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KEEPING FAMILIES IN THEIR HOMES: HOW TO PREVENT FORECLOSURES

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

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CONTENTS

FRIDAY, OCTOBER 17, 2008

STATEMENTS OF COMMITTEE MEMBERS

	Page
Specter, Hon. Arlen, a U.S. Senator from the State of Pennsylvania	1

WITNESSES

Casey, Hon. Robert P., Jr., a U.S. Senator from the State of Pennsylvania	2
Griffin, Barbara, Pro Bono Coordinator, Allegheny County Bar Foundation, Pittsburgh, Pennsylvania	11
James, Joseph M., President Judge, Court of Common Pleas of Allegheny County, Pittsburgh, Pennsylvania	3
McKeever, Michael T., Partner, Goldbeck, McCafferty and McKeever, PC, Philadelphia, Pennsylvania	9
Mullen, Sheriff William P., Allegheny County, Pittsburgh, Pennsylvania	5
Sullivan, Dan, Mortgage Foreclosure Prevention Specialist, ACTION-Housing, Inc., Pittsburgh, Pennsylvania	6
Williams, Dawn T., Director of Housing, Urban League of Greater Pittsburgh, Pittsburgh, Pennsylvania	8

A SUBMISSIONS FOR THE RECORD

Griffin, Barbara, Pro Bono Coordinator, Allegheny County Bar Foundation, Pittsburgh, Pennsylvania, statement	22

FRIDAY, OCTOBER 24, 2008

STATEMENTS OF COMMITTEE MEMBERS

Specter, Hon. Arlen, a U.S. Senator from the State of Pennsylvania	25
prepared statement	54

WITNESSES

Carmona, Hiram, Assistant Contract Administrator Housing Counseling	47
Casey, Hon. Bob, Jr., a U.S. Senator from the State of Pennsylvania	26
Dodds, John, Director, Philadelphia Unemployment Project	44
Gould, George, Managing Attorney, Housing and Energy Unit Community Legal Services, Philadelphia, PA	38
Harrigan, Tania, Homeowner	36
Henderson, Cynthia, Homeowner	37
Hudson, Brian, CEO, Pennsylvania Housing Finance Agency	40
Jackson-Smith, Deborah, Homeowner	35
Jones, C. Darnell, President Judge First Judicial District of Pennsylvania Court of Common Pleas of Philadelphia County	28
Jones, Curtis, Jr., Member, Philadelphia City Council, Philadelphia Pennsylvania	32
Rhaney, Eric, Homeowner	34
Rizzo, Hon. Annette M., Judge, First Judicial District of Pennsylvania Court of Common Pleas of Philadelphia County	29
Seldin, Stefhanie, Managing Attorney, Philadelphia Law Works/Philadelphia VIP	42

VerDate Nov 24 2008 12:18 May 05, 2009 Jkt 048815 PO 00000 Frm 00003 Fmt 5904 Sfmt 5904 S:\GPO\HEARINGS\48815.TXT SJUD1 PsN: CMORC

Page

White, Michael, Pennsylvania Bankers Association city of Philadelphia 45

SUBMISSIONS FOR THE RECORD

Carmona, Hiram, Assistant Contract Administrator, City of Philadelphia, Office of Housing and Community Development, Philadelphia, Pennsylvania 54
Dodds, John, Director, Philadelphia Unemployment Project, Philadelphia, Pennsylvania, statement 56
Gould, George, Managing Attorney, Housing and Energy Unit Community Legal Services, Philadelphia, Pennsylvania, statement 61
Harrigan, Tania, Homeowner, Philadelphia, Pennsylvania, statement 67
Hudson, Brian, Sr., Executive Director and CEO, Pennsylvania Housing Finance Agency, Harrisburgh, Pennsylvania, statement 68
Jones, Curtis, Jr., Member, Philadelphia City Council, Philadelphia Pennsylvania 73
Rizzo, Hon. Annette M., Judge, First Judicial District of Pennsylvania Court of Common Pleas of Philadelphia County, Philadelphia, Pennsylvania, statement 77
Seldin, Stefhanie, Managing Attorney, Philadelphia Law Works/Philadelphia VIP, Philadelphia, Pennsylvania, statement 82
White, Michael, Pennsylvania Bankers Association, City of Philadelphia, Philadelphia, Pennsylvania, statement 85

KEEPING FAMILIES IN THEIR HOMES: HOW TO PREVENT FORECLOSURES

FRIDAY, OCTOBER 17, 2008

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The Committee met, pursuant to notice, at 9:35 a.m., in room 321, Allegheny County Courthouse, 436 Grant Street, Pittsburgh, Pennsylvania, Hon. Arlen Specter, presiding.

Present: Senators Specter and Casey.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Good morning, ladies and gentlemen. The Senate Judiciary Committee will now proceed with this hearing on the unique programs here in Allegheny County to try to keep homeowners in their homes when faced with potential eviction under sheriff sales through a mediation program which has been devised by the Court of Common Pleas under the direction of the distinguished President Judge James and implemented by Sheriff William Mullen and supported by quite a number of pro bono groups in the community.

I am pleased to be joined by my distinguished colleague Senator Casey, and we thank Judge James and the sheriff and others for coming in today on relatively short notice. And we have scheduled this hearing because of the problems faced nationally and, of course, locally on this eviction issue.

It is a win-win proposition if we can structure these matters so that people can stay in their homes. The homeowner obviously is benefited by not being evicted and by an arrangement to save the home. The lender has the potential for benefit to avoid a lot of costs of eviction and to repossess property which may be reduced in value and in a very difficult housing market, and it is something to be avoided if it possibly can be avoided. And, of course, it has the benefit of protecting the taxpayers from welfare programs and other support programs.

There are a number of agencies which are at work here. Pittsburgh and Allegheny County both qualify under the neighborhood stabilization grants and the Housing and Economic Recovery Act of 2008, and there are a number of programs both on the Federal and State level which are potentially helpful.

In discussing this issue with President Judge James, one of the critical points is to acquaint the homeowners with the availability of the program. And when foreclosure proceedings are initiated,

VerDate Nov 24 2008 12:18 May 05, 2009 Jkt 048815 PO 00000 Frm 00005 Fmt 6633 Sfmt 6633 S:\GPO\HEARINGS\48815.TXT SJUD1 PsN: CMORC

they are swamped with a lot of legal papers, which many people cannot understand and they discard. So it has to be a proactive effort to reach these people and tell them that they can get a 90-day stay and they can get assistance.

Senator Casey and I are also looking at the issue of legislation at the Federal level. Legislation has been pending since last November to give bankruptcy courts some authority to move in, and we included in the economic recovery program some provisions to protect lenders who enter into these arrangements.

We have a relatively tight timeframe here, and we want to proceed with dispatch, and in accordance with Judiciary Committee procedures, we have allocated 5 minutes to each witness to reserve some time for Senator Casey and me to ask some questions at the end. And now I am delighted to yield to my distinguished colleague, Senator Bob Casey.

STATEMENT OF HON. ROBERT P. CASEY, JR., A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator CASEY. Senator, thank you very much.

I want to thank Senator Specter for gathering us together today to talk about an issue that confronts not only Allegheny County and southwestern Pennsylvania, but the whole State and the country, and that is the issue of foreclosures and the strategies that many communities, including this county, have begun to put in place to prevent foreclosures, to keep people in their homes and thereby to stabilize neighborhoods and keep our economy moving in the right direction.

