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ECONOMIC FAIRNESS OREGON

Consumer Advocacy • Economic Security

House Consumer Protection and General Government Committee
Testimony of Angela Martin in support of SB 558A
May 7, 2013

Good morning and thank you Chair Holvey, Vice-Chair Lively, Vice-Chair Richardson and members of the committee. My name is Angela Martin and I'm here to testify before this committee on a topic that has been in the headlines for far too long - foreclosures.

Economic Fairness Oregon is a non-profit advocacy and policy organization dedicated to protecting the financial interests of Oregon consumers. Although our mission aims to cover all aspects of consumer advocacy, we keep being pulled back to foreclosures. It's overwhelmingly the number one issue consumers call our office about. By the time they come to us, most of them have already exhausted the typical avenues of seeking help through housing counselors and federal programs. Most of them truly are just exhausted – dealing with a seemingly never-ending process of filling out paperwork, being spun in circles trying to get straight answers from their bank and frankly dealing with a system that simply isn't working.

We are still in the midst of the worst foreclosure crisis our nation has ever experienced. Since the beginning of the foreclosure crisis more than 4 million foreclosures have been completed. This tally does not include the millions who have lost their home through a short-sale or remain at risk due to depressed home values, drawn out loan modifications and delayed action by their lender.

Since 2006 the home equity wealth of Americans, the single largest source of wealth for the majority of us, has fallen by some $9 trillion - or 40 percent.[1] Unfortunately, given the current landscape of an increasing pool of at risk borrowers and failure of policies or programs designed to

[1] Martin Feldstein, "How to Stop the Drop in Home Values," New York Times, Oct 12, 2011.

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alleviate the problem, the end is nowhere in sight. The predictions of financial analysts and industry experts are that we are not even halfway through the crisis.[2]

The Drop in Oregon Foreclosure Filings is Temporary

While it is safe to say we are past the peak, evidence suggests that the recent drop in Oregon foreclosure filings is temporary and we will see an increase as lenders adjust to a series of recent changes including the Oregon Court of Appeals ruling in *Niday v. GMAC, LLC*, the National Mortgage Settlement agreement and the Oregon foreclosure mediation program.

Foreclosure prevention laws in Washington and Nevada triggered a similar slow down in foreclosure filings to the one we are witnessing in Oregon. Washington's foreclosure mediation law went into effect in July 2011 and what followed was a 12-month foreclosure slowdown. [3] By September 2012 Washington's foreclosure starts hit a 26-month high. In Nevada, an October 2011 change in the state foreclosure mediation law triggered a 14-month hiatus followed by a return to pre-reform levels.[4]

Tens of Thousands of Oregonian Remain at Risk

The most recent numbers indicate that 1 out of 13 Oregon mortgage loans are a month or more behind[5] and 132,000 mortgages are underwater.[6] The following chart provides an even more in-depth look at the number of troubled loans in Oregon. The data on this chart was submitted to the Office of Mortgage Settlement Oversight and includes information about loans controlled by the five major servicers subject to the National Mortgage Settlement. Out of the loans held by these major servicers, 1 out of 12 are failing – delinquent, in foreclosure or bankruptcy. This figure puts the recent Settlement Report in perspective. While the headlines tout success with figures like $384 million in relief we see that more than $8 trillion worth of first and second lien Oregon loans managed by these servicers are at risk.

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[2] Cohen, A., Cohen, A., and Thompson, D. (Jan 2013). *At a Crossroads, Lessons from the Home Affordable Modification Program.* National Consumer Law Center.

[3] Blomquist, Daren. (2013, Feb 22). "California's Foreclosure Drop – Too Good to be True." *U.S. News*. Retrieved Feb. 23, 2013 from http://www.usnews.com

[4] Ibid.

[5] Lender Processing Services. (Jan 2013).

[6] CoreLogic. (Jan 2013).

