Coalition for Occupied Homes in Foreclosure (COHIF):

An Assessment of the Greater Four Corners

Community Stabilization Pilot Project

During the First Two Years

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List of Acronyms

AG -	Attorneys General
AGO –	Attorney General's Office
AMI –	Area Median Income
BCC-	Boston Community Capital
CDC-	Community Development Corporation
CDFI-	Community Development Financial Institution
CLT –	Community Land Trust
CL/VU –	City Life/Vida Urban
COHIF-	Coalition for Occupied Homes in Foreclosure
CSNDC –	Codman Square Neighborhood Development Corporation
DND –	Department of Neighborhood Development
DPH –	Department of Public Health
DSNI-	Dudley Street Neighborhood Initiative
FHA –	Federal Housing Administration
FMIC-	Federal Mortgage Insurance Corporation
GFCAC-	Greater Four Corners Action Coalition
GSE-	Government-Sponsored Enterprise
HH-	Heading Home
HLAB-	Harvard Legal Aid Bureau
HUD-	U.S. Department of Housing and Urban Development
ISD-	Inspectional Services Department
LIHTC-	Low Income Housing Tax Credit
NSP-	Neighborhood Stabilization Program
PTFA-	Protecting Tenants at Foreclosure Act
REO –	Real Estate Owned
RFP -	Request for Proposals
SUN-	Stabilizing Urban Neighborhoods
WIHED-	Women's Institute of Housing and Economic Development

Summary

The Coalition for Occupied Homes in Foreclosure (COHIF) Community Stabilization Pilot Project is a bold and ambitious initiative. It targets a highly vulnerable population – mostly lower income homeowners who have experienced foreclosure and tenants of those buildings – in one of the poorest sections of Boston. Launched in 2012, its aim is to help families by creating and preserving long-term, affordable and secure living opportunities. At the same time, the program also promotes neighborhood stability. COHIF's coordinator and members have demonstrated an enormous capacity and commitment to solve problems both proactively and as they have arisen.

The Pilot model entails layers of complexity. Trying to ensure that prior owners and existing residents are able to stay in their homes, post-foreclosure, turns out to be an enormously difficult undertaking. Obstacles abound, with prevailing procedures in the banking industry working against continued occupancy of existing residents. In addition, there are significant challenges related to whether the incomes of these residents will be able to cover the anticipated rehabilitation and operating costs, and if not, if the project will be able to secure enough funding and subsidies to cover the gap. As COHIF members have observed repeatedly, if this were easy to do, someone would have already figured it out.

One of the major components of the Pilot that was thought to be in place at the start of the Pilot – the identification of the development partner/long-term owner— did not materialize as planned and has created significant challenges for which creative solutions are being sought. This delay has meant that a financing and ownership arrangement that will assure high-quality rehabilitation of the units and capable long-term management has not yet been put into place.

In addition, many of the issues were unforeseen at the outset, and strategies to deal with them have had to be devised as quickly as possible as the program has progressed. In particular, a number of Fannie Mae, Freddie Mac and the U.S. Department of Housing and Urban Development/Federal Housing Administration (HUD/FHA) policies have created barriers to purchasing properties and safeguarding continued occupancy for the residents. COHIF members, along with legal advisors, advocates and public officials, are confronting the thorny policy issues that have threatened to undermine COHIF's efforts, as well as any similar initiatives that others may undertake. Their work in highlighting legal inconsistencies and other ways in which operating policies of HUD/FHA, Fannie Mae and Freddie Mac are in direct conflict with consumer and neighborhood needs may stimulate much needed changes in the landscape within which COHIF is currently operating.

As a result of these cumulative obstacles, the number of units (11) that are certain to be included in the Pilot at the end of the first two years, has not yet reached the 30-unit

goal. Going forward, if the remaining issues can get resolved, it will bode well for COHIF to proceed more smoothly with a strong likelihood of more robust outcomes.

To accomplish the Pilot's goals more efficiently, particularly the desire to enable existing residents to stay in their homes, greater public resources and commitment are needed. Key to such an effort would be a complete assessment and overhaul in the ways in which HUD/FHA and Fannie Mae and Freddie Mac approach their post-foreclosure property disposition policies. Enabling nonprofit organizations to purchase properties, including providing this housing to former owners and tenants, should be seen in the context of the larger set of problems and opportunities arising from the mortgage crisis. Public officials and private investors need to better understand, and act on, the reality that there is nothing to be gained by continuing to implement a highly problematic set of policies that promote family instability, possible homelessness and vacant homes.

Hopefully, this report will provide valuable feedback to COHIF as the Pilot continues, as well as to other groups contemplating or involved with similar initiatives. Ultimately, the goal of this work is to provide information that will assist advocates and policy makers to develop solutions that will enable foreclosed homeowners and their tenants, to continue living in their homes at affordable costs and with long-term security. The COHIF Pilot is demonstrating that another approach may, indeed, be possible.

This evaluation was made possible through funding from several foundations, including Citigroup and The Boston Foundation. It was carried out under contract with COHIF.

Introduction

In 2008, with foreclosures increasing in Boston, particularly in neighborhoods with high percentages of lower income and Black and Latino households, some 25 tenant, community, nonprofit, legal and government agencies and organizations came together and formed the Coalition for Occupied Homes in Foreclosure (COHIF).[1] Participating in the fledgling organization was a distinguished group of housing professionals. Central to this new effort were concerns about the fate of occupied foreclosed homes. How could residents of these properties – both owners and tenants – be assisted to stay in their homes despite the threat or reality of foreclosure? And how could the properties continue to be occupied without interruption, thereby avoiding the negative, destabilizing effects of vacant properties on the surrounding neighborhood?

In 2010, in collaboration with several advocacy groups, COHIF was successful in achieving the passage of just-cause eviction protections for tenants in foreclosed properties.[2] The following year, COHIF initiated a series of roundtable discussions to consider how, exactly, it could spearhead a new initiative to achieve the goals first articulated in 2008. In short, the challenge was to develop a strategy to "acquire, hold, and develop occupied properties (where no former owner or tenant can purchase), and to expand and use regulatory tools such as receivership and code enforcement to hold bank and investor owners more accountable to the residents and the community."[3]

In addition to being committed to assisting existing residents of financially at-risk properties to remain in their homes, COHIF aims to increase resident and community control of housing, so that it stays affordable over the long-term. Thus, in contrast to the federal government's Neighborhood Stabilization Program (NSP), which provided funding to municipalities to facilitate the rehabilitation and sale of foreclosed, vacant properties to new owners – who may be either for-profit or nonprofit entities – COHIF strives to maintain neighborhood stability by ensuring that homes never become vacant and that existing residents are provided security of tenure.

To put these ideas into practice, a Pilot project was launched in April 2012. The target area was the Greater Four Corners area of Dorchester, which had been particularly hard-hit by foreclosures (more than double that of the City of Boston) and with a disproportionately large number of people of color and low-income households. The latter represents a historically underserved population, which, over the years, has often

[1] Among the participants were representatives from Boston Community Capital; Boston Tenant Coalition;
[2] Tenant Protections in Foreclosed Properties, An Act Relative to Mortgage Foreclosures, 2010 (see Figure 3).
[3] COHIF proposal submitted to the Miller Foundation, Fall 2013, by Maureen Flynn, COHIF Coordinator.

taken the brunt of problematic private and public investment (or disinvestment) decisions.

The Greater Four Corners Community Stabilization Pilot project consists of three components: 1) outreach and education to community residents regarding their rights with respect to foreclosure issues and the availability of the pilot project to purchase the home in which they live; 2) direct purchase and rehab and assistance with purchase and rehab of approximately 30 units of foreclosed or at-risk units and 3) a community code enforcement project, which brings together neighborhood residents to identify and track code violations on REO (real estate owned by banks or other investors) and vacant properties. This evaluation focuses on the second component of the project: COHIF's purchase and rehab activities.

This report presents an evaluation of this effort through its first two years.[4] In part, the evaluation was prompted by funders who were eager to get feedback on how the Pilot was progressing. In addition, COHIF members wanted to learn as much as they could about the strengths and weaknesses of the Pilot model. In recognizing that the Pilot was an ambitious experiment, all those involved wanted to better understand which components were working well and which were in need of further modifications. An overriding concern related to whether the Pilot could or should be replicated. The evaluator was selected following COHIF's issuance of a RFP.

The following questions formed the basis of this inquiry and provide the framework for this report:

1) What are the state and local contextual factors that are important in understanding the Pilot? What is the primary focus of the Pilot and its ideological basis? What are its specific goals and why and how was the Pilot designed as it was? How does it compare to other interventions aimed at assisting properties in foreclosure and their residents?
2) How has the Pilot operated? What has worked well? What types of issues/obstacles have arisen, and what adjustments have been made?
3) How have policy/legal issues impacted the ways in which the Pilot has been carried out?
4) What are the outcomes? To what extent have the articulated goals been achieved? How many properties and units are in the Pilot? What is the general condition of these properties?
5) What is the overall assessment of the Pilot? Should it be viewed as a potential model for other parts of the country and, if so, what are the steps needed to advance the Pilot as a viable policy? What recommendations for programmatic changes and for new or modified policies can be offered?

[4] The Greater Four Corners Pilot Project was originally known as the Erie-Ellington Community Stabilization Initiative.

To answer these questions, interviews were conducted with nearly all the key participants in the COHIF Pilot. In addition, written materials pertaining to the Pilot and to the various legal issues that are relevant to this evaluation were reviewed. Due to the timing of this phase of the evaluation, this report focuses on presenting descriptive and process-oriented information, as well as a discussion of the key policy issues that the Pilot is confronting. While preliminary information on outcomes is provided, a fuller assessment of the outcomes and impacts of the Pilot will have to wait until more properties have been acquired and completed.[5]

I am grateful to all those who generously gave their time to speak with me (see Appendix I for a list of all those interviewed). I want to acknowledge specifically my appreciation for interviewees' willingness to reflect on the issues we discussed. In view of their involvement with the Pilot, and the hundreds of *pro bono* hours they have donated over the past several years, speaking openly and honestly about the Pilot's weaknesses took a great deal of courage. All the quotations have been approved by the person associated with the statement.

Special thanks go to Claire Masinton, Special Counsel to the HomeCorps Initiative, Office of the Attorney General of Massachusetts, and Eloise Lawrence, Staff Attorney, Harvard Legal Aid Bureau, who critiqued the policy section of this report. Their comments were important in helping to clarify the many legal issues surrounding the COHIF Pilot. I am also indebted to Michael Stone, Professor Emeritus, University of Massachusetts, for offering very helping feedback on an earlier draft of this report and for his sage advice at several points during the study. Finally, I want to acknowledge and thank Tufts graduate student Becca Schofield, who wrote the first draft of the section on the Greater Four Corners area and compiled the demographic data.

Hopefully, this report will provide valuable feedback to COHIF moving forward, as well as to other groups contemplating or involved with similar initiatives. I understand how hard it is for an evaluation to be made public while a project is still under-way and for ongoing challenges and weaknesses to be broadcast to a wide audience. It should be acknowledged that, as this report was being completed, there were still some major issues that were unresolved. But a major strength of COHIF is their strong desire for their experiences to be as transparent as possible and for the challenges encountered to be openly discussed. Ultimately, the goal of this work is to provide information that will assist advocates and policy makers to develop solutions that will enable foreclosed homeowners and their tenants, to continue living in their homes at affordable costs and with long-term security.

[5] The evaluation approach was informed by: Francine H. Jacobs. 1988. "The Five-Tiered Approach to Evaluation: Context and Implementation. In Heather B. Weiss and Francine H. Jacobs (Eds.). *Evaluating Family Programs* (pp. 37-68). Hawthorne, NY: Aldine deGruyter.

1) Background

- ***What are the state and local contextual factors that are important in understanding the Pilot?***
- ***What is the primary focus of the Pilot and its ideological basis?***
- ***What are the Pilot's specific goals and why and how was it designed as it was?***
- ***How does it compare with other interventions aimed at assisting properties in foreclosure and their residents?***

State and Local Context

Massachusetts has long been a leader in the affordable housing arena and has been in the forefront of creating new and innovative initiatives. For example, Massachusetts is only one of a handful of states that created its own public housing program; in 1966, it became one of the first states to establish a state housing finance agency; three years later, it created the much-touted Chapter 40B program aimed at overcoming exclusionary zoning practices in suburban areas; during the Dukakis administration, in the 1980s, it launched a group of programs aimed at supporting nonprofit housing organizations and, in 2000, it created the Community Preservation Act, which provides state matching funds to municipalities that choose to levy a property tax surcharge to fund community housing, open space and historic preservation. More recently, the state legislature has enacted several unique and progressive laws aimed at providing special relief to homeowners and tenants of foreclosed homes, as discussed in Section 3 of this report.[6]

These initiatives were the result of the hard work of the large number of enormously competent public, private and nonprofit housing professionals and activists. Boston, as the capital of Massachusetts and its largest city, has been the locus of much of the state-based housing activity. Moreover, Boston, in its own right, has been an incubator and innovator in promoting an affordable housing agenda.

The extent of collaborations around housing issues has produced an abundance of "social capital" within this sector; many of the same people serve on the boards of

[6] In addition to passing legislation to protect tenants and homeowners, Massachusetts has used its money from the $25 billion settlement with five of the nation's largest banks, due to the robo-signing scandal, to create a series of programs to assist homeowners facing foreclosure, known as the HomeCorps program, operated by the state's attorney general. In contrast, about one half of the states have used some or all of their allocations for other purposes. In the case of California, for example, $369 million (or about 15% of the $2.5 billion total they received through the settlement) was used to pay down the state debt. "California Sued Over Diversion of Money From National Mortgage Settlement," Gretchen Morgenson, *The New York Times,* March 14, 2014. http://www.nytimes.com/2014/03/15/business/california-sued-over-diversion-of-money-from-national-mortgage-settlement.html?hp&_r=0 (accessed March 14, 2014).

nonprofit organizations and on public agencies' advisory committees. In referring to the group of people who started talking about the foreclosure issue in Boston, interviewees repeatedly noted that participants were well known to each other, having worked together on numerous housing-related issues. The level of trust, collegiality and mutual respect within this group constitutes a unique characteristic of the local housing context in which the Pilot took shape.

In addition to the generally supportive and expert housing community in Boston, the nonprofit sector is among the most highly developed and sophisticated in the country. Theresa Gallagher, Deputy Director, Neighborhood Housing Development, City of Boston, underscored this point, by noting: "We're lucky to have a strong group of nonprofits in Boston; they know how to do development and rehab and, in relation to COHIF, they understand the implications of absentee landlords on a property and on adjacent properties."

The Greater Four Corners Area[7]

Greater Four Corners has been a low-income community for decades. Community-based efforts to support the residents of the Greater Four Corners area have been ongoing, and the Greater Four Corners Action Coalition (GFCAC) has been active in neighborhood stabilization and community organizing since the 1990s. The Greater Four Corners target area for the COHIF Pilot project is located in the northwest corner of Dorchester, bounded by Columbia Road, Blue Hill Avenue, Geneva Avenue, Park Street, Bernard Street and Harvard Street (see Figure 1).

The Greater Four Corners area is comprised of higher percentages of Black or African-American and Hispanic or Latino groups than in the overall City of Boston and the larger Dorchester area. Residents also have historically low median household incomes and low levels of homeownership (see Figure 2). While most households speak English, several other languages are spoken in the area, and there are a number of distinct newly arrived immigrant groups – Caribbean, Latino and Hispanic, and East and Southeast Asian.[8]

[7] This section was edited from material written by Becca Schofield, M.A. Candidate, Urban and Environmental Policy and Planning, Tufts University. Some of this work is based on a report by Sahar Lawrence and Rebecca Schofield, 2013. "Exploring Best Practices Regarding Long-Term Affordability, Resident Input and Control" for the Coalition for Occupied Homes in Foreclosure, Boston, MA.

[8] Greater Four Corners Action Coalition, 2011. "About Us" http://gfcac.org (accessed March 22, 2014).

Figure 1:
Greater Four Corners Community Stabilization Pilot Project Target Area

Source: COHIF

Figure 2:
Selected Demographics and Housing Characteristics for Boston, Dorchester and the Greater Four Corners, 2000 and 2010*

	Boston		Dorchester		Greater Four Corners	
	2000	2010	2000	2010	2000	2010
Total population	588,641	617,594	109,547	110,507	23,168	21,546
% White alone	54.5	53.9	27.0	25.7	5.8	7.5
% Black or African American alone	25.3	24.4	47.8	47.2	74.9	71.4
% Asian alone	7.5	8.9	8.4	9.1	2.2	2.7
% other race alone	8.3	1.8	10.4	12.8	12.4	12.7
% Hispanic or Latino origin**	14.4	17.5	13.9	17.2	19.0	22.4
Median household income	$55,413	$53,914***	$50,110	$46,849***	$42,131	$38,880***
% owner-occupancy	32.2	32.5	33.0	34.2	29.5	28.1
% renter-occupancy	67.8	67.5	67.0	65.8	70.5	71.9
% vacancy	4.9	9.4	5.6	8.7	6.9	9.8

* Table prepared by Becca Schofield. The data is based on a somewhat larger geographic area than the Pilot target area. This discrepancy is due to the way in which the U.S. Census defines the Four Corners area. Nearly all the Pilot area falls within the five census tracts that comprise Four Corners.
** Latino and Hispanic households may be White, African American or members or other racial groups. Therefore, the numbers in the race categories and the Hispanic/Latino number add up to more than 100%.
*** These data are not available for the 2010 time period and at the census tract level. Median household income data cited are reported by the American Community Survey (2007-2011, 5-year survey). Accessed through the U.S. Census Social Explorer (http://www.socialexplorer.com), March 6, 2014.

Much of the housing in the Greater Four Corners area is comprised of aging two- and three-unit properties. These buildings often have deferred maintenance and/or a need for structural repairs.[9]

Throughout Boston, multifamily buildings were foreclosed at higher rates than other housing types.[10] In 2008, Dorchester had the highest foreclosure rate in the city and the fourth highest rate statewide.[11] Moreover, foreclosures in Dorchester were highly concentrated in the Greater Four Corners area. In 2012, there were 153 units (78 properties) in Greater Four Corners that were REOs or in the foreclosure process; this was about 6.5% of the housing stock in the area. In 2013, 130 units (65 properties) were REOs or going through the foreclosure process. The area's foreclosure rate was 3.6 times that of Boston as a whole in both 2012 and 2013.[12]

This profile, of a high foreclosure rate, combined with a vulnerable low-income population, and several active community partners, made the Greater Four Corners area an appropriate focus of the COHIF Pilot.

Primary Focus and Ideological Basis

As the 2011 COHIF roundtable discussions continued, the need to figure out how to assist current residents of financially at-risk properties emerged as the central concern. Several members of the group were particularly frustrated that interventions to bring back foreclosed properties to productive uses had to wait for the owners or tenants to leave and for properties to be completely vacant. As Lisa Alberghini, President of the Planning Office of Urban Affairs, noted:

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[9] American Community Survey 5-year surveys from 2006-2010 and 2008-2012. Selected population and housing data. Accessed 3/6/2014 through the American Fact Finder at http://factfinder2.census.gov and the Social Explorer at http://www.socialexplorer.com (accessed March 27, 2014).

[10] Department of Neighborhood Development, 1999 and 2010. "Foreclosure Trends." Published by the City of Boston, http://www.cityofboston.gov/dnd/pdr/Foreclosure_Trends.asp (accessed February 27, 2014).

[11] Mattapan, Roxbury, Hyde Park, and East Boston were other Boston areas with high concentrations of foreclosure. See Department of Neighborhood Development, 2008, 2009, 2010, 2011, 2012. "Foreclosure Trends." Published by the City of Boston, http://www.cityofboston.gov/dnd/pdr/Foreclosure_Trends.asp (accessed February 27, 2014); and Tim Davis and Rus Lodi, 2013. "New law may be reason why foreclosures down sharply." Massachusetts Housing Partnership (MHP) News, May 31, 2013 http://www.mhp.net/vision/news.php?page_function=detail&mhp_news_id=501; (accessed March 22, 2014) and Tim Davis, 2014(a). "Recovery-wise, there are two Massachusetts" Foreclosure Monitor, Massachusetts Housing Partnership (MHP). http://www.mhp.net/vision/resources.php?page_function=detail&resource_id=616 and http://www.mhp.net/vision/resources.php?page_function=list&resource_category_id=61 (accessed March 13, 2014).

[12] Davis, Tim, 2014. Collection of American Community Survey 2007-2011 data and Warren Group foreclosure data. City of Boston.