Senator Specter has been kind enough to invite me here and to bring us together, and I know that he appreciates, as I do, Judge James and the sheriff and others who are here with us and spending the time with us to begin to hear some of the ideas that you have been implementing here in Allegheny County to prevent people from being thrown out of their homes.

When you think about this in real terms, when we think about the economy that we are living through right now, the terrible financial crisis that has gripped the country, as complicated as it is, at its foundation it is rather simple. This started with the foreclosure problem, and that remains, I think, the central challenge in our economy. You could make a case for the freezing up of credit being another major challenge as well, but it did start with foreclosures. We have to keep our eye on the ball to bring that number down, which we see over and over again growing. The number of people in the United States, the number of families in the United States, every single weekday, the days that the courthouses across the country are open, almost 10,000 people every single day fall into foreclosure, begin that process of foreclosure. We have got to bring that number down.

Here in Pennsylvania, even though we have been in a relative sense not as bad off as some States, like Nevada or California or Florida, for example, recently our numbers are getting worse. You know the numbers here in Allegheny County are getting higher. I know in the other end of the State, in Philadelphia, the numbers are getting higher. But statewide, in the month of August the foreclosure rate went up by 60 percent over August of 2007, and that

is statewide. That is a statewide number. So Pennsylvania is going to be faced with this challenge for a long time, and we have got to put in place steps that will work, and a lot of those steps don't come from some smart guy in Washington. They come from people in communities like this and counties like this that have begun to take steps to deal with foreclosures.

So I am happy to be here, happy to listen to the testimony and to ask questions, because we can learn a lot from you from having dealt with it directly, in a personal way and in a community-focused way here in Allegheny County, and I am thankful for that opportunity.

Senator SPECTER. Thank you, Senator Casey.

Senator Casey says the answers do not come from a smart guy in Washington. We are still trying to find a smart guy in Washington.

[Laughter.]

Senator SPECTER. If we are successful in finding one, maybe we will do a little better. But what is happening here on the county level is very encouraging, and our lead witness is the distinguished President Judge of the Court of Common Pleas, Judge Joseph M. James. I talked to Judge James last week, and he has expedited the organization of this hearing.

We are very appreciative of your presence here, and as a general matter, it is 5 minutes, as I have said. And there will be time cards held up to give you notice when the time narrows and when the time ends.

Judge James, this is an unusual procedure for you to be in the witness box and Senator Casey and I to be promoted to the bench, but thank you, and we look forward to your testimony.

STATEMENT OF HON. JOSEPH M. JAMES, PRESIDENT JUDGE, COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PITTSBURGH, PENNSYLVANIA

Judge JAMES. Thank you, Senator. Senator Specter, Senator Casey, being a witness is something I have tried to avoid in my 29 years of being a judicial officer, but I am pleased to testify here today.

When Senator Specter says that it was on short notice, we pulled this together in less than a week, and I would like to thank the staff of the Court of Common Pleas—Ray Billotte, the Court Administrator; Helen Lynch, the Deputy Court Administrator—who put this together working with Senator Specter's staff. It was quick. I guess when you are a United States Senator, you can get things done in about 5 or 6 days.

I would like to start off. This summer, I had a meeting with Bill Mullen. The sheriff of Allegheny County and a long-time friend of mine came to my office concerned with the home foreclosure problem within Allegheny County. We were well aware that the city of Philadelphia had started a program under the supervision of President Judge Darnell Jones, and I had spoken with President Judge Jones on a number of occasions. So we were looking to see what the problem was in Allegheny County, to identify it, see the magnitude of this problem, and then determine what type of project, if

any, we should endeavor to start here to deal with the particular problems of Allegheny County.

So after the meeting with the sheriff in June, I endeavored to start to meet with various people who were involved in this. I met with Katherine Martin of the Neighborhood Legal Services; Tom Riley, Esquire, who is the chairman of the Real Property Section here in Allegheny County of the Allegheny County Bar. I met with ACTION-Housing and the members of their Mortgage Foreclosure Conciliation Collaborative. I met with lawyers representing numerous banks and lending institutions. I also met with Dan Onorato, the County Executive, and he gave me full support to deal with our Director of Court Records. Under our home rule, the Director of Court Records, most of you practicing law remember them as prothonotaries. We no longer have one here. But Kate Barkman is the Director of Court Records. And I also spoke and met with John Goryl, who is the Director of the Pennsylvania Housing Finance Agency.

And so after these various discussions, we have decided let's identify how many cases we actually have, how many home foreclosures are taking place. We started by identifying that we had approximately 400 actions in foreclosure taking place a month. The sheriff and I consulted, and the number is fairly stable, if not slightly down from 2007 numbers, which is unique to the Allegheny County housing market. So we looked at the magnitude of our problem.

The problem we had initially was that of those 400 foreclosures a month, we were unable to identify which ones were owner-occupied residences and which were commercial, which were non-owner-occupied residences, and the other group, which would have been tax delinquencies.

So meeting with Kate Barkman, she and her staff have agreed, first of all, that we will have an official designation for owner-occupied mortgage foreclosures, a separate identifying suffix MG; as opposed to general docket, it will be mortgage docket. We will be able to create a data base and know exactly how many of these are homeowner-occupied mortgage foreclosures.

Now, the second thing was where along this continuum of the legal process is the best place to intervene, and, obviously, the further up the stream, at the very initial beginning is the place where you can intervene and create a workout, if you will, and the lender has not incurred additional costs—the legal costs, the costs of posting the property, and, of course, of legal advertising.

So our plan here in Allegheny County, after meeting with a number of people—in fact, as recently as yesterday afternoon in my courtroom—we have created a program as follows: At the time of the initial filing of the complaint, the case will be identified as a homeowner mortgage foreclosure. It will have an important notice on it which will identify a single phone number, which is what you alluded to, Senator, that, in fact, the people are confused by getting papers, a central repository where they can make a call and ask for counseling. The existing counsel program created by the Pennsylvania Housing Finance Agency have agreed to provide counselors and pay for those counselors, and counseling will be made available.

If an owner avails themselves of the program, a 90-day stay in all proceedings will take place. Counseling will take place. A workout will be proposed, and they will go before a judge of the Court of Common Pleas for conciliation. The Allegheny County Bar Association, where the defendant qualifies, will provide pro bono, free lawyers for them to attend in a special appearance to appear before the conciliation judge. If it can be worked out, the case will be settled and discontinued. If it cannot be worked out, the stay will be lifted, and the case will proceed. So it is a simple solution to a difficult problem, and we think we will be much more effective by dealing with these cases at the very earliest stages of the legal proceedings.

The banking community welcomes this and looks forward to it. The 90-day stay is not as disruptive as other stays, and it is not a stay across the board. The defendant must avail themselves of some counseling.

Now, as you said, they get bombarded with literature, so by having a single number that they can call, an 800 number, then they can get help immediately, and people can explain to them what their rights are and their ability to get additional financing, get the HERO program set up by the State of Pennsylvania and the HEMAP program, also available for funding, and hopefully some additional funding available from the Federal Government which will be made available in the future as this bailout helps us.

So thank you for coming, and thank you for calling attention to our efforts here in Allegheny County, and people here to my left can explain it a little bit further. But that is the outline.

