

2013

Chasm Between Words and Deeds

IX:

Bank Violations Hurt Hardest Hit
Communities

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CHASM BETWEEN WORDS AND DEEDS IX: BANK VIOLATIONS HURT HARDEST HIT COMMUNITIES

EXECUTIVE SUMMARY

California families and neighborhoods have been suffering greatly under the weight of the foreclosure crisis. This last year has brought major policy developments to California, including the \$25 billion Attorney General's National Mortgage Settlement (NMS) and the landmark Homeowner Bill of Rights (HBOR) legislation. The NMS requires the five largest servicers to provide considerable consumer relief and honor important foreclosure processing reforms. HBOR, which imposes new servicer obligations and gives consumers the right to sue their servicer in court, was cited as the reason for the large drop in foreclosure starts in California in February and again in March. As NMS settlement progress reports are released and real estate trends are examined, the lingering question is whether the NMS and HBOR have successfully changed bank practices so that homeowners struggling to avoid foreclosure have a fighting chance to do so.

This survey—CRC's ninth survey of nonprofit housing counseling agencies and legal service lawyers in California—attempts to answer that question with a focus on the NMS, the servicing reforms it imposed, and the impact that these reforms and consumer relief are having in our state, including in the hardest hit communities. Eighty-four counselors and legal service lawyers responded to the survey.

An analysis of these responses reveals that homeowners continue to face a plethora of servicing problems-- many of which were supposed to be fixed by the NMS. Key findings include:

1. **Single Points of Contact** - a primary regulatory and industry response to the difficulty consumers have had talking to their loan servicer - **are not accessible, consistent, and knowledgeable**.
 - Over 70% of responding counselors found that each of the banks provided SPOCs that were "never," "rarely," or only "sometimes," accessible, consistent or knowledgeable.
2. **Dual track problems persist**. Even though it is now outlawed in the state of California, banks are failing to stop the foreclosure process while borrowers are negotiating in good faith for a loan modification.
 - Over 60% of counselors reported that Bank of America, Citibank, JPMorgan Chase and Wells Fargo still dual track "sometimes," "often," or "always," even though this practice should have ended months ago under the NMS.

Counselors Respond:
"One client was offered a national settlement principal reduction modification but [the] case was closed due to lack of response [from the borrower]. He did not respond because all communications were in English and he is primarily Spanish speaking. A HUD counselor assisted in re-opening the bank offer and the client now has principal reduction and the loan modification was approved."

3. **Timelines** outlined in the NMS for responding to, and deciding upon, borrower applications for loan modifications **are rarely honored**.
 - Sixty percent or more of counselors said each of the Big 5 Banks “rarely” or “never” made loan modification decisions within 30 days of a complete loan modification application having been submitted.
4. **Banks continue to lose documents and improperly deny borrowers** the assistance they seek to stay in their homes.
 - Over 60% of responding counselors felt that each of the Big 5 servicers denied loan modifications to seemingly qualified homeowners, “sometimes,” “often,” or “always.”
5. **Borrowers of color, Limited English Proficient (LEP) homeowners, widows, and disabled borrowers may face additional challenges** to accessing relief.
 - Over 60% of counselors said their LEP clients were “never” or only “sometimes” able to speak to their servicer in their native language, or through a translator provided by the servicer.
 - 44% of counselors noted servicers “always” or “almost always” refuse to discuss loan modifications with “widows” clients if they are not listed on the loan.
 - Over one-quarter of responding counselors noted clients with disabilities “always” or “almost always” report difficulties receiving reasonable accommodations.

When asked **which servicer was most difficult** to work with, most counselors named **Wells Fargo**, with Bank of America coming in a close second.

Counselors report modest improvement in certain areas. HBOR’s private right of action and the threat of litigation for illegal bank practices, as well as the strong work of the California Monitor of the NMS, deserve credit for imposing added measures of servicer accountability in our state.

Yet the survey reveals that more needs to be done to protect communities. Servicer errors, non-responsiveness and violations mean that more homeowner and tenant families continue to be improperly displaced from their homes. Displacement has dramatic consequences for families—especially children—and neighborhoods which are rapidly changing as cash buyers gobble up properties for investments where community members once lived, thrived, and pursued the “American Dream.”

Counselors Respond:
 “I am working with survivors (widows and children of deceased spouses and parents) who cannot get information from the bank because the bank insists on speaking with their dead relative.”

To prevent unnecessary foreclosures and stabilize California communities, we need:

- **Transparency, data collection and fair lending enforcement.** Regulators must require the collection of loan level race, ethnicity, gender and census tract data so

the public knows who is getting appropriate relief, and who is not. Strong enforcement of fair lending laws by the Consumer Financial Protection Bureau, Department of Justice and state Attorneys General is needed to provide redress for harmed consumers, and to send a strong message to banks that they must provide equal access to foreclosure prevention relief and servicing reforms.

- **Penalties for noncompliance.** NMS Monitor Joe Smith and state Attorneys General must impose strong oversight metrics and penalties on servicers failing to comply with NMS servicing reform provisions.
- **Tighter rules.** Tighter rules are needed to clarify ambiguities and provide better protection for widows, Limited English Proficient consumers, borrowers whose loans have been transferred to a new lender, and dual track and other victims whose servicers hide behind determinations that they did not submit a “complete loan modification application.”
- **More support for outreach, counseling and legal services.** Lax enforcement of existing servicer obligations, confusing and ineffective programs such as the Independent Foreclosure Review (IFR), and the failure to adopt strong public policies to promote and enforce fair lending and sustainable modifications have created a breeding ground for scammers that prey upon families in distress. Nonprofit counselors, legal service lawyers and advocates are an antidote to these problems, but need more capacity to meet the continuing strong demand for their services.

Counselors Respond:

“Often clients are still in review for a loan modification and the Single Point of Contact is still in active communications with the client; however their home gets sold in foreclosure. Homeowners still believe their home is in active review when it’s actually been sold already. By the time the homeowners get the notice that their property has been foreclosed, they only have 3 days to move out.”

