

# A SNAPSHOT OF COMPLIANCE WITH CFPB SERVICING STANDARDS



## INTRODUCTION

The housing crisis cost families generations of wealth. In the years before the crisis, communities of color and low- and moderate-income communities in particular were disproportionately targeted by abusive lending practices. Studies indicate that **Latino and Black homeowners were more likely to receive high-risk and costlier mortgages** than their White counterparts despite having comparable credit profiles.<sup>1</sup>

The size and scale of the foreclosure crisis required a vastly different approach to mortgage servicing. New standards and structures lagged behind consumers' needs. As a result, servicers would take months, and in many cases years, to make a decision on a homeowner's application for a mortgage modification. Servicers would routinely and repeatedly lose documents submitted by homeowners and then deny the homeowner's application because he had missed a deadline as a result of the losses. They would proceed with foreclosures even while considering a homeowner's application to save her home. These and other abusive servicing practices resulted in many foreclosures that could and should have been avoided, and many families lost their homes. It was clear that comprehensive improvements to the servicing system were essential.

The Consumer Financial Protection Bureau (CFPB) identified this need and took steps to provide clear standards that would streamline services. On January 10, 2014, it implemented new mortgage servicing standards, with public input, that sought to halt predatory practices and help families stay in their homes. Without these, homeowners would continue to bear the burden of disjointed servicing practices and remain at risk of unnecessarily losing their homes and decades of accumulated wealth, sometimes due to just a technical glitch.

The rules protect homeowners by prohibiting or severely restricting some of the worst servicing practices, such as dual tracking, in which

ARE MORTGAGE SERVICERS  
FOLLOWING THE NEW RULES?

[www.nclr.org](http://www.nclr.org)

a servicer proceeds with a foreclosure even while it considers a borrower for a loan modification. In addition, the new servicing rules make home-saving loan modifications more available by requiring servicers to evaluate homeowners for all offered loss mitigation options, they prohibit servicers from starting a foreclosure until the borrower is at least 120 days delinquent, and they seek to address the deplorable customer service that has been a hallmark of many mortgage servicing companies.

For many years, the National Housing Resource Center (NHRC)\* and the National Council of La Raza (NCLR)<sup>†</sup> have worked to end harmful servicing practices. Both organizations inform the policy debate by regularly testifying on the matter<sup>2</sup> and collecting stories from housing counselors, families, and other stakeholders about enduring market challenges.<sup>3</sup> To better understand whether servicers are meeting their obligations, NHRC and NCLR conducted a survey of housing counselors from throughout the country. Housing counselors regularly work with homeowners facing foreclosure and are uniquely suited to provide information on servicer compliance. Housing counselors have considerably more direct experience working with servicers than individual homeowners because they serve as an intermediary between clients and servicers, they have the experience to compare the performance of different servicers, and they are well informed about the mortgage servicing rules. Accordingly, a national survey of housing counselors provides valuable insight into the implementation of the new servicing regulations and their effect on homeowners.

The survey results show that aspects of the rules substantially mitigated bad practices in mortgage servicing, while other servicing practices still need improvement.<sup>‡</sup> In addition, there are key issues for communities of color that remain unaddressed by the standards. For example, the standards failed to incorporate the needs of borrowers with limited English proficiency—an obstacle that causes many homeowners to miss out on affordable modifications even though they might qualify. While the new CFPB standards represent a step in the right direction, there is still work to be done to ensure that families remain in their homes. NHRC and NCLR developed recommendations featured at the conclusion of this report to enhance these standards for homeowners.

\* The National Housing Resource Center is an advocate for the nonprofit housing counseling community, as well as for housing consumers, communities of color, the elderly, and underserved populations. [www.hsgcenter.org](http://www.hsgcenter.org)

<sup>†</sup> NCLR—the largest national Hispanic civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans. NCLR created the NCLR Homeownership Network (NHN) to provide pre-purchase homeownership counseling directly to the Hispanic community. The NHN consists of nearly 50 community-based nonprofits throughout the nation. The NHN homeownership counseling model emphasizes one-on-one counseling in which trained counselors work with low-income families over a period of time to help them become mortgage-ready. This individual attention is critical to low-income Latino families who may be unfamiliar with the home-buying process.

<sup>‡</sup> The CFPB has subsequently [opened a public comment period](#) to improve these servicing standards. This is an encouraging request, and we recommend that stakeholders take the opportunity to submit their recommendations. Read [NCLR's testimony](#) on the consumer experience for more information.

