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TESTIMONY OF HILARY O. SHELTON

DIRECTOR, NAACP WASHINGTON BUREAU &

SENIOR VICE PRESIDENT

FOR ADVOCACY AND POLICY

before the

SENATE JUDICIARY COMMITTEE

on

"Lending Discrimination and Foreclosure Abuse"

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Good morning Chairman Leahy, Senator Franken, Ranking Member Grassley and esteemed members of this Committee. Thank you so much for calling this important hearing and for asking me here today to share with you the NAACP's position on this crucial issue.

My name is Hilary Shelton, and I am the Director of the NAACP Washington Bureau, the federal legislative and national public policy advocacy arm of the NAACP. As many of you know, with more than 2,200 membership units in every state in the country, the NAACP is our Nation's oldest, largest and most widely recognized grassroots-based civil rights organization. I am also pleased to say that just last month we celebrated our 103rd anniversary.

Since our founding, a basic goal of the NAACP has been, and continues to be, to ensure that every American, regardless of race, ethnicity, place of national origin or background should have an equal opportunity to achieve economic success, sustainability and financial security. Sadly, more than 103 years later, we are still struggling to achieve that goal.

Let me be clear: abusive, predatory lending and the lack of access to basic financial services and reasonable credit continues to be a major civil rights issue in America.

<u>Abusive Lending and the lack of available credit in racial and ethnic minority communities</u>

The targeting of racial and ethnic minority Americans by predatory lenders is not a new phenomenon. In mortgage lending, numerous studies have shown that since at least the early 1990's select groups, including racial and ethnic minorities, women, and senior citizens were targeted by predatory mortgage lenders with subprime loans, regardless of the borrowers' past history or existing credit score. I should hasten to say at this point that not all subprime loans are predatory, but we have found that all predatory or abusive loans are subprime. Indeed the NAACP recognizes the benefits of non-abusive, non-predatory subprime loans to a constituency which includes many without a strong traditional credit history.

As early as 1996, a study by Fannie Mae and Freddie Mac reported that as many as a third of the families who receive subprime loans actually qualify for prime loans[1]. A seminal report by Allen Fishbein and Harold Bunce for the U.S. Department of Housing and Urban Development (HUD) issued in 2000 demonstrated definitively the "rapid growth of subprime lending in minority neighborhoods."[2] Ensuing reports and evaluations of HMDA data bore this out: African Americans, Latinos, and seniors, among others, were consistently being targeted by predatory lenders peddling their nefarious mortgage loans.

A 2006 study by the Center for Responsible Lending demonstrated that for most types of subprime home loans, African American and Latino borrowers are more than 30% more likely to have higher rate loans than Caucasian borrowers, even after accounting for differences in risk[3]. They have since followed this up with a number of other studies, most recently *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures*[4]. All of their reports have reached similar conclusions when it comes to race and predatory mortgages: that African Americans and Latinos were much more likely to receive high interest rate loans than their white counterparts, even when credit scores and credit history are taken into account.

In addition to predatory mortgages, racial and ethnic minority Americans have been and continue to be disproportionately impacted by other types of abusive loans. One of the most obvious examples of this would be short term, or "payday" loans, which like predatory mortgage loans really took hold in our communities beginning in the early 1990's. Virtually no payday loan outlets existed in 1990, but a study released in 2005 found that in 2004, there were 22,000 payday loan stores extending about $40 billion in

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[1] Freddie Mac. September 1996. *Automated Underwriting: Making Mortgages Lending Simpler and Fairer for America's Families. Washington DC*

[2] Fishbein, Allen and Bunce, Harold, Subprime Market Growth and Predatory Lending, U.S. Department of Housing and Urban Affairs, 2000. In Susan M. Wachter and R. Leo Penne, eds. *Housing Policy in the New Millennium.* Washington, DC: U.S. Department of Housing and Urban Development.

[3] Center for Responsible Lending. May 31, 2006. "*Unfair Lending: The effect of Race and Ethnicity on the Price of Subprime Mortgages*" Debbie Gruenstein Bocian, Keith Ernst and Wei Li.

[4] Center for Responsible Lending, November 2011. *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures*. Debbie Gruenstein Bocian, Wei Li and Roberto G. Quercia,

loans[5]. Today, there are more payday loan and check cashing stores nation-wide than there are McDonald's, Burger King, Sears, J.C. Penney, and Target stores combined[6].