INTRODUCTION

California families and neighborhoods have been suffering greatly under the weight of the foreclosure crisis. This last year has brought major policy developments to California, including the \$25 billion Attorney Generals' National Mortgage Settlement (NMS) and the landmark Homeowner Bill of Rights (HBOR) legislation. The NMS requires the five largest servicers to provide considerable consumer relief and honor foreclosure processing reforms. HBOR, which imposes new servicer obligations and gives consumers the right to sue their servicer in court, was cited as the reason for the large drop in foreclosure starts in California in February, and again in March. As settlement progress reports are released and real estate trends are examined, the lingering question is whether the NMS and HBOR have successfully changed bank practices so that struggling homeowners have a fighting chance to avoid foreclosure.

To answer this question, the California Reinvestment Coalition (CRC) surveyed the large network of nonprofit housing counselors and legal service providers in California. These counselors serve thousands of homeowners that represent a variety of income levels, races, and borrower classes. This is the ninth survey of housing counseling agencies conducted by CRC since the beginning of the foreclosure crisis.

METHODOLOGY

The California Reinvestment Coalition (CRC) distributed a survey to housing counselors in February 2013. The survey asked about counselor experiences in 2013, after NMS and HBOR went into full effect. Eighty-four (84) counselors and legal service advocates responded to the survey. Though counselors report modest improvement from prior years, the results were still disheartening. The survey represents the first comprehensive attempt to assess changes to servicing practices since both NMS and HBOR were in effect on January 1.

Survey questions asked comprehensive questions that assessed the general state of servicer compliance, as well as servicer-specific questions. In the latter case, the survey asked counselors to report on the performance of the Big 5 Banks- Bank of America, Citibank, JPMorgan Chase, Wells Fargo, and GMAC/Ally. These five banks are the largest loan servicers in the country, and the signatories to the National Mortgage Settlement. The Homeowner Bill of Rights applies to all but the smallest of servicers.

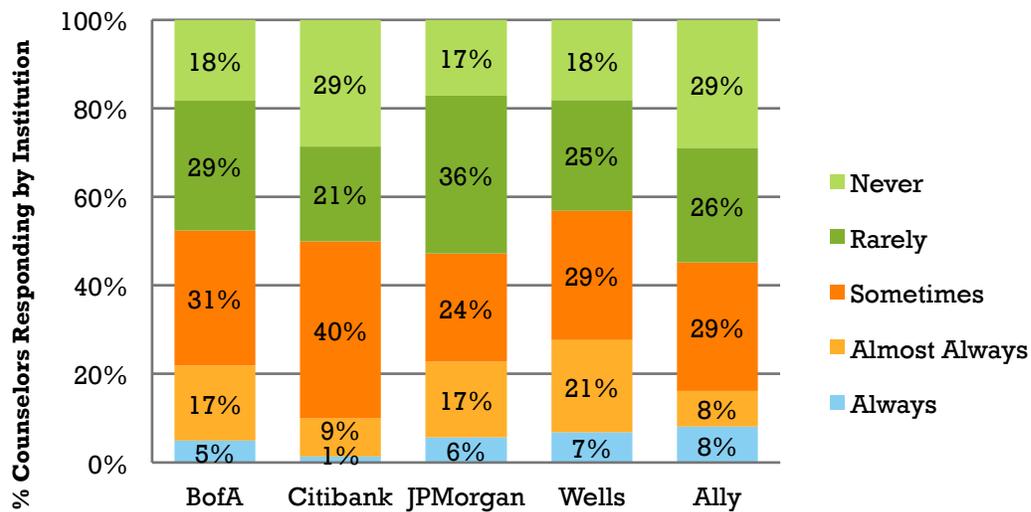
KEY FINDINGS

1. Single Points of Contact (SPOCS) are not working

Regulators, Attorneys General and legislators have required servicers to provide borrowers with a Single Point of Contact after countless reports of borrowers having difficulty communicating with their servicer became common knowledge. The SPOCs were expected to be accessible to borrowers, prevent borrowers from being referred from one person to another, and to generally assist consumers trying to navigate the loan modification process. However, counselors report that servicers are not always providing SPOCs.

- One-third or more of responding counselors noted that each of the Big 5 Banks “sometimes,” “rarely,” or “never” assigned clients a SPOC. SPOCs should be assigned to all borrowers.
- Citibank fared worst, with over 70% of responding counselors reporting that the Bank did not consistently assign SPOCs.

SPOCs are Not Working: Counselors Report Whether SPOCs are Accessible, Consistent and Knowledgeable



Source: California Reinvestment Coalition 2013 Counselor Survey

Even where a SPOC was assigned, they were often not helpful.

- Over 70% of counselors reported that each of the banks provided SPOCs that were “sometimes,” “rarely,” or “never” accessible, consistent or knowledgeable about relevant program rules.
- Again, Citibank fared worst, with 90% of respondents being underwhelmed by Citibank SPOCs.

Counselors Respond: Rating SPOCs

“Point of contact rarely answers phone [and] doesn't return phone calls as they say in their greeting. Even their supervisors/managers [do not respond].”

“[Some problems include] delays in modification process; poor/confusing communications; inability of different departments to coordinate their work; premature foreclosure; inability to fix problems in a timely, efficient manner; endless delays in converting borrowers from trial plans to permanent modifications.”

