



Putting an End to Predatory Lending in Minority and Latino Communities

Presented at:

**Hearing on the “Mortgage Reform and Anti-Predatory Lending Act of 2009”
(H.R. 1728)**

Before:

**Committee on Financial Services
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**Graciela Aponte
Legislative Analyst
National Council of La Raza
Raul Yzaguirre Building
1126 16th Street, NW
Washington, DC 20036**

My name is Graciela Aponte, and I am a legislative analyst at the National Council of La Raza (NCLR) the largest national Hispanic¹ civil rights and advocacy organization in the United States. NCLR has been committed to improving opportunities for the nation's more than 45 million Latinos since 1968. 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. I would like to thank Chairman Frank and Ranking Member Bachus for inviting me to share our recommendations for the "Mortgage Reform and Anti-Predatory Lending Act of 2009" (H.R. 1728). NCLR has supported earlier versions of this legislation while also calling for improvements.² We applaud the Committee for strengthening sections in H.R. 1728 that are essential to protecting vulnerable borrowers from unfair lending. However, there is more work to be done. Our community has been hit hard by predatory lending, record-high foreclosure rates, and erosions of hard-earned home equity. NCLR stands ready to work with the Committee to strengthen this bill and ensure that all homebuyers are protected from deceptive lending practices.

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. For the last ten years, NCLR has been helping Latino families become homeowners by supporting local housing counseling agencies. The NCLR Homeownership Network (NHN), a network of 50 community-based counseling providers, works with more than 37,000 families annually and produced more than 25,000 first-time homebuyers in its first decade. Recently, our focus has shifted to helping families keep their homes. NHN members counseled more than 7,500 homeowners facing foreclosure last year alone. 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 to locally based development projects throughout the country. This work has substantively increased NCLR's institutional knowledge of how Latinos interact with the mortgage market, their credit and capital needs, and the impact of government regulation of financial services markets.

For years, NCLR and the civil rights community have urged Congress to put an end to predatory lending.³ The lack of strong laws, regulations, and enforcement has severely damaged Latino and other minority communities' ability to securely enter the ranks of the middle class. Reckless and deceptive lending practices will likely result in the disappearance of a generation of wealth and financial security. While this Committee has actively fostered dialogue and debate on the issue, and even passed legislation in the previous Congress, a new law has yet to be signed. We are disappointed that it has taken a foreclosure and economic crisis in order for Congress and regulators to seriously address predatory and deceptive lending practices.

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, and Spanish descent; they may be of any race.

² Letter from NCLR and NAACP to Barney Frank, Chairman, House Financial Services Committee, and Spencer Bachus, Ranking Member, House Financial Services Committee, November 6, 2007.

³ Janis Bowdler, *Jeopardizing Hispanic Homeownership: Predatory Practices in the Mortgage Market* (Washington, DC: National Council of La Raza, 2005).

We commend members of this Committee for their efforts to bring forth a stronger anti-predatory lending bill to protect future homeowners. In my testimony today, I will discuss protections included in H.R. 1728 that are paramount to guarding Latino families and other underserved communities. I will also discuss sections that need to be strengthened to ensure that lenders are effectively deterred from steering borrowers into high-cost, deceptive, and unaffordable mortgages. Finally, I will close with a series of recommendations.

Background

For decades stakeholders have worked together to increase homeownership rates in Latino and other underserved communities. Like most American families, Latino families purchased their homes to build wealth and long-term financial security. In fact, the home is often the primary asset for communities of color, representing more than three-quarters of their net worth. Home equity can help families save for retirement or a college education for their children, start a small business, and provide a safety net for financial emergencies. Unfortunately, neither the prime nor the subprime markets have served the Latino and immigrant communities well. Hispanic and immigrant borrowers often have unique profiles that make them unattractive to lenders who rely heavily on automated underwriting. For example, 22% of Latinos have a thin credit file or no credit history, which usually results in a credit score of zero, compared to only 4% of Whites.⁴ However, the fact that these individuals do not have a credit score does not mean that they are not creditworthy borrowers. For example, many of these individuals pay for items in full with cash, do not have a credit card, pay their rent and bills on time, and live within their means.

