

STATEMENT OF SAPNA V. RAJ
MANAGING ATTORNEY
MEMPHIS FAIR HOUSING CENTER
MEMPHIS AREA LEGAL SERVICES, INC.

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Chairman Cohen and Congressman Conyers, good morning.

My name is Sapna V. Raj. I am the Managing Attorney of the Memphis Fair Housing Center, at Memphis Area Legal Services, Inc. (MALS). I appreciate the opportunity to appear before you today to talk about the foreclosure crisis in our community and about the effectiveness of mortgage modifications under the HAMP program.

I have been at the Fair Housing Center for more than ten years. As my short bio indicates, after a stint as an Assistant United States Attorney in the Southern District of New York, I joined the Fair Housing Center which has been on the forefront in combating predatory lending, long before the “housing bubble crisis” hit the national headlines. I am counsel in the predatory lending lawsuits filed against lenders, mortgage brokers, appraisers and closing agents. Through contacts with lenders’ legal departments and the lawsuits filed in federal court, we have been able to reach very successful settlements for innumerable homeowners.

MALS’ HISTORY OF ADDRESSING THE NEEDS OF DISTRESSED HOMEOWNERS

Memphis Area Legal Services (MALS) was certified as a HUD housing counseling agency more than thirty (30) years ago. MALS provided free advice and assistance for those homeowners who were facing mortgage default or foreclosure. The Memphis Fair Housing Center was created in 1998 to address the fair housing needs of the citizens of Memphis.

There are no income restrictions for clients of the Fair Housing Center. The housing counseling program of MALS was instituted in 1980 and became part of the work of the Fair Housing Center in 1998.

By the mid-2000s, the type of loans we saw walk through our doors changed dramatically. Almost every loan that our housing counselors and attorneys analyzed was a predatory loan. At that time, the term “predatory” had not been coined for those loans, but that is what they were. Elderly home owners on fixed incomes, with substantial equity in their homes, had been refinanced into new 30-year mortgages, when all they were seeking was a small equity loan for a relatively minor home repair like a new driveway or a new roof. Other homeowners had been convinced that consolidating unsecured debt into their mortgage loans was a prudent financial decision. The terms were almost uniformly unconscionable. Interest rates as high as 25%, excessive fees, fraudulent income on loan applications, mortgage payments that the homeowner could not afford were some of the terms that appeared over and over again in those loans. To add insult to injury, the home-improvement companies almost universally provided over-priced and shoddy home-improvement work. Their goal was to induce the vulnerable homeowners into loans that were profitable for the industry, not to provide any valuable service for the homeowner. The vast majority of these homeowners were African-American and, most important of all, they were not financially sophisticated. They placed great faith in the agents (real-estate and mortgage brokers), home improvement contractors and others they came in contact with, never dreaming that they were agreeing to terms that set them up for failure. Failure in this context meant that they eventually lost homes that they had owned for twenty, thirty or forty years. Upon signing on to these loans, they were about to lose

the most important asset they had or would ever own. Homeowners who had worked hard to buy and then maintain a home were suddenly faced with the frightening prospect of being homeless in their old age. Others had been convinced by real estate agents and mortgage brokers that they could buy a home they clearly could not afford. They trusted those who seemed to be experts in the field to guide them, not defraud them. Still others were sold houses at highly inflated prices, with a predatory loan attached. It was inevitable that all such victims would eventually face homelessness.

Interviews of homeowners and reviews of their loan documents made it abundantly clear that there was a pattern of reverse redlining in Memphis. The Fair Housing Act, part of the Civil Rights Act of 1968, had been violated over and over again. We sought to address this problem by filing more than 30 federal lawsuits against lenders, mortgage brokers, real estate brokers, appraisers and closing agents. We alleged civil violations of the Racketeer Influenced and Corrupt Organizations Act and violations of the Fair Housing Act, Truth in Lending Act, Tennessee Consumer Protection Act and other federal and state laws. Settlements of these cases involved restructured mortgages, which saved the plaintiffs \$1,678, 401 in mortgage payments over the life of their loans. The settlements also involved monetary damages of \$1,298,000, for a total benefit of \$2,976,401. In addition, MALS was able to recover \$86,500 in actual costs and expenses it had invested in the case. Through its fair housing work, MFHC has done groundbreaking work on behalf of predatory mortgage lending victims and has been recognized as a regional and national leader in the area. However, we realize that litigation is impossible on behalf of every homeowner in Memphis who has been a victim of predatory lending. In just 17 of the lawsuits, MALS attorneys had invested more than 10 years and

11,000 hours. Obviously, every case cannot be litigated; however, MALS lawyers have capitalized on litigation successes by achieving very significant loan modifications for clients through pre-litigation settlements in countless other cases. We recognize that while we have been very successful in litigating against the bad actors participating in predatory loans, the mechanism to alter the atrocious terms of thousands of these loans in the community has to be something other than expensive, labor intensive and time-consuming litigation. Legal Services programs are currently not permitted to file class actions. This has prevented Legal Services from addressing the predatory lending issues more systemically.

