National Mortgage Settlement Servicing Standards and Noncompliance

Results of a National Housing Counselor Survey

June 5, 2013

NHRC
National Housing Resource Center

About NHRC

The National Housing Resource Center (NHRC) is dedicated to organizing nonprofit housing counseling agencies to advocate for the housing counseling industry and on behalf of housing consumers.

Our national advocacy program provides a platform for nonprofit housing counseling professionals to come together and develop a common voice with Congress, the Administration, regulators, and policy makers. Together we are addressing the deep inequalities in mortgage, foreclosure, and rental situations.

For more information about NHRC, visit our website at www.hsgcenter.org.

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Executive Summary

In February 2012, the nation's five largest mortgage servicing companies (Bank of America, Citi, JPMorgan Chase, Wells Fargo, and GMAC/Ally) reached an agreement with the attorneys general of 49 states (excluding Oklahoma) and the federal government to settle claims that servicers had broken the law when foreclosing on thousands of properties across the country. The settlement imposed new servicer obligations which included stricter mortgage servicing standards.

The National Housing Resource Center (NHRC) conducted a national survey on servicer compliance with the new servicing standards, collecting data and insight from 212 respondents representing 28 states and the District of Columbia. Findings from this report indicated that many servicers have not complied with the new requirements; it also revealed an alarming level of fair lending problems.

- Seventy-three percent of respondents reported that their clients did not receive decisions on loan modifications within 30 days of application.
- Sixty-eight percent of counselors reported problems of servicers losing borrowers' documents "frequently" or "sometimes."
- Sixty-two percent of counselors reported incidents of dual tracking, where a homeowner went to foreclosure sale before the servicer completed the required modification review.
- Even though 83% of respondents reported having non-English speaking or limited English proficient (LEP) clients, 76% reported that their clients were "never" or only "sometimes" able to speak with servicers in their native language or through a translator provided by a servicer; as a result, LEP homeowners are often left stranded, missing key deadlines and risking foreclosure.

Counselors also reported that servicers continued to lose required documents, violated standards for Single Point of Contact (SPOC), and unfairly treated borrowers of color, persons' with disabilities, widows and surviving occupants, and persons' with Limited English proficiency (LEP).

These issues directly impact homeowners who are at risk of foreclosure usually due to decreased incomes or predatory loan products. Without strong compliance of servicing standards, homeowners experience delayed applications, added expenses, and unnecessary foreclosures.

NHRC's recommendations are: (1) NMS Monitor Joseph Smith must enforce the NMS Servicing Standards, (2) housing counselors, legal services lawyers, and others on the front lines must document servicer noncompliance with the NMS Servicing Standards, (3) surviving occupants must be able to assume the loan to qualify for a loan modification, (4) dual tracking of mortgages must end, (5) housing counseling agencies and legal services need adequate funding, and (6) servicers must provide effective communication for Limited English proficiency (LEP) homeowners.

Introduction

In February 2012, the nation's five largest mortgage servicing companies (Bank of America, Citi, JPMorgan Chase, Wells Fargo, and GMAC/Ally) reached an agreement with the attorneys general of 49 states (all but Oklahoma) and the federal government to settle claims that the servicers had broken the law when foreclosing on thousands of properties by failing to verify the information contained in the foreclosure-related documents and by signing foreclosure-related documents outside the presence of a notary. The agreement, called the National Mortgage Settlement (NMS), includes three key elements: (1) cash payments from the servicers to injured homeowners, (2) non-cash assistance to distressed homeowners in the form of principal reduction and other relief, and (3) stricter mortgage servicing standards.

While there are important questions that must be addressed with respect to the first two prongs of the NMS, especially the extent to which the non-cash assistance is adequately aiding homeowners and whether the communities most impacted by the foreclosure crisis are proportionately sharing in the relief, we are concerned here with whether the servicers are complying with their obligations under the new stricter servicing standards.

To better understand the extent to which the servicers are meeting these obligations, the National Housing Resource Center (NHRC) reached out to housing counselors. Housing counselors have first-hand knowledge of the servicing practices of the covered servicers and whether each is meeting its obligations under the NMS. Working in conjunction with the California Reinvestment Coalition (CRC), NHRC conducted a national survey of housing counselors that asked about what they were seeing on the ground.

