



"Unlock the Bureaucracy."

## American Land Rights Association National Inholders Association

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Extracted from testimony to the Financial Services Committee by Charles Cushman, Executive Director, American Land Rights Association, August 31, 2011, as testimony for the record of the hearing held in Newnan, Georgia on Tuesday, August 16<sup>th</sup>. All statements are those of Charles Cushman on behalf of ALRA

### **Wednesday, September 7<sup>th</sup> – Alert -- FDIC Bank Closure Policies and FDIC Authorized Aggressive Tactics by FDIC Partners Are Destroying Jobs, Small Businesses, and Communities Plus Holding Back Economic Recovery and Job Creation**

**Problem:** The FDIC's methodology, policies, and procedures, while closing an average of two banks per week have created significant, unnecessary hardships on American citizens, borrowers, and vendors of failed banks. **FDIC policies have been a driving force in the destruction of local and the national economies,** markets and industries, destroyed hundreds of thousands of jobs and promoted the growth and market share increases of national banks (too big to fail) to the detriment of community banks, the American people and the free market system.

The FDIC's use of Loss Share Banks (Banks or equity group formed banks, that purchase failed bank assets at deep discounts, which are further indemnified up to 80% of collection losses by the FDIC and Public-Private Investment Program or PPIP's [partnerships with publicly-traded Wall Street hedge fund companies (such as Rialto/Lennar Multibank, Colony, Kingston, Starwood, Roundpoint, and other FDIC partners)] **have fueled and accelerated the degradation of market economies and real estate values,** artificially prolonged and deepened the economic depression currently impacting the country, for the profit of the FDIC's private hedge fund partners. **The FDIC has unintentionally become an active partner in victimizing hard working Americans and businesses.**

The statutory powers of the FDIC do not entitle them to pick winners and losers or to create different classes of citizens (borrowers versus depositors or the wealthy few versus the American public) especially with taxpayer money in violation of federal law (see TARP) Troubled Asset Relief Program requirements). In addition, **FDIC procedures and methods have squandered the Deposit Insurance Fund** in the conduct of their Receiverships and Loss Share Bank Agreements. **Finally, let's face it, the FDIC has been inconsistent and done a poor job regulating the banking industry.**

**With regards to the PPIP's, the FDIC is using taxpayer/US Treasury funded interest free loans to finance the public/private structured sales, with little or no return to the taxpayer.** The FDIC has shown no consideration of the unintended consequences to quality small businesses with strong track records (who were in good standing before the bank closure) and all for the profit of the FDIC and their publicly traded partners. **These businesses are being destroyed by foreclosures created by FDIC policy of choosing to partner with the huge Wall Street hedge funds. These local businesses are ultimately forced into bankruptcy eliminating most from hiring workers and rebuilding the economy.**

The FDIC drafted the PPIP documents, which require the minority structured sale participant, Rialto/Lennar (in this partnership called Multibank 2009-1), **to pursue borrowers without regard or consideration of to the circumstances surrounding their individual loans) until they cannot be legally pursued anymore. FDIC policy does not even consider whether most borrowers were current on their loans.**

**Rialto, Multibank, and other FDIC PPIP partners aggressively litigate borrowers, attempt to force them into bankruptcy, obtain judgments and further pursue those judgments against personal assets and savings** and generally attempt to ruin all borrowers and guarantors, unless they pay the loans off or gain an unappealable court decision in the borrower's favor. **They aggressively use the court system in their tactics and will punish and outspend borrowers with legal fees until they are broken as their legal budget is unlimited and paid by the FDIC using taxpayer dollars.**

These unlucky borrowers had their loan at a bank that just happened to be closed by the FDIC. **Overwhelmingly these borrowers were current with their loans** but the FDIC bank receivership froze all

loans, funding, and loan provisions. Rialto (FDIC Partner) aggressively uses the threat of the IRS as part of their tactics and they fund their efforts with taxpayer dollars at no cost to them. **There is no effort to work with borrowers already damaged by the FDIC's tactics.**

**All of this economic disaster has been orchestrated by the FDIC.** The FDIC policy requires full pursuit of all judgments as a condition for the participating PPIP minority partner to get paid its share.