## ABOUT THE SURVEY

The survey, conducted between June 25 and August 16, 2014, was circulated to several housing counselor networks, including NHRC's Leaders in Housing Counseling list server and the NCLR Homeownership Network. Not every respondent answered every question, so the number of responses varies for each question, ranging from 139 to 163. Respondents were geographically diverse, representing 35 states and Washington, DC.

The survey questions generally focused on whether servicers are following the new servicing rules. The questions briefly describe the servicer requirement and ask how often servicers comply with the rule: "Always," "Frequently/Often," "Occasionally," "Rarely," "Never," or "Not Enough Information to Answer." If the respondent chose "Not Enough Information to Answer," the response was not included in the findings. Respondents were also given the opportunity to provide additional information in open-ended responses.

Because housing counselors continue to tell us that servicers are not adequately meeting language access needs, the survey also included questions on this topic. Language access, which refers to servicers providing and accepting written and oral communications in languages other than English for homeowners with limited English proficiency, was not addressed in the new rules.

## SUMMARY

As indicated in the NHRC and NCLR joint survey, the servicing standards have had a positive impact in their first year. However, more must be done to make course corrections in the housing market and ensure that homeowners are treated fairly by servicers. The mortgage standards are an opportunity to improve their business protocols and rebuild customer loyalty. Working with families to stay in their homes results in stronger family balance sheets, better outcomes for neighborhoods, and more trusted relationships with consumers. Strong servicing standards are a win-win situation with an eye toward long-term growth and recovery rather than short-term, unsustainable practices. The following findings can both inform the CFPB on improving standards in 2015 and give servicers recommendations to systemically enhance their own approaches.

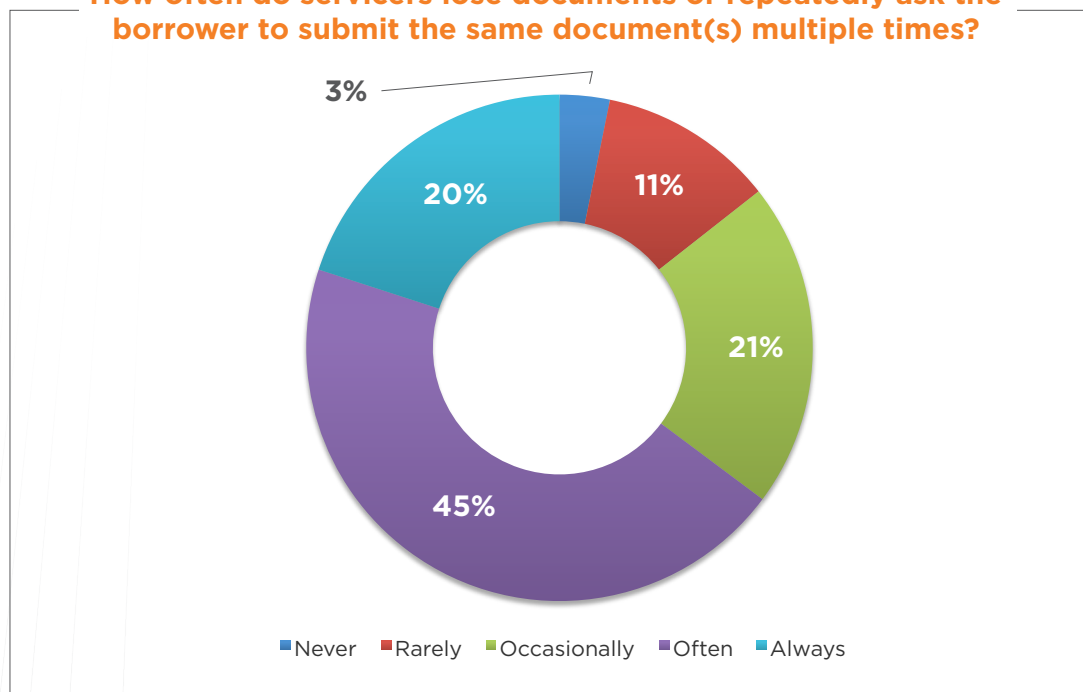
## FINDINGS

4

1. There is widespread noncompliance with rules relating to servicers losing homeowner documents, missing required deadlines for communicating with borrowers, and helping heirs with a modification in the event of the mortgage holder's death. Majorities of housing counselors reported noncompliance with a number of the rules.