About the Survey

The survey was conducted jointly by NHRC and CRC, with CRC administering and publishing the survey for California and NHRC administering it in the rest of the country. The results of the CRC survey are available in their report, *Chasm Between Words and Deeds IX: Bank Violations Hurt Hardest Hit Communities*. The 212 responses in the NHRC survey from 28 states and the District of Columbia provide a broad look at how the servicing standards are being met nationwide.

There were two broad categories of questions in the survey. First, with respect to each of the five servicers covered by the NMS, survey respondents were asked how often they see each of a number of potential violations of NMS servicing standards ("always," "almost always," "sometimes," "rarely," or "never"). Second, respondents were asked how often they see various fair lending violations, such as disparate treatment of borrowers of color, borrowers with limited English proficiency, and borrowers with disabilities. Respondents also had the opportunity to provide more detailed information through open-ended questions on each topic. The survey was conducted in February, March, and April 2013.

Key NMS Finding #1: Servicers were not complying with required timelines

The NMS servicing standards impose a number of deadlines on servicers when reviewing loan modification applications from clients. For example, servicers are required to acknowledge in writing their receipt of a loan modification application within 3 business days, to notify the homeowner of any missing documents in the loan modification application within 5 days, to allow homeowners 30 days to respond to requests for additional documents, and to make a decision on a loan modification application within 30 days of receiving a complete application.

Respondents indicated that these deadlines were largely being ignored. When asked how often servicers made a decision within 30 days of receiving a complete loan modification application, 73% said "rarely" or "never." Likewise, 60% of responses were that servicers "rarely" or "never" notified the homeowner of missing documents in their loan modification application within 5 days.

When asked to identify the biggest problems their clients face with each of the Big 5 servicers, many pointed to servicers' failure to comply with required deadlines, especially with respect to making a decision on a complete application within 30 days; many responses indicated that the review process had been taking much longer.

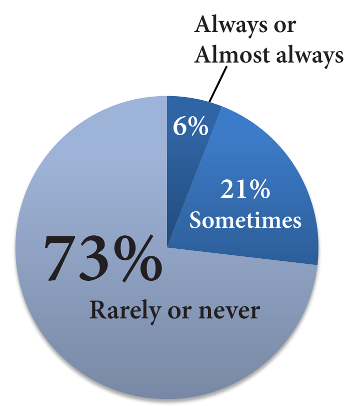
Below is a small sample of the responses:

- "Modification process is taking longer than 45 days with a complete package. If one thing submitted needs an explanation, it starts the 30 day wait period all over again. When applying for a forbearance, it's taking 45-60 days for a review." (In reference to Bank of America)
- "Always takes more than 90-120 days to get a decision." (In reference to JPMorgan Chase)
- "Could be three to four months [to process a loan modification application]." (In reference to Bank of America)
- "Their review process takes an average of 8 months to more than a year." (In reference to CitiBank)
- "Loan modification review period is taking up to 3-4 months when all documents have been received." (In reference to CitiBank)
- "Taking over a year to make a decision and not accepting payments making bringing the loan current almost an impossibility if the modification is denied." (In reference to CitiBank)

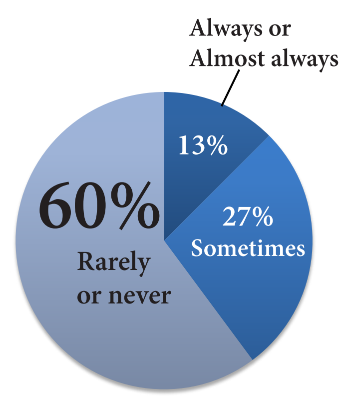
Counselor Response:

"It has taken up to 8 months or more for a client to receive a decision. In the meantime, they are not accepting payments and the client is then further behind and cannot afford to reinstate accounts."

How often did clients receive a decision on a loan modification within 30 days of application?



How often were banks notifying clients about missing documents within 5 days?



Key NMS Finding #2: Servicers continued to lose required documents

One of the most commonly cited issues in the loan modification process was servicers losing documents. In fact, when asked how often submitted documents were lost by the servicer, 68% of the responses were that this happened "sometimes," "almost always," or "always."

