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NATIONAL COUNCIL OF LA RAZA

Protecting Latino Wealth: Alternatives to Foreclosure

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Possible Responses to Rising Mortgage Foreclosures

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Submitted by:

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My name is Janis Bowdler, Senior Policy Analyst on Housing at the National Council of La Raza (NCLR). NCLR is the largest national Hispanic civil rights organization in the U.S., dedicated to improving opportunities for Hispanic Americans. I conduct research, policy analysis, and advocacy on affordable homeownership, and provide technical assistance to NCLR housing counseling grantees. Prior to coming to NCLR, I worked for a large community development corporation (CDC) in Cleveland, Ohio, as a Project Manager developing affordable housing. During my time at NCLR, I have published on a number of housing issues important to the Latino community, including *American Dream to American Reality: Creating a Fair Housing System that Works for Latinos* and *Jeopardizing Hispanic Homeownership: Predatory Practices in the Homebuying Market*. In addition, I recently provided expert testimony before the U.S. Senate Committee on Banking, Housing, and Urban Affairs and before the Board of Governors of the Federal Reserve. On behalf of NCLR, I would like to thank Chairman Frank and Ranking Member Bachus for inviting us to this hearing. The alarming rate of foreclosure is clearly one of the most pressing civil rights issues before us today. Latinos will be among the most affected by the coming storm unless we respond thoughtfully.

For more than two decades, NCLR has actively engaged in relevant public policy issues such as preserving and strengthening the Community Reinvestment Act (CRA) and the Home Ownership and Equity Protection Act (HOEPA), supporting strong fair housing and fair lending laws, increasing access to financial services for low-income people, and promoting homeownership in the Latino community. In addition to its policy and research work, NCLR has been helping Latino families become homeowners for nearly ten years as a sponsor of housing counseling agencies. The NCLR Homeownership Network (NHN), a network of 42 community-based counseling providers, works with 20,000 families annually, nearly 3,000 of whom become homeowners. Our subsidiary, the Raza Development Fund (RDF), is the nation's largest Hispanic Community Development Financial Institution (CDFI). Since 1999, RDF has provided $400 million in financing for locally-based development projects throughout the country, building the capacity of local nonprofits and creating opportunities for Latino communities. These relationships have increased NCLR's institutional knowledge of how Latinos interact with the mortgage market.

The rising foreclosure rates are a concern to all. We commend the members of this committee for bringing together a diverse group of stakeholders to discuss potential solutions to the problem. Much like all Americans, Latinos rely on homeownership to build wealth for their long-term financial well-being. With research predicting that one in 12 loans to Latinos will end in foreclosure,[1] the hallmark of the American Dream is threatening to leave millions of families without homes, access to credit, or a financial safety net. However, it is not too late to save the homes of thousands of hardworking Latinos across the country.

To spare thousands of Latino and other vulnerable families the devastating experience of foreclosure, NCLR is proposing three complementary approaches: increasing access to independent Department of Housing and Urban Development (HUD)-certified foreclosure prevention counseling, creating sustainable rescue loan products, and ensuring protection from predatory and fraudulent scams.

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[1] Schloemer, Ellen, Wei Li, Keith Ernst, and Kathleen Keest, *Foreclosures in the Subprime Market and Their Cost to Homeowners*. Washington, DC: Center for Responsible Lending, December 2006.

Background

Many Latino families face significant barriers to sustainable homeownership. Their unique borrower profiles – such as multiple wage earners and thin credit histories – make them unattractive to many lenders who rely heavily on automated underwriting. Many subprime lenders move quickly to fill the gap between market demand and services provided. As a result, many Latinos are finding themselves in expensive and sometimes risky mortgage products, even when they are not high-risk borrowers. Lenders and mortgage brokers have incentives to put borrowers in higher-cost loans, while borrowers have little information about what goes on behind the scenes. In this situation the borrower holds all the risk.

NCLR has responded to these challenges by investing significantly in independent homeownership counseling. NHN has been working in low- and moderate-income Latino communities for ten years. Traditionally, NHN organizations have focused their efforts on helping families build wealth through homeownership. Two years ago, we recognized the growing demand for services that help families protect and maintain their home equity. NCLR launched a pilot program within NHN to add post-purchase service lines. The pilot began with eight organizations in the first year and nearly doubled to 15 in the second year. We plan to expand the program further next year. These services have been a lifeline for many families whose homes are in jeopardy.

In addition to our programmatic services, NCLR joined other members of the Leadership Conference on Civil Rights (LCCR) Housing Task Force in calling on the industry to institute a six-month moratorium on foreclosures for families with the riskiest subprime loans – those with payment shock. A moratorium on this select group of foreclosures would give all parties involved time to identify meaningful resolutions. Our public call has become a platform for dialogue on a national strategy for helping thousands of families successfully avoid foreclosure.

