

**Written Testimony
of
Benjamin Clark
of the
National Fair Housing Alliance**

Submitted to

Raquel Rolnik, United Nations Special Rapporteur on Adequate Housing

October 26, 2009

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Special Rapporteur Rolnik, thank you for this opportunity to testify on behalf of the National Fair Housing Alliance (NFHA) regarding the fair housing implications of the foreclosure crisis and the chance to offer specific policy recommendations to address those implications. My name is Ben Clark, and I am NFHA's Project Coordinator for Public Policy and Communications. Founded in 1988, the National Fair Housing Alliance is a consortium of more than 220 private, non-profit fair housing organizations, state and local civil rights agencies, and individuals from throughout the United States. Headquartered in Washington, D.C., the National Fair Housing Alliance, through comprehensive education, advocacy and enforcement programs, provides equal access to apartments, houses, mortgage loans and insurance policies for all residents of the nation.

NFHA has worked closely with Congress and the Administration since the 1990s when predatory lending began to take root, to develop policies that fight discriminatory lending practices, mitigate foreclosures and advance equal opportunity. Predatory lending is a historical problem. Since the turn of the 20th century, governmental policies and private practices have created large and oftentimes intentional hurdles to keep African American and Latino borrowers from entering America's lending mainstream. Without historic access to the government programs that have encouraged homeownership or traditional forms of credit, minority communities have long relied upon the fringe lending market as their source of credit.¹ Although it is illegal to deny applicants credit or insurance based upon their race or national origin², this discrimination continues. America's legacy of segregation and the perpetuation of illegal discrimination on behalf of financial services providers have left communities of color, women, the elderly and others vulnerable to abusive and predatory lending. In order for the federal government to adequately address the foreclosure crisis, it must:

- aggressively intervene to mitigate foreclosures with programs that assist the communities most affected by the crisis;
- reform the national financial regulatory system that failed to enforce federal fair lending laws and enabled financial institutions to make discriminatory loans; and
- administer federal funds in a way that creates regional equity and reduces racial and income segregation.

I. The Foreclosure Crisis is a Civil Rights Issue

The foreclosure crisis is, at its heart, a civil rights issue. Minority communities and borrowers of color have long been underserved by financial institutions and been denied credit because of

their race, national origin, sex, or other protected class. Well-documented evidence shows that lenders have denied borrowers of color credit or offered them credit with strikingly different terms than white borrowers.³ Most recently, subprime lenders targeted communities of color with their loan products and flooded the marketplace with unsustainable and discriminatory loans bound for failure. These mortgage brokers, lenders, investors, securitizers, and servicers unscrupulously profited by offering borrowers high-cost subprime loans.

Subprime lending has depended upon, and built upon, America's legacy of racial segregation. In the twenty-first century, the United States of America remains a segregated nation with high incidences of housing discrimination. Although America is less segregated than it was in 1980, white Americans continue to live in neighborhoods with a vastly different racial and ethnic makeup than African American and Latino families. Communities of color are disproportionately poor and tend to be racially isolated. In fact, neighborhoods are more likely to be racially isolated if they have high levels of concentrated poverty.⁴ As reported by Kai Wright in a special edition of *The American Prospect*, homeownership represents almost two-thirds of middle-class wealth, and that wealth is largely held by whites. The homeownership gap between Whites and Blacks is worse than it was in 1940 – 23% in 1940 versus almost 28% today.⁵ The gap between Whites and Hispanics is also 27%.⁶ In addition, African American and Latino applicants are denied conventional mortgage loans more often than white applicants in ALL income ranges; and white homeowners in white neighborhoods pay less for better insurance coverage. These lower homeownership rates resulted in a racial wealth disparity: in 2004, 40 percent of African-Americans and Latinos lived below the asset poverty line.⁷

Most subprime lending occurred in racially segregated and economically isolated neighborhoods. At the height of the subprime lending boom, people of color were two to five times more likely to receive a predatory loan than white borrowers.⁸ This phenomenon has been well documented over many years, most recently in a study issued by the Center for American Progress. That study, which analyzed the 2006 Home Mortgage Disclosure Act (HMDA) data of 14 banks and their subsidiaries that recently received billions of dollars in Troubled Asset Relief Program (TARP) funding from the federal government, found high-income African Americans were still three times as likely as their white counterparts to receive subprime loans. The study, in part, examined data for borrowers whose incomes were more than twice the area median income for their metropolitan area. Among this wealthy group, 10.5% of white borrowers received higher-priced loans while 29.1% of Latino borrowers and 32.1% of African-American borrowers received these loans.⁹ The numbers overall are even worse: 17.8% of white borrowers received higher-priced mortgages, while 30.9% of Latino borrowers and 41.5% of African-American borrowers received higher-priced loans.

