Deed

¹⁵ The design of the program suggested here is based on the Predatory Lending Remediation Program sponsored by the Toledo (Ohio) Fair Housing Center.

2. Include Contracts for Deed in any programs developed to prevent or remedy predatory lending practices, including help in transferring these contracts to traditional loans
3. Review existing laws in Arizona regarding consumer protection and fraud and develop ways these may be better used in regard to Contracts for Deed.
4. Review laws in other states and localities that specifically address abuses in Contracts for Deed and use these as models for a State Statute and/or countywide ordinance.

Addendum: Responses by Lenders to the Foreclosure Study

A few lenders who had learned of the report, had reviewed a preliminary draft, or received a summary of tentative findings at the Affordable Housing Conference sponsored by the City of Tucson in April 2004 requested an opportunity to respond to the findings prior to release. SWFHC and supporters of the Study agreed to this. On June 1, 2004 SWFHC sent out preliminary drafts of the report to the 22 lenders named in the study. Replies were requested within 10 days. A number of lenders notified SWFHC that they wanted to respond but could not within that period of time. SWFHC accommodated all requests for more time and ended up basically providing all the time that lenders felt they needed. The last response was received August 19th and SWFHC waited further, until August 30th, to cut off the response period. Even with the additional time, the number of responses were disappointing. Only six lenders responded in writing during this period of time with varying comments and additional or alternative information. Two other lenders responded by phone.

Only four of the responses that were received were in some detail and contained substantive data. The following is a compilation and summary of the responses along with SWFHC's reply.

Lender's Response:

1. *"Predatory lending was too closely coupled with foreclosures and it gave the impression that foreclosures indicated predatory lending or that a high number of foreclosures defined the lender as a predatory lender."*

SWFHC's reply:

First, SWFHC clearly stated in the study that there could be a number of reasons for foreclosures and that abusive lending may not be a factor or in some cases only a partial factor; a high number of foreclosures may not necessarily mean that predatory lending is occurring. However, a high number of foreclosures can be a red flag for predatory lenders who have either already reaped the benefits of high fees, costs and interest or are looking for a windfall

of equity. In addition, considering the devastating effect they have on families, neighborhoods and communities, high numbers of foreclosures for any reason are disturbing and warrants investigation and actions to remedy the problems.

In order to clarify the fact that the focus of the study is on foreclosures the discussion of predatory lending occurs after the foreclosure data and discusses the possible but not invariable relationship of foreclosures to predatory lending tactics

Lender's response:

2. *Foreclosures are caused by a number of socio-economic factors including unemployment, bankruptcies, divorce etc. It is these causes rather than anything lenders are doing that account for foreclosures. SWFHC should have considered these in their study.*

SWFHC's reply:

As SWFHC stated in the study, there are many causes for foreclosures. SWFHC enumerated a number of these. There is however a problem in contending that these are almost invariably the causes of foreclosures and that these should be the focus of the Study. In reference to lenders, these factors impact on all lenders similarly yet there are wide differences in the number of foreclosures between lenders. These external factors are thus unable to explain the reasons for these differences. Rather, the reasons for differences in foreclosures between lenders lie with the policies, practices, terms, conditions and profit and loss management strategies of particular lenders. Focusing on such factors as bankruptcies, divorce rates, unemployment, federal policies and other social, political and economic factors may help us to understand the aggregate rate of foreclosures and can be of some help in understanding differences between zip codes but are red herrings when it comes to understanding why the foreclosure rate is so much higher for some lenders than others.¹⁶ Unfortunately, it is this internal information that lenders protect so vigilantly and is so difficult for community researchers to obtain.

Lenders response:

3. *SWFHC's methodology was questioned and termed "flawed" by one lender because the term "foreclosure rate" did not conform to their use of the term. One lender claimed a "standard" usage, which included information that is not normally public information.*

SWFHC's reply:

¹⁶ For an example of an analysis of economic and social factors in the differences in foreclosures between neighborhoods see Risky Business - An Economic Analysis of the Relationship Between Subprime Lending and Neighborhood Foreclosures. 2004, Dan Immergluck and Geoff Smith. Woodstock Institute. www.woodstockinst.org

