NCLR
NATIONAL COUNCIL OF LA RAZA

Putting an End to the Foreclosure Crisis for Latinos and Communities of Color

at:

"The Private Sector and Government Response to the Mortgage Foreclosure Crisis"

Submitted to:

U.S. House Financial Services Committee

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The National Council of La Raza (NCLR)—the largest national Hispanic[1] civil rights and advocacy organization in the United States—has been committed to improving opportunities for the nation's 47 million Latinos for the past four decades. To this end, NCLR conducts research, policy analysis, and advocacy on a variety of financial services issues that impact the ability of Latinos to build and maintain assets and wealth.

NCLR is deeply concerned about the number of Latino and other minority families losing their homes and financial security. The foreclosure and economic crisis is disproportionately impacting communities of color. Congress and the administration must work together to establish tailored strategies that will help Latino and other minority families save their homes from foreclosure and realize financial security and long-term sustainability. NCLR is dedicated to these issues and we look forward to working with you.

For more than two decades, NCLR has advocated for policies and programs that support sustainable Hispanic homeownership. NCLR conducts research and analysis on relevant public policy issues such as preserving and strengthening the Community Reinvestment Act (CRA) and the Home Owner Equity Protection Act (HOEPA), supporting strong fair housing and fair lending laws, and expanding access to credit. In addition, NCLR is the only Department of Housing and Urban Development (HUD) housing counseling intermediary focused on the Latino community. The NCLR Homeownership Network (NHN) provided first-time homebuyer and foreclosure prevention counseling to more than 50,000 families last year alone. Working with our partners and Affiliates, NCLR has moved quickly to respond to the foreclosure crisis. NCLR has invested nearly $10 million in community-based organizations (CBOs) to expand foreclosure prevention counseling services. We joined forces with the National Urban League (NUL) and National Coalition for Asian Pacific American Community Development (National CAPACD) to host dozens of Home Rescue Fairs nationwide and distribute a resource toolkit on foreclosure prevention strategies.[2]

As communities of color brace for a second wave of foreclosures, we are disappointed that the federal government and the private sector have still not developed a response that can address the magnitude of this crisis. NCLR and the civil rights community have urged Congress and the administration to move swiftly to provide relief to families facing foreclosure. Instead, policymakers have relied on the voluntary efforts by the private sector, which have proven fruitless. The ineffective response to the foreclosure crisis is one of the greatest threats to a full economic recovery and a blow to families who were on the path to financial security and the middle class. Policymakers and industry stakeholders must reevaluate and adjust their approach.

In this statement, we examine the federal government and private sector's responses to the foreclosure crisis and provide recommendations to improve foreclosure prevention programs and put Latinos and other underserved communities back on the path to middle class security.

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[1] The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to identify persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

[2] Home Rescue Fair is a one-day outreach event that offers individuals facing foreclosure the opportunity to receive free advice and resources from housing counselors, attorneys, and loan servicers. *Community Responses to the Foreclosure Crisis: An NCLR Tool Kit*, http://www.nclr.org/content/publications/detail/59463.

Background

Despite indications that our overall economy is emerging from the deepest recession since the Great Depression, the socioeconomic status of Latino families and workers has not improved and continues to lag behind that of other Americans. More than one million Latino workers have lost their jobs, and Latinos have experienced the largest increase in unemployment of any group since the recession began in December 2007.[3] The worst is yet to come; it is estimated that more than 400,000 Latino families may lose their homes to foreclosure in 2009 alone, and in 2010, more loans are scheduled to reset, which translates to more than 1.3 million Latino families in foreclosure over the next four years.[4]

The recession hit Latino families just as they appeared to be on the brink of an economic breakthrough—employment and homeownership trends were on the rise. However, perverse market incentives steered Latinos toward the mortgage products that run the highest risk of foreclosure. In fact, Latino homebuyers were 30% more likely than Whites to receive a high-cost loan when purchasing their home.[5] NCLR, along with a number of experts and advocates, has long warned of the consequences of ignoring the structural flaws in the mortgage market.[6] Unfortunately, the lack of strong regulations of the private sector and now the reliance on voluntary efforts have disrupted the global economy and upset the lives of millions of American homeowners.

The failure of regulators and Congress to respond in a timely manner to the housing market's inefficiencies led to the initial foreclosure crisis, followed by the economic meltdown and massive job losses. This, in turn, has led to even more foreclosures. The national unemployment rate stands at 9.7% and is expected to reach double digits by the end of the year. Yet, Black unemployment has already been in the double digits for nearly one full year, and the Latino unemployment rate passed the 10% mark in February 2009, the same month President Obama signed the American Recovery and Reinvestment Act (ARRA).[7] Record-high foreclosure rates are projected to cost Black and Hispanic households between $164 and $200 billion of wealth.[8] Nearly 70 million families will see their homes lose value, even if they make their mortgage payments on time.[9] Cities and states will lose billions in local taxes, putting the squeeze on budgets that pay for teachers, fire and police departments, and other community services.