> After the meetings, many of us were struck by how the discussion was about empty buildings, and not the people in them. The real issue was about the people and the buildings – the consequences of people being evicted from their homes and the buildings going into more disrepair. It was not that we were focusing on the wrong issues. But a big issue was the existing residents and that wasn't part of the conversation.

Kathy Brown, Coordinator of the Boston Tenant Coalition (BTC), recalled her feelings at that time:

> If we don't house the people living in these homes, they'll be homeless and the neighborhoods will be de-stabilized with lots of vacant houses. We all believed that doing something about this was possible. We just had to figure it out.

Becky Regan, President of the Capital Market Companies, Housing Partnership Network, elaborated on the task before them:

> We needed to reach out to residents so they wouldn't leave and we needed to get to the owner before they started the foreclosure procedure. First, though, we had to understand the system of foreclosure. Then we had to figure out a way to intervene in the system to create change. We spent a lot of time working on these questions. At some point, Steve [Meacham, Organizing Coordinator, City Life/Vida Urbana (CL/VU)] asked for help with a family in a difficult situation. He wanted to think about what Boston Community Capital (BCC, a nonprofit bank that operates as a Community Development Financial Institution) could do. That led to the first deal, known as the SUN (Stabilizing Urban Neighborhoods) initiative. We had a lot of 'one-offs' like that. But we felt that we needed to be bigger than 'one-offs.' We had to try different things to develop an initiative that could have a broader impact.

Based on these views, the Pilot project articulated its mission:

> The purpose of the Pilot Program is to ensure that owner occupants and tenants of Four Corners area homes that have been or are at risk of being foreclosed are able to remain in their homes over the long term and that the presently occupied housing units in these properties can remain decent, safe and affordable for the long term.[13]

The approach that the roundtable members embraced was heavily influenced by the ideologies of many of the participants. As Kathy Brown put it:

[13] COHIF Pilot Project Guidelines, May 2012.

> Many of us believe that housing is a human right and we were interested in developing a strategy that would involve permanent affordability for the residents, sustainability for the buildings and long-term community or resident control of the properties. Several of the grassroots groups within COHIF were particularly interested in a community land trust (CLT), possibly connecting with the Dudley Street Neighborhood Initiative (DSNI).

Another of the founders of COHIF and a key participant in developing the Pilot project, Professor Emeritus Michael Stone of the University of Massachusetts, Boston, has been a longstanding critic of housing being viewed as a commodity in the U.S. Solutions, he has argued, should look to non-market mechanisms – ways to provide long-term affordable housing to all income groups, with security of tenure, while also offering residents control over decisions pertaining to ownership and management.[14]

As a participant in the formation of COHIF and the Pilot project, Steve Meacham sees the effort as part of a long-range organizing strategy. In explaining the orientation of CL/VU and its connection to the Pilot project, he explained:

> We believe in a model that uses direct action, including civil disobedience, to target specific banks and big investors. We seek to stop no-fault evictions, get collective bargaining agreements and prevent displacement. We are doing race, class and gender organizing, focused in one neighborhood (see Appendix II).
>
> Our "bank tenant organizing" model has been picked up by 15-20 cities; we are generating a movement. I know it's small right now, but if something happens (like Occupy or Moral Mondays in North Carolina) that lets our ideas catch fire, the movement could grow. When that happens, we want to have a cadre of leaders. That's what we're doing – working on leadership development.
>
> COHIF is part of this small but growing movement. Our responsibility is to 'fan the flames.' We support residents of foreclosed properties to stay in their homes. We defend each other's homes and even occupy vacant units at times. In any case, we are NOT going quietly. We don't want to be the entity that buys the properties. We will do the organizing to pave the way for the purchase.

In collaboration with COHIF, the leadership of GFCAC met with city officials to secure resources to assist with the area's foreclosure crisis. Marvin Martin, Executive Director of GFCAC, explained how his organization worked to gain city approval for the Pilot:

> We were looking at some innovative ways to keep people in their homes. How can we purchase properties and then sell them to tenants or someone else? The city had done work in Bowdoin Geneva [an area within the Greater Four Corners

[14] See, for example, Michael E. Stone, 1993. *Shelter Poverty: New Ideas on Housing Affordability*. Philadelphia, PA: Temple University Press.

neighborhood], dealing with a whole block of foreclosed homes. We wanted to do a whole neighborhood, not just a street. We wanted to know what money might be out there that the city could shift to this project. We had several meetings with the City's Department of Neighborhood Development in support of the Pilot project.

Despite the enormous amount of good-will and commitment on the part of COHIF members, it was not until a full-time coordinator was hired in April 2012 that COHIF could move to a new level of productivity. Maureen Flynn, an attorney who had previously coordinated a foreclosure prevention project and worked on affordable housing issues for many years, became COHIF's first coordinator. Since the fledgling organization was not incorporated as a separate entity, the BTC acted as a fiscal sponsor for COHIF.

Maureen Flynn's first tasks included fund-raising, locating properties for inclusion in the Pilot and expediting the signing of the first set of guidelines that had just been drafted, which outlined the roles of each stakeholder in the Pilot. Within a month of her joining COHIF, the guidelines were, indeed, signed by the key partners. By the fall of 2012, the first two properties to be included in the Pilot were purchased. And, within six months after Maureen Flynn took over running COHIF, COHIF received a $150,000 grant from Citigroup. In short, the Pilot project was on its way. At the two-year mark, COHIF has been successful in gaining funding from the Boston Foundation, the Hyams Foundation, the Miller Foundation and the Citi Foundation, with grants awarded to date totaling $290,000.

Goals and Program Design

As of late 2012, the following were the specific goals of the Pilot project:[15]

- Outreach to 150 residents of buildings that are foreclosed or at-risk of foreclosure and identify 40-50 families to participate in some facet of the Pilot project; and, assist 10-20 owners in foreclosure to retain their homes through workouts, legal support, and/or organizing and repurchase strategies.
- Purchase and rehab 30 occupied foreclosed units, stopping the displacement of families and stabilizing the Greater Four Corners area.
- Undertake a "model" code enforcement project in the pilot area to improve conditions of vacant and REO properties and hold owners of those properties more accountable to the community; advocate for stronger code enforcement tools to be implemented in Boston.
- Research and then implement alternative ownership models, initiating co-op, 'rent-to-buy,' land trusts, other development plans for 20-25 units.

[15] Cited in COHIF proposal to The Boston Foundation, 1/1/13-12/31/13.

- Document COHIF's progress, produce a report that outlines COHIF's efforts in order to replicate the effort elsewhere, and convene the membership and others regarding lessons learned.

After identifying a building suitable for participation in the Pilot (*e.g.*, the property is in the foreclosure process or has recently been foreclosed, is occupied and has an owner and/or tenants interested in working with COHIF), the model involves an interim for-profit purchaser/developer. The reason COHIF members decided to use such an intermediary was to ensure that purchases could occur quickly. In short, an entity with significant financial resources and with the ability to act quickly at a foreclosure auction was needed. A for-profit developer was thought to be in a far stronger position to meet these needs than a local nonprofit. More concretely, none of the possible nonprofit groups in the area were in a position to make a quick purchase, primarily because of a lack of adequate capital. In addition, by having an interim owner, it was felt that COHIF would have the needed time to put a long-term financing and ownership package together.

Thus, the Pilot project involves several distinct steps:

- Implementing outreach efforts to identify properties, which are foreclosed or at-risk of foreclosure, but not vacant, and identifying existing residents to participate in the Pilot project;
- Working with a private, for-profit developer who purchases the buildings on behalf of COHIF and who does moderate rehabilitation of the occupied foreclosed units;
- While the buildings are being managed by the for-profit owner, working to develop leadership of the residents of current and future COHIF properties and maximizing resident involvement and control over the properties purchased on COHIF's behalf;
- Identifying and working with a long-term nonprofit owner on developing a long-term ownership structure involving residents. Central to this work is acquiring the needed financial resources to rehabilitate the buildings and to maintain their financial viability, while assuring resident stability and affordability of the units;
- Continuing to implement a "model" community code enforcement project in the Pilot area to improve conditions of vacant and REO properties; and
- Advocating for stronger regulatory reform measures to be implemented in Boston and beyond to facilitate the ability of existing residents to retain their occupancy in foreclosed properties.

Connection of COHIF Pilot to Other Interventions

Across the country, there are numerous examples of nonprofit organizations engaged in foreclosure counseling efforts; in Massachusetts alone, there are scores of U.S. Department of Housing and Urban Development (HUD)-approved Foreclosure Avoidance Counseling organizations.[16] However, there are very few examples of direct action programs similar to COHIF, which provide a possible remedy for existing owners and tenants, post-foreclosure.[17]

One such intervention stands out. COHIF is closely linked to another key effort in the Boston area aimed at enabling foreclosed homeowners and tenants either to stay in their homes or to regain occupancy after foreclosure. Specifically, the Pilot can be seen as a sub-set of the overall approach pioneered by CL/VU.

CL/VU is committed to a social and economic justice agenda, with individual and community empowerment being central to its mission. The organization has a 40-year history of community organizing and activism, primarily around housing issues. Originally focused on high rents being charged by "slum landlords" and a wave of arson, CL/VU also has focused on efforts aimed at stemming gentrification and displacement of low-income households. In the wake of the foreclosure crisis, CL/VU developed a program aimed at halting evictions for low-income tenants and homeowners due to foreclosure.

Officially known as the Bank Organizing: Post-Foreclosure Eviction Defense Campaign (and, informally, the "bank tenant organizing" project, cited earlier), the CL/VU strategy embraces "the sword and the shield." The "shield" refers to the organization's work with tenants and homeowners informing them of their rights through legal assistance,

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[16] http://www.hud.gov/offices/hsg/sfh/hcc/fc/index.cfm?webListAction=search&searchstate=MA&filterSvc=dfc (accessed January 8, 2014). NeighborWorks reports that a study prepared by the Urban Institute "shows that homeowners who received … counseling were nearly twice as likely to obtain a mortgage modification and at least 67 percent more likely to remain current on their mortgage nine months after receiving one" (http://www.nw.org/network/foreclosure/nfmcp/ -- accessed March 31, 2014).

[17] Perhaps the most comparable program to the Pilot project is New York City's Occupied Homes Program, which assists underwater homeowners to stay in their homes. "The program purchases the note at the current market rate and rents the home back to the household. The family is able to stay in the home while they receive intensive financial coaching from a HUD-certified housing counseling agency. The rent is equal to the new principal, interest taxes and insurance of the newly adjusted mortgage. The family demonstrates they are able to afford the new mortgage with this new payment history. If the household meets underwriting criteria and makes 12 consecutive payments, they may repurchase the home under the program's mortgage terms." Danielle Samalin, "Strengthening Neighborhood Stabilization: Refining Business Models for Housing Counseling," *Community Development Investment Review*, Federal Reserve Bank of San Francisco, Vol. 9, Issue 2, 2013, pp. 53-61. With reference to similar initiatives with a focus on community organizing, tenants' rights, anti-eviction campaigns, foreclosure prevention and leadership development, Steve Meacham noted that among the several groups that CL/VU has assisted across the country, special mention should be made of Causa Justa, Just Cause, in Oakland, California (http://www.cjjc.org/en/our-work -- accessed March 31, 2014).

education and advocacy. In addition, the work of key partners is essential to providing a protective shield. In particular, assistance from Greater Boston Legal Services, the Harvard Legal Aid Bureau (HLAB), and various private attorneys is central to their work.

The "sword" refers to various types of direct campaigns, which encourage residents to stay in their homes. Through blockades, vigils and other public actions aimed at exerting pressure on banks holding the mortgages, CL/VU works with BCC to purchase the homes of foreclosed residents and, if possible, to resell to them.[18]

Seen in a larger context, CL/VU presents a unique model, since it combines both an educational component, which is often referred to as housing counseling, with a mechanism for helping residents retain occupancy of their homes. As part of this overall campaign, CL/VU, as a member of COHIF, helped create the financing initiative operated by BCC known as SUN, referenced earlier. SUN was an outgrowth of discussions among COHIF members that began with Steve Meacham and Becky Regan, when she was at BCC. Since late 2009, SUN has "prevented the eviction of over 400 Massachusetts residents and has helped homeowners and tenants facing eviction reduce their monthly housing payments by more than 40 percent."[19]

Another strategy that CL/VU helped create as a member of COHIF is the Pilot project, which is closely connected to the over-arching CL/VU strategy, and is an important tool available to CL/VU to help households dealing with foreclosure. To be clear, the Pilot project (and SUN) are subsets of the overall CL/VU strategy and while they share one similar goal, (keeping foreclosed homeowners in their homes), they are different in several ways. Specifically:

- In the Pilot, a small geographic area was targeted, and the goal was to find appropriate properties clustered in that location; BCC's SUN initiative is not restricted to a single neighborhood and works wherever a suitable opportunity arises, including areas outside Boston.

- The BCC/SUN approach does not rely on a for-profit intermediary as in COHIF, since the former's strategy calls for the sale of the property from the bank holding the property back to the original owner.

- Since COHIF is creating a new ownership structure with a nonprofit organization (and, ultimately, would like to create a resident ownership model), outside financing and subsidies are needed. In contrast, BCC, to provides the new loan to the original owner who, presumably, is in a financial position to carry the new mortgage.

[18] Based on: http://clvu.org/our-work/programs-campaigns/bank-organizing-post-foreclosure-eviction-defense-campaign (accessed January 8, 2014).
[19] http://www.bostoncommunitycapital.org/what/foreclosure-relief (accessed January 21, 2014).

- BCC, for the most part, does not get involved with the rehabilitation of the properties, whereas that is an important component of COHIF's work.

- The COHIF Pilot assists both tenants and former homeowners whereas the SUN program only assists former homeowners.

- The COHIF Pilot is seen as a last resort for homeowners when they cannot purchase back their home through BCC.

2) Operations

- ***How has the Pilot operated?***
- ***What has worked well?***
- ***What types of issues/obstacles have arisen, and what adjustments have been made?***

This section explores the operation of the Pilot by first discussing the areas that have worked well – its strengths. The second part of this section explores the challenges that have arisen and how adjustments have been made.

Strengths

The first five strengths discussed below all relate to the programmatic operations of COHIF staff, members and their partners. The next two strengths of the program pertain to some immediate benefits that COHIF and the Pilot have already provided.

Programmatic Issues

- ✓ Management
- ✓ Expertise of COHIF members and strong relationships
- ✓ Connection between organizing and action
- ✓ Commitment and sensitivity of intermediary owner/manager
- ✓ Clarity of mission and depth of commitment of COHIF staff and members

Immediate Benefits

- ✓ Ability of former owners and tenants to stay put (at least for a while), receive support and lower household costs
- ✓ Some households not participating in the Pilot also have been assisted

Programmatic Issues

1) Management

An important aspect of COHIF's operation has been the support provided by the Boston Tenant Coalition (BTC). Until COHIF was incorporated as a separate nonprofit organization on March 5, 2014, BTC served as the legal entity responsible for COHIF's contractual relationships and served as the umbrella organization under which COHIF operated. Kathy Brown and Maureen Flynn, the COHIF Coordinator, had a good working relationship throughout this period. BTC will continue to serve as COHIF's fiscal sponsor until COHIF obtains 501(c)(3) approval from the IRS.

Maureen Flynn's leadership of COHIF is widely viewed as one of the major assets of the project. Interviewees repeatedly voiced strong support and appreciation for the enormous commitment and hard work of the COHIF Coordinator. In virtually every interview, the evaluator was told that Maureen Flynn was the person who was most responsible for locating buildings, bringing the purchases to completion and working with residents, the for-profit intermediary and the nonprofit organizations. The sentiment was widely shared that "bringing Maureen into the project was one of the best things that we did; she has worked tirelessly with all stakeholders to make COHIF a success. But she is the only paid staff member and her plate is very full."

In addition to her administrative skills, Maureen Flynn is an attorney, and her legal knowledge has provided enormous "value-added" which has saved COHIF a considerable amount of money. With the exception of the initial guidelines, which had been drafted before she joined COHIF, Maureen Flynn has written all the initial drafts of the other COHIF agreements, contracts and bylaws.

While it is important to underscore Maureen Flynn's role as a major strength of the Pilot, her consistent willingness to go "above and beyond" what most would view as a normal work-week could become problematic if, at some point, she decides to leave the project. This would create a significant and serious void in COHIF's management.

2) Expertise of COHIF members and strong relationships

Another major strength of the Pilot is the expertise of its members. In reflecting on the people who comprise COHIF, Becky Regan noted:

> One of the key pieces is having people involved who have expertise in virtually all the issues we deal with: real estate, mortgage finance, securitization and legal issues including evictions and tenant rights. This is a very experienced and high-powered group in their respective fields. From the outset, it was clear that the purpose in getting together was to create a different model and, collectively, we had the background to make it happen.

As noted previously, COHIF is comprised of housing professionals and advocates who know and respect each other. The high level of trust continues to be an important ingredient in COHIF's operation and in the way in which the Pilot has been carried out. Dana McQuillin Dalke, former Project Manager, Codman Square Neighborhood Development Corporation (CSNDC),[20] commented on the strong working relationship of COHIF members: "It's one of the most unique coalitions I've ever been a part of. Everyone really understands the mission, pulls their weight and is committed to the Pilot."

[20] As of early May 2014, Dana McQuillin Dalke was no longer employed at CSNDC; she is now Deputy Director of COHIF.

Yet, management by committee can also be challenging. With so many diverse interests represented, disagreements are certain to arise. For example, the idea of COHIF incorporating as a separate 501(c)(3) was first suggested more than a year ago, but with a small minority of members opposed, the proposal was shelved. By Winter/Spring of 2014, however, it became apparent that COHIF needed to form a separate organization and, as noted above, this change of status has occurred.

3) Commitment, sensitivity, and competence of intermediary owner/manager

As the Pilot project was taking shape, COHIF members realized that they needed someone who would be able to buy properties quickly. After the group had met for several months, Lisa Alberghini explained their decision:

> Every time we met, we kept losing 5 properties. Who around the table could buy properties and how would they get the money? It seemed premature for Codman [CSNDC] and Dorchester Bay [EDC] to buy the properties without all the funding lined up. We realized that it was not working to keep waiting. We thought about getting a pool of money for quick purchases. For example, the Massachusetts Housing Investment Corporation, through the federal NSP, had lines of credit available. But still, we needed an entity to do the purchasing. We needed to put the necessary ownership and management pieces in place.

Jonathan Kaye, a local developer with a 30-year track record, including several previous projects in Dorchester that had been done in collaboration with local nonprofits, was chosen to be the intermediary for-profit owner of the properties. Jonathan Kaye's role is to purchase, manage and oversee modest renovations of the buildings selected by COHIF. The intent has been that he would keep the properties for about one year, prior to selling them to a nonprofit entity that would assemble a financing package; oversee the more extensive rehabilitation of the buildings and either assume long-term ownership or assist with the transition to a resident ownership model.

In addition to the work being time-consuming and difficult, there was a need for a developer who was "on board" with the overall goals of the Pilot. Jonathan Kaye clearly is. As he put it:

> I'm a small company and I can move quickly to purchase buildings. This is what I like to do. A lot of people wouldn't have the patience with tenants. But I wish we had more units in the pipeline. The question for me is how to replicate the Pilot. If we're successful with the first few buildings, there has to be more courage on the part of government to put more pressure on the financial institutions to sell buildings to us at fair prices. The model can't compete with private for-profits.[21]

[21] As noted later in this report, private for-profit investors are typically able to outbid COHIF and other nonprofits in acquiring properties.

Interviewees consistently commented on Jonathan Kaye's commitment to the Pilot and his patience in working with the residents and with COHIF members. With regard to the first property in the Pilot (422 Seaver Street) and its successful renovation through Jonathan Kaye's contractors, the experience was mostly very good with high quality work completed on-time and on-budget and with change orders accommodated, as needed. Although there were some seemingly modest inconveniences with this arrangement, on balance, it appears to have worked smoothly. As the rehabilitation of 422 Seaver Street was nearing completion, Dana McQuillen Dalke, who was the person most connected to the project through her job with the owner of the property, CSNDC, noted that:

> Jonathan adds a layer of complexity to the construction-end of the project. CSNDC's contract is with Jonathan, who, in turn, has a contract with a licensed general contractor, who does the work. CSNDC contractually should not be giving directions to subcontractors, so it was a little frustrating early in the job when I would go to the site and see the general contractor there and he is not the one we have the contract with; it made it difficult to discuss issues on site since our communication really needed to go through Jonathan. We did address this later in the job and Jonathan made it a point to be on-site for all walk-throughs. While CSNDC might have preferred to hire the general contractor directly, since he is licensed, he may not have had a sufficiently strong financial position. Jonathan certainly adds financial security and flexibility to the deal and makes sure that the workers are fully insured, which is something some smaller contractors are not able to provide.