- **Lost documents:** 65% of housing counselors said that servicers always or often lose documents or repeatedly ask borrowers to submit the same documents.

**How often do servicers lose documents or repeatedly ask the borrower to submit the same document(s) multiple times?**

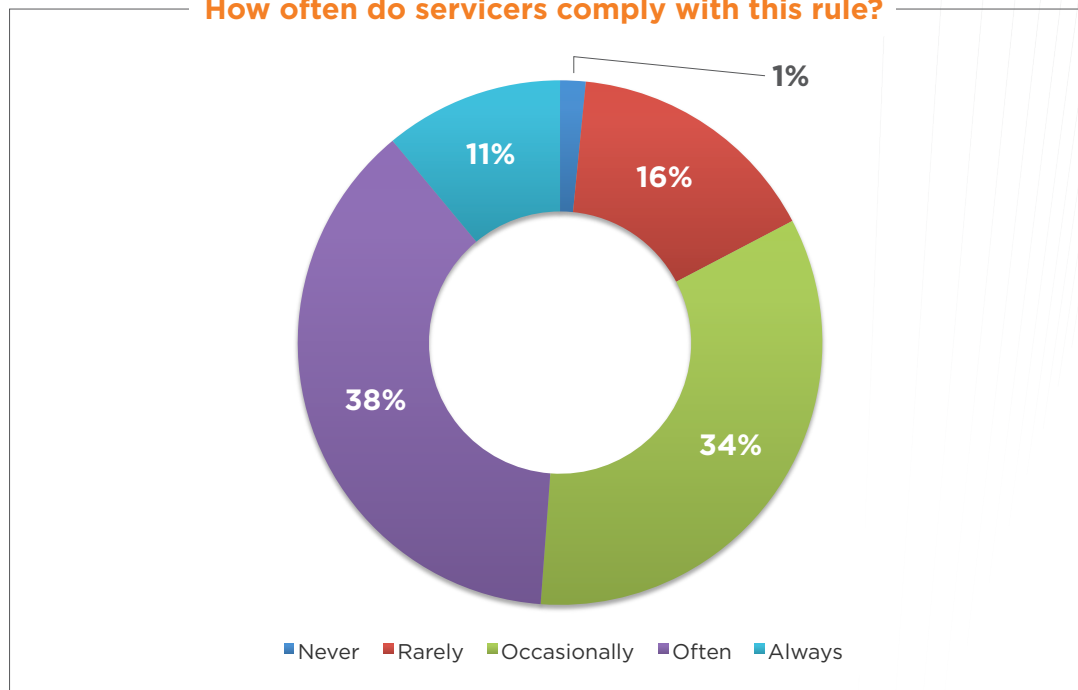


"It happens all of the time. I submitted a complete RMA [Request for Mortgage Assistance] to [a servicer] just last week and they stated they were missing one page. I'm not sure how that can be as the file was a PDF and 19 pages of the document are there and visible."

*-Housing Counselor, Redmond, OR*

- **Lack of diligence in obtaining missing documents:** 51% of respondents said that servicers occasionally, rarely, or never exercised reasonable diligence to obtain missing documents or information.

