



**Overview of National Trends
in Consumer Protection**
MEPC Annual Policy Conference

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Self-Help & CRL

- **Self Help, 1980**
 - Nonprofit community development financial institution
 - Mission: Create & protect ownership for people of color, women, rural residents & low-wealth families
 - \$5.3 billion in over 63,000 borrowers
 - Home loans and small business loans

- **Center for Responsible Lending, 2002**
 - Nonprofit, non-partisan policy organization
 - Protect homeownership & family wealth
 - Work to eliminate abusive financial practices

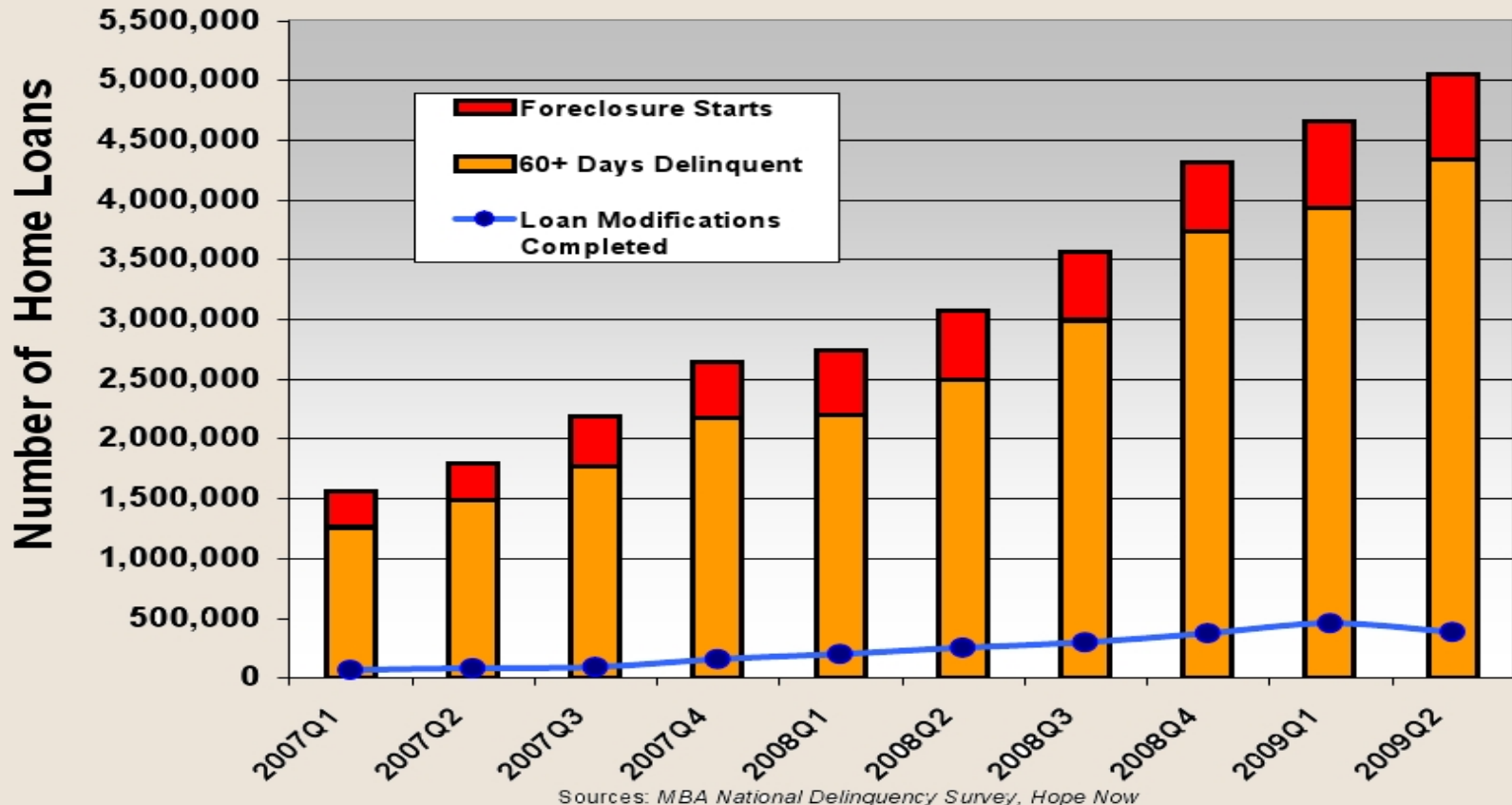
Mortgage Meltdown



Greatest Threat to Mississippi Wealth

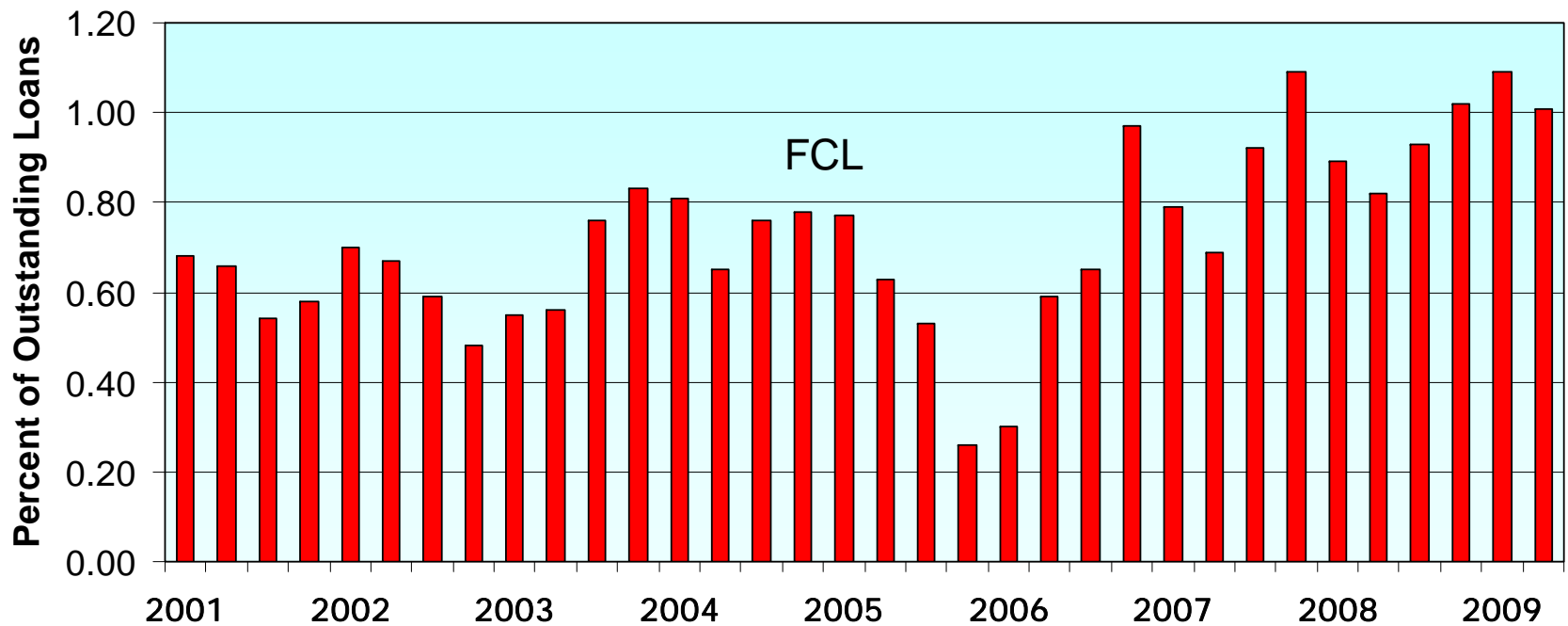
A New Foreclosure Starts Every 13 Seconds

Homes At Risk Outpaced Loan Modifications



No sign of slowing down...