4) Connection between organizing and action

One of the unique aspects of the Pilot is that another strong local organization focused on community organizing is able to put pressure on banks. Although CL/VU makes its own decisions about which properties to target, this direct action strategy has been an important factor in encouraging banks to enter into negotiations with COHIF and other nonprofit purchasers.

Another important early relationship that combined organizing and action was between CL/VU and BCC, which had been identified to provide financing to the long-term owners in the SUN program. As Michael Stone noted: "CL/VU's organizing strategy and eviction defense was instrumental in some REO properties being sold at current value and then being re-sold to the former owners, with BCC financing."

However, in the past few years, the relationship between BCC and CL/VU has changed significantly, with BCC taking the major role in implementing the SUN program and with CL/VU no longer actively involved in this effort. Nevertheless, the early working

relationship between CL/VU and BCC was likely a positive component in getting the Pilot project launched.

5) Clarity of mission and depth of commitment of COHIF staff and members

From the outset, COHIF has been clear about the types of properties that are to be part of the Pilot: occupied buildings that had been foreclosed or were near foreclosure. The condition of the properties and the incomes of the current residents are not a concern, so long as they fit the key criteria of occupancy and mortgage distress. In the early days of the Pilot, potential properties were identified through lists of REO properties. Staff or volunteers from CL/VU went to these homes to see if they were occupied. But it turned out to be difficult to make these "cold calls." In view of the stresses that owners and tenants of these properties were facing, it is easy to understand why gaining their trust might have been difficult. While these canvassing efforts may have helped to educate the community about the possibility of assistance, these contacts rarely yielded viable candidates for the Pilot.

COHIF now relies primarily on CL/VU's contacts with people who are coming to their meetings to find out more about their "sword-shield" approach and from referrals from HLAB. With each person's story and property representing a unique set of challenges, COHIF's coordinator works with each potential client to assess her/his suitability for inclusion in the Pilot. On the one hand, the process has provided an opportunity for foreclosed owners and residents to get to know Maureen Flynn, to understand the program and to develop the required level of trust to work together. On the other hand, as discussed later, the process has been both labor-intensive and time-consuming.

During the course of this evaluation, the evaluator had the opportunity to hear Maureen Flynn provide an update to the former owner of a foreclosed home that COHIF was hoping to include in the Pilot. Before relating the progress being made to get the mortgagee (Wells Fargo) to sell the foreclosed property to Jonathan Kaye, COHIF's interim buyer, Maureen Flynn summarized what had been happening so far: Wells Fargo had been trying to evict the residents of the 2-family home, which included a woman (the former owner), her three adult daughters and their four small children. Despite this pressure, Maureen Flynn, along with attorneys at the HLAB and staff at CL/VU, has been urging the former owner and her family to continue to stay put. In addressing the former owner, she explained:

> In the past, Wells Fargo, which was the original mortgagee on this property, sold another property to COHIF. But, with this property, there has been a problem. The loan is insured by the FHA [Federal Housing Administration, a unit within HUD], and FHA says that they want the property vacant before sale. FHA doesn't want any of the former owners to benefit in any way, even by being able to stay on as tenants. The local HUD office has not been helpful. But there is hope. We are now working with the HUD office in Washington, D.C., and they seem willing to sell a group of FHA foreclosed homes to appropriate buyers, including perhaps

the former owners. Moreover, they seem willing to have the properties conveyed with the residents living there. HUD wants to establish a price for this home, so FHA will be sending out an appraiser shortly. Hopefully, this property will be included on FHA's priority list and we'll be able to acquire it, so you and your family will be able to stay here as tenants. We hope to have a clear answer by April 1 [Note: this was less than two months from the time this conversation took place].

This property is one of about 30 properties that several nonprofit organizations, including COHIF, are trying to acquire from HUD. As of early April, HUD/FHA had completed the appraisal on this and the other properties and had indicated that they were willing to sell to a single group, BCC, assuming the latter could become a HUD-certified nonprofit. HUD understands that BCC will then sell some of the properties to COHIF. At that time, Maureen Flynn expressed a high level of optimism that this property would be part of the Pilot.

While Maureen Flynn conveyed the information to the former owner with clarity and hope, there was no discussion about what would happen if the best-case scenario outlined above did not materialize. When the evaluator questioned the woman directly about what she would do if COHIF were not able to help acquire her property, she said, simply, "I guess we'll try to rent somewhere else." But, of course, finding a new home that could accommodate four single adults and four children would not appear to be an easy task. In the meantime, however, the Pilot is offering this owner and her family a respite from the very significant housing-related problems she is facing, as discussed in the following section.

Immediate Benefits

1) Ability of former owners and tenants to stay put (at least for a while), receive support and lower household costs

As of early June 2014, there were four properties in COHIF's portfolio, one of which had just been completed through CSNDC and was on the market for-sale. Three additional properties, with a total of 9 units, were included in the Pilot and owned by Jonathan Kaye. The evaluator only spoke with one person, referenced above, whose property was in the pipeline to be purchased (hopefully) through COHIF. It is likely that this woman's story has some overlaps with other households participating in the Pilot.

- The 2-family home was purchased 13 years ago and refinanced 10 years ago;
- Payments had been made until 4 years ago, when the owner became ill, could not continue to work and was unable to catch up with the mortgage payments;
- The bank refused to reduce her mortgage payments, despite her requests for them to do so;

- The home has been foreclosed with eviction notices;
- However, she and her family have been told by CL/VU and COHIF to stay put;
- The mortgagee has not requested rent and therefore the family has been able to live rent-free. She stated: "I've been able to catch up with my other bills."
- Since she got involved with COHIF, she has been assisted by the HLAB. Again, in this woman's words: "It has been a relief not having to go to court so much; the lawyers take control of everything."
- And, more generally, her contacts with Maureen Flynn and CL/VU have provided support and an understanding about how her situation might get resolved in a positive way for her and her family. Having a tenacious partner working with her, helping her to navigate the enormously complicated financial and bureaucratic landscape, is sure to inspire confidence and lift a portion of the burden that families in such vulnerable situations face.

Thus, despite the stress of going through foreclosure and the many eviction notices, the immediate benefits of being part of the Pilot project have been significant for this family and, likely, for others as well.

2) Some households not participating in the Pilot also have been assisted

In view of the extensive work that COHIF has been doing in the Greater Four Corners area, several households were able to receive support and assistance from COHIF and collaborating organizations, even though their properties did not become part of the Pilot. The following April 4, 2014, email from Maureen Flynn to COHIF members, speaks for itself.

> With COHIF members' and supporters' help, the "X" family was able to buy back their home at "YY Street" in Dorchester! The "Xs" were foreclosed on but because of advocacy on their own behalf and with CLVU's and Councillor Jackson's help, they were able to remain in their home post-foreclosure. Jonathan Kaye bought the home from the foreclosing lender after many, many hours of advocacy on behalf of the "Xs" to make it happen. Jonathan acted as an interim owner so that the "Xs could buy it back from him, rather than losing the house. We also spent many hours trying to identify an appropriate lender for the "Xs" – Steve Meacham in particular spent many hours on the phone on this one. We also want to thank MAHA [Massachusetts Affordable Housing Alliance] and MHP [Massachusetts Housing Partnership] for their help…The "Xs" closed on the house last week and they now have the stability on the home front that every family needs and deserves. [Family name and street address deleted to protect privacy.]

Instances like this are not part of the "count" of households and properties purchased in the Pilot, as discussed in the Outcomes section of this report. Yet, COHIF's work in assisting this family to buy back their home at a new, affordable price is an important aspect of its strengths, and it should be credited for providing this type of immediate benefit.

Challenges and Adjustments

As a new, untested model, unforeseen challenges and complications could be expected. In each case, COHIF has worked hard to identify the problem and, where possible, to create an appropriate response, thereby allowing the Pilot to keep moving forward. The following challenges fall into three main groups: programmatic, property-related and issues pertaining to the ability to implement the Pilot model.

The programmatic issues discussed here all stem from the Pilot not having developed detailed guidelines prior to its launch. Instead, it tried to devise its rules for operation as it went along. The broad guidelines of the Pilot were defined by May 2012, but with the "devil being in the details," a number of issues that had been unresolved at the outset created significant obstacles as the Pilot unfolded. Realizing that more clarity on the roles of the various partners was needed, at the end of 2012, Roberta Rubin, an attorney with extensive experience in affordable housing development, was hired to help draft a more formal Joint Venture Agreement. More than a year later (as of early June 2014), the Agreement was still not executed with any development partner and some critical issues governing the Pilot were not yet resolved.

In contrast to the programmatic issues discussed below, the challenges discussed in the second and third categories are beyond the direct control of COHIF. In addition, several of the most serious and daunting challenges that the Pilot has faced relate to specific policies on the part of banks, servicers and investors, which also are not within COHIF's direct ability to change. These are discussed in the Policy Issues section of this report.

Programmatic Issues

- Dependence of COHIF on another organization
- Difficulty enlisting long-term nonprofit owner
- Creating incentives for interim owner

Property-related Issues

- Problems locating and purchasing suitable properties
- Properties needing extensive renovations

Implementation Issues

- Aspirations about innovative, long-term ownership arrangement vs. reality
- Funder regulations: possible conflicts with affordability goals
- Concerns about long-term affordability
- Complexity of assembling a long-term financing package

Programmatic Issues

1) Dependence of COHIF on another organization

As the Pilot took shape and as a series of legal arrangements had to be forged (*e.g.*, with the for-profit intermediary owner and with the nonprofit long-term owner), it became challenging to work through COHIF's fiscal sponsor, the BTC. While the interpersonal relationships were strong, BTC is not in the business of housing development, nor is it a large organization with a large infrastructure or budget. By bringing COHIF into its fiscal orbit, BTC's budget was roughly doubled – but without any additional managerial staff. As a result, the arrangement created some level of stress for BTC.

One interviewee suggested that, perhaps, no one at BTC fully understood or anticipated the range of tasks that would have to be carried out under their organizational name. In some respects, CL/VU's ongoing "bank tenant organizing" initiative might have suggested that partnering with them would make sense. However, with organizing being so central to that organization's mission, it likely was advisable for the Pilot to operate independently of CL/VU.

As this evaluation was underway, COHIF members were pondering the future organizational structure of COHIF. Becky Regan commented on the need for COHIF to become an independent organization: "Coming together was organic and having a collaborative model worked well until we realized that we needed to raise funds to get projects completed; if we're raising funds, then we probably need to become a legal entity."

As noted earlier, the issue of organizational autonomy for COHIF was not new, and it was a concern virtually from the outset of the Pilot. Specifically, with reference to the May 2012 guidelines, it was unclear what it meant for Maureen Flynn to be a signatory on a document, without COHIF itself being a legal entity.

On March 5, 2014, COHIF was incorporated as a separate entity, with the paperwork for approval as a 501(c)(3) organization being filed. Nevertheless, there was still some difference of opinion on whether this was a good idea. Several interviewees noted that, with COHIF becoming a fully separate organization, the already intense competition for resources among housing nonprofits would become even more problematic.

While it does not seem that there were any major problems for COHIF due to their initial dependence on BTC, working out the organizational structure represented another time commitment for Maureen Flynn and COHIF members.

2) Difficulty enlisting long-term nonprofit owner

The Greater Four Corners Action Coalition (GFCAC) is rooted in the target area, but they could not serve as the developer/long-term owner, since they don't develop affordable housing. The tasks involved in property acquisition, rehabilitation and long-term management are not GFCAC's focus or area of their expertise. GFCAC was, however, brought in to the Pilot, originally, to do outreach to local residents.

Two other nonprofit organizations working in the general Greater Four Corners area were considered as possible long-term owners of the properties. These included the Codman Square Neighborhood Development Corporation (CSNDC) and Dorchester Bay Economic Development Corporation. COHIF members were concerned, however, about the capacity of these organizations taking on an additional set of complicated tasks; they both operate on tight budgets and the Pilot was not a top priority for either of them. In addition, Dorchester Bay was not really a possibility since Greater Four Corners is almost exclusively within CSNDC's catchment area, and the community development corporations (CDCs) have an agreement not to over-step each organization's boundaries.

As the discussions evolved, it seemed that CSNDC, with its long and successful history of housing development in the area, including the rehabilitation and re-sale of several foreclosed properties, would be in the best position to assume the long-term ownership of the properties, including doing the rehabilitation needed. In fact, the first Pilot property, which was completed in April 2014 and was being marketed as a 2-family owner-occupied property (the only such unit in the Pilot), was purchased by CSNDC. For that property, the pieces fell into place fairly easily. CSNDC had received a funding commitment from NeighborWorks and NSP, but the money had to be used to purchase a property before the end of 2013. The Seaver Street property was available and CSNDC was able to make the purchase. Given CSNDC's comfort with the model of rehabilitating and then selling the property to a new homeowner, it made sense for COHIF to agree to that approach. However, it was always assumed that Seaver Street would be COHIF's only homeownership project.

As prescribed by the model, CSNDC provided the oversight for the rehabilitation work, which was done through Jonathan Kaye's company. But, after this first property was acquired, the question of whether CSNDC would continue to play this role was unresolved. After protracted back and forth negotiations, and following an attempt by housing consultant and COHIF member Mat Thall to work out a compromise solution, toward the end of the first year the possibility of CSNDC and COHIF continuing to partner dissipated. Interviewees provided several reasons. First, CSNDC did not have a strong interest in occupied, scattered site rental housing; its stated preference for the Pilot project had always been homeownership. Second, and connected to the first reason, developing a scattered-site portfolio of rental properties that needed to be managed was outside CSNDC's normal operations for foreclosure projects and would

have presented a number of challenges. Elaborating on these points, Dana McQullin Dalke (speaking as a CSNDC employee) provided some additional insights about how CSNDC's orientation and the needs of the Pilot were out of sync:

> Codman wanted to participate in the Pilot to assist residents in our service area. Our strong preference was to continue with the model that had proven to be successful for us in the past. If we could have done what we typically do, acquire a home, do the rehab and then sell the home to a new buyer and get out of the deal, earning a small developer fee, it would have been more attractive. But our leadership was particularly concerned about project feasibility and only wanted to participate if we knew that we would not lose money and assume much long-term risk. The Pilot as conceived was just not the kind of project that we are comfortable doing; the partnership was not the right match.

And, third, CSNDC was not comfortable with the provision in the original joint venture guidelines giving the for-profit owner's company the ability to match a construction bid if it came within 3 percent of the lowest bid (discussed below). The feeling was that if CSNDC was to be involved, the process for awarding contracts needed to be more open, transparent and competitive. In addition, there might have been some concern about Jonathan Kaye being neither a licensed nor a bonded general contractor.

Regardless of the extent to which each of the factors caused CSNDC to withdraw from COHIF, from COHIF's perspective, a huge amount of time and money was lost trying to reach an agreement with CSNDC and in negotiating the terms of a contract, which was never signed.

In November 2013, COHIF embarked on finding another nonprofit to take CSNDC's place. Several COHIF members contacted Heading Home and, later, the Women's Institute of Housing and Economic Development (WIHED), Heading Home's technical development consultant, to discuss their potential involvement. As Maura Camosse Tsongas, Development Manager at WIHED, explained:

> Heading Home already had a commitment to this community, having purchased two properties in Dorchester through the [federal] NSP. Heading Home and the Women's Institute discussed the risks and benefits, and we assessed the properties that were already in the COHIF Pilot. Since Heading Home and the Women's Institute have worked together on several projects, we felt comfortable in partnering on this new initiative.

Heading Home, a local homelessness organization that provides emergency, transitional and permanent housing, as well as support services to its client population, agreed to be the new nonprofit partner, replacing CSNDC, with WIHED serving as the development consultant. The blended expertise of the two organizations appeared to be a good fit for the Pilot.

Although Heading Home has a four-decade track record in the Boston area, it is not a place-based organization, has no direct connections with the Greater Four Corners area of Dorchester, and it has never used the federal Low Income Housing Tax Credit (LIHTC) program. Nevertheless, Tom Lorello explained why he thought collaborating with COHIF would make sense.

> Over the past 10 years, we have become more involved with developing small permanent housing developments, so I was interested in having access to buildings to develop through the Pilot. COHIF's and our mission overlap; but they're not dead center. We wanted to honor their mission to keep tenants in the buildings. I was also interested in the possibility of getting more units for homeless families. When there is natural turnover of tenants, we hope to be able to put our families into the buildings. COHIF's mission is not exactly in our sweet spot, but it's not much of a stretch, when you think about COHIF being involved with homelessness prevention. The differences were not a huge issue for me or for the board.

At the point that this evaluation was carried out (January – May 2014), Heading Home's contractual obligations were still trying to be defined. On June 4, Heading Home decided that it would not move forward with the partnership.[22] This extremely disappointing decision came after five months of negotiations, and, again, with significant expenditures of time and money. This delay has created an enormous amount of pressure and uncertainty for the Pilot. Looking forward, as this report was being finalized, COHIF was in discussions with two other possible development partners, and there was optimism that one of these collaborations would work.

3) Creating incentives for interim owner

As discussed earlier, the Pilot model is dependent on an interim owner who has access to the needed capital to purchase properties quickly and hold them until a long-term financing and ownership arrangement can be negotiated. Given this design, the question arose about the incentives needed for such an individual to be willing to participate. As Jonathan Kaye pointed out: "What I want is to do the construction when it happens – it would be really nice to get that work."

With the construction contract being a key incentive for Jonathan's participation, the May 2012 COHIF guidelines clearly defined a process for giving him an opportunity to secure the construction contract, referenced earlier. Specifically, the last provision of the guidelines stated:

[22] In a June 5 email, Maureen Flynn reported that Tom Lorello had indicated that Heading Home's board had not approved the COHIF collaboration and that he had received a negative response from his preferred funder. While Maureen Flynn indicated that she thought that Heading Home could have found other viable financing options, this will be up to the new development partner to figure out.

> If CSNDC or another nonprofit housing development organization acquires three or more properties from Kaye it will invite Kaye's construction company to bid on the renovation work of all properties, recognize Kaye's construction company as a qualified bidder and seek to award Kaye the construction contract if his bid is no greater than three percent (3%) above the bid of the lowest qualified bidder.

This stipulation, as noted earlier, may have been one of the main reasons why CSNDC ultimately withdrew from the Pilot. Regardless of CSNDC's other reasons, it appears that they were correct to be concerned about this provision. In early 2014, when WIHED (working with Heading Home) had just agreed to be the Pilot's development consultant, WIHED staff realized that they would need to review this issue with the city and the state.

One version of the draft agreement with Heading Home would have given Jonathan Kaye the right to win the construction bid if he were either the lowest bidder or able to match the lowest bid (not 3% above as in the guidelines, as indicated above).[23] This is in conformance with city and state rules. If Jonathan Kaye had known, at the outset, that he might be disqualified from bidding on the job altogether, with no chance of getting the construction contract, it is likely that he would not have been interested in participating. And, indeed, if the city had rejected Heading Home's request to approve Jonathan Kaye for a contract, assuming he could do the work for the same price as the lowest bid, he might have withdrawn from the Pilot at that point.

In view of the expertise of COHIF members, it is curious why no one pointed out, at the time the May 2012 guidelines were drawn up, that an open bidding process would be required for the Pilot to receive city or state funding. Clearly, as Tom Lorello commented: "We can't do anything that the public funders won't agree with." In addition, COHIF members might have been working under the assumption that the more lenient guidelines of NSP funding would prevail, where only one bid was needed, as long as costs were deemed reasonable.

Whether or not COHIF members can be faulted for not taking into account city and state funding requirements for open bidding processes, this issue raises the question of the incentives needed to encourage a private for-profit developer to become involved if, in fact, city and state requirements only allow construction contracts to go to the lowest bidder. How might the initial transaction include some sweeteners for a developer to purchase and hold properties, even for a short time, whether or not a major construction contract materializes?

While the first three challenges, just discussed, were directly related to COHIF's operations, the five issues discussed below have origins outside COHIF's sphere of

[23] In addition, under the terms of this agreement, Jonathan Kaye would have had to partner with a licensed contractor who would be able to get a performance bond.

influence. These are further divided into property-related issues and external issues impacting the feasibility of implementing the Pilot model. The property-related issues that pertain directly to policies of Fannie Mae, Freddie Mac[24] (sometimes referred to as Government Sponsored Enterprises, or GSEs) and HUD/FHA are discussed in the Policy Issues section of this report.