**How often do servicers comply with this rule?**

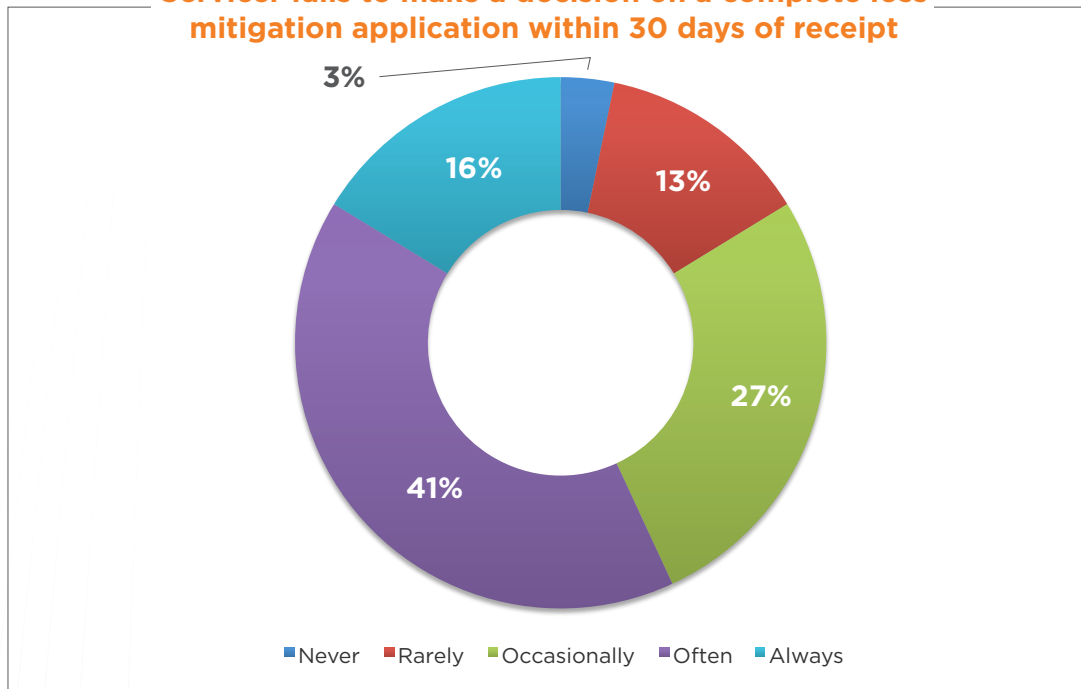


“It is rare to get a prompt notice specifying which additional documents are needed to complete the application. We generally have to call to get the information. If we wait for a notice, it comes weeks later...Their notices are virtually incomprehensible. They will re-request documents that have already been supplied, without identifying the problem or issue that causes them to be insufficient. For example, one recent notice said only that ‘further information may be needed’ regarding bank statements—without specifying the information. I had to call to find out what was needed (it turned out to be identification of some cash deposits.)”

—Housing Counselor, Oregon City, OR

- **Missing required deadlines:** 57% of housing counselors reported servicers always or often failed to make a decision on a complete loss mitigation application within the required 30 days, and 35% responded that servicers rarely or never send a written acknowledgment of receipt of a loss mitigation application within the required five business days.

**Servicer fails to make a decision on a complete loss mitigation application within 30 days of receipt**

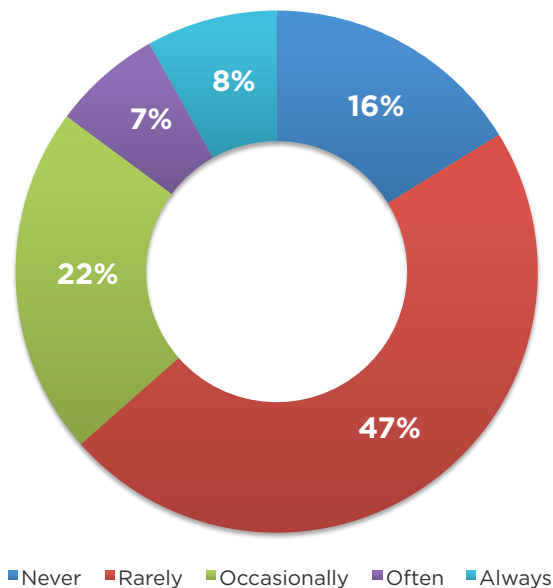


“[One servicer’s] information was given only when [the] case went to the Rhode Island state mediator, who got the information sent to the counselor who shared it with the people denied. [Another servicer] will not modify older loans...and does not give reasons for denial.”

*–Housing Counselor, Woonsocket, RI*

- **Deceased borrowers:** 63% of housing counselors reported servicers rarely or never had required policies in place to promptly identify and communicate with a successor in interest for a deceased borrower.

**In your experience, how often do servicers comply with this rule?**



“Lenders usually refuse to speak or work with survivors of the deceased.”

–Housing Counselor, Chicago, IL

## 2. Servicer noncompliance remains high for rules involving a single point of contact, initiating foreclosure before the legal deadline of 120 days, and dual tracking.

- **Points of contact rule:** 25% of counselors reported servicers rarely or never assign one or more points of contact who are easily accessible by phone and familiar with the borrower’s case.

“[S]ervicers often assign single points of contact whom are extremely difficult to reach in my experience.”

–Housing Counselor, Brooklyn, NY



- **Prohibition on initiating foreclosure before borrower is 120 days delinquent:** 19% of housing counselors said servicers occasionally, rarely, or never comply with this rule.

“[Most servicers] will violate this rule every time they can get away with it. Sometimes homeowners will call and get a housing counselor that recognizes that the rule was violated but there are a lot of homeowners who are clueless about the rules and unfortunately believe that the lender knows what they are talking about.”

