

Testimony
Before the
Subcommittee on Housing and Community Opportunity
Regarding
Successful Homeownership and Renting through Housing Counseling

Mr. Chairman, Ms. Waters, and Members of the Committee, we thank you for inviting us to testify regarding the homeownership housing education and counseling industry. The National Consumer Law Center¹ submits the following written testimony on behalf of our low-income clients.

We fully support the Committee's efforts to strengthen the housing counseling and education offered to low-income consumers. The achievements of the housing education and counseling industry are exemplified by the steady increase in the number of low-income and minority first-time homebuyers over the last decade. Your effort to enhance the counseling programs currently operating through HUD and to foster other private counseling programs is laudable. With the increasing threat posed by predatory lending, and the decades long trend of increasing foreclosures, now more than ever, a strong housing counseling industry is needed to sustain the gains made in homeownership among low-income and minority consumers. We will address many of the issues critical to this industry as outlined below.

- I. A strong homeownership education and counseling industry can benefit consumers but is not a panacea for predatory lending.
- II. NCLC has been actively involved in facilitating counseling to avoid foreclosures and predatory lending.
- III. More resources should be devoted to post-purchase education and counseling.
- IV. More funding is needed to support non-profit organizations and to stimulate research into the industry.
- V. The proposed legislation will support foreclosure avoidance counseling, but needs some tweaking.
- VI. Recommendations and conclusion.

I. A strong homeownership education and counseling industry can benefit consumers but is not a panacea for predatory lending.

Homeownership education and counseling is an irreplaceable requirement for affordable loan products aimed at low-income and minority consumers. An effective counseling and education program can offer many benefits to consumers and the lending

¹ The National Consumer Law Center, Inc. (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of sixteen practice treatises and annual supplements on consumer credit laws, including Truth In Lending (5th ed. 2003) and Cost of Credit (2nd ed. 2000) and Repossessions and Foreclosures (5th ed. 2002) as well as bimonthly newsletters on a range of topics related to consumer credit issues and low-income consumers.

industry. **Pre-purchase education and counseling** has been credited with expanding homeownership in underserved communities, in part, by producing informed borrowers knowledgeable about the lending process and better prepared to accept the responsibilities of homeownership. Pre-purchase education and counseling has also been found to lower the risk of default:

- Borrowers who received any form of pre-purchase counseling (classroom style, by telephone, or individually) as part of Freddie Mac's Affordable Gold lending program had a 19 percent lower delinquency rate than those who received no counseling.
- Borrowers who received one-on-one counseling had a 34 percent lower rate delinquency rate.²

An important part of the pre-purchase counseling process is working with potential borrowers to remove barriers to homeownership. The most often cited barriers are affordability and credit problems.³ Many community-based non-profit agencies work with potential homeowners to build or repair credit. Others may offer financial assistance to supplement down payments, closing costs, or monthly payments. This form of assistance may take the form of deferred payment second mortgages with special terms. Without such assistance the barriers to homeownership may be insurmountable for many low-income individuals.

An educated and informed borrower is also a benefit to the mortgage industry. The group instruction offered by many non-profit agencies and the follow-up assistance provided to potential borrowers produces a pool of mortgage ready applicants. Moreover, as has been well documented, collaborations between lenders and non-profit agencies allow the lending industry to provide outreach and marketing to underserved communities, helping lenders to satisfy CRA requirements and GSEs to meet their affordable lending goals. It is also credited with building trust in the mortgage system among that population.⁴

Post-purchase education and counseling can stabilize homeownership in underserved communities. Post-purchase education and counseling refers to a range of services -- from instruction on home maintenance, budgeting, and foreclosure prevention, to crisis intervention for delinquent borrowers, or counseling to prevent or assist victims of predatory lending. The intensive, one-on-one default and delinquency counseling most often provided by non-profit agencies reduces the incidence of foreclosure among low-income households. Counselors work closely with borrowers to help them understand their options and act as intermediaries in negotiating between borrowers and servicers to put the best workout in place. Moreover, if a workout is not

² Abdighani Hiram and Peter M. Zorn, *A Little Knowledge Is a Good Thing: Empirical Evidence of the Effectiveness of Pre-Purchase Homeownership Counseling*, May 2001, at 3.

³ See George W. McCarthy and Roberto G. Quercia, *Bridging the Gap Between Supply and Demand: The Evolution of the Homeownership Counseling Industry*, Report No. 00-01, Research Institute for Housing America, 2000, at 19.