Property-Related Issues

1) Problems locating and purchasing suitable properties

By the time the Pilot project was launched, the Boston housing market was slowly beginning to revive, following the mortgage crisis that had started in the late 2000s. While the Greater Four Corners area was lagging behind hotter sub-markets in Boston, speculators had emerged, ready to purchase properties whose owners were in financial distress. But even without this pressure, COHIF's early strategy for identifying suitable properties was time consuming and unwieldy, involving personal visits to households in REO homes. And the hope that a group of properties could be acquired in bulk proved to be infeasible. Even asking servicers for "everything you've got in the Greater Four Corners area" did not yield a group of possible properties, since each was at a different stage in the foreclosure process. While working with referrals from CL/VU and the HLAB yielded potential candidates, each contact took a great deal of time.

Several interviewees acknowledged that they had been far too optimistic in originally projecting that property acquisition could be completed within one year. Lisa Alberghini described some of the frustrations associated with locating and purchasing suitable buildings:

> Fundamentally, our process had to start with the properties. We got lists of potential buildings, but then we had to determine whether they were occupied and identify the servicer and the owner. We met with various servicers and banks, hoping to get some clusters of suitable properties having a single servicer/owner. For example, Bank of America gave us a list of 50 properties, but they were not in the Pilot area and they were not occupied, so that did not fit our criteria. We never had more than 3-4 properties with a single servicer/owner that were possibilities for inclusion in the Pilot.

[24] Fannie Mae was originally known as the Federal National Mortgage Corporation, and Freddie Mac was originally known as the Federal Home Loan Mortgage Corporation, created in 1938 and 1970, respectively. Their role is to provide a source of liquidity in the mortgage market, by purchasing loans from banks and other originators of mortgages. Thus, they perform what is referred to as secondary mortgage market functions.

Although Becky Regan acknowledged that the Pilot is stabilizing the situation for a number of households and that people seem to understand that COHIF is working with/for them, getting through to the servicers has been "excruciating." And, further:

> Right now, we get properties by people coming to us; it's reactive. Our process depends on servicers who may or may not be interested. But perhaps there's an opportunity for COHIF and partners to be proactive. Maybe we need to think about accepting 30 properties within a 10-mile radius that servicers want to unload. It's been hard to get servicers to do anything that is community oriented. Is there a button we can try to push with them to get more volume? Doing just a few purchases here and there is not enough.

In short, none of the entities involved -- banks, servicers, and Fannie Mae— has been able or willing to package a group of suitable properties in the Greater Four Corners area that could be sold to Jonathan Kaye, on behalf of the Pilot project. Further, as the housing market is shifting back to being stronger and more competitive than a few years ago, the challenge of acquiring suitable properties will continue. The more that acquisition costs go up, the more the financial feasibility for potential Pilot properties is compromised. (See Appendix III for a description of some of the efforts taken by COHIF and others to secure a property for the Pilot.)

2) Properties needing extensive renovations

The severe deterioration of most of the properties that were acquired through the Pilot, while not a surprise, has, nevertheless, presented a significant challenge that has had to be tackled. As Kathy Brown noted: "it's sobering every time we encounter just how bad disinvested substandard housing can be. But the condition of the properties also makes us see the great need."

Jonathan Kaye, who buys the properties and makes some modest repairs on the buildings while waiting for the financing and renovation plan to be put in place, acknowledged the generally deteriorated condition of the buildings when he purchases them. However, he stated:

> I'm in a holding pattern. I'm not proud of how some of the properties look right now. I just had to put $500 into a ceiling repair, but it's a band-aid—much more work needs to be done on these buildings. But that has to wait for the long-term financing and ownership arrangement.

Jonathan Kaye's bids to purchase the properties, in consultation with COHIF, take into account how much money will be needed to bring the properties up to a good quality. Whoever assumes the role of long-term owner (development partner), they will need to be sure that the numbers for each building acquired will work. When Tom Lorello was planning on assuming that role, he stated:

> We have to go through due diligence regarding any COHIF purchases. A lot of properties that normally would not work can be made to work, as long as COHIF's acquisition cost is low; we can't get into projects that don't work financially. That's the bottom line. While we're prepared to live with a certain number of people who are paying next to nothing, we have to have a line in the sand about how many we can accommodate who are in that position. We can cover a certain amount of deficit, and we have fund-raising to cover that, but we have to manage the number of programs that we are fund-raising for. We look at each building, one at a time.

In contrast to the thorough assessment of expected costs that purchasers must do on behalf of COHIF, speculative buyers are much less concerned about the current state of the property, since they anticipate doing minimal repairs, at most. As Michael Stone observed:

> If the speculators really had to deal with local enforcement and bring the properties up to code, then maybe they wouldn't be able to put in such high bids. At present, there's no step that a foreclosed home must go through, in terms of assuring its quality. Under the state sanitary code, if an inspection is done and violations are not corrected within a reasonable period of time, residents can initiate a judicial action to have the city appoint a receiver to do the needed repairs. But this requires local enforcement. In short, either investors have to be held accountable to do what needs to be done or they should be scared off so they can't bid so high.

Thus, for COHIF, properties acquired for the Pilot must take into account the current condition of the building and the amount of work that will be required to bring it up to a (typically) much higher standard than for-profit investors aspire to. Since investors are not facing an automatic code enforcement requirement, they can easily outbid a COHIF offer.

Implementation Issues

1) Aspirations about innovative long-term ownership arrangement vs. reality

As noted earlier, the desire for the Pilot to include resident ownership and control were important to many members of COHIF. Yet, Roberta Rubin observed that there is a large gap between the aspirations and ideology of COHIF and the Pilot and the "nuts and bolts" realities of affordable housing finance:

> COHIF is very powerful in terms of its creativity and having so many strong advocates who want as much resident control as feasible. This can present a challenge when trying to put together a model that is financeable. Because

> COHIF does not have a development track record, it needs to partner with a developer whose assets will be on the line when lenders and/or investors require guarantees. Neither funders nor development partners are willing to leave up to the residents decisions with financial consequences such as whether to raise rents, do needed repairs and put aside sufficient reserves. Ultimately, the Pilot will include language about residents being consulted, but words like 'control' can be a red flag for funders and developers, and the philosophical differences can tend to slow things down.

While the ability to form a CLT or resident cooperative may have been overly optimistic for this first phase of the Pilot, several COHIF members are disappointed that this goal may not be realized, at least in the short-term. However, with the long-term ownership of the properties still not resolved, this issue was not among COHIF's central concerns, as of the end of the evaluation period.

As Heading Home became involved with the Pilot, another potential conflict arose related to COHIF's aspirations for a resident-owned and managed development and the reality that the buildings would, instead, be owned and managed by a nonprofit. Tom Lorello voiced the concern that COHIF's emphasis on tenant advocacy could end up hurting them. As with all community-based nonprofit owners of affordable housing, the potential conflicts inherent in landlord-tenant relationships could become problematic. This is, perhaps, even more plausible, in view of the strong collaboration between COHIF and CL/VU, which is known for its efforts to publicly embarrass banks and landlords who are creating problems for their residents. Although Tom Lorello had been concerned about this possibility, he had received assurances from CL/VU that such an action would not occur.

2) Funder regulations: possible conflicts with affordability goals

At the heart of the Pilot is the question about how the financing will be packaged to assure long-term affordability and security of tenure for current residents of the foreclosed properties. When the Pilot model was created, the extent to which funders' guidelines would become a central issue in relation to the affordability goals did not seem to have been anticipated. Specifically, if there is city or state money in the deal, household income limits must conform to the regulations of the program providing the funding. In a development that an affordable housing developer initiates "from scratch," the requirements of the funding program dictate the eligibility of various households that can be considered as possible tenants or owners. In the COHIF Pilot, however, the residents who already live in the buildings are a "given," and protecting their security of tenure is a key tenet of the program. The COHIF coordinator and others helping to implement the Pilot are working hard to ensure that the requirements of the funding programs that will be used to finance the rehabilitation and long-term ownership of the development will be compatible with the incomes of the existing residents.

In cases where the residents are unable to cover the cost of operating the property (even with additional rental subsidies), including the debt service on the acquisition and repair costs, Maureen Flynn posed the dilemma that COHIF may be facing:

> We may have to decide not to purchase a property or not allow the current residents to stay in their homes, if they can't afford to pay a minimal amount of rent that would make owning the property feasible. Either way, this is not a good situation and another wrinkle that surfaces when trying to do projects with people already living in the buildings. We are trying to take people as we find them, whether or not they fit the requirements of the funding program.

It is not yet clear how the demands of the various funders with whom COHIF will have to deal will impact the programmatic goals of the Pilot. Maura Camosse Tsongas noted that the development consultants would have to take into account "the many complexities and considerations in balancing the needs of COHIF and the intent of the PILOT along with the legal requirements inherent in creating and preserving housing for families." She also added, that, going forward, it will be important "to have the right team to quickly assess opportunities and preserve housing options and stability for families."

Unfortunately, as already noted, the "right team" to do this work has not yet been finalized.

3) Concerns about long-term affordability

The agreement that COHIF had been negotiating with Heading Home would have guaranteed affordability for only 15 years. This contrasted with the original intention for the units to be permanently affordable. If the agreement had been executed, it was possible that, at some point within the 15-year period, COHIF may have been successful in converting the units into a CLT, or some other type of ownership arrangement that would guarantee long-term affordability. Regardless of who the long-term owner will be, unless a permanent affordability structure is established, each unit in the Pilot is at risk of being lost once the restriction period terminates.[25] This would create a new challenge for COHIF to fulfill its commitment to provide long-term affordability and security of tenure to the existing residents of the foreclosed buildings. On the other hand, since the funding programs that any development partner would likely be using

[25] Lisa Alberghini added that, from a developer's perspective, what Heading Home had been requesting was "reasonable and prudent to enable them to carry out their mission and protect their own organization. Even in that context, though, there is always some risk in undertaking these projects, which is to be expected. The objective is to balance the risks with the mission outcome."

typically require a 30-year affordability restriction period, a 15-year time limit would probably be irrelevant.

4) Complexity of assembling a long-term financing package

Even though the Pilot is comprised of 2- and 3-family properties, the long-term ownership and financing plan will involve packaging the various buildings as a single development, and the project will have to conform with regulations governing multifamily housing. Since Jonathan Kaye has been acquiring only one property at a time, Roberta Rubin notes that he only has had to fix up the properties to comply with the standards of the Inspectional Services Department (ISD). And, further:

> Jonathan is not answerable to a lender breathing down his back about the condition of the properties. But when a developer is doing multifamily residential, the lender wants much more information and assurances. For example, for each property in the development package, funders need environmental assessments, property appraisals, surveys and plot plans. All this increases costs; this is what makes scattered site development so challenging. There's just a different set of expectations and requirements compared with doing single-family re-development.

Mat Thall has spent a great deal of time working through the numbers pertaining to long-term financing; he stated the following:

> I've looked at the model and applied it to the properties that have been acquired. In view of the condition of the properties and the rents that the tenants can afford, I've found a much larger financing gap than anticipated. This problem has not gone away.

Some COHIF members feel that the LIHTC 4% program is likely the best financing option, even for a project with less than 20 units. While Heading Home likely would not have pursued the LIHTC approach with the first group of COHIF properties, some COHIF members feel that the LIHTC program is not geared to small projects, such as the Pilot, as Roberta Rubin explained:

> LIHTC would generate equity to make the Pilot more feasible in terms of its debt burden, but with fewer than 30 units, it is tough to do a LIHTC project because of the fixed costs (including legal, accounting and consulting costs) associated with LIHTC investment, many of which are the same whether you have a large project or a small one. At the same time, it can be hard to generate investor interest in a small scattered-site LIHTC project, which may result in a lower equity raise. Because it's so challenging to do a tax credit deal with a small project, I would have reservations about using LIHTC for the Pilot.

Another concern about the LIHTC program in connection with the Pilot is that, as Maureen Flynn noted:

> Tax credits and co-ops don't go together at least for 15 years. Even though there are other issues related to whether our residents would have been ready to form a cooperative, this is an important way in which the requirements of funders are affecting what the project will look like.

The incompatibility of LIHTC and co-ops notwithstanding, the issue is moot, at least for the time being.

To make the model work, a substantial amount of "soft money" will be needed in terms of grants, primarily from the city and state (potential sources include Boston's Neighborhood Housing Trust; the state's Housing Preservation and Stabilization Trust Fund, Affordable Housing Trust Fund and Housing Innovations Fund; the federal government's HOME program; and the Federal Home Loan Bank's Affordable Housing Program). Since the state's Department of Housing and Community Development caps the amount of money that can come from any one source, a number of programs provide a wide array of funding sources.[26] The application process has been improved with the state's single application and its consistent reporting requirements. But there are differences in, for example, income requirements for the various programs, and each one has to be understood and complied with.

In addition to grants and loans, project-based Section 8 rental subsidies likely will be needed. However, this source of funding is scarce, and it could be difficult to accommodate all the current residents, to whom assurances have been given about their not being displaced and not paying more than 30% of their income for rent. Also, as Roberta Rubin explained: "For the long-term, we need a budget that will work. If we have a lot of people with incomes at 30 or 40% of area median income, who are paying 30% of income, it will be very hard to cover the costs of operating the development, unless we can get rental subsidies." Even the most understanding and socially committed development partner would likely have to limit the number of extremely low income households that they would be able to support.

As the April 1 deadline for identifying and purchasing all the buildings to be included in the Pilot was fast approaching, WIHED was working through the various options for how the financing package would come together. Yet, not knowing all the buildings to be included, clearly presented challenges. Despite the many negotiations, as noted previously, COHIF's partnership with Heading Home and WIHED did not come to fruition.

[26] As a result, each funding source can claim that they helped to develop a larger number of units, than if one or two sources gave a given project a large amount of money.

3) Policy Issues

- ***How have some of the larger policy/legal issues impacted the ways in which the Pilot Project has been carried out?***

In embarking on an inquiry into the policy issues that relate to the Pilot project, three points should be underscored. First, attorneys and advocates have begun to identify conflicts between federal rules, procedures and guidelines and several Massachusetts laws that were enacted specifically to protect owners and tenants in foreclosed properties. The extent to which these various conflicts will be litigated, or whether policies will be changed to create greater consistency, is not yet clear.

Second, the positions that have been taken by Fannie Mae and Freddie Mac and federal officials often work at cross-purposes with COHIF's agenda and are sometimes very difficult to understand. If one of the intents of federal policies is to safeguard people and communities,[27] it is apparent that a number of procedures and regulations have profoundly undermined these goals. It remains to be seen whether new policies and procedures will be forthcoming that will be more supportive of the COHIF agenda, which sees household and neighborhood stability as the paramount concerns. However, as noted in Recommendation #15, there is reason to believe that the Federal Housing Finance Agency (FHFA), the federal agency with the responsibility for overseeing the operations of Fannie Mae and Freddie Mac during the period of federal conservatorship, may be open to making some significant policy changes. (FHFA currently directs various procedures for Fannie Mae and Freddie Mac concerning mortgage servicing and property conveyance).

An important example of federal programs or guidelines conflicting with one another relates to the NSP. The U.S. Congress appropriated nearly $7 billion for this program[28] to assist in the disposition of homes post-foreclosure. The intent was that vacant, foreclosed houses should be re-occupied by new owners and tenants as soon as possible, to avoid the negative impacts on surrounding areas of abandoned or neglected homes. Logic would seem to dictate that all policies over which the federal government has any control or influence should strive to minimize houses becoming vacant in the first place. Yet, there are instances where federal officials' actions appear to be at odds with this goal. In short, if federal guidelines and initiatives had been more targeted to enabling defaulting homeowners to retain their homes, the need to develop a new

[27] Indeed, HUD's own handbook concerning disposition of foreclosed properties states that strengthening neighborhoods and communities is one of the agency's key goals, along with reducing the inventory of acquired properties in a manner that expands homeownership opportunities while also ensuring a maximum return to the mortgage insurance fund. HUD Handbook 4330.4; § 203.670 Conveyance of occupied property, section (a).

[28] One CPD Resource Exchange, U.S. Department of Housing and Urban Development. https://www.onecpd.info/grantees/cpd-allocations-awards/?filter_year=&filter_program=10&filter_state=&filter_coc (accessed March 5, 2014).

program such as the NSP, to facilitate the re-occupancy of those properties, would have been far less.[29]

The third point that emerges from this examination of the policy issues that directly impact the Pilot is that it is very hard to disentangle them. All three policies discussed here operate in tandem: the need for properties to be vacant at foreclosure; the lack of priority given to nonprofits wanting to purchase foreclosed properties and the resistance to allow former owners and tenants to continue living in those homes post-foreclosure. Nevertheless, an attempt is made to discuss each separately, with specific reference to the relevant federal policies and laws and, when appropriate, in comparison to Massachusetts state laws.

Requirement for Foreclosed Properties to be Vacant

HUD/FHA Rules and Fannie Mae/Freddie Mac Policies

FHA's mortgage servicing, loss mitigation and property conveyance rules are derived from federal regulations and thus carry the force of law and cannot be easily revised. However, the various guidelines issued by the FHFA are not similarly constricted. As discussed at length in the following sections, FHFA has a great deal of leeway regarding the promulgation of the procedures that Fannie Mae and Freddie Mac are to follow when dealing with properties following foreclosure. With Fannie Mae and Freddie Mac owning a substantial number of foreclosed homes across the country, and with them collectively being the largest owners of REO properties in the Greater Four Corners area, a focus on their practices is warranted, both for the COHIF Pilot and more generally.

According to several interviewees, one of the most frustrating aspects of the Pilot project is that HUD/FHA officials, and the banks and servicers of FHA-insured loans, require that properties become vacant after foreclosure but before the property is conveyed by the mortgage servicing entity to the FHA. Clearly, there are times when an owner who has lost her/his home through foreclosure chooses to leave the property. But, there are countless other instances where the former owner and/or tenants are eager to stay in their homes, if an alternative arrangement can be made. This is, in fact, the situation that COHIF is attempting to address by assuring continued occupancy for existing owners and tenants.

[29] Another example of federal agencies working at cross-purposes with federal law comes from the REO-to-Rental program, which converts pools of REO properties held by the GSEs into affordable rental properties. However, this program, which is a joint creation of the FHFA, HUD and the Treasury Department, has operated in a way that is at odds with the Federal Fair Housing Act of 1968 and "reinforces existing patterns of segregation and contributes to the lack of affordable rental properties in economically diverse neighborhoods." Diane Glauber and Philip Tegler, *Community Development Investment Review*, 2013, cited earlier, pp. 73-80.

Claire Masinton, Special Counsel to the HomeCorps Initiative, Office of the Attorney General of Massachusetts, expressed her frustration about FHA's regulations concerning the need for properties to be vacant at foreclosure, while also touching on the other key policy issues discussed in this section.

> FHA is, in many ways, very difficult to deal with; they purport to be bound by their rules irrespective of the absurdity of the outcome. FHA will not permit a nonprofit like BCC to buy a house back because FHA requires that the house be vacant before the servicing bank can convey the house to FHA and, thus, get reimbursed by the FHA. And the BCC model is to buy the house back while allowing the homeowner to remain in the house, and then reselling the house to that homeowner (if he or she can afford it), while providing the financing to that homeowner. If someone is living in a property, though, FHA is intransigent.
>
> We are in contact with HUD and FHA personnel in Washington, D.C., on these issues, but there is apparently a lot of push-back from the Inspector General overseeing HUD/FHA concerning any property sales that might have an appearance of impropriety or conflict of interest. A key concern for the Inspector General is whether FHA is going to lose money. FHA's Mutual Mortgage Insurance Fund capital reserve ratio got very low or even negative during the financial crisis, and there is significant caution about FHA not doing anything to further jeopardize its financial position. But we keep explaining that in the case of potential buybacks by groups like BCC, the vacant property rule works against FHA's best financial interest. If we have a way for a nonprofit to buy back the house at fair market value, with the current residents in occupancy, FHA will save money (which includes not incurring the cost of evicting the homeowner).

Despite the "hard and fast" way in which HUD/FHA personnel appear to be implementing the rule concerning properties needing to be vacant upon conveyance, the agency's written rules delineate exceptions that may be applicable for at least some of the occupants of properties that COHIF is interested in acquiring. If the written rules were followed, it is possible that these households would be able to remain in their homes.