Foreclosures continue to rise at an alarming rate. Between July 2007 and August 2009, banks foreclosed on 1.8 million homes and initiated another 5.2 million foreclosures.¹⁰ In the first quarter of 2009, 800,000 new foreclosure actions were filed and the Center for Responsible Lending (CRL) projects that number will grow to 2.4 million by the end of the year.¹¹ These numbers will continue rise as Option ARM mortgages are recast, homeowners continue to see unanticipated spikes in mortgage payments, and Americans continue to lose their jobs or suffer from other unanticipated losses of income.¹² In the next three years, CRL estimates banks will initiate some 9 million foreclosures.¹³

This large number of foreclosures has had a dramatic impact on communities of color, as borrowers with subprime loans are substantially more likely to default than borrowers with conventional fixed-rate mortgages.¹⁴ In fact, 10% of African-American borrowers are expected to face foreclosure, compared to only 4% of white borrowers.¹⁵ As a consequence of these lending practices, communities of color lost between \$164 and \$213 billion in wealth between 2000 and 2007,¹⁶ and that number keeps rising as the foreclosure crisis worsens.

The racial disparity is stark and can be seen in foreclosures, which will be obvious during your tour of the United States: for example, in New York City, subprime lending was disproportionately concentrated in census tracts with high minority populations;¹⁷ neighborhoods in Chicago with minority populations of 90 percent or greater experienced a 544 percent increase in foreclosures;¹⁸ and nine of the ten neighborhoods with the highest foreclosure rates in New Orleans are predominantly African American neighborhoods.¹⁹

II. Three Policy Recommendations to Address the Foreclosure Crisis

In order to properly stabilize the economy, the United States federal government must address the recession at its roots: it must repair the housing market, and it must do so in an equitable way that recognizes the impact that racial discrimination in the lending market has had on communities of color. The following three recommendations are suggested starting points.

A. **The Federal Government must offer appropriate foreclosure assistance programs that take into account racial disparities, and properly monitor these programs.** The Administration has attempted to mitigate the foreclosure crisis through its Making Home Affordable program, announced in spring 2009, which is run through the Department of the Treasury. The program does not adequately address the crisis. Making Home Affordable seeks to prevent foreclosures by working with private industry to offer affordable loan refinances and affordable loan modifications. Unfortunately, this federal program is too small to address the growing foreclosure crisis. Making Home Affordable's Home Assistance Modification Program (HAMP), which offers incentives to loan servicers and investors to offer borrowers loan modifications, will only benefit an estimated 3 to 4 million people, while the Center for Responsible Lending predicts 9 million foreclosures in the next three years.²⁰ To make the most impact, Treasury should expand the program to:

- cast a broad net with respect to determining which borrowers are eligible for a modification, including giving a second chance to borrowers for whom changes in circumstances (such as unemployment) make their original HAMP loan modification unsustainable;
- reduce loan principals on the loans to make them more affordable; and
- make interest rate reductions permanent, not short-term.²¹

Housing advocates report a lack of cooperation on the part of loan servicers who are misinforming consumers, and a lack of transparency by servicers and the government

that makes it difficult to determine why servicers have refused to modify some borrowers' loans. Treasury must increase HAMP's transparency by providing applicants with reasons for denial, and it also must make public its measurements used to evaluate whether borrowers qualify for the program.

Additionally, Treasury must continue to collect data about applications received by all participating servicers, including data on race, gender, national origin, and the outcome of those applications. It must make these data available to the public in a usable way so that academics and advocacy organizations can determine whether or not HAMP is having a disparate impact on African Americans, Latinos, and others.

B. The Federal Government must increase its oversight of financial services providers for compliance with anti-discrimination laws. The subprime lending crisis was, in part, enabled by the failure of federal banking regulators to adequately protect consumers. Many of the lenders that preyed upon communities of color and offered subprime loans to borrowers who qualified for prime loans broke federal fair lending laws. The federal regulators that were responsible for examining these banks and enforcing laws like the Equal Credit Opportunity Act did not do an adequate job and oftentimes ignored their responsibilities altogether. From 2004-2007, during the height of subprime lending, national bank regulators referred an abysmal number of fair lending cases to the Department of Justice for prosecution. In fact, the Office of the Comptroller of the Currency only referred one case and the Office of Thrift Supervision only referred seven cases. During this time, lenders unapologetically targeted communities. For example, Wells Fargo's Mortgage Resource division, known as MORE, exclusively originated high-cost subprime loans and targeted predominantly African American communities (by zip code) in Washington, DC that are east of the Anacostia River, Prince Georges' County, Maryland, and the City of Baltimore.²²

In order to reduce foreclosures and ensure that lenders are not discriminating, federal regulators must do a better job of enforcing fair lending laws. Congress is currently considering creating a Consumer Financial Protection Agency, which would take civil rights enforcement responsibilities away from regulators that rarely use them, and give them to a new agency tasked solely with consumer protection. We support this proposal, which recently passed the House Financial Services Committee.

C. The Federal Government must spend its funds in such a way that promotes diverse, inclusive communities. The Troubled Asset Relief Program (TARP) is the largest federal program in place to address the economic crisis. Congress passed TARP to improve the economy by assisting banks' and others' ability to increase available credit. This federal funding is being used for both housing and urban/community development, and is therefore subject to the obligation to "affirmatively further fair housing" under the federal Fair Housing Act. This means that TARP money must be used in a way that reduces segregation and promotes racial and other types of integration.