In addition to servicers losing documents, counselors frequently complained that clients were made to resubmit documents multiple times, often because delays in the review process left documents stale. Requiring clients to resubmit documents results in a vicious cycle of delay in which clients submit an application, wait for a response, are told they need to resubmit documents (often because the review process took longer than it should have), and are then made to wait again. This cycle may repeat itself numerous times before a decision is ever made on the application.

Many of the responses to an open-ended question about the biggest challenges their clients face with each of the Big 5 servicers had to do with lost documents and clients being made to resubmit documents many times.

Below is a small sample of the responses:

- "Not all documents are scanned together at intake and often times they are lost and no one knows where the client is in the process …." (In reference to GMAC/Ally)
- "Clients have issues with the bank sometimes losing documents, particularly letters of authorization. The latter is likely due to having a separate fax number for Letters of Authorization, increasing the likelihood that they won't get connected with the matching case and request for modification assistance." (In reference to Bank of America)
- "CitiBank has a problem with losing documents and not informing the client or counselor that these documents are missing for a long period of time. Likely due to the volume of foreclosures and departments set up for mitigation, documents get lost and cases aren't reviewed until it is too late and the bank winds up asking for new documents again."
- "Even when submitting docs through their online system they still lose docs, ask homeowners for the same thing 5-6 times..." (In reference to Wells Fargo)
- "They ask for the same documents all over again..." (In reference to Bank of America)

Counselor Response:

"They ask for the same documents all over again extending the process for more than one year even though the first application was complete."

How often were banks losing documents that have been submitted?

Counselor Response:

"Even when submitting docs through their online system they still lose docs, ask homeowners for the same thing 5-6 times. If they don't get them in 24-48 hours, they close the file and demand you start over."

Key NMS Finding #3: Servicers were not fulfilling their obligations with respect to the Single Point of Contact (SPOC)

The NMS requires the Big 5 servicers to establish a single point of contact (SPOC) system that would provide homeowners a single servicer staff person with whom to communicate. This is intended to respond to homeowners being unable to consistently communicate with someone who was familiar with their case. Among other requirements, the SPOC is required to be accessible and knowledgeable with the facts of the cases to which they are assigned.

While counselors expressed support for the idea of the SPOC, in practice they said the system was not working. First, the survey revealed that servicers often failed to comply with the requirement that they assign each homeowner a SPOC; only 16% of respondents said that this "always" happened. However, even in those cases when a SPOC was assigned, when asked how often the assigned SPOC was "accessible, consistent, and understands relevant program rules," 80% of respondents said this was true only "sometimes," "rarely," or "never."

When given the chance to respond to an open-ended question about the biggest problems their clients face with each of the Big 5 servicers, by far the largest number of comments had to do with the SPOC. Among these, the most frequent complaint was that the SPOC failed to return calls or was otherwise inaccessible.

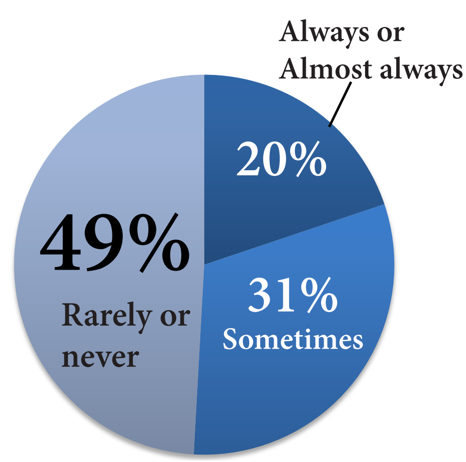
Below is a small sample of some SPOC-related responses:

- "Not being able to get a hold of SPOC. It's understandable that they cannot answer the phone all the time because they have to review files, but they do not return all phone calls. As a counselor, I rarely get a call back from a SPOC even though there is a 3rd party authorization form in file, but if the ONLY person that can provide information does not respond, it defeats the purpose and it makes it harder for the homeowner …." (In reference to Wells Fargo)
- "SPOC is not knowledgeable about foreclosure prevention programs." (In reference to Bank of America)
- "One of the biggest problems with Bank of America is being able to speak with the single point of contact directly. The voicemail machine is the only answer you get and there is never a call back within those 48 hours as they stated on their voicemail."

Counselor Response:

"As a counselor, I rarely get a call back from a SPOC even though there is a 3rd party authorization form in file, but if the ONLY person that can provide information does not respond, it defeats the purpose and it makes it harder for the homeowner..."

