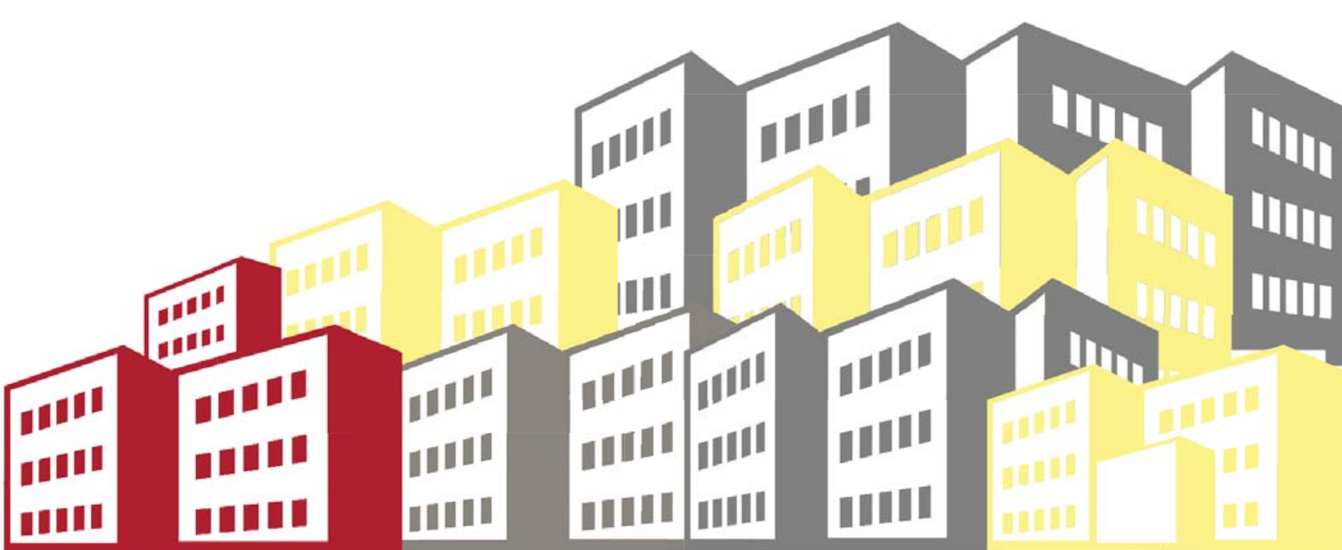
RENTERS IN FORECLOSURE:
A Fresh Look at an Ongoing Problem

NATIONAL LOW INCOME HOUSING COALITION | *September 2012*



NATIONAL LOW INCOME HOUSING COALITION

The National Low Income Housing Coalition is dedicated solely to achieving socially just public policy that assures people with the lowest incomes in the United States have affordable and decent homes.

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EXECUTIVE SUMMARY

IN THE THREE YEARS SINCE THE NATIONAL LOW INCOME HOUSING COALITION first alerted the nation to the plight of tenants facing foreclosure of homes they are renting, U.S. renters remain in jeopardy from the ongoing waves of foreclosures. Today, renters make up approximately 40 percent of families affected by foreclosure. While Congress's 2009 Protecting Tenants at Foreclosure Act (PTFA) gives renters-in-the-know historic rights to protect the stability of their housing, many renters remain unaware of their rights under the PTFA. Whether renters are ultimately protected by the PTFA depends on several factors, but unfortunately the law gives no federal agency the authority to ensure the law is implemented.

For this report on the current state of people renting homes going through the foreclosure process, we:

- Analyzed available data on properties in the late stages of the foreclosure process to estimate the proportion of renters impacted.
- Scanned media and research for current issues facing this population.
- Surveyed lenders on their policies regarding implementation of the PTFA and other protections for renters.
- Surveyed legal services and housing counseling workers to determine the PTFA's efficacy.
- Looked at the impact that rental units in foreclosure have on renters, neighborhoods and federal housing policies regarding real estate-owned (REO) properties.

Our conclusions are:

- The PTFA is an extraordinarily important protection for renters and should be made permanent.
- One federal agency must be directed to oversee nationwide compliance with the PTFA.
- Nationwide data must be made available to better assess and address foreclosure's impact on renters.
- Efforts to convert REO properties into rental housing must have an affordability component to ensure extremely low income renters have homes in these neighborhoods.
- The overall federal investment in affordable rental housing should be expanded by investments in the National Housing Trust Fund to meet rapidly growing need for housing affordable to the lowest income households.

INTRODUCTION

WHILE THE NUMBER OF FORECLOSURES HAS DRAMATICALLY INCREASED since NLIHC's 2009 report, "Renters in Foreclosure: Defining the Problem, Identifying Solutions," the estimated proportion of renters affected by foreclosures has remained relatively constant at 40 percent (Pelletiere, 2009).[1] That is, renters continue to constitute 40 percent of the families facing foreclosure of their homes. Rental properties continue to constitute an estimated 20 percent of all foreclosures.

In this new report, which is an update of our 2009 report, we take a broader look at the issue of renters in foreclosure and seek to answer some key questions.

What is known about this population?

Not enough. The paucity of national, accessible data on whether foreclosed properties are renter- or owner-occupied makes it difficult to quantify the impact of foreclosures on renters. This must be remedied.

What is known about laws Congress has passed to protect renters' housing stability?

Despite the ongoing lack of national data, what is known about renters affected by foreclosure was startling enough to spur Congress to enact the PTFA in May 2009. This law provides the first national protection for renters, a population previously overlooked in policy responses to the foreclosure crisis. While an important first step, PTFA is set to expire at the end of 2014. If the PTFA is not extended or made permanent, renters once again will be without any federal protection when faced with a foreclosure-related eviction.

How are housing counselors and legal services attorneys responding?

The PTFA is self-executing. In other words, implementation of the law is not overseen by any federal agency and, as such, its efficacy is not formally evaluated. To gauge the law's impact, this report includes the results of an NLIHC-conducted survey of housing counselors and legal service providers who work to implement the PTFA on the ground, as well as a summary of the policies of major lending organizations as related to renters in foreclosure and as provided to NLIHC upon request.

The results of these surveys and a literature review conducted by NLIHC find that while the PTFA has been a helpful tool, it needs an enforcement mechanism and should be made permanent.

What is happening to these properties after the foreclosure occurs?