Payday lenders offer small, short-term loans while charging the equivalent of annual interest rates of up to 900% for a one-week loan, 450% for a two-week loan and more than 200% for a one-month loan[7]. Most of the loans (more than 40%, according to the FDIC) are for between $200 and $300; less than 10% are for more than $500.

One of the biggest problems with payday loans is that consumers who use payday lenders are often in desperate debt, and the high interest rate makes it so hard to pay back the loan that they quickly find themselves on the perpetual debt treadmill. When they cannot pay back the original loan, they extend it, often paying the fees and interest several times over. The end result is that many consumers end up paying far more in fees than what they originally borrowed. This is so common that 99% of all payday loans go to repeat borrowers; the typical payday borrower pays almost $800 on a $325 loan[8]. In total, payday lending earns the financial institutions $4.2 billion in fees annually[9]. It is currently estimated that 12 million Americans are trapped every year in a payday debt loan cycle[10].

What is even more disturbing is that these stores are concentrated in low-income and racial and ethnic minority communities. As Julian Bond, the Chairman Emeritus of the NAACP Board of Directors once stated, "Visits to payday lending stores – which open their doors in low-income neighborhoods at a rate equal to Starbucks openings in affluent ones – are threatening the livelihoods of hard-working families and stripping equity from entire communities.[11]"

One study found that African American neighborhoods have three times as many payday lending stores per capita as white neighborhoods in North Carolina, even when the average income of the neighborhood is taken into account. Another study showed that in Texas, where 11% of the population is African American, 43% of the payday loans were taken out by blacks. Seven states in the nation have five or more payday stores per 10,000 households: Alabama, Louisiana, Mississippi, Missouri, Nevada,

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[5] Bair, Sheila. 2005. *Low-Cost Payday Loan: Opportunities and Obstacles*. The Annie E. Casey Foundation, June.
[6] Karger, Howard. 2005. *Shortchanged: Life and Debt in the Fringe Economy*, San Francisco: Berrett- Koehler.
[7] Consumer's Union. November 1999. Fact Sheet on Payday loans. Found at http://www.consumersunion.org/finance/paydayfact.htm
[8] Center for Responsible Lending, "Fast Fact on Payday Loans", found at http://www.responsiblelending.org/payday-lending/tools-resources/fast-facts.html
[9] Ibid
[10] Ibid
[11] Bond, Julian. December, 2003.

South Carolina and Tennessee[12]. It should come as no surprise that these seven states have some of the highest percentages of African American residents in the nation: the 2010 Census reports that the population of four of these seven states is at least, or is some cases more than, one third black[13].

I should also mention that abusive predatory lenders have also targeted the men and women of the armed services who serve and protect our country by also concentrating themselves around military installations. In response, in 2006, Congress passed the NAACP-supported Military Lending Act, aimed at ending predatory lending practices, such as 400%-interest payday loans and auto title loans, to military men and women and their families. The Act found that abusive high-cost loans were creating significant financial distress for soldiers, leading to failed security clearances and ultimately harming military readiness. Military relief societies report that this law has had a significant impact in curbing some abusive products, but that predatory practices continue to cause significant harm to members of the military and their families. In some cases, this is because lenders have become adept at evading key protections of the original Act.

While I realize that the focus of this hearing is abusive, discriminatory lending, I would be remiss if I didn't also briefly discuss some of the forces behind the conditions which have made our communities so receptive to the targeted abusive lending practices which I have outlined above.

There has always been, and sadly there continues to be, a definitive lack of access to reasonable, responsible credit in racial and ethnic minority neighborhoods. A 1995 Federal Reserve Survey of Consumer Finances found that among lower income families, one-third of African-American households and 29 percent of Hispanic households were unbanked. Furthermore, while specific state studies are abundant, one particularly striking statistic comes from California, where A 1999 *Harvard Business Review* article, cites extreme disparity in financial services options available to residents of two neighborhoods in Los Angeles—one in South Central and the other in Pacific Palisades. South Central, which has a high African American population, has one depository institution for every 36,000 people, while Pacific Palisades, a majority white community, has one for every 1,250 people.

Unfortunately, the situation has not improved for our communities. The 1977 Community Reinvestment Act (CRA) requires banks to make loans in all the areas they serve, not just the wealthy ones. Yet one analysis has found the percentage of banks

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[12] Ibid

[13] U.S. Department of the Census, The Black Population, 2010. September 2011. Found at http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf

earning negative ratings from regulators on CRA exams has risen from 1.45 percent in 2007 to more than 6 percent in the first quarter of 2011[14].