⁴ Hiram and Zorn, *supra*, note 2 at 5.

feasible or unsuccessful these agencies ease the homeowner's transition to other affordable housing.

One of the most important benefit that education and counseling can provide is to make homeowners less vulnerable to predatory lending. Borrowers who receive individual counseling may be more likely to seek assistance before entering into a high-cost loan. Those who have been victimized by a predatory lender may be more apt to seek out assistance before foreclosure or may be dissuaded from entering (or being "flipped") into another loan. A knowledgeable counselor, if provided with advance information about the terms of the loan, can steer homeowners away from predatory lenders to affordable alternative loan products.

While good counseling may potentially reduce the incidence of predatory lending in low-income and minority communities, counseling will not stop predatory lending. Only by changing the laws governing mortgage lending – to stop lenders from financing high points and fees, charging exorbitant prepayment penalties, refinancing special loan programs for first-time buyers into high-cost credit – can we fully address the problem of predatory mortgage lending. Clear prohibitions to stop the most egregious practices, coupled with assignee liability are what is needed to tackle this problem. NCLC has proposed that legislation to address predatory lending should include the following:

- Limits on the points and fees which can be financed by lenders.
- Full assignee liability that is capped at the amount of the loan.
- Amend the income tax rules to limit home secured debt to debt which is obtained for reasons relating to the home. In exchange, individual taxpayers should be permitted some additional measure of deductions for personal credit not secured by the home.

Moreover, as discussed below, only a fraction of the organizations that provide pre-ownership housing counseling and education, also provide assistance to established homeowners. That assistance will most likely take the form of group instruction on maintenance and other issues related to owning a home. Very few organizations provide pre-refinance counseling or assistance to victims of predatory lending. Many of the homeowners most at risk – including the elderly – are long time homeowners with substantial amounts of equity accrued in their homes. They are not the traditional clients of housing counseling organizations (who often focus on first-time homebuyers) and they are not likely to seek assistance prior to signing a loan. Aggressive outreach and an effective public education campaign is necessary to get these potential victims to seek help before it's too late.

II. NCLC has been actively involved in facilitating counseling to avoid foreclosures and predatory lending.

The National Consumer Law Center (NCLC) has long recognized that housing education and counseling can be a benefit to low-income consumers. Our work to preserve homeownership among low-income families and stem the spread of predatory

financial practices that target the economically disadvantaged has included the essential component of promoting housing counseling.⁵ Over a decade ago we established the Massachusetts Foreclosure Prevention Project as the first step toward accomplishing this goal.

This statewide foreclosure prevention project has served as a model to other states on how to use post-ownership housing counseling to prevent foreclosures and as one tool to address predatory lending. In Massachusetts, the Center leads a collaboration of community-based housing counseling agencies, local lenders and city officials to provide direct assistance to homeowners facing foreclosure. Between 1995 and 2001 our Massachusetts Foreclosure Prevention project provided intensive mortgage and financial counseling to 1,200 families who avoided foreclosure and provided targeted assistance to approximately 300 families to negotiate a mortgage workout to save homes from foreclosure.⁶

The Center provides extensive training nationwide to housing counselors and advocates on foreclosure prevention and predatory lending. The Center was awarded grants from HUD to teach housing counselors about its loss mitigation program. In addition, the Center has received grants or contracts from NRC, Fannie Mae, Freddie Mac, state and city governments, and housing counseling agencies nationwide to train housing counselors or support the foreclosure prevention project

Over the past five years, NCLC has trained over 2,000 housing counselors and advocates on foreclosure prevention options to help clients keep their homes. We have developed a highly acclaimed course (for both beginners and experienced counselors), *Preserving the American Dream*, that has been sponsored by both the U.S. Department of Housing and Urban Development and the Neighborhood Reinvestment Corporation. Most recently, the Center was awarded a grant from the Ford Foundation to conduct predatory lending training for housing advocates and attorneys across the nation. For the past three years the Center has been working with Freddie Mac's "Don't Borrow Trouble" campaign and conducting all of the trainings for this campaign. NCLC has trained hundreds of housing counselors and advocates on ways to fight predatory lending by building coalitions of counselors, advocates, government officials and concerned