The impact of the foreclosure crisis on renters goes beyond evictions. Increasingly, the lack of proper maintenance of renter-occupied homes that have been foreclosed on has an effect similar to eviction, because neglect by a new owner can render a property uninhabitable (Joint Center for Housing Studies, 2011).

What is happening to the overall housing market as more people enter the already crowded rental market?

Looming over the foreclosure response are reports that the foreclosure crisis has not yet reached its halfway mark (Gruenstein Bocian and Quercia, 2011). As such, the federal response to the crisis must not only legislate policies to prevent foreclosures but must also work to stabilize neighborhoods and correct market imbalances, such as the oversupply of vacant properties for sale and growing rental demand that have been exacerbated by the crisis (NLIHC, September 2011).

1 NLIHC tabulations of Warren Group data from: CT, MA, NH, and RI, January 2010 through March 2011 and 2010 American Community Survey (ACS) Data.

How can renter needs be covered by new housing policies?

The needs of renters, both those affected by the foreclosure crisis and those otherwise lacking affordable housing, must be included in forthcoming policies that aim to hasten neighborhood recovery. Of note is the REO-to-rental pilot program launched by the Federal Housing Finance Agency, the Department of the Treasury and the Department of Housing and Urban Development (HUD). The pilot enables the government sponsored enterprise Fannie Mae to sell a portion of its REO inventory to investors for conversion into rental units (Federal Housing Finance Agency, 2012). Further pilots, that may include properties owned by Freddie Mac or the Federal Housing Administration, may be launched at a later time.

Any REO-to-rental program presents a unique opportunity to address the ongoing shortage of housing affordable to extremely low income households. These rental units can be made affordable, and maintenance and operations expenses addressed, through the pairing of a sale with dollars from the National Housing Trust Fund (NHTF). Currently, the pilot includes no mention of affordability considerations, nor does it include any policies related to the PTFA compliance or efforts to ensure tenant stability (Federal Housing Finance Agency, 2012). Advocates must work to ensure that the needs of renters are not forgotten in any stage of the federal foreclosure response.

POLICY RECOMMENDATIONS

This report summarizes NLIHC's findings regarding renters in foreclosure and the PTFA and proposes five key policy recommendations that will ensure that protections for renters stay in place, are strengthened and contribute to an expansion of the housing affordable to low income renters as rental markets continue to tighten.

DATA SHOW MASSIVE NUMBERS OF RENTERS FACING FORECLOSURE

WHILE ACKNOWLEDGING THE SCARCITY OF DATA RELATED TO RENTAL FORECLOSURES, NLIHC's findings show that renters continue to be affected by foreclosures at rates similar to those estimated by NLIHC at the outset of the crisis. As noted, the existing literature provides varied estimates of renters affected by foreclosure, with these estimates (ranging from 10 percent to 65 percent) largely determined by dynamics in local housing markets.

The combination of NLIHC's new estimates and other studies, both summarized below, suggest that rentals continue to represent at least 40 percent of foreclosed housing units nationwide, as was first estimated by NLIHC in 2009 (Pelletiere, 2009).

NEW ENGLAND DATA

To date, no national publicly accessible data are available on foreclosure filings. Sources, such as CoreLogic and Lender Processing Service (LPS), provide useful but proprietary information with relatively high data purchase costs (Carr, Anacker, and Mulcahy, 2011). Further, these data sources do not provide information on tenure status. The Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203, Section 1447) charged HUD and the Consumer Financial Protection Bureau (CFPB) with the creation of a publicly available database on foreclosures and defaults on mortgage loans. However, the rulemaking required to implement this law has not yet begun (Taylor, 2011).

In light of these constraints, NLIHC has analyzed data on properties at the end of the foreclosure process, either those with an auction notice or those that were already real estate owned (REO), in four New England states: Connecticut, Massachusetts, New Hampshire, and Rhode Island. For this report, NLIHC analyzed data from 2010 and the first quarter of 2011.[2]

Based on this analysis, NLIHC estimates that 46 percent of homes facing a foreclosure auction or that reached REO status during this period were rentals.[3] The findings show that the percentage of renter-occupied foreclosed properties has stayed relatively stable through the crisis, even as the number of foreclosures has increased. Based on the same data from 2010 and the first quarter of 2011, multifamily properties, which are often home to renters, represent 22 percent of foreclosed properties and 44 percent of foreclosed units.

Our initial 2009 report analyzed data from the early years of the crisis: 2007 and the first quarter of 2008. In that report, we estimated that 45 percent of the homes facing a foreclosure auction or with REO status were renter occupied, and that multifamily properties account for 32 percent of foreclosed properties and 56 percent of foreclosed units (Pelletiere, 2009).

