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Testimony of Anne Balcer Norton, Esquire
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Before the Congressional Oversight Panel
February 27, 2009

Thank you Chairperson Warren and Members of the Panel for inviting me to testify here today on the state and local efforts to combat mortgage foreclosures.

My name is Anne Balcer Norton and I am the Director of Foreclosure Prevention for St. Ambrose Housing Aid Center, a non-denominational, 501(c)(3) non-profit, located in Baltimore, Maryland. From its founding in 1968 to today, St. Ambrose has provided direct housing services to over 100,000 low and moderate income families through five distinct but interrelated housing programs that serve families across Maryland. The mission of St. Ambrose Housing Aid Center is to create, preserve, and maintain equal housing opportunities for low and moderate income people and to encourage and support strong and diverse neighborhoods.

The Foreclosure Prevention Division of St. Ambrose provides default counseling services, direct legal representation and legal counsel to homeowners and nonprofit housing agencies statewide. St. Ambrose has provided foreclosure prevention services for the last 31 years. During this past year, our office provided foreclosure prevention assistance to nearly 3,000 families from across Maryland. Approximately 30% of our clients were single female heads of household and 74% African American.

I appreciate the opportunity to testify and it is my intention to convey to this Panel the effectiveness of loss mitigation efforts, as observed from the ground, in consideration of the geographical and economic diversity that results in unique challenges to borrowers across the state of Maryland.

In the last few years, there has been a disturbing shift in the contributing causes of default and delinquency. Death, divorce, disability or loss of income were the predominant reasons for someone to contact our office for assistance. Today, an overwhelming number of homeowners in default and facing foreclosure are in loans that were set to fail from the point of origination. Of this group, the vast majority of homeowners were approved for loans through reduced or no documentation mortgage loan products. Borrowers received underwriting approval that relied on the equity in the subject property and a mortgage originator too often typed into the application whatever income amount was needed to obtain approval regardless of whether or not it in any way resembled the borrower's actual income.

Such practices were intended to provide short term loans in which increasing property values would give way to future refinancing of the same property and quick returns on investment. Due to the tightening in the credit markets and collapse in the housing market, we now know that such reasoning failed.

In addition to the homeowners facing foreclosure just described are those borrowers that are in default solely as a result of the current economic downturn. This category of borrowers may have otherwise been able to obtain an alternative to foreclosure but due to tightening in the credit and housing markets are unable to sell or refinance their properties in order to do so.

Both categories of homeowners facing foreclosure that seek the services of St. Ambrose housing counselors and attorneys present unique challenges, challenges that are often compounded by the barriers that are faced when seeking sustainable loss mitigation remedies. Despite reason for default or geographic locale, our observations and frustrations remain the same. For the purposes of providing brief testimony, I will limit my summary of our observations to the prevailing six barriers to mitigating losses from foreclosure:

1. Affordability and redefault rates;
2. Required length of delinquency as a prerequisite to loss mitigation;
3. Negative equity and junior liens;
4. Capacity;
5. Access to credit and retail markets; and
6. Securitization

Affordability and Redefault

In recent months, we have observed an increase in previously modified loans that have returned to a delinquent status. We attribute the increasing redefault rates to previously offered loan modifications that were not based on affordability. It has become common practice for servicers to send mass mailings of loan modification offers to borrowers in default. These blind offers are sent to borrower with instructions that they sign and return the agreements or face foreclosure. The offers are not based on the income, assets or household budget. In other cases, modifications that recapitalize arrears and late fees amortized over the remaining life of the delinquent loan often increase payments above the previously unaffordable payment without regard to long term sustainability. Predicting long term sustainability and measuring affordability requires a case by case analysis of each given borrower's ability to repay and to retain homeownership.

Length of Delinquency

Prior to engaging in loss mitigation, most pooling and servicing agreements and servicing guidelines that we have reviewed dictate the length of time that a borrower must be past due. This time is typically around 90 days delinquent. During this time, considerable fees, penalties, unpaid interest and other collection costs accrue, while at the same time, the borrower falls further in default. These costs are added to the loan balance if a modification is offered, the recapitalization of the arrears and accrued costs typically increases the new payment beyond that which was previously deemed unaffordable. Additionally, the significant accrual of arrears and length of time in default dictates the collection of an upfront down payment or deposit that is necessary to qualify for a loan modification. The deposit is based on the outstanding arrears, including all fees that have accrued during the previous 90 days. By providing loss mitigation services to borrowers at imminent risk of default or in stages of early default, it is in our opinion that through avoiding the costly fees that accrue over the 90 day period of delinquency and are recapitalized through a loan modification or required as a lump sum deposit will lessen the redefault rates for these borrowers.

