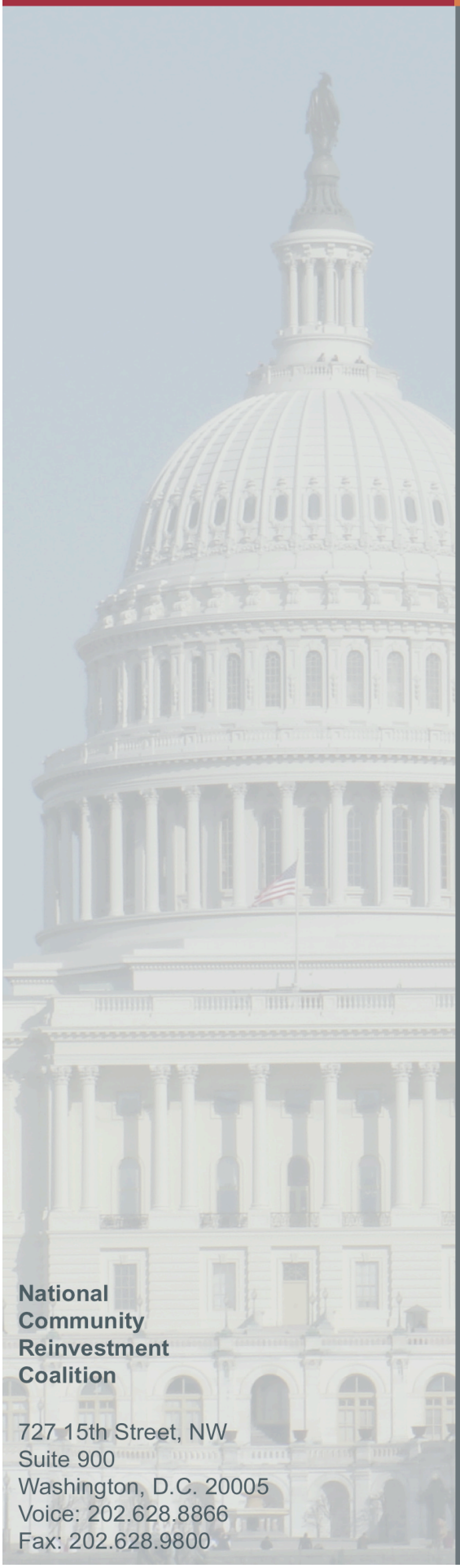
NATIONAL COMMUNITY REINVESTMENT COALITION NCRC

REGULATORY COMMENTS



Testimony of

David Berenbaum
Chief Program Officer

On behalf of the
National Community Reinvestment Coalition

On the topic of
"Affirmatively Furthering Fair Housing"

Submitted to the
U.S. Commission on Civil Rights District of Columbia Advisory Committee

Thursday, September 16th, 2010

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Introduction

Good afternoon, Chairman Lips and other distinguished members of the Advisory Committee. My name is David Berenbaum, Chief Program Officer of the National Community Reinvestment Coalition (NCRC). On behalf of our coalition, I am honored to testify before you today concerning the progress and challenges to affirmatively furthering fair housing and related issues of equal access to credit and fair lending in Washington, D.C.

NCRC is an association of more than 600 community-based organizations that promotes access to basic banking services, including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families.[1] Our members include community reinvestment organizations, community development corporations; local and state government agencies; faith-based institutions; community organizing and civil rights groups; minority and women-owned business associations as well as local and social service providers from across the nation.

NCRC's National Neighbors program has worked to make fair housing a reality in all communities by providing technical assistance to the public and private sector as well as to NCRC member groups. Through multifaceted programs including testing, private enforcement, education and outreach, fair housing planning, "best practice" compliance initiatives, comprehensive voluntary compliance services, and building partnerships among communities, real estate providers, financial institutions, and other market players, the National Neighbors program directly promotes fair housing and fair lending.[2]

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[1] NCRC has created a comprehensive and diverse set of programs which enable us to serve our members and the communities they represent by providing access to community development and direct service opportunities for America's working families. These programs include: National Neighbors, providing comprehensive fair housing services to the public and private sector, coupled with fair housing research, planning, and neighborhood rehabilitation through our new Fair Housing Planning Institute; Minority Business Enterprise Centers, operating in Washington, D.C. & Houston, Texas; Women's Business Center of the District of Columbia; National Housing Counseling Network, a certified National HUD Counseling Intermediary; The Center for Responsible Appraisal and Valuations; and the NCRC National Training Academy.

