Questions for the Hearing on
"The Need for National Mortgage Servicing Standards"
May 12, 2011
Answers from Diane E. Thompson, National Consumer Law Center

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Questions for Ms. Diane Thompson, Counsel, National Consumer Law Center, from Senator Menendez:

In your testimony, you provide a stunning array of specific examples of homeowners who have had terrible experiences with mortgage servicers' actions, most of them illegal. In your experience, how widespread are each of the homeowner abuses you describe?

Answer:

The abuses I catalogued in my May 12, 2011, testimony are widespread. Every day, I hear examples of similar abuses. Attorneys representing homeowners anywhere in the country have similar experiences to relate.

Last December, in an attempt to quantify the scale of servicer abuses, the National Association of Consumer Advocates, in conjunction with NCLC, conducted a survey of attorneys representing homeowners in foreclosure. That survey found that almost 99% of the respondents were representing a homeowner who had been placed into foreclosure while awaiting a loan modification, almost 90% of the attorneys surveyed were representing a homeowner who had been placed into foreclosure despite making payments as agreed, 87% of the attorneys were representing clients who had been placed into foreclosure due to a servicer's improper failure to accept payments, over 50% reported representing homeowners who had been placed into foreclosure as a result of forceplaced insurance alone, with similar figures reported for the impact of illegal fees and the misapplication of payments. These figures suggest that all of these abuses are common.

My testimony provides illustrative examples of several different kinds of abuses: the improper solicitation of a waiver of some or all of a homeowner's legal rights; servicers' failure to honor their agreements with homeowners, whether permanent or temporary modifications or short-term payment plans; the failure to timely convert a loan modification to a permanent modification; foreclosing on homeowners who are either awaiting a loan modification review or are in a temporary or permanent loan modification; misapplication of payments, improper assessment of fees, and abuse of suspense accounts; and a failure to offer homeowners a loan modification that would have benefited the investor. In my experience, all of these abuses are so commonplace as to be unremarkable were they not so appalling.

Ms. Goodman, Senior Managing Director of Amherst Securities, stated in her testimony that mortgage servicers should be required to offer borrowers the loan modification that has the highest net present value for the investor, not just any modification that has a higher net present value than foreclosure. Do you agree with that?

Answer:

We agree with Ms. Goodman's proposal that servicers be required to offer a loan modification with a principal reduction where a loan modification with a principal reduction offers a greater return to investors than a modification without a principal reduction. The failure to make the HAMP Principal Reduction Alternative mandatory where the principal reduction offers a greater net present value to investors than a conventional HAMP modification is illogical and harms both borrowers and investors.

We would oppose any requirement that the servicer be required to offer borrowers only the loan modification that has the highest net present value for investors in all circumstances. There are many circumstances in which the loan modification that is most responsive to the homeowners' needs may not be the one that returns the highest NPV to investors. Indeed, such a rule might impede settlement of litigation and interfere with judicial oversight of foreclosure mediation.

Moreover, we are not sure that such a rule would in all cases serve the interests of investors. We are unsure the extent to which the NPV test accurately measures the value of an increase in the sustainability of a loan modification. Recent data from the OCC-OTS Mortgage Metrics Report supports our experience that providing deep payment cuts, reducing principal significantly, and otherwise structuring loan modifications to ensure long term affordability results in improved outcomes and lowered redefault rates. Unless the redefault rate used in the NPV test dynamically takes into account the offered terms of the loan modification, the NPV test will likely understate the positive return to investors from a loan modification that provides for greater sustainability.