San Francisco Fair Lending Working Group (FLWG)
FINAL RECOMMENDATIONS

Introduction

In January 2008, under the leadership of Supervisor Sophie Maxwell, Assessor-Recorder Phil Ting and Treasurer Jose Cisneros, the San Francisco Board of Supervisors established the SF Fair Lending Working Group. The Working Group's charge was to facilitate a dialogue among community-based organizations, financial service institutions and City agencies around remedies to the current and potentially deepening mortgage foreclosure crisis.

The eleven public appointees and four City agency representatives making up the Working Group spent the last ten months assessing the impact of the mortgage foreclosure crisis on San Francisco's residents, reviewing the best practices of other jurisdictions, and tracking pertinent legislation at the state and federal levels.

The members of the SF Fair Lending Working Group are as follows:

Jon Ballesteros (Wells Fargo Bank)
Maeve Elise Brown (Housing and Economic Rights Advocates)
Ed Donaldson (San Francisco Housing Development Corporation)
Jane Duong (Co-Chair) (Mission Economic Development Agency)
Amanda Feinstein (Walter and Elise Haas Fund)
Leon Huntting (California Association of Mortgage Brokers)
Grace Mejia (Wells Fargo Bank)
Heidi Mueller (Co-Chair) (Realtor)
Kevin Stein (California Reinvestment Coalition)
Chris Oldag (Patelco Credit Union)
Jan Lynn Owen (Washington Mutual)

Additionally, the Working Group has received staff support from City Staff Katie Muehlenkamp (Assessor-Recorder Phil Ting), Myrna Melgar (Mayor's Office of Housing), David Augustine (Treasurer Jose Cisneros), Gabe Cabrera and Rachel Force (Office of the Legislative Analyst).

Methodology

The Working Group met twelve times over the course of six months. It worked with the Office of the Legislative Analyst (OLA) to study and discuss best practices from other jurisdictions and track pertinent legislation at the State and Federal levels. Further, the Group studied existing San Francisco departments, programs and mechanisms that could best be leveraged to address the current mortgage crisis. This also included input from staff at the Mayor's Office of Housing, the Assessor-Recorder's Office and the Treasurer's Office. Formal presentations were also made to the Group on alternative rescue loan products by Salvador Menjivar of One California Bank Foundation in Oakland and on foreclosure's impact on tenants from Sara Shortt of Housing Rights Committee and Maria Jose Lopez of St. Peter's Housing Committee. Brief summaries of those findings are provided below to provide context for the corresponding recommendations.

Understanding the Magnitude of the Foreclosure Crisis

The magnitude of the mortgage foreclosure crisis is well documented. For example, in a 2006 study based on the performance of more than 6 million subprime mortgages, the Center for Responsible Lending (CRL) estimated that one in five homeowners who obtained subprime mortgages in 2005 and 2006 have lost or will lose their home to foreclosure nationally. More recently, analysis by Credit Suisse estimates that 6.5 million homes will enter the foreclosure process between now and 2012, resulting in a home loss for as many as 13% of all people who hold a mortgage on their primary home.

Not only do individual homeowners suffer when faced with foreclosure, but entire communities feel the spillover effects as property values depreciate, tax revenues decline, public services wane, and social fabrics fray. According to CRL, more than 40 million families who happen to live in the vicinity of one or more subprime foreclosures will see the collective equity in their homes decline by $365 billion over the next two years.

Impact of the Foreclosure Crisis on San Francisco Residents

The mortgage foreclosure crisis may be less severe in San Francisco than other jurisdictions, but it is equally compelling. In San Francisco, research conducted by the Mission Economic Development Agency found that three out of four San Francisco homebuyers received an adjustable rate mortgage in the period between 2005 and 2006. Further, one in four homebuyers borrowed more than 95% of the value of their home and one in ten received a high cost loan according to the standards set by the Home Mortgage Disclosure Act (HMDA). All of these factors exacerbated homeowners' susceptibility to foreclosure. This is confirmed by data from the San Francisco Assessor-Recorder's Office: **The number of *Notices of Default* filed by San Francisco homeowners rose from 817 in 2006 to 1,804 in 2008 (calendar year) – an increase of 121%. More importantly, the number of foreclosures increased even more dramatically by 723%-- from 81 in 2006 to 667 in 2008 (calendar year)**.

