EXECUTIVE SUMMARY

> "Lenders say they can't help us because they can't contact us. We are here, trying to save our homes." *Jaime Silahua before several hundred homeowners attending a rally at Holy Rosary Church in Antioch, organized by Contra Costa Interfaith Supporting Community Organizations (CCISCO)*
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> "We have experienced that lenders and servicers would rather let the homes go into foreclosure than to try to work something out." *A housing counselor in CA*

California documented foreclosure filings on 69,548 properties in September 2008, the highest in the nation. Additionally, six of the nation's top ten foreclosure rates were in California.[1]

This report is the fourth in a series that examines the extent to which home loan servicers are modifying loans and working with borrowers to preserve homeownership, as servicers say they are doing.[2] **Sadly,since the last report, not much has changed**. CRC conducted this survey of 44 mortgage counseling agencies and legal service offices statewide to determine the level of assistance servicers are offering borrowers now, and whether things have improved since the last survey in April 2008. As in April, counselors reported similarly frustrating experiences in the past five months trying to negotiate good outcomes for their clients. **For the month of September 2008, counselors again report that the most common outcome for borrowers is foreclosure**.

A series of government initiatives and industry commitments to follow "best practices" to avoid foreclosure have been announced over the past year. But the crisis is only worsening in California. These initiatives and best practices suffer from failing to be sufficiently ambitious in scope, and in relying on industry groups to voluntarily comply. Home loan servicers are subject to virtually no obligations, no accountability, and no transparency when it comes to helping working families avoid foreclosure. More of the same from government and industry is simply unacceptable.

California housing counselors confirm that more needs to be done. Key findings include:

I. California Families and Communities Are Being Devastated by the Foreclosure Crisis.

- **Most borrowers are experiencing devastating outcomes, with foreclosures most common**. 52.5% of counseling agencies reported that foreclosure is still a "very common" outcome for their clients seeking assistance, compared to only 26.3% observing that loan modifications are very common.

[1] "Foreclosure Activity Decreases 12% in September," Realtytrac, October 23, 2008. The six California metro areas in the top ten nationally of communities most impacted by foreclosure were: Stockton (#1), Riverside-San Bernardino (#3), Bakersfield (#4), Sacramento (#7), Fresno (#9), and Oakland (#10).

[2] The other "Chasm between Words and Deeds" reports can be found at www.calreinvest.org.

Long-term, sustainable loan modifications are the best solution for homeowners in distress.

- **Borrowers are facing profound economic challenges.** Large majorities of counseling agencies report they are working with borrowers who are:
    - "under water" (owe more on their loans than their homes are worth) (97.2% of agencies report this is very common);
    - experiencing a decrease in family income (85.7%);
    - stuck with option ARM loans that leave them owing more than when they started (82.9%);
    - struggling with unaffordable loans that never should have been made (73.2%);
    - realizing that key loan terms promised in their Spanish and Asian language negotiations didn't find their way into English-only documents (64.3%); and
    - victims of broker or lender fraud (56.1%).

- **The huge numbers of Californians who are under water need loan principal reduction, but that relief is rarely available.** A toxic combination of inflated appraisals, option ARM loans, and an overheated housing market that abruptly tanked has left many families owing much more money than their homes are worth. Not one counseling agency reported that principal reductions—often the key remedy for such borrowers—are very common.

- **Tenants are harmed by foreclosure.** 31% of agencies reported that tenants living in foreclosed homes are very common, and another 28.6% reported this situation as somewhat common. Tenants are the most unwitting victims of this crisis. They are often the last to know that the bank has foreclosed on their landlord; victims of illegal eviction attempts; subject to utility shut-offs; and forced to leave without recovering their security deposits. Greater protections are needed to help these families avoid homelessness.

- **Distressed homeowners are turning to expensive payday loans.** In a disturbing sign of these desperate times, one-third of counseling agencies reported that homeowner clients have taken out high-cost payday loans which often carry Annual Percentage Rates of 460%.

II. Servicers are Not Reaching Out and Modifying Loans.

- **Lenders are not responsive.** 93.6% of groups responding said that the industry as a whole is not consistently modifying loans for long-term affordability, subjecting borrowers to future difficulties as payments rise once more.

- **Longer-term loan modifications still lag.** Counseling groups were most likely to respond that when servicers were willing to modify loans, they were only willing to fix interest rates for one or two years at a time. These short-term solutions will make future payments difficult and may ultimately lead to foreclosure.

- **Outreach to borrowers in trouble is poor.** 63.6% of groups responding reported that the industry as a whole is NOT conducting outreach to borrowers before rates and monthly payments increase. Even where servicers are reaching out to borrowers before delinquency, counseling agencies report in large numbers that servicers remain unwilling to restructure loans for borrowers before they fall behind on payments. This finding is especially troubling given that both federal and state servicer agreements, in which all of the servicers in the survey participate, commit the servicers to work with borrowers before they are in default.[3] Only one agency reported that the industry as a whole was working with borrowers before default. Individual servicers did not fare much better.

- **Servicers are still hard to work with**. Counseling agencies were asked, "In your experience, which lenders/servicers are the most difficult to work with in trying to keep borrowers in their homes? Why?" A total of 23 companies were named as servicers that are difficult to work with. Wachovia was named most often, with 14 groups citing Wachovia/World as difficult to work with. Next came Wells Fargo and Ocwen, which were named by 9 groups.

- **Servicers may have a financial incentive to foreclose.** Servicers say it's not in their interest to foreclose, but that may not be the case. Foreclosure is often the least troublesome solution for servicers: 1) in a foreclosure the servicer gets paid; 2) foreclosure avoids the possibility of the servicer getting sued for exceeding its authority by modifying loans; and 3) foreclosure can help garner a better rating agency grade since the system rewards those who extract the most cash, which is more safely done through foreclosure.