We have one last thing to do, and that is to centralize where we are going to have the single phone number. We have not decided where it is going to be. It could be the sheriff's office. It could be the prothonotary's office. It could be the bar association. We are finalizing that, and when that is done, we will put this plan in place.

Senator SPECTER. Thank you very much, President Judge James.

We turn now to Sheriff William Mullen, who has exercised unique sensitivity on a very, very difficult issue over and above the ministerial job of evicting people. So we appreciate what you have done, and we thank you for joining us, Sheriff Mullen, and the floor is yours.

STATEMENT OF SHERIFF WILLIAM P. MULLEN, ALLEGHENY COUNTY, PITTSBURGH, PENNSYLVANIA

Mr. MULLEN. Thank you, Senator Specter, Senator Casey, for coming here. I can give you a little bit of a historical perspective how we have come to this plan.

Shortly after I came from Pittsburgh Police over to the sheriff's office, I noticed that the sheriff sales had increased from 2006 to 2007. At that time, reading about what was being forecast for the housing industry and how the bubble was going to burst, and reading some FBI publications about the fraud and corruption within home sales and getting mortgages, I thought that we should do some things to be proactive in case that would come here.

The first thing that we did was when we served the writs, the foreclosure notices, we would send an informational booklet which was "Prevention of Mortgage Foreclosure, Tax Sale, and Other

Court Action." That gives them financial and legal assistance by listing phone numbers and areas where they can contact people to try to save their home. There were several organizations included in that: ACTION-Housing, ACORN, the Urban League.

There were other issues that we started. We started a website where people could come to the website, go through the various links to find help and maybe some ways to save their homes and stop the foreclosure process. We instituted a mortgage foreclosure hotline for people to call, which was manned between certain hours for people to call, where we would not be able to give legal advice, but certainly give them information on where to go to once they received the notice.

What we did next was, you know, the sales sort of stabilized from 2006 to 2007. They actually decreased a little bit. But then I met with the Federal Reserve, I think in March of this year, to try to determine about the ARMs resetting. And I talked to them, and they told me that the ARMs would be resetting in Allegheny County between the next 5 and 12 months. I then checked to find out that the foreclosures and ARMs, or the adjustable rate mortgages, were 28 percent where the standard mortgage at foreclosure was 8 percent. So at that time, I thought there was maybe something else we could do to try to stay ahead of this curve and try to prevent people from losing their homes. And that is when I sat down with my staff and some of the lawyers, and actually some people from the mortgage business, and tried to come up with a plan to try to do something about maybe getting ahead of the curve and prevent some of these—you know, give these people some options.

So then we came up with a plan about the conciliation process, and then, you know, I do not have much to do with this other than to be able to set the sheriff sales. I did not want to have a moratorium on sheriff sales because of the problems it would cause with the banking industry. I did not want to postpone them. I just wanted to try to get a conciliation process in place.

So that is when I went over to see Judge James. He said to make a rough draft, put it on paper, and that is what we did. We put it on paper. We took it to Judge James, and he carried the ball from there.

Thank you.

Senator SPECTER. Well, thank you very much, Sheriff Mullen.

We turn now to Mr. Dan Sullivan, a mortgage foreclosure prevention specialist with ACTION-Housing, Incorporated, in Pittsburgh. Thank you for coming in, Mr. Sullivan, and we look forward to your testimony.

STATEMENT OF DAN SULLIVAN, MORTGAGE FORECLOSURE PREVENTION SPECIALIST, ACTION-HOUSING, INC., PITTSBURGH, PENNSYLVANIA

Mr. SULLIVAN. Thank you, Mr. Specter and Mr. Casey, for arranging this. I just want to let everyone know that I am merely now just a representative of 12 different organizations that are working in Allegheny County. We represent advocacy, housing counseling, and legal services. We had met back in the beginning of September to discuss some of the conversations that we had had

with Judge James and Sheriff Mullen previously regarding mortgage conciliation to see where we could best fit into the solution.

The organizations that I am representing cover the community outreach to get scared borrowers or borrowers who are not sure what conciliation means to them, to try to get them to answer the paperwork, to call up the 800 numbers. We represent the counselors who will help the borrowers provide financial documentation so a successful conciliation can be had. We also represent groups that provide legal services, pro bono attorneys to represent these borrowers at the actual conciliation so they get fair and equal representation at these discussions.

I think when I look at certain economic projections of Allegheny County, this mortgage conciliation proposal is going to have an effect not just with the folks who are falling behind now, but, you know, for years to come in certain cases. We are going to see, based on estimates right now, an increase in foreclosure filings from 2007 to 2008 if the numbers keep up. If they keep decreasing, we should be fine. But averages right now show that they are going to be higher than they were last year.

I think within the last 10 years, there has been a 131-percent increase in mortgage foreclosure filings in the county. We are looking at a lot of subprime mortgages that Sheriff Mullen had just mentioned that are going to reset, have not reset yet, and there are about 52,000 subprime mortgages in Allegheny County that are going at a delinquency rate of about 30 percent, which is significantly larger than prime mortgages as a comparison.

We are also looking at unemployment rates that are going to increase in Allegheny County. Last year's unemployment rate was about 4 percent. This year's projections could be up to 6 percent. So when you are looking at the borrowers, the citizens of Allegheny County, those projections are going to suggest that those subprime mortgages that they have, regardless of whether or not they are ARMs, they are going to start falling behind. Borrowers are very tight on their budget. You have got a lot of folks who are living paycheck to paycheck, week to week, to keep their mortgage affordable. And a conciliation is really going to have a positive effect with borrowers working out reasonable payment plans with mortgage companies.

I think the largest issue that counseling and advocacy groups see now currently is getting timely responses from servicers regarding a modification request. Financials have been collected from the borrowers, income statements, debt information, and sent to these lenders for them to propose some sort of modification adjustment—either a rate decrease or principal balance reduction, something to that effect to help them out.

We are looking at a turnover of somewhere in the range of 2 to 3 months now for mortgage companies to come back and give us an adequate modification proposal. And that is just too long. It is after the Act 91. It is after the complaint has already been filed. The legal costs are escalating. And a mortgage conciliation at the time proposed by Judge James and Sheriff Mullen is perfect in that we can get these folks in before those fees have been assessed, and it is forcing everyone at the table to provide documentation up

front and expedite the process so that we can get quicker turnover and get more people to stay in their homes.

I again want to thank both Judge James and Sheriff Mullen for how they have taken on this issue, and they have really sort of pushed it to the forefront, because we have an issue just currently, but there is going to be a continual bubble burst in Allegheny County. I do not think we are halfway through the woods. I think we just got to the beginning of the woods. And we are going to see foreclosure rates go up based on some of the data I shared.

Senator SPECTER. Thank you very much, Mr. Sullivan.

We now turn to Ms. Dawn Williams, Director of Housing for the Urban League of Greater Pittsburgh. Thank you for coming in today, Ms. Williams, and the floor is yours.

STATEMENT OF DAWN T. WILLIAMS, DIRECTOR OF HOUSING, URBAN LEAGUE OF GREATER PITTSBURGH, PITTSBURGH, PENNSYLVANIA

Ms. WILLIAMS. Thank you, Senators. Thank you for this opportunity.