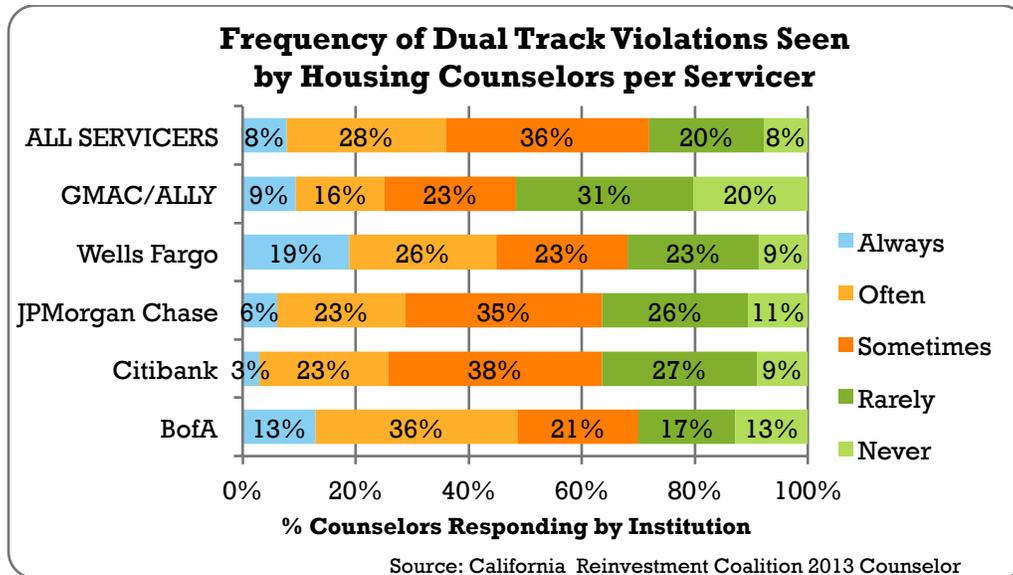
“Clients do not receive information in their own language. SPOC does not speak clients' language and are not able to communicate with him/her.”

“As a housing counselor, we are finding difficulty in communicating with the SPOC. Ever since loan port emerged, they will not return our phone calls at all. If clients are in the loan port system and loan modification has been denied, it is impossible to reach a SPOC to discuss prior issues with the application and we are just having to resubmit the application.”

“Even though I have seen improvement ...it seems that most of the clients that come to me have already been trying to obtain assistance on their own but have found it really difficult to communicate with their SPOC and feel like they are given the run around.”

2. Dual track violations persist

For years, housing counselors and advocates have decried the harm caused by dual track practices. These abuses were addressed in both the NMS and the HBOR, giving cause for optimism that borrowers might finally receive fair consideration for a loan modification before foreclosure. Counselors do report fewer dual track violations but violations continue with all servicers, and some counselors report concerns that servicers are using loopholes to evade dual track protections.



Dual Track Violations

- Over 60% of counselors reported that Bank of America, Citibank, JPMorgan Chase and Wells Fargo still dual track “sometimes,” “often,” or “always,” even though this abusive practice should have ended months ago, under the NMS.
- Ally was the only servicer that was reported by a majority of responding counselors to only “rarely” or “never” dual track.
- When asked about the performance of “all servicers,” counselors were even more likely to note violations. 72% of counselors responding reported all servicers “sometimes,” “often” or “always” dual track, and only 8% of counselors said that they never see dual track violations. This is incredibly concerning since dual track was supposed to have ended among the Big 5 with NMS, and with all servicers under HBOR.

When asked, “which servicers are the biggest dual track offenders?” counselors listed:

1. Bank of America- 19 times
2. Wells Fargo- 18 times
3. JPMorgan Chase- 9 times

Emerging Issue: “Complete Loan Modification Application”: Dual track and other protections kick in for borrowers when they are deemed to have submitted a complete loan modification application. But what does this mean, and how is this communicated to a borrower?

- Large percentages of responding counselors noted that homeowners are not told if and when a loan modification application is complete, even after submitting all documents requested.
- Bank of America fared worst, with nearly half of responding counselors saying this was “always” or “almost always” the case.
- Ally performed “best,” with less than 20% of counselors saying Ally “always” or “almost always” fails to tell homeowners when their loan modification applications are complete.

Counselors Respond: Dual Track

“There is still dual tracking; it is getting better but still very evident.”

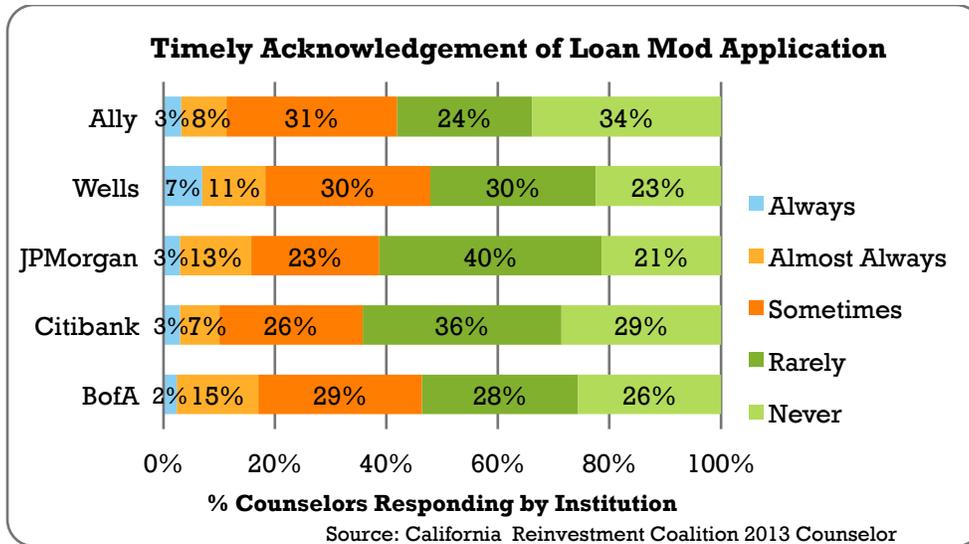
“Often clients are still in review for a loan modification and the Single Point of Contact is still in active communications with the client; however their home gets sold in foreclosure. Homeowners still believe their home is in active review when it's actually been sold already. By the time the homeowners get the notice that their property has been foreclosed, they only have 3 days to move out.”

“[Servicers are] asking for documents multiple times regardless of whether documents are submitted through Hopeloan portal or not. Nitpicking the RMA (Request for Modification and Affidavit) to determine if there is a complete file or not may be used as a strategy to circumvent the timeline requirements once a final application is received. [This] may be a way to manage their case loan which is not in favor of the homeowner when they are in NOD (Notice of Default) and NOS (Notice of Sale) status.”

“The issue with having a ‘complete application’ is true with all servicers. The RMA and 4506t form is constantly being resubmitted for minor edits and every servicer has a different idea of what a “complete” packet really is.”