Despite the fact that there exist sound prime products that accommodate nontraditional credit, including proof of on-time rent and bill payments, there was a strong disincentive to market these products. To lenders relying on automation, making such loans seemed too time-consuming and burdensome to bother with. Instead, prime lenders referred hard-to-serve borrowers to their subprime affiliates or simply did not market themselves to such borrowers. This left a vacuum that subprime and predatory lenders quickly filled. Meanwhile, subprime products and loan characteristics earned higher fees for loan originators. Originators with a wide range of products at their disposal often steered borrowers, especially those considered “hard-to-serve,” toward products that earned higher commissions rather than products that were a good fit for the consumer. Research shows that Latinos are 30% more likely than Whites to receive a high-cost loan when purchasing their home.⁵ Other research shows Latinos were more likely to receive loans with interest-only or negative amortization features, prepayment penalties, and high yield spread premiums. When forced on the wrong borrower, these products and features leave borrowers vulnerable to foreclosure. Now, as many as 400,000 Latinos may lose their homes to foreclosure this year alone.⁶

⁴ Michael Stegman et al., “Automated Underwriting: Getting to ‘Yes’ for More Low-Income Applicants,” (presentation, 2001 Conference on Housing Opportunity, Chapel Hill, University of North Carolina, 2001).

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 *Projected Foreclosures to Latinos by State* (Durham, NC: Center for Responsible Lending, 2009).

Through NHN, NCLR has served more than 150,000 low- and moderate-income families seeking to become homeowners. Each year, we help more than 3,000 families purchase their first home with a prime mortgage product. Moreover, NCLR moved quickly to respond to the foreclosure crisis by providing funding and training to more than 40 community-based housing counseling agencies throughout the country. This year, NCLR launched a campaign with the National Urban League (NUL) and the National Coalition for Asian Pacific American Community Development (National CAPACD) to expand efforts to help community-based organizations address the rising rates of foreclosures. In addition, NCLR has conducted research and analysis on homeownership and foreclosure issues in the Latino community.

We understand the credit needs of low-income families. When paired with a safe and affordable loan product, families are much less likely to default, even when facing tough economic times.⁷ Unfortunately, matching creditworthy families with positive lending models has not been the dominant practice in the mortgage market for some time. During the subprime boom years, negative and reckless lending practices crowded out positive lending innovations in both the prime and subprime markets. New legislation and regulations should seek to promote positive innovation while keeping deceptive and harmful developments in the market at bay.

Protecting Borrowers and Tenants

The “Mortgage Reform and Anti-Predatory Lending Act of 2009” includes several vital protections for borrowers and tenants. As the Committee continues to debate this bill, we urge you to protect three provisions in particular:

- **Ability-to-repay standard.** The ability-to-repay standard would require lenders to present borrowers with “appropriate mortgage loans.” The lender must determine that the borrower has a reasonable ability to repay the loan, present a net tangible benefit to homeowners seeking to refinance, and ensure that the loan cannot have any predatory characteristics such as equity stripping, excessive fees, or abusive terms. The standard makes it clear that the borrower’s financial circumstances, including credit history, income, debt-to-income ratio, property taxes, insurance, and other related costs, are factored into the determination of eligibility for a home loan. Many NHN clients seeking foreclosure assistance are in trouble because they received mortgages they could never afford to repay. By reinstating this commonsense lending standard, we will ensure that borrowers receive affordable and sustainable mortgage loans.
- **Safe harbor for qualified mortgages.** By providing a safe harbor for traditional 30-year fixed rate loans, H.R. 1728 will help shift the incentives away from exotic mortgages to those that are as safe and sound for families as they are for the economy. We challenge the idea that this will stifle innovation. The innovative models established by credit unions, Community Reinvestment Act programs, community banks, CDFIs, and others demonstrate the ability of the lending institutions to provide mortgages that meet the safe

⁷ Roberto Quercia and Janneke Ratcliff, “The Preventable Foreclosure Crisis,” *Housing Policy Debate* 19 (2008): 775–785.

harbor standard without sacrificing innovation, sound lending principles, or profit.⁸ For example, the Community Commitment suite of products by Bank of America was widely successful among NHN clients. The mortgage product allowed the use of nontraditional credit, offered low down payments, and required counseling. Except for those affected by unemployment, NHN counselors see very few Community Commitment borrowers return to their shops. The Committee should provide further direction to bank regulators, using this as an opportunity to develop cutting-edge lending models that truly meet the needs of all borrowers.