HUD's guidebook concerning foreclosed FHA-insured properties states that: "The property may not be occupied at the time of conveyance ***unless HUD agrees to accept it occupied*** (emphasis added)…"[30] Specifically, properties with one to four residential units may be conveyed occupied if the Secretary of HUD finds that:

- An individual residing in the property suffers from a temporary, permanent, or long-term illness or injury that would be aggravated by the process of moving

[30] Section 2-9 Occupancy and Possession of Property, Section A, Occupancy. HUD Handbook 4330.4; Chapter 2, Conveyed Home Properties, p. 2-18.

from the property, and that the individual meets [specified] eligibility criteria;

- State or local law prohibits the mortgagee from evicting a tenant residing in the property who is making regular monthly payments to the mortgagee, or prohibits eviction for other similar reasons beyond the control of the mortgagee;
- or, It is in the Secretary's interest to accept conveyance of the property occupied … the property is habitable … and, except for [certain] conveyances, … each occupant who intends to remain in the property after the conveyance meets the eligibility criteria...
- HUD consents to accept good marketable title to occupied property where 90 days have elapsed since the mortgagee notified HUD of pending acquisition, the Department has notified the mortgagee that it was considering a request for continued occupancy, and no subsequent notification from HUD has been received by the mortgagee.[31] (Or, in other words, if HUD sits on an application for occupied conveyance for more than 90 days, thereby failing to respond to a request for occupied conveyance, then the occupied conveyance is, by default, approved.)

It is in the Secretary's interest to accept occupied conveyance when one or more of the following are met:

- Occupancy of the property is essential to protect it from vandalism from time of acquisition to the time of preparation for sale.
- The average time in inventory for HUD's unsold inventory in the residential area in which the property is located exceeds six months.
- With respect to multi-unit properties, the marketability of the property would be improved by retaining occupancy of one or more units.
- The high cost of eviction or relocation expenses makes eviction impractical.[32]

The HUD Handbook further states:

> If there is a lengthy redemption period and the mortgagee has possession of the property during that period, ***the best protection against damage to the property may be to keep it occupied by tenants***. HUD will not reimburse the mortgagee, however, for costs incurred solely in renting the property. These costs must be recovered from rental income… (emphasis added)[33]

Thus, the HUD Handbook, along with the accompanying regulations, suggests that there

[31] CFR §203.670 Conveyance of occupied property, section (b). http://www.gpo.gov/fdsys/pkg/CFR-1997-title24-vol2/pdf/CFR-1997-title24-vol2-sec203-670.pdf (accessed April 13, 2014).
[32] §203.671 Criteria for determining the Secretary's interest. http://www.gpo.gov/fdsys/pkg/CFR-1997-title24-vol2/pdf/CFR-1997-title24-vol2-sec203-670.pdf (accessed April 13, 2014).
[33] Section 2-19, Rental of Properties, HUD Handbook 4330.4; Chapter 2, Conveyed Home Properties, p. 2-40.

is a considerable amount of leeway and opportunity for properties to be conveyed occupied. However, based on the information gathered by a number of knowledgeable observers, HUD/FHA field personnel do not appear to be following those guidelines.

HUD/FHA and Fannie Mae/Freddie Mac Procedural Conflicts with Federal and State Laws

In an effort to counter the requirement that foreclosed buildings must be automatically emptied of their residents, there is both a federal law and a Massachusetts law referred to earlier (see footnote #2, Tenant Protections in Foreclosed Properties, 2010) that are supposed to prohibit evictions of tenants of foreclosed properties, except for cause, such as nonpayment of rent. In fact, the Massachusetts law is actually stronger, in comparison to the protections provided by the federal law. Nevertheless, Maureen Flynn explained that Fannie Mae and other servicers are, seemingly, getting around the laws by making their requests for payment through an unreliable method, as opposed to, for example, sending a certified letter to the residents.[34] As a result, rent is not collected and tenants can be charged with a cause for eviction:

> In one case … both families living there are being evicted for nonpayment of rent, thereby giving the bank legal rights to evict. However, the residents' attorneys say that they were never asked by Fannie Mae to pay. Fannie's practice seems to be to leave a notice about paying rent on the doorknob. This is usually the first time that residents learn that Fannie is the servicer and is initiating eviction proceedings against the residents. By the time COHIF gets involved, there is usually an eviction procedure going on.

The HUD/FHA guidelines discussed in the prior section detailed the circumstances under which a property may be conveyed while occupied. However, this discussion assumes that the intent is for the property to be conveyed vacant, since that has been the experience encountered by those implementing the Pilot. In these cases, the mortgagee is required to send notification of this policy to the head of every occupant household. However, the National Housing Law Project has pointed out that this notice misleads tenants by not accurately communicating the various protections provided by PTFA.[35] In addition, the notice fails to clarify how aspects of the Massachusetts state law further protect tenants against hasty evictions following a foreclosure.

As noted in Figure 3, PTFA requires that any entity acquiring title to a property through foreclosure must honor the terms of any existing *bona fide* lease entered into before the complete transfer of title. In addition, the new owner must provide a 90-day notice to vacate to any *bona fide* tenant, but only after they have acquired title to the

[34] Mass. Gen. Laws Ch. 244, section 35A specifies that communications concerning foreclosure must be made by certified and first class mail or a similar service by a private carrier.
[35] National Housing Law Project, HUD/FHA Occupied Conveyance Policy Notices, http://nhlp.org/node/1485 (accessed March 18, 2014).

property. Therefore, according to the National Housing Law Project, "tenants have guaranteed occupancy rights in the property they are renting for a minimum of 90 days after the full transfer of title pursuant to a foreclosure. These restrictions also apply to anyone that the immediate successor in interest transfers the property to."[36]

HUD/FHA requires mortgagees to use very precise wording in their communications to occupants stating that the property must generally be vacant when it is transferred to HUD/FHA. In order for the tenant to remain an occupant of the property, the tenant must file an application within 20 days of receiving the notice and meet HUD/FHA's conditions for continued occupancy.

One of the several conflicts between the notice that HUD/FHA requires mortgagees to send to tenants and PTFA is that:

> the notice indicates that tenants who are not approved by HUD will have to vacate the property immediately after the mortgagee acquires title. This violates the PTFA's guarantee that occupants can remain for the greater of the term of their lease and at least 90 days after the mortgagee (or any entity) has acquired title and gives the tenant proper notice to vacate… [HUD/FHA] policy encourages mortgagees to try to get around the PTFA since, in most cases, they will not be able to receive the insurance money until the property is empty.[37]

The National Housing Law Project further reports that they, in collaboration with The National Low Income Housing Coalition and The National Law Center on Homelessness and Poverty, "have tried to work with FHA and executives at HUD to change HUD's notice so that it accurately informs tenants of their rights pursuant to the PTFA, but HUD has made no effective changes to the notice. Even if the HUD notification eventually complies with the PTFA, that is no guarantee that mortgagees will know about or comply with the PTFA…It is essential for tenants and advocates to understand that the PTFA trumps HUD policies and notifications. If a client receives the HUD notification from a mortgagee, they are still protected by, and should assert their rights under, the PTFA."[38]

Concerning the Massachusetts law, Figure 3 further notes that a post-foreclosure owner must have a "just cause" reason for eviction and, even then, a number of prescribed actions must be followed. Evictions are also permitted if a binding purchase and sale agreement has been executed for a *bona fide* third party (individual or investor) to purchase the housing accommodation from a post-foreclosure owner. While a third-party owner retains the right to evict a tenant at the expiration of an existing lease, most tenants would still be protected by PTFA. This would allow them to complete the

[36] Ibid.
[37] Ibid.
[38] Ibid.

Figure 3:
Federal and State Laws Pertaining to Eviction of Tenants Post-Foreclosure

	Federal	Massachusetts
Law	Protecting Tenants at Foreclosure Act, 2009 (PTFA) (due to expire December 31, 2014)	Tenant Protections in Foreclosed Properties, 2010 An Act Relative to Mortgage Foreclosures; Chapter 186A of Mass. General Laws
Applies to	Any foreclosure on a "federally related mortgage loan" or on any dwelling or residential real property.	Tenants in foreclosed residential rental properties
Protections	Must provide tenants with a notice to vacate at least 90 days before the effective date of such notice. Even when exceptions (below) apply, tenants must still receive 90 days notice before they may be evicted. The protections of this law apply to tenants under a "bona fide" lease or tenancy. A lease or tenancy is "bona fide" only if: (1) The mortgagor or a child, spouse, or parent of the mortgagor under the contract is not the tenant; (2) The lease or tenancy was the product of an arm's-length transaction; and (3) The lease or tenancy requires the receipt of rent that is not substantially less than fair market rent or the rent is reduced or subsidized due to a federal, state, or local subsidy.	A foreclosing owner shall not evict a tenant except for "just causes" (*e.g.*, non-payment of rent or carrying on illegal activities in the unit). If there is a "just cause," the foreclosing owner must comply with a series of actions, including posting the name and contact information of the new owner and providing the opportunity for a court hearing.
Exceptions	Tenants must be permitted to stay in the residence until the end of their leases, with two exceptions: (1) When the property is sold after foreclosure to a purchaser who will occupy the property as a primary residence or (2) When there is no lease or the lease is terminable at will under state law.	Evictions may be permitted for "just cause" or if a binding purchase and sale agreement has been executed for a *bona fide* third party (individual or investor) to purchase the housing accommodation from a foreclosing owner. A third-party owner retains the right to evict a tenant at the expiration of an existing lease. But most of these tenants are still protected by the federal "Protecting Tenants at Foreclosure Act of 2009," enabling them to complete the term of their lease or be allowed at least 90 days' of continued occupancy before a new owner can start eviction proceedings.

term of their lease or be allowed at least 90 days' of continued occupancy before a new owner could start eviction proceedings.

Regardless of the various laws, vacant properties at conveyance are the norm for FHA-insured and Fannie Mae and Freddie Mac loans. Theresa Gallagher summed up the current situation: "The 'bottom line' is that the policy seems to be to get the properties emptied out and sold for the highest price, tenants and community be damned." She also provided additional detail about the frustrating process of trying to convince banks to accept offers for properties with residents and not go through with evictions:

> It was like talking to a wall when we spoke to the banks about keeping tenants in the buildings that were being foreclosed. They wanted the properties vacant. From a business perspective it didn't seem to make sense to forgo an income stream from the rents but, on the other hand, the banks aren't landlords – they're not set up to manage these properties, and maybe there were liability issues of which we were not aware.
>
> We had a good working relationship with Bank of America, but it was not easy for them to be flexible. Perhaps part of the problem was that the foreclosure process is so fragmented within the Bank. Often, the people who have the greatest influence over the foreclosure process aren't the ones with whom the city had developed a relationship. The same thing happens when dealing with Fannie Mae; there is typically a community liaison or a person who deals with inter-governmental relationships. But they are not the decision makers nor do they set policy regarding foreclosure and REO sales decisions. These are typically two different departments within the financial institution and do not necessarily talk to one another, let alone outside entities. The liaison or government relations person may be helpful and we would begin to think that something might work out and then the issue would be referred up the chain, and it all falls apart.

Organizers who are working directly with residents of foreclosed properties are reporting that banks or their agents are doing everything they can to force people out of their homes so that the homes can be delivered to new owners, vacant. As Pamela Bush, GFCAC's Lead Organizer, observed:

> One of the tactics is to totally neglect the condition of the property. You can't imagine what people have been telling us; there has been a lot of abusive treatment. In one case, a family rented an apartment in 2007. The house was later foreclosed. Despite gas leaks, a leaking roof, and bad wiring, the family continued to live in the house. The bank assigned the house to a management company and, rather than doing the needed repairs, they kept threatening the family to try to get them out. They have hauled her into court, they have

> threatened her, and they have harassed her at all hours of the day and night. With our support, they're holding their ground, but it's taking an emotional toll. The tenant is doing everything she can to get the bank to change its policies, including testifying at hearings, so that maybe others will be helped. All she wants for herself is to be able to live in peace and harmony.

There are several additional reasons why keeping residents in their homes makes sense. First, according to Michael Stone, keeping tenants in the property should make it easier for the new owner, since an occupancy permit is not needed if the house is occupied. Second, a review of a number of studies exploring the implications of selling foreclosed homes that are occupied, compared with vacant properties, found that there are many positive outcomes associated with the former approach, including banks being able to sell properties for higher prices and providing greater short-term profits for banks. Furthermore, there are a number of negative impacts of a foreclosed property being vacant including lowering the value of surrounding properties, a corresponding erosion of the community's tax base and increased crime.[39]

Despite uninterrupted occupancy being good for the existing residents, new owners and neighborhoods, this has not been the general practice. Whereas FHA's rules on the need for properties to be vacant at foreclosure carry the weight of law, Fannie Mae's and Freddie Mac's procedures are based only on guidelines. Certainly, it is possible that under Mel Watt as the new head of the FHFA, these guidelines, as well as the other restrictive policies of the GSEs discussed below, will be revised. However, as of May 13, 2014, the date of a major speech by Mel Watt presented at the Brookings Institution (see footnote #52), no such policy changes had been made.

The Massachusetts Act Preventing Unlawful and Unnecessary Foreclosures, 2012 (discussed below) directed a task force to be created to prevent "unnecessary vacancies following foreclosures." The task force was charged with exploring: "the feasibility of allowing a foreclosed homeowner to continue to occupy the foreclosed property, in whole or in part, until a binding purchase and sale agreement has been executed with a purchaser who intends to occupy the housing accommodation as such purchaser's primary residence and who is not a foreclosing owner."[40] This, then, would extend the same protections to former homeowners as currently provided to tenants under Massachusetts law.

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[39] Lindsey Beckett, "Empirical Evidence on the Feasibility of Allowing a Foreclosed Homeowner to Continue to Occupy the Foreclosed Property," Harvard Law School, March 27, 2013 (unpublished manuscript). See also data presented in: Final Report of the Foreclosure Impacts Task Force, pp. 7-8. June 2014. Office of the Attorney General of Massachusetts, Martha M. Coakley. http://www.mass.gov/ago/news-and-updates/initiatives/addressing-the-foreclosure-crisis/foreclosure-impacts-task-force/final-fitf-report.pdf (accessed June 4, 2014)

[40] Final Report of the Foreclosure Impacts Task Force, Ibid. p. 7.

For several years, there has been a desire to provide protections to foreclosed homeowners, enabling them to stay in their homes, post-foreclosure. Such a stipulation was first proposed in 2011, as the Act to Prevent Unnecessary Vacancies in Foreclosed Homes (2011). A version of this bill is currently being considered by the Massachusetts House and Senate.[41] Several of the recommendations presented in the Final Report of the Foreclosure Impacts Task Force relate to this issue. Specifically, the Task Force noted that the evidence "uniformly demonstrates that it is feasible for large banks to allow foreclosed homeowners to continue to occupy and rent their homes after foreclosure until their homes are purchased by a third party as a primary residence."[42] And, further:

> Lenders and servicers should endeavor to develop rental programs that allow former owners to stay in their former property until such time as the property is sold to a *bona fide* purchaser who intends occupy the property as a primary residence. Under any such programs, the former owner should agree to pay a fair market rent, comply with basic occupancy obligations, and voluntarily vacate the property once it is sold to an owner that intends to occupy it as a primary residence.[43]

Presumably, these findings will help inform debate on the bill.

No Priority Given to Nonprofits Wanting to Purchase Foreclosed Properties

None of the financial entities with which COHIF has been involved has been consistently helpful or supportive in trying to make deals work that would allow COHIF (or its agent) to purchase properties at a reduced price – or, indeed, even at the current fair market value.

One might have hoped that some of the benefits that have been enjoyed by the financial sector, in terms of the federal government's support following the mortgage crisis, could have been translated into a requirement – either *de facto* or moral – that an appropriate part of the pay-back should involve a willingness to assist groups such as

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[41] Information on the proposed 2011 bill can be found at: https://malegislature.gov/Bills/187/House/H493; Information on the current bills can be found at: https://malegislature.gov/Bills/188/House/H1596 and https://malegislature.gov/Bills/188/Senate/S728; (accessed April 2, 2014)

[42] Final Report of the Foreclosure Impacts Task Force, op. cit. p. 10. Interestingly, a similar temporary program has been operated by the GSEs, noted earlier. Specifically, under the Freddie Mac program, known as the REO Rental Initiative, "servicers are not required to contact occupants or otherwise take actions with regard to the rental initiative." Instead, an "assigned real estate broker will contact occupants shortly after the conclusion of a foreclosure action, and a property manager and/or eviction attorney will make subsequent contacts." It is not clear how often, in practice, the program is actually offered to foreclosed homeowners. http://www.freddiemac.com/singlefamily/service/reo_rental.html (accessed April 29, 2014).

[43] Ibid.

COHIF that are trying to stabilize families and properties in financial distress. As Maureen Flynn noted:

> The word from Fannie Mae is that since they have been under conservatorship, being overseen by the FHFA, they have to follow their rules. And, so far, their rules have not included any kind of leniency, such as discounting the purchase price of properties, for groups such as COHIF that are interested in buying them. FHFA has said that they are trying to protect values for the community, so selling below market is bad for the community, since that would further deflate property values in the area. This is a ridiculous argument to us.

The consistent message from interviewees was that Fannie Mae and Freddie Mac have been extraordinarily difficult to "bring to the table." There was, however, one exception mentioned, concerning a property that was not purchased on behalf of COHIF. In that case, CL/VU had pressured Fannie Mae to sell the property, and CSNDC was then able to acquire it for an acceptable price. But, since then, Dana McQuilkin Dalke noted that the problems have been constant and that "Fannie has been the most difficult lender to work with." Specifically,

> Their policies are inconsistent and it feels like they give preferential treatment to investors. They refuse to sell properties below appraised market value to Kaye/COHIF because they say that they don't want to be depressing prices in already depressed areas. But then it seems that they sell the property to an investor at a discount. It's confusing how they dispose of properties.

Maureen Flynn added this comment about Fannie Mae's problematic stance with regard to the sale of their properties:

> In an ideal world, it would be possible to negotiate with Fannie Mae as we do with the 5 banks[44] that the 49 state attorneys general [AG] and the federal government made the deal with [as compensation for the "robo-signing" scandal, whereby banks were found to provide insufficient oversight in the preparation of documents pertaining to foreclosure]. Perhaps that would provide some leverage. But even though CL/VU is trying a similar line of argument with Fannie Mae, that's not how they are thinking and they are allowed to escape a lot of oversight because they were not part of the AG settlement.

Despite Fannie Mae's current inflexibility about allowing buy-backs through a nonprofit, BCC was successful in doing several such purchases, due to the cooperation of several field staff personnel. In those instances, the latter appear to have been working "off the radar" as Claire Masinton put it. She added that: "Fannie was also requiring BCC to hold

[44] These include: Ally/GMAC; Bank of America; Citi; JPMorgan Chase and Wells Fargo.

the property for 6 months before selling it back to the prior owner, which is certainly not how the BCC model works and is far from ideal. But, in a case of apparent "unintended consequences," once the broader policy discussion around such "buy-backs" was escalated to higher levels within the GSEs and within the FHFA, Fannie stopped doing these sales altogether."

Claire Masinton further explained that:

> Banks and servicers are increasingly willing to engage in sell-backs to groups like BCC and COHIF, but only if the underlying mortgage was not an FHA, Fannie or Freddie mortgage. The banks have recognized that this is in their best financial interest. Banks realize they can't sell the property for the outstanding indebtedness, but rather for the current fair market value, thus they will entertain competitive offers from nonprofits, whether or not anyone is still living in the house.

This discussion is continued in the next section, which looks at why nonprofits such as COHIF are so intent on trying to purchase properties – to be able to provide continued occupancy to the former owners and tenants of the foreclosed properties. Or, if that is not possible, to provide affordable homes to other neighborhood residents.

Resistance to Former Owners/Tenants Living in Home Post-Foreclosure

Many interviewees observed that COHIF could have done so much more, and much more easily, to preserve foreclosed properties if Fannie Mae and Freddie Mac had been willing to cooperate. As noted above, servicers/investors have refused to put in place a set of procedures that would enable COHIF to put together deals that would result in the existing residents (former owners and tenants) being able to stay in their homes. Concerning one property, Maureen Flynn noted that "the former owner is living there and we've been told that the only way that he can stay is if COHIF pays the full balance owed on his mortgage, which is way above the current market value."

This was confirmed during a brief conversation with a Fannie Mae employee. The evaluator requested information about Fannie Mae's guidelines concerning existing owners not being able to continue living in the property post-foreclosure. The employee's response was that "Fannie has to be 'made whole' for any such thing to occur [the outstanding debt and all fees must be covered in the sale price]." In other words, if the property is to be re-sold by the purchasing nonprofit entity (such as BCC) to the prior owner, the sale price suddenly inflates to the "make whole" amount rather than the current fair market value. The evaluator asked where the written guidelines authorizing this process could be found. The Fannie Mae employee responded: "I really don't know, but this is the policy across the country." He was then asked if he could provide the name of his supervisor so she could ask her/him this question. He said he

was not comfortable providing that information and he declined to be interviewed more fully.