Foreclosures have disproportionately impacted low- and moderate-income families, communities of color, and seniors. In the same study by MEDA, it was found that the typical Latino, Asian, or African American homebuyer received a riskier and more expensive loan than the typical white homebuyer. Further, high cost loans were disproportionately originated in the southeast sector of San Francisco, neighborhoods where the typical homebuyer has a 15% lower income than the typical San Francisco home buyer. In these neighborhoods, 78% of new borrowers (2005-06) are people of color (4% are African American, 33% are Latino, and 38% are Asian). Although, more difficult to track, anecdotal evidence from housing counseling agencies in San Francisco indicates that the elderly population has also been especially hard-hit by the mortgage crisis.

Less documented in the national media, has been the consequences of foreclosure on the tenants of foreclosed properties. In San Francisco, rental tenants outnumber homeowners 2:1. It is therefore, no surprise that a large number of San Francisco tenants have also become the victims of the mortgage crisis. Between the three major tenant counseling groups in San Francisco (SF

Tenant's Union, St. Peter's Housing Committee, Housing Rights Committee of SF) at least 100 tenant cases have been documented in the last year. Challenges and abuses experienced by tenants include: harassment by realtors, landlord, and other agents to illegally evict tenants from their homes; loss of homes through eviction; unfit living conditions as a result of utility shut-offs; loss of assets as landlords walk away with security deposits and rent.

Current Responses to the Mortgage Crisis

During the last year, there have been many efforts at the federal and state level to stem the tide of foreclosure and subsequent aftershocks on the economy. Beginning in December 2007, Congress passed and signed into law several pieces of legislation to support homeowners. These include reducing the tax burden on homeowners facing foreclosure, expanding homeownership counseling efforts throughout the country, funding local governments to purchase foreclosed homes, and stronger regulation of government sponsored entities such as Fannie Mae and Freddie Mac. Further, Congress expanded the Federal Housing Administration (FHA) to play a larger role in refinancing mortgages at high-risk of foreclosure. And the Federal Reserve recently enacted regulations through the Truth and Lending Act to curb underwriting abuses by requiring lenders to consider ability to repay, requiring income verification, and requiring escrow of property taxes and insurance.

Most recently Congress passed a $700 billion bailout of financial markets. However, as it currently stands, no provisions have been made with these funds to address the impact of foreclosures on individual homeowners. While federal efforts represent a positive step, they continue to rely on voluntary industry efforts to modify loans – few of which have actually been realized by San Francisco homeowners. Further, San Francisco received no funds through the Federal Housing and Recovery Act of 2008 to infuse $4 billion through CDBG to support the purchase and rehabilitation of foreclosed properties.

Progress is slow at the state level to reform to banking practices or provide assistance to homeowners facing foreclosure in California. A notable exception is the passage of SB 1137. This bill implements important foreclosure process reforms to protect the hundreds of thousands of Californians who are in danger of losing their homes due to the mortgage crisis. The bill requires lenders to contact borrowers to provide loan restructuring options prior to the filing of the Notice of Default (NOD). Homeowners have a 30-day grace period after the contact is made (or a sufficient effort to contact the homeowner is made) before the formal filing of the NOD. The bill also requires that tenants in foreclosed properties be given 60-days notice before the tenant can be evicted. The bill allows for civil penalties of $1000 per day to be assessed on properties that are not properly maintained and contributing to neighborhood blight.