How often was SPOC accessible, consistent, and understanding of relevant program rules?



Key NMS Finding #4: Dual tracking continued

Dual tracking, where a servicer proceeds with a foreclosure sale on a home while the homeowner has a pending loan modification application, is restricted by the NMS servicing standards. Unfortunately, while some counselors indicated that dual tracking has become less prevalent in recent months, there were still reports that each of the Big 5 continued to engage in dual track violations. In fact, 62% of respondents said that the Big 5 continued to engage in dual tracking at least "sometimes." Some counselors further indicated that while they have seen some improvement among the Big 5, dual tracking continued to be a major issue among servicers not covered by the NMS.

Respondents were also given the opportunity to address dual tracking in an open-ended question. While the question asked which servicers are the worst dual track offenders, many respondents used the opportunity to provide more detailed responses.

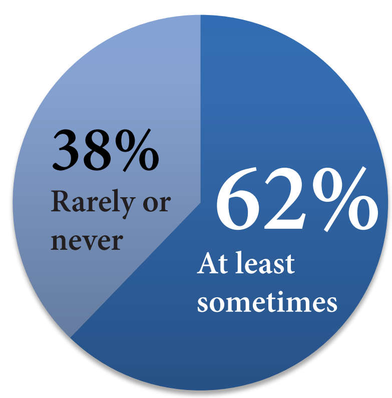
The following is a small sample of the responses collected:

- "Some of our worst dual tracking with the Big 5 has come from Chase, who seems to lose important agreement documents and have foreclosed on a client whose lien was released."
- "B o A by far. I've had clients who had final modification papers sent at the same time as notice of sheriff sale …."
- "Wells Fargo engages in dual tracking—going ahead with a foreclosure process (judicial) even when a modification application is pending. This includes substantive briefing, placing a burden on a homeowner who is fully qualified for a loan …."
- "The biggest problem with GMAC/Ally is dual tracking in a judicial foreclosure state. Foreclosure continues unabated despite modification efforts by a well-employed borrower."
- "The worst offenders are the lenders that weren't part of the settlement. Many of them, especially those dealing with land/home deals for manufactured homes, seem unwilling to learn from the settlement at all."
- "Chase, Bank of America, and Wells Fargo are the lenders that more often proceed with foreclosure even when the loan modification applications are in review, alleging in court that the borrower has not submitted a request for mortgage assistance."

Counselor Response:

"All of the banks are still doing it. We have to ask over and over again for them to postpone the sale date. The file will be in review for a modification, the collection department still continues to move toward foreclosure, nothing stops."

How often did the Big 5 continue to engage in dual tracking?



Key Fair-Lending Finding #1: Borrowers of color were receiving worse loss mitigation outcomes than white borrowers

When asked whether their foreclosure clients who are borrowers of color were generally experiencing worse loss mitigation outcomes than white borrowers, 29% of respondents said "yes." We asked for further explanation from those who responded "yes."

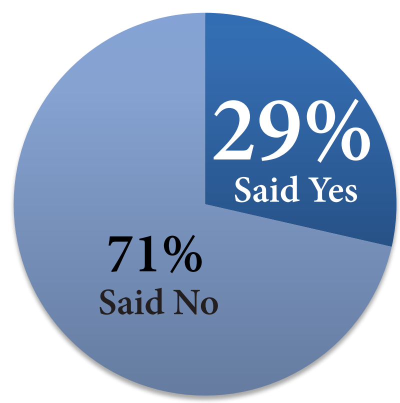
Here are some of the explanations from our participants:

- "Process is much longer [for clients of color] than other races. Very hard on income and debt to income [for borrowers of color relative to] other races. Require more frequent updates on documents before making a decision."
- "The worst loss mitigation outcomes have been for women of color …. They have experienced the worst mitigation outcomes and often have been in homes longer than they usually have the same investors from the beginning of the loan."
- "Banks seem to take more time in doing work-outs with our white borrowers. [White borrowers] are sometimes offered services never offered to others."
- "I believe people of color have less options when it comes to adding income to their file from renters, family members, etc. The additional income would help them get approved."
- "People of color generally do not receive favorable outcomes and their homes go into foreclosure."