- **Counseling agencies are frustrated.** Counseling agencies continue to express frustration with companies that do not offer any real solutions and provide poor customer service. Below is a sampling of comments made by counseling agencies. (The full text of all comments submitted is set forth in Appendix I.)
  - "Lack of concern, lack of urgency, lack of sense of timing, although they set the time frame. Failure to stop foreclosure long enough to negotiate and process requests."
  - "All have taken months to make a decision... had us on hold for 2.5 hours and then a machine came on stating that they were now closed and cut us off. On average 30 minutes to get to the right person, but before that we could be talking to 2 to 3 different depts or reps before we get to the right person."

III. Federal and State Initiatives Are Not Working.

- **HOPE NOW questioned.** The most significant federal efforts to prevent foreclosures have centered on the HOPE NOW alliance, a coalition of mortgage servicing companies,

[3] California Subprime Loan Agreement, November 21, 2007 (http://www.corp.ca.gov/press/news/SubprimeLending.asp) and "HOPE NOW Hails Broad Effort to Refinance and Modify Mortgage Loans," HOPE NOW press release, December 6, 2007, available at www.hopenow.com.

trade groups and counseling agencies. Counseling agencies report that servicers have not met any of the benchmarks established five months ago by HOPE NOW's Mortgage Servicing Guidelines, designed to encourage more timely responses to borrowers.[4]

- **State efforts questioned.** Counseling agencies report starkly longer wait times to reach a servicer than data reported by the Department of Corporations would suggest.[5]CRC also questions the purported success of the Governor's year-old Subprime Loan Agreement, as well as the prospects for success of his new proposal to offer servicers the choice of developing a streamlined loan modification program or a 90-day stay on foreclosures. A lack of enforcement and public data reporting threaten to undermine both proposals.

- **Fannie Mae and Freddie Mac: part of the problem or the solution?** Counseling agencies responding to the survey were slightly more likely to report that both Fannie and Freddie-serviced loans were more difficult, as opposed to less difficult, to modify than loans not subject to Fannie Mae or Freddie Mac guidelines. As the U.S. Government is now essentially in control of Fannie and Freddie, it is imperative to ensure that both companies are aggressive in helping families maintain homeownership.

- **A slew of additional federal efforts have failed to adequately address the foreclosure crisis.** The Paulson "Teaser Freezer" Plan, Project Lifeline, FHA Secure, and Hope for Homeowners have all failed to live up to expectations. Even the $700 billion bailout adopted by Congress has gone from a program that would buy up distressed mortgage assets in order to reduce foreclosures and encourage lending, into one focused on capital injections into many of the banks that caused this crisis in the first place, merely enabling them to buy other banks.[6]

- **One cause for optimism – FDIC.** Under the leadership of Chair Sheila Bair, the FDIC has been promoting more streamlined loan modifications and has informed the Bank of America predatory lending settlement, the recent JPMorgan Chase initiative, and Governor Schwarzenegger's recent plan. Indymac Federal Bank performed relatively well in this survey, though there were complaints. All of these FDIC-inspired initiatives must be subject to scrutiny in order to ensure success.

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[4] See http://www.hopenow.com/upload/press_release/files/Mortgage%20Servicing%20Guidelines.pdf.
[5] DOC collects data on state-licensed servicers. Counseling agencies responding to this survey are attempting to contact state-licensed and federally-chartered servicers.
[6] Michael J. de la Merced, "Many Line Up for Cash, but Bailout Plan Falters," New York Times, November 14, 2008.

RECOMMENDATIONS

What we have in place is not working. In order to keep borrowers in their homes, and to address the concerns of housing counseling agencies and legal services offices, CRC urges lenders, the California Legislature, Governor Schwarzenegger, federal banking regulators, Congress and the Bush and Obama Administrations to take the following key steps:

- **Stop foreclosures.** Impose a 180-day moratorium on foreclosures to allow enough time for workouts to occur and to halt the downward spiral of property values, while homeowners make affordable payments. Impose foreclosure filing fees to mitigate against financial incentives servicers have to foreclose, and to create a foreclosure prevention fund.

- **Modify loans.** Mandate that all servicers adopt FDIC-like streamlined, long-term loan modification programs. These programs should include principal reduction, help borrowers who are in default as well as those current on their loans but struggling, and allow borrowers to opt for mediation to ensure negotiations are fair and productive.

- **Create accountability.** Loan servicers must be required to submit detailed loss mitigation data to regulators that is validated and subject to public review. This is the only way to truly inform policymakers and the public as to what is going on, and to encourage better business practices by subjecting those practices to the light of day.[7]

- **Reform the Bankruptcy Code.** Change the Bankruptcy Code so that judges are permitted to modify loans on owner occupied housing, as can be done for 2nd lien loans, boat loans, and other less compelling credit products. The Center for Responsible Lending estimates that this change could help 600,000 people avoid foreclosure.

- **Reform the lending system.** The abusive and predatory lending practices that placed borrowers into high-risk loans and fueled our current crisis should be outlawed, investors held liable for any such abuse, and borrowers given a clear and meaningful ability to vindicate their rights in court.

- **GSE (Government Sponsored Enterprise) Reform.** Require Fannie Mae and Freddie Mac to aggressively pursue long-term loan modifications as servicer and investor; encourage low-cost home lending, especially in areas hard-hit by foreclosures; and support affordable housing development, which is critically needed, and which is being adversely impacted by Fannie and Freddie's retreat from the Low Income Housing Tax Credit market.

[7] Citibank voluntarily reports some of this data on its website, throwing into serious question industry arguments that these data are private or contain trade secrets.