3. Servicers are flouting the timelines established by the NMS

The NMS required the largest servicers to follow specific uniform timelines for loan modification requests. Borrowers are supposed to receive a written acknowledgement of their loan modification applications within 3 business days, notification of any missing documentation in 5 days, 30 days to respond to a request for additional documentation, and 30 days to receive a final decision upon their loan modification application being complete. Most of the counselors responding noted that these timelines are “rarely” or “never” being met by all institutions, for nearly all timeline obligations.



- A majority of counselors said each of the Big 5 Banks “rarely” or “never” acknowledged receipt of a loan modification application within 3 business days. For Citibank, over 60% of respondents noted this poor performance.
- A majority of counselors said each of the Big 5 Banks “rarely” or “never” notified homeowners of documents needed to complete their loan modification applications within 5 business days. For JPMorgan Chase, over 60% of respondents noted this poor performance.
- Over one-third of counselors said each of the Big 5 Banks “rarely” or “never” gave borrowers 30 days to respond to a request for additional documentation. For Citibank and Ally, over half of counselors noted this poor performance.
- Sixty percent or more of counselors said each of the Big 5 Banks “rarely” or “never” made loan modification decisions within 30 days of a complete loan modification application having been submitted. For Bank of America and Citibank, over three-quarters (75%) of counselors noted this poor performance.

Counselors Respond: Timely Responses

“Often, [servicers] ask for duplicate or more recent paperwork. The process takes many months. They claim it's "under review" over and over again. They need to stick to strict time limits as they always insist on for the homeowner. Process takes way too long.”

“Bank of America asks for the same documentation over and over, even when they already have it. They sometimes come back after reviewing a file for over 30 days and ask for updated information and demand it within 2 or sometimes 1 business day or threaten to close the file.”

“If the issue is escalated they only give us less than 5 days to gather requested documents from the homeowner and send them in for review. If not they say the file will be closed. It can be very difficult to reach a homeowner and request docs in a 2-5 day period only.”

4. File management problems continue to plague servicer performance

Counselors increasingly report problems when servicers sell or transfer loan files from one company to another. At the same time, incredibly, servicers still have not solved the longstanding problem of lost documents. Perhaps most damaging of all, counselors continue to report problems with servicers seemingly making the wrong decisions and improperly denying loan modifications to qualified applicants.

Loan Servicing Transfers. As the volume of loan servicing transfers increases, so do the negative impacts on innocent homeowners. At best, consumers often have to begin the loan modification process anew. At worst, a modification secured is called into question, or certain relief available before the transfer is not available after the transfer. The Consumer Financial Protection Bureau has recently issued guidance for loan servicing transfers,¹ though it is not yet clear if this guidance will successfully fix the existing problems.

- At least 44% of responding counselors said they “always,” “almost always” or “sometimes” saw homeowner files transferred to another servicer after a complete loan modification application was submitted. For Bank of America, the figure was 72% of responding counselors seeing a transfer at least sometimes.
- One-third or more of responding counselors saw files transferred after the borrower had been offered a trial or permanent modification. For Bank of America, over half of all counselors saw files transferred to another servicer after a loan modification was offered, at least sometimes.

Counselors Respond: Loan Servicing Transfers

“Transferring loans to a different servicer that doesn't offer principal reduction when they could have got one with BofA.”

“[Servicers are] selling a lot of their loans to other Servicers, forcing clients to start over the loss mitigation process.”

“Selling loans to other servicers after loan mod docs received. This is a problem as an inordinate amount of time and effort is expended in submitting a perfected file to GMAC and then they are denied a loan mod as the loan is sold and the borrower is not even aware. [This is a] big problem and I take issue with this practice.

“Nationstar seems to ignore Trial Payment Plans and loan modification agreements made with previous servicers and is nonresponsive to requests for information.”

Lost Documents. It is hard to imagine that servicers have not fixed this problem, but counselors continue to report that servicers lose documents, as well as take too long to act on loan modification applications and then need to request the same documents over and over again.

¹ CFPB, “Mortgage Servicing Transfers: Bulletin 2013-01,” February 11, 2013.

² Marc Hochstein, American Banker, “Morning Scan: Reviewing the Review of the Review of Foreclosures,” March 1, 2013 (citing Wall Street Journal).

³ See October 22, 2012 AFR Working Group Letter to Joe Smith at <http://www.brennancenter.org/sites/default/files/legacy/AFR%20working%20group%20letter%20to%20Joseph%20>

- Over 60% of counselors reported that Bank of America, Citibank, JPMorgan Chase, and Wells Fargo lose documents at least “sometimes.” Ally fared better with “only” 49% saying Ally loses documents at least “sometimes”.
- Over a third of responding counselors said Bank of America lost documents “always” or “almost always.”

Counselors Respond: Lost Documents

“[The biggest servicing problem is when they] deny that a package for a modification was received. [I have to] resubmit it several times.”

“[The biggest servicing problem] is lost paperwork.”

“With Chase, most of the time I have to keep resubmitting documents over and over to the same Point of Contact and the time frame for review always expands.”

“Wells Fargo is great about losing documents.”

“[Servicers] always ask for documentation that has already been provided even though they acknowledge receipt.”

Improper Denials. Recent revelations about the failures of the Independent Foreclosure Review process—overseen by the Office of the Comptroller of the Currency and the Federal Reserve-- have made clear that servicers often make mistakes. The Wall Street Journal reported that, “a breakdown of the information provided to the regulator shows that more than 11% of files examined for Wells Fargo & Co. and 9% of those for Bank of America Corp. had errors that would have required compensation for homeowners, said people who have reviewed the figures.”²

These errors may be unintentional, and yet the consequences are profound for families struggling to keep their homes. There currently is no meaningful review of whether servicers are making the correct decisions on loan modifications applications. Housing counselors believe that borrowers are being turned away when they do qualify for help that would save their homes. Counselors also report that when denials are made, banks fail to provide the reasons for denial, as required by the NMS and HBOR.