Counselor Response:

"Banks seem to take more time in doing work-outs with our white borrowers. [White borrowers] are sometimes offered services never offered to others."

Were foreclosure clients who were borrowers of color generally experiencing worse loss mitigation outcomes than white borrowers?



Key Fair-Lending Finding #2: Limited English Proficiency borrowers were not adequately communicated with and received worse loss mitigation outcomes

A majority of respondents [83%] "sometimes," "often," or "always" had clients with no English speaking skills or Limited English proficiency (LEP). These borrowers face numerous additional hurdles when trying to navigate the loan modification process, especially the failure of servicers to provide them with written or oral communications in their native language.

Nearly half [46%] of counselors said their LEP clients "never" received translated foreclosure-related documents and 76% of respondents 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. Unsurprisingly, counselors see these disadvantages leading to disparate outcomes for their LEP clients, with nearly half [47%] saying their LEP clients "always," "often," or "sometimes" received worse loss mitigation outcomes than their English-proficient clients.

Counselors were also asked to provide a summary of a client or clients who had difficulty accessing foreclosure prevention because of language access issues. Here are some of their responses:

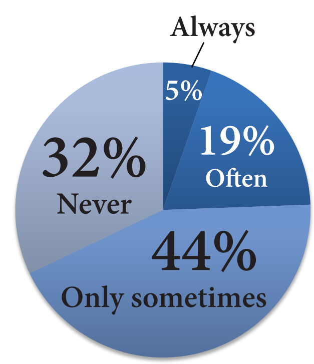
- "Many clients have difficulty contacting the servicer due to the language barrier. Even when a translator is provided there is a lot of information lost in translation that often affects the outcome of the review. The result is that the client rarely calls the lender as they feel they cannot communicate adequately with them."
- "We often speak with the servicer along with the client because of the poor treatment and response they get when trying to make contact."
- "While most banks have SPOC and customer service lines in Spanish, not all mail correspondence in Spanish. Many times clients have little to no idea what is being told to them from the bank via mail, and counseling frequently requires doing a lot of translating for clients..."
- "We try to be on these calls to help the client as the lender never offers a translator… They often say yes to things, even if they don't understand, just to get off the phone."

Counselor Response:

"The better [a client's] English skills the better the outcome. Often they don't understand what the lender is requesting even though the lender may have been instructed to contact us for all needed documents to alleviate the language barrier."

How often were your clients included Non-English speaking or Limited English Proficient (LEP) borrowers?

How often were LEP clients able to speak to the servicers in their native language or through a translator provided by the servicer?



Key Fair-Lending Finding #3: Surviving occupants faced additional hurdles in the loss mitigation process and received worse outcomes

"Surviving occupants" refers to individuals such as widows and widowers and surviving children who have a clear ownership interest in the home but who are not listed on the mortgage. More than 55% of counselors responded that servicers made surviving owners go to probate or otherwise jump through additional hoops. Servicers also refused to speak with surviving owners about the mortgage or engage in the loss mitigation process. In fact, 59% of counselors said that servicers "always" or "often" refused to discuss loan modifications with surviving owners. As with other clients who face additional hurdles in the loan modification process, counselors said surviving owners were receiving worse outcomes, with more than 40% of counselors indicating that surviving owners "always" or "often" received worse loss mitigation outcomes than their other foreclosure clients.

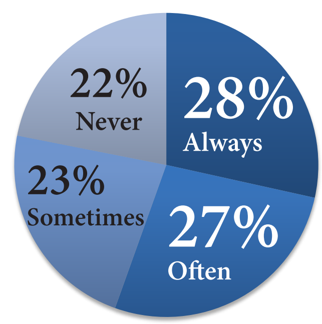
Counselors were also given the opportunity to respond to an open-ended question about the experiences of surviving owners. Below are some of their responses:

- "Usually the "widow" will give up on the process because they are asked to do so much more and when they do get the quit claim deed – then they are told it is never good enough or is now unacceptable."
- "The process of raising an estate to be added to the deed is sometimes a costly endeavor, and is complicated legally. When already facing financial hardship, this added burden as a prerequisite for "widow" clients to be considered for a loan modification makes it extremely difficult for some of our clients to either assume the mortgage or receive a curable workout option – even if they have sufficient documented income to afford the mortgage (if it were modified)."
- "I had a client whose husband died and the property was left in her name, but the mortgage was in his name only. She fell behind and Wells would not modify the loan because there was no assumption and would not allow the assumption without the loan being current. We went round and round with this for like 2 years..."
- "If they own property but not on loan, they will not discuss with them. They are in limbo as their only option is to bring the account current."