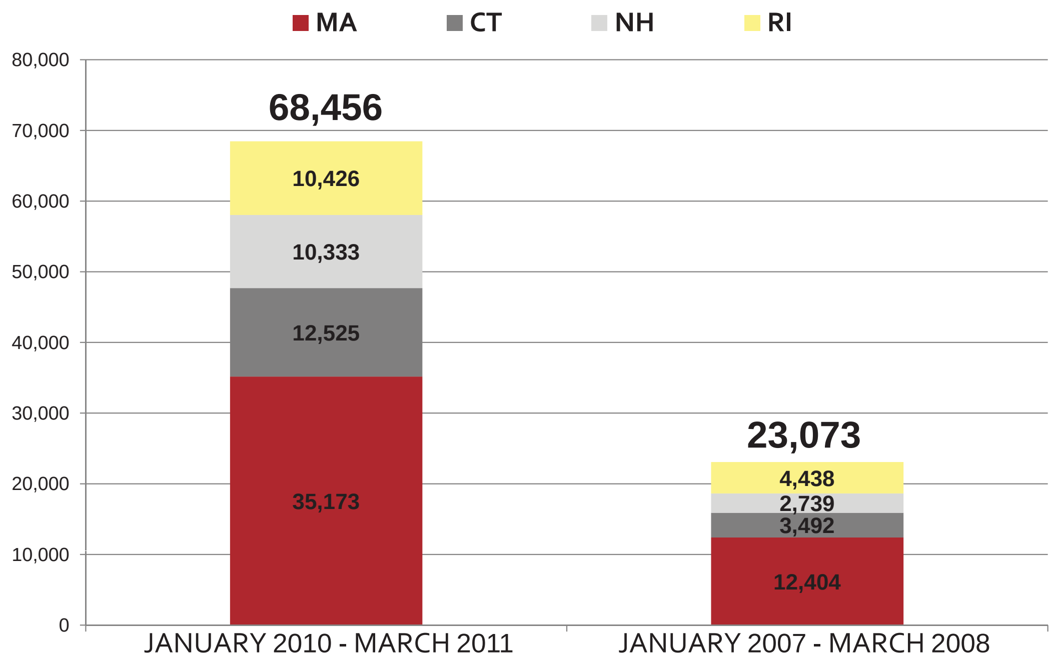
NUMBER OF RENTERS AFFECTED BY FORECLOSURES TRIPLES IN THREE YEARS

While the percentage of multifamily properties in foreclosure has decreased from the analysis of foreclosures in 2007 and the first quarter of 2008, the raw number of foreclosures has increased dramatically, meaning that many more renters are now feeling the impact of the foreclosure crisis. NLIHC estimates that approximately 68,500 renters (in approximately 30,600 households) were impacted by foreclosure in these four states between January 2010 and March 2011, compared to approximately 23,000 renters between January 2007 and March 2008.

2 NLIHC tabulations of Warren Group Data of properties with an auction notice or REO-status, January 2010 through March 2011 and 2010 American Community Survey (ACS) Data.

3 NLIHC tabulations of Warren Group Data of properties with an auction notice or REO-status, January 2010 through March 2011 and 2010 American Community Survey (ACS) Data. For 2010-11, NLIHC assumed that 17 percent of multi-unit buildings had an owner on-site and that 17 percent of single-family homes were renter occupied. For 2007-8 we assumed that 15 percent of multi-unit buildings had an owner on-site and that 15 percent of single-family homes were renter occupied. These numbers were based on 2010 and 2006 ACS occupancy status estimates, respectively.

figure 1 | ESTIMATED NUMBER OF RENTERS AFFECTED BY FORECLOSURE IN CT, MA, NH, RI



SOURCE: *NLIHC tabulations of Warren Group Data of properties with an auction notice or REO-status, January 2010 through March 2011 and 2010 American Community Survey (ACS) Data.*

NOTE: For 2010-11, NLIHC assumed that 17 percent of multi-unit buildings had an owner on site and that 17 percent of single-family homes were renter occupied. For 2007-8 we assumed that 15 percent of multi-unit buildings had an owner on site and that 15 percent of single-family homes were renter occupied. These numbers were based on 2010 and 2006 ACS occupancy status estimates, respectively.

table 1 | FORECLOSURE AUCTION AND REO PROPERTIES IN CT, RI, MA, NH

	JANUARY 2010 - MARCH 2011		JANUARY 2007 - MARCH 2008	
PROPERTY TYPE	TOTAL PROPERTIES	UNITS	TOTAL PROPERTIES	UNITS
SINGLE-FAMILY				
Single-family residential	30,401	30,401	8,606	8,606
Single-family condominium	7,110	7,110	1,602	1,602
Single-family mobile home	281	281	49	49
MULTIFAMILY				
2-family residential	5,384	10,768	2,156	4,312
3-family residential	3,280	9,840	1,316	3,948
1-4 family residential	681	1,703	252	630
2-5 family residential	268	868	743	2,601
4-8 unit apartment	774	4,644	246	1,476
9+ unit apartment	85	765	14	126
Apartment Building	51	510	9	90
TOTAL	48,315	66,890	14,993	23,440
SINGLE-FAMILY	37,792	37,792	10,257	10,257
% OF TOTAL	78%	56%	68%	44%
MULTIFAMILY	10,523	29,098	4,736	13,183
% OF TOTAL	22%	44%	32%	56%

SOURCE: *NLIHC tabulations of Warren Group Data of properties with an auction notice or REO-status, January 2010 through March 2011 and 2010 American Community Survey (ACS) Data; Wardrip, K.E., Pelletiere, D. (2008). "Research Note #08-10, Properties, units and tenure in the foreclosure crisis: An initial analysis of properties at the end of the foreclosure process in New England."*

NOTE: Foreclosures vary state-by-state, and timing of foreclosures is tied to whether a state is a judicial foreclosure state—that is, a state that requires a court approval for a foreclosure to be completed. Connecticut is a judicial foreclosure state. Rhode Island allows for both judicial and non-judicial foreclosures. The significant increase in foreclosures may in part be attributed to the fact that judicial foreclosures can take upwards of a year to process (Noguchi, March 2012), (RealtyTrac, 2012).

DATA SNAPSHOTS OUTSIDE OF NEW ENGLAND

ALTHOUGH THE ONGOING IMPACT OF THE FORECLOSURE CRISIS ON RENTERS is not limited to New England states, there is no existing data source to compare foreclosures and the impact on renters in different states. Rather, scattered reports and assessments have emerged of the impact of the crisis on renters in very diverse housing markets. While these different community snapshots help fill out the body of knowledge of how renters are affected by foreclosure, what remains notable is the lack of national, uniform data to assess the impact of the crisis.

California

In a 2011 report from California-based advocacy organization Tenants Together, "California Renters in the Foreclosure Crisis," the authors found that at least 38 percent of California homes in foreclosure were rentals. Overall, more than 200,000 California renters were directly affected by home foreclosures alone (Treves, 2011). The same report states that from 2009 to 2010, the foreclosure rate for single-family homes decreased almost 10 percent while that for apartment buildings with five or more units increased almost 30 percent.

Tenants Together notes that these numbers may be conservative, as many renters live in homes that are falsely classified as "owner-occupied" because many "more attractive" loan packages were reserved for owner-occupied properties. Further, Tenants Together reports that it is increasingly common for renters to reside as boarders in owner-occupied homes when owners need additional income to help make mortgage payments.

New York

Data and research from the Furman Center for Real Estate and Urban Policy estimates that in New York City, the nation's largest rental market (Badger, 2012), multi-unit buildings made up 56 percent of foreclosure filings in 2009. In terms of units, this means that in 2009 "at least 25,000 of the 46,000 units in properties that entered the New York City foreclosure process in 2009 were rental units." (Madar, 2010).

Massachusetts

The Metropolitan Boston Housing Partnership (MBHP) identified a connection between renters in foreclosure and the temporary Homelessness Prevention and Rapid Re-Housing Program (HPRP). In an evaluation of the HPRP program, MBHP found that eight percent of households seeking assistance had lost their homes due to foreclosure. According to MBHP, 32 percent of these households reported that they were formerly renters, and for an additional 16 percent it was unclear whether they had rented or owned their homes at the point of the foreclosure (Davis and Lane, 2012).