*–Housing Counselor, Covington, KY*

- **Dual tracking—37 day rule:** 19% of counselors say servicers rarely or never comply with the prohibition on initiating a foreclosure while in receipt of a complete loss mitigation application at least 37 days before a scheduled foreclosure sale.

“The problem is that the servicer often takes issue with documents provided in the submission package and drags out the request until the app is no longer timely, thus requiring updated documents. This then enables the servicer to say that the application is not ‘complete’ and can dual track all they want.”

*–Housing Counselor, Santa Rosa, CA*

**3. Language access continues to be a major issue for homeowners not fluent in English.** Many borrowers with limited English proficiency were sold mortgages in non-English languages but are now faced with extreme hardships, including losing their homes, because their mortgage servicer is unwilling to work with them in their preferred language.

- **Non-English written communication:** 48% of counselors reported that servicers rarely or never provide written communications to limited-English-proficient (LEP) borrowers in their preferred language.

“I have clients whose primary language is Spanish, Chinese, Russian, etc. I have never seen documents provided in any language other than English.”

*–Housing Counselor, Oregon City, OR*



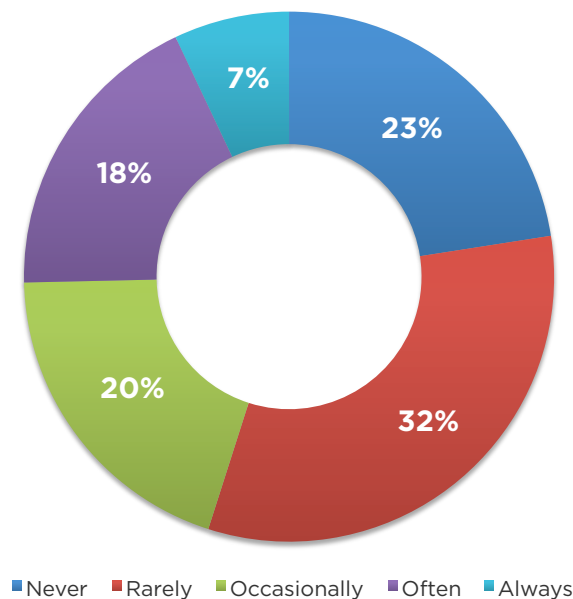
- **Point of contact fluency:** 44% of counselors said assigned points of contact were never or rarely fluent in the borrower's preferred non-English language.

"Yes. My clients...never received any translation service from their servicers."

*-Housing Counselor, Chicago, IL*

- **Translator knowledge:** 55% of housing counselors said that when translators were provided, the translators never or rarely had both a technical understanding of relevant mortgage servicing issues and fluency in the target language.

**Servicer provides a translator fluent in borrower's preferred language who also understands the technical aspects of the case and loss mitigation**



"Sometimes it is very difficult to get a Spanish speaker. Borrowers state that they have to wait longer to get assistance from a Spanish speaker with most of the servicers."

*-Housing Counselor, North Las Vegas, NV*

- **Accepting official government documents:** 23% said servicers always or often refused to accept official U.S. government documents that are approved for use in languages other than English, including Social Security income documentation and the HAMP Request for Mortgage Assistance.

“I was told by our counselor who does all of our Spanish-speaking clients that she has to redo the RMA in English, and that all forms must be in English.”

*–Housing Counselor, Kingman, AZ*

## RECOMMENDATIONS

All homeowners deserve observance of the CFPB’s improved protections that are now required by law. Underserved communities of color in particular stand to benefit from resolutions to the issues raised in the survey and to improvements in servicing practices. It is clear that some of the servicing standards are working as intended. However, to ensure that families have the best opportunity to remain in their homes, NHRC and NCLR recommend several ways to improve the standards and steps that servicers can take to improve their compliance with the standards.

1. **Engage the housing counseling community to better understand what is and is not working in real time.**<sup>4</sup> Housing counselors are uniquely qualified to understand and report how the new servicing rules are playing out in the community. Counselors help many homeowners navigate the loss mitigation process, deal with many different servicers, and understand the CFPB rules, as demonstrated through this survey. Counselors see each day whether servicers are following the rules, which servicing issues must still be addressed, and examples of success. CFPB and servicers should regularly engage the housing counseling community to discuss servicer compliance and how counselors can assist in finding positive outcomes for delinquent borrowers.
2. **Address language access issues.** The survey shows that servicers’ failure to communicate effectively with borrowers with limited English proficiency remains a major unresolved issue. Servicers fail to provide written communication in borrowers’ preferred non-English language, fail to provide adequate oral translation services for LEP borrowers, and refuse to accept official government documents such as Social Security documentation and the HAMP Request for Mortgage Assistance in languages other than English. Servicers should examine their practices related to LEP borrowers and hire the staff necessary to ensure that materials and single points of contact are available in a borrower’s primary language. Servicers can also work more closely with housing counselors, including in fee-for-service models, who have proven issue-area expertise and deep linguistic capability. In addition,

the CFPB should address language access in mortgage servicing immediately through new rulemaking.