As Dan stated, I represent the Urban League of Greater Pittsburgh, and we are one of the collaborating agencies seeking to have some input into this conciliation process, wanting to express our support for this process, and to just outline the vital need for this process in this area, and even to advocate for that, for something like that across the Nation.

Because of the inequity of bargaining position between lenders and homeowners, as Dan alluded to, it is vital that a third party, an impartial party—in this case, the court—step in to mediate favorable results that will make nonperforming loans perform and homeowners that are threatened with foreclosure able to hold onto the American dream of homeownership. If processes like these are not implemented—and we would even argue nationwide—there is going to be forum shopping on the part of unscrupulous lenders, and there could be possible negative business consequences for cities and municipalities that have the courage, as Allegheny County has, as Philadelphia County has, to address this issue systemically.

The Government's role in this crisis has already been recognized by Congress and the executive branch, and so the country knows that decisive action is required and has been taken to begin to avoid and to avert this meltdown.

The action that is needed is for Government to step in also in the form of legislation to mandate that the two entities crucial to our economy—lenders and homeowners—sit down at a table with a level playing field. And that is what the conciliation process does. It brings the two entities together, the lender and the homeowner who may be afraid, who is most of the time afraid, who does not have enough information, does not know in a lot of cases how to represent themselves in a way that would get them the best benefit and be able to create a situation that is affordable for them over the long term.

Once brought together, we would advocate, legislation this process, that parties agree to terms that will ensure long-term affordability for homeowners and a consistent income stream for lenders uninterrupted by foreseeable disruptions in performance caused by

too high interest rates, adjustable interest rates, balloon notes, and principal balances that far exceed fair market value.

There are many things to recommend a conciliation process, but I just want to outline the importance of some of the ideas that were already raised.

It is crucial that the process rely upon a centralized hotline so that people can call and know exactly where to call. There must be a network of counseling agencies to assist clients in reviewing documentation, proposing affordable loan modifications to lenders, with the ultimate goal of home retention and decreased foreclosure. And, finally, the significant role of volunteer and legal services attorneys cannot be underestimated in the success of this process and the production of meaningful results for constituents.

Because of the many benefits for the homeowner, we would even advocate that this be implemented on a statewide level and that even it could be undertaken across the Nation. However, if the strong network that I have mentioned earlier, including a crucial role for housing counseling agencies and pro bono legal services, does not exist, this process becomes merely a sham and just one more hoop to jump through before foreclosure becomes a reality.

If these underpinnings cannot be mandated, then another solution would be a nationwide moratorium on sheriff sales in order to for Congress to flesh this matter out and pass legislation that would give incentives to mortgage companies to negotiate meaningful workouts with borrowers and penalties for the failure to do so. Such legislation would need to provide substantive defenses for homeowners to foreclosure actions and, similar to the Truth in Lending Act and other consumer protection statutes enacted under the Commerce Clause, would have to penalize lenders that fail to comply with this provision.

Now, these ideas I know seem ambitious and probably beyond the pale, but these desperate times are calling for decisive action and action that needs to be taken immediately.

I thank you for your time.

Senator SPECTER. Thank you very much, Ms. Williams.

Our next witness is Michael McKeever, Esquire, a partner in the law firm of Goldbeck, McCafferty and McKeever, from Philadelphia.

Thank you for traveling here today, Mr. McKeever, and we look forward to your testimony.

STATEMENT OF MICHAEL T. MCKEEVER, PARTNER, GOLDBECK, MCCAFFERTY AND MCKEEVER, PC, PHILADELPHIA, PENNSYLVANIA

Mr. MCKEEVER. Thank you, Senator Specter, and thank you, Senator Casey, for the invitation. I look forward to presenting at least some of the lender response, as our firm represents a number of mortgage lenders in foreclosure, bankruptcy, eviction, and related proceedings.

We, too, share the desire to resolve loans on an effective basis and in a cost-effective and efficient manner. The program that has been proposed in Allegheny County is similar to the program that is in place currently in Philadelphia. I want to take some of what the other witnesses have stated.

Judge James and I think Mr. Sullivan and Ms. Williams have indicated, you know, we need to go out and acquaint the homeowners with their rights and with their responsibilities that are available to them. There is a lot of fear. There is a lot of concern and embarrassment. Homeowners are scared. That is why Sheriff Mullen's office gets the brunt of the calls and the letters and the contact from homeowners. That is at the end of the foreclosure process. By the time a sheriff sale is scheduled, you are 14 to 18 months delinquent in your account. That is too late. It is not too late for everybody, but it is too late for a lot of the homeowners. That is not to say we will not work with them, but it is very late at that point to come up with an effective plan based on their current income and expense statements.

One of the frustrations that we deal with on the lender side is that income and expense statement and those payroll records. I am not aware of many of the resolutions that our clients have entered into over the last year or more that could not have been entered into whether or not there was court intervention or legislative activity. The fact of the matter is effective communication among the parties is absolutely necessary, and every homeowner out there who is near foreclosure, in foreclosure, or threatened with foreclosure should sit down today and work through their financial plan—forget financial plan. That is too wordy. Work through their family budget. What do they make each month? What do they pay each month? Look to cut those costs. Take that responsibility. Then when they meet with a housing counselor or an attorney who specializes in foreclosure defense, they have a much better idea of how they can advocate for themselves and use those advocacy groups to push their plan ahead.

It may be that those numbers show that they cannot afford where they are living, with or without the rate increases. Lenders are dropping interest rates. They are not doing it across the board. It has to be on a loan-by-loan basis, at least now under the current environment that we are in. They are dropping principal balances in certain cases. And I think we are going to see that increase as time goes on.

It is clear that lenders lose money when a house is foreclosed upon, but they also lose money in delaying that process unnecessarily. The amount of time, money, and expense that lenders have put into creating programs and reaching out to borrowers over the last year is unprecedented. And, unfortunately, whether from fear or lack of information or lack of counseling, homeowners still are not stepping up as soon as they should. They are a couple of months down: "Oh, I can handle this." The next thing they know, the foreclosure complaint is filed. It is moving along on a pretty quick track. It still takes 10 months in a State like Pennsylvania, but it moves quickly, and the costs continue to increase.

One of the other elements of the Philadelphia program—and we have made the offer here in Allegheny, and we hope that it is embraced here—is to provide contact information for each of the law firms that represent lenders in foreclosure matters throughout the Commonwealth. The idea behind that is to avoid exactly what Mr. Sullivan had stated earlier, that idea that lenders are sitting on

perhaps effective workout agreements, and meanwhile the foreclosure is proceeding.

I can tell you that our office will take that to our lender clients, and we will try to avoid the incurring of additional costs and expenses because the goal is the loan resolution first. And foreclosure is one of the alternatives, but certainly not the chief alternative for lenders.

That communication is of paramount importance. The Philadelphia program is a pilot program. This program I assume will be a pilot program as well. Constant communication among all the stakeholders throughout the process is really, really important. And to the extent that that is part of the framework of the program, we look forward to supporting it.

We also, again, will—I am glad that most of the—that the witnesses today, all of the witnesses today, were not engaged in the blame game. And it would be easy. We could spend hours talking about who is to blame. I have my views on that, and I think, frankly, everyone has a piece of this puzzle. And that does not solve the underlying issue. The underlying issue is how do we resolve this loan, and we resolve it through effective communication—a court-annexed program such as this is very important to promote that effective communication—and, again, to stress that the homeowners are their best and first advocates. They are the ones who need to step up, find that counselor that can help them, find that attorney that can help them, and put together a plan of action to resolve their loan delinquency in partnership with their lender.