“Foreclosure rate” or similar terms have been used in various ways and can include different factors depending on the particular purpose and the information one wishes to clarify or obscure.¹⁷ The lenders that responded defined it a number of ways. One lender defined it three different ways. It can often include loans and servicing rights that have been purchased and were not originated by the lender. The use of such concepts as “units of service” instead of loans originated counted loans and loan servicing rights for loans that were not originated but were bought and sold and came in and out of the pool. This had the effect of inflating the numbers of “units”, and reducing the ratio of foreclosures to loans. In addition, the use of data to determine foreclosure rate was inconsistent between lenders and depended on information that is not normally available to the public. Thus, one lender provided SWFHC with a classic catch 22. It was contended by that lender that if the study was to be valid SWFHC would be required to use the methodology determined to be “standard” by that lender. However, their methodology was based on information that is internal to lenders and not available to the public and, thus, using the methodology would have precluded any study comparing rates of foreclosures between lenders by anyone except possibly a federal regulator.¹⁸

One lender accurately pointed out that the foreclosure rate usually refers to a pool of loans and the number of foreclosures within that pool over a period of time. Instead SWFHC took a “snapshot” looking at loans originated in 2002 and loans foreclosed in 2002. These were not necessarily the same loans. We believe this is valid and was a necessary accommodation to determine a ratio of foreclosures to loans when neither the time nor information is available for a three dimensional analysis (foreclosures, loans and time). Generally we would not expect the ratio of loans originated in that year and foreclosures in that year to differ greatly to the foreclosure of the actual loans over time - but it could. For this reason SWFHC is taking care to point this out.

SWFHC is using the term “foreclosure ratio” in the study to distinguish it from the ambiguous term “foreclosure rate”. Foreclosure ratio includes only information that is 1) available in public record, 2) verifiable, 3) uniform and replicable, and 4) identifies information that is useful for our purpose. Thus the data for this ratio is readily available to communities and evaluates foreclosures to loans on a consistent scale. In addition, foreclosure ratio only includes loans originated which focuses on the terms and conditions defined by loan originators. This identifies the lender responsible for the loan and avoids the argument that many lenders have used to avoid responsibility for terms and conditions that lead to foreclosures.

¹⁷ For example see the use of the term “foreclosure level” in the article cited above.

¹⁸ See Exhibit A at the end of this report.

It is true however, as one lender pointed out, that by using "foreclosure ratio" SWFHC's scale may differ from that used in national comparisons. While national comparisons have always been problematic because of inconsistencies in what constitutes "foreclosure rate" this study has dropped comparisons to national data that were made in earlier drafts and only compares lenders locally on a consistent scale

Lenders response:

4. *The number of loans and/or foreclosures provided by lenders differed, at times dramatically, from the number of foreclosure recorded or the HMDA data. One lender stated they made over 1,800 loans when 99 were reported in their HMDA report.*

SWFHC's reply:

The wide disparities between the information provided by lenders and that which is public record confirms the importance and validity of basing the study on information that is accessible to the public and can be verified. SWFHC checked its data with a number of sources and is confident it is correct.

Lenders response:

5. *A few lenders offered programs to help consumers who are facing problems with loan fraud, predatory lending, default or foreclosure.*

SWFHC's reply:

Community organizations would welcome any effort by a lender(s) which would help to lower the number of foreclosures, and would cooperate with these efforts. However it is obvious that there can be clear conflict of interest with "internal" consumer programs. In the case of allegations of fraud these should be filed with and investigated by the State Attorney General's office. This will assure that the rights of consumers are protected. Second, one of the purposes of such an office should not only be to help homeowners who are facing foreclosures but also to gather information on lenders who are using predatory and possibly illegal tactics. Lender programs have not offered to do this. Third, the operations of such offices should be "transparent" to determine their effectiveness. It is not clear that any particular lender is going to meet this need. It is SWFHC's opinion that the interest of consumers would be better served by an office independent of specific lenders that could nevertheless draw on the resources of a wide range of lenders offering a variety of loan products. Lenders should be willing to support such an effort.

Lenders response:

6. *Lenders expressed opposition to antipredatory lending legislation. One lender stated "...we disagree with a number of specific statements the Study makes, particularly the recommendations for and the contents of an anti-predatory lending bill.*

Housing consumers, community advocates, agencies and organizations are overwhelmingly in favor of antipredatory lending laws to protect themselves and their communities, yet have been continually thwarted in their efforts to have them enacted by lenders and others in the housing industry. This consistent opposition to laws against many of the practices that foster foreclosures as well as the unwillingness to provide information are reasons that advocates of fair lending see anti-predatory lending laws as necessary.