Recognizing the language barriers that often exist in communication during the home purchase transaction, the State of California acknowledged the importance of translation of loan documents in its recent expansion of State Civil Code 1632 (in 1976). The law provides, in part, that: "Any person engaged in a trade or business who negotiates primarily in Spanish, Chinese, Tagalog, Vietnamese, or Korean, orally or in writing, in the course of entering into any of the following, shall deliver to the other party to the contract or agreement and prior to the execution thereof, a translation of the contract or agreement in the language in which the contract or

agreement was negotiated, which includes a translation of every term and condition in that contract or agreement…" CC§1632(b)

In order to facilitate compliance, the California Department of Real Estate has several of the key disclosure documents, already translated into the five required languages, posted on its website to ease the burden placed upon the industry to provide translated documents. However, it is important to note that community advocates report that translation of documents almost never occurs.

Existing SF Capacity to Address Foreclosure Crisis

Since the onset of the mortgage crisis, several efforts have been underway in San Francisco that span across the non-profit, public, and private sectors. Each reflects San Francisco's existing capacity to address the mortgage crisis and potential opportunity to broaden its influence to mitigate the negative impacts of foreclosure. They include the following:

- **Existing foreclosure counseling infrastructure**: There are currently five housing counseling agencies in San Francisco providing foreclosure counseling: Mission Economic Development Agency, San Francisco Housing Development Corporation, Consumer Credit Counseling Service of San Francisco, Asian, Inc., and SF Urban CHC. Housing Education Rights Advocates (HERA) is located in Oakland, but offers legal assistance to San Francisco homeowners at risk of foreclosure. Several of these agencies are also involved in the Don't Borrow Trouble Campaign, a public education and service coordination initiative led by MEDA. These agencies have the language capacity on staff to serve the Spanish-speaking and Cantonese/Mandarin-speaking communities in San Francisco. While these agencies have collectively assisted over 200 distressed homeowners to date in 2008. Too few of their clients are able to keep their homes. Many clients go into foreclosure or short sale their properties. Few homeowners are able to secure a modification while most homeowners remain in limbo as they wait for a response from their servicer regarding a loan modification or short sale. The greatest challenge faced by housing counseling agencies are clients with incomes too low to pay for the homes they purchased and lenders unwilling to write down the value or modify the terms of their loans.

- **Systematic outreach to homeowners receiving a Notice of Default:** The Assessor-Recorder's Office currently works with the housing counseling agencies to send letters to homeowners that have received a Notice of Default to encourage them to contact a housing counseling agency and to warn homeowners of foreclosure rescue scams. Letters are sent in English, Spanish, and Chinese. Similar efforts are underway to also send letters to tenants in homes at-risk of foreclosure.

- **Existing Real Estate Fraud Prosecution Recordation Fee:** The Real Estate Fraud Prosecution Recordation Fee requires $2 fee paid for every real estate transaction. The fee goes to the Real Estate Fraud Prosecution Trust Fund comprised of the District Attorney, City Attorney, and city Administrative representatives to investigate and

prosecute real estate fraud crimes. Currently, most cases involve the elderly. As of FY2007, there was a balance of $200,000 in unused funds.

- **Strong tenant protections**: It is important to note that foreclosure is not a "just cause" for eviction under the City's Rent Ordinance (Chapter 37 of the Administrative Code) and provides no basis to force a tenant to leave. While the Rent Ordinance does not apply to post-1979 buildings, the number of excluded buildings is relatively small, according to the San Francisco Residential Rent Stabilization and Arbitration Board.

- **Existing tenant counseling infrastructure**: There are three non-profit organizations providing assistance to tenants in San Francisco: San Francisco Tenant's Union, Housing Rights Committee of SF, and St. Peter's Housing Committee. All provide counseling and education regarding tenant's rights and advocacy on behalf of clients. These agencies are also limited by staffing capacity.

- **Loans for first time home-buyers:** The Mayor's Office of Housing (MOH) currently through a number of down payment assistance programs has the capacity to extend loans to first-time homebuyers. This capacity can potentially be broadened to assist homeowners in distress.