⁵ NCLC has a long history in the debate surrounding predatory mortgage lending. The Center became aware of predatory mortgage lending practices in the latter part of the 1980s, when the problem began to surface in earnest. Since that time, NCLC's staff has written and advocated extensively on the topic, conducted training for thousands of legal services and private attorneys on the law and litigation strategies to defend against such loans, and provided extensive oral and written testimony to numerous Congressional committees on the topic. NCLC's attorneys were closely involved with the enactment of the Home Ownership and Equity Protection Act in Congress, and the initial and subsequent rules pursuant to that Act. NCLC attorneys, on behalf of their low-income clients, have actively participated with industry, the Federal Reserve Board, Treasury, and HUD in extensive discussions about how to address predatory lending.

⁶ In addition to community-based organizations, NCLC's project has worked with legal services, private pro-bono bar, and city and state officials to raise public awareness about predatory lending and the deleterious effect of foreclosures on low-income and minority communities; to promote alternative sources of credit for low-income families; to increase the number of advocates who are qualified to counsel people in financial distress; and help public officials strengthen important consumer protection laws.

lenders. These trainings have been bolstered by our publication of *Stop Predatory Lending: A Guide for Legal Advocates* (2002). The book, which is the first comprehensive manual of its kind, explains the causes of the phenomenon and outlines both legal remedies and community solutions to predatory lending.

III. More resources should be devoted to default and delinquency counseling and predatory lending counseling and assistance.

The capacity of non-profit and state government agencies to offer default and delinquency counseling or predatory lending assistance must be expanded to stem the alarming increase in the foreclosure rate over the past two decades. The homeowners who are most at risk of foreclosure are low-income consumers, suffering the effects of the downturn in the economy and targeted by predatory lenders. HUD is mandated under program guidelines to reduce defaults and foreclosures.⁷ There is much more that HUD can do to fulfill this mandate.

The homeownership education and counseling industry has evolved over the last thirty years to address the needs of traditionally underserved populations in the housing marketplace. At its inception, industry efforts were focused on reducing the substantial number of defaults under HUD's Section 235 program through post-purchase counseling aimed at delinquent borrowers. However, with the advent of affordable loan products, encouraged and supported by federal policy and designed to increase homeownership rates among traditionally underserved populations, the industry's focus shifted dramatically to pre-purchase homeownership education.⁸ The result has been a marked increase in homeownership among low-income and minority Americans.

Today, the housing education and counseling industry is characterized by a diverse array of programs and approaches to increasing homeownership. Almost all organizations provide pre-purchase education and counseling to low-income individuals seeking to purchase their first home. The programs are delivered through home study, classroom or other group instruction, individual counseling, or over the telephone. Counseling typically refers to one-on-one consultation tailored to an individual's need as opposed to a generic program. Non-profit agencies, government, for-profits, lenders, realtors, brokers and mortgage insurance companies administer these programs. Pre-purchase programs are dominated by telephone and home study methods administered by lenders and other for-profit organizations.⁹

A very small subset of the housing and education industry, mostly community based non-profit or government agencies, administer post-purchase education and counseling programs. Post-purchase education is often provided to new homeowners and includes instruction on home maintenance, budgeting, landlord/tenant and other

⁷ See the HUD Housing Counseling Handbook (7610.1 Rev-4), section 1-3(B). Half of the department's program objectives are related to reducing defaults or foreclosures.

⁸ See McCarthy & Quercia, *supra*, note 3, at 5.

⁹ At least one study has documented that telephone counseling has no statistically significant impact on borrower delinquency. See Hirad and Zorn, *supra*, note 2 at 3

issues. Some non-profit agencies (and increasingly for-profits) offer default and delinquency counseling to homeowners in an attempt to bring them current on their mortgage or when necessary, transition them to less costly housing through means other than foreclosure, pre-refinance counseling to those seeking loans, or assistance to victims of predatory lending. The demand for default and delinquency counseling and predatory lending counseling has exploded over the last few years. There are a number of factors fueling the demand, but three of the most prominent are:

- ***Steep increase in the number of loans in foreclosure.*** The number of mortgages in foreclosure in the United States climbed to a record high during 2002.¹⁰ This caps a twenty year trend of rising foreclosure rates. More alarming, the rate of government-backed mortgages in foreclosure (guaranteed or insured by the FHA, VA or RHS) is typically two or more times higher than the rate for conventional mortgages.¹¹ The Mortgage Bankers Association's National Delinquency Survey noted that the seasonally adjusted percentage of FHA loans in which foreclosures were started in the second quarter of 2003 was the highest ever recorded in the survey, eroding the hard fought gains of government and the housing industry to increase homeownership in underserved communities.
- ***Dominance of subprime lending in low-income and minority communities.*** The drastic increase in the foreclosure rate is due in large part to subprime lending. The foreclosure rate for subprime mortgages nationwide, including the abusive ones targeted at low-income homeowners – is **twelve** times higher than for prime conventional mortgages.¹² Many studies have documented the prevalence of subprime lenders in low-income and minority communities.¹³ African-American, Latino and low-income homeowners are disproportionately represented in the subprime foreclosure rate and are losing their homes at a faster rate than others.
- ***New state laws challenging predatory lending.*** New state anti-predatory lending laws require or recommend counseling before homeowners can refinance their mortgages into new high-cost loans.¹⁴ This common recommendation is designed to ensure that homeowners know the risks and obligation of taking on these loans. In addition, the federal bankruptcy reform

¹⁰ Peter T. Kilborn, *Easy Credit and Hard Times Bring a Flood of Foreclosures*, N.Y. Times, November 24, 2002, at Section 1, Page 30, Column 3; Queena Sook Kim, *Foreclosures Hit Record Levels*, Wall St. Journal, September 10, 2002, at D1.

¹¹ See e.g., National Delinquency Survey, Mortgage Bankers Association, September 30, 2003, for 3rd Quarter of 2003.

¹² *Id.*

¹³ See e.g., Calvin Bradford, *Risk or Race: Racial Disparities and the Subprime Refinance Market*, Center for Community Change (May 2002). Available at: <http://www.communitychange.org/default.asp>.

¹⁴ See e.g., Georgia, Ga. Code Ann. § 7-6A-5(7); New Jersey, N.J.S.A. 46:10B-26(g); New Mexico, N.M. St. §58-21A-5(g); North Carolina, N.C. Gen. Stat. § 24-1.1E©(1); New York, N.Y. Gen. Banking Law § 6-1(1).

bill that has passed both houses of Congress mandates counseling before a consumer can file for bankruptcy.¹⁵

While the demand for default and delinquency counseling has mushroomed among low-income and other homeowners, the capacity of non-profit agencies to meet this need is highly questionable. Based upon conversations with housing and credit counselors, we believe that possibly fewer than half of these agencies provide such specialized service or can meet the need in their communities. Of those that provide this service, they may do so on an occasional basis or may lack the staff specifically dedicated to providing this type of counseling.¹⁶

The barriers to providing effective default and delinquency counseling are numerous. Default and delinquency counseling is time intensive and expensive. To provide effective assistance, counselors must meet with homeowners face-to-face, review relevant paperwork such as letters from the lenders, foreclosure notices, and the like, discuss their budgets thoroughly, help them apply for public assistance, and provide other services to increase their income or decrease expenses. Then the counselor will work with the homeowner and the lender or servicer to craft an appropriate workout. As most cases are referred after months of default, counselors deal with the most difficult cases. This type of counseling cannot be performed effectively from afar by telephone counseling only.

Even fewer non-profit agencies provide any type of pre-refinance counseling or services to assist victims of predatory lending.¹⁷ The agencies that provide this service most often provide it *after* the person has been victimized by a predatory lender. To provide effective service, counselors must be skilled and adequately trained to review mortgage documents that may contain complex or hidden terms disadvantageous to the homeowner. Correctly spotting predatory mortgage terms is an essential ability. Counselors also need to be able to make an appropriate referral to an attorney as repayment plans without a negotiated reduction of the principal of a predatory loan is never advisable.

Moreover, the homeowner rarely receives relevant loan documents in time for counselors to review before the loan closes. The Good Faith Estimate is rarely given in advance of closing in the subprime market, despite the statute's mandate that it be given within three days of application.¹⁸ Truth in Lending early disclosure requirements only

¹⁵ See Section 106(a) of H.R. 975.

¹⁶ See Mark Wiranowski, *Sustaining Home Ownership Through Education and Counseling*, Neighborhood Reinvestment Corporation, 2003, at 15.