Mississippi Foreclosure Starts



(Source: MBA National Delinquency Survey)

Foreclosures Cost Everyone



- High costs to neighbors and community.
 - By 2012, 92 million neighbors will suffer property value decline of \$1.2 trillion. (CRL Report, *Soaring Spillover*, May 2009)
 - \$7200 per foreclosure
- Net homeownership drain.
 - Between 1998 and 2006, only 9% of subprime loans went to first-time homebuyers.
 - During that same time, 15% of subprime loans were foreclosed upon.

Foreclosure Spillover Cost to Mississippians

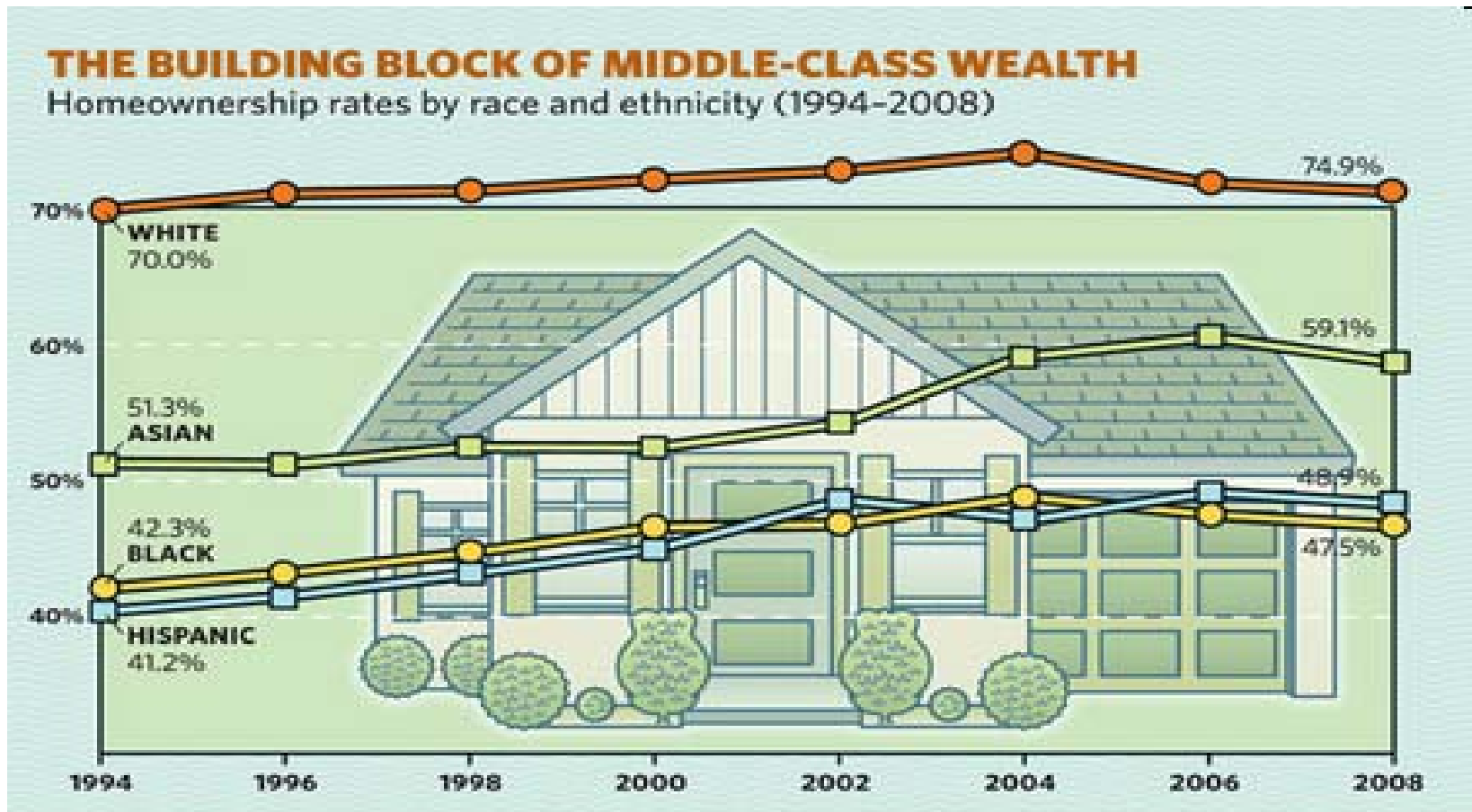


- Nationally, foreclosures will continue to rise (Goldman Sachs: 13M in US from 2008Q4- 2014Q4)
- Estimated 9,300 new foreclosure starts in Mississippi since January 1, 2009 (Mortgage Bankers Association Delinquency Survey)
- 12,100 foreclosures in 2009 will impact 195,000 neighboring homeowners, pushing home values down \$175 million (most recent Center for Responsible Lending analysis)