If the government monitors TARP funds and ensures that they are being used to open economic and social opportunity, it can begin to systemically address the residential segregation that allowed mortgage lenders to geographically target communities and borrowers of color. Recent news reports indicate that the Obama Administration is considering providing TARP funds to local community banks. Ensuring that TARP funds are distributed to responsible banks and encouraging those banks to make commercial investments in low-income communities and investments in affordable housing in high-opportunity communities is one way that TARP funds can be leveraged to reduce inequality.

For all of these recommendations, we suggest meeting with the Treasury Department, the Department of Housing and Urban Development (HUD), and the House and Senate, specifically the House Financial Services Committee and the Senate Banking and Urban Development Committee.

Thank you for the opportunity to submit testimony on such an important topic. We appreciate your time and attention to this matter and would welcome the opportunity to continue working with you on these and other fair housing issues.

¹ See “An Examination of Civil Rights Issues with Respect to the Mortgage Crisis: The Effects of Predatory Lending on the Mortgage Crisis,” Statement of Lisa Rice for the US Commission on Civil Rights. (March 20, 2009.)

² See 42 U.S.C. §3601, *et seq.*, 15 U.S.C. § 1691, *et seq.*

³ See “Residential Segregation and Housing Discrimination in the United States: Violations of the International Convention on the Elimination of All Forms of Racial Discrimination,” a response to the 2007 Periodic Report of the United States of America submitted by U.S. Housing Scholars and Research and Advocacy Organizations. (A Report to the U.N. Committee on the Elimination of Racial Discrimination, January 2008.), 15.

⁴ “The Future of Fair Housing,” Report of the National Commission on Fair Housing and Equal Opportunity, p. 5.

⁵ Callis, Robert R. “Moving to America – Moving to Homeownership 1994 – 2002.” (United States Census Bureau, September 2003.)

⁶ “Through Boom and Bust: Minorities, Immigrants, and Homeownership,” 2009 Pew Hispanic Center.

⁷ Wright, Kai. “The Assault on the Black Middle Class.” *The American Prospect Special Report: The Credit Crisis and Working America*. Jul/August, 2009.

⁸ “The Silent Depression: State of the Dream 2009,” United for a Fair Economy, 2009.

⁹ Jakabovics, Andrew and Jeff Chapman, “Unequal Opportunity Lenders? Analyzing Racial Disparities in Big Banks’ Higher-Priced Lending,” (Center for American Progress, September, 2009).

¹⁰ “October Oversight Report: An Assessment of Foreclosure Mitigation Efforts After Six Months,” (Congressional Oversight Panel, October 9, 2009.), 4.

¹¹ Center for Responsible Lending, *Soaring Spillover 1* (May 2009), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-3-09.pdf>

¹² “October Oversight Report: An Assessment of Foreclosure Mitigation Efforts After Six Months,” (Congressional Oversight Panel, October 9, 2009.)

¹³ Center for Responsible Lending, *Soaring Spillover 1* (May 2009), available at <http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-3-09.pdf>

¹⁴ After controlling for credit score, CRL found that subprime loans originated in 2000 were 72% more likely to foreclose than conventional loans. Ellen Schloemer, Keith Ernst, Wei Li and Kathleen Keest, *Losing Ground: Foreclosures in the Subprime Market and Their Cost to Homeowners*, December 2006, available at: www.responsiblelending.org.

¹⁵ Wright, Kai. “The Assault on the Black Middle Class.” *The American Prospect Special Report: The Credit Crisis and Working America*. Jul/August, 2009.

¹⁶ “Foreclosed: State of the Dream 2008,” United for a Fair Economy, 2008.

¹⁷ “Subprime Mortgages in the New York Region: High-cost subprime loans became widely popular in New York, New Jersey, and Connecticut in 2005 and 2006,” (interactive graphic). *The New York Times*. (October 12, 2007.) Available online at

http://www.nytimes.com/interactive/2007/10/12/nyregion/20071012_SUBPRIME_GRAPHIC.html#.

¹⁸ See “United Nations Special Rapporteur on Adequate Housing U.S. Mission Federal Talking Points 10/22/2009-11/8/2009.”

¹⁹ National Fair Housing Alliance and Greater New Orleans Fair Housing Action Center’s forthcoming paper on foreclosures in New Orleans.

²⁰ Center for Responsible Lending, *Soaring Spillover 1* (May 2009), available at

<http://www.responsiblelending.org/mortgage-lending/research-analysis/soaring-spillover-3-09.pdf>

²¹ For a more detailed list of recommendations, please see, “Progress of the Making Home Affordable Program,” Written Testimony of Deborah Goldberg of the National Fair Housing Alliance before the Congressional Oversight Panel. (September 24, 2009.)

²² Declaration of Tony Paschal. Filed in *Mayor and City Council of Baltimore v. Wells Fargo*, No. 1:08-cv-00062-BEL, (D. Md. 2008).