**3. Address the issue of servicers continuing to lose documents in an additional rulemaking.** Counselors report that lost documents remain a serious problem. In addition to being a source of major frustration for homeowners and counselors, lost documents can cause homeowners to miss critical deadlines and, consequently, forfeit important protections. The lost documents issue is not covered by the current rules and CFPB should address this in additional rulemaking. Specifically, CFPB should:

- Require the initial written acknowledgment to include a checklist of required documents that clearly indicates which documents and information have been received and which are needed to complete the application.
- Require written acknowledgement within five business days of all documents and information submitted.
- Deem the date when a servicer receives all documents and information specified in the initial written acknowledgement as the date when the servicer has received a complete application.
- Impose penalties if a servicer requests additional documents and/or information not specified in the initial written acknowledgment or asks the homeowner to resubmit any documents and/or information for which the homeowner has received a written acknowledgement of receipt.

**4. Fix the complete application requirement.** Currently a homeowner receives protections once a servicer deems a loss mitigation application complete. This structure gives servicers undue control over whether or not homeowners receive the benefits of the rules. Instead, homeowner protections should be triggered by a borrower's submission of an initial application (which includes a request for modification assistance or similar application, documentation of income, and IRS Form 4506-T authorizing release of the homeowner's tax returns).

**5. Step up enforcement actions.** CFPB announced in September 2014 that it was taking its first enforcement action under the new rules against Flagstar Bank for violations including untimely processing of loss mitigation applications, failing to notify borrowers their applications were incomplete, wrongly denying applications, and failing to convert trial modifications to permanent modifications when they should have. This is a strong and important first step, and many of the issues addressed by this first CFPB action were identified by counselors in our survey. However, the survey also demonstrates that noncompliance is still an issue, even one year after the standards were put into place. The CFPB should expand the use of its enforcement authority to ensure compliance with the rules.

## ENDNOTES

12

- 1 Debbie Gruenstein Bocian and Roberto Quercia, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures* (Durham, NC: Center for Responsible Lending and Center for Community Capital, November 2011), [www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf](http://www.responsiblelending.org/mortgage-lending/research-analysis/Lost-Ground-2011.pdf) (accessed December 17, 2014).
- 2 National Housing Resource Center, "Mortgage Servicing Standards Comments by Housing Counseling Agencies," comments to CFPB, October 9, 2012, [www.hsgcenter.org/wp-content/uploads/2013/01/Servicing-Standards-Comments-2012-10-Housing-Counseling-Agencies.pdf](http://www.hsgcenter.org/wp-content/uploads/2013/01/Servicing-Standards-Comments-2012-10-Housing-Counseling-Agencies.pdf) (accessed December 17, 2014); and Lautaro Lot Diaz for the National Council of La Raza, "The Impact of Dual Tracking on Communities of Color," comments to CFPB, January 17, 2013, [www.nclr.org/index.php/publications/the\\_impact\\_of\\_dual\\_tracking\\_on\\_communities\\_of\\_color/](http://www.nclr.org/index.php/publications/the_impact_of_dual_tracking_on_communities_of_color/) (accessed December 17, 2014).
- 3 NCLR, "Dual Tracking: Pushing California Families into Foreclosure," <https://www.youtube.com/watch?v=bNW27Hqg3Ko> (accessed December 17, 2014).
- 4 Lautaro Lot Diaz for the National Council of La Raza, *Housing Finance Reform and the Consumer Experience: The Importance of Housing Counseling*, 113th Cong., 1st sess., [www.nclr.org/index.php/publications/housing\\_finance\\_reform\\_and\\_the\\_consumer\\_experience](http://www.nclr.org/index.php/publications/housing_finance_reform_and_the_consumer_experience) (accessed December 17, 2014).

This publication was produced in association with the National Housing Resource Center.

Photo by Southwest Key Program Austin, TX