Mounting foreclosures is one of the most pressing civil rights issues facing the nation. For decades many of us have worked together to build wealth in Latino and other underserved communities. Homeownership is supposed to be a family's ticket to the middle class and financial security. If we allow foreclosures to undercut this work, not only will wealth and credit be lost, but large sections of our neighborhoods will have lost their ability to send their children to college and plan for their retirement. There is still time to act, however, and protect the hard-earned gains in homeownership for vulnerable communities.

Protecting Latino Wealth

Independent homeownership counseling is critical for building Latino wealth through homeownership and avoiding foreclosure. NHN grantees are community-based organizations (CBOs) that serve as the primary point of contact for Latino families on a variety of issues. In the case of housing services, housing counselors are quickly being recognized as an important conduit for borrowers looking for safe and affordable loan products. For families facing financial crisis, CBOs have the credibility necessary to intervene between the borrower and the

servicer and investor. At the risk of sounding cliché, prevention truly is the best medicine. NCLR has long been engaged in national efforts to increase the availability of pre-purchase counseling, which research shows is an effective way to prevent foreclosures. Through research, public testimony, and direct funding, NCLR has been a champion of counseling services as a way to connect low- and moderate-income Latino and immigrant families to sustainable homeownership opportunities for more than a decade.[2]

The rising rate of foreclosure clearly signals a need for this kind of preventative service; however, not all families are going to receive pre-purchase homeownership counseling. Families in financial crisis have an immediate need for a robust foreclosure counseling industry. For Latinos and many other underserved communities, the challenges present during the purchase transaction inevitably spill over into homeownership. The secondary market and servicing industries are daunting and complicated, especially for a borrower facing unexpected financial trouble. While servicers and noteholders can modify the terms, forgive portions of principal in the case of faulty or fraudulent appraisals, or structure a payment plan for a borrower facing temporary hardship, only a handful of industry leaders have stepped up to make these tools more accessible to homeowners who need them. Furthermore, lenders responsible for families being channeled into unsustainable loans owe the families loss mitigation services, at minimum. Unfortunately, many families never learn about the loss mitigation tools a lender has available because they do not contact their servicers. Families experiencing financial hardship are often embarrassed and distracted by the event that caused their delinquency. Housing counselors have the trust of the community and the skill to interact with the industry. They act as intermediaries that help families navigate this system and save their homes.

The story of Joann V. is an excellent example of how foreclosure prevention counselors serve families. Joann came to the offices of the Spanish Coalition for Housing in Chicago, Illinois, in September 2006. She was a few months behind on her mortgage payment and was beginning to run out of options. Several months prior her monthly mortgage payment jumped from $881 to $1,434 due to an escrow shortage. With such a dramatic increase in her payments, Joann struggled to keep up with the mortgage and household expenses. Joann and her counselor called the servicer together and submitted the required information. The servicer's initial offer was for a repayment plan that would require Joann to pay $2,003.24 each month until she became current with her loan. The counselor was able to intervene again and explain the payment plan was not affordable and would not help the client to save her home. Upon completion of the necessary documents, the counselor successfully negotiated a loan modification that permanently changed the terms of her loan to make it affordable.

To expand this kind of service, the housing counseling field needs to extend its reach and build capacity. The President's budget calls for an increase in funding for the Housing Counseling Program, housed at HUD, to $50 million (up from $42 million in the previous budget). While we are pleased to see the number increasing, it is not enough to meet the demand. The field needs funding dedicated to supporting foreclosure prevention services. That said, the counseling industry cannot survive on grant funding alone. Counseling agencies must be able to charge lenders for their pre- and post-purchase services. A reliable source of fee-income will defray

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[2] *Testimony on Increasing Latino Homeownership Through Housing Counseling*, presented by Lot Diaz, NCLR, before the U.S. House of Representatives Committee on Financial Services, Washington, DC, March 2004.

costs, allow counseling agencies to hire additional staff, and expand their services. In addition to funding, counselors need better access to borrowers in danger of foreclosing. Many servicers and investors understand they may not be in the best position to reach a delinquent borrower, whereas a community-based counseling agency may be. However, privacy laws prohibit investors and servicers from sharing delinquent borrower contact information with counseling agencies. Unable to connect with borrowers directly, most counseling agencies rely on local marketing and outreach efforts or word-of-mouth to attract clients before it is too late. Thus, NCLR has advocated for an "opt-in" provision that would allow borrowers to give the servicers permission to share their information with a HUD-approved counseling agency should they ever become delinquent. We applaud Congresswoman Waters for including an opt-in provision for FHA-insured borrowers as a part of the "Expanding American Homeownership Act of 2007" (H.R. 1852).

However, not all servicers have the necessary discretion over the loan to make modifications and not all lenders or investors are willing to fix the mistakes of the originator. These families need a rescue mortgage product that will transition them into a sustainable ownership position. NCLR calls on entities that have a social responsibility, such as HUD through the Federal Housing Administration (FHA) insurance program and the Government Sponsored Enterprises (GSEs) to develop safe mortgage products and make them accessible to families facing foreclosure. To be successful with Latino families, a rescue product must accommodate flexible Debt-to-Income (DTI) and Loan-To-Value (LTV) ratios and damaged credit. Families who are steered toward ill-fitting products with negative amortization or who have been trapped in a cycle of wealth-draining refinances are likely to have little equity in their home, and therefore will need products with a high LTV threshold. Similarly, families who have delinquency – whether due to sudden loss of income or payment shock – may have damaged credit as a result. They need a product that takes this into account and puts them on a path to repairing their credit.