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[3] U.S. Bureau of Labor Statistics, "Data Retrieval: Labor Force Statistics," *Current Population Survey,* Table A-2 and Table A-3, http://www.bls.gov/webapps/legacy/cpsatab2.htm (accessed September 2009).
[4] Center for Responsible Lending, *Projected Foreclosures to Latinos by State* (Durham, NC: Center for Responsible Lending, 2009).
[5] Debbie Gruenstein Bocian, Keith S. Ernst, and Wei Li, *Unfair Lending: The Effect of Race and Ethnicity on Price of Subprime Mortgages* (Durham, NC: Center for Responsible Lending, 2006).
[6] Janis Bowdler, *Challenges to Building Sustainable Homeownership in Latino Communities* (Washington, DC: National Council of La Raza, 2007), http://www.nclr.org/content/publications/download/45391 (accessed December 2009).
[7] "Data Retrieval: Labor Force Statistics," *Current Population Survey*, Table A-2 and Table A-3.
[8] Amaad Rivera et al., *Foreclosed: State of the Dream 2008* (Boston, MA: United for a Fair Economy, 2008).
[9] Center for Responsible Lending, *Soaring Spillover: Accelerating Foreclosures to Cost Neighbors $502 billion in 2009 alone; 69.5 million homes lose $7,200 on Average* (Durham, NC: Center for Responsible Lending, 2009).

The federal government must act to stop the steady unraveling of Latino economic security and to pave the path to economic success for the next generation. An economic recovery that leaves out minority communities robs all Americans of prosperity and deepens racial and ethnic divides in economic and financial security. Initiatives to revive the economy must be paired with deliberate efforts to rebuild the crumbling foundation of protections that American families have come to expect, including fair and safe financial products. In the next section, NCLR will discuss three major federal relief initiatives and their progress in improving the economic conditions among Latino families.

Federal Initiatives to Address the Foreclosure Crisis

Well into the decline of the mortgage market, Congress and the current and previous presidential administrations created three major programs designed to improve conditions, stabilize the housing market, and reduce foreclosures: Hope for Homeowners, Troubled Assets Relief Program, and the Making Home Affordable program. In each case, the authors intended swift and efficient execution for maximum effect. While each of these programs has elements that could help Latino communities, their implementation is fraught with problems that hamstring their success. Below, we discuss each of these programs and their service to communities of color.

Hope for Homeowners

Hope for Homeowners (H4H) was designed to offer as much as $300 billion in government-guaranteed home loans to people whose current mortgages exceed the value of their houses. This program was launched by the George W. Bush administration after the FHA Secure refinance option proved unsuccessful, helping less than 4,000 homeowners. H4H has also produced poor outcomes—only one family has been able to save their home from foreclosure–due to issues with the design and implementation of the program, including:

Design:

- **Restrictions and eligibility criteria are overly burdensome.** Onerous requirements for the lender and eligibility criteria for the homeowner have made this program virtually unusable. Latino families face significant barriers to applying for H4H because many have multiple wage earners or some cash income and savings that cannot be used to qualify for H4H.
- **Fees and equity sharing are expensive for the homeowner.** Homeowners are required to pay costly fees including an upfront mortgage insurance payment of 3%, a 1.5% annual mortgage insurance premium, and closing costs. In addition, when the property is sold or refinanced, homeowners must pay at least 50% of the equity created by the refinance and 50% of the appreciation accumulated after the refinance.
- **Participation by lenders is voluntary.** H4H relies on lenders to voluntarily participate and encourages lenders to write down the principal balances, which servicers have been unwilling to do.

Implementation:

- **H4H has helped only one family save their home from foreclosure.** Estimates claimed the program would benefit 400,000 homeowners. In May of 2009, President Obama signed the Helping Families Save Their Homes Act (S. 896) into law, which includes improvements to H4H. The U.S. Department of Housing and Urban Development has yet to release new program guidelines.

As a result, no Latino families have been able to save their homes from foreclosure using H4H, and foreclosure rates continue to rise in our communities. The proposed legislative improvements fail to address the barriers that Latino families have faced, and will continue to face if their needs go unheeded.

Troubled Assets Relief Program

While the overarching purpose of the Troubled Assets Relief Program (TARP) was to stabilize the U.S. financial system, the legislation established two objectives of critical importance to Latino families: mitigate rising foreclosure rates, and increase the flow of consumer credit. We are gravely disappointed that while banks seem to be stabilizing, struggling families have not experienced the same benefits.[10] TARP had two primary design flaws:

- **The U.S. Department of the Treasury did not require TARP recipients to provide loan modifications to homeowners at risk of foreclosure.** Instead, the Treasury relied on voluntary loan modification programs that have proven ineffective.
- **The Treasury did not require TARP recipients to increase credit flow to hard-hit communities.** The Treasury could have helped Latino and other underserved communities by increasing access to the affordable and safe financial products that are critical to stabilizing communities and building wealth.