I thank you for your time.

Senator SPECTER. Thanks very much, Mr. McKeever.

Our final witness is Ms. Barbara Griffin, Pro Bono Coordinator for the Allegheny County Bar Association.

STATEMENT OF BARBARA GRIFFIN, PRO BONO COORDINATOR, ALLEGHENY COUNTY BAR FOUNDATION, PITTSBURGH, PENNSYLVANIA

Ms. GRIFFIN. Thank you, Senator Specter and Senator Casey, for having me here today. I am the pro bono coordinator for the Allegheny County Bar Foundation, which is the charitable arm of the Allegheny County Bar Association, and I want to talk to you just for a few minutes about the role of volunteer lawyers and other lawyers on behalf of the borrowers in this process that has been proposed by Judge James.

First, let me say that I am very proud to work for and be a member of one of the most active and involved and strongest bar associations in the country, I would say. The Allegheny County Bar Association has almost 7,000 members, which means that about 80 percent of the lawyers in Allegheny County are members of the bar association, and out of that number, about 750 attorneys regularly volunteer for one of the many pro bono programs that we operate here in Allegheny County under the umbrella of what we call the "Pro Bono Center." We have about 24 or 25 programs that provide a number of types of legal services to low-income people in need of legal help. And these programs also call upon volunteer law students, paralegals, legal secretaries, and in all we have about 1,000 volunteers who are doing pro bono services for low-income individ-

uals here in Allegheny County every year. So those are the volunteers that I feel very confident we will be able to call upon to help address this problem and participate in this very important program.

I also want to say that luckily we are a close community here in Allegheny County, a little smaller than Philadelphia, so the bar association—I and really the bar association as a whole—enjoys a very good working relationship with members of the local bench, including and especially Judge James. And we also work very closely with other legal service providers, including our local Legal Service Corporation entity, which is called Neighborhood Legal Services Association, and along with organizations like the housing counseling agencies that are present here today. We started meeting with everyone very early on in this process, and I think that these relationships greatly facilitate the implementation of this kind of project here in Allegheny County.

As Judge James described, what we envision is that volunteer attorneys will work very closely with the housing counseling agencies early on in the process to look at how a loan might be worked out. And as you know, by the time you get to foreclosure, there have been many attempts and notices to get these loans worked out. And you might think that all hope is lost, but what we have found in similar programs that are offering lawyers to low-income borrowers is that once there is a lawyer finally on behalf of a low-income borrower, who at this point has, you know, been barraged with information and really has not had anyone on their side, finally when this person that is finally there for them, the dynamics of the case change. The borrower is able to feel more comfortable. That fear factor, that shut-down factor often goes away. So we really think that lawyer participation on behalf of the borrower is essential to the success of this program.

We have already laid the foundation for this type of project. We have something here in Pittsburgh called the "Pittsburgh Pro Bono Partnership," which is a sort of consortium of mostly larger law firms, corporate legal departments, and even governmental legal departments and legal services entities. And we have had for the past couple of years an anti-predatory lending clinic, and that clinic has been focused just on loans that we have identified predatory lending practices. And that project has been staffed entirely by volunteer lawyers from the U.S. Steel Corporation and from the firm of Pietragallo Bostick & Gordon. And we will talk to them about expanding that project not only to loans where there is predatory lending, but to all of these loans that are participating in this conciliation process.

We will represent the very-low-income borrowers. We can go up to—borrowers who have up to—whose incomes are up to 250 percent of the Federal poverty guidelines. Borrowers who may not qualify, who still have a higher income even though they are in trouble with their loan, we can use our lawyer referral service at the bar association to steer them to hiring a lawyer, maybe doing the conciliation on a flat-fee basis or something like that. So we are very confident that we will have the resources to mobilize an army of attorneys and get this process moving forward. And we are looking forward to continue working with everybody here.

Thank you.

[The prepared statement of Ms. Griffin appears as a submission for the record.]

Senator SPECTER. Thank you very much, Ms. Griffin.

We now turn to 5-minute rounds of questioning by Senator Casey and myself, and we will begin with you, President Judge James.

Where the conciliation efforts do not work, the question arises as to what could be the next step. Last November, I introduced legislation which would authorize the bankruptcy courts to take a look at the situation and not to affect the principal sum but to deal with the scheduling, with a heavy focus on variable rate mortgages. For example, people take out a mortgage not knowing that the rate is going to change. They may have a schedule of $1,200 a month, and then shortly thereafter, they find it balloons to $2,000 a month.

What do you think about the authorization to the bankruptcy court to take a look at a misunderstanding or perhaps misrepresentation, or perhaps even fraud, to rearrange the schedule of payments to elongate them so that the lender gets the principal repaid and the agreed-upon interest but on a longer period of time to try to keep the homeowner in the home?

Judge JAMES. The answer to your first question is that at the conciliation, if they are unable to reach an agreement, the case would go back onto the trial list, and an answer would need to be filed. The stay would be lifted.

However, under our rule, the trial judge would have the opportunity to extend it. If the parties were close to settlement or needed an additional piece, the stay can be continued for a reasonable period of time for the workout.

As to the question of bankruptcy, I would suggest that anything that makes the payments—or makes the ability of the borrower—gives them a greater ability to make payments that are reasonable would be helpful. But I have to confess to you, Senator, not only have I never practiced in bankruptcy law, I did not even take bankruptcy in law school. So my knowledge of the bankruptcy laws is slim and none. Perhaps someone here who practices would be better able to answer your question. But I would suggest that anything permits the homeowner to be able to make reasonable payments would be helpful for the conciliation process.

Senator SPECTER. Well, Judge, you may not have been practicing in the bankruptcy field, but you might be appointed to the Federal bench. Then Senator Casey and I might recommend you.

[Laughter.]

Judge JAMES. I would have to do some studying, wouldn't I?

Senator SPECTER. Well, I am glad to hear you are not summarily turning it down. But that would put you in the bankruptcy field.

Sheriff Mullen, if you had to give specific advice, say, to Ms. Williams and Ms. Griffin, who will be helping out the people who are threatened with foreclosure as to what to look for and how to be proactive—because there is a significant hurdle here, as I understand the practice, in acquainting the homeowners with their rights and their opportunities—how would you lay it on the line most effectively to see to it if the homeowners have not seen this on the evening news—and we appreciate PCN and the coverage here to try to get this word out. That is always a tough job. When

they go out into the field in a proactive way, what would your suggestion be as to effectively communicate opportunities to the homeowners?

Mr. MULLEN. I think the biggest problem from what I have been told is that people refuse to look at the notices that they are receiving before this goes to foreclosure process, and it is difficult to get that information out. You know, we have advertised in the Pittsburgh Post Gazette when we do the sheriff sales about where to go. We take these brochures to each person that we serve. There is a Rule 91 that when we serve the papers to them, it tells them their rights.

I think we may be able to do some public service announcements to try to get that message out before it goes to foreclosure. And I think we have been doing a relatively good job at that, but from what I have been told from these advocates to try to intervene, you know, people just are reluctant to admit that they are in that situation, much like a lot of people are reluctant to look at their 401(k)s nowadays.

