

Good afternoon my name is Ndukwe Agwu and I am the deputy director of the Consumer Economic and Advocacy Program at Brooklyn Legal Services Corporation A. My primary function is to help homeowners in foreclosure to save their homes. In addition, to assisting homeowners through various loss mitigation procedures, my office litigates, where needed, to accomplish this. I wanted to supplement Ms. Nicholson's testimony before this panel by talking very briefly about loss mitigation in its various guises in both state and federal court and why this is necessary to combat the ever-evolving banking criteria for approving loan modifications. Additionally, I do not seek to mimic a lot of what has already or will be discussed today

Today, New York's CPLR 3408 requires mandatory settlement conferences to be held as a formal Loss Mitigation process for all residential foreclosure actions of owner-occupied homes. With the expiration of the federal Home Affordable Modification Program ("HAMP") in December 2016, struggling borrowers have had to turn to standard in-house loan modifications for relief from financial hardships. In-house modifications have been a staple of American banking since well before HAMP. A primary benefit of HAMP, however, was the standardization it provided to lenders throughout the industry. Before HAMP, loan modification processing procedures varied with each institution, and applicants had little room for review of a private denial outside of the legal safeguards built into New York

State foreclosure legislation. HAMP's expiration, however, has not brought a corresponding decrease in financial hardships. In fact, HAMP's expiration has increased the hardships facing borrowers who previously defaulted, since interests owed continue to accrue in a climate where there is no federal or state program or law to encourage loan modifications.

The question then remains as to whether a return to in-house modifications will result in an increase in arbitrary denials and roadblocks for struggling New York borrowers? My answer to that question is yes.

With HAMP gone I've seen banks, investors, private equity firms and the like reverting back to creating in-house criteria and formulas that make it harder and harder to qualify for affordable modifications. These new formulas or criteria are capricious and arbitrary and create automatic scenarios that fail for such things like Net Present Value (NPV). What is difficult about this is the Banks and various investors do not explain the formula they use to come to these arbitrary conclusions and claim them to be proprietary.

Despite this CPLR 3408 has allowed us, in state court, to still hold the banks accountable and maintain an environment where modifications are still obtainable, albeit with more pitfalls. In both Brooklyn in Queens various Legal Services organization, Brooklyn Legal Services Corporation A included, have been

fortunate to be allowed by some judges and referees to step in courtrooms and conference rooms as a friend of the court and offer additional help and protections to homeowners. Additionally, the federal bankruptcy courts in the Eastern District and Southern district have adopted loss mitigation procedures to address the continuing foreclosure crisis.

I want to make it clear, that with the exception of FHA loans, there is no longer any legal standard for judges in state and federal courts to require national or local banks, hedge fund servicers, investors or the like to submit a coherent or credible basis for the denials. I recently represented a homeowner where Wells Fargo denied him because they indicated that even though his income made the loan payment affordable, he was denied because of Net Present Value, essentially his debt to income ratio was too high and they were better off foreclosing. I am still litigating this case.

Regardless of all these protective procedures that have been put in place it is getting harder to get around the ever-evolving rules and restrictions being created by banks, investors, private equity firms and the like to deny homeowners an affordable modification or similarly doable loss mitigation alternative. We are also fortunate that many in our judiciary in both state and federal court still hold the banks accountable for unscrupulous unfair practices. Thank you for your time and consideration.