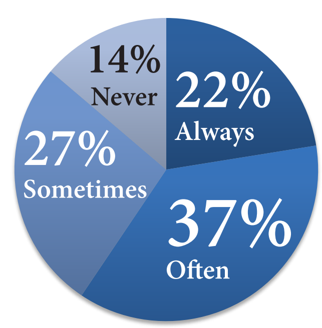
Counselor Response:

"...the lender refused to do a modification with them as they were not on the loan. Often times they are asked to file certain court documents which require some expense on the widow's part and they still deny the modification..."

How often had servicers make widowed clients go to probate or jump through additional hoops?



How often did servicers refuse to discuss loan modifications with widowed clients because they were not on the loan?



Key Fair-Lending Finding #4: Borrowers with disabilities faced additional hurdles and received worse outcomes

Borrowers with disabilities may face a variety of additional barriers to the loan modification process than other borrowers, such as a need for reasonable accommodations when communicating with servicers. However, 60% of counselors reported that their clients with disabilities "always," "often," or "sometimes" faced additional hurdles in trying to access loss mitigation relief and had difficulties receiving reasonable accommodations in the loan modification process. Furthermore, more than 40% reported that their clients with disabilities received worse outcomes than other clients "always," "often," or "sometimes."

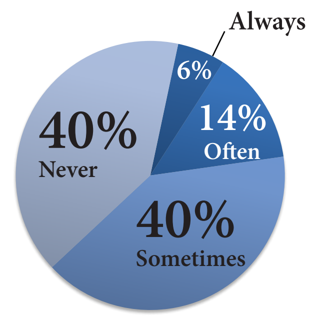
Here are some of the responses to an open-ended question about the experiences of their clients with disabilities:

- "Servicers will typically hang up when they are "picked" up by a relay call center for deaf/hearing impaired. Usually the homeowner is forced to try to call the servicer back and always faces issues because of use of interpreter that is not listed as a verified 3rd party. It seems as if servicers never note the account as an account belonging to a hearing impaired person."
- "I am trying to get a reasonable accommodation in the foreclosure process with Bank of America and am getting the runaround. I don't really think they know what this is."
- "Hearing impaired clients have been serviced by our agency and we have had to schedule specific times wherein a translator is available to assist in the communications, any follow up questions would then require the same intervention, thus, an extra amount of time and effort is devoted to trying to get information back and forth."
- "Most of the time it's a lack of communication where the client has not been able to connect with anyone who they can explain their needs to."

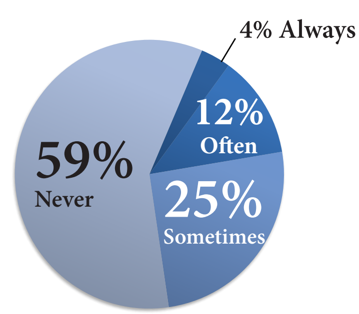
Counselor Response:

"Usually the homeowner is forced to try to call the servicer back and always faces issues because of use of interpreter that is not listed as a verified 3rd part. It seems as if servicers never note the account as an account belonging to a hearing impaired person."

How often did clients with disabilities face additional hurdles when trying to access mitigation relief?



How many clients with disabilities received worse loss mitigation outcomes than other clients?



Recommendations

1. NMS Monitor Joseph Smith must enforce the NMS Servicing Standards

The Office of Mortgage Settlement Oversight, led by Monitor of the National Mortgage Settlement Joseph A. Smith, Jr., is charged with ensuring servicer compliance with the servicing standards contained in the NMS. As has been documented in this report and elsewhere, servicers are regularly failing to meet these obligations. It is incumbent upon Mr. Smith to step-up enforcement of the NMS servicing standards and hold servicers accountable when they fail to meet their obligations. Under the NMS, the Office of Mortgage Settlement Oversight is required to conduct quarterly reviews of servicer compliance with the NMS servicing standards and is empowered to bring enforcement actions where violations are found and not cured within the established framework. This must be more than a hollow threat if the NMS servicing standards are to do anything to address the servicing abuses of the past.

