

**Commonsense Mortgage Origination Protections  
Empower Latino Homebuyers**

Presented at

**“Mortgage Origination:  
The Impact of Recent Changes on Homeowners and Businesses”**

Submitted to

**Subcommittee on Insurance, Housing, and Community Development  
U.S. House of Representatives Committee on Financial Services**

Submitted by

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Good afternoon. My name is Janis Bowdler, and I am the Director of the Wealth-Building Policy Project at the National Council of La Raza (NCLR)—the largest national Hispanic civil rights and advocacy organization in the United States. For the last four decades, NCLR has been committed to improving opportunities for the nation’s 50.5 million Latinos. To this end, NCLR conducts research, policy analysis, and advocacy on a variety of financial services issues that affect the ability of Latinos to build and maintain assets and wealth. I would like to thank Chairwoman Judy Biggert and Ranking Member Luis Gutierrez for inviting me to participate in today’s hearing.

For more than two decades, NCLR has engaged in public policy issues that focus on supporting strong fair housing and fair lending laws, increased access to financial services for low-income people, and promoting homeownership in the Latino community. And for more than ten years, the NCLR Homeownership Network (NHN)—a network of 50 community-based counseling providers—has been providing first-time homebuyers with the advice and guidance they need to navigate the mortgage process. NHN counselors have produced more than 25,000 first-time homebuyers over the last 13 years. NCLR’s subsidiary, the Raza Development Fund (RDF), is the nation’s largest Hispanic Community Development Financial Institution (CDFI). Since 1999, RDF has provided \$500 million in financing to community-based development projects throughout the country, building the capacity of local nonprofits and creating opportunities for Latino communities. Our research, programs, and market investments have increased NCLR’s institutional knowledge of how Latinos interact with the mortgage and financial markets and the impact on their communities.

NCLR strongly supports the Dodd-Frank Wall Street Reform and Consumer Protection Act. This landmark legislation includes new protections that will improve financial markets for Hispanic and immigrant consumers, a number of which will be under the jurisdiction of the newly created Consumer Financial Protection Bureau (CFPB). In addition, regulators are drafting rules that will guide the implementation of new remittance protections, underwriting standards, and mortgage reform. Though the majority of rules have yet to be finalized, NCLR has high hopes that the new rules will further the goals of Dodd-Frank by protecting consumers while maintaining market access.

In my brief comments today, I will draw your attention to three critical aspects of the mortgage origination process that are currently under consideration by Congress and federal regulators: the new Truth in Lending Act (TILA) disclosure being developed by CFPB; the Department of Housing and Urban Development’s (HUD) Housing Counseling Program; and the Federal Reserve’s pending rule to prohibit unfair steering practices.

## **Background**

Homeownership has long been the primary asset for most Americans, steadily building modest wealth that can leverage education, entrepreneurship, or retirement opportunities. When nurtured over a lifecycle, home equity can be shared with the next generation and further their

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\* 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.

financial security. Communities of color do not own homes at rates comparable to their White peers, which contributes heavily to the racial wealth gap.<sup>\*</sup> Civil rights institutions have fought for decades for policies that ensure that qualified borrowers of color are able to access the same homeownership opportunities enjoyed by the rest of the market. Unfortunately, policies to this end have been undermined by lax oversight of financial institutions, faulty implementation, and predatory lending. An abundance of research has shown that Black and Hispanic borrowers were disproportionately sold subprime loans, even when their income and credit profiles warranted standard prime loans.<sup>†</sup> For this reason, NCLR testified before this committee in favor of many of the policies that were eventually included in Dodd-Frank.<sup>‡</sup>

There is overwhelming evidence demonstrating that minority borrowers pay more to access credit than similarly situated White borrowers. This pattern of overpayment, abuse, and discrimination disrupts the financial stability of low-income and minority communities, and impedes their upward mobility toward the middle class. The following is a summary of four critical barriers that NCLR identified prior to the passage of Dodd-Frank which characterized how the banking and financial services markets drain wealth rather than build it. These barriers demonstrate the need for improved regulatory systems, industry practices, and consumer supports.