Oregon Mortgage Loans Held by Five Servicers Subject to National Mortgage Settlement: Bank of America, Citibank, JP Morgan Chase, Ally Financial					
		Number of Loans	Aggregate UPB	% by Number of Loans	% by UPB
	1st Lien Portfolio [1, 3]				
a	Current (0-29)	430,730	$71,201,509,284	91.7%	90%
b	DLQ 30-59	8,395	$1,444,083,527	1.8%	2%
c	DLQ 60-179	5,662	$1,060,459,545	1.2%	1%
d	DLQ 180+	3,864	$846,679,853	0.8%	1%
e	Bankruptcy	5,225	$1,024,128,984	1.1%	1%
f	Foreclosure	15,623	$3,360,695,633	3.3%	4%
g	Total Active Portfolio	469,499	$78,937,556,825	100.0%	100%
	Total DLQ, Bankruptcy, Foreclosure	**38,769**	**$7,736,047,542**	**8.3%**	**10%**
	2nd Lien Portfolio [1, 3]				
a	Current (0-29)	81,027	$3,885,110,204	95%	93%
b	DLQ 30-59	920	$50,393,345	1%	1%
c	DLQ 60-179	1,081	$64,683,531	1%	2%
d	DLQ 180+	612	$35,635,706	1%	1%
e	Bankruptcy	1,657	$93,901,400	2%	2%
f	Foreclosure	269	$26,101,046	0%	1%
g	Total Active Portfolio	85,566	$4,155,825,230	100%	100%
	Total DLQ, Bankruptcy, Foreclosure	**4,539**	**$270,715,028**	**5%**	**7%**

Notes:

[1] 1st and 2nd Lien Portfolios include Servicing Performance for the Total Servicer Portfolio.

[2] Delinquency is based on MBA methodology.

[3] Line items a-f in 1st and 2nd Lien Portfolios are mutually exclusive. E.g., all loans in bankruptcy are included in Bankruptcy, line e, regardless of delinquency status. "Bankruptcy" refers to borrowers in pending Bankruptcy cases.

UPB - Unpaid Principal Balance

Source: Office of Mortgage Settlement Oversight, Sept 2012, accessed Feb 26, 2013 at https://www.mortgageoversight.com/.../Final-Report-Template-Servicing- Performance.xlsx.xlsx

Exemption

The exemption is an effort target the pre-foreclosure resolution program to the larger, out-of-state servicers with a track record of abuse, fraud and mishandling of modification requests while allowing Oregon credit unions, community banks and non-profit affordable housing providers an opportunity to opt-out of the program.

As drafted in SB 1552 and SB 558, the exemption is pegged to the volume of foreclosure filings in the previous year. Currently, a beneficiary that initiated fewer than 250 foreclosures in 2012 is exempt from the mediation program in 2013. There is no central database for tracking Oregon foreclosures and there is no independent verification process so qualification for the exemption is largely based on the honor system. The exemption level in SB 558 is currently set at 175 foreclosures initiated in the prior year.

There are several problems with this approach including limited information regarding the foreclosure volume of individual beneficiaries and the potential for large national servicers to qualify for an exemption intended for small, local institutions.

New entities enter the market – within the last 12 months, the players in the mortgage servicing industry have been rapidly changing as some of the largest servicers, like Bank of America, have begun selling off their mortgage servicing rights to non-bank entities like Greentree, Nationstar, Quicken and Ocwen. Ally/GMAC, one of the big five servicers included in the national mortgage settlement recently announced it had sold the last of it's mortgage servicing portfolio to Ocwen and Quicken. As a result, at least 30,000 Oregonians who were previously with Ally now have their mortgage serviced by a national company few have heard of and, based on an analysis of 2012 foreclosure volume, are likely to qualify for an exemption for 2013.

As currently drafted, SB 558 and current law allow all but a few of the largest residential loan servicers to claim an exemption from the program. **Mega-servicers like HSBC and SunTrust have already claimed the exemption from mediation for 2013**. With the continued transfers of mortgage servicing rights, the number of homeowners excluded from participating in pre-foreclosure resolution conferences will only continue to grow.

Servicer Errors and Complaints

Individual homeowners and the network of homeowner assistance professionals in Oregon, including consumer attorneys, housing counselors and advocates, report that servicer problems continue to be a major barrier. Complaints filed with the Office of Mortgage Settlement Oversight are on the rise. In the most recent Mortgage Settlement monitor's report, Oregon was cited as one of six states providing the most feedback regarding problems with specific cases. The majority of complaints involve process and notice issues such as:

- Failing to make a loan modification determination within 30 days of receiving a complete application.
- Failing to notify borrowers of known deficiencies in their initial modification application.
- Failing to disclose accurate information regarding loss mitigation programs.
- "Dual tracking," or foreclosing while a loan modification or loss mitigation application was pending.

These are the type of issue that a well-designed and fully implemented foreclosure mediation program can address.