Given the sustained and continued dearth to reasonable credit, when coupled with the targeting of racial and ethnic minorities by predatory mortgage lenders, the disproportionately devastating impact of the foreclosure crisis on racial and ethnic minority families, neighborhoods and communities is of no surprise.

The disparate impact of the foreclosure crisis on communities of color

In November, 2011, the Center for Responsible Lending (CRL) issued a seminal report, *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures.* The results of this report were sobering, and confirmed what NAACP members and branches throughout the United States have been witnessing for years: Foreclosure patterns are strongly linked with patterns of risky lending, and as a result of the continued targeting of racial and ethnic minorities by predatory mortgage lenders, borrowers of color are more than twice as likely to lose their home as white households[15].

Perhaps more disturbing, and frightening, is their conclusion that our nation is not even halfway through the foreclosure crisis: among mortgages made between 2004 and 2008, 6.4 percent have ended in foreclosure, and an additional 8.3 percent are at immediate, serious risk.

Foreclosures take a financial and physical toll on a former homeowner and his or her family. Homeownership has long been the primary asset for most Americans. Steadily building modest wealth can leverage education, entrepreneurship, or retirement opportunities. When nurtured over a lifecycle, home equity can be shared with the next generation and further their financial security. Communities of color do not own homes at rates comparable to their White peers, which contributes heavily to the racial wealth gap. In fact, recent research by the Pew Research Center shows that wealth in White households exceeds that of Hispanic households by a staggering18-to-one ratio and by 20-to-one for African American households.[16] The foreclosure crisis has only served to exacerbate this gap.

Further, the CRL report began to quantify the suffering which many of our neighborhoods have endured: "…neighborhoods with high concentrations of minority residents have been hit especially hard by the foreclosure crisis. Nearly 20 percent of

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[14] Benson. Clea "A Renewed Crackdown on Redlining" Bloomberg Businessweek, May 5, 2011, found at http://www.businessweek.com/magazine/content/11_20/b4228031594062.htm

[15] Center for Responsible Lending, November 2011. *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures*. Debbie Gruenstein Bocian, Wei Li and Roberto G. Quercia, p.3

[16] Paul Taylor et al., *Twenty to One: Wealth Gaps Rise to Record Highs Between Whites, Blacks and Hispanics* (Washington, DC: Pew Research Center Social and Demographic Trends, 2011).

loans in high-minority neighborhoods have been foreclosed upon or are seriously delinquent, with significant implications for the long-term economic viability of these communities[17].

The CRL study went on to show that there is strong evidence that low-income and minority neighborhoods are being hit hardest, not only by foreclosures, but by the attendant spillover effects of higher crime, lower property values, and fractured social cohesion.[18]

The impact of these disproportionate foreclosures on our neighborhoods cannot be understated: the high concentration of foreclosures in racial and ethnic minority communities make it impossible for these areas to remain viable, let alone grow or prosper. Neighborhoods with high concentrations of foreclosures lose tax revenue while at the same time incurring the financial costs of abandoned properties and neighborhood blight. According the a 2009 report by the Urban Institute, local governments incur, on average, over $19,000 in costs for every foreclosure[19], These revenue losses have a direct impact on the ability of the local government to provide residents with crucial services such as high quality schools, adequate health care, basic public safety and infrastructure maintenance, to name just a few services.

Furthermore, homeowners living in close proximity to foreclosures typically lose significant wealth as a result of depreciated home values. The 2009 Urban Institute study also found that neighbors adjacent to a foreclosure incur a loss of $3,000 in lost property values[20].

<u>How do we help these communities?</u>

Several things must be done to help those now fearing foreclosure who were targeted by unscrupulous predatory mortgage lenders. Perhaps it is most simple to break it down into two categories: Enforcement and legislative initiatives.

On the enforcement side, the NAACP recognizes and is deeply appreciative of the efforts by the current U.S. Department of Justice (DoJ) to bring to justice some of the more egregious marketers of discriminatory mortgage products. We are, in fact, encouraged by many of the actions coming out of the DoJ and other agencies, and we are especially heartened by the fact that if and when the nascent Consumer Financial Protection Bureau (CFPB) becomes fully operational, there will be an even more robust

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[17] Center for Responsible Lending, November 2011. *Lost Ground, 2011: Disparities in Mortgage Lending and Foreclosures*, p.4
[18] Ibid, p.10
[19] G. T. Kingsley, R. Smith, and D. Price (2009). *The Impacts of Foreclosure on Families and Communities.* Washington, DC: The Urban Institute.
[20] Ibid

enforcing of laws already on the books and fewer cases of discrimination that are allowed to fester and grow as big as Countrywide. We are also pleased that the *Dodd-Frank Wall Street Reform and Consumer Protection Act* prohibits many of the predatory lending practices, such as yield spread premiums and steering, which have decimated so many of our communities. Currently, under President Obama, Attorney General Holder and Assistant Attorney General for Civil Rights Perez, of the U.S. DoJ has led the effort to apply existing laws to ensure that discrimination is not tolerated.