Minnesota

Hennepin County, which includes Minneapolis, is one locality that has conducted its own analysis of the impact of the foreclosure crisis on renters. The impact on renters in Minneapolis is significantly greater than comparable reports from across the country. Gail Dorfman, a Hennepin County Commissioner, testified before the House Financial Services Subcommittee on Housing, Insurance and Community Opportunity that "65 percent of the foreclosures in Minneapolis involve rental properties, and approximately 10 percent of the families in our homeless shelters over the past two years are renters coming from these foreclosed properties" (Dorfman, 2010).

Chicago

The Lawyers' Committee for Better Housing (LCBH) conducted an analysis of renters in foreclosure in some Chicago neighborhoods, with a particular focus on minority and low income communities. LCBH concluded through its analysis that many "community areas" had more than 10 percent of their rental stock impacted by foreclosure over the two years examined in the analysis (Swartz and Fron, 2010).

Children

A report released jointly by the policy advocacy organization First Focus and the Brookings Institution takes a nationwide look at children affected by the foreclosure crisis and estimates that "there are three million children living in rental units directly affected by the foreclosure process." The report estimates that 11 percent of American children have been affected by the foreclosure crisis and that a third of these children are living in rental housing units (Isaacs, 2012). The report, "The Ongoing Impact of Foreclosures on Children" uses data on foreclosures of owner-occupied homes and American Community Survey (ACS) estimates to approximate how many children in renter-occupied homes are impacted by the foreclosure crisis.

LOW INCOME AND MINORITY COMMUNITIES CONTINUE TO BE SEVERELY IMPACTED BY THE CRISIS

VARIOUS RECENT STUDIES SHOW THAT MINORITIES, particularly African-Americans and Latinos, continue to be disproportionately affected by the foreclosure crisis as compared to non-Hispanic Whites (Carr, Anacker, and Mulcahy, 2011).

While much of the existing research has focused on racial disproportionality in the foreclosure crisis among homeowners, NLIHC reported in 2009 that low income and minority communities, which are home to a greater percentage of renters, have been particularly affected by the foreclosure crisis (Pelletiere, 2009). Three years later this continues to be the case.

NLIHC analyzed data on foreclosures from four New England states from 2010 and the first quarter of 2011 to determine the racial and poverty characteristics of the census tracts where foreclosures occurred.[4] Based on NLIHC's analysis, the census tracts with the lowest percentage of White individuals and the highest percentage of households that are under the poverty line continue to have the highest foreclosure rates.[5] The foreclosure rate reached 2.72 percent in the low income, minority census tracts. This represents not only the highest foreclosure rate among all of the race and poverty categories examined by NLIHC in this analysis but also the second highest percentage point increase among census tracts in comparison to NLIHC's analysis of data from 2007 and the first quarter of 2008.

The data show a relative increase in foreclosures in what are classified as "White," low and average poverty census tracts. This finding could be explained by the fact that while the early years of the foreclosure crisis were dominated by defaults on subprime loans, increasingly, foreclosures occur due to an inability to make mortgage payments as a result of unemployment or other recession-related causes such as house price deterioration. As such, the concentration of foreclosures has declined in the minority neighborhoods that were targeted by subprime lending in the beginning of the foreclosure crisis and the years immediately preceding it (Kiviat, 2009; Armour, 2009).

Foreclosure rates are still disproportionately high in African-American neighborhoods, particularly with respect to multifamily property foreclosures. New research suggests that this might be attributed to the high level of foreclosures of investor-owned properties as compared to owner-occupant foreclosures (Gilderbloom, Ambrosius, Squires, Hanka, and Kenitzer, available online in 2012). In other words, renter-occupied properties may account for the relatively higher level of foreclosures in these neighborhoods.

Overall, NLIHC's analysis shows that in the early years of the foreclosure crisis and shortly thereafter, the highest number of completed foreclosures occurred in high-poverty neighborhoods. Multifamily properties, more often than not home to some renters, continue to make up a substantial percentage of the properties that have been foreclosed on. The following two tables below summarize data on foreclosure rates and the percentage point change in these rates as compared to the data presented in NLIHC's 2009 report.

4 NLIHC tabulations of Warren Group Data of properties with an auction notice or REO status, January 2010 through March 2011 and 2010 American Community Survey (ACS) Data.

5 NLIHC calculates "foreclosure rate" by dividing the number of foreclosed units over total households, as opposed to households with a mortgage. This is because the Census Bureau currently only makes available data on households with a mortgage that are owner-occupied.

table 2 | FORECLOSURES IN NEW ENGLAND BY HOUSING TYPE AND CENSUS TRACT RACE AND POVERTY CHARACTERISTICS

Foreclosure Rate (Foreclosed Units/ Total Units), January 2010 - March 2011

Percentage Point Change between the January 2007 - March 2008 Period and the January 2010 - March 2011 Period

	WHITE QUARTILE		MIDDLE HALF		NON-WHITE QUARTILE	
	Foreclosure Rate	% Point Change	Foreclosure Rate	% Point Change	Foreclosure Rate	% Point Change
LOW POVERTY	0.96%	0.75	0.89%	0.65	0.82%	0.30
AVERAGE POVERTY	1.38%	1.10	1.03%	0.71	1.40%	0.80
HIGH POVERTY	1.80%	1.17	1.99%	1.53	2.72%	1.40

SOURCE: *NLIHC tabulations of Warren Group Data of properties with an auction notice or REO-status, January 2010 through March 2011 and 2010 American Community Survey (ACS) Data.*

table 3 | MULTI-UNIT FORECLOSURES IN NEW ENGLAND BY HOUSING TYPE AND CENSUS TRACT RACE AND POVERTY CHARACTERISTICS

Percentage of Foreclosed Properties that are Multifamily (Multifamily Foreclosed Properties/Total Foreclosed Properties), January 2010 - March 2011

Percentage Point Change in rate of Multifamily Foreclosed Properties between the January 2007 - March 2008 Period and the January 2010 - March 2011 Period

	WHITE QUARTILE		MIDDLE HALF		NON-WHITE QUARTILE	
	% of Foreclosed Multifamily Prop.	% Point Change	% of Foreclosed Multifamily Prop.	% Point Change	% of Foreclosed Multifamily Prop.	% Point Change
LOW POVERTY	10.8%	3.80	10.9%	2.90	14.21%	6.21
AVERAGE POVERTY	8.37%	-1.63	16.79%	-0.21	21.23%	-9.77
HIGH POVERTY	18.98%	-7.02	31.76%	-1.24	47.51%	-10.49

SOURCE: *NLIHC tabulations of Warren Group Data of properties with an auction notice or REO-status, January 2010 through March 2011 and 2010 American Community Survey (ACS) Data.*

NOTE: The White Quartile is the bottom quarter of tracts in each state ranked by the proportion Non-White population, the Middle Half contains tracts ranking between the 26th and 75th percentiles of tracts ranked by the proportion Non-White population, and the Non-White Quartile in the top quarter of tracts ranked by the proportion Non-White population. That is, the quarter of tracts with the highest percentage of "Non-White" residents. A tract is categorized as being "low poverty" if its poverty rate ranks in the bottom third within the state, "average" if it ranks in the middle third or "high" if it ranks in the top third.