FORECLOSURES IN MEMPHIS, SHELBY COUNTY

The foreclosure crisis has had an unequal impact on minority neighborhoods in Memphis. This is mainly because during the subprime lending boom, minority homeowners were targeted by mortgage lenders through brokers and home improvement contractors who sold them overpriced and predatory loan products. Lenders and their cohorts used aggressive tactics to sell these loan products to unsuspecting homeowners. From 2000 to 2006 the number of foreclosure notices published in Shelby County increased from 4,609 to 10,515. In 2006, 52.44% of all home-purchase loans made to African- American families were sub-prime compared to 40.66% for Hispanic or Latino families and 22.2% to white non-Hispanic families. By all accounts, the foreclosure rate has risen dramatically and shows signs of worsening rather than improving.

Less than two months ago, in May 2010, Realty Trac reported that 1 in every 288 housing units in Memphis received a foreclosure filing. This does not include homeowners who are in

default but who have not yet received a foreclosure notice. The foreclosure filing rates were higher in minority zip codes such as 38109, 38141 and 38125. In these zip codes, 1 in every 126 homeowners received foreclosure notices. This is more than twice as high as the rate in non-minority neighborhoods. In June 2008, 7.1% of mortgage loans were 90 days or more delinquent. A year later, in June 2009, the rate was 8.6%.

THE HOME PRESERVATION PROJECT

Obviously, the foreclosure crisis in this city has steadily grown worse in the last ten years. In 2008, with funds from Neighborworks America, a national nonprofit organization created by Congress to help community-based revitalization efforts, the Memphis Fair Housing Center began an ambitious project to address the mortgage foreclosure crisis in this city. We received the Neighborworks funds through SEEDCO and the THDA (Tennessee Home Development Agency).

Since 2008, the services of seven to ten attorneys and counselors have been offered free of charge to anyone having trouble meeting their mortgage obligations, regardless of their income. Project attorneys and trained counselors meet with each client facing mortgage default or a foreclosure sale and determine whether there have been violations of the law to get leverage to demand that the loans be restructured as an alternative to litigation. The goal is to help homeowners retain their home and acquire wealth by building equity in the home.

In the past two and a half years, more than 1,800 homeowners in default have received legal advice, assistance with modifying loans, and representation in predatory lending lawsuits from

the Fair Housing Center. The number of homeowners who have received some type of foreclosure mitigation assistance is large; however, when viewed in conjunction with the number of homeowners in Memphis facing the possible loss of their homes, we and the other counseling agencies in Memphis are just touching the tip of the iceberg.

THE HAMP PROGRAM

Since 2009, The Home Affordable Modification Program (“HAMP”) program has been the cornerstone of the federal government’s effort to address the foreclosure crisis. HAMP provides incentives to mortgage servicers and lenders to encourage loan modifications. However, lenders and servicers who received no TARP funds from the government can and do refuse to abide by the requirements of HAMP. This includes some large lenders and most of the smaller lenders.

If the expectation was that the foreclosure crisis would be solved and homeowners would be given affordable mortgage payments irrespective of their financial status or the value of their homes, HAMP has been far from perfect. Modifications offered under HAMP, in many cases, provide only temporary relief. It is a band aid rather than a cure for the problem.

The Fair Housing Center attorneys and counselors have faced many obstacles, challenges and frustrations in working with lenders and servicers who have agreed to offer HAMP modifications. HAMP requires that the homeowner must be in default or in imminent default to be even considered for a HAMP modification. This does not help many homeowners who may be struggling to remain current on predatory loans. Under the requirements of HAMP, unless

they default, they cannot be helped even though their interest rate may be as high as 24%. Many lenders define default as being 60 days delinquent on the mortgage. Those who have lost jobs and know that they will be defaulting do not qualify for HAMP under this definition. They are forced to wait until they have defaulted on at least two mortgage payments.

We are now seeing an increase in the number of homeowners who have suffered some loss of income in the household. Lenders and servicers claim that they offer forbearance plans for those who have lost income; however, in practice, these plans seem to be rarely offered. A new program, Home Affordable Unemployment Program, will become effective in August 2010. The program is set to offer forbearance plans for the unemployed homeowner. If previous experience is a guide, the forbearance plans will require the unemployed homeowner a lump sum payment at the end of the forbearance period. The lump sum will include mortgage payments the homeowner did not have to pay during the forbearance period. Most homeowners who are unemployed for a period of time will be unable to make a lump sum payment. These homeowners will then face foreclosure once again.