¹⁷ Where available, pre-refinance counseling is usually designed to help homeowners avoid predatory loans and may involve the counselor reviewing the terms of the prospective loan with the homeowner before closing to make sure they do not qualify for a better loan or to spot hidden, disadvantageous terms. Some community-based non-profits and government agencies offer this service to borrowers. However it is not very common and the homeowners who contact these agencies have often already entered into a predatory loan.

¹⁸ 12 U.S.C § 2603. There is no remedy if a lender violates this rule, which is the likely reason the rule is constantly violated.

kick in for purchase money mortgages, not refinances.¹⁹ No other laws, of which we are aware, require the lender to provide the loan contract or mortgage to the homeowner in advance. In combination, these documents would reveal many predatory loan terms. To make this type of counseling effective, early comprehensive disclosure is vital.

The demand for counseling to prevent foreclosure or assist victims of predatory lending has clearly outstripped the capacity of non-profit and other agencies to provide such assistance. Given the susceptibility of low-income borrowers to predatory lending and foreclosure, HUD must encourage the growth of default and delinquency and predatory lending counseling programs in the industry. Providing these services is more expensive, as it takes more time to assist homeowners and counselors must be well trained. As detailed below, non-government support for this type of service is currently very limited. More funding and other resources should be specifically allocated to these services. In its 2003 SuperNOFA funding competition for HUD-approved agencies, HUD specifically allocated money for combating predatory lending. This effort should be expanded.

IV. More funding is needed to support legitimate non-profit organizations and to stimulate research into the industry.

Overall funding for housing counseling has declined. Agencies seek funding from foundations, local government or private entities; non-profits may seek funding from HUD. Funding from HUD covers approximately one-quarter of program costs for HUD- approved agencies.²⁰ Not all HUD-approved agencies receive funding each year. Although HUD has steadily increased its funding for housing counseling, non-profit agencies in particular are struggling to make up the shortfall between the funding received and the services provided. HUD must increase its level of funding even further to ensure that legitimate agencies with strong programs are supported.

It is important that HUD funding be targeted to legitimate *non-profit* organizations that provide the most effective types of services to low-income consumers. Community based non-profit housing agencies have consistently been found provide the most successful – but the most time intensive – types of education and counseling services.²¹ They also provide a broad range of services either directly or through referral to other organizations. However, non-profit housing counseling agencies are competing with more organizations (both non-profit and for-profit) for the small pool of funding and resources available to conduct this work.

¹⁹ 15 U.S.C. § 1638(b)(2).

²⁰ See McCarthy & Quercia, *supra*, note 3, at 31 fn 2.

²¹ For example, non-profit agencies are less likely to provide telephone counseling, and more likely to provide individual counseling, which one study documented was the most effective method of reducing 90-day delinquency rates. Telephone counseling had no statistically significant impact. See Hiram and Zorn, *supra*, note 2 at 3.

The counseling world includes many counselors, both for-profit and non-profit, which offer some type of credit counseling to consumers. For many years, legitimate non-profit credit counseling agencies (traditionally funded by creditors as a means to help consumers avoid bankruptcy on their unsecured debt) were the primary alternative to housing counselors. So on the one hand, consumers seeking pre-ownership counseling had HUD certified counselors, and consumers seeking assistance with their overwhelming unsecured debt could go to legitimate non-profit consumer credit counseling agencies. There were few alternatives, and little overlap. Neither type of agency provided assistance on home secured debt.

The situation has changed in recent years as credit counseling agencies have increasingly begun to offer housing counseling services as well. However, there are many types of credit counseling agencies, some good, and many not. Legitimate, honest credit counselors are often uniquely qualified to help consumers. They are already working with consumers to address unsecured debt and when properly trained, can provide a holistic service by assisting consumers with delinquent secured and unsecured debt.

Unfortunately, there is also a negative side to the new increase in credit counseling services. Recent abuses by so-called non-profit credit counseling agencies have raised serious questions about the quality and legitimacy of credit counseling services. Many of these faux non-profit credit counseling agencies have cost strapped consumers precious dollars while providing little or no meaningful service.

Aggressive firms masquerading as non-profit organizations have been among the credit counseling agencies that are most likely to deceive or to gouge consumers. Massive cuts in creditor funding for agencies has exacerbated this trend, leaving many well-intentioned organizations without sufficient funding to provide appropriate services.

To make up these funding deficits, traditional *credit* counseling agencies have increasingly sought out housing counseling dollars. Some of these agencies have done so with the best of intentions and are developing quality housing counseling programs. Others are only chasing available dollars.

