

Testimony

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Subcommittee on Housing, Transportation, and Community Development.

Saving Our Neighborhoods from Foreclosure

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Good Morning. I'd like to thank Senator Menendez and the Committee Members for holding these hearings today in Plainfield, New Jersey. My name is Phyllis Salowe-Kaye. I've been the Executive Director of New Jersey Citizen Action (NJCA) for the past twenty five years. I am also a former member of the Consumer Advisory Council, constituted by the Federal Reserve Board of Governors. As the state's largest independent citizen watchdog coalition, New Jersey Citizen Action works to protect and expand the rights of individuals and families and to ensure that the needs of people – rather than the interests of those with power and money – are served. Through education, research, organizing and outreach our campaigns promote economic, social, racial, and political justice.

As the state's largest HUD-certified Housing and Foreclosure Counseling agency and a leader in innovative projects and programs, I appear before you to offer remarks about how we can save our neighborhoods from foreclosure.

Keeping families in their homes when reasonable loan modifications are possible, and the reform of the broken loan servicing industry should be a priority for Congress. The

Center for Responsible Lending's *Lost Ground, 2011 Report* finds that 2.7 million people who received mortgages between 2004 and 2008 have already lost their homes to foreclosure and an additional 3.6 million households are still at immediate, serious risk of doing so. According to Amherst Securities, we may have a stunning 10 million more foreclosures ahead of us.

Many of these foreclosures can be prevented if policymakers stop relying on voluntary efforts and instead *require* servicers to make reasonable modifications on mortgages that have a good chance of success.

Policymakers should apply strong, mandatory standards for loan modifications. While states can require loan servicers to take specific steps to avert foreclosures prior to foreclosure ("loss mitigation"), there is an urgent need to establish national loss mitigation standards. These standards should target appropriate levels of debt (i.e., the debt-to-income-ratio) for eligible homeowners and bar unreasonable fees. Some effective state loss mitigation efforts and future settlements and consent orders between banks and regulators offer examples of standards that could apply to servicing nationally.

Additionally, eliminating the barriers to homeowner refinancing and streamlining the refinancing process as outlined in S-170, the "Helping Responsible Homeowners Act of 2011" (Boxer/Isakson), would allow homeowners to take advantage of our historically

low interest rates and prevent banks from refusing to refinance underwater homeowners. This legislation must be supported and passed.

There must also be an end to the loan servicing abuses and poor business practices that contribute to unnecessary foreclosures. Federal regulators should prohibit common servicer abuses, including misapplied payments, illegitimate fees, failure to pay escrowed taxes and insurance, force-placing overpriced insurance, obstructing refinances and modifications and improperly pursuing foreclosures when at the same time working with borrowers on loan modifications. New York's recent laws and regulations provide a useful framework that should be examined.

Lowering mortgage balances (principal reductions) is an essential tool for stopping the foreclosure epidemic. Housing experts are reaching a consensus that we need mandated principal reductions for many underwater borrowers at imminent risk of foreclosure to stabilize the housing market. Modifications that reduce principal and are Net Present Value (NPV) positive to investors would enhance income streams for investors and servicers, while keeping families in their homes and prevent further foreclosures from flooding an already saturated housing market. Given the high share of loans held by Fannie Mae and Freddie Mac, the Federal Housing Agency (FHA) must permit meaningful principal reductions on loans that are at imminent risk of foreclosure.

Shared appreciation mortgages are an excellent tool to redirect principles that will allow mortgages to become affordable and sustainable. Ocwen Financial Corporation, one

of the country's largest independent mortgage servicers, has adopted shared appreciation (equity) mortgages as a creative way to do principal reductions for homeowners for use in its Loan Modification Program. A shared appreciation mortgage is a mortgage in which the homeowner agrees to pay a stated percentage of the property appreciation to the lender at the time the house is sold. In return, the lender agrees to reduce the principal and change the interest rate of the loan to one that is below the prevailing market rate.

Ocwen currently has about 16,000 loans in New Jersey. Eight thousand are currently in foreclosure and the bank is aggressively working with these homeowners to modify the loans and reduce the principals. Ocwen is a company that is doing principal reductions throughout the country and has found a way to make a profit. The other large banks and servicers paused to foreclose on millions of homeowners, should be required to modify loans and write down principals in a similar manner. No more than 5% of the security agreements (PSA's) have language that limits or prohibits principal reductions. The others are silent except to say that whatever solution is taken should benefit investors. This benefit to investors can be calculated by using the NPV (net present value), which is what Ocwen does. Ocwen has made use of principal reductions on a large scale. It is essential to require the U.S. Treasury, SEC, OCC or whichever the correct regulator is to issue guidance dispelling the notion that the PSA precludes principal reduction except where explicitly stated.

It is also important to set a NPV calculation standard similar to Ocwen's (though that might be proprietary) so that everyone is "singing from the same score." If that seems to intrude on the "rights" of lenders or be too hard to pass, establish the standard anyway and give borrowers the right to demand a re-evaluation using that NPV.

Senator Menendez has proposed a bill that would establish a pilot program at Fannie Mae, Freddie Mac and FHA to offer shared appreciation mortgage modifications to underwater or delinquent homeowners. The "Shared Mortgage Appreciation Modification Act of 2012" must be supported and passed quickly to help homeowners remain in their homes. It should be offered only in instances of foreclosure prevention because in other contexts it can become another exotic tool that can harm homeowners.

To get banks to agree to reduce the principal they would be entitled to a fixed percentage of the value when prices finally increase and the home is sold. But a cap should be established so that the servicers can't recoup more than they write down plus some foregone interest.

The federal government has established numerous programs to stop foreclosures and save our neighborhoods. Some work, others don't. Just last week, President Obama outlined a series of proposals to help homeowners, including a plan requiring Congressional support that would enable responsible homeowners who are current on their mortgages to refinance into lower rate loans, even though their homes are underwater. We strongly urge Congress to support this plan so that responsible

homeowners can take advantage of currently low interest rates. This will enable them to put more money in their pockets and make their homes more affordable.

The Treasury's Hardest Hit Fund has funded some excellent state and local programs. New Jersey's Homekeeper Program, which provides two years of funding for unemployed or underemployed homeowners, should be expanded and heavily marketed. Congress should support nascent large scale models like the Mortgage Resolution Fund (MRF), a public, private, nonprofit partnership, by allowing the organizations themselves to apply for Hardest Hit Funds or other TARP type dollars, instead of just permitting the HFA's to access these funds. Also, as long as the Hardest Hit Funds are being recycled as in the Mortgage Resolution Fund, Congress should not sunset their use. Additionally, incentives should be set for servicers and banks to ally themselves with MRF type nonprofits (e.g., MRF and NCLR) and the same should be provided in the bulk REO programs being initiated.

Finally, Congress should fund more HUD-certified housing counseling and legal aid assistance for homeowners at risk of foreclosure. Studies have shown that homeowners who receive counseling are less likely to default on their loans. Every successful loan workout that prevents an unnecessary foreclosure helps homeowners, their communities and our economy as a whole.