

TO: President Barack Obama
FROM: PICO, NPA, NWFCO, ACCE, SE IAF, CRA-NC
RE: Preventing foreclosures and stabilizing the housing market
DATE: November 8, 2010 (REVISED)
CC: Treasury Secretary Timothy Geithner; Secretary of Housing & Urban Development Shaun Donovan

The current approach to the foreclosure crisis is not working. We can no longer rely on the good intentions of the financial institutions that caused the crisis to revive the economy. Monthly foreclosure sales have now passed 100,000 per month for the first time in American history, while permanent loan modifications have fallen below 28,000. The Administration needs to adopt a **new approach** to foreclosure that unequivocally puts the needs of American families and communities ahead of the short-term bonus-maximizing interests of big bank executives.

As networks of hundreds of faith and community-based organizations representing more than three million families, we see first-hand how the flood of foreclosures is driving down property values and prolonging hard times for families. Long-term unemployment is higher than at any time in our lives and the housing markets in the communities in which we work remain in turmoil. More than five million families, including tens of thousands of our members, will receive a foreclosure notice this year. Bank repossessions are devastating for our children and families and impose enormous spillover costs on the entire economy.

We now have ample evidence that it is possible to prevent large numbers of foreclosures through well-constructed loan modifications. Nine-out-of-ten families who have made it through the gauntlet of servicer incompetency and disinterest to obtain a permanent modification through HAMP have been able to stay current on their loans. Not every foreclosure can or should be avoided, but we should not allow foot-dragging by financial institutions and poor program design stand in the way of stopping entirely preventable foreclosures. Flooding the housing market with unnecessary foreclosures is an economic failure that further destabilizes the housing market and impedes job growth; it is a moral failure that causes avoidable suffering; and it is a political failure that contributes to cynicism about government. Many of our members have looked at the handling of the foreclosure issue and concluded that the Administration is more concerned about bailing out big Wall Street banks than protecting ordinary American families.

The **recommendations** in this memo are based on a series of eight Community Hearings that PICO and National People's Action and other organizations held with the U.S. Treasury about the Administration's foreclosure prevention efforts, many meetings with Treasury and HUD officials and thousands of conversations with families facing foreclosure, faith leaders and housing counselors. We add our voices to a growing chorus calling for a new approach. With active investigations underway by Attorney Generals across the U.S., legal action by investors and growing public anger over foreclosure fraud, this issue is not going away and will continue to drag down the housing market and the economy if we do not get ahead of it. We know that it is possible to extend sustainable loan modifications to millions of American families, now we need the will to make this happen.

We urge you to take the following steps to prevent unnecessary foreclosures and stabilize the housing market:

1. Institute a temporary freeze on foreclosures of owner-occupied homes until a thorough investigation can be conducted into the foreclosure process, including the document scandal, the systematic failure to follow HAMP guidelines, and other examples of loan servicer misconduct

A temporary freeze on foreclosure actions against owner-occupied homeowners (not vacant property) is essential to stabilizing the housing market while we put in place a new more successful approach to the preventing a larger volume of foreclosures. More and more local and state officials and non-profits are pressing for an industry-wide foreclosure freeze in response to revelations of widespread fraud by the nation's largest financial institutions. A number of banks have agreed to partial foreclosure moratoriums. The big banks have tried to diminish fraud accusations, but support for a foreclosure moratorium is growing because ordinary people and economists understand that flooding the housing market with illegal foreclosures hurts everyone's property values and unfairly denies people an opportunity to save their homes from foreclosure. We need a temporary nationwide freeze, not just on final foreclosure sales, but on all foreclosure actions until the systems are put in place to assure that people are being given an opportunity to avoid foreclosure. The moratorium should not end until banks/servicers have provided permanent loan modifications to fifty percent of eligible owner-occupied homeowners.

We also believe that this is just the tip of the iceberg. The big banks got us into this crisis by cutting corners, and these new fraud revelations show that they are continuing to act in an unfair and reckless way that is prolonging the crisis. The

State Attorneys General have provided important national leadership in pressing investigations into wrong-doing, as they did in the years leading up to the financial crisis. The Treasury, HUD, Attorney General Holder and other federal agencies need to step forward with a stronger hand to investigate and prosecute executives who engaged in fraud. We need to hold banks accountable for criminal action.

2. Appoint a senior-level official who will lead the Administration's efforts to fix the housing crisis

There needs to be a senior level official with sufficient clout to champion the fight against foreclosure within the Administration, with the banks/servicers and publicly. Over the past year it has been difficult to understand who, at the highest levels in the Administration, is really fighting to make the Administration's efforts on housing work and to force servicers to follow through. At times the Administration has given mixed signals about its approach to the foreclosure issue. A single point of leadership on this issue would help build public support for the steps that people understand need to be taken to stabilize the housing market.