NCLC and the Consumer Federation of America (CFA) highlighted many of these problems in an April 2003 report, *Credit Counseling in Crisis: The Impact on Consumers of Funding Cuts, Higher Fees and Aggressive New Market Entrants*.²² Congress is beginning to focus on the serious consumer abuses caused by the new consumer credit counselors. The House Ways and Means Committee, Subcommittee on Oversight held hearings on these problems in November 2003. The Senate Government Affairs Committee, Subcommittee on Investigations is scheduled to hold hearings on the same subject next week, on March 24, 2004.

²² The executive summary is attached at the end of this testimony. The full report is available for downloading from either the NCLC web site (www.nclc.org) or the CFA web site (www.consumerfed.org).

State and federal enforcement agencies are just beginning to deal with the rogue credit counseling agencies. State attorney generals have sued a number of major agencies in the past year and the I.R.S. and F.T.C. have launched extensive investigations. However, many agencies continue to line their own pockets at consumer expense.

There is much to learn from the credit counseling experience. Allowing agencies free rein to hide behind charitable tax-exempt status is unacceptable. We have the opportunity now to ensure that sufficient quality controls are in place to avoid similar problems in the housing counseling arena.

In addition to questions surrounding the credit counseling industry, there are many questions outstanding about housing counseling and education industry in general. Despite the industry's long history, there are only a handful of studies documenting the types of services provided, the effectiveness of counseling at reducing default, or other issues of interest to lenders and policymakers. The dearth of studies is particularly stark with respect to post-purchase programs. While homeowners are turning in increasing numbers to credit and housing counseling organizations for default and delinquency counseling and predatory lending assistance, little is known about how these services are delivered, the numbers of homeowners served, and whether the agencies that provide these services have sufficient resources and funding to meet the need.²³ There are many reasons for the lack of research on this industry. However, one of the main hurdles is funding. Given the reliance of HUD on this industry to assist low-income homeowners, HUD should fund more research, and encourage the private sector to fund and make data available for research .

V. The bill to establish the Office of Housing Counseling

HR 3938 would assist in coordinating the housing counseling functions at HUD. We particularly support the following aspects of the bill:

- Specific requirements for housing counselors to provide services to homeowners considering refinancing, and facing foreclosure.
- Support for increased funding for HUD certified housing counseling – although we believe the numbers should be doubled, at least.
- The requirement that only HUD certified housing counselors receive grants and provide services under the program.
- The requirements for studying defaults and foreclosures.

We do, however, have some suggestions to make to improve the bill, and ensure that its overall impact will be beneficial to homeowners. Some of these suggestions are:

²³ NCLC has proposed to do research in the form of a survey and report on the housing counseling and education industry. The report will be comprehensive assessment of the industry and document the types of services currently provided; the number of homeowners who received each type of service; the method of delivering the service; the amount of resources devoted to offering these services; an estimate of the need, if unmet; and, the problems and challenges faced in expanding the quality and quantity of these services. The report will also take a critical look at funding for the industry and provide recommendations.

- **Non-Profit Agencies Only.** Recipients of HUD counseling funds should be limited to non-profit agencies; and these agencies must be *bona fide* non-profit agencies, and for-profit agencies should not be permitted to receive HUD counseling funds (change needed on page 17, line 10, to remove the words “other entities.”)
- **Advisory Committee should *Only Provide Advice*.** An Advisory Committee can certainly provide valuable information and assistance to the Secretary regarding the fundamentals of counseling, the subjects included in counseling, appropriate certification requirements, and other matters, it would be entirely inappropriate for a private body such as this to have *oversight* over these important matters. The function of the Advisory Committee should be limited to providing advice, and all mention of the ability of this Committee to control any aspect of the functioning of government sponsored housing counseling should be eliminated. (This necessitates changes to page 5, line 18 to remove the word “oversight,” as well as other changes throughout the bill to ensure that the Committee’s function is limited to an advisory one.)
- **Advisory Committee Should Be Equally Comprised of Representatives of Non-Profit Agencies, Homeowners, and Industry.** Even if limited to advice, the Advisory Committee will have significant impact on the counseling functions provided with HUD dollars. Representatives of non-profit counseling agencies and representatives of consumers/homeowners should be equally represented on the committee with the industry members. (This necessitates a change to page 5, lines 23 and 24.)
- **Mortgage Software Should Include Indices of Predatory Lending.** The idea of the mortgage software is an excellent one, which we fully support. The software must be comprehensive, however. One of the most salient aspects of predatory lending is the degree to which home equity is lost through refinancing and excessive payment of points and fees. This analysis must play a significant role in the advice provided through the new software. (This necessitates a change to page 14, after line 11, adding another criteria such as: “the degree to which home equity is depleted or fostered by the loan product.”)
- **The Study on Defaults and Foreclosures Should Include Findings on Most Effective Programs To Avoid Foreclosures.** We have been very successful in working with housing counselors to facilitate foreclosure avoidance in our Massachusetts Foreclosure Prevention Project. Other programs exist throughout the United States which are similarly successful (such as the Pennsylvania HEMAP program). The study on foreclosures should also identify these positive ways for housing counselors to help avoid foreclosures. (This necessitates a change to page 20, line 21.) There should be competitive bidding to find the best organization to conduct this study.