Devastation in Communities of Color

- Facing historic loss of wealth.
 - African-Americans \$75 billion - \$98 billion
 - Latino households \$71 billion - \$93 billion
- Community Reinvestment Act is NOT the cause
 - CRA passed in 1977, long before the subprime market ever existed.
 - > 94% of S/P loans that caused the S/P meltdown were not counted under the CRA.
 - The majority of subprime loans did not go to minorities.

1M Homes Lost, Billions More in Lost Wealth



SOURCE: U.S. CENSUS BUREAU, PEW HISPANIC CENTER

Unsustainable Products and Practices: The Problem

- **Failure to assess borrower's ability to repay**
 - 70% of Countrywide loans would not have met basic underwriting standards.
 - 17% of POARMS between 2004 and 2007 had full-documentation. (*Fitch Ratings, Sept. 2008*)
- **Prepayment penalties**
 - Discourage or prohibit affordable refinancing, e.g. typical \$250,000 loan carried \$4,000 penalty.
 - 67% of subprime loans securitized from 2005–2007 had prepayment penalties (*Inside Mortgage Finance*)
- **Yield spread premiums (kickbacks)**
 - Extra payments lenders paid to brokers for putting borrowers into more expensive loans
 - Lenders get repaid via prepayment penalties; borrowers pay up to \$3000 more for loans with YSPs.
 - Kickbacks present on more than 90% of subprime loans. (*Howell E. Jackson and Jeremy Berry, "Kickbacks or Compensation: The Case of Yield Spread Premiums", Jan. 8, 2002*).
- **Predatory lending**
 - Flipping: refinancing with no net tangible benefit to the borrower
 - Racially disparate pricing: African-Americans and Latinos got higher interest rates even when their credit risks were identical to whites. Upper income AA borrowers 5x more likely to get S/P loan than lower income Caucasian borrowers

Solutions: State Policy Options

- Ban predatory practices.
 - **Prepayment Penalties:** 16 states ban in some fashion, either a full ban or on a subset of loans
 - **Yield Spread Premiums:** 13 states include YSP in points and fees trigger, 2 ban on certain loans
 - **Flipping:** 12 states restrict refinancing with no tangible benefit to the borrower.

- Require careful underwriting for all home loans.
 - 7 states require verification of income and assessment of loan cost using fully indexed, fully amortized rates, plus taxes and insurance.

- Establish common sense duties for mortgage brokers.
 - 12 states establish some agency or fiduciary relationship between broker and homeowner.

Broken Regulatory System: The Problem

- Federal agencies' failure to act
 - Federal Reserve made no amendments to its 1994 HOEPA rules until July 2008, while more than two dozen states enacted anti-predatory lending laws.
 - OCC brought only 4 formal enforcement actions under ECOA from 1987 to present and no actions under FTC for 25 years.
- Preemption of state law
 - OCC exempted national banks from state laws.
 - State prepayment penalty laws for ARMs were preempted from 1999 to 2003.
- Federal interference with state regulatory enforcement
 - Cuomo v Clearing House Association and the OCC
 - Capital One Bank (USA) v. McGraw

Regulatory System Solutions: State Policy Options



- Keep secondary market actors accountable
 - Regulate servicers
 - Assignee liability is key
- Maximize state enforcement resources
 - Federal law is floor, not the ceiling
 - Seek concurrent authority with federal regulators
 - Support Consumer Financial Protection Agency