**The PPIP's are rewarded for employing FDIC scorched earth tactics against the borrowers** of the failed banks and the effect of destroying local economies, jobs, and property values in addition to the borrowers' ability to support themselves going-forward. The borrowers did not cause the bank to fail and did not cause the disruption of their loans that result from the FDIC's process and use of outside contractors with **little or no oversight from FDIC or Congress.**

**Solution:** The FDIC sponsored attacks on small business must stop. Congress must limit the ability of the FDIC and their partners to go after deficiencies and personal assets. Collections must be limited to collateral securing the loans they acquire. What is needed is a **simple amendment to the FDI Act and FIRREA**, that is a variation on the "Bridge Bank" concept, which is already in the FDIC playbook. This will eliminate the waste and misery forced on the American public and economy by the FDIC and its partner companies. Together, they are destroying local businesses (borrower's) and other members of the local communities, victims of the bank closures that were not direct customers of the failed banks nationwide.

Without diminishing the FDIC's authority or autonomy, **this amendment** provides a **Preferred Least Cost Resolution** methodology, which protects depositors, borrowers and vendors of failed banks and the markets they serve and the people living and working within those markets whether they banked at the failed institution or not. The **Preferred Least Cost Resolution** protects everyone. It treats everyone fairly, equally and with respect.

The Amendment eliminates the need for Loss Share Banks and FDIC PPIP's partners such as Rialto and Multibank. It does not create different classes of citizens and it does not favor equity groups and hedge funds over the borrowers and jobs producers in the local market, as do current FDIC methods. It is demonstrably less expensive to the deposit insurance fund than current methods utilized by the FDIC. However, if the FDIC is allowed by Congress "to do things the way they have always been done", which is clearly not the Least Cost Resolution as required by statute, then the destructive effects of their efforts and alliances are reduced and contained by limiting the extent of their collections to realizing on the collateral securing the loans they acquire. It is still their choice.

#### **We urge Congress to:**

- 1. **Halt all funding by the US Treasury for the FDIC Public Private Partnership program** until a complete audit is made by the FDIC Inspector General and the GAO (Government Accountability Office). Further, that the Congress freeze the lands taken by the FDIC and their partners with the ultimate goal of re-vesting these properties with the original owners where the abuse of power by FDIC and its partner companies have resulted in taking lands inappropriately and using the FDIC extreme powers inappropriately.
- 2. **Congress must intervene to stop the attack on private owner assets and guarantees** until these public audits are complete. The mass slaughter of small businesses and the damage to local communities must be brought to an end as quickly as possible. In other words, impose an immediate injunction against their collection activities and lawsuits until a thorough investigation can be performed.
- 3. Defund the FDIC's Multibank and any PPIP's not in compliance with TARP, or using TARP funds.
- 4. Intervene and mandate that judgments already awarded to the Multibank & other PPIP's against borrowers be vacated due to their participation in an illegal act central to their benefit.
- 5. Intervene for a mass settlement between the Multibank & PPIP's and borrowers based solely on the transfer of collateral in full satisfaction of the debt.
- 6. Pass immediate Federal Anti-Deficiency Law that is based on recently approved Nevada Law AB 273- Anti-Deficiency Law. *This law **limits** PPIP's (like Multibank/Rialto/Lennar) or Private Loan Speculators who re-purchase these notes for pennies on the dollar at depressed market values and make immense profits. These Loan speculators would be prevented from then also suing local borrowers for the personal deficiencies.*

For more information and a full copy of the ALRA testimony Go to: <http://reactioncommittee.com/> or [www.landrights.org](http://www.landrights.org) Chuck Cushman at (360) 687-3087 Reference links and articles below.

<http://www.nytimes.com/2009/04/07/business/07sorkin.html>

The Nevada Law is explained in a video interview at: <http://www.vegasinc.com/videos/2011/jun/13/5227/>