Similarly, concerning Freddie Mac, a recently decided court case included, among its Statement of Facts, the following: "On May 29, 2013, Freddie Mac took the position at a Housing Court hearing that it would only agree to a sale price in the full amount of the debt if the property was being resold to plaintiffs [the former homeowners]."[45]

Conflicts with State Law

In the court case cited above, attorneys for the plaintiffs argued that Freddie Mac's refusal to sell the property to a nonprofit (BCC) on behalf of the plaintiffs was because BCC intended to sell it back to the former owners. Attorneys noted that this was in violation of the 2012 Massachusetts law – An Act Preventing Unlawful and Unnecessary Foreclosures (see Figure 4).[46] However, attorneys for Freddie Mac argued that they could not accept less than the full amount due on the note, due to a "directive," which was unspecified and undocumented.

The plaintiffs further argued that: "policies that prohibit homeowner 'buyback' of properties is inconsistent with Massachusetts laws which were designed to protect consumers."[47] The court memorandum stated that:

> The Massachusetts legislature made it clear that homeowners should be allowed to repurchase their homes from non-profit third parties. Freddie Mac's disregard of this policy, which was designed to benefit consumers, may very well be a violation of Mass. Gen. Laws ch. 93A (see footnote #47)… This court finds that the plaintiffs have met their burden of proving a likelihood of success on the merits that Freddie Mac's refusal to entertain fair market value offers from BCC violates ch. 93A.

The court memorandum concluded: "The Massachusetts Legislature has determined that allowing the sale of property to third-parties for resale to the defaulting home owner is in the best interest of the Commonwealth." The court therefore prohibited Freddie Mac from: "(1) taking any steps toward selling the property in which the

[45] Ramon Suero and Rosanna Suero, Plaintiffs, v. Federal Home Loan Mortgage Corp. a/k/a Freddie Mac, Defendant. "Memorandum of Decision and Order on Plaintiffs' Motion for a Preliminary Injunction," December 17, 2013. Civil Action No. 13-13014-JGD. United States District Court, District of Massachusetts.

[46] According to attorney Eloise Lawrence, Massachusetts is only one of two states (the other being Oregon) with such a law. The way in which Freddie Mac's procedures conflict with the Massachusetts law, based on the Suero case, is discussed in: "Can Freddie skirt Mass. Consumer law?" *The Boston Globe*, Paul McMorrow, May 13, 2014.

[47] The quotation is from the court memorandum cited in footnote #45 above, and is based on Massachusetts Chapter 93A, Section 11, which prohibits "unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce."

Figure 4:
Federal Policy and State Law Pertaining to Re-Sale or Renting of Foreclosed Home to Prior Owner

	Federal	Massachusetts
Law or Stated Policy	Policy of the GSEs as stated by FHFA: "Freddie Mac and Fannie Mae require that all parties to a traditional short sale transaction must execute an affidavit stating that the sale is an "arm's-length" transaction." As stated in letter from Alfred M. Pollard, General Counsel FHFA to Lisa R. Dyen, Office of the Attorney General, Commonwealth of Massachusetts, January 31, 2013.	An Act Preventing Unlawful and Unnecessary Foreclosures, 2012 Mass. Gen. Laws Chapter 244, section 35C (h)
Applies to	Prior homeowners of foreclosed residential properties that are owned by Fannie Mae or Freddie Mac post-foreclosure	Banks, the GSEs or other entities holding "REO" (real estate owned – post-foreclosure) residential properties
Protections	None for a homeowner who wants to retain occupancy post-foreclosure. The GSEs' "arm's length" transaction requirement effectively prohibits any transaction that may ultimately benefit the former homeowner.	In the case of a 501(c)(3) organization that offers to purchase a residential property, creditors may not require as a condition of the sale the limitation of ownership or occupancy of the property by homeowner (or former homeowner). Accordingly, the latter cannot be a reason for rejecting such an offer to purchase a property.
Exceptions	None	None

plaintiffs are residing…pending a resolution of this litigation; and (2) taking any steps to evict the plaintiffs during the pendency of this litigation."

A key question regarding Fannie Mae and Freddie Mac's recalcitrance concerning occupancy by the former homeowner relates to where, exactly, these policies derive their legal authority. In other words, what specific directive, if any, prohibits the GSEs from engaging in these types of transactions? According to Eloise Lawrence, a staff attorney with the HLAB, as of March 2014, these issues were being litigated. Further, she indicated that: "HLAB on behalf of former mortgagors is actively suing Freddie Mac and Fannie Mae for their implementation of their illegal policy. It is only because of the litigation that Freddie and Fannie are starting to answer the most basic questions, such as what is the actual language and location of the policy?"

Despite the lack of clarity about the legal authority for the GSE's policies, the position has been clearly articulated by Alfred Pollard, General Counsel of the FHFA. Specifically, he has stated: "Freddie Mac and Fannie Mae require that all parties to a traditional short sale transaction must execute an affidavit stating that the sale is an "arm's-length" transaction," discussed below.[48] More specifically, the GSEs require that:

> There are no agreements, understandings or contracts between the parties that the Borrower will remain in the [property] as a tenant or later obtain title or ownership of the [property] except to the extent that the Borrower is permitted to remain as a tenant on the [property] for a short term, as is common and customary in the market but no longer than ninety (90) days, in order to facilitate relocation.[49]

The Massachusetts Attorney General responded that "this policy contravenes [Massachusetts law, An Act Preventing Unlawful and Unnecessary Foreclosures, 2012], which prohibits creditors from imposing such restriction on the sale or transfer of property to a tax-exempt entity (whether via a short sale or post-foreclosure sale)."[50]

Claire Masinton reflected on whether such a state law likely would prevail over either FHA's rules (which exist by virtue of, and have the force of, federal regulations) or the GSEs' servicing guidelines:

> Since the process of foreclosure and conveyance of real estate are traditionally within the domain of state law," she said, "there may be a good chance that Massachusetts law would prevail in a legal battle over federal preemption, though

[48] Letter from Alfred M. Pollard, General Counsel FHFA, to Lisa R. Dyen, Office of the Attorney General, Commonwealth of Massachusetts, January 31, 2013. Before this letter, according to Attorney Eloise Lawrence, Fannie Mae was willing to do buy-backs through BCC, whereas Freddie Mac would not. However, she further noted that Freddie Mac would rent to a former owner, while Fannie Mae would not.
[49] Cited in letter from M. Claire Masinton, Assistant Attorney General, Commonwealth of Massachusetts, to Alfred M. Pollard, February 11, 2013.
[50] Ibid.

that body of law has many nuances. But would any group have the appetite to go up against the GSEs or big federal agencies such as FHA or FHFA in such a legal battle? That's the real question. [51]

In concluding this section, there are two issues related to the ability of former owners to stay in their home post-foreclosure: the unintended consequences of the "arm's length" requirement in mortgage transactions and the "moral hazard" argument against principal reduction.

Unintended Consequences of the "Arm's Length" Requirement

The "arm's length" transaction requirement is meant to guard against fraud. Namely, it was designed to ensure that a property sale is not a sham transaction intended to relieve the homeowner of his/her current mortgage debt while still allowing him/her to remain in the property as a homeowner. The assumption is that if disinterested third parties are involved in the transaction, there will be no self-dealing. Moreover, the "arm's length" requirement is intended to prevent so-called "strategic defaults" where a homeowner defaults on purpose, whether because the homeowner is "underwater" (the outstanding mortgage is higher than the market price) or for another reason, even though he/she may be able to afford the mortgage payments. This, of course, makes good sense. However, the way in which the "arm's length" requirement is being implemented creates problems for the client population that COHIF is attempting to assist.

Since a nonprofit organization that would be purchasing a home through a foreclosure, on behalf of the former owner or tenants has a relationship with the latter, the FHFA and HUD/FHA have argued that this is not an "arm's length" transaction. In the case of the Pilot, the plan for the owner of a foreclosed home to become a tenant appears to be viewed as not permissible by those entities, with the "arm's length" rule being offered as an excuse for rejecting such a sale. Applying the "arm's length" screen in such transactions does not appear to be what the "arm's length" requirement was designed to prohibit, since it would be hard to argue that the former owner is becoming enriched by becoming a tenant.

In addition, in such transactions the financial position of the nonprofit really is not a concern, since the nonprofit is not entering into the transaction with a view toward making a profit. (Similarly, if the nonprofit is planning on renting the home back to the prior owner or tenants, profit is not the motive.) The whole point of the transaction would be to provide the prior owner with the opportunity to buy back the house at the current market value or to rent the units either to the prior owner or to the existing tenants. With many people "underwater," the goal is to try to re-calibrate the mortgage

[51] On June 2, 2014, a court case was filed by the Massachusetts Attorney General that may provide the answer to this question: *Commonwealth of Massachusetts, Plaintiff, v. Federal Housing Finance Agency, Federal Home Loan Mortgage Corporation, and Federal National Mortgage Association, Defendants.*

indebtedness, to better reflect what the house is truly worth at the current time. And, if the prior owner is in a position to pay that price, the transaction could be a "win-win" outcome for all concerned. If not, a long-term, stable rental option for both the prior owner and tenants, as in the Pilot, becomes the most desirable result.

Moral Hazard

The issue of the former owner being able to buy back the house at the current fair market value also raises the moral hazard question. The former Acting Director of the FHFA, Edward DeMarco, emphasized the risks associated with GSEs offering principal reduction to homeowners, thereby encouraging others to default on purpose:

> A key concern with principal forgiveness has always been the borrower incentive effects, in particular, whether borrowers who are current on their loans and have the ability to pay will claim a hardship or actually become delinquent to capture the benefits of principal forgiveness… [And, further, the GSEs would have to implement a principal reduction program] through public announcements, uniform program eligibility standards, and a set of published decision rules for more than a thousand mortgage servicers to apply. This could give borrowers who are current on their mortgages a message that the government endorses forgiving a portion of mortgage debt if hardship can be demonstrated, creating a broad incentive for underwater borrowers to seek ways to become eligible.[52]

Despite the claim that an FHFA-authorized principal reduction program would have to be offered broadly, Claire Masinton has pointed out:

> Fannie Mae and Freddie Mac can essentially do what they want. They could make principal reduction available in only very narrow circumstances. And there are processes the GSEs could employ to combat strategic default. The reality is that the specter of strategic default has been just that, a specter. It has not occurred on any wide-scale basis. The truth is that most people don't want to default and, at least during the recent recession, found themselves in difficult

[52] Letter from Edward J. DeMarco to The Honorable Tim Johnson, Chairman, Committee on Banking Housing and Urban Affairs, U.S. Senate and The Honorable Richard C. Shelby, Ranking Member, Committee on Banking Housing and Urban Affairs, U.S. Senate, July 31, 2012. More recently, the current FHFA Director, Mel Watt, indicated that FHFA did not yet have a different view about principal reduction and stated the following: "We've evaluated it in the short-term and we've found that there are other things that we need to focus on at the present. We continue to study not only that issue, but a number of other issues. It doesn't mean that we're not considering it, it just means that we're not ready to talk about it at this point." In response to a question about principal reduction, following the Prepared Remarks by Melvin L. Watt, Director, Federal Housing Finance Agency, At the Brookings Institution Forum on the Future of Fannie Mae and Freddie Mac, "Managing the Present: The 2014 Strategic Plan for the Conservatorships of Fannie Mae and Freddie Mac," May 13, 2014. http://www.brookings.edu/~/media/events/2014/5/13%20future%20fannie%20mae%20freddie%20mac/preparedremarks05132014embargoedfinal.pdf (accessed May 13, 2014).

financial straits through no fault of their own. Homeowners feel obligated to avoid default, which is laudable, and many have a strong emotional connection to their homes as well. In addition, most people realize that if they go through a foreclosure, their credit will be destroyed.

In addition to the moral hazard argument, the FHFA has argued that it is obligated by law to set as its top priority the conservation of GSE assets – assuming the losses represented by principal write-downs would undermine that priority. This goal of the FHFA – to conserve and preserve GSE assets – apparently trumps the goal of assisting homeowners and stabilizing communities. Concerns that were so clearly articulated in the NSP, about the need for foreclosed homes to be brought back to productive use as fast as possible and to not remain vacant, were seemingly of little importance in the analysis cited by DeMarco.[53]

In short, the GSE's position is that former owners can't receive any benefit from the transaction, even if they remain in the home as a tenant. As this report was being completed, early June 2014, Mel Watt had been on the job for five months. At that point, however, major changes in FHFA's policies regarding the issues discussed here had not yet occurred.

The preceding set of discussions concerning the policy issues pertaining to the Pilot project raise many "red flags" that warrant much greater investigation, as outlined in the Assessment and Recommendations section of this report. Suffice to say that changes in a number of procedures being followed by HUD/FHA and by Fannie Mae and Freddie Mac could dramatically reduce the obstacles that COHIF has faced in assisting owners and residents of foreclosed homes. At the same time, much of the damage caused by non consumer- oriented and non neighborhood-oriented polices has been done. With so many homes already having been foreclosed and sold to private for-profit investors, one could argue that it is almost too late in terms of safeguarding properties and households that have been impacted by the recent mortgage crisis.

[53] DeMarco acknowledged that the Emergency Economic Stabilization Act of 2008 directs FHFA to: "implement a plan that seeks to maximize assistance to homeowners… [and to] take advantage of … available programs to minimize foreclosures." But, he went on to argue that the results of a model-based analysis led FHFA to conclude that the adoption of the Principal Reduction Alternative, as authorized by the Home Affordable Modification Program: "would not make a meaningful improvement in reducing foreclosures in a cost effective way for taxpayers." And, although he further acknowledged that: "principal forgiveness might provide some financial benefits to Fannie Mae and Freddie Mac, it presents operational challenges for them and their servicers as well as a risk of loss to the taxpayer. The program would be costly and time consuming to implement." Edward De Marco letter cited previously (see footnote #52).

4) Outcomes

- ***To what extent have the articulated goals been achieved? And, more specifically:***
- ***How many properties and units are in the Pilot?***
- ***What is the general condition of these properties?***

Achievement of Goals

- Outreach to 150 residents of buildings that are foreclosed or at-risk of foreclosure and identify 40-50 families to participate in some facet of the Pilot project; and assist 10-20 owners in foreclosure to retain their homes through workouts, legal support and/or organizing and repurchase strategies.

This goal has been achieved. COHIF has contracts with CL/VU and GFCAC that outline these specific tasks. CL/VU has submitted reports indicating that they had done outreach to 150 residents within the past year and also identified 40-50 potential participants. However, as of this evaluation, due to the many challenges COHIF has encountered, the number of owners actually being assisted to retain their homes was at the low end of the projected goal: about 10. However, to engage this number of households, COHIF had meetings with about 30 potential candidates. GFCAC was also supposed to be involved with these tasks, but that aspect of their work with the Pilot has not yielded as many potential participants as had been hoped. Based on this, the GFCAC contract with COHIF was changed so that they are no longer involved with outreach and, instead, they are working on a model code enforcement initiative, described below.

- Purchase and rehab 30 occupied foreclosed units, stopping the displacement of families and stabilizing the Greater Four Corners neighborhood.

This goal has been partly achieved. As of early June 2014, 11 units were in the Pilot, including a 2-unit building that had been acquired without occupants and was rehabilitated and marketed for-sale. There was also a good possibility that another 7 units would be included, which would bring the total number of units in the first phase of the Pilot to 18. The efforts aimed at achieving this goal are discussed in more detail in the following section.

- Undertake a "model" code enforcement project in the Pilot area to improve conditions of vacant and REO properties and hold owners of those properties more accountable to the community; advocate for stronger code enforcement tools to be implemented in Boston.

This goal has been achieved and is ongoing. GFCAC's code enforcement effort involves

working with the city to identify REO and vacant properties (not in foreclosure) in the area and to assess their likely compliance with the housing code. COHIF and GFCAC members were trained on how to do external visual inspections and they, in turn, have trained a group of volunteer resident inspectors. After receiving a list of foreclosed properties, the volunteers submit the list of properties that have possible violations to the city's Inspectional Services Department. ISD is responsible for doing formal assessments and assuring that code violations are fixed; GFCAC then tracks the progress of these properties.

GFCAC has tried to do assessments on a group of 40-50 foreclosed properties. In a handful of cases complaints have been sent to ISD concerning serious defects. As Mayra Duran, a Community Organizer at GFCAC, reported:

> The process of getting people to talk to us about the condition of their homes is not easy. We knock on peoples' doors and try to explain who we are and what we're doing. We ask them if there are any major problems with their homes, but some people don't want to talk to us; a lot of people are afraid. Until we get the trust of the people living in the neighborhood, it's very hard to pinpoint code violations.

The code enforcement initiative is considered part of the Pilot's overall community stabilization effort, on the theory that bad conditions of houses in the neighborhood drive other people away and lead to disinvestment. In addition, this is a tactical method to help families stabilize their homes, by forcing the owners to bring their properties up to code. Funders typically like this part of COHIF's work since it is a good way to get residents engaged in the upkeep of their neighborhood.

- Research and then implement alternative ownership models, initiating co-op, 'rent-to-buy,' land trusts and other development plans for 20-25 units.

This goal has been partially achieved. Research has been conducted on alternative ownership models, as detailed in the report previously cited by Sahar Lawrence and Becca Schofield. However, the goal of implementing an alternative ownership model most likely will not be achieved, at least in the first round of the COHIF Pilot.

- Document COHIF's progress, produce a report that outlines COHIF's efforts in order to replicate the effort elsewhere and convene the membership and others regarding lessons learned.

This goal will be achieved with the completion of the current evaluation.

Overview of People and Properties in the Pilot

As of early June 2014, there were 4 buildings with 11 units in the Pilot.[54] Three of these buildings (9 units) were still owned by Jonathan Kaye and were awaiting the purchases to be finalized with a long-term owner (and for the development of a financing package and rehabilitation plan). The fourth, as noted above, is a 2-unit property that has been rehabilitated and is being sold by CSNDC (see Appendix IV). This building had been acquired directly by CSNDC from Jonathan Kaye before CSNDC decided not to continue their involvement with the Pilot. Despite CSNDC's concerns about working with Jonathan Kaye, Dana McQuillin Dalke reported that: "The work proceeded smoothly. This first effort was an example of the model with which CSNDC is most comfortable: a short period of ownership, extensive rehabilitation, and a [planned] sale to a new homebuyer."

Maureen Flynn indicated that there is a good likelihood that 3 more properties, with an additional 7 units, would shortly be acquired. This would mean that the Pilot, in its first round, would include a total of 18 units (counting the 2-unit homeownership property completed by CSNDC and 16 units awaiting rehabilitation).

Although the hope is that all 9 units already purchased by Jonathan Kaye will be purchased by a long-term owner, it is possible that any such entity would want to retain the right to reject the purchase of any of these properties if it finds through its "due diligence" process that there are significant unforeseen costs associated with redevelopment. In keeping with its mission, COHIF is intent on ensuring that none of the existing tenants will have to be evicted. However, a very disappointing and sad scenario could play out, which could result in the eviction of existing tenants, if a long-term owner refuses to purchase one of Jonathan Kaye's properties **and if** COHIF cannot find a buyer within 30 days **and if** Jonathan Kaye has not been able to sell the property on the open market for 90 days. Indeed, as this report was completed, this scenario was possible.

Figure 5 presents the information for the four properties that were included in the Pilot as of early June 2014. It does not include information on any additional properties that COHIF is still hoping to acquire. It should be emphasized that the estimated rehabilitation costs are preliminary figures and do not represent the actual contract amounts for the renovations, since those amounts were not known as of early June 2014.

[54] As this report was being completed, it appeared that another property (22 Gaston Street) would be acquired by Jonathan Kaye, on behalf of COHIF (see Appendix III). In the *Commonwealth of Massachusetts Department of Public Health Childhood Lead Poisoning Prevention Program, Plaintiff v. Tamango Corbin, Mary E. Corbin, and Federal Home Loan Mortgage Corporation, et als. Defendants*. Judge Winik approved COHIF as the winning bid in the foreclosure auction, which was the last step in the receivership case.

Figure 5:
Properties in COHIF Pilot, Acquired as of June 2014

	422 Seaver*	349 Park	620 West Park	4 Beechwood
Number of units	**2**	**3**	**4**	**2**
Date of acquisition	**August 2013****	**August 2012**	**July 2013**	**August 2013**
Total price	**$126,000****	**$259,710**	**$226,186**	**$292,000**
Estimated Rehab costs*	**Actual cost: $427,397**	**$545,700**	**$633,000**	**$ 43,256**
TOTAL	**$553,397**	**$805,410**	**$859,186**	**$335,256**
Cost/unit	**$276,698*****	**$268,470**	**$214,797**	**$167,628**

* Note: this is the only property that has been completed. It was the first property acquired as part of the Pilot, by CSNDC, on behalf of COHIF. For this property, rehab and other costs are actual, not anticipated.