- **Small Sites Fund Legislation**: Legislation introduced by Supervisor Daly that would required the Mayor's Office of Housing (MOH) to divert 10% of all in-lieu fees paid under the City's inclusionary housing program, up to $15 million, into a "Small Sites Fund" for the purpose of buying and rehabilitating properties consisting of less than 25 units. This includes "properties that have been the subject of foreclosure." The legislation is currently pending action in the Land Use and Economic Development Committee.

Policy Recommendations

The goal of this report is to identify the issues that must be addressed to remedy the mortgage foreclosure crisis, as well as to propose solutions and tools that the City can use to address those issues. There is no "panacea" for the crisis so the Working Group has developed a variety of policy recommendations (listed below) along with the strategies and mechanisms to implement them.

- Policy 1.1: Whenever possible, homeownership should be preserved and foreclosure should be prevented.

- Policy 1.2: Steps should be taken to prevent predatory lending practices and avoid foreclosure crisis in the future.

- Policy 2.1: Tenant's rights should be protected during and after foreclosure.

- Policy 3.1: Affordable housing opportunities should continue to be a priority in the face of increased numbers of displaced former homeowners in order to prevent displacement outside of San Francisco.

Policy 1.1: *Whenever possible, homeownership should be preserved and foreclosure should be prevented.*

Implementation:

a. **City should enforce compliance with the recently enacted anti-foreclosure bill SB 1137:** Specifically, 1) The Recorder's Office should forward cases of noncompliance to SB1137 to the City Attorney and the state Department of Corporations; 2) Lenders should file an affidavit with the Recorder's Office proving they complied with SB1137 for each defaulted home, especially the provision requiring them to notify homeowners of the 30-day grace period before they file a notice of default; 3) Relevant City agencies should work with tenant rights groups as well as industry associations to ensure tenants and loan servicers are educated about SB 1137 and other similar anti-foreclosure laws; 4) The Department of Building Inspection and other appropriate City departments should monitor foreclosed properties and impose fines on those property owners who do not maintain foreclosed properties in accordance with local ordinances.

b. **City should use its influence to demand more responsiveness by lenders/servicers to assist more homeowners.** Specifically, the City should request that lenders/servicers 1) contribute more funds to outreach, counseling, and legal services for homeowners in trouble; 2) negotiate more loan modifications and participate in distressed homeowner programs, like Hope for Homeowners which officially began on October 1, 2008; 3) designate and provide a specific San Francisco contact for loan modifications, REOs and short sales, and provide reasonable timing quotes for workouts; 4) report loss mitigation outcomes in SF so that the City can hold lenders and servicers accountable; and 5) ensure adequate servicing capacity to address the volume of homeowners.

c. **Increase capacity at Mayor's Office of Housing to coordinate city-wide foreclosure efforts:** A full-time staff person should be hired through the Mayor's Office of Housing to coordinate and implement any programming related to the foreclosure issue.

d. **City should impose a 6-month foreclosure moratorium on owner-occupied homes and use its lobbying capacity to advocate and support statewide legislation on a foreclosure moratorium and accompanying loan workout programs.** Many homeowners continue to slip through the cracks into foreclosure because they have been unable to reach their servicer and appropriately modify their loans. As such, the City should support local and statewide efforts to impose a foreclosure moratorium.

e. **Increase number of homeowners accessing foreclosure counseling.** 311 Operators should be trained to forward callers appropriately in order to provide resources to distressed homeowners and connect them with assistance

f. The Treasurer's Office should modify its socially responsible investment index. They can do this by adding a screen to its socially responsible index related to reducing predatory mortgage lending and increasing the responsible servicing of mortgage loans. The screen should be comprised of publicly available, verifiable, and administrable information by the Treasurer's Office.