Best Value in the Subprime Market: State Predatory Lending Laws



- **Homeowners get fewer loans with abusive terms.**
 - For example, without New Mexico's law, an additional 4 out of 10 borrowers (38.5%) in the subprime market would have received home loans with abusive features—including prepayment penalties, balloon payments or being unfairly steered into a higher-cost loan.
- **Homeowners have ready access to subprime credit.**
 - In states with regulation stronger than federal law, lenders responded to state laws by fueling the expanding subprime market with mortgages that do not include loan terms targeted by state laws.
- **Homeowners pay about the same or lower interest rates for subprime mortgages.**
 - Fees in the form of prepayment penalties are reduced, and many families pay lower interest rates. Among states with reforms, interest rates on fixed-rate mortgages showed no statistically significant difference in eight states and actually were lower in 19.

Source: Wei Li & Keith Ernst, CRL, *The Best Value in the Subprime Market: State Predatory Lending Laws* (Feb. 2006 (analysis of 6 million subprime loans between 1998 and 2004 and comparison of 28 states with predatory lending laws with states that have little or no regulation)).

CONSUMER FINANCE

Some Types of Predatory Small Loans

- Payday Loan/Cash Advance
- Car-Title Loan/Title Pawn Loans
- “Faux” Car-Title Loans/MV Equity LOC
- Predatory Installment Loans
- Credit Service Organizations/Credit Repair Organizations
- Predatory Open-End Lines of Credit

What Makes Them Predatory?

- Small dollar loan secured by personal check or access to bank account.
- Triple-digit APR (usually 391% and above)
- To qualify, borrowers only need:
 - personal identification
 - a checking account
 - an income from a job or government benefits
- Ability to re-pay is not considered
- Must pay back in full or renew by paying an additional fee.

Phantom Demand

Consecutive borrowing



Borrower earning \$35,000 a year, taking out \$300 payday loan @ \$15 per \$100 borrowed

| | |
|---|----------------|
| Two-week salary | \$1458 |
| Amount of paycheck (take home pay after taxes deducted) | \$1344 |
| <i>Payday loan due (\$300 principal plus \$45 fees)</i> | -\$345 |
| Paycheck remaining after payday loan repaid | \$999 |
| Basic expenses due over pay period* (housing, utilities, food, transportation, and healthcare) | \$1,107 |
| Shortfall | \$(108) |

Phantom Demand

- 90% of loans go to borrowers with 5 or more loans
- 62% of loans go to borrowers with 12 or more loans

Industry Trends

- Fee Increases
- Loan Amount Increases
- “Best Practices” – (Codification of Abusive Practices)
 - Rollover Bans, Databases, Cooling off Periods,
 - Limits on Outstanding Loans, Payment Plans
- Internet Lending
- Federal Lobbying for State Preemption at 400%
- Federal Lobbying against CFPB

Lessons From Other States

| State | State Law | Predatory Lenders' Response |
|----------|--|--|
| Oregon | Rate Cap focused on Payday and Car-title | Renamed products and business as usual under small loan law. |
| Illinois | Enacted restrictions on Payday product | Industry began making predatory installment loans. 1000% APR |
| Ohio | 28% Rate cap. | Referendum. New product under old small loan law. |
| Texas | State small loan permits 100% to 130% APR | Industry registered as Credit Service Organizations 664% APR |
| Virginia | Reduced PDL APR by 25% and capped loans at 10 per year | Industry began "open-end" loans and "faux" car-title loans. |

The Case for a Consumer Protection Agency

- Currently there is no federal financial regulator focus primarily on consumer protection
- Consolidates Regulators Under One Roof
- Gives Consumer Choice of Responsible Products
- Promotes Competition by raising the bar rather than lowering it
- Levels the playing field for Companies
- Promotes “Transparency, Simplicity, Fairness, Accountability, and Access”

How Much Can Be Saved?

- FY 2010 MS Budget Deficit - \$655Million
- 2009 – 2012 Foreclosures – 40,867
- Lost Wealth - \$ 647.4 Million
- Overdraft Fees - \$169.2 Million
- Payday Loans - \$303.5 Million

For more information:

Visit: www.responsiblelending.org

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