- **Tenant protections.** All too often we hear from tenants on the verge of homelessness because their landlord did not pay their mortgage. Tenants who have been paying their rent on time become innocent victims. Many are forced into an unaffordable rental market and an unstable housing situation. They need time to find an affordable home to rent, save for their security deposit and the move itself, and make other arrangements for their family. This bill gives tenants the right to remain in their homes until the end of their lease. If they do not have a lease or if the property is purchased, then tenants must be given 90-day notice to vacate.

In addition, NCLR also applauds the Committee for its continued support of community-based counseling and legal assistance programs. The bill elevates the U.S. Department of Housing and Urban Development (HUD) Housing Counseling Program by creating an Office of Housing Counseling and expands funding opportunities for free and low-cost legal services programs. These programs often serve as a lifeline for communities cut off from the financial mainstream.

Strengthening H.R. 1728

While this legislation includes vital provisions to protect consumers, several areas must be strengthened to prevent abuse and make way for constructive developments in the market. Although some have argued that lenders have “learned their lesson” and will implement better lending practices moving forward, current events suggest otherwise. As credit markets have tightened, we have seen abusive practices creep into the Federal Housing Administration (FHA) and Veterans Administration (VA) markets.

Take the case of a retired veteran who came to El Centro, Inc., based in Kansas City, Kansas. The veteran came to the agency when his VA loan was no longer affordable. After reviewing his case, the counselor discovered that a mortgage broker from a popular local firm had inflated the borrower’s income and the borrower was dedicating 60% of his pension to his home. He had struggled to keep up with the payments, but they proved to be too much. Now the veteran is in default and counselors at El Centro are working to secure a loan modification.

In Los Angeles, counselors from East Los Angeles Community Corporation met Ricardo S. when his loan adjusted and he couldn’t keep up with the payments. Upon further investigation, they discovered that he had been sold two loans (popularly called an “80/20”). His first

⁸ See Subcommittee on Financial Institutions and Consumer Credit, *Mortgage Lending Reform: A Comprehensive Review of the American Mortgage System*, 111th Cong., 1st sess., 2009.

mortgage had five built-in adjustments, with a balloon payment due at the end of the 30-year term that would have represented 70% of the principal. In other words, had this loan not been discovered by the counselors, the borrower would have spent 30 years paying the mortgage only to have repaid 30% of the principal balance.

As struggling borrowers flood the doors of NHN agencies, similar cases are appearing throughout the country. Some are quick to blame the borrower for getting a loan that they cannot afford. However, the reality is that most of our families could have qualified for 30-year fixed rate mortgages but were unknowingly steered into unaffordable, high-cost loans. We know that it is possible to get our families into prime loan products, even with nontraditional credit barriers. NHN counselors have helped more than 25,000 families purchase homes with prime mortgage products.

Mrs. Romero, a single mother working at the local YWCA, is one of our success stories. She sought out the help of El Centro when she decided to move her four children out of their apartment and into a house. Her housing counselor helped her create a budget and savings plan. They enrolled her in their individual development account (IDA) program, which allowed her to open a matched-savings account and receive financial counseling. She recently applied her savings to her down payment after qualifying for an FHA mortgage.