Consequently, TARP has not reduced foreclosures for Latino and other hard-hit communities. Latino foreclosure rates continue to rise and housing counselors—who are on the frontlines trying to help families save their homes from foreclosure—continue to experience difficulties. Just as notable, TARP has not measurably increased the flow of credit to Latino and other impacted communities. Credit card companies have reduced card limits and raised interest rates, student loans are drying up, and flexible mortgage products, like those that accept nontraditional credit, have disappeared. Consumers living paycheck to paycheck are unable to tap affordable credit to cover gaps in income and instead rely on expensive and risky payday and car title loans. Furthermore, qualified homeowners are unable to purchase excess housing stock, a significant portion of which is in Latino, minority, and modest-income neighborhoods.

[10] Janet Murguía, *Rethinking TARP Implementation: Strategies to Reduce Latino Foreclosures* (Washington, DC: National Council of La Raza, January 2009), http://www.nclr.org/content/publications/detail/55452 (accessed December, 2009); National Council of La Raza, "NCLR Urges Congress to Include Homeowners in Bailout Bill," news release, September 23, 2008, http://www.nclr.org/content/news/detail/54073; National Council of La Raza, "Civil Rights Groups Call on Congress to Assist Homeownership in its Economic Recovery Package," news release, September 30, 2008, http://www.nclr.org/content/news/detail/54252.

Making Home Affordable

In March 2009, the Obama administration introduced the Making Home Affordable (MHA) loan modification program, which created a series of incentives for servicers to provide loan modifications to troubled borrowers. While we applaud the administration for its efforts in developing the most comprehensive response to the foreclosure crisis to date, program design and implementation flaws fail to prevent eligible homeowners from losing their homes to foreclosure.[11]

Design:

- **MHA allows servicers to start <u>foreclosure proceedings</u> on eligible homeowners.** Regulations prohibit lenders from sending families to foreclosure *sale* if they have applied for a loan modification, but does not stop foreclosure proceedings. Starting the foreclosure proceedings straps families with thousands of dollars in legal fees, which can jeopardize their loan modification if they cannot pay the fees prior to the loan modification.
- **MHA lacks strong enforcement mechanisms.** TARP recipients are required to participate in MHA. However, the Treasury has not implemented the enforcement structure necessary to ensure participants are complying with the rules.
- **The program does not fund foreclosure prevention counseling.** MHA requires families with debt equal to 55% or more of their income to enter a HUD-certified counseling program as a condition for a modification, but no funding has been dedicated to pay counseling agencies for this service. Many counseling agencies are operating at capacity and are struggling to keep up with the demands from the community.
- **Eligible applicants are entered into trial-period modifications even when full documentation is submitted.** Even when NHN counselors help families pull together a complete loan modification package, many are forced into trial-period modifications. Upon expiration, the entire process must be repeated in order to secure a permanent modification. This increases the workload of already overburdened and underfunded housing counseling agencies and is a source of great confusion and frustration for families.

Implementation:

- **MHA is not streamlined, efficient, or transparent.** Servicers continue to lose documents and take three to six months to respond to requests from borrowers and counselors. While waiting, many families may rack up late payments and legal fees, turn to foreclosure rescue scammers, or lose their homes. Despite repeated requests, servicers have refused to accept client authorization forms and workout packets electronically, which would make the loan modification process quicker and easier to track. Moreover, servicers often ignore the family's preference for working through a housing counselor, even when given a signed authorization form. This adds confusion for the families,

[11] Letter from NCLR with recommendations to the Making Home Affordable loan modification program to the U.S. Department of the Treasury, U.S. Department of Housing and Urban Development, and the administration, http://www.nclr.org/content/publications/download/59288.

especially those with limited English proficiency and who may need interpretation services.

- **Servicers are not offering loan modifications with principal forgiveness.** If the interest rate reduction is not enough to make the mortgage payment affordable, then, at minimum, a portion of the principal will be placed at the end of the loan as a balloon to be paid when the house is sold or the mortgage is paid off. MHA *encourages* servicers to forgive a portion of the principal, but most servicers are not doing so.
- **Latino families and others with limit English proficiency have difficulties securing loan modifications.** Our families turn to counseling services that are provided by trusted community-based organizations in Spanish and other languages, which are critical in helping them reach out to their lenders and secure loan modifications. Funding is not available for these agencies to hire and train more staff to meet the growing demand.
- **Families are stuck in trial-period modifications for more than four months.** NHN counselors report that the majority of MHA applicants are stuck in trial-period modifications and have not heard back from their servicers for several months. According to the Congressional Oversight Panel, as of September 1, 2009 only 1.26% of MHA modifications had become permanent after the anticipated three-month trial.[12]

Design flaws and breakdowns in the implementation process have hampered MHA's ability to curb foreclosures, especially in communities of color. Delays in processing applications, insufficient support for community-based counseling services, and lack of true consequences are allowing homeowners who are eligible for MHA to lose their homes. Furthermore, NCLR is seriously concerned about the overreliance on trial modifications, which allow for a "pause" in the crisis, but do not create sustainable solutions.