[2] The National Neighbors program published the nation's first Fair Housing Planning Resource Manual for public and private sector use in 1995, significantly contributing to the Third Edition of the Department of Housing & Urban Development (HUD)'s Fair Housing Planning Guide in 1996. In addition, National Neighbors released the nation's first fair housing curriculum "Creating Common Wealth – A Fair Housing & Fair Lending Resource Guide & Teaching Curriculum" in 1997.

Within the National Neighbors program, NCRC recently created the Fair Housing Planning Institute to assist public and private organizations ensure all communities have equal access to housing, credit, and the opportunity to live in vibrant and sustainable communities. The Fair Housing Planning Institute provides research and technical assistance to public and private sector agencies and fair housing and community-based organizations, allowing NCRC to be well-positioned to analyze and speak to the issues at hand today.

In addition, NCRC has also created a Neighborhood Planning and Investment Services initiative, through which NCRC pulls from best practices in community stabilization and reinvestment from across the country to develop innovative and practical solutions to the nation's housing and community challenges. NCRC is partnering with the District of Columbia Department of Housing and Community Department to implement a Neighborhood Stabilization Program grant from the US Department of Housing and Urban Development. In three distressed District neighborhoods, NCRC is implementing a model of comprehensive and green revitalization that builds upon the communities' assets and links housing investment to job creation and business development.

With my testimony, I hope to shed light on new areas of concern regarding the District's progress in addressing its 2005 and prior Analysis of Impediments. In addition, this testimony includes practical recommendations to assist the District in overcoming these, and other, obstacles to fair housing. As the panel may be aware, I also previously served as the Executive Director of the Fair Housing Council of Greater Washington where I served as the facilitator and one of the primary authors of the first Metropolitan Washington Council of Government's Regional Fair Housing Planning Analysis of Impediments In this role, I helped identify issues of reverse redlining, a dual lending marketplace, and pricing and lending discrimination that led to the agency filing the Capital Cities mortgage discrimination case. Unfortunately, in the decade since this work, little has changed, and in fact, for many the prevalence of discrimination has exacerbated well know problems associated with the financial crisis. Further, NCRC's recent testing and research in this area will provide a unique perspective on Washington, DC's duty to "affirmatively further fair housing."

Foreclosure in the Nation's Capital

Like the foreclosure crisis nationwide, the Washington, DC area crisis has been driven by subprime and non-traditional lending. Earlier this year, NCRC conducted a study, "Foreclosure in the Nation's Capital: How Unfair and Reckless Lending Undermines Homeownership," which sampled loans originated between 2004 and 2007 to examine the various borrower, loan, and neighborhood characteristics that drove subprime lending and foreclosure in the Washington, DC area.[3] By building on NCRC's other examinations of subprime lending, this study provides an expanded and sophisticated understanding of the causes of foreclosure and reveals some disturbing racial disparities that directly impact the District's Analysis of Impediments.

[3] Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, *The 2007 HMDA Data, in the Federal Reserve Bulletin*, Volume 94, 2008.

First, our research verified other studies in its finding that nearly 35 percent of subprime loans were issued to borrowers who could have qualified for fixed-rate, prime loans. This revelation is directly contradicts a common assumption that the foreclosure and subprime crisis was caused by irresponsible borrowers who bought homes they could not afford. This finding becomes all the more significant in light of recent claims of borrowers who were pushed into risky subprime loans, of enders or brokers aggressively marketing the loans while hiding higher interest rates or stricter repayment terms, higher rates of foreclosure for subprime loans, as well as racial disparities in subprime lending.

Second, by controlling for credit risk and other factors to isolate the effects that borrower, loan and neighborhood characteristics have on loans, our study confirms that individual African-American and Hispanic borrowers obtained subprime loans more often than white borrowers with similar credit scores, incomes, loan-to-value ratios, and neighborhood characteristics. Therefore, disparities in lending have a clear racial component that has yet to be adequately addressed through enforcement of the nation's fair lending laws.