- **Shopping for credit is nearly impossible.** Few shopping tools exist that can help borrowers create true apples-to-apples cost comparisons. As a result, some borrowers forgo shopping altogether while others rely on intermediaries, such as mortgage brokers or auto dealers, to shop on their behalf. Numerous studies and reports showing deception and hidden costs through these delivery channels demonstrate that brokers and dealers do not operate in a manner that truly benefits the borrower consistently.
- **Borrowers are steered toward expensive products regardless of creditworthiness.** Many low-income and minority borrowers have unique borrower profiles—such as thin credit files, multiple co-borrowers, or multiple sources of income—that are not easily processed through automated underwriting. Rather than taking the time to match these consumers with existing products that accurately measure their true risk, lenders would steer borrowers toward products that were easier to originate and highly profitable. Prior to Dodd-Frank, mortgage brokers and loan officers were paid kickbacks for putting consumers in loans with higher interest rates than their credit warrants.<sup>§</sup>

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<sup>\*</sup> The racial wealth gap leaves the average American family of color with only 16 cents for every dollar owned by the average White family. Wealth is what you own minus what you owe: assets minus debts. For more information, see Meizhu Lui, *Laying the Foundation for National Prosperity: The Imperative of Closing the Racial Wealth Gap* (Oakland, CA: Insight Center for Community Economic Development, 2009).

<sup>†</sup> Robert B. Avery, Kenneth P. Brevoort, and Glen Canner, “The 2007 HMDA Data,” *Federal Reserve Bulletin* 94 (December 23, 2008); 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).

<sup>‡</sup> Janet Murguía for the National Council of La Raza, *Laying the Foundation for Improved Access to Credit for Hispanic Families*, before the U.S. House of Representatives Committee on Financial Services, July 16, 2009, [www.nclr.org/images/uploads/publications/RegReform\\_testimony\\_final.pdf](http://www.nclr.org/images/uploads/publications/RegReform_testimony_final.pdf) (accessed July 2011).

<sup>§</sup> *Eliminating Systematic Charges on Home Loans: Fed Rules on Yield Spread Premiums* (Durham, NC: Center for Responsible Lending, 2010); Susan E. Woodward, *A Study of Closing Costs on FHA Mortgage*. Office of Policy Development and Research, U.S. Department of Housing and Urban Development. Washington, DC, 2008, [www.urban.org/UploadedPDF/411682\\_fha\\_mortgages.pdf](http://www.urban.org/UploadedPDF/411682_fha_mortgages.pdf) (accessed July 2011); and Keith Ernst, Debbie

- **Creditors trap borrowers in cycles of debt.** For some subprime borrowers, excessive fees, high interest rates, prepayment penalties, and mounting debt effectively trap them in the subprime market. For example, the pervasive use of loose underwriting criteria led to the origination of loans that homeowners could never afford to repay. The mortgage industry wagered that the value of home prices would continue to climb and clients would refinance if their mortgage product became too expensive. This practice led many families into a downward spiral of wealth-draining refinances that has contributed heavily to the current mortgage crisis.
- **Fraud and scams are rampant.** Compounding the impact of predatory lending and the gaps in consumer protections is the rise of fraud and scams targeting victims of burdensome debt and foreclosure. Research conducted by the Federal Trade Commission (FTC) shows that 14.3% of Hispanics are victims of fraud, compared to 6.4% of non-Hispanic Whites.\* From fake credit cards claiming to help families build credit to foreclosure rescue scams claiming to help families save their home, fraud is on the rise.

Many have recognized the shortcomings of the mortgage system that led to the housing bubble and today's foreclosure disaster. The lack of transparency and accountability, as well as the increasing complexity of mortgage products made it difficult for even the most diligent borrower to shop effectively. In such an environment, deceptive actors had their way at the expense of responsible lenders, homeowners, and taxpayers. The protections established in Dodd-Frank respond directly to this situation. Implemented properly, the regulations should advance a mortgage market that works more fairly for all.

### **Empowering Homebuyers at Origination**

Homeownership stakeholders must work together to ensure that the mortgage market treats consumers and honest dealers fairly and maintains a responsible flow of credit to qualified borrowers. Dodd-Frank established new provisions intended to further this goal. However, final regulations must be drafted and implemented before reform is fully realized. NCLR plans to submit public comment on key proposed rules, and we encourage others to leverage the rulemaking process to help refine final regulation. In response to questions raised during this hearing, we offer our perspective on three elements of origination currently under public debate.