2. Housing counselors, legal services lawyers, and others on the front lines must document servicer noncompliance with the NMS Servicing Standards

Housing counselors are in a critical position to recognize when servicers are failing to comply with NMS servicing standards. While there are mechanisms in place for counselors to report violations, including through the CFPB's consumer complaint process, it does not appear that violations are being reported on nearly the scale that counselors are seeing them.

In an effort to improve the reporting of NMS servicing standards, NHRC, working in conjunction with the National Consumer Law Center, has developed a soon-to-be-released online tool designed to expedite and streamline the process for counselors to report violations. Likewise, the National Association of Consumer Advocates is developing a mortgage database for legal services attorneys to identify NMS servicing standard violations.

3. Surviving occupants must be able to assume the loan to qualify for a loan modification

This report makes clear the need for greater protections for surviving occupants. This begins with servicers communicating effectively with surviving occupants. Servicers should also implement a streamlined and expedited loan assumption process for surviving occupants so they can access loss mitigation options before losing their homes.

4. Dual tracking of mortgages must end

Under the NMS rules, a foreclosure cannot be initiated if the homeowner has submitted a complete modification application to the servicer prior to being 120 days late. If the foreclosure has been initiated before the complete modification application has been submitted, the servicer must refrain from a foreclosure sale unless the property is within 15 days of sale. Under HAMP rules, a foreclosure cannot be started until a HAMP review is completed and if a HAMP review is requested for a property already in foreclosure, the property cannot proceed to sale until the HAMP review is completed.

As our survey has shown, people continue to lose their homes to foreclosure in violation of the dual track rules. No sale dates should be set on a mortgage until the HAMP review and all appeals have been completed. Ending dual track must be a priority of the Office of National Mortgage Settlement.

5. Housing counseling agencies and legal services need adequate funding

When negotiating a mortgage modification, homeowners at risk of foreclosure do significantly better when aided by a counselor than when they try by themselves. However, foreclosure counseling funding levels do not match the demand for these services. The currently available funding pays for client intake and referral to servicer, but homeowners need more to recover from decreased income, damaged credit scores, and foreclosure. Quality counseling includes financial and credit counseling, escalating cases, updating clients as the case progresses, refreshing financial documents, short sales, reverse mortgage, and, where needed, transition to rental counseling.

These activities are poorly funded and badly needed. In its upcoming budget for fiscal year 2014, Congress should allocate $55 million for HUD housing counseling assistance and $77 million for the National Foreclosure Mitigation Counseling program.

The nonprofit housing counseling community is committed to working with homeowners to provide the best and most appropriate solutions for each family. Much of the available funding supports entry into the loss mitigation process but not the extensive work required to get to resolution and financial recovery. In a court proceeding, homeowners need an attorney and people in foreclosure often do not have the funds for legal representation. Nonprofit legal services funding is inadequate to meet the large need for effective representation.

6. Servicers must provide effective communication for Limited English proficiency (LEP) homeowners

Despite legal and regulatory protections, limited English proficiency people face extra challenges in trying to navigate the foreclosure process. When LEP homeowners find that their Single Point of Contact cannot speak a language they understand, the homeowner may be referred to a customer service representative who is fluent in their language but not knowledgeable about the loss mitigation process and has no access to the case file, leaving the LEP homeowner stranded, missing key deadlines and risking foreclosure. Alternatively, the SPOC may have a translator, but one who is not familiar with the process and vocabulary of loss mitigation, missing the meaning, and not providing the LEP homeowner with the information they need.

Additionally, some servicers are not accepting social security income documentation in Spanish, even though it is issued by the Social Security Administration. Some servicers are only accepting hardship letters in English – asking people who are not fluent in English to provide the required letter in a language they are not familiar with. The Treasury Department provides the required HAMP Request for Mortgage Assistance (RMA) form in Spanish, but some servicers require that it be submitted only in English, and do not accept the Treasury Department's Spanish form.

All these barriers should be eliminated by: (1) providing more SPOCs who are fluent in commonly spoken languages, (2) referring LEP clients to nonprofit counseling agencies when the servicer lacks the appropriate language capacity, and (3) requiring servicers to accept government documentation and forms which are printed in languages other than English.