THE PROTECTING TENANTS AT FORECLOSURE ACT WORKS

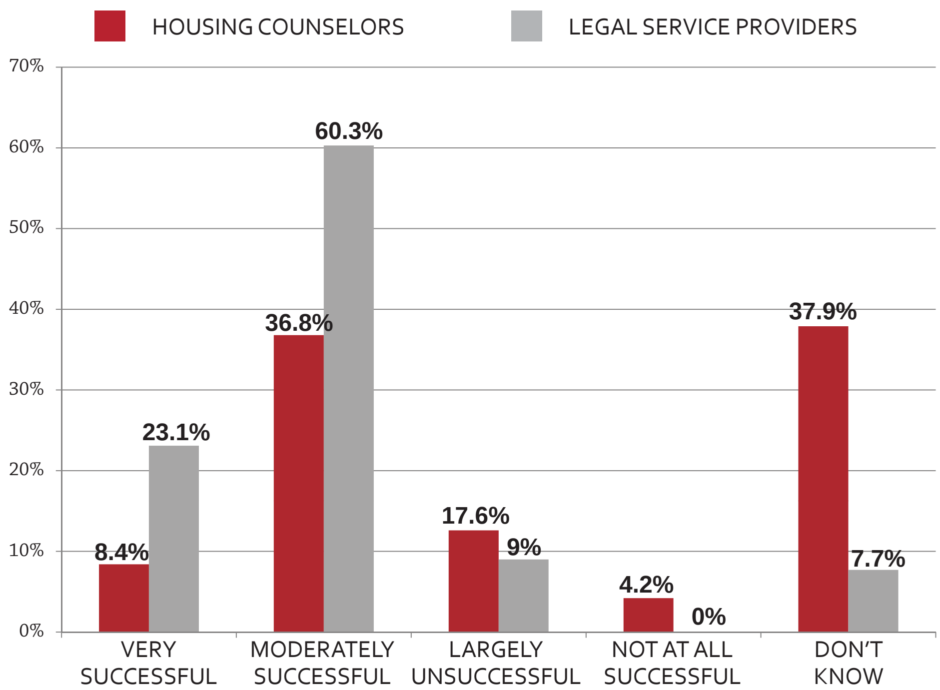
WITHOUT A DOUBT, THE LARGEST POLICY CHANGE since the 2009 edition of “Renters in Foreclosure” is the enactment of the Protecting Tenants at Foreclosure Act (PTFA).

The PTFA (P.L. 111-22, division A, title VII) was signed into law by President Obama on May 20, 2009. Initially slated to expire at the end of 2012, the law was extended and clarified by the Dodd-Frank Act and unless extended further will now sunset at the end of 2014.

The PTFA requires the immediate successor in interest at foreclosure to provide bona fide tenants with at least 90 days' notice before requiring them to vacate the property. Tenants with a lease are allowed to occupy the property until the end of the lease term. The one exception is when the successor in interest plans to use the property as his or her primary residence, in which case the successor in interest is allowed to terminate the lease on 90 days' notice.

Since its enactment, the PTFA has been recognized as an extremely effective tool in preventing the eviction of renters due to a foreclosure. In the fall of 2011, NLIHC conducted surveys of legal service providers and housing counselors who work directly with tenants in foreclosure. Ninety-two percent of the legal service providers responded that they have used the PTFA in their advocacy for a client. Close to 90 percent of the lawyers who have used the PTFA stated that it has helped to halt or otherwise avoid an eviction in their cases. Likewise, 90 percent of housing counselors said that the PTFA has been useful in one or more of their efforts to assist tenants in foreclosure-related evictions, and 73.7 percent responded that the PTFA has helped halt or otherwise avoid an eviction of at least one of their clients.[6]

figure 2 | **PERCEIVED EFFICACY OF THE PTFA**



SOURCE: *National Low Income Housing Coalition. (2011, November). [Survey of Housing Counselors and Legal Service Providers on Renters in Foreclosure]. Unpublished raw data.*

NLIHC found through the survey that while knowledge of the PTFA is very high among legal service providers (100 percent), the law is not quite as well known among housing counselors, with only 78.3 percent of housing counselors reporting they had heard of the law.

6 Eighty-two legal service providers and 153 housing counselors completed the 2011 surveys.

Unsurprisingly, there is a considerable difference in the PTFA knowledge of professionals and that of clients. When asked how many renters seeking assistance already knew something about the PTFA before they sought professional services, 57.5 percent of housing counselors and 35.4 percent of legal service providers said that none of their clients knew of the law and its protections prior to seeking help. Thirty-six percent of counselors and 51 percent of legal service providers responded that only a few of their clients were familiar with the law. Only one legal service provider and one counselor responded that all or most of their clients knew something about the PTFA before seeking assistance.