- Over 60% of responding counselors felt that each of the Big 5 servicers denied loan modifications to seemingly qualified homeowners, at least “sometimes.”
- Wells Fargo performed worst, with over a third of all responding counselors saying Wells denied seemingly qualified borrowers “always” or “almost always.”
- When questionable denials were given, the reasons for denial were often unclear. Well over half of all responding counselors felt that each of the five banks denied loan modifications without offering an understandable explanation for the denial, at least “sometimes.”

² Marc Hochstein, American Banker, “Morning Scan: Reviewing the Review of the Review of Foreclosures,” March 1, 2013 (citing Wall Street Journal).

- Bank of America, JPMorgan Chase and Wells Fargo were cited by over 30% of responding counselors as “always” or “almost always” failing to provide understandable reasons for loan modification denials.

Counselors Respond: Improper Denials and Reasons for Denial

“When a client gets denied, the reason for the denial is never specific to the client, it is like choosing from a list of responses they have, a generic denial reason. They need to be specific as to the client, not just choose option one or two, etc.”

“Biggest issue is no clear explanation of decline - thus clients continue to fight when if told the reason for decline, they could move forward with other options.”

“Chase seems to deny loan mod without any explanation that makes sense.”

“Can never get supervisor to call you back when you need to speak to someone with authority because they are not being clear as to why a file is being denied.”

“They will deny the client without providing a reason for denial.”

5. Hardest hit communities are facing extra challenges in securing equal access to relief

CRC and other national advocacy and community groups are greatly concerned that the communities hardest hit by the foreclosure crisis (and the abusive and discriminatory lending practices that preceded the crisis), are not seeing their fair share of consumer relief built into the NMS and related federal and state agreements and programs.³ While California Attorney General Kamala Harris succeeded in negotiating incentives for NMS banks to provide relief in Hard Hit counties in the state, banks are self-reporting that they are close to meeting their consumer relief obligations under the NMS, even though the impact on hard hit communities is less than clear.

Prior CRC housing counselor surveys have shown roughly half of responding counselors reporting that borrowers of color were receiving worse outcomes when trying to avoid foreclosure. In this survey, we sought to dig a little deeper. The results revealed that there were significant problems in servicing homeowners with disabilities, homeowners who are limited in their English proficiency, and homeowners who have lost a spouse and are trying to modify their loans.

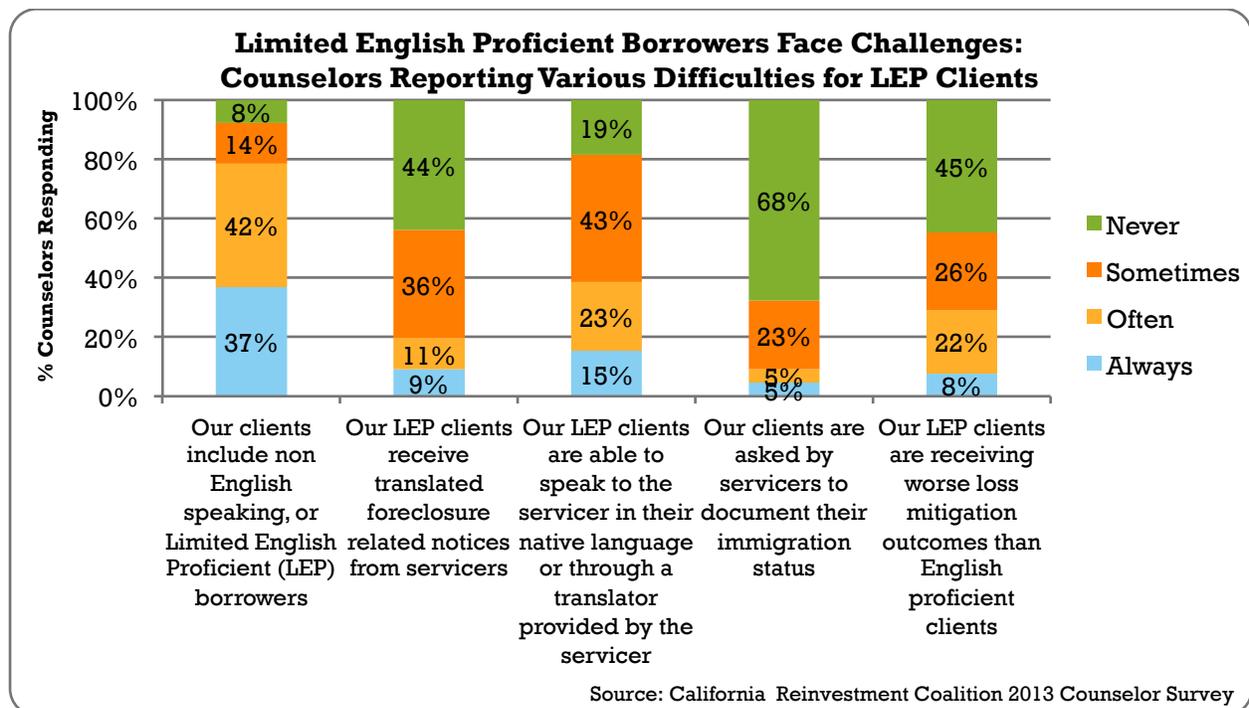
In general, counselors again report challenges securing positive outcomes for their clients.

- Over 60% of counselors reported that a majority of their clients were borrowers of color.

³ See October 22, 2012 AFR Working Group Letter to Joe Smith at <http://www.brennancenter.org/sites/default/files/legacy/AFR%20working%20group%20letter%20to%20Joseph%20Smith.pdf>; and Kirwin Institute race talk blog at <http://www.race-talk.org/category/racial-equity/housing-racial-equity/>. **READ ALL ABOUT IT!**

- A majority of counselors felt that their clients were not receiving good outcomes from loan servicers.
- Most counselors reported “rarely” or “never” seeing loan modifications with principal reduction from each of the Big 5 Banks, though this was one of the most publicly touted benefits of the NMS. Bank of America actually fared best, with 47% of respondents saying they saw principal reduction modifications from Bank of America, at least “sometimes”. In contrast, Citibank and Ally were reported to offer principal reduction modifications at least “sometimes” by less than 15% of those responding.
- Much has been made of the large proportion of NMS relief that is comprised of short sales, whereby homeowners agree to leave their homes. Counselors confirm these results, with over 30% of respondents noting there has been pressure on homeowners to do short sales, at least “sometimes.”