-END-

EXHIBIT A

Methodology Stipulated by Chase/Bank One in their Response to This Study

The standard way to calculate a lender's foreclosure rate is to measure the number of loans in foreclosure as a percent of all loans that the lender services. This would include loans that it originates, has purchased or services on behalf of third parties. By this measure, both Chase's and Bank One's foreclosure rates in Pima County are well below the average. We should point out that while our foreclosure rates are low, we are interested in your ideas on ways to lower foreclosures in Pima County.

Both Chase and Bank One are large nationwide mortgage and home equity lenders with large servicing portfolios. Chase, but not Bank One, originates subprime mortgage loans. Chase currently services 71,396 mortgage loans in Arizona, of which 12,241 are in Pima County. The following chart provides the details of this servicing.

Chase Mortgage Foreclosure Rates--July 2004				
Category	Units Serviced	Foreclosures		Aggregate Arizona Rate
		Units	Rate	
Arizona	71,396	464	0.65%	0.79%
<i>Pima County</i>	12,241	57	0.47%	

The Aggregate Arizona Rates is from the Mortgage Bankers Association ("MBA") as of first quarter, 2004. Only statewide rates are available on an aggregate basis.

These data show that both statewide and in Pima County, Chase's foreclosure rates are well below the Aggregate Arizona Rate for all lenders.¹⁹ The Study's 6.53% foreclosure rate attributed to Chase is clearly erroneous.

Similarly, Bank One's foreclosure rates both statewide and in Pima County are well below the Aggregate Arizona Rate. At first glance, they seem unusually low and that is because Bank One sold all mortgage servicing rights in bulk in 1999 and continued to sell newly originated servicing until 2002. As a result, the mortgage loans currently serviced by Bank One represent only loans originated over the past few years. Because borrowers tend not to default immediately on their mortgage payments, the mortgage foreclosure rates in the table below are lower than they otherwise would have been. For that reason, we have also included Bank One's home equity foreclosure data, which was not affected by the sale of mortgage servicing rights. Contrary to what the Study suggests, these data indicate that Bank One is not originating loans without respect to its borrowers' ability to pay and that the 6.14% foreclosure rate calculated in the Study is clearly erroneous.

¹⁹ Chase and Bank One data include foreclosures for loans where Chase or Bank One acts as trustee for a loan securitization and the loan is serviced by Chase or Bank One, respectively. The data do not include foreclosures where Chase or Bank one acts as trustee but the loan is not serviced by Chase or Bank One.

Bank One Foreclosure Rates--July 2004				
Category	Units Serviced	Foreclosures		Aggregate Arizona Rate
		Units	Rate	
Arizona				
Mortgage	735	0	0%	0.79%
Home Equity	83,002	60	0.07%	
Pima County				
Mortgage	103	0	0%	
Home Equity	12,008	11	0.09%	

The Aggregate Arizona Rates is from the MBA as of first quarter, 2004. Only statewide rates are available on an aggregate basis.

SWFHC Comments on Exhibit A:

Chase’s “standard” methodology lacks any of the criteria that we defined for the methodology that we needed for this study. One, it is not readily retrievable. It is based on internal data and not available to the public. Two, based on internal information it is not verifiable except to internal auditors. Three, studies based in this methodology may not be replicable for other lenders who use different “standard” ways to define, loans, units of services and foreclosure rates. Finally, the information that a study based on these methods provides is not the information we are seeking i.e. data that will provide a consistent measure of foreclosures to loans in order to be able to compare and evaluate lenders. The methodology that Chase/Bank One provides is more attuned to internal cost accounting than external performance comparisons. The use of such concepts as “units of service” based on servicing that is bought and sold independent of origination is abstruse, except to Chase administrators, and obscures the relationship between foreclosures and terms and conditions of loans. It precludes any understanding of the role abusive lending may be playing in a foreclosure and a comparison of Lender performance. Ironically by Chase’s own admission its methodology is unable to provide an accurate current foreclosure rate for Bank One and it needed to “adjust” the data to try to provide one. In short, Chase’s methodology is not one that community based researchers could feasibly use to evaluate the performance of lenders in regards to foreclosures.