The Countrywide settlement, for example, is a welcomed demonstration of DoJ using the law and its resources to go after a company with a long and well-established record of discrimination when it comes to mortgage lending. As I am sure Assistant Attorney General Perez noted in his remarks earlier today, the settlement asserts that between 2004 and 2008, Countrywide discriminated by charging more than 200,000 African-American and Hispanic borrowers higher fees and interest rates than white borrowers in both its retail and wholesale lending. The complaint alleges that these borrowers were charged higher fees and interest rates because of their race, ethnicity or national origin, and not because of the borrowers' creditworthiness or other objective criteria related to borrower risk. The Justice Department further found that Countrywide discriminated by steering thousands of African-American and Hispanic borrowers into subprime mortgages when white borrowers with similar credit profiles received prime loans.

As a result of these heinous practices and the settlement, Countrywide has paid $335 million in compensation for the victims of their discriminatory behavior. Again, the NAACP would like to extend our sincere thanks to the US DoJ for their thorough investigation and for their willingness and ability to enforce the law, or in this case several laws, which were put into place to protect Americans from discrimination and abuse.

The DoJ Office of Civil Rights has also, in recent months, aggressively been addressing cases of redlining, or punishing financial institutions which do not serve racial and ethnic minorities. Again, the NAACP appreciates and applauds the efforts of the U.S.DoJ for their continuing efforts to end lending discrimination.

That is not to say, however, that the increase in making fair lending a priority has not been a government-wide effort. According to Assistant Secretary Perez's office, there have been a record number of referrals from other supervisory agencies of suspected civil rights violations. In fact, in the past three years, there have been 55 referrals of lending misconduct sent to the U.S. DoJ, compared to 30 referrals in the preceding 8 year. And, according to Mr. Perez's office, the majority of these referrals are suspected cases of discriminatory actions against racial or ethnic minorities.

Legislatively, we support several initiatives which we believe will alleviate much of the pain and suffering which has been caused by the foreclosure crisis and allow millions of hardworking American families to say in their homes and communities.

First off, we support a year-long moratorium on all foreclosures. This would potentially allow homeowners time to find and take remedial action. It would also provide mortgage servicers, many of whom currently may find it easier and more time efficient to foreclose on a home than to work with the homeowner, the time they need to try to resolve cases and allow the homeowners to stay in their homes.

The NAACP also supports several initiatives to help homeowners who are currently facing foreclosure and / or those who are "underwater" on their mortgages, owing more than the value of their homes. We need to make it easier for homeowners to refinance their mortgages and get away from abusive or high cost loans and take advantage of today's record-low loan rates. Proposals such as Senator Franken's *Helping Homeowners Refinance Act of 2012*, S. 2072 will help level the playing field and make it easier for homeowners, including those who may find themselves owing more for their homes than their current value, to refinance.

In the short term, we must stop the foreclosure crisis which is disproportionately impacting racial and ethnic minority homeowners and communities. We must change not only the thinking of financial institutions, which are not taking responsibility for their role by selling abusive loans, but we must also change the incentive for mortgage servicers, who currently generally gain more by foreclosing on a home than working with a homeowner to modify their loans to a sustainable level.

We must also support and enact proposals such as Congresswoman Maxine Waters' Project Rebuild, which would target federal dollars and matching state and local funds into rehabilitating and redeveloping abandoned and foreclosed properties. By doing this, we are not only creating jobs we are investing in communities which have, for too long, been ravaged by the foreclosure crisis.

Given the continuing disparate impact of the foreclosure crisis on racial and ethnic minority communities across the nation, as well as the continuing lack of access to reasonable, responsible credit in our neighborhoods, the growing wealth gap in our Nation should come as no surprise. We clearly have our work cut out for us.

I would again like to thank the committee for holding this important hearing and for asking for the opinions of the NAACP. I would also, at this time, welcome any questions or comments you may have.