Policy 1.2: *Steps should be taken to prevent predatory lending practices and avoid a foreclosure crisis in the future.*

Implementation:

a. The City Attorney should enforce State Civil Code Section 1632: Loan documents should be provided both in English and the primary language of the borrower, or translation services should be provided for purchases and refinances. Borrowers who are buying or refinancing their home should be afforded the opportunity to understand the terms of the transaction they are getting into. Translation of loan documents into the primary language of the borrower – presumably the language used to convince the borrower to take out that particular loan in the first place- is a bare minimum that a lender/broker should provide.

b. City should encourage the District Attorney/City Attorney to prosecute real estate fraud in San Francisco: The Board of Supervisors should request a report on the use of the funds through the Real Estate Fraud Prosecution Fund including any obstacles or challenges of using the funds as soon as possible. Upon receipt of the report, the City should explore within a 3-6 month time period the possibility of amending Section 8.24.5(c) of the Administrative Code to reflect the State's new fee schedule increasing the Real Estate Fraud Prosecution Fee from $2 to $3. This revenue would be used to increase the capacity of the District Attorney's and City Attorney's Offices to prosecute real estate fraud.

c. District Attorney's Office should educate mortgage industry regarding foreclosure rescue scams and other predatory practices: Specifically, the DA's Office should post warnings on its web site and send email alerts about the scams they uncover. Associations of realtors, mortgage brokers, bankers, title companies, apartment management companies, housing groups, etc. should subscribe to the DA's postings and disseminate them to their members. The DA should attend meetings of associations and housing groups to disseminate information.

d. City should increase public awareness of predatory lending and mortgage rescue scams. Public awareness can occur through the following strategies: 1) Enlist the media to participate in a public awareness campaign about the scams; 2) Lenders can participate in media alerts when a new scam surfaces; and 3) City can develop PSAs to educate about rescue scams.

e. 311 Operators should be trained to forward callers appropriately

Policy 2.1: *Tenants' rights should be protected during and after foreclosure.*

Implementation:

a. **Strengthen Rent Ordinance's Just Cause Provision:** Legislation should be pursued to include an eviction amendment to Just Cause law requiring that proof of ownership, including all investors, must be provided before evicting the former owner/tenant to ensure that proper noticing occurs and tenants are not wrongfully evicted.

b. **Educate tenants about their rights and resources:** The City should reach out to tenants in properties facing foreclosure with information about their rights and ways to get help. The Assessor-Recorder's ability to identify properties receiving a Notice of Default should be expanded to include notifying tenants.

c. **Educate lenders and their agents about SF's eviction laws:** The City should educate lenders and their vendor companies that manage or sell foreclosed properties about landlord and eviction laws in San Francisco in order to prevent illegal practices. Under the City's Rent Ordinance (Chapter 37 of the Administrative Code) foreclosure provides no basis to force a tenant to leave. While the Rent Ordinance does not apply to post-1979 buildings, the number of affected buildings is relatively small, according to the San Francisco Residential Rent Stabilization and Arbitration Board.

d. **Encourage "No shut-off" utility agreement:** The City will encourage and facilitate meetings with PG&E, SFPUC, and tenant organizations to ensure that power and water are not disconnected in tenant-occupied buildings during or after foreclosure.

e. **Increase resources to support tenants:** Resources should be used to fund tenant counseling services and relocation assistance for renters in foreclosed properties.

f. **311 Operators should be trained to forward callers appropriately.**

Policy 3.1: *Affordable housing opportunities should continue to be a priority in the face of increasing numbers of displaced former homeowners in order to prevent displacement outside of San Francisco.*

Implementation:

a. **The City should support the Mayor's Office of Housing to secure state bond allowances for affordable housing and financing:** City should attempt to secure state bond allowances to help people refinance out of unaffordable loans or purchase properties in foreclosure for use as affordable housing. The City should monitor additional grant opportunities as appropriate.

b. **311 Operators should be trained to forward callers appropriately in order to connect displaced former homeowners with assistance.**

Next Steps

The SF Fair Lending Working Group respectfully submits these recommendations to the San Francisco Board of Supervisors for its consideration. We encourage the Board to endorse these recommendations, set priorities among them and allocate the resources (staff and otherwise) needed to implement them. We recommend that regular progress reports be made to the Board of Supervisors from those responsible for implementation to monitor the progress and effectiveness of the strategies.