Private-Sector Response to the Foreclosure Crisis

Congress and the administration have relied heavily on voluntary efforts from the private sector that have proven ineffective. NCLR, along with other civil rights groups, has offered recommendations to policymakers and private industry to curb foreclosures, including: implement foreclosure moratoriums until federal initiatives could be fully operational; systematize loan modifications using a program similar to FDIC's "Mod in a Box"; increase capacity to address the magnitude of the foreclosure crisis; and work with HUD-approved housing counseling agencies to process loss mitigation requests efficiently and effectively. In response, many have cautioned against overreacting or going too far. However, more than two years of modest steps have not been enough to spur action that is proportional to the rate of home foreclosures and loss of wealth across the country.

NCLR is disappointed that there is not more positive information to report on the actions of the collective private sector. Specifically, NHN counselors report that:

- **The loss mitigation process is not effective.** Servicers routinely misplace documents, forcing families and counselors to fax the same documents multiple times. Servicers

[12] Congressional Oversight Panel, *An Assessment of Foreclosure Mitigation Efforts After Six Months* (Washington, DC: Congressional Oversight Panel, 2009), http://cop.senate.gov/documents/cop-100909-report.pdf (accessed December 4, 2009)

have refused to accept workout packets and documents electronically, which would allow for efficiency and transparency. Furthermore, there is no process set up to halt the foreclosure process once homeowners submit their loan modification workout packet, meaning many are foreclosed on while still waiting to hear from the servicer.

- **Investors are cited as opposing modifications.** While it is difficult to ascertain the exact cause, servicers still frequently report that they are unable to modify a loan or offer principal forgiveness due to guidance from the investor.
- **The loan servicing industry lacks capacity.** Despite efforts to increase staff support, there are strong indicators that servicers are still struggling to meet the growing demand for loss mitigation services. This is especially troubling given reports that a new wave of loan resets is expected in 2010.

Finally, despite reports on the national level of upturns in the economy, more than one in eight Black and Latino workers is unemployed. NHN counselors report that many of the families they are trying to assist have now become underemployed or unemployed. Yet, none of the federal programs offer a solution for the underemployed, leaving millions of families without a way to effectively avoid foreclosure.

Recommendations

NCLR recognizes that putting an end to the foreclosure crisis is no small task. The rapid decline of credit and housing markets, followed by record-high foreclosure and unemployment rates, created a sense of urgency and demanded action from Congress and two administrations. The programs established in response to the crisis contain strong elements that could provide much-needed relief to millions of families of color. However, design or implementation flaws prevent these initiatives from reaching as many families, especially those of color, as would otherwise be possible with practicable improvements.

NCLR has offered specific and detailed recommendations to Congress and the federal agencies charged with implementing these programs, which have been cited throughout our written statement. Below we summarize four recommendations common to all of the programs.

- **Make participation mandatory and enforceable for companies that accepted taxpayer funding.** Voluntary efforts are clearly not having the desired effect on the housing market. Private companies that accepted taxpayer funding to stabilize their balance sheets should be required to vet every delinquent loan for eligibility under the MHA program before starting foreclosure proceedings. Failure to do so should come with strict liability and enforcement.

- **Support community-based organizations involved in foreclosure prevention efforts.** The Department of the Treasury must ensure that housing counseling providers are more fully integrated into efforts to secure loan modifications. This can be accomplished directly by paying counseling agencies for their work similar to how Treasury pays servicers for each loan modification.

- **Hold federal programs publicly accountable for spending and performance.** Given the significant investment of taxpayer funds in each of the three programs discussed, there must be appropriate enforcement and oversight mechanisms to ensure that homeowners do not fall through the cracks. Specifically, mortgage servicers are required to provide data on loan modification approvals and denials by race and ethnicity to the Treasury. At the request of the servicers, however, the Treasury has agreed to not publicly release disaggregated performance data. This decision must be reversed.

- **Provide relief to those facing unemployment.** Policymakers should consider a range of loss mitigation tools for the underemployed and unemployed, including allowing judges to modify home mortgages in bankruptcy court; automatic and mandatory forbearance of government-insured loans, those backed by Fannie Mae and Freddie Mac, and other loans held or serviced by companies that received taxpayer subsidies; and affordable loans that can be repaid when the home is sold or the first lien is paid.