- **The Mortgage Handbook Should Include Discussion of the Effect of High Points and Fees and the Effect of Refinancing on Savings and Home Equity.** The cost of paying high points and fees when obtaining a home mortgage is a confusing and much misunderstood aspect of the process. All educational materials developed by HUD to facilitate information must include discussion of the issues involved in evaluating whether points are actually beneficial to the homeowner, and how to evaluate the real requirement for and fairness of various mortgage fees. (Necessitating adding language to the list on page 23.)
- **The bill appears to dilute funding for housing counseling.** Section 3 of the bill refers to other counseling programs not currently included in HUD's budget for housing counseling under 12 U.S.C. § 1701x. Presently, we understand that housing counseling is funded at \$37.5 million, exclusive of these other programs. If this is the case, then the proposed \$45 million of funding will be spread over a broader number of programs, thus reducing funding for community-based housing counseling agencies. These agencies have been the backbone in HUD's efforts to reduce defaults and foreclosures.

VI. Recommendations and Conclusion

To improve the housing counseling and the education industry's effectiveness at helping low-income consumers we recommend:

- Federal law must provide additional protections to borrowers losing their home to foreclosure. The law should mandate that foreclosures cannot go forward without lenders and servicers being first required to offer counseling and to evaluate the use of loss mitigation options. Similar requirements are in place for FHA-insured loans. These requirement should be made applicable to all loans. Homeowners should be able to raise the claim that he lender improperly foreclosed when a loss mitigation plan was unreasonably rejected by the lender.
- Funding for housing counseling should be increased. HR 3938's call for \$45 million to be appropriated for fiscal years 2004 to 2007 is inadequate. This does not represent a significant increase from current funding levels of \$37.5 million. As discussed above, more non-profit and for-profit organizations are providing housing counseling services. With more providers, the small pool of funding dedicated to housing counseling is further depleted. Currently, most HUD-approved housing counseling agencies receive one quarter of their support from HUD. Without a significant increase in funding, these agencies may be forced to cut services. In addition, the \$45 million called for by HR 3938 will fund a new agency and many new initiatives. The net result may be a *reduction* in the amount of funds directed towards HUD-approved agencies. Funding should be doubled to support this new agency and to provide adequate funding for the non-profit housing counseling agencies that provide direct assistance to consumers.

- More of that funding provided to housing counseling agencies should be allocated to default and delinquency services and programs designed to combat predatory lending. An effective housing counselor can prevent foreclosure by mediating between borrowers and servicers. With the widespread adoption of loss mitigation tools, housing counselors are effective and necessary intermediaries in the process. Federal policy should also encourage the private mortgage industry to provide more financial support to this industry.
- HOEPA and other federal laws should be strengthened to provide greater protection for consumers against predatory lending. As discussed above, limits on the points and fees, full assignee liability and changes in the tax code will go a long way to dissuade abusive loan practices. In addition, laws governing disclosures for second mortgages should be tightened to give consumers early and meaningful disclosures.
- More funding should be devoted to research into the industry. Research is essential to understand how the industry works and to identify effective practices. In addition, anecdotal evidence suggests that demand for services has increased for post-purchase services. Research needs to document this demand so federal policy can respond accordingly.

The housing counseling and education industry provides invaluable assistance to low-income and minority consumers. While many questions remain about funding and the efficacy of some of the services provided by the industry, it is undisputed that a strong industry has the potential to benefit all consumers.