Negative Equity and Junior Liens

Prince George's County illustrates the increasing barriers to achieving sustainable loss mitigation as a result of declining property values and flooded inventories of housing stock that are for sale in the market. Communities within jurisdictions across the State that experienced an increase in property development or artificial inflation of home value face a precise challenge to obtaining sustainable loan modifications in light of declining markets. In other areas, including communities within Baltimore City, inflated appraisals used at the time of loan origination using false or at times, fraudulent measures, have seen a dramatic decline in home values obstruct sustainable loss mitigation efforts. It is in our opinion that principal reductions pursuant to loan modification agreements are the only reasonably sustainable alternative to foreclosure and least costly option for investors. Principal modifications, however, continue to be the least favored of the loss mitigation options available to homeowners and yet, particularly in declining markets, long term sustainability will be contingent on the increased use of this option.

Capacity

Capacity in light of surging volume serves as a barrier to effective loss mitigation as it relates to both servicer as well as HUD certified housing counseling agencies' capacity to respond to the current crisis. Servicers either lack the staffing to effectively respond to loss mitigation requests or have artificially ramped up capacity at a level that precludes training and oversight of staff. For those that have doubled and tripled staff size in a very short frame of time, there remains a disconnect in the conveyance of critical information that is necessary to facilitate timely changes in loss mitigation options and protocol. There is further a lack of accountability and oversight. Within a single servicer, there are multiple data systems and procedures for processing requests. Counselors and borrowers are provided a single point of entry and yet, when following the protocol set-forth by a given servicer, too often files are transferred from department to department, documents are misplaced and authorizations expire. While at the same time, late fees and penalties continue to accrue and the file continues on the fast track to foreclosure. From point of submission to resolution of a file can take anywhere from 3 to 5 months. This already trying process has only been compounded by the acquisitions of struggling financial institutions into larger ones that are not prepared to integrate staff procedures and points of entry for submission of files at the time of acquisition. Clear objectives and a precise strategy for processing loss mitigation requests are needed. Unfortunately, as mentioned in my summary of affordability, resolution of this crisis requires case by case, loan by loan analysis to determine affordability and long term sustainability. Under the current model, capacity to fulfill this objective is lacking.

Housing counselors play a critical role in assisting defaulting homeowners obtain sustainable loss mitigation relief while at the same time, mitigating losses to investors. For non-profit housing counseling agencies, capacity continues to be a concern making it difficult to provide assistance to the surging numbers of homeowners that are requesting relief. Federal funding for housing counseling has been made available, however, the funding is provided through a fee for service model that precludes agencies from increasing capacity in order to increase the number of households served.

Access to Credit and Retail Markets

For many homeowners, access to low cost refinancing could provide the savings through a reduced interest rate needed to evade foreclosure. There are certain barriers prohibiting or making it more expensive for homeowners to access programs and products available through Fannie Mae, Freddie Mac and FHA through retail lending channels. The warehouse lines of credit that fund retail loans at closing have tightened restrictions on loans that can be held on a specific line of credit before it is sold. Loan to value ratios and credit score floors prohibit retails lenders from making loans available even though they comply with Fannie, Freddie or FHA guidelines. In other cases, pricing available through retail lenders is higher as a result of credit scores due to warehouse lenders that are risk adverse even in cases where borrowers have above-average credit scores. The response from the wholesale market makes clear that the infusion of capital to these institutions has not trickled down to the retail mortgage market. Further assurance of increased liquidity is needed to spur retail markets to provide affordable credit to homeowners needing to refinance.

Securitization

As previously stated, the current crisis demands clear objectives and precise strategies employed by servicers to engage in loss mitigation. Such strategies are complicated by the prevailing servicing guidelines and threats of litigation by investors. We routinely represent borrowers that have loans serviced by TARP recipients and in which the investor has also received TARP funds and yet, our counselors continue to receive the same inconsistent responses to our requests for reasonable and sustainable loss mitigation. From my colleagues in the industry, I have been advised that the threat of litigation for breach of obligations under pooling and servicing agreements is a legitimate concern. Proposed incentives to modify mortgage loans may fail in the face of such threats unless the servicing guidelines already permit the loss mitigation relief requested. It is in our opinion that revising the bankruptcy code to permit the cramdown of a debtors' residential mortgage loans through bankruptcy provides the perverse incentive that is needed to require investors to direct servicers to engage in sustainable loss mitigation.

Despite recent high profile announcements committing to engage in loss mitigation, it is in our experience that voluntary efforts do not provide the consistent and systematic loan modifications that are critically needed to curtail the current crisis.

Again, thank you for the opportunity to testify today. This concludes my testimony and I am available to provide clarification or answer any of your questions.