Limited English Proficient (LEP) borrowers. CRC and others have long raised concerns about the victimization of California families whose first language is not English. LEP borrowers were more vulnerable to being sold predatory and discriminatory loans that were negotiated in their native language, but recorded in English-only loan documents that told a different story. Today, counselors report LEP families face additional challenges in trying to keep their homes.



- Nearly 80% of responding counselors said their clients “always” or “almost always” include LEP borrowers.
- 44% of counselors said their LEP clients “never” receive translated foreclosure related notices from their servicers.
- Over 60% of counselors said their LEP clients were “never” or only “sometimes” able to speak to their servicer in their native language, or through a translator provided by the servicer.

- Nearly one-third of counselors reported that LEP clients were asked by their servicers to document their immigration status.
- Over one-quarter of counselors reported that LEP clients received worse loss mitigation outcomes than English proficient clients “always” or “often,” even with the counselor’s intervention. We can only imagine what the success rate is for the majority of LEP families who are without representation or advocate of any kind.

California Monitor Katherine Porter deserves credit for negotiating with Bank of America to re-solicit certain borrowers for loan modification offers under the NMS with letters that were in English and Spanish. This sets a good precedent regarding the importance of translating all foreclosure documents and for future efforts to ensure equal access to all available relief provided by programs or settlement agreements. This principle should be extended to all servicers, in at least all five non-English languages prioritized by state housing policy,⁴ and should extend to all notices. Short of this, challenges of access relating to loan modifications for LEP borrowers are not surprising.

Counselors Respond: Challenges Facing LEP Borrowers

“The most common problem we encountered is that Chase does not accommodate non-English speaking clients, especially Thai-speaking clients (No translator available for the clients).”

“Wells Fargo requires our clients, whose English proficiency is limited, to go through very lengthy interviews over the phone before they are considered to receive a loan modification application.”

“Many homeowners who are LEP are discouraged because they feel that they cannot get help from their lender, and they cannot get an interpreter over the phone. Housing counselors do not receive any documents from Wells Fargo even though we have Authorization to Release Information.”

“Services are provided without consideration for language barriers and provision of translators in verbal and written communications. Offers are being rescinded by lender without consideration that homeowners don’t understand or know how to respond to offers made in English without assistance from HUD counselor.”

“We have been on the line where clients were ridiculed and told since you don’t understand the language you need to go back to Mexico.”

“Recently I had a homeowner who submitted their complete packet to servicer, but the documents were rejected because the hardship letter was in Spanish. They wanted the packet resubmitted for consideration in English. I have another case where the file has been denied a modification. The servicer is asking for proof of residence from the homeowner. They are requesting a letter from Social Security offices to prove that the SS belongs to the homeowner.”

“Clients can't talk directly to point of contact, just through customer services. Clients (Vietnamese) are not provided interpreter, they don't understand what the SPOC wants. Clients often receive calls from collections department asking to make payments and threatening foreclosure, even clients who were being assisted by Keep Your Home California which has already made mortgage payments for clients to lender/servicer.”

⁴ California Civil Code section 1632 provides for translation of certain contracts and documents, under certain circumstances, in Chinese, Korean, Spanish, Tagalog and Vietnamese.

Widows and orphans. CRC, Housing and Economic Rights Advocates (HERA), and other CRC members and allies submitted a detailed letter to regulators in December 2012, outlining the horrible challenges facing family members who lose a loved one who was the only person listed on the home loan. These widows and similar borrowers are owners of the home, but servicers often do not recognize them as such, refuse to even speak with them, and make it especially difficult for them to obtain a loan modification so they can remain in their homes. The CFPB did acknowledge the issue in its recently

released servicing rules, and both Fannie Mae and Freddie Mac have responded with new guidelines meant to improve the treatment of widows and similarly situated borrowers.⁵ It is not yet clear how far these rule and guidance changes will go towards finally protecting widows and similar borrowers. Yet, hardship still befalls these borrowers, and compelling stories keep pouring in.

- Over 80% of responding counselors have clients who are widows, or similarly situated borrowers.
- 44% of counselors say servicers “always” or “almost always” refuse to discuss loan modifications with “widows” clients because they are not on the loan. An additional 25% of respondents (for a total of 69% of all counselors responding) see this problem, at least “sometimes.”
- A similar 41% of counselors responded that servicers “always” or “almost always” make widows borrowers go through the legal probate process or jump through additional hurdles, and an additional 23% of respondents (for a total of 64% of all counselors) found this to be true at least “sometimes”.
- 26% of counselors reported that widows “always” or “almost always” received worse loss mitigation outcomes, even with the intervention of the advocate.

⁵ See CFPB, 24 CFR Part 1024, January 17, 2013 at http://files.consumerfinance.gov/f/201301_cfpb_final-rule_servicing-respa.pdf; Freddie Mac Guide Bulletin 2013-3, February 15, 2013; Fannie Mae Lender Letter, LL-2013-04, February 27, 2013.

Counselors Respond: Problems facing Widows

“I am working with survivors who cannot get information from the bank because the bank insists on speaking with their dead relative.”

“[My client was] told she needed paperwork from probate & it took months; meanwhile, foreclosing property continued until she just left the home of 55 years! Widow lost 1/2 income, as spouse died. Bank refused to lower payment or assist in any way, except short sale. Client did everything asked to keep home. Disabled @ 68 & got work, rented room, all was in vain. [Servicer] refused to lower payment. [My client] spent all retirement & savings, no family, all alone. Still struggling.”

“I have had several situations in which the widow comes for help and she was never on the loan. Many of these are Hispanic woman and the servicer is not willing to talk to them because they do not have authorization. The servicers require them to have the courts through probate give them the property before they will assist them. For most of these widows, since they usually have a language barrier and their level of education is limited, they either just try to continue making payments or end up losing the home.”