For example, even after controlling for other factors, Latinos were 70 percent more likely and African-Americans were 80 percent more likely than their white counterparts to receive a subprime loan. This pointedly suggests that race, in and of itself, affects the likelihood of receiving a subprime loan. I whole-heartedly agree with John Taylor, President and CEO of NCRC, that "it is a shameful condition that borrowing while black or Latino remains a hazard in this country."

This finding supports previous studies by NCRC, which have repeatedly confirmed racial disparities in lending nationwide. For example, a recent NCRC study found that middle and upper-income African-Americans were at least twice as likely to receive subprime loans as middle and upper-income whites in 155 metropolitan areas in 2006.

Finally, NCRC's "Foreclosure in the Nation's Capital" report found that minority borrowers face foreclosure more often than white borrowers, even after controlling for borrower, loan, and neighborhood characteristics. Therefore, minorities are disproportionately affected by the foreclosure crisis, beyond levels that can be explained by any objective criteria. For example, African-Americans were almost 20 percent more likely and Latinos were 90 percent more likely than their similarly situated white counterparts to go into foreclosure. This, again, suggests that race, in and of itself, affects the likelihood that a borrower will go into foreclosure.

Likewise, this finding supports NCRC's previous studies of borrowers in the loan modification process, including those that found that loans held by African-Americans went to foreclosure more often than loans held by whites. This emerging area of concern is one that demands additional study.

Overall, these findings are particularly significant because the study controls for the most important factors used to determine risk during the origination process, including credit score. By using regression analysis in order to separate out and control for likely causal factors, NCRC's research results achieve a greater determination of causation than otherwise possible. Specifically, the study controls for a number of influential factors, including: loan-to-value ratio,

loan type (purchase or refinance), adjustable rate mortgages, refinancing, high-cost (subprime) loans, the extent of documentation, interest-only loans, pre-payment penalties, balloon terms, payment-to-income ratios, neighborhood characteristics including the percent of owner occupied housing, the median year homes were built, home values, and demographic characteristics of neighborhoods.

These findings also confirm recent fair lending testing by the National Community Reinvestment Coalition in the Greater Washington area over the past five years. In these audits of mortgage brokers, financial service companies, sub-prime lenders, banks and real estate companies that offer financial service products, NCRC on average found that in over forty percent of these institutions that discrimination on the basis of race or national origin occurred. Credit worthy consumers were often steered to high cost products coupled with different pricing, condition or terms, offered sub-standard and unsustainable, non-traditional loan products, or given sub-standard service and follow-up.

The Community Reinvestment Act in Washington, DC

In the last few years, NCRC has seen a growing number of critics accuse the Community Reinvestment Act (CRA) of causing our nation's financial crisis and the meltdown of the housing market. This accusation is unequivocally false. While CRA requires banks to serve communities, particularly low- and moderate-income communities, this legislation also requires that such lending is consistent with safety and soundness. In addition, research has proven that CRA was *not* the cause of the financial crisis.

NCRC's recently released report, "Safe and Sound Lending in Neighborhoods: An Examination of the Community Reinvestment Act (CRA) at Work in Washington, DC and Houston, TX," builds on this body of work by comparing the effects of CRA in two metropolitan areas.[4] First and foremost, this research reveals that CRA did, in fact, mitigate the significant decreases in lending accompanied by the current foreclosure crisis and severe recession as well as serve as an effective tool to ensure that lending conducted by banks is safe and sound. Both of these findings directly impact the District's Analysis of Impediments.

Consistent with Federal Reserve research, our findings first reveal that lenders covered by the Community Reinvestment Act issued a small percentage of high-cost loans in the geographical areas in which they are examined.[5] For example, CRA-covered lenders undergoing CRA exams in Washington, DC and Houston made only 4.3 percent and 12.5 percent, respectively, of the high-cost loans in 2006, a year of heavy subprime volumes. CRA-covered lenders made a larger share of high-cost loans in 2007 as several independent mortgage companies went out of business or started winding down their operations. Nevertheless, CRA-covered lenders issued a considerably smaller share of high-cost loans in geographical areas where they had CRA exams

[4] http://www.ncrc.org/images/stories/mediaCenter_reports/ford_nhood%20analysis-execsum.pdf
[5] Canner, Glenn and Neil Bhutta, 2008, "Staff Analysis of the Relationship between the CRA and the Subprime Crisis," Memorandum from the Division of Research and Statistics, Board of Governors of the Federal Reserve System, available at http://www.federalreserve.gov/newsevents/speech/20081203_analysis.pdf

than in areas outside of their exams. This was the case in Houston, Washington, DC as well as nationally.

