
October 28, 2009

Xavier de Souza Briggs
Associate Director for General Government Programs
Office of Management and Budget
Executive Office of the President
725 17th St., NW
Washington, D.C. 20503

Dear Mr. Briggs:

We write to urge that the President's FY 2011 budget request to the Congress include a recommendation to address a critical piece of the foreclosure crisis: the lack of legal representation for low-income families losing their homes. As "Foreclosures: A Crisis in Legal Representation," a recent report released by the Brennan Center for Justice, demonstrates, the overwhelming majority of homeowners facing foreclosure do so without legal assistance that could save their homes. We therefore request that the Department of Housing and Urban Development's ("HUD") budget include a request for \$60 million in foreclosure-related legal assistance. We believe such a measure would be a logical extension of HUD's existing efforts to provide loan counseling to prevent foreclosure and request a meeting with you or your staff to discuss this critical issue further.

The need is staggering. In Stark County, Ohio, one of the hardest-hit counties in the nation, a Brennan Center analysis found that 86 percent of defendants facing property foreclosure did not have counsel in 2008. In New York, 84 percent of defendants in proceedings in Queens County involving foreclosures on "subprime," "high-cost," or "non-traditional" mortgages – loans disproportionately targeted to low-income and minority homeowners – proceeded without full legal representation. The situation was worse in New York's nearby Richmond and Nassau counties: 91 and 92 percent, respectively, of such defendants were unrepresented.

It is clear that legal assistance could make the difference for many of these unrepresented homeowners. The Brennan Center study found five areas of advocacy for which lawyers can make a critical difference in preserving peoples' homes:

- 1) By helping homeowners to identify violations of state and federal laws prohibiting predatory, fraudulent and other abusive lending practices and enforce consumer protection laws;
- 2) By helping homeowners negotiate loan modifications with lenders, efforts bolstered by the lawyers' ability to identify viable legal claims that can be used as appropriate leverage to reach agreement on sustainable loan terms;

- 3) By helping homeowners ensure that the foreclosure process is followed properly;
- 4) By helping homeowners achieve bankruptcy protection. Bankruptcy is a complicated and specialized area of law, and its protection can provide a safe-harbor to homeowners attempting to get back on their feet; and
- 5) By helping the secondary victims of foreclosures – the tenants who reside in foreclosed properties -- by helping to ensure that they are not improperly evicted.

These interventions are particularly critical for those homeowners for whom counseling is not sufficient. These homeowners may have been victimized by unsavory lenders or by those engaged in mortgage fraud schemes. They may be facing particularly recalcitrant lenders who are unwilling to renegotiate loan terms without the threat of legal action. The presence of lawyers as additional “watchdogs” in the process also can help ensure that courts scrutinize foreclosure filings more carefully.

We believe that a targeted appropriation of funds through HUD would be an effective way to staunch the damage of the ever-growing foreclosure crisis. As you know, the issue of funding for foreclosure legal representation gained considerable traction in Congress this year. H.R. 1728, the House predatory lending bill, authorized such a program in HUD and enjoys the support of Chairman Frank and Congressman Watt, among many others. Senators Dodd, Casey, Menendez and others supported similar initiatives in the Senate throughout the year. The support of the Administration and HUD would be a significant boost to our efforts to consolidate this support next year. We are hopeful that President Obama will join the effort and request a meeting with you, Mr. Briggs, or another appropriate staff member to discuss this critical issue further.

We have enclosed “Foreclosures: A Crisis in Legal Representation,” a recent front page *USA Today* story, “Lawyers Scarce for Poor Facing Foreclosure,” and a recent *New York Times* editorial decrying the lack of legal assistance in the foreclosure crisis.

We will be contacting you to follow up on this letter. In the interim, please feel free to contact Rebekah Diller, Deputy Director of the Brennan Center’s Justice Program, by phone at 212.992.8635 or by email at rebekah.diller@nyu.edu.

Sincerely,

Brennan Center for Justice at NYU School of Law

International Union, United Automobile, Aerospace,
and Agricultural Workers of America and Local
2320, the National Organization of Legal Services
Workers

National Legal Aid and Defender Association

Cc: Michelle A. Enger, Housing Branch