#### *Revised TILA Disclosure*

One of the most daunting challenges for homebuyers, especially those new to the process, is comparing loan terms and offers. The Good Faith Estimate (GFE) was intended as a shopping tool that would allow borrowers to determine which loan made sense for their personal circumstances. Several challenges made the GFE less effective than intended. NHN housing counselors point out that the GFE is frequently delayed, sometimes during closing, and comes too late in the process to inform borrower decision-making. Similarly, the TILA disclosure is

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Gruenstein Bocian, and Wei Li, *Steered Wrong: Brokers, Borrowers, and Subprime Loans* (Durham, NC: Center for Responsible Lending, 2008), [www.responsiblelending.org/mortgage-lending/research-analysis/steered-wrong-brokers-borrowers-and-subprime-loans.pdf](http://www.responsiblelending.org/mortgage-lending/research-analysis/steered-wrong-brokers-borrowers-and-subprime-loans.pdf) (accessed July 2011).

\* Federal Trade Commission, *Consumer Fraud in the United States: An FTC Survey*. Washington, DC, 2004.

given at the time of closing when few borrowers are in a position to walk away from the deal. Both forms have been criticized for giving too little or too much information, causing confusion, and being burdensome for lenders. For these reasons, Dodd-Frank requires the two forms to be combined, revised, and given to borrowers three days after they have submitted a mortgage application.

NCLR applauds the CFPB for its progress so far in developing and evaluating a revised GSE/TILA disclosure. The online feedback tool is transparent and makes it simple for a broad audience to provide input on the design and content. NCLR distributed the link to NHN organizations and encouraged them to share their critiques as experts working with first-time homebuyers. According to the CFPB website, more than 13,000 comments were submitted during the first round. In addition to the innovative comment process, CFPB co-developed its Spanish-language version of the disclosure. Word-for-word translations are often problematic and fail to effectively communicate the same meaning, tone, and purpose as the original English. Rather than a strict translation, best practice calls for applying the same creative thinking used to develop plain English to draft terms and phrases in Spanish. Using such a process will help CFPB create a document that is culturally relevant, easy to understand, and user-friendly. We urge CFPB to use the online comment tool to solicit comments on the Spanish version of the disclosure as well.

The TILA disclosure is not a substitute for responsible underwriting by lenders. However, a well-written disclosure can be an important tool to help borrowers understand the terms of their loan. CFPB staff are wise to undergo a thorough drafting and testing process before publishing a final version for public comment. It is our understanding that additional rounds of edits and testing are forthcoming. We look forward to participating in this process and offering additional comments and feedback.

### *Prepurchase Housing Counseling*

The Housing Counseling Assistance Program administered by the Department of Housing and Urban Development (HUD) was established in 1968. Early on, the program focused on Federal Housing Agency (FHA) mortgage insurance borrowers, however, over time the scope of the program has broadened to focus on providing education and advice to first-time homebuyers. Over the last decade, the Housing Counseling Assistance Program has adapted to a dynamic housing market by increasing its capacity and sophistication. Today, many housing counselors have mortgage origination experience and provide objective information, advice, and guidance to homebuyers.

Prepurchase programs are delivered before individuals become homeowners, and focus on assisting prospective homeowners to qualify for a mortgage, apply successfully, and succeed as homeowners. Indeed, research has shown that borrowers who receive prepurchase counseling are less likely to default than their peers.\* During the bubble years of 2004–2007, housing

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\* Chris Herbert for the Joint Center for Housing Studies of Harvard University, “Housing Counseling: Past and Future Trends” (presented at Housing Counseling Intervention: Research and Impact briefing, June 21, 2010), [www.995hope.org/press-media/related-research-and-downloads/Mortgage-Counseling-Benefits-Validated](http://www.995hope.org/press-media/related-research-and-downloads/Mortgage-Counseling-Benefits-Validated) (accessed July 2011).

counselors often competed with realtors, lenders, and loan brokers offering unrealistic loans, many of which were outright predatory. Housing counselors had the less popular job of instructing clients on the steps necessary to enter safely into homeownership—steps that were often seen by originators as a roadblock to a fast and lucrative closing.

Precisely because housing counseling has been so effective, Congress's elimination of funding for the annual allocation for HUD's Housing Counseling Assistance Program represents a huge loss for homebuyers and for communities of color in particular. Homebuyers already struggling to beat out cash-laden speculators for properties in their own neighborhoods will find themselves even more imperiled absent a counseling infrastructure that can aid in the transaction. Moreover, at a time when most federal efforts to curb foreclosure rates have fallen far short of their goals, the HUD Housing Counseling Assistance Program has stood out as an efficient use of resources. Last year, certified housing counseling agencies helped 469,484 clients who were delinquent on their mortgages successfully avoid foreclosure, preventing approximately \$28 billion in damage to the economy and reducing lender losses.