The Track Record of State Foreclosure Mediation Programs

To date, at least 25 state and local foreclosure mediation programs have been implemented in response to the nationwide foreclosure crisis. Available research supports the overall effectiveness of foreclosure mediation programs for achieving workouts that avoid foreclosure, reduce costs and have a lasting impact. An empirical study of the impact of Philadelphia's mediation program found that 70% of eligible homeowners attended mediation and 35% of those conferences resulted in a workout that allowed the homeowner to remain in their home. Two years later 80% of the homeowners with mediated agreements were still in their home.[7] The following charts provide detailed information about two mediation programs.

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[7] The Reinvestment Fund, Philadelphia Residential Mortgage Foreclosure Diversion Program: Initial Report of Findings (June 2011) avail. at www.trfund.org.

CONNECTICUT STATEWIDE

Type	Opt-in/Opt-out	Costs	Mediators are
Judicial	*Opt-out*	*No fee*	*Court Employees*

Summary: About 1/4 of eligible foreclosures in Connecticut are mediated. Once there, 2/3 of borrowers reach agreement to stay in their homes.

Statistics from: July 1, 2008 – May 31, 2012

Eligible Foreclosures Filed*
62,118[1]

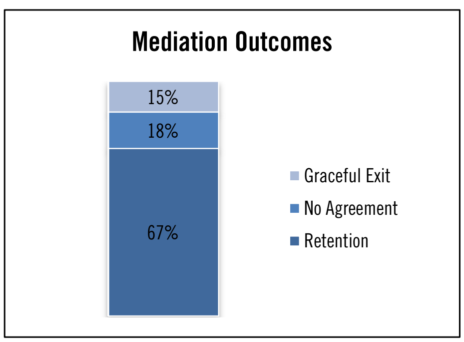
Cases Referred*
26,984
43% of eligible foreclosures

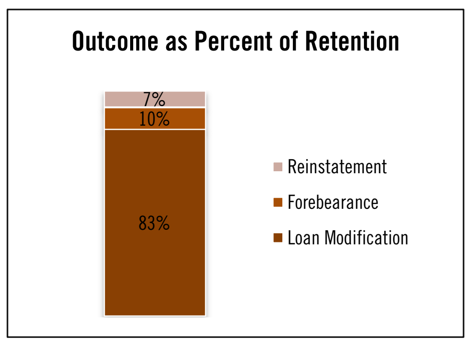
Cases Mediated
13,844[2]
22% of foreclosures
51% of cases referred

Agreements
11,362
82% of mediations

Retention
9,313
67% of mediations
82% of agreements

* Foreclosures and cases referred include June 2012.





[1]Source: Connecticut Foreclosure Mediation Program

[2]Source: Connecticut Judiciary Statistics

PENNSYLVANIA – PHILADELPHIA

Type	Opt-in/Opt-out	Costs	Mediators are
Judicial	*Opt-out*	*Lenders pay*	*Contractors*

Summary: About 70% of borrowers referred to the program attend mediation. Participating borrowers reach agreement with the lender in 1/3 of the cases.

Statistics from: April 14, 2008 – March 31, 2011

Eligible Foreclosures Filed*
16,435

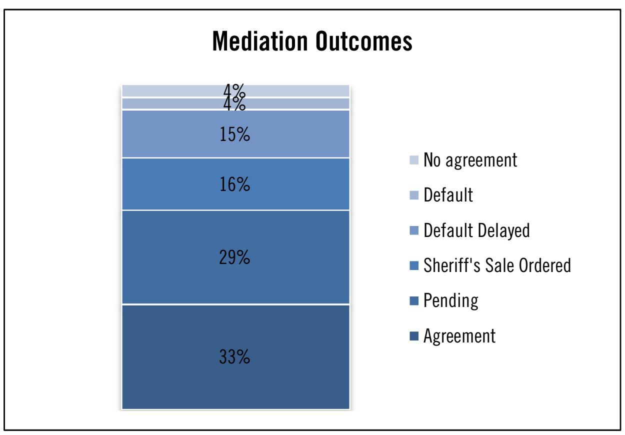
Cases Referred
15,915
97% of foreclosures

Cases Mediated
11,061
67% of foreclosures
69% of cases referred

Agreements
3,624
33% of mediations

*This is an estimate taken from calendar years 2008-2011.

Source: The Reinvestment Fund



Support for SB 558

Many stakeholders around the state have expended considerable time, expertise and effort to help build a successful foreclosure resolution program for Oregon. It's shameful that many of the largest lenders continue to drag their feet and refuse to participate in a program that aims to find mutually beneficially workouts and ease the backlog of foreclosure cases. I urge you to take another step toward ending our protracted foreclosure crisis by supporting SB 558.