Housing counselors instruct their clients to wait until the right moment to purchase their home and connect them with financial products that will guarantee success. We urge the Committee to bolster three provisions critical to protecting Latino and other communities of color and ensuring that truly positive lending models emerge:

- **Section 103: Anti-steering provision.** Many originators are paid premiums for adding prepayment penalties, increasing interest rates, including onerous and unnecessary terms, or shifting borrowers to limited documentation loans, even when borrowers can document their income and credit history. These premiums create an incentive for steering unsuspecting borrowers, including many Latino and immigrant borrowers, toward risky and expensive products. The result is that many Hispanic homeowners waste hard-earned income paying unnecessary fees and higher-than-reasonable interest when they should be paying off principal and building equity and wealth. As a result, as interest rates reset on adjustable rate mortgages and Option ARMs, Latinos are at risk of experiencing a record number of foreclosures. Section 103 is a step in the right direction. It aims to curb the practice of steering, but it is ambiguous and does not clearly prohibit certain deceptive practices.
- **Section 102(b): Duty of care.** Most borrowers pay mortgage professionals to coach them through what is likely the largest financial transaction they will make in their lifetime. Similar to the way they rely on the advice of other professionals such as doctors, lawyers, and accountants—all of whom have legal and ethical responsibilities to their clients—borrowers believe mortgage brokers are obligated to work on their behalf. Unfortunately, this is not the case. Despite the efforts of some to implement best practices, brokers are under no legal or professional ethical responsibility to work on behalf of the borrower. H.R. 1728 includes a duty of care for all originators, and while

this is a step in the right direction, more is needed. Mortgage brokers must be held accountable for the role they play in helping consumers shop for their mortgage.

- **Liability and enforcement.** H.R. 1728 outlines liability standards for originators, lenders, and Wall Street. However, in many cases the liability may not be strong enough to deter those covered by the legislation from violating the new law. Instead, the bill shifts the responsibility on the borrower to discover that the law has been violated and fight the industry for a correction. As it is, Latinos and immigrants are often the least likely to file formal complaints. While there are many reasons for this, one is that filing a complaint does little to resolve one's immediate situation. We need a mortgage system that works regardless of whether victims file a complaint, pursue legal action, or default on their mortgage. The liability and enforcement provisions included in H.R. 1728 must be strengthened to effectively discourage creditors from breaking the law.

Recommendations

We offer the following recommendations to further strengthen the legislation. Addressing these points would earn our full support of the bill.

- **Prohibit lenders from luring unsuspecting borrowers into unaffordable loans.** Stronger anti-steering provisions are necessary to protect Latino and other communities of color from reckless and discriminatory lending. The "Fairness for Homeowners Act of 2009" (H.R. 1782) includes strong provisions that explicitly prohibit steering consumers toward loans that are more costly than those for which they qualify and mischaracterizing the consumer's information, property value, and home loan. We are prepared to work with the Committee and other consumer groups to incorporate these strong provisions into H.R. 1728 to provide further protections for consumers.
- **Make mortgage brokers accountable for the mortgages they sell to families.** We urge Congress to establish a fiduciary duty for mortgage brokers. The "Fairness for Homeowners Act of 2009" would impose a fiduciary responsibility on brokers and other mortgage originators, prohibiting undisclosed compensation and requiring brokers to find the most beneficial deal for borrowers and act in the consumer's best interest.
- **Ensure lenders obey the law.** We urge Congress to include stronger remedies to deter creditors from violating the statute. H.R. 1728 allows creditors to provide a cure in cases where the statute has been violated, along with other nominal damages. However, this consequence is unlikely to change the business practices of at least some mortgage originators. Thus, we believe that stronger penalties may be required for knowingly committed, pattern and practice violations.

While the focus of this hearing is on mortgage reform and anti-predatory lending legislation, additional measures will be required to create a robust and cutting-edge mortgage market and regulatory infrastructure. NCLR supports a strengthened regulatory system, efforts to modernize CRA, and increased funding for community-based housing and financial counseling. We also support proposals to invest in affordable rental and homeownership opportunities, revitalize

neighborhoods, and build wealth in minority communities. Finally, we have endorsed the “Foreclosure Prevention and Sound Mortgage Servicing Act of 2008” (H.R. 5679, 110th Congress), which seeks to reform the mortgage servicing industry as a means of helping families save their homes from foreclosure. We look forward to working with this Committee, Congress, and the new administration to enact these proposals in the coming months.