Senator SPECTER. Judge James, do you have a comment on that?

Judge JAMES. Yes. Through the use of the defined number that will be owner-occupied home foreclosures, we will be able to create a data base. And meeting with a number of the advocate groups, they were asking for this because they would like to do outreach to actually be able to contact people who have not responded to the 800 number.

I have also discussed this with the two law schools in Pittsburgh concerning use of clinical students, law students, to try to reach these people and explain to them that all they have to do is avail themselves of counseling and some help will be there.

So the data base is really important to identify these people so that we can share it with various agencies that want to do outreach, which I think is a big part of this.

Ms. Williams—and before turning to Senator Casey, one final question for the panel at this moment—you talk about mandating conciliation, and that can be done with State law. Why do you think a mandated conciliation would have a better opportunity for success than voluntary conciliation?

Ms. WILLIAMS. Senator Specter, because of the inequity of bargaining position of the two entities, the lender and the homeowner, we are finding, as Mr. Sullivan had mentioned, that it takes awhile for the lender to get back to a mortgagor when they are trying to work out an agreement, even if they are represented by a housing counseling agency.

So the mandate for the two entities to come together is necessary because both parties need to be present and both parties need to be able to negotiate the terms. When that does not happen, someone needs to step in—and in this case, it would be the court—to say that this is what must happen.

And just to go back to your point that you asked Judge James about, I am a bankruptcy practitioner, so I was kind of sitting at the edge of my seat when you mentioned what you mentioned, because I am a former legal services attorney. And I would say that your proposal is right on point. The Bankruptcy Reform Act took away Section 1322(b)(5) of the Bankruptcy Code which gave the

court the ability to modify mortgages. So to proffer that legislation at this point I think is right on point, although I would differ with you on the principal balance issue. I think we should be able to reduce that as well, because many properties are underwater and a lot of properties are also in the inception of the loan; the fair market value is inflated.

Senator SPECTER. Senator Casey.

Senator CASEY. Thank you very much.

I wanted to focus my initial question on implementation. I realize that you are beyond the point of just talking about this and theorizing about it, that you are actually implementing. And I guess I wanted to get a sense, after having listened to each of you and having listened to individuals in Philadelphia and actually having gone into a courtroom like this, about this size or a little larger maybe, full of people discussing and negotiating and trying to work things out between lenders and borrowers and advocates. And it was a roomful of—gosh, it must have been 150 people packed in, talking and working things out.

But I think they are pretty far along in terms of implementation, and I wanted to get your sense, maybe starting with the judge, with regard to impediments to implementation, problems you are seeing, and things you might need help with.

Judge JAMES. Well, actually, we are very fortunate, Senator, in Allegheny County—and Attorney Griffin pointed this out—that the relationship between the bench and the bar is very close. I serve as an ex officio member of the Board of Governors of the Allegheny County Bar Association, and a number of my judges are also active in the bar. So we are ready to go.

One problem might be the funding of a central call system. We are trying to find out where we are going to place that. That seems to be the sticking point. The sheriff has offered the use of his offices. However, we think it should be closer to a counselor. It should be someone who actually has legal expertise and can discuss the matter and talk to the person. We would like to make it as simple as possible; that is, one call triggers the whole thing, rather than having people go to two or three different places. I think someone used the words "jump through hoops." Under these circumstances, once they contact us, we want to bring them immediately into the conciliation, let them know that we need their financials, we need them to come to a conference, and that it is free of charge.

So financing or where we lodge the central call system is the only sticking point, and that is the only thing we need right now for the implementation of it. Once we resolve that—and we hope to have that done, I think, by the first part of next week. Once we resolve that issue, we intend to create this. We need to do some training. We need to do some explaining to the counselors, the existing counselors.

I should point out, Senator, we have decided to use the existing framework because we think it works fairly well. Philadelphia created some infrastructure and did some training, and the only training we are going to do is voluntary training of the lawyers, the pro bono lawyers, and some explanation to the debt counselors of who these people are and what is going on. But the communication and

the linkage is already in place, and so I think we can kick this off within a few weeks.

I have been happy that we have not had a lot of roadblocks. Everyone seems to be trying to resolve it, including Mr. McKeever, I believe, whom I spoke to in June, I think it was.

Mr. MCKEEVER. Yes, that is right.

Judge JAMES. And the banking industry is also cooperating, and they think that this is worthwhile for them.

So the answer to your question is if we could get some funding for a central call center or something like that, that is the only thing we are looking at.

Senator CASEY. Well, let me say that I think when it comes to what the Federal Government has done and can do, in the "has done" category, there has been a substantial effort at the Federal level just in the recent past where we passed and the President signed into law Hope for Homeowners, which is a major initiative, that the legislation that dealt with Hope for Homeowners and other aspects of housing policy is the most significant piece of legislation of its kind in a generation. That was a very positive step forward. And in the recent Emergency Economic Stabilization Act, there was even more help and focus on Hope for Homeowners. So that is a good thing.

Part of that, of course, is what you have all touched on, and some more than others: the issue of counseling. I and others pushed very hard in 2007 and 2008 to get $180 million into housing counseling, which we have already deployed. I think that money is already spent, one of the best expenditures of Federal dollars in recent American history. We got another $150 million for that same purpose.

So I think in terms of what the Federal Government can do to help, counseling is a very significant part of that, but in the last minute I have, is there anything very specific, in addition to the funding on counseling—because I think that I and others have said to Secretary Paulson and Secretary Preston at HUD, you ought to make this a national program, or at least focus on it and experiment with it as a national program. Anything else that the Federal Government can do that it is not doing right now to make your program even better?

Mr. MCKEEVER. Well, if I could speak to that, I will go back a little bit to the testimony I gave about the frustration that the lender side has about gathering the information from the bar. And I think that there probably are available technologies today among lenders, whether they are proprietary or shared systems, that maybe could be provided—or access could be provided to housing counselors and housing advocates so that you could gather the financial information electronically and work through a decision tree of available options that might be available from that investor or bank. And I think that that is something that perhaps would be a beneficial use of the Federal Government's power in this situation.

It is likely that the Treasury Department is looking at something like that, I would imagine. But in terms of streamlining the application process for loan resolution, I think that might be an avenue to pursue.

Mr. SULLIVAN. If I can echo Attorney McKeever's sentiment, as frustrated as I know the lenders are about getting financials, it is as frustrating for counselors not getting their hands on financials. We cannot do our job successfully if borrowers cannot get us the documentation. So his suggestion would be really key for us, too.

Senator CASEY. Thank you.

Senator SPECTER. Thank you, Senator Casey.

We have time for another round, and let me turn to you, Ms. Griffin, from your position as pro bono counselor for the bar association. How will you be proceeding to try to take this program that the President Judge and the sheriff have outlined here to make the maximum effort to get through to these homeowners who are frightened, have a lot of legal papers, do not understand them, but persuade them that they have to focus on it and come forward with the unique opportunity to save their homes?

Ms. GRIFFIN. Right now, whenever a defendant is suited in Allegheny County, their notice has the phone number of the bar association, the lawyer referral service, and it says pretty clearly, you know, you have been served, you need to call—you know, you need to get an attorney. And often the bar association is the first stop for many defendants in these kinds of actions. And so what we do at the bar association, we sort of do a triage when they call that number, and if they are able to afford an attorney, then they go to one of the attorneys that is a member of the panel of attorneys at the bar association. And then if not, then we send them to the appropriate legal service provider in the community.