In addition, NCRC's research found that while financial institutions decreased their lending, lenders not covered by CRA decreased their lending to a much greater extent. In Washington, DC, for example, CRA-covered banks issued 97,216 prime home loans in 2006 and 61,178 loans in 2008 (a drop of 37 percent over the time period). Non-covered CRA institutions issued 52,960 prime loans in 2006 and 30,973 in 2008 (a drop of 41.5 percent). At the end of the time period, bank lending was twice as great as non-bank lending in comparison to the start of the time period when bank lending was one-third greater than non-bank lending.

Over the time period that this research analyzes, many large mortgage companies went out of business due to non-performing and risky loans. For example, of the 169 lending institutions that went out of business in 2007, 167 were independent mortgage companies.[6] In contrast, banks with a greater degree of regulatory oversight were more successful in surviving adverse economic conditions and maintaining loan volumes. Regulatory oversight of CRA lenders, therefore, mitigated the destabilizing effects of declines in credit.

Another way to measure the greater stability of bank lending is to compare the volume of loans in neighborhoods to the number of homeowners. In the Washington, DC metropolitan area, for instance, CRA-covered lenders issued prime loans to 13 percent of the homeowners in low-income census tracts, on average, while non-CRA covered lenders made prime loans to only four percent of the homeowners in low-income tracts during 2008. In 2006, the percentages were 17 and 14 percent for CRA-covered and non-CRA covered lenders, respectively.

CRA-covered lenders also offered higher percentages of prime home loans to homeowners in minority and modest income neighborhoods in the Washington, DC metropolitan area. For example, CRA-covered lenders issued loans to 12 percent of homeowners in predominantly minority tracts and 9 percent of homeowners in predominantly white tracts in 2007. The same results favoring homeowners in low-income tracts compared to middle- and upper-income tracts occurred from 2006 through 2008. For instance, CRA-covered lenders made prime loans to 13 percent of the homeowners in low-income tracts compared to eight percent of the homeowners in upper-income tracts in 2008.

Limitations of the Home Affordable Modification Program

Earlier this year, NCRC undertook one of the first concerted efforts to document the experiences of homeowners throughout the modification process, under the Obama Administration's Home Affordable Modification Program (HAMP). As first presented by NCRC President and CEO John Taylor before the Oversight and Government Reform Committee of the U.S. House of Representatives on March 25, 2010, NCRC's HAMP Mortgage Modification report provides alarming insight into the performance of this federal program.[7] Administered to distressed

[6] Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, *The 2007 HMDA Data, in the Federal Reserve Bulletin*, Volume 94, 2008.
[7] http://www.ncrc.org/images/stories/mediaCenter_reports/hamp_report_2010.pdf

homeowners seeking assistance from NCRC's Housing Counseling Network, the report documents disturbing issues of fairness and equity, including possible race and age disparities in quality of treatment, that directly impact the District's Analysis of Impediments.

Among its troubling findings, the NCRC HAMP Mortgage Modification report revealed African-American borrowers were more likely to be foreclosed upon and less likely to receive a loan modification than their white or Hispanic counterparts. For example, white HAMP-eligible borrowers are almost 50 percent more likely to receive a modification than African-American HAMP-eligible borrowers. In addition, only 24.3 percent of African- American respondents and 32.3 percent of Hispanic or Latino respondents received some kind of modification. In contrast, 36.4 percent of HAMP-eligible whites received a modification, strongly suggesting the need to address barriers impeding eligibility and equitable access, as well as a need for fair lending investigations of HAMP program and participating servicers.