“Servicer would not deal with the widow even with repeatedly providing documentation of spouse death - widower lost home. Mortgagor died, widow was on title not on loan, lender would not discuss loan assumption or modification with widow and required documentation that she could not get because dead spouses daughter refused to provide.”

“(1 client as of 2/6/13) CitiMortgage will not work with client because she is not on the loan. She was divorced from her husband 3 yrs ago, she got the house and the title is in her name. Her husband is responsible for 2 loans against the property but has not made a payment in 3 years and left the country. The client wishes to get the loan in her name so that she doesn't end up with the bank foreclosing on the ex-husband. She feels like she is in a "catch-22" because since she's not on the loan, the bank will not work with her, tells her she's not responsible for the loans... but she knows that her ex-husband will not make any payments toward his debt. She has now gone delinquent on the loan because they will not work with her on a modification.”

Borrowers with disabilities. The loan modification process is an inherently complex process, difficult to navigate for any borrower, and perhaps especially so for borrowers with physical, mental or developmental challenges. Borrowers with disabilities may require reasonable accommodations to meaningfully apply for loan modifications, but servicers are refusing to provide accommodations or are unclear about their obligations to work with disabled borrowers in a manner that will give them fair consideration for assistance.

- Over 80% of counselors report having clients with disabilities.
- Over one-third report that servicers refuse to accept or work with clients who have SSI or disability related income, at least “sometimes”.

- Over half of counselors report that clients with disabilities face additional hurdles in trying to access loss mitigation relief, at least “sometimes”.
- Over one-quarter of responding counselors report clients with disabilities “always” or “almost always” report difficulties receiving reasonable accommodations, and over one-half report such difficulty, at least “sometimes.”
- Over one-quarter of counselors report clients with disabilities “always” or “often” receive worse loss mitigation outcomes, even with their intervention.

Counselors Respond: Clients with Disabilities

“It is ridiculous that people on SSI have to get an award letter within 30 days from the SSI office when for months and years, their bank statement shows direct deposit of SSI. We have even had the challenge of having to explain penny fluctuations.”

“The banks have been insensitive to the physical needs of clients with disability and or chronic illnesses.”

“Servicer claimed head injury causing brain damage was no reason for getting loan mod. Job lost, less income. Refused money orders, wanted checks, which he was unable to write. Referred to discrimination department for complaint. Client unwilling to discuss; embarrassed (former teacher) & hopes to forget emotional response to this treatment.”

“Our clients with disabilities usually have a difficult time explaining their situation to their servicer. They do not receive any accommodation that I can see, especially when it is a cognitive disability (i.e. ADHD, OCD) where the borrower has difficulty answering questions over the phone with the SPOC. The borrower is often put in a position where they answer a question (not fully understanding what is being asked) and then this information is inputted by an inexperienced servicer representative who tends to misinterpret the borrower's situation/intent.”

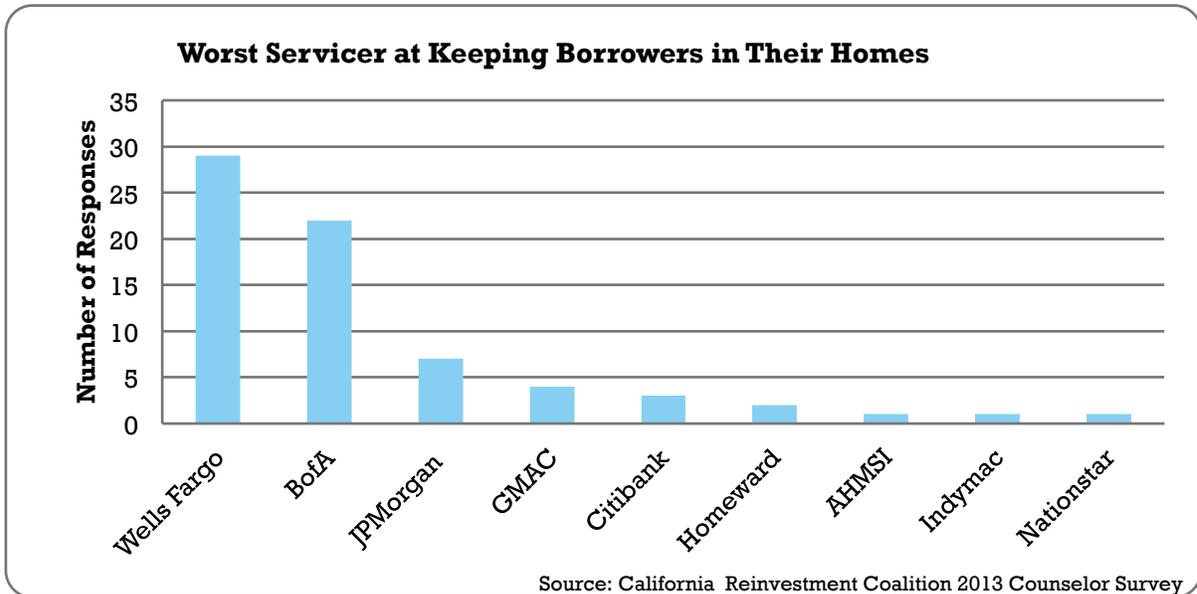
“Helping homeowners with fixed income is harder with the lender. Lenders do not understand how complex the process may be due to these homeowner's benefits and how hard it is to fully document them. Example is cash aide or housing/food allowances from their faith based organization. It is also harder when you deal with a homeowner who is assigned with a payee to their income.”

“I had a client with an 85% hearing disability. She tried to do a loan mod to save her home after she separated from her husband. She notified the bank she needed hearing accommodations to understand process better. [Servicer] advised none were available and her home was foreclosed and legal proceeding to evict her and children started. HUD counselor was able to rescind foreclosure and achieve trial loan mod for client.”

Worst Servicer

Counselors were asked, “For all servicers, in your experience, which servicer is the worst at keeping people in their homes where that should be possible? Why?”