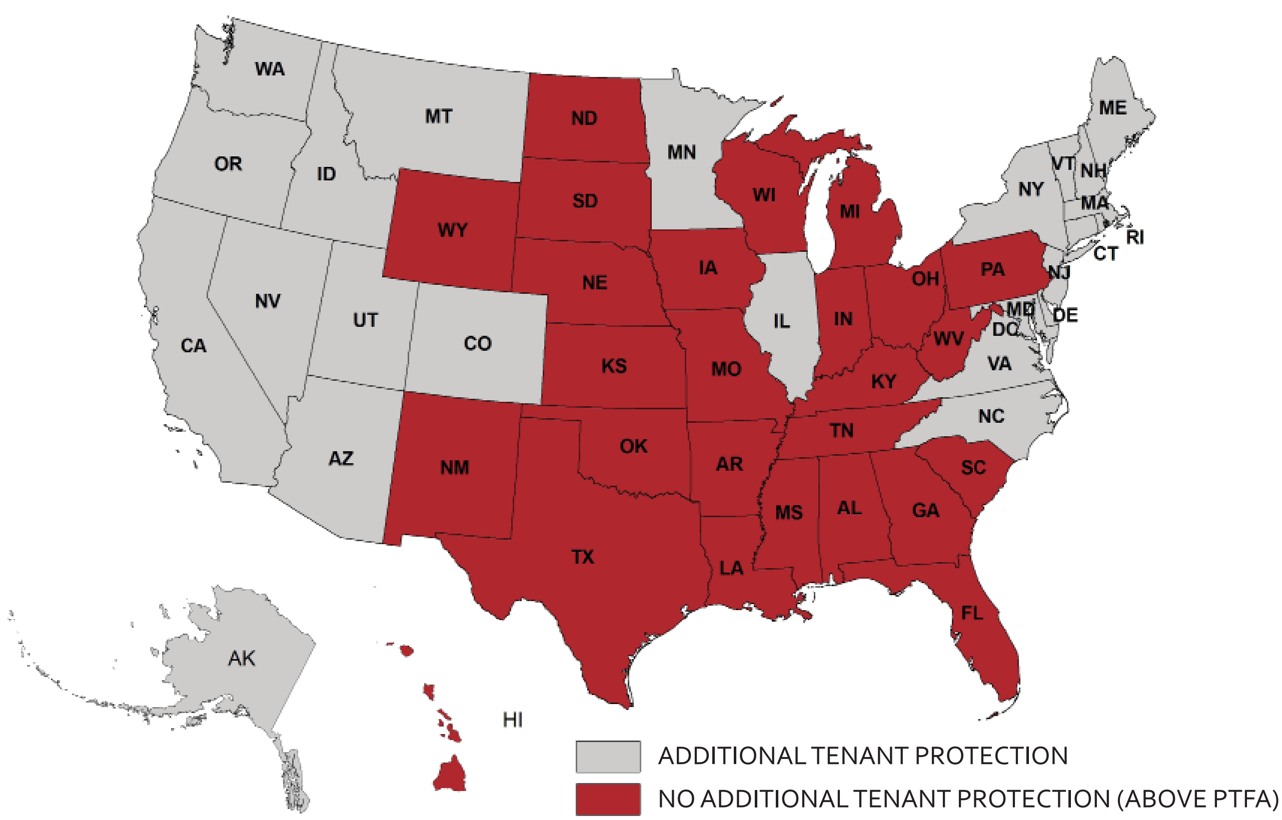
Seventy percent of housing counselors said that of their clients who had some knowledge of the PTFA when they initially sought assistance, most knew only a little about the law and its protections. No counselor reported that most clients knew a lot about the PTFA. Further, only 6.9 percent of housing counselors reported that of their clients with prior knowledge of the PTFA, most of the information that clients had about the law was actually accurate.

NLIHC's surveys provided further insights to the impact of foreclosures on renters in addition to the impact of the PTFA. Based on responses to NLIHC's survey of housing counselors, 58.6 percent said that over the past year they have seen an increase of renters seeking assistance due to a pending foreclosure-related eviction. A third (32.8 percent) said there had been no change in the number of renters seeking assistance as compared to the previous year, a time when the foreclosure crisis was already fully underway.

Survey respondents also said that the PTFA has helped advocacy efforts in ways other than halting or preventing an eviction. Common responses included that the PTFA provides leverage to help negotiate cash-for-keys agreements, and that tenants without utilities were able to enforce orders against the bank to provide utilities in their housing unit.

In addition to the PTFA, a number of states and localities have enacted a variety of laws that supplement the PTFA, thereby providing additional layers of protection for renters. If the PTFA is not made permanent, or at a minimum the sunset date extended, protections for renters will form an uneven patchwork with a majority of states having no protection against eviction in the case of a foreclosure.

map 1 | **STATE-BY-STATE LOOK AT LAWS PROTECTING TENANTS AFTER A FORECLOSURE**



SOURCE: *National Housing Law Project. (2011). "State and Local Tenant Protections: Additional State and Local Protections for Tenants in Foreclosure Situations."*

LENDER POLICIES REGARDING TENANTS IN FORECLOSURE VARY

ROLE OF REGULATORS

Private lenders are increasingly taking the role of landlord as their REO portfolios continue to grow. As such, federal regulators are reminding these lenders of their obligations under the PTFA and are providing guidance on how the law's provisions should be addressed. In December 2011, the Office of the Comptroller of the Currency issued a reminder to the lenders that it regulates their rights and responsibilities under PTFA (Benhart, 2011). The Federal Reserve Board issued similar guidance in April 2012 (Federal Reserve Board, 2012); the Federal Deposit Insurance Corporation did so in September 2009 (Federal Deposit Insurance Corporation, 2009).

GOVERNMENT POLICIES FOR RENTERS IN FORECLOSURE

Private lenders are not the only entities with large REO stocks and an obligation to comply with the PTFA. The government sponsored enterprises Fannie Mae and Freddie Mac and the Federal Housing Administration have seen their REO portfolios grow in recent years and consequently have established public and comprehensive policies regarding tenants in foreclosure. Fannie Mae, in addition to requiring compliance with PTFA, provides the option for tenants to sign a new 12-month lease with Fannie (Fannie Mae, 2010). Freddie Mac, in addition to PTFA compliance, provides the option for a month-to-month lease option for tenants and former owner-occupants. Freddie also has a cash-for-keys option for tenants who are willing to move from the property within 90 days (Freddie Mac, 2011).

PRIVATE LENDER POLICIES FOR RENTERS IN FORECLOSURE

The policies of private lenders, however, are far less transparent. Tenants Together surveyed major lending institutions in its 2010 report, "Without Justification: Banks Continue Mass Displacement of Innocent Tenants after Foreclosure." Tenants Together found that "only JPMorgan Chase has rental policies approaching those of Fannie Mae and Freddie Mac" (Treves, 2011).

According to information provided to NLIHC by JPMorgan Chase in 2012, its policy is to comply with all applicative federal and state laws and local ordinances. JPMorgan Chase has also established a tenant review committee to ensure that all bona fide leases are honored. In cases where there is no bona fide lease, tenants have the option to move to a month-to-month lease. JPMorgan Chase's policy also calls for close collaboration with local counsel to ensure compliance with state and local laws that go beyond what is required by the PTFA (M. Rigdon, personal communication, December 22, 2011).