** Jonathan Kaye acquired this property in August 2012. It was acquired by CSNDC one year later. Kaye's purchase price was $101,500; CSNDC's purchase price was $126,00

*** CSNDC received subsidies totaling $105,500 from NeighborWorks and $164,164 from the city. The remainder of the cost ($283,733) will be funded by proceeds from the sale of the property, which will include a 30-year restriction of the re-sale price to limit any speculative gain. The purchasing homeowner must be the owner-occupant and have income at or below 120% AMI. Also, he/she must agree to rent the second unit to a household earning 50% AMI or below. Upon re-sale, the owner must sell to another income qualified, owner occupant homebuyer, who will continue to rent the second unit to an income-qualified tenant.

Since all four of the properties currently included in the Pilot are multi-unit buildings, most of the residents involved with the Pilot project are tenants, as opposed to the former owners. In three out of the four cases, the former owners were no longer involved with the property at the time the Pilot became involved. The residents typically have very low incomes, and English is often not their first language. Some have Section 8 certificates (or, officially, Housing Choice Vouchers). Rents being paid to Jonathan Kaye, which are based on 30% of income, are lower than the amounts that had been anticipated.

Both the prior owners of Pilot properties and tenants have encountered a wide range of difficult situations that have compromised their ability to pay rent or stay current with their mortgage: illness, loss of job, divorce, refinancing to assist a family member in need of cash and never getting repaid and, in at least a couple of cases, being defrauded by a family member or friend. While the Pilot project has offered an attractive option for a number of people, a few got frustrated with the process and indicated that they did not want to continue.

In one case, the home is also used as a family's business – a day care center. Therefore, the loss of a home for this household would also mean a loss of their livelihood. However, from the perspective of a landlord, taking over the ownership of a building with this type of facility could raise a series of issues, including the possibility of increased liability. Operating under the assumption that the owner of the day care program will assume most of the liability, and that their liability is limited to normal landlord responsibilities, the hope is that the day care center will continue to operate, in order to safeguard this source of the household's income.

The properties range in condition from needing relatively little work to needing the replacement of just about every major system – heating, electrical and plumbing. In one dramatic case, a burst sewer pipe resulted in the basement being flooded with raw sewage.

In terms of the most obvious outcome measures – the number of people and properties in the Pilot, the results, so far, are modest.

5) Assessment and Recommendations

- ***What is the overall assessment of the Pilot?***
- ***Should it be viewed as a potential model for other parts of the country and, if so, what are the steps needed to advance the Pilot as a viable policy?***
- ***What recommendations for programmatic changes and for new or modified policies can be offered?***

The COHIF Pilot Project is an exciting, idealistic model for assisting homeowners and tenants following foreclosure. With the goal of helping families by creating and preserving long-term, affordable and secure living opportunities, the program also promotes neighborhood stability. COHIF's coordinator and members have demonstrated an enormous capacity and commitment to solve problems as they have arisen.

The Pilot model entails layers of complexity. Trying to ensure that prior owners and existing residents are able to stay in their homes, post-foreclosure, turns out to be an enormously difficult undertaking. Obstacles abound, with prevailing procedures in the banking industry working against continued occupancy of existing residents. In addition, there are significant challenges related to whether the incomes of these residents will be able to cover the anticipated rehabilitation and operating costs, and if not, if the project will be able to secure enough funding and subsidies to cover the gap. As COHIF members have observed repeatedly, if this were easy to do, someone would have already figured it out.

As discussed previously, many of the issues were unforeseen at the outset and strategies to deal with them have had to be devised as quickly as possible as the program has progressed. In particular, a number of Fannie Mae, Freddie Mac and HUD/FHA policies have created barriers to purchasing properties and safeguarding continued occupancy for the residents. COHIF members, along with legal advisors, advocates and public officials, are confronting the thorny policy issues that have threatened to undermine COHIF's efforts, as well as any similar initiatives that others may undertake. Their work in highlighting legal inconsistencies and other ways in which operating policies of HUD/FHA, Fannie Mae and Freddie Mac are in direct conflict with consumer and neighborhood needs may stimulate much needed changes in the landscape within which COHIF is currently operating.

Also problematic is that one of the major components of the Pilot that was thought to be in place at the start of the Pilot – the identification of the development partner/long-term owner— did not materialize as planned and has created significant challenges for which creative solutions are being sought. This delay has meant that a financing and ownership arrangement that will assure high-quality rehabilitation of the units and capable long-term management has not yet been put into place. Going forward, if the remaining issues can get resolved, it will bode well for COHIF to proceed more smoothly

with a strong likelihood of more robust outcomes.

As a result of these cumulative obstacles, the number of units that, as of early June 2014, were certain to be in the Pilot at the end of the first two years (11 including the 2-unit property to be sold) has not yet reached the 30-unit goal. Yet, for every family assisted, the benefits are significant. As Jonathan Kaye summed up his feelings about COHIF and the Pilot:

> Are we making a difference? As with the story about the single starfish among the thousands stranded on the beach, which the little girl saves by throwing it back into the water, we're making a difference to that one family. We all know the challenges of the big picture and some people think what we're doing is impractical, but working together makes us feel good. Is it worth doing more of it? Would I do another project? Is it a great use of resources? I don't know, but I really enjoy the work and the people and the mission. We are a great team. COHIF is comprised of people who care deeply about what they are doing – people who want to leave it better than they found it.

This final section offers recommendations for COHIF as it moves through the next phases of the program and for other groups contemplating similar initiatives. In view of the Pilot's experiences, many lessons and suggestions emerge. In addition, some recommendations are aimed at key institutions and governmental bodies whose policies could be altered or new ones developed to more easily facilitate foreclosure processes to better enable existing residents to stay in their homes, thereby fostering security of tenure and neighborhood stability.

The following 21 recommendations are presented in the following four categories:

- Contextual and Organizational Issues (4)
- Programmatic Issues (5)
- State and Local Policies (4)
- Federal and Other Non-local Policies (8)

Contextual and Organizational Issues

Recommendation #1: Supportive context

- ***Any similar project to be launched in another locale should assess whether it can count on the help and support from city and state officials, as well as from other nonprofits in the area.***

This report has highlighted a number of factors that were critical to the COHIF Pilot as it formed and as it began its work. Notably, Boston, Massachusetts, represents one of the

most supportive state and local contexts for housing initiatives in the country. In addition, COHIF benefited from strong pre-existing relationships and a great deal of social capital among COHIF members and other participants. This translated into a high level of shared views about the goals of the Pilot and a supportive public sector, particularly on the part of the City of Boston's Department of Neighborhood Development.

Recommendation #2: Existing, experienced local nonprofit that "owns" the project

- ***The project should be organically and integrally a part of the mission of an existing local nonprofit organization, with a well-established track record.***

While there were a number of grass-roots organizations that were involved with the Pilot, it was never fully "owned" by any of the groups operating in the Greater Four Corners area. It is possible that the model would have been stronger if one of the local organizations had been able to take over the key roles needed for the Pilot to function. While GFCAC and CSNDC were early supporters of COHIF, and GFCAC lobbied the city for support, the Pilot did not grow organically out of either of these organization's own priorities; each had other demands, constraints and programs with which they were involved.

In addition, COHIF was a new organization that was not operating in the community in which it was targeting its services, and it did not have a track record of having developed or re-developed any properties. As a result, it was dependent on both a for-profit intermediary to purchase the buildings and a nonprofit ultimate owner. The need to line up suitable partners to carry out functions that a single, more experienced community developer could have perhaps fulfilled resulted in a far more complex program with a number of additional stakeholders needing to become involved and with each having somewhat different concerns and goals from COHIF itself.

The COHIF Pilot had been underway for nearly two years when COHIF became a separate legal entity. A considerable amount of time and energy was devoted to the legal and procedural issues involved with figuring out a viable operating structure and then, finally, going through with the incorporation process. Ideally, organizational integrity and independence should be in place prior to the launch of a similar program.

Recommendation #3: Roles of key partners

- ***The roles of key partners of any similar initiative should be identified at the outset of the program.***

The roles of key partners in the Pilot evolved as the program was underway. At first, it was hoped that CSNDC would be able to purchase properties on behalf of COHIF. Later, and as that relationship changed, it became clear that a for-profit intermediary would

be needed to fill that role. At the same time, a long-term owner had to be identified. The need for Jonathan Kaye to join the partnership, and for a new development partner to be identified to replace CSNDC, was not known at the outset. In order to facilitate the operations of any new program modeled on the Pilot, all these relationships should be worked out in advance of the start of the program.

Recommendation #4: Incentives for for-profit intermediary

- ***If a future program or a second phase of the Pilot relies on a private for-profit interim owner, appropriate financial incentives to encourage such participation are needed.***

As long as the Pilot relies on a for-profit intermediary to expedite the purchase of suitable properties, a clear set of financial incentives for that entity is needed. In the Pilot, the incentive was the likelihood of a significant contract for the rehabilitation of the properties, as specified in the May 2012 guidelines. As the Pilot unfolded, however, it became clear that such a contract for Jonathan Kaye could not be guaranteed, due to the need for COHIF to comply with city and state open bidding rules that mandate transparency in the awarding of contracts using public funds. While it is perplexing why this issue was not addressed before Jonathan Kaye was brought into the Pilot, the dual problems of finding appropriate financial incentives for developers, while working within open-bidding rules, will need to be resolved if the Pilot is to be continued or replicated in its current form.

Could a RFP for a new initiative be issued, which would involve an intermediary able to purchase and hold properties, as well as to provide a guarantee for a construction contract, assuming a competitive bid? In order to assure that the latter would come in at a fair price, some method of cross-checking would be needed. Perhaps the Pilot could cover the cost of soliciting a second bid from at least one other reputable contractor. In addition, perhaps the city or state could, in exchange for participating in a Pilot-type program, assign the developer extra points in awarding other city or state contracts.

Programmatic Issues

Recommendation #5: Identifying properties and households

- ***Adequate resources are needed to screen residents who are good candidates for the program and to locate suitable properties. One-on-one case management personnel would facilitate this process.***

A key aspect of the Pilot's operations has involved extensive work locating suitable properties and a great deal of time has been spent with individual households to help them understand their options and how the Pilot was aiming to assist them. Whatever

entity handles this set of tasks, the process is labor-intensive and costly. In order to enhance the efficiency of these dual processes, there should be one or more staff members (perhaps with fluency in Spanish and Haitian Creole) whose specific job would be to work with residents interested in joining the program and with owners of properties that may be appropriate for inclusion. In the case of the Pilot, both of these tasks were primarily carried out by the Coordinator of the program, adding to her already heavy work-load.

Although CL/VU and COHIF operate independently, CL/VU's activism has been an important part of COHIF's advocacy efforts with lenders, negligent owners and public officials. Going forward, it would be far more efficient for there to be a set of HUD/FHA, Fannie Mae and Freddie Mac policies and procedures that are a "given" for expediting the sale of qualified properties, with the needed assurances that prior owners of the properties and current tenants could continue occupancy. And, in terms of other groups that might be interested in trying to replicate the Pilot, the deep organizing capacity and commitment of CL/VU may not be readily available.

Recommendation #6: Long-term ownership arrangement

- ***If a similar initiative is focused on a resident/community ownership model, there should be clarity at the outset about how this will be achieved and about which of the various models will be used.***

When the Pilot was created, a great deal of time was devoted to discussions about resident ownership models. In fact, two graduate interns were hired in the summer of 2013 to explore and make recommendations about optimal resident ownership arrangements. Despite the Pilot's key goal to promote resident or community ownership and control of the buildings, at least for the time being, this has shifted to a lower priority. Whether or not a resident/ownership model may work at some point in the future is not known. For the present, the overriding need of the Pilot is to secure a new development partner who will enable former owners and tenants to remain in their homes, paying affordable rents and with security of tenure.

For any new program based on the Pilot, it will be important to assess the feasibility of such an alternative ownership arrangement and, if that is desired, to have a clear understanding at the start of the program about how that will be accomplished.

Recommendation #7: Flexible post-foreclosure ownership model

- ***Explore the possibility of developing alternative types of long-term ownership models.***

As an alternative to deciding, at the outset, that there should be a single long-term model involving resident ownership and control, perhaps the Pilot going forward, or a

new program, should be open to the possibility of creating an array of ownership options. Perhaps each group of tenants and buildings needs to be assessed separately to see what would make the most sense for that particular set of circumstances. A new model could include a mixture of rentals, rent to own or homeownership arrangements. In addition, perhaps the use of local small landlords could be a desirable ownership approach, with each such owner having 3-4 buildings in their portfolio. The key to all the various options would be the ability of existing residents to stay in their homes, over the long-term, paying affordable rents.

This recommendation is consistent with one of the findings of graduate student researchers, Sahar Lawrence and Becca Schofield, who concluded that:

> A common theme of our interviews was that residents might not want to be owners. They might prefer to have reliably affordable and well-managed housing. Resident control has major challenges, and balancing power and group decision-making, especially across a widely scattered site of housing, were often cited. If residents decide that they want some form of control, most interviewees believed that their presence on the CDC or CLT board would allow them to have an invested interest in the maintenance and character of this ever-evolving community – shared equity through a cooperative model may not be necessary… Before making decisions about which path to follow, it is important to discover what is most meaningful to residents: ownership, security, control or another priority?[55]

Recommendation #8: Long-term financing package

- ***For a second generation of COHIF properties, or other similar programs, the long-term financing package should be understood and arranged at the outset.***

Deciding on the best structure for long-term financing for the Pilot project has been a challenge. Some members of COHIF have felt that using the 4% LIHTC program would make the most sense, while others have felt that the development would be too small for a LIHTC deal to be feasible. These decisions have had to be assessed as the Pilot has gone along, which has been time-consuming and labor-intensive. As of early June 2014, the Pilot had not yet been able to move into its next phase, rehabilitation of the properties, since neither a long-term owner nor the financing package had been solidified. Going forward, it is an understatement to say that it would be far preferable for this major set of decisions to be resolved at the outset of a second iteration of the Pilot, or for any new program modeled on the Pilot.

[55] Report cited earlier, "Exploring Best Practices Regarding Long-Term Affordability, Resident Input and Control," 2013, pp. 9-10.

Recommendation #9: Subsidies for long-term affordability

- ***In order to make the financing work, it is likely that some number of households will need ongoing rental subsidies.***

The COHIF Pilot includes a number of households with serious financial constraints. The ability of the Pilot to put together a viable long-term financing package will depend, in part, on how much each tenant will be able to contribute toward rent. In addition to the hope that there will be a significant amount of grant money coming from city, state and philanthropic funders, a dedicated pool of rental voucher assistance for qualifying households would help to close any gaps in the ongoing operation of the buildings. Based on the income levels of a number of the Pilot's existing occupants, many would easily qualify for rental assistance. The ready availability of rental vouchers to be used by a COHIF-type of program would be a major aid in developing a more streamlined, long-term funding mechanism.

State and Local Policies

Recommendation #10: Preferential treatment for nonprofits in post-foreclosure transactions

- ***Assess the feasibility of instituting a new regulation that would give nonprofits priority in purchasing foreclosed properties.***

In order to stabilize households and neighborhoods, it is critical that homes that have been foreclosed are protected from the private speculative market as much as possible. If nonprofit organizations were consistently offered the first right of refusal to purchase foreclosed properties, the twin goals of assisting vulnerable households and neighborhoods could be enhanced considerably.

Interestingly, just days before this report was completed, Mel Watt announced that a new pilot in Detroit involving nonprofits was being launched. Specifically, he stated:

> Part of FHFA's focus in this area is working to stabilize communities hardest hit by the foreclosure crisis. As a result, we are launching a Neighborhood Stabilization Initiative with Fannie Mae, Freddie Mac and the National Community Stabilization Trust. Phase one of this initiative is a pilot program in Detroit, Michigan. We're pursuing pre-foreclosure and post-foreclosure strategies that include deeper loan modifications and partnering with nonprofits earlier in the REO sales process. FHFA expects to use the experiences in Detroit to expand this initiative to other parts of the country. We believe this will be a win-win for hardest hit communities

and for our conservatorship objectives.[56]

The next recommendation, below (as well as recommendation #15), would assist nonprofits in making such purchases financially feasible.

Recommendation #11: State and quasi-public agencies' funding for foreclosed properties

- ***State funding should target the non-speculative re-use of foreclosed properties, and state officials should explore the potential for requesting or requiring the state's quasi-public agencies to set-aside a pool of funds to support the sale and redevelopment of foreclosed properties.***

In addition to the state being in a position to focus its funding on pro-consumer and neighborhood-supportive post-foreclosure initiatives, Massachusetts has a number of quasi-public agencies that have major roles in supporting the state's affordable housing agenda (*e.g.*, Massachusetts Housing Investment Corporation[57] and Massachusetts Housing Partnership). In order to facilitate the work of the Pilot, could the state require each of these agencies to set-aside money to assist qualified buyers, particularly nonprofits, to acquire foreclosed properties in low-income areas, so that they could be preserved for low-income occupants? With the loss of federal funding through the NSP, it is much harder for nonprofits to purchase foreclosed properties. A dedicated source of funds to assist nonprofits with such transactions would be an enormous help and could, conceivably, reduce or remove the need for a for-profit entity to be involved with the transaction (see also recommendation #15).

Recommendation #12: Mechanism to assure property upkeep post-foreclosure

- ***Explore possible changes in local policies that would require banks or others purchasing foreclosed properties to bring houses up to code within 60 days of acquiring properties that have been foreclosed.***

Working with the city's Inspectional Services Department, it would be desirable to explore how a system of inspections could be put in place whereby any new owner of a foreclosed property would have a limited period of time to bring the building up to code. Perhaps, as part of any foreclosure transaction, a new owner could be required to put money into an escrow account or purchase a bond that would guarantee that all necessary repairs on the property are completed within the specified period of time. In fact, COHIF has recently drafted an ordinance that would require owners of foreclosed properties to post a bond to be used by the city if banks and servicers do not complete the needed repairs. Such a measure would assure that tenants would be living in safe dwellings, and it could also discourage investors from placing unrealistically low bids at

[56] Prepared Remarks by Melvin L. Watt, cited earlier (see footnote #52).
[57] MHIC is currently supporting the Pilot with a credit line for Jonathan Kaye.

foreclosure auctions (since they would need to take immediate rehabilitation costs into account), thereby making property acquisition by nonprofits more feasible.

Recommendation #13: Further research on innovative strategies to deal with foreclosed properties.

- ***COHIF's experiences should both be informed by, and help inform, other innovative efforts to assist former owners of foreclosed properties and their tenants to remain in their homes. More information on such projects should be collected and disseminated.***

We know very little about the existence and the experiences of other programs that are similar to COHIF. In fact, in the course of this evaluation, only one other roughly comparable program surfaced (see footnote #17). It is very likely, however, that other such programs are operating across the country. A targeted research effort would be helpful in identifying such efforts and in collecting information about their respective experiences and what might be learned from their respective successes and failures.

Federal and Other Non-Local Policies

Recommendation #14: HUD/FHA guidelines about foreclosed properties

- ***Further inquiries are needed to better understand how HUD/FHA guidelines are being implemented in the field and whether the agency's stated criteria for conveying properties occupied are being followed. In addition, HUD/FHA should consider launching a pilot program to explore efficient mechanisms for field personnel to offer greater flexibility in property conveyance.***

In view of the important role that HUD/FHA plays in the disposition of FHA-insured foreclosed properties, it should take a leadership role in facilitating pro-consumer and pro-neighborhood policies. While HUD/FHA's written guidelines appear to provide some leeway in conveying properties with occupants, it seems that these guidelines may be little utilized. This is a critical issue that demands serious attention. In addition, HUD/FHA could experiment with a series of initiatives, based in diverse locales across the country, which would promote different models aimed at assisting residents of foreclosed properties and, at the same time, avoiding buildings becoming vacant.[58]

[58] There are precedents for FHA launching innovative pilot programs dealing with seriously delinquent and foreclosed FHA-insured loans. Through the Distressed Asset Stabilization Program, properties with delinquent loans are sold prior to foreclosure at the prevailing market rate, rather than for the amount outstanding on the loan. This provides the new servicer with greater flexibility in renegotiating the terms of the loan with the existing homeowner, and foreclosure is postponed for at least six months. The seriously delinquent loans are pooled and sold to the highest bidder. While nonprofit organizations can put in bids, they do not appear to receive any preferential treatment. For more information on this program, see: Carol Galante, "The Federal Housing Administration's Distressed Asset Stabilization

Recommendation #15: Fannie Mae/Freddie Mac rules about foreclosed properties

- ***There is a need for FHFA, or whichever entity assumes supervisory functions over the Fannie Mae and Freddie Mac portfolios, to authorize immediate changes in the rules, thereby making it easier for foreclosed properties to be transferred to nonprofits at or below current market prices, with occupants, and with the opportunity for prior owners and tenants to remain in their homes over the long-term.***

Immediate changes in Fannie Mae/Freddie Mac's rules about foreclosed properties are needed. Hopefully, Mel Watt, the new administrator of the FHFA, will be able to reverse the restrictive and inflexible rules of his predecessor, Edward DeMarco. One of the initiatives that could be considered is creating a separate division of the GSEs that is specifically geared to facilitating the transfer of properties to nonprofit organizations. Such an initiative could also include financing to help groups acquire these properties and subsidies to rehabilitate them.