Another issue of concern illuminated by this report was that almost half of the respondents were over the age of 50. While the current economic crisis and collapse of real estate values have made life more uncertain for all Americans, seniors have been especially impacted. Foreclosure and the sharp reduction in the value of most seniors' primary asset -- their home-- means that the economic crisis has left many older Americans particularly vulnerable to financial insecurity. This population was most likely counting on the equity built in their home to sustain them throughout their retirement and they are now experiencing massive losses while also facing difficulties in selling their homes. While the younger population hopes to recoup their losses over time as the economy heals, Americans at or near retirement have less time to regain their footing. As such, Congress and State legislatures need to ensure that the foreclosure crisis does not imperil the financial security of this particularly vulnerable section of Americans. When coupled with the fact that older Americans are likely to be living on fixed budgets, these findings suggest that the fair housing choice of this population is negatively impacted.

On a broader level, this report found that a disappointing number of homeowners are receiving the modifications necessary for them to be able to stay in their homes. In fact, less than half of HAMP-eligible applicants received a modification. Program history also shows that a vast majority of these modifications were temporary and only 12.6 percent of these were converted into permanent modifications.[8] There is no doubt that more needs to be done to determine why denial rates are so high and why trial modifications are not being converted into permanent modifications on a meaningful level.

Predatory Foreclosure Prevention Firms

While foreclosure prevention and rescue modification scams have been problematic for years, these scams have become more prevalent with the increase of foreclosures nationwide and present a significant consumer protection concern. By promising an easy fix for a fee, scammers mislead homeowners into believing that they will receive a modification that significantly lowers their payment, or stabilizes an exploding adjustable-rate mortgage. Consumers are encouraged

[8] See the Making Home Affordable Program Servicer Performance Report Through February 2010

to deal only with the for-profit company or mortgage service provider, and are sometimes advised to cease making payments as they are contractually obligated to do. Scammers often fail to the deliver the services they advertise and consumers are left in a worse position – behind on their home loan, with no recourse or hope of a refund.

More vulnerable than ever, consumers may then fall prey to other schemes, such as a transfer of title without a release of the mortgage obligation. Directed to make rental payments to the new owner, the home may still fall into foreclosure. At the end of the process, consumers find themselves without equity, with scarred credit, and with nothing to fall back on. Community ties are ruptured and neighborhoods become more prone to blight, disinvestment, and elevated crime because of declining property values and increased abandonment, decay, crime, and vandalism. In sum, the continued failure to address such scams only multiplies the profound social, cultural, and economic injury to our local communities and to the nation overall. Not only do these scams present a growing concern for the consumer protection community, but I believe they should be considered an impediment to fair housing choice in Washington, DC.

To address the concerns surrounding rescue scams, NCRC conducted a research study for three months in mid-2009 by using fair lending, matched-pair testing or "mystery shopping" to assess the extent of the problem. This testing reveals that consumers experience a wide range of treatment by foreclosure prevention service providers. In the best case scenario, consumers receive fair advice and cost-effective strategies for preserving homeownership. However, many companies were revealed to be sources of misinformation while others perpetrate devastating scams against consumers, including phantom help, reverse mortgages, title theft, and short sale fraud.

NCRC found that many companies that pose as "rescuers" have become a pervasive threat to community stability and sustainable homeownership. NCRC's study reveals that over 80 percent of the companies it "tested" gave consumers problematic advice and offered little to no guarantees for their "professional" services. The companies quoted consumers an average fee of $2,600 for the same services that could be readily obtained from HUD-certified counseling agencies or by dealing directly with mortgage servicers. Furthermore, many companies were truly out to scam homeowners, looking to strip equity, steal title, or sell services that would allow the company to profit at the expense of consumers, leading to foreclosure and irreparable harm to the consumers' credit and financial stability.

Specifically, less than 20 percent followed Federal Trade Commission (FTC) guidance that requires companies to inform consumers of alternatives, including nonprofit organizations that provide foreclosure prevention services for free. In addition, in nearly a quarter of the mystery shopping calls, shoppers were advised to not to pay their mortgages or have any contact with their lender.

Scammers have been able to threaten consumers, in large part, because modification companies are often operating in a regulatory vacuum without any accountability, potentially preventing consumer access to the Home Affordable Modification Program and the Home Affordable Refinance Program.

NCRC's findings demonstrate that aggressive legislative solutions and added public and private oversight and enforcement are necessary to prevent consumers from being harmed. Additional testing is needed to fully assess the nature of the problem, but many avenues for consumer protection enforcement are already apparent, including increased public and private sector oversight combined with effective education and outreach to ensure consumers work with responsible providers.