So we have a lot of experience of steering folks in the right direction. I do feel that we are already a pretty well-known resource for the community. When I answer the phone calls at the Pro Bono Center, I often ask, "How did you hear about us? How did you get to me?" And it is amazing that they say a variety of ways. Sometimes they find us on the Internet. Sometimes it is a State senator or a State rep.

Senator SPECTER. So you think you can get through?

Ms. GRIFFIN. I think we can get through. We have a marketing department. We can get out and do public service announcements also. But I think a lot of it is just going to be our network, our existing network of providers, and getting the word out and kind of referring people to the right place.

Senator SPECTER. Mr. McKeever, let's turn to the perspective of the home for the lender. I was concerned to see this morning's USA Today saying that the bailout pushes mortgage rates up, and it has a couple of consequences from the legislation. One is with the Government borrowing $700 billion, it is going to tighten up the credit market, and the rates are already going up. But a second matter of greater concern to me is the report that bankers are looking for the Federal guarantee of up to $1.5 trillion on senior credit so that they can loan money to provide liquidity, which is very important, but they are not going to be looking to mortgages which do not carry that kind of a guarantee.

What can Senator Casey and I do to make some modifications perhaps at the Federal level to see to it that all the money we are putting up goes to the homeowner? That is the man or woman in the chain which really needs the help the most. And the subprime

loans got us on this crazy spiral so that we cannot tell the banks what to do, but we can come close. And we have to be concerned that we do not nationalize the banks and destroy our free enterprise system. But what can we do to get that money out there to the mortgage market?

Mr. MCKEEVER. Well, I think it is a very difficult problem that we are in because the mortgage service company, the lender, has some rights to make adjustments to the amount due and owing or change the payment schedule. But wholesale reductions create issues with the investor that they are servicing that loan on behalf of. They have a fiduciary duty to those investors, and, unfortunately, those investors are many of us. Almost all of us have a piece in that investment, whether you have a pension plan, a checking account, a savings account, or even an interest in a company.

So to change that investment expectation—and, of course, that is one of the biggest issues regarding a bankruptcy cramdown or resetting the investment expectation—is that you may solve the problem temporarily, but what you may well create is a market—or reduce the market of the ability to sell mortgage securities in the future.

It is not quite my area of expertise, but that is my understanding of why lenders find themselves in this difficult position of while it may make sense to make that reduction in a principal because the house price has dropped so dramatically, the investor has requirements, and the investor requirements require that the foreclosure be completed and the loss be taken at some other time.

Senator SPECTER. A final question to Mr. Sullivan, with 30 seconds remaining. You commented about the successful mediation projects that you have been involved in. Could you give us the critical elements which have led to success, maybe some guidance to the mediators who are going to be looking at this on a much broader scale?

Mr. SULLIVAN. I think the most important piece was early intervention. Most of the successful modifications that I have been part of were borrowers who were 30 to 60 days delinquent and not, you know, 5, 6 months. It was key for the borrowers to get the financial documentation over to the counselors as quickly as possible and then us turning it over to the servicer.

The longer the delinquency occurs, the harder it is to just work it out. It is just that simple. If I got someone who is 12 months in with all the legal fees and everything else that has piled up, the workout is almost unattainable. So the key is—and that is what I like about the conciliation proposal, is that it is early intervention. You are getting folks who would be 2 to 3 months behind. The filing has not been issued yet, so the attorney fee has not been attributed. Those are the kinds of workouts that I have seen most successful from my counseling perspective.

Senator SPECTER. Senator Casey.

Senator CASEY. Yes, two questions. One is—or I should say one follow-up on what Senator Specter was asking about before a question. Yesterday I sent a letter to Secretary Paulson which highlighted a number of concerns I had with the direction that he is taking now, and I have been very complimentary of his work, but

I have real concerns now that in the midst of this focus now on getting direct investment in banks, taking 250 of the 700 and directing it toward banks, which in concept is a good idea, but there is nothing in there for modifications of mortgages. And I said in part in the letter that financial institutions receiving significant benefits from Government investment or guarantees should agree to modify loans which they hold in their portfolios. And this is not some theory. The FDIC has done just that. The FDIC implemented a loan modification program that Treasury should look at in this context. It should adopt a lot of the same ideas that each of you have been not just talking about but advocating and implementing here in the county.

I guess the one question I had was one of numbers, and I am not sure—a number of you have these numbers in mind or in front of you. But what is the projection for Allegheny County when you look at foreclosures or just default, mortgages heading in that direction? But let's just talk about foreclosures, 2007 versus 2008, and then the projection for 2009, if any. Does anyone have that information?

Mr. MULLEN. The figures I have, our figures are based on those foreclosures that actually are listed in the paper, which we have to do by judicial rule. I can give you the figures from the end of the year: from 2006, they were 4,727; and then 2007, they were reduced to 4,632; and for this year—and keep in mind that these have to be posted 2 months in advance, so this is for the entire year—4,450. So those figures have gone down consistently for—

Senator CASEY. And 2008 is what?

Mr. MULLEN. 4,450.

Senator CASEY. Okay. To date, right?

Mr. MULLEN. Yes, that includes the entire year because they have to be posted 2 months in advance. So, actually, they have gone down, you know, from 2006 to 2007 and continue to go down in 2008.

Senator CASEY. Any projection for 2009?

Mr. MULLEN. I do not know. Like I said before, you know, after consulting with their—talking to the Federal Reserve, they said that the ARMs resetting would be increased within the next 5 to 12 months. And like I said before, those show a higher figure of foreclosure than the regular mortgages.

Judge JAMES. And to amplify that, Senator, we are not able to differentiate how many of those are commercial or how many of those are tax defaults. They are all lumped in one group, and that is why it is really important that the Director of Records has agreed to identify owner-occupied structures. As this program goes forward, not only can we identify them, but we can actually see if it starts to go up, because we are going to be able to track the owner-occupied foreclosures, which is really important. I think it is an important factor.

Mr. MCKEEVER. And although those numbers are large, I do think it is significant to look at the decrease from 2007 to 2008 in the—now, we are talking about sheriff sales scheduled, which I think is an indication that lenders are working with borrowers and borrowers are stepping up to work with their lenders to resolve things and taking them out of the foreclosure process, because we

saw similar things in Philadelphia where there was an increase in the foreclosure filings, but the number of sales has stayed relatively constant. And I think, again, it is an indication that there are—that these programs are working.

Judge JAMES. There is about a 10-percent shrinkage from actual foreclosure filings to actual foreclosures, so about 10 percent of the complaints are being withdrawn. Either they are being settled or there is some procedural defect, and we think that there is 10 percent of the ones that they are settling early on even without court intervention.

Mr. SULLIVAN. I would just suggest this as a concern: that in 2001 and 2002, there was about a 1-percent national and local increase in the unemployment rate. At that time, the foreclosure filings—not sheriff sales notices, but the actual filings itself—increased by 25 percent. So if projections by the Bureau of Labor are accurate, and we are going from 4 percent to 5.5 to 6 percent locally and nationally, you are also going to see a spike again in the foreclosure filings.

But, I mean, both Judge James and Attorney McKeever, who represented, correctly I think, that there is at least more workouts being attained early on, because the sheriff's own numbers are decreasing while, generally speaking, we are still on pace for about 4,700 filings for the year.