Very importantly, just days before this report was finalized, FHFA had just reached out to COHIF and wanted to begin discussions regarding the launching of a possible pilot purchase program with COHIF. FHFA has proposed that this new new pilot initiative would include changes in FHFA's current policies, which currently create barriers for nonprofits to purchase homes owned by Fannie Mae and Freddie Mac. This could be a significant step toward making this recommendation a reality.

The policy of not giving COHIF or other nonprofits the opportunity to purchase the homes at a discount, and insisting that the existing owners leave, may be a tangible manifestation of the view that the latter should be punished for their alleged irresponsibility and that they, alone, are the cause of their financial problems. If there were a way to assign responsibility to the lenders, servicers or investors, then perhaps this would result in an effective "stick" to encourage some form of "pay-back" on behalf of the former owners, for the industry's role in contributing to the mortgage crisis. Appendix II details a protest action against the GSEs, using the argument that they owe it to individual homeowners to show leniency, in view of the level of public support they have received and the debt that they owe to the Affordable Housing Trust Fund, which is to be partially capitalized with GSE profits.

Additional information should be collected about the efficacy of the GSE's REO-to-Rental Program, particularly the Freddie Mac version of this initiative (see footnotes #29 and 42). Specifically, it would be helpful to understand the extent to which existing homeowners and tenants of foreclosed properties have been offered the opportunity to

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Program: An Innovative Solution for Addressing National and Local Impacts of the Recession." *Community Development Investment Review*, 2013, cited earlier, pp. 63-66. Also, the "First Look" program, in which FHA participated, gave nonprofits and local governments with access to NSP money opportunities to acquire foreclosed properties in a way that would complement broader neighborhood goals.

rent their homes post-foreclosure, and how these arrangements have worked.

Of course, the way in which Fannie Mae and Freddie Mac's functions will be carried out in the future is not yet resolved. If enacted, the Housing Finance Reform and Taxpayer Protection Act of 2014, sponsored by Senators Johnson and Crapo, would result in Fannie Mae and Freddie Mac ceasing to exist in their current form over the next five years. In their place, a new Federal Mortgage Insurance Corporation (FMIC) would be created, but the question of how existing properties owned by Fannie Mae and Freddie Mac would be disposed would still be unresolved, even with such a new entity.[59]

Interestingly, a precedent for how Fannie Mae and Freddie Mac could change their policies comes from existing policies concerning reverse mortgages. If the owner of a home that had a reverse mortgage passes away, his/her "heirs may retain the property and satisfy the reverse mortgage debt by paying the lesser of the mortgage balance or **95% of the current appraised value of the home** (emphasis added)."[60] Adopting this policy with regard to properties owned by Fannie Mae and Freddie Mac would be beneficial. Allowing prior owners, tenants or nonprofits to purchase the foreclosed home at a percentage of the appraised value may meet the needs of COHIF and any other programs trying to stabilize households and properties going through foreclosure.

Recommendation #16: The "arm's length" rule

- ***The need for the "arm's length" rule, in its present form, should be assessed to better understand how it limits the ability of nonprofit organizations to purchase foreclosed properties on behalf of existing tenants or prior owners.***

We need a better understanding of the "arm's length" provision, why it has been viewed as an important requirement in mortgage transactions and whether it would be possible to develop alternative language that would enable prior owners or tenants to stay in their homes, post-foreclosure, without jeopardizing the seemingly valid intents of the provision: to safeguard against sham transactions, intentional defaults and other fraudulent mortgage transactions.

[59] The FMIC would be responsible for regulating the secondary mortgage market and providing secondary insurance on mortgage-backed securities for assets that meet a set of standards. Private entities would provide the first tier of insurance and would be expected to cover the first 10 percent of any loss in the principal value of a security.

[60] https://www.fanniemae.com/content/fact_sheet/reverse-mortgage-questions-and-answers.pdf (accessed March 27, 2014)

Recommendation #17: Moral hazard

- ***More information about whether moral hazard is a real issue would be valuable.***

Given the importance of the moral hazard argument on the part of HUD/FHA and the FHFA, it would be helpful to better understand he extent to which leniency offered to a given mortgagor stimulates or in any other way promotes intentional or strategic defaults, on the part of homeowners who, otherwise, would likely be current on their loans. Designing such a study or data collection method could be challenging, but it is clear that it is a compelling issue needing further investigation.

Recommendation #18: The Neighborhood Stabilization Program

- ***Revive and revise the NSP.***

As discussed in recommendation #11, the loss of NSP funding has created a gap in the ability of nonprofits to acquire foreclosed properties. Restoring this source of federal funding, and also revising the program to assure that it is geared to promoting the kinds of goals embraced by COHIF, should be a priority. In particular, nonprofit organizations, which are purchasing properties for rental or ownership to low-income households, and with long-term affordability restrictions, should be given preferential treatment. To the maximum extent feasible, any additional federal NSP funding should be used for neighborhood stabilization and to assist existing residents of an area; precautions should be taken to guard against funds being used for speculative investments and in ways that would promote displacement of low-income households.[61]

Recommendation #19: Assistance for Nonprofits and Targeted Financing Mechanisms

- ***Explore mechanisms to support the work of nonprofit organizations that are tackling the issue of how to re-use foreclosed properties and develop new financing mechanisms that are uniquely suited for single family properties that are being re-developed as a single project. In particular, assess how the LIHTC program could be changed to better accommodate such initiatives.***

One of the challenges that the COHIF Pilot encountered was the need to find a local nonprofit that would be comfortable managing a scattered site portfolio of 1-4 family residences. CSNDC's decision to leave the Pilot was, in part, due to the fact that

[61] Confirming the need for changes in any revised NSP, a recent study found that: "…traditional means of asset disposition – in which banks just put their properties on the market – did not work… One of the key lessons to emerge from the crisis is the need for financial institutions and the public sector to structure asset disposition strategies that are sensitive to community needs and conditions." John O'Callaghan and Paul Weech, "Policy Lessons from the Neighborhood Stabilization Innovations Initiative." In *Community Development Investment Review,* 2013, cited earlier, pp. 7-14.

managing scattered site rental housing is not part of their normal operations. The findings of this evaluation support a conclusion of some thoughtful practitioners who observed that: "There is significant opportunity to build the capacity of nonprofits to manage single-family rental portfolios professionally and in ways that are more sensitive to the needs of the neighborhood."[62]

In connection with developing mechanisms to assist nonprofits to manage scattered site portfolios, there is also a need, as highlighted in this report, for a financing mechanism that would be tailored to the needs of such portfolios. As several interviewees noted, the LIHTC is not geared to this type of small project, and putting together an appropriate financing mechanism, thereby allowing a number of buildings to be combined into a single package, has presented some real challenges.

Recommendation #20: Role for Community Development Financial Institutions (CDFIs)

- ***Encourage CDFIs to streamline one of their products to provide favorable financing opportunities to nonprofits and former-resident purchasers of foreclosed properties.***

Although BCC and CL/VU do not currently have a close working relationship, BCC's role as a funder of foreclosed properties has been very important in the Boston area and across Massachusetts. In addition to BCC, Massachusetts has several other quasi-public funding entities, notably the Massachusetts Housing Partnership and the Massachusetts Housing Investment Corporation, which are specifically focused on providing funding for affordable housing developments. In most places in the U.S., however, there are far more limited resources for affordable housing development available. It might be possible for COHIF-type organizations to work directly with the Coalition of Community Development Financial Institutions, as well as with individual CDFIs across the country, to encourage them to develop lending products that would facilitate prior owner-buybacks or the resale of foreclosed properties, particularly to nonprofit organizations. In Massachusetts, such efforts could be undertaken in tandem with the state's quasi-public agencies, as noted in Recommendation #11, above.

Recommendation #21: More exploration of policy issues

- ***This report has only "scratched the surface" of discussing the relevant policy issues pertaining to the sale and re-use of foreclosed properties with tenants. Much more study and inquiry is needed.***

The ways in which HUD/FHA guidelines and Fannie Mae/Freddie Mac rules about foreclosed properties conflict with the needs of prior owners and tenants needs much

[62] Ibid., p. 10

more study and analysis. It seems clear that there are some significant gaps between what the HUD/FHA handbook says is possible, in terms of homes being sold with occupants, in comparison to the inflexible way in which the policy is carried out. Continued efforts should be made to discuss the issue with HUD officials in Washington, as well as in the Boston HUD office, in the hope that the seemingly more flexible written guidelines will become more faithfully followed in the field. In addition, it would be helpful to better understand the extent to which the kinds of issues related to FHA-insured foreclosed properties have arisen in other parts of the country.

Since COHIF has identified the need for a different set of foreclosure actions to be followed, particularly with regard to keeping existing residents in their homes **and** allowing them to stay on as tenants, new procedures, which carry the weight of law, are needed. However, there are currently no incentives encouraging such changes and no "sticks" that, seemingly, can be brought into the conversation. As a result, no special procedures have been forthcoming. But this provides fertile ground for exploring new policies that would provide an appropriate set of incentives and sanctions for non-compliance.

Final Note

The COHIF Pilot is a bold and ambitious initiative. It targets a highly vulnerable population – mostly lower income homeowners who have experienced foreclosure and tenants of those buildings – in one of the poorest sections of Boston. The Pilot's work to help stabilize families and neighborhoods should be supported and could also serve as a model for other such initiatives. But the obstacles in carrying out such a program are significant and, to accomplish the Pilot's goals more efficiently, particularly the desire to enable existing residents to stay in their homes, greater public resources and commitment are needed. Key to such an effort would be a complete assessment and overhaul in the ways in which HUD/FHA and Fannie Mae and Freddie Mac approach their post-foreclosure property disposition policies. Enabling nonprofit organizations to purchase properties, including providing this housing to former owners and tenants, should be seen in the context of the larger set of issues arising from the mortgage crisis. Public officials and private investors need to better understand, and act on, the reality that there is nothing to be gained by continuing to implement a highly problematic set of policies that promote family instability, potentially increase homelessness and result in vacant homes. The COHIF Pilot is demonstrating that another approach may, indeed, be possible. But it is too early to know whether the Pilot will serve as a model that can be expanded in Massachusetts and that others will choose to replicate across the country. Hopefully, the lessons learned through COHIF's experiences will help others to make more informed judgments.

Appendix I
People Interviewed

Lisa Alberghini, *President, Planning Office of Urban Affairs*
Kathy Brown, *Coordinator, Boston Tenant Coalition*
Mela Bush, *Lead Organizer, Greater Four Corners Action Coalition*
Dana McQuillin Dalke, *Project Manager, Codman Square Neighborhood Development Corporation (as of May 2014, Deputy Director of COHIF)*
Mayra Duran, *Community Organizer, Greater Four Corners Action Coalition*
Maureen Flynn, *Coordinator, Coalition of Occupied Homes in Foreclosure*
Theresa A. Gallagher, *Deputy Director, Neighborhood Housing Development, City of Boston*
Curdina Hill, *Executive Director, City Life/Vida Urbana*
Jonathan Kaye, *Founder/Owner, Combined Resources Company*
Eloise Lawrence, *Staff Attorney, Harvard Legal Aid Bureau*
Tom Lorello, *Executive Director, Heading Home*
Marvin Martin, *Executive Director, Greater Four Corners Action Coalition*
Claire Masinton, *Special Counsel to the HomeCorps Initiative, Office of the Attorney General of Massachusetts*
Steven Meacham, *Organizing Coordinator, City Life/Vida Urbana*
Rebecca Regan, *President, Capital Market Companies, Housing Partnership Network*
Roberta Rubin, *Attorney, Klein-Horning*
Michael Stone, *Professor Emeritus, University of Massachusetts*
Matthew Thall, *Consultant*
Maura Camosse Tsongas, *Development Manager, Women's Institute of Housing and Economic Development*
Max Weinstein, *Senior Clinical Instructor and Lecturer on Law, Harvard Law School*

Brief contacts were also made with Erin Hearn, Legislative Director, Office of Senator Richard J. Ross; Benjamin Menshoulam, Policy Advisor in the Massachusetts Attorney General's Office; and Tonja R. Mettlach, Research Director, Representative Thomas P. Conroy. In addition, one resident of one of the properties in foreclosure and (hopefully) in the pipeline to be acquired through COHIF was interviewed. For privacy, the name of this individual is not included here. Sincere thanks to everyone who graciously and generously gave their time, candor and insights to this project.

APPENDIX II
Notice of Protest Action at a Possible COHIF Pilot Project Home

Fannie Mae, Freddie Mac:
turn it over, give it back!!!

WHO: City Life/Vida Urbana & COHIF
WHAT: Vigil vs. Fannie Mae
WHERE: Home of Domingo Franco (CLVU BTA member& leader) 49 Speedwell Street Dorchester, MA 02122
WHEN: Saturday January 11, 2014 4:30-5:30pm

WHY:

- Because Fannie Mae & Freddie Mac are not paying into the Affordable Housing Trust Fund as they should.
- COHIF has made a fair offer to purchase the property from Fannie Mae and they've declined.
- Right to the City is suing Fannie Mae & Freddie Mac because when we bailed them out in 2008 with $180 billion the FHFA (Federal Housing Finance Agency) was created to oversee Fannie Mae & Freddie Mac. By law, they are obligated to pay 0.4% of their profits towards the Affordable Housing Trust Fund. They currently owe over $578 million to the fund.
- Fannie Mae should turn over the property at 49 Speedwell Street Dorchester, MA 02122 to COHIF (Coalition for Occupied Homes In Foreclosure) a non-profit organization. The transaction can be recognized as partial payment toward the Affordable Housing Trust Fund.

We welcome Mel Watt as the new head of FHFA. Our hard-fought protests from Dorchester, MA to Washington, DC have been part of a national movement to TAKE BACK THE PEOPLE'S BANK!

We call for Fannie/Freddie-owned housing to be sold back to former owners at fair value - and where this is not possible, that they be turned over to nonprofit organizations to become permanently affordable, community-controlled housing.

We welcome Mel Watt's new leadership and we call on him to put in place a moratorium on no-fault evictions by Fannie & Freddie while he reviews foreclosure policy.

Appendix III
Example of COHIF's Work with People and Properties

On Monday, April 28, 2014 10:06 AM, from maureen@cohif.org

I wanted to let you know about our case involving **22 Gaston Street in Dorchester** and give you a little background on this issue because it's really a great illustration of the work we have been doing in the purchase and acquisition portion of our Greater Four Corners Stabilization Pilot Project and a good example of the ways in which we are trying to change policy and stabilize the community. The time spent on this case is also typical of the amount of time it takes and the number of organizations and agencies involved for us to secure each property for the pilot, which is A LOT!! Andrea Park of HLAB has been representing the family; the family members are leaders in CLVU; Jim Cotter is the receiver; and, DPH, DND, ISD, and the AGO have been involved in the de-leading/receivership aspect.

Background

The Corbin family[63] lives at 22 Gaston Street in Dorchester. This is a very complicated case, but in short, the mortgage lender foreclosed on the property and almost simultaneously, the Corbin's three children (all under 5 y.o.) tested positive for high lead levels. A receivership needed to be established to de-lead the home because the family could not pay the almost $80k cost to de-lead. Meanwhile, after Freddie Mac, who acted as the servicer post-foreclosure, tried to evict the Corbins, fought the lead violations, and delayed repairs. After all of this, Freddie stipulated in Housing Court that the foreclosure was improperly done - but the court didn't then establish who held title to the house!!

The DPH, DND, CLVU and others asked if COHIF could help provide a solution for the Corbin family which would allow them to stay in their home at 22 Gaston after it was de-leaded as the Corbins could not afford to pay the $80,000 back to the receiver for the cost of de-leading, which meant that the house would most likely be foreclosed on for the receivers lien and auctioned (this is the normal procedure when an owner cannot pay a receiver's lien).

COHIF determined that the only way we could make the home part of the Pilot Project (and provide that the family could stay) was if we purchase the property and convert it into a two family home, making the property more financially feasible. Coming up with this solution took the efforts of realtor Milo Taviliero, Jonathan Kaye acting as the interim purchaser, and Heading Home agreeing to be the developer/long term owner. This was only half the battle as the foreclosure on the receiver's lien was proceeding in court. At the request of the parties involved, I attended numerous court hearings to propose to Judge Winnik a sale to COHIF. Jim Cotter agreed to put forth the motion

[63] Family name is used with their permission.

which would have provided that the judge do a directed sale to COHIF for the cost of his lien, rather than conducting an auction.

Unfortunately, despite all of our work and a lot of research and writing on directed sales, the judge would not allow the directed sale in part because Freddie Mac opposed it, even though they acknowledge they are not going to recover their money. **The good news is that the judge did allow the sale to be approved by the court.**

So, the auction will proceed but the receiver is allowed to ask **for qualifications** from the bidders to be presented to the court and then the court will determine who among the three highest bidders will be approved as the buyer. This is actually a substantial win for COHIF and for families who face potential eviction in a situation like this. It means that the home will not necessarily be sold to the highest bidder and that this housing court is willing to look at the qualifications of a buyer before a receivership sale takes place. We will be bidding on the property at auction. Our plan is for Jonathan to hold the property for six months while we determine with ISD whether the property can be converted into a two-family (per zoning code issues). We have some preliminary information that this can happen. If we win approval to convert within six months (which is ambitious), this property would become part of our pilot project. Architects have already done an initial assessment of the property and we know it will be quite expensive to convert so we can only bid $80,000 at auction. All of this information is part of the court record so I am not divulging state secrets.

In the end, if we are successful, the Corbins will get to stay in their home and not be displaced. We will also be creating another unit of affordable housing in Boston. If we are not successful, the Corbins may very well end up completely displaced from their home, after so much upheaval already.

If you can attend the auction on the 14th, we'll see you there – if not, I will let you know if we are successful in being one of the three highest bidders which would allow us to present our case for ownership to the court.

Appendix IV
Notice about Sale of First Pilot Project Property

On Fri, Jan 17, 2014 at 11:04 AM, from maureen@cohif.org
… We have great news regarding 422 Seaver Street. Codman (the owner) and Jonathan (the contractor) have almost completed redeveloping the property. It is due to be finished in the next two – three weeks. This will be the first completed COHIF property!! Understandably Codman would like to begin marketing the property now and had a soft marketing roll out a few weeks ago. There is already interest from prospective buyers. Before the marketing begins though, we wanted you all to know the process for sale and qualifications for the purchaser and renter. As you may remember, Codman used some NeighborWorks money and City funds (channeled from NSP funds) so the NSP rules at a minimum must be met. So here is how it will work:

- The purchase price is $280k, the completed appraised value.
- The property can be sold to an income eligible buyer below 120% of the AMI who will be the owner occupant; the owner must rent to a renter below 50% AMI.
- All fair housing laws and guidelines will be followed in the marketing and sale of the property.
- Codman is allowed to accept the highest and most qualified offer.
- There will be a 30 year covenant on the property which will restrict to whom the buyer can sell to - the property must be sold at a price that is affordable to buyers who meet the income limits (there are standard maximum sale price caps set by the city/state/fed). 422 Seaver is currently far below that maximum sale price cap…
- The marketing materials, including the MLS [multiple listing service] listing, will feature the fact that this property was redeveloped and is being offered as part of a joint effort between COHIF and Codman. We will also include in the P&S [purchase and sale], language that encourages the homeowner to become part of any COHIF residents' group and COHIF related activities – we will communicate the same to any tenants that rent the apartment.
- We will do press/an event when the renovations are complete to publicize COHIF's first redeveloped property – and maybe do a tour of 422 for you all!

As you know, many COHIF members wanted 422 to be part of a land trust but we could not establish a land trust yet ourselves (until we solidify things with Heading Home) and the timing and logistics of DSNI taking in the property for us in their land trust was too difficult at this stage. Kathy advocated for a longer covenant as an alternative and we feel it is a good compromise. We look forward to working with all of you, DSNI, and Heading Home to figure out the land trust issue for the properties HH redevelops on our behalf. I have attended the last few construction updates at 422 and it is looking really good – Dana has done a great job monitoring the work and Jonathan's crew has been flexible and responsive to requests for changes, etc…