The HAMP program's biggest flaw is that reduction of the principal is not required or mandated. The result has been that those who are upside down on their mortgages, i.e., have a larger loan than the house is worth, get no real relief. For example, if a house is worth \$60,000, but the mortgage loan is \$80,000, HAMP will modify the \$80,000, ignoring the fact that the house was really worth \$20,000 less at the time the house was first purchased. This type of modification provides no help for the homeowner. The lenders and servicers universally refuse to reduce the principal to comport with the actual value of the home at the time of

purchase. Redefaults and foreclosures are more likely if the homeowner owes more than the home is worth. Without a mandatory principal reduction when a loan is found to be predatory, the foreclosure tidal wave will continue to devastate homeowners and the neighborhoods they live in.

It was a common practice during the subprime lending boom to give homeowners 80-20 mortgage loans. Often the 80% part of the loan was with one lender or servicer while the 20% was, then or later, sold to another servicer or lender. Under HAMP, the homeowner in such a situation has to apply for two modifications -- one for each loan. Homeowners are typically successful in modifying one loan but not the other. These second mortgages were usually predatory, accounting for the amount by which the price of a house was over-inflated. These loans contain high interest rates and balloon payments. The homeowner often remains saddled with the second mortgage payment even if the first is modified under HAMP.

The performance under HAMP among servicers and lenders has been quite uneven. Often a modification application has to be sent in to the lender or servicer more than 3 or 4 times. Modification applications and requests are repeatedly "lost" by the servicers and lenders. HAMP requires a lender acknowledgement within 10 days. No lender or servicer seems to adhere to this requirement. Servicers and lenders promise to have a response to a request for a trial modification within 30 to 45 days. The response time for just a trial modification can take 5 to 9 months. As the borrowers wait for a response, their credit continues to be adversely affected. Many homeowners grow frustrated with the unnecessary delays and just drop out of counseling. The lenders and servicers also require borrowers to update their financial

information every 30 days while they await a response on a trial modification application.

These updates also have to be submitted several times before the servicer acknowledges that it was received.

Many servicers continue to proceed with foreclosure proceedings while the modification application is pending, although it is contrary HAMP guidelines. This forces many homeowners in a non-judicial foreclosure state such as ours to file a Chapter 13 petition in bankruptcy to stop a foreclosure sale, if the sale date is fast approaching and the lender has not or will not provide a response on the application for a trial modification. Homeowners further damage their credit by filing for bankruptcy. Often they are not able to make the regular mortgage payment plus a portion of the arrearage that a bankruptcy plan requires. Even if the modification is approved prior to the sale date, by pursuing both tracks, the servicer adds foreclosure fees, accrued while the modification request was being reviewed, to the modified principal.

As I noted before, the HAMP modifications really offer a temporary, band aid rather than a permanent cure. Borrowers who are not approved for the “permanent” modification often find themselves in a worse position than they were in when they first defaulted. During a trial modification period, the homeowner pays a reduced monthly amount. At the time the modification is denied, the lender demands payment of amounts not paid while the trial modification was in effect. The homeowner has to pay back this amount, plus the regular monthly mortgage payment, with the foreclosure sale fast approaching. Homeowners are not usually able to pay the lump sum demanded by the lenders and servicers.

Those who receive “permanent modifications” have anywhere from \$5,000 to \$10,000 added to the principal on their loans. Servicers claim that these amounts include foreclosure fees and other fees. As a result, a \$50,000 loan automatically becomes a \$55,000 or \$60,000 loan, as modified. For those with predatory loans or who are upside down on their mortgages, this addition to the principal is devastating. Using the example I used before, if the house is worth only \$60,000 and the mortgage loan is \$80,000, having \$5000 or \$10,000 added to a predatory loan is patently absurd.

OTHER POSSIBLE SOLUTIONS FOR THE FORECLOSURE CRISIS

Tennessee is a non-judicial foreclosure state. The requirements placed on lenders prior to a foreclosure are minimal. Lenders are required to send a letter via regular mail to the homeowner advising them of the foreclosure sale date and publish the sale date prior to actually selling the property. Mandatory mediation prior to a foreclosure sale would help in stemming the tide of foreclosures. This would help those homeowners who have the ability to pay if the loan was modified. It would also help attorneys and counselors who have identified predatory terms to discuss and convince the lender to either reduce the principal or remove other predatory terms from the loan. The Preventing Homeowners from Foreclosure Act, if passed, would slow down the foreclosure process and benefit homeowners, and ultimately, the community. Modification of mortgages while the client is in bankruptcy could also be an option. Many homeowners who owe more than their houses are worth can seek to cram down those mortgages if the bankruptcy court could oversee mortgage modifications. Filing adversary complaints to challenge the amount of the mortgage debt may also be an option.

CONCLUSION

The foreclosure crisis seems to be deepening in our community. The tidal wave of subprime lending that swept so many neighborhoods in the last 10 years and the effect of high unemployment on a homeowner's ability to pay his/her mortgages requires a program more comprehensive and effective than HAMP. Litigation is no longer an option for many aged predatory loans where the statutes of limitations have run. Only a government program or laws which better address the problems of unemployment, servicer competence, predatory loans and upside down mortgages can make a dent in the foreclosure crisis.