Ms. WILLIAMS. And I would just submit that because a lot of times in Allegheny County it has been touted that there are not as many foreclosures as compared to the other areas across the country, I would just caution that we realize the population density and compare that to the number of foreclosures; and when you look at those two, you will see that it is still significant, and that we should really be moving toward getting these issues worked out. And there will be some that will have to go to foreclosure, but our goal would be to eliminate those numbers significantly.

Senator CASEY. Thank you very much.

Thank you, Senator.

Senator SPECTER. Well, thank you very much, President Judge James and Sheriff Mullen, for initiating this program, and I thank all of you for coming in. I believe this has been a very, very important hearing because it goes to the core problem of keeping people in their homes, and that is where the full problem got started, and that is the critical factor.

We have moved a great distance from there when Senator Casey and I very reluctantly backed this $700 billion bailout program, and we did not do it to save Wall Street. We did that to save the ripple effect which would have drastic consequences for the economy on credit to small business, student loans, and more evictions.

In a free enterprise society, people have the right to take risks to make money, but if they use bad judgment and those risks turn out to produce losses, they ought not come to the Federal Government for a bailout, which ends up with the taxpayers. And we have seen a critical situation on Wall Street with highly sophisticated kinds of commercial paper which no one understands. You have these derivatives, which are extraordinarily complicated, and you have these credit swaps, which are even more complicated. And

there is talk about some $62 trillion involved in these derivatives, which makes $700 billion look like a small sum of money.

So we are wrestling with this issue, and there is going to have to be some regulation on operations like Fannie Mae and Freddie Mac. And, again, in our line of work in the Congress, we have to be careful we do not overregulate as we did with Sarbanes-Oxley. So it is a delicate matter.

But to the extent that there is action at the local level, that is best. If you take the matters right here to the county level, it is best—not to Harrisburg and not to Washington. So what is going on here is very, very important, and Senator Casey and I have an eye out to what we can do at the Federal level to supplement what is going on here.

A wrap-up, Senator Casey?

Senator CASEY. Well, thanks, Senator Specter, and I want to thank the panelists here, especially Judge James for the use of your courtroom, the use of this courtroom, as well as your participation in leading this effort at the county level in a big county like Allegheny County, taking on a tough issue and not just waiting for some solution to arrive from Washington, but helping us to point to good models at the local and county level that can be, I think, replicated not only throughout this region but throughout the State and throughout the country. So we are grateful for your advocacy and for your willingness to take on a tough problem and try to solve it.

Thank you very much.

Senator SPECTER. Well, that concludes the hearing. Thank you all.

[Whereupon, at 10:45 a.m., the Committee was adjourned.]

[A submission follows.]

A SUBMISSION FOR THE RECORD

STATEMENT OF BARBARA E. GRIFFIN
before the Senate Judiciary Committee

October 17, 2008

Pittsburgh, Pennsylvania

***Barbara E. Griffin** is the Pro Bono Coordinator for the Allegheny County Bar Foundation, where she creates and manages programs that match volunteer attorneys with low-income persons in need of legal services.*

Although she began her legal career in private practice at both large and small law firms, Ms. Griffin has spent most of her career in public interest law. She served as an Assistant Attorney General for the State of Texas, where she provided general counsel to the agency and wrote advisory opinions on a wide range of legal issues. She worked for the Texas House of Representatives writing reports and summaries of legislative developments on public policy issues for state legislators. Ms. Griffin also served as a law clerk to the Honorable Gene Strassburger in the Civil Division of the Allegheny County Court of Common Pleas. At all times during the course of her legal career, Ms. Griffin has been a volunteer attorney, taking on pro bono cases and staffing community legal clinics.

Ms. Griffin received her J.D. in 1991 from the University of Texas School of Law in Austin, Texas, where she served as an Executive Editor of the Texas Law Review. She is a 1985 graduate of the School of Foreign Service at Georgetown University in Washington, D.C.

GOOD MORNING, AND THANK YOU SENATOR SPECTER FOR INVITING ME HERE TODAY. I AM THE PRO BONO COORDINATOR FOR THE ALLEGHENY COUNTY BAR FOUNDATION, WHICH IS THE CHARITABLE ARM OF THE ALLEGHENY COUNTY BAR ASSOCIATION. I WILL TALK TO YOU BRIEFLY THIS MORNING ABOUT THE ROLE OF VOLUNTEER LAWYERS IN THE MORTGAGE FORECLOSURE CONCILIATION PROGRAM PROPOSED BY JUDGE JAMES.

FIRST LET ME SAY THAT I AM PLEASED TO WORK FOR AND BE A MEMBER OF ONE OF THE MOST ACTIVE AND INVOLVED BAR ASSOCIATIONS IN THE COUNTRY. THE ALLEGHENY COUNTY BAR ASSOCIATION HAS APPROXIMATELY 6,600 MEMBERS, WHICH MEANS THAT ABOUT EIGHTY PERCENT OF THE LAWYERS IN ALLEGHENY COUNTY ARE MEMBERS. OF THOSE ATTORNEYS, 750 REGULARLY VOLUNTEER FOR ONE OF THE MANY PRO BONO PROGRAMS THAT

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ARE UNDER THE UMBRELLA OF THE BAR FOUNDATION'S PRO BONO CENTER, WHICH I MANAGE. THESE PROGRAMS ALSO CALL UPON VOLUNTEER LAW STUDENTS, PARALEGALS, LEGAL SECRETARIES, AND OTHERS, SO THAT THE TOTAL NUMBER OF ACTIVE PRO BONO VOLUNTEERS PROVIDING LEGAL SERVICES IN ALLEGHENY IS NORMALLY OVER 1,000 PER YEAR. THESE ARE THE VOLUNTEERS THAT I FEEL CONFIDENT THAT WE WILL BE ABLE TO CALL UPON TO ASSIST LOW-INCOME BORROWERS IN THE MORTGAGE FORECLOSURE CONCILIATION PROGRAM.

I ALSO WANT TO SAY THAT I AND THE BAR ASSOCIATION AS A WHOLE ENJOY A GREAT WORKING RELATIONSHIP WITH THE MEMBERS OF THE LOCAL BENCH, INCLUDING AND ESPECIALLY JUDGE JAMES. AND WE ALSO WORK VERY CLOSELY WITH OTHER LEGAL SERVICE PROVIDERS, INCLUDING AND MOST SIGNIFICANTLY OUR LOCAL LEGAL SERVICE CORPORATION ENTITY, WHICH IS NEIGHBORHOOD LEGAL SERVICES ASSOCIATION. (AND I KNOW THAT REPRESENTATIVES FROM NLSA ARE HERE TODAY.) THESE RELATIONSHIPS GREATLY FACILITATE THE IMPLEMENTATION OF PRO BONO LEGAL SERVICE PROGRAMS IN ALLEGHENY COUNTY.

AS JUDGE JAMES DESCRIBED, WE ENVISION THAT VOLUNTEER ATTORNEYS, WORKING CLOSELY WITH EXPERIENCED HOUSING COUNSELING AGENCIES, WILL EVALUATE LOANS IN DEFAULT AND PROVIDE DIRECT LEGAL REPRESENTATION TO BORROWERS IN THE CONCILIATION PROCESS. BY THE