In January 2012, to gain a more comprehensive overview of lender policies, NLIHC, Tenants Together and the California Reinvestment Coalition surveyed a number of national and California-based lending institutions on their policies regarding tenants in foreclosure. The varying levels of information provided in the responses reflect the reality that PTFA compliance is unregulated.

Bank of America stated in a written response that it has established agreements with agents and property managers to require compliance with the PTFA and local laws. When Bank of America acquires a property through foreclosure, occupants are mailed a notice stating that for tenants, "if you have a bona fide lease, Bank of America will honor the terms of your lease….If you do not have a bona fide lease and/or choose to forgo relocation assistance, Bank of America will allow you to remain in the home for at least 90 days." The notice does not cite the PTFA by name, neither does it mention that there may be further, more protective state or local laws (K.D. Wade, personal communication, February 12, 2012).

Deutsche Bank (DB) said that in California, it serves as a trustee and as such does not hold REO housing stock and that such responsibilities fall upon third-party loan servicers. Deutsche Bank has informed loan servicers that they must "comply with the PTFA and all other law and regulations applicable to foreclosure and tenancy issues and requesting that they take all steps necessary to ensure that they and their personnel and agents are in full compliance with the PTFA and all applicable state laws nationwide" (G. Vaughan, personal communication, February 15, 2012).

A few smaller banks also responded. The following table lists policies of lenders as provided to NLIHC upon request. The table notes when responses and policies were not provided within three months of the requested deadline for information.

table 4 | **LENDER POLICIES REGARDING TENANTS AT FORECLOSURE**

	Received response	Written affirmative compliance with PTFA and other state laws	New lease option	Other
AURORA LOAN SERVICES				
BANK OF AMERICA	X	X		
CITIBANK	X			*Phone call affirming PTFA compliance*
COMERICA BANK	X	X		
DEUTSCHE BANK	X			*Responded that as a trustee is not responsible for managing foreclosure activity or maintaining foreclosed properties*
JPMORGAN CHASE	X	X	X	
US BANK	X			
WELLS FARGO BANK	X			*May provide offer of financial relocation assistance, option to purchase property*

To fill the role that typically is attributed to a regulator or overseeing entity, nonprofit organizations, including the National Law Center on Homelessness and Poverty (NLCHP), the National Housing Law Project and NLIHC often work with lending institutions and the government sponsored enterprises to ensure that notices and other documents are complaint with the PTFA. NLCHP has also partnered with organizations, including the National Association of Realtors (NAR), to provide guidance on how property managers, landlords and others should proceed in areas where the PTFA is silent (National Association of Realtors, 2011).

INSUFFICIENT MAINTENANCE CREATES NEW RISKS AND CHALLENGES

WHILE FINDING THAT PTFA IMPLEMENTATION AND COMPLIANCE remains an ongoing issue, NLIHC's surveys of housing counselors and legal service providers also found that the insufficient maintenance of foreclosed properties is a growing concern (NLIHC, November 2011). Whether the insufficient maintenance is intentional or not, the end result is the same: further losses from the affordable housing stock (DiPasquale, 2011).

Many survey respondents, when asked how the PTFA could be improved, discussed how utility cutoffs during a foreclosure can have the same impact on a tenant as eviction. Often, respondents reported that it is unclear who is responsible for maintaining a rental property after a foreclosure, particularly in the case of utilities in multi-unit buildings (NLIHC, November 2011). The impact of insufficient maintenance in buildings could have dire consequences. The Joint Center for Housing Studies warned that, "rather than eviction, the primary risk to tenants from the multifamily debt crisis is that property owners will fail to invest adequately in their buildings and that housing will decline" (Joint Center for Housing Studies, July 2011).

Contributing to the problem is the growing REO stock held by private lenders who previously did not serve as landlords in any sort of major capacity. In the case where the lender serves as a trustee for a property and a third party is assigned for building maintenance issues, it can be even more difficult for tenants to ascertain who is responsible for building maintenance (Badger, 2012). In some cases, renovations that were in progress when a foreclosure occurred are not completed, even years after a property was acquired by a bank, creating safety hazards (Shahani, 2012).

The Office of the Comptroller of the Currency (OCC) has issued formal guidance to lenders clarifying their responsibilities with respect to the maintenance of their REO stock and obligations under the PTFA (Benhart, 2011); the Federal Reserve Board followed suit in April 2012. The Federal Deposit Insurance Corporation's guidance is focused on the PTFA and does not expand in detail on the responsibilities of lending institutions as landlords. While the guidance offered by OCC and the Federal Reserve is helpful and welcome in response to the maintenance of growing REO portfolios, the government continues to lack an enforcement mechanism to ensure compliance with these obligations.

Several states are in the process of developing guidance to help ensure compliance with housing codes (Shahani, 2012). Further federal action, either through legislation or through administrative policy, must clarify the obligations of servicers to adequately maintain their REO stock and provide utilities and other services to the tenants who continue to live in these REO properties. Servicers must also make their policies regarding tenants at foreclosure transparent and must also actively ensure compliance with the PTFA and any other applicable state and local laws.

THE FORECLOSURE CRISIS CONTINUES TO EXACERBATE PRE-EXISTING HOUSING MARKET IMBALANCES

IN 2009, NLIHC REPORTED THAT THE FORECLOSURE CRISIS has exacerbated pre-existing rental imbalances. This continues to be the case nearly three years later. With research that indicates that the crisis has not even reached the halfway mark, policy interventions are needed to address the impact that these imbalances have on renter households (Gruenstein Bocian and Quercia, 2011).

In a white paper, the Federal Reserve Bank identifies the three key forces in the housing market as "a persistent excess supply of vacant homes on the market, many of which stem from foreclosures; a marked and potentially long-term downshift in the supply of mortgage credit; and the costs that an often unwieldy and inefficient foreclosure process imposes on homeowners, lenders, and communities" (Bernanke, 2012).

In response to declining homeownership rates, in part caused by the forces described by the Federal Reserve Bank white paper, rental markets are strengthening in many areas (Bernanke, 2012). According to the January 31 Housing Vacancy Survey issued by the U.S. Census Bureau, the "homeownership rate was 0.5 percentage points lower than the fourth quarter 2010 rate (66.5 percent) and 0.3 percentage points lower than the rate last quarter (66.3 percent)." As more households become renters, rents increase.