Lastly, NCRC is very concerned about valuation issues in the District of Columbia and the excessive reliance on broker price opinions (BPOs) in place of independent appraisals. This overreliance has pushed experienced and reliable appraisers of the industry, left consumers in the hands of inexperienced brokers who often have a direct conflict of interest with the homeowner and investor, and both have contributed to a decline in the quality of valuations. In addition, the use of BPOs open the door to short sale fraud, or flopping, in which a home's value is falsely deflated for its first purchase and then later resold for its true value.

When home values are inaccurate or artificially deflated, homeowners and investors are not the only parties that lose out. Neighboring homeowners and States and local governments that use property values to assess taxes also suffer. In turn, those who rely on essential government services, including school systems, roads, hospitals, and police, are also left vulnerable. According to the Government Accountability Office, a decline in home values, whether due to changes in the market or due to artificially-deflated property valuations, has a direct correlation to state and local government's ability to provide resources for schools, public safety, and other necessary public services which are funded in large part from property tax revenue.[9]

Recommendations

To address challenges to fair lending in Washington, DC, federal and local lawmakers must act boldly by enacting strong and insightful legislation and regulatory solutions. Any policy change must consider the unique role of fair lending in helping to restore stability in the wake of the current economic crisis.

As such, NCRC has identified a number of areas that must be addressed. These include, but are not limited to the following:

- Washington DC and other local jurisdictions should consider adopting community reinvestment and fair lending ordinances requiring that CRA and fair lending performance be a factor when localities are deciding which institutions to place their deposits. The City should consider commissioning regular studies similar to the study NCRC conducted for the City a couple of years ago that rank and compare lenders on their CRA and fair lending performance in serving minorities, low- and moderate-income borrowers, and women.[10] The City can then adjust the level of deposits they place into various banks based on their rank in such studies. This approach is a powerful

[9] US Conference of Mayors, *U.S. Metro Economies*, June 2008
[10] http://www.urban.org/UploadedPDF/411709_dc_subprime_mortgage.pdf

mechanism for encouraging banks to increase their responsible lending to traditionally underserved communities and provide more product choice in communities experiencing less access to responsible credit. Such local ordinances would also complement further strengthening of CRA legislation and regulation on a federal level.

- In order to further investigate racial disparities in high cost lending and foreclosures, resources for fair housing/lending enforcement must be increased. Additional resources from the public and private sectors should support systemic investigations including mystery shopping and data collection of borrower experiences in applying for loans as well as applying for modifications.

- Washington DC and other local jurisdictions should pass legislation requiring mediation between servicers, lenders, and distressed borrowers before foreclosure proceedings are allowed to commence. Mediations explore whether borrowers can qualify and afford loan modifications, and if not whether short sales, deeds-in-lieu, and other alternatives to foreclosure can be pursued. Maryland, Pennsylvania, and North Carolina have recently passed these types of laws.

- Borrowers need to be armed with knowledge and information regarding how to shop for responsible financial products and how to avoid scammers. Additional public, private, and foundation resources need to be identified to bolster the level of homeowner pre-purchase counseling, foreclosure prevention counseling, and anti-fraud education.

Conclusions

NCRC, through research and analysis, have documented several disturbing findings: racial disparities in terms of receiving subprime loans and foreclosure rates, despite similar credit scores, incomes, loan-to-value ratios, and neighborhood characteristics; that African-American borrowers are less likely to receive a loan modification than their white or Hispanic counterparts; and an increase in predatory scammers. These areas of concern directly impact the District's ability to affirmatively further fair housing and should be considered as the City produces its Analysis of Impediments.

In regard to practical recommendations to assist the District in overcoming these, and other, obstacles to fair housing, NCRC strongly supports requiring that CRA and fair lending performance be a factor when localities are deciding which institutions to place their deposits, increasing resources for fair housing/lending enforcement, passing legislation requiring mediation between servicers, lenders, and distressed borrowers before foreclosure proceedings are allowed to commence; and increased support of homeowner pre-purchase counseling, foreclosure prevention counseling, and anti-fraud education.