Experience shows that the loss of community-based counseling services will leave a void that is likely to be filled by scam artists. Unscrupulous activity will continue to be particularly acute in communities of color, where predatory practices have been in play for decades. Rather than ax the program, Congress and HUD should look for ways to integrate prepurchase counseling into the origination process. Federal funding has never been intended to be the sole source of support for the counseling program. However, without the infrastructure created by HUD, the counseling field will be unable to maintain its depth and capacity. Truly, the HUD Housing Counseling Assistance Program is an excellent example of an effective and highly functional public-private partnership. NCLR urges Congress to fully fund the program at \$88 million in the 2012 budget.

### *Preventing Unfair and Deceptive Steering*

The misalignment of incentives at the origination level was a primary cause of the housing bubble. Simply put, brokers and originators were paid more for steering creditworthy borrowers into expensive loans with risky terms such as high upfront fees, interest-only payments, negative amortization, and exploding interest rate adjustments. This practice was especially common among Latino borrowers, as described in the background section above. To address this issue, the Federal Reserve solicited public comment on a proposed rule, which was the product of years of study, public hearings, and earlier rulemaking.\* Dodd-Frank supported the direction of the Federal Reserve by incorporating two provisions—a duty of care for mortgage originators and prohibitions on compensation-based incentives to steer—that closely track the Federal Reserve's proposed rule.

Steering was one of the most egregious deceptive lending tactics employed against Hispanic borrowers. Therefore, we strongly support the commonsense regulations proposed by the Federal Reserve, further cemented by Dodd-Frank. The proposed rule rightly prohibits compensation based on the terms of the loan, excluding principal, as well as other protections.

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\* Janis Bowdler for the National Council of La Raza, *The Impact of the Home Equity Lending Market on Latino Consumers*, before the Board of Governors of the Federal Reserve System, August, 15, 2006.

The rule does not eliminate the ability of originators to be paid for their work to package and close a mortgage loan.

Mortgage brokers play an essential role in helping Latino families purchase their homes, especially when Spanish is their preferred language. Like housing counselors, many brokers use a one-on-one style that appeals to consumers making such a critical and confusing decision. Unfortunately, this trust was not honored by many unscrupulous brokers, causing irreparable harm to families and honest brokers.\* In fact, the harm done by deceptive brokers and the inability of banks to control the delivery channel is one reason why lenders have all but eliminated their wholesale units. The steps taken by the Federal Reserve are reasonable and will help to restore trust and confidence in the system. We support the full implementation of the final rule. In addition, as the CFPB assumes oversight, we encourage the Federal Reserve to work closely with them to harmonize their work. Such opportunities lay in the development of the new mortgage disclosure forms and the proposed rule on Qualified Residential Mortgage (QRM) and Qualified Mortgage (QM). Furthermore, we recommend strict oversight of other mortgage fees to protect consumers from absorbing potential cost-shifting on the part of mortgage lenders, and full disclosure of all associated fees.

## **Conclusion**

In sum, NCLR supports the mandates of Dodd-Frank that further a responsible and accessible mortgage market that rewards honest lenders and aids qualified homebuyers and homeowners. In our testimony, we offered three modest recommendations: make the Spanish TILA disclosure available for public comment via CFPB's online feedback tool; fund the HUD Housing Counseling Assistance Program at \$88 million; and implement the Federal Reserve's rule on steering as well as protections for borrowers from potential cost-shifting fees.

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\* Janis Bowdler and Timothy Sandos, *Saving Homes, Saving Communities: Latino Brokers Speak Out on Hispanic Homeownership* (San Diego, CA: National Association of Hispanic Real Estate Professionals/Washington, DC: National Council of La Raza, 2007), [www.nclr.org/index.php/publications/saving\\_homes\\_saving\\_communities\\_latino\\_brokers\\_speak\\_out\\_on\\_hispanic\\_homeownership](http://www.nclr.org/index.php/publications/saving_homes_saving_communities_latino_brokers_speak_out_on_hispanic_homeownership) (accessed July 2011).