Further, since late 2009, the national vacancy rate on multifamily rentals has steadily declined, albeit with some stabilization in 2011 (Bernanke, 2012; Callis and Kresin, 2012). However, as the new supply of multifamily units is not expected to increase in line with demand, the expectation is that sharp increases in rents could be in the pipeline (Joint Center for Housing Studies, 2011). Demand is increasing for single-family rental units as well. The Joint Center for Housing Studies reports that "the number of renters living in single-family homes increased by 1.7 million between 2005 and 2009." Further, while the number of single-family rental properties has increased, the vacancy rate for these properties is unchanged (Joint Center for Housing Studies, July 2011).

TIGHTENING RENTAL MARKETS ARE WORSENING THE ONGOING SHORTAGE OF HOUSING AFFORDABLE TO EXTREMELY LOW INCOME PEOPLE

NLIHC's research shows that, in 2010, there were approximately 40 million renter households in the United States. One in four, 9.8 million, had incomes that can be classified as extremely low (ELI) using HUD categories. This is an increase of almost 200,000 ELI households between 2009 and 2010. However, the supply of rental units affordable to ELI households, which was already woefully inadequate to meet this need, decreased from 2009 to 2010 by over 200,000 units. In 2010, the true deficit of rental units that were affordable and available to these households reached 6.8 million (NLIHC, March 2012).

Given the ongoing market imbalances and shortage of affordable housing, future federal responses to the foreclosure crisis must not only prevent foreclosures but must also try to correct these imbalances to help improve neighborhood stability.

REO-TO-RENTAL PROVIDES AN OPPORTUNITY TO ADDRESS THESE IMBALANCES

While renters are directly affected by the foreclosure crisis when the rental properties in which they live are foreclosed on, the impacts of the foreclosure crisis have also worsened the other housing crisis: the shortage of housing affordable to ELI renters.

There is now a surplus of REO-properties, due to the magnitude of the foreclosure crisis and the languishing home sales market. In August 2011, the Federal Housing Finance Agency (FHFA), HUD, and the Department of the Treasury released a request for information (RFI) on how the government sponsored enterprises Fannie Mae and Freddie Mac and the Federal Housing Administration could convert a portion of their REO stock, previously unavailable for sale or for rent, into rentals (Federal Housing Finance Agency, 2011).

On February 1, 2012, President Obama launched a government REO-to-rental program through the announcement of the first of what may be several pilot programs. While support for affordable housing was one of the items that FHFA, HUD and the Department of the Treasury included as a strategy to help meet the objectives listed in the RFI, the pilot to date does not include an affordability focus (Federal Housing Finance Agency, 2012).

Advocates and the administration, particularly through the FHFA, HUD and the Department of the Treasury (the agencies charged with implementing such an effort), must actively promote policies that ensure that a portion of the properties are made affordable to the ELI population. It is difficult to make these properties affordable without some type of federal subsidy. As such, NLIHC recommends that $1 billion be allocated to the National Housing Trust Fund as an initial capitalization to help make this housing affordable (NLIHC, September 2011).

While at the time of this writing the discussion of the REO-to-rental efforts did not include an affordability component, such a program would provide a unique opportunity to address the shortage of housing affordable to ELI renters. The RFI is focused on single-family properties, but an even greater impact could be reached if multifamily REOs were considered as part of the stock.

POLICY RECOMMENDATIONS

1 | The federal Protecting Tenants at Foreclosure Act (PTFA) must be made permanent. Evidence shows that the PTFA has been a useful tool in ensuring housing stability for renters who live in properties that have been foreclosed on. However, as mounting evidence shows that the foreclosure crisis has not even reached its halfway mark, the arbitrary PTFA sunset date must be removed to ensure that tenants are protected no matter when a foreclosure occurs.

Representative Keith Ellison (D-MN) has introduced legislation, H.R. 3619, the Permanently Protecting Tenants at Foreclosure Act, that would remove the sunset and would add a private right of action to provide an enforcement mechanism to the legislation. Congress must enact this legislation immediately.

2 | Congress should charge an agency, such as the Consumer Federal Protection Bureau (CFPB), with overseeing the implementation of PTFA. Currently no federal agency has this charge.

3 | Foreclosure data, including occupancy status and tenure information, must be made publicly available at the national level.

The Dodd-Frank Act (Section 1447) charged HUD, in consultation with federal financial regulatory agencies, with the creation of a publicly available database on foreclosures and defaults on mortgage loans. However, the required rulemaking to implement the law has not yet been initiated by HUD or the CFPB.

While HUD monitors foreclosures using a variety of private sources (Young, 2012), these sources are costly and do not include data on whether properties are owner or renter occupied. While the current budget environment is difficult, it is critical that the federal government make available data on the extent and nature of the crisis and who is feeling its effect.

4 | Further federal action, either through legislation or through administration policy, must clarify the obligations of servicers to adequately maintain their REO stock and provide utilities and other services to the tenants who continue to live in them.

5 | Efforts to convert REO properties into rentals must include a set-aside for housing affordable to extremely low income households.

NLIHC recommends that $1 billion be provided to the National Housing Trust Fund to help make these properties affordable.

The foreclosure crisis's most obvious and visible impact on renters is when the renters' homes have been foreclosed on. But the secondary effects of the crisis, such as falling home prices and tightening rental markets, have worsened what was an absolute shortage of housing affordable to the poorest Americans.

CONCLUSION

WHILE IMPORTANT STEPS TO PROTECT TENANTS IN FORECLOSURE have been taken in recent years, the federal response continues to be inadequate. The PTFA must be made permanent, and enforcement mechanisms must be added to the law. To reach this goal, Congress must quickly enact H.R. 3619 to ensure that tenants are not left vulnerable after the PTFA's 2014 sunset date. A federal entity such as the CFPB must be tapped to oversee implementation of the law.

With the foreclosure crisis only at its halfway mark, and renters continuing to be adversely affected by the crisis, existing law is not enough. Years of depressed home prices have burdened communities distressed with large numbers of bank-owned properties that are often left vacant. While the REO-to-rental pilots are commendable and much needed, the effort will be a lost opportunity if there is no affordability component to the program.

The crisis has only worsened the existing shortage of housing affordable to extremely low income people, who also are disproportionately living in properties that are being foreclosed on. Now is the time for Congress to take action on the dual goals of strengthening protections for renters in foreclosure and ending the shortage of housing affordable to extremely low income people.

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