We believe that FHA and the GSEs have the capacity to develop products that could save the home equity of thousands of families. Both already have industry-leading loss mitigation tools. The principles of these tools should be applied to the creation of market-changing rescue programs. For example, FHA's partial claim program pays an eligible FHA borrower's arrears to bring their loan current. The amount paid is added as a second lien to the property as a zero interest loan due when the first mortgage is paid or the home is sold. A similar product could be fashioned by the GSEs and applied toward their affordable housing goals. Based on our experience in the purchase market where second mortgages can be a successful affordability tool, the partial claim concept could translate into an extremely beneficial rescue product.

Finally, borrowers in crisis need protection from fraudulent and predatory foreclosure rescue scams that have been popping up across the country. Borrowers desperate to save their homes are easy targets for predatory lenders who present themselves as "foreclosure consultants" and make unrealistic promises. Many victims feel like they have few options and are pressured into signing papers they do not understand. Predators promise refinances or temporary transfer of deeds where the family believes they will rent for a short period of time and earn their way back to ownership; others completely misrepresent the documents the client signs. Calls have been flooding into the offices of NHN organizations from Latino families who trusted these predators. Mr. and Mrs. Garcia from Chicago represent one of these calls. The couple turned to The

Resurrection Project (TRP), an NHN Affiliate, for assistance when they were served an eviction notice on a home they thought they owned. Several months earlier the Garcias were having trouble making their mortgage payments and went in search of a more affordable loan. Their lender told them they could not help them, but referred them to a finance company that would be able to refinance their loan. The family followed up with the new lender and signed documents they thought were to refinance their mortgage. Instead, they are trapped in a "shared investor" scam where onerous terms make it more likely that a family will be evicted from their home than save it from foreclosure. The counselors at TRP connected the Garcias to legal assistance, and their case is ongoing. Once again, the absence of legitimate lenders and industry leaders serving Latino communities leaves a hole predators are quick to fill. Without a concentrated effort on behalf of government, industry, and legitimate housing counselors, foreclosure rescue scams will overrun our communities.

Conclusion

NCLR is deeply concerned that rising foreclosure will erode the wealth that homeownership is supposed to build. Too many of our families were steered toward loans that were not a good fit for them in the first place. We have long argued that bad loans were leaving our families in a precarious position. Now we are on the brink of large swaths of low- and moderate-income, minority, immigrant families, and the elderly losing their only financial safety net. However, we firmly believe that the impending wake of foreclosures can be avoided. To accomplish our shared goal, NCLR has proposed broad support and expansion of foreclosure prevention counseling, the creation and delivery of rescue loan programs, and enforcement actions against predatory and fraudulent foreclosure scams. To implement these solutions, we make the following recommendations:

- **Create a robust national campaign against foreclosure.** Borrowers facing foreclosure and financial crisis are bombarded with predatory offers to "save" the borrower from their situation. Many families do not know who to trust or what the proper next step is to resolve their situation. The federal government and private stakeholders, such as lenders, servicers, and counselors, must come together to launch a national campaign that would combine social awareness, emergency assistance, and strong enforcement against fraudulent rescue scams. Public Service Announcements (PSAs) in various media and languages can build awareness of what to do in the case of mortgage delinquency and where to turn for help. The campaign should also direct families to HUD counseling services in their neighborhood for further assistance. A national hotline or website could help facilitate the delivery of that information. We also recommend expanding the optional privacy waiver to all borrowers. To complement the public education piece, a national campaign must include strong enforcement action against predatory foreclosure rescue operations. These scams take advantage of underserved communities at their most vulnerable point. Without strong enforcement action against these predators, the education and hotline efforts will not be successful.

- **Increase funding support for foreclosure prevention counseling to $100 million.** We recommend that the House Financial Services Committee dramatically increase the authorization for housing counseling and that a portion of the increase be set aside for

foreclosure prevention counseling. In addition, lawmakers should clarify housing counseling agencies' ability to earn fees for their work to prepare families for homeownership. Doing so will greatly expand the availability of housing counseling services. In addition, NCLR calls on industry leaders to support the foreclosure intervention services through funding and partnerships.

- **Create foreclosure rescue loans.** Given FHA's mission to build wealth in underserved communities, it makes sense that they should play a role in protecting that wealth as well. We recommend that Congress authorize HUD to create a rescue mortgage that the FHA program will insure. The loan program should be built off the concept of the Partial Claim loss mitigation tool currently used for FHA-insured loans. Appropriately capitalized and promoted, such a product could help thousands of families save their homes.