3. Reset the housing market by adopting an aggressive policy that promotes principal reduction for underwater homeowners

- Make principal reduction a mandatory element of HAMP: Under new HAMP rules requiring an alternative NPV test that includes principal reduction, banks should be required to do the principal reduction when alternative waterfall is NPV positive.
- Require Government-Sponsored Entities Fannie Mae and Freddie Mac to undertake principal reductions. Currently the GSE's are refusing to support principal reduction, which makes it harder to make the case with non-GSE held mortgage loans.
- Increase capacity of Fannie Mae and Freddie Mac to make principal reduction by lowering their dividend repayment from 10% to the 5% level that banks had paid for their bailout funds.
- To make loan modifications more sustainable, change the back-end ratio from 63.3% to below 45%.
- Support common-sense changes to the bankruptcy code that would level the playing field for homeowners by allowing judicial loan modification

4. Hold servicers accountable for compliance with HAMP

- Mandate participation and impose stiff financial penalties on those servicers that are not complying with HAMP, beginning with fines on Bank of America

(under the Servicer Participation Agreement, penalties could include reduced servicer incentive payments).

- Set clear and ambitious goals for the number of permanent loan modifications per quarter and for standards of customer service, for each financial institution participating in HAMP, and impose financial penalties on institutions that consistently fail to meet these goals.
- Strictly enforce the rule that no foreclosure can go to sale until the HAMP review is completed – too many are slipping through.
- Increase transparency and accountability by:
 - Making the Net-Present Value calculation available to public.
 - If a borrower is denied a modification and NPV is given as reason, must include NPV inputs and outputs, in writing to the borrower and counselor.
 - If investor denial given as reason, must include name of investor and copy of PSA
- Input the NPV factors for property deterioration and vandalism and for the time it takes to resell a foreclosed home on a neighborhood basis – instead of the metropolitan or statewide basis used currently – so that the hardest hit neighborhoods get the appropriate lower valuations.
- Make loan modifications more sustainable by 1) basing them not only on income but also on expenses by using a back end ratio of debts, plus medical expenses and 2) making loan terms for the life of the loan.
- Establish a uniform process to be followed by all lenders and servicers in the process including a point person for each loan review
- Auto-convert trial modifications to permanent modifications at end of three months.
- Apply trial modification payments toward permanent modification. Repayment for homeowners who pay their trial modifications but are not accepted into permanent modifications for legitimate reasons.
- Under new HAMP rules requiring an alternative NPV test that includes principal reduction, banks should be required to do the principal reduction when alternative waterfall is NPV positive
- Establish an independent appeals process with enforcement powers.
- Release loan-level data that includes race and ethnicity data

5. Require banks to help the millions of homeowners who are unemployed and who are in danger of losing their homes

- Mortgage servicers should be required to offer payment forbearance for the minimum of 12 months or the period of unemployment or underemployment. The homeowner would contribute 31 percent of his

gross income each month, in line with the requirements in the primary HAMP program. Payments owed in excess of the 31 percent would be forborne. At the end of 12 months, or the period of unemployment, the payments that were not made would be capitalized into the principal balance.

- If a homeowner has applied to the Hardest Hit Fund run by their state or to the HUD Emergency Homeowner Loan Program, HAMP rules should be clarified to make certain that foreclosure actions cannot proceed during the period during which their application is being considered.
- Increase funding to states under the Hardest Hit Fund, from unspent TARP funds that Treasury has for foreclosure prevention, so that more unemployed homeowners can get loans to prevent foreclosure. Extend Hardest Hit Funds to all states since unnecessary foreclosures are taking place in all states.
- If the homeowner does not qualify for a modification, servicers, banks should be required to allow homeowners and tenants to rent foreclosed properties at market prices and remain in their homes until the expiration of the lease (if applicable) or until the home is sold to an owner-occupant, whichever is later.
- HUD must get the new program to help unemployed homeowners up and running as quickly as possible; ensure that people who currently have forbearance can enter the new HUD program and/or Hardest-Hit Funding program; stop foreclosures on people waiting to qualify for the loan; and when reemployed, ensure that they can also access HAMP to restructure bad loans

We believe that, by taking the steps listed above, the Administration will send a clear signal that it cares about the fate of ordinary Americans and, in their defense, is willing to push hard on the banks that caused this crisis. Doing so will also send a clear message to the markets that the Administration is committed to getting to the root of what has been ailing the housing market and larger economy for close to three years, rather than kick the can down the road once again.

For more information contact:

Tim Lilienthal, PICO National Network

(413) 537-0631

tlilienthal@piconetwork.org