- Fifty-six counselors responded to this question. Some respondents listed one servicer as the worst, and some counselors listed several. Nine (9) servicers were mentioned as “worst.”
- Wells was listed 29 times by counselors as the worst servicer, more than any other servicer.
- Bank of America came in a close second, having been mentioned 22 times.
- JPMorgan Chase was a distance third, with 7 mentions.



Counselors Respond: Worst Servicer

“It has been my unfortunate experience to witness Wells Fargo foreclose senior after senior. Wells refuses to work with seniors to try to keep them in their homes. If the senior hires an attorney to try and stop the foreclosure, Wells Fargo hires high priced law firms to try and crush the senior homeowner with unnecessary motions and discovery. The law firms hired by Wells rack up their fees by hundreds of thousands of dollars and then tack that amount onto the senior’s loan. Wells targeted seniors to refinance their loans and pull out their equity and now they are targeting seniors to remove them from their homes. It has been my experience that senior homeowners fear Wells Fargo more than they fear cancer or liver failure. I guess you can treat cancer and liver failure but a Wells Fargo foreclosure is always terminal.”

“BofA, unfortunately. They used to be the best, now they are the worst. They seem more focused on dumping their Countrywide portfolio rather than helping the people currently in their pipeline. Their follow through is abysmal compared to what it used to be, especially for clients working with them directly. Once we get involved, they pick up the pace somewhat but that should not have to happen. Our contacts within BOA have been very supportive, but again, why should the consumer have to suffer through the lack of communication and follow through if they choose to go to the servicer first?”

RECOMMENDATIONS

In order to prevent further unnecessary foreclosures and to start stabilizing California communities, we need:

- **Data collection and fair lending enforcement.** NMS Monitor Joe Smith and state Attorneys General must collect, analyze and report the race, ethnicity, gender, and census tract of those who have received assistance under the NMS, and those who have not. The Office of the Comptroller of the Currency and the Federal Reserve must collect, analyze and make public this data beyond the NMS, and include all loss mitigation activity. Additionally, the CFPB should swiftly promulgate new rules for the Home Mortgage Disclosure Act (HMDA), which must include collecting HMDA's detailed loan level data for loan modification activity. The Department of Justice and state Attorneys General should pursue fair housing and fair lending claims in the foreclosure context, where appropriate, to ensure that servicers provide equal access to consumer relief and servicing reforms to all borrowers and communities, or face consequences for failing to do so.
- **NMS Monitor must impose penalties on outliers.** California housing counselors report widespread noncompliance with obligations under the NMS. The National Association of Consumer Advocates and the National Housing Resource Center are also documenting evidence of noncompliance with the NMS. Joe Smith and state Attorneys General must impose strong monitoring metrics that will illuminate noncompliance around key issues, and proceed swiftly in imposing penalties to deter continuing violations. The more time that goes by without consequences for bank errors and intransigence, the more families who will fall unnecessarily into foreclosure.
- **Tighter rules around “complete loan mod app”, transfers, widows.** Various important borrower protections kick in upon a servicer determination that a borrower has submitted a “complete loan modification application.” Servicers cannot be given unfettered discretion to define this term so broadly as to make meaningless the underlying consumer protections. Joe Smith, CFPB and state regulatory agencies should explore developing a definition that will prevent servicers from evading their obligations. In addition, Joe Smith and state Attorneys General should ensure no NMS servicer duties are being improperly contracted away through mortgage servicing transfers. Through its examination, supervision, and enforcement functions, CFPB should ensure that consumers are not being harmed by the large transfer of servicing rights that is occurring right now. Further, CFPB and other regulators must finish the job of ensuring that widows and similar borrowers do not unnecessarily lose their homes due to outdated rules and harmful industry practices.
- **Fix IFR to keep people in their homes.** Numerous problems with the Independent Foreclosure Review process have been identified by advocates, the General Accountability Office, and the media. IFR was intended to provide over 4 million borrowers who were in some stage of the foreclosure process in 2009 or 2010 with the opportunity to demonstrate they were financially harmed by wrongful practices, and to receive compensation for that harm, including being restored to their home under certain circumstances. The Federal Reserve and the OCC recently

scrapped the IFR process in favor of a settlement that appears to retreat from the notion that IFR would provide an accounting of what went wrong with certain foreclosure proceedings. The regulators must fix IFR by prioritizing principal reduction relief, keeping people in their homes, and restoring wrongful foreclosure victims to their homes by forcing servicers to go back through their files, rescind improper foreclosure sales, and fix mistakes.

- **Provide more support for housing counseling and legal services.** It is clear that borrowers who are able to access the assistance of a nonprofit counselor or legal service lawyer have more success in keeping their homes. With each new program, settlement or rule, scam artists feel emboldened to pitch their “services” to unsuspecting and understandably confused homeowners. Families do not know who to trust and are skeptical even of government programs in light of ineffective programs and policy and the continuation of discriminatory industry practices. The only meaningful counter to these problems is to build the capacity of nonprofit advocates who can help families navigate the complex loss mitigation process. Yet, 85% of responding counselors said their capacity was remaining constant or shrinking, often citing lack of funding. The California Attorney General’s upcoming release of \$10 million for such purposes from NMS funds will help, but more is needed.
- **Better training at servicer shops.** Servicer staff need to be sufficiently trained and have manageable case loads so they can do their jobs properly and consistent with applicable laws, regulations, rules and settlements. Regulators should ensure that servicers have sufficient capacity to work with homeowners at risk of foreclosure. Housing counseling agencies strive to continually train their staff and retain a high level of competence. Servicers should not be held to lower standards.

This report was prepared by Kevin Stein with helpful edits and production by Amelia M. Martinez Cantos, Kristina Bedrossian and Alan Fisher. Helpful comments on early versions of the survey were provided by Maeve Elise Brown of Housing and Economic Rights Advocates, Sharon Kinlaw of the Fair Housing Council of the San Fernando Valley, Maria Villa of Community Services Employment Training, and Elba Serrano of East Los Angeles Community Corporation. All errors are strictly those of the author.

California Reinvestment Coalition advocates for the right of low-income communities and communities of color to have fair and equal access to banking and other financial services. CRC has a membership of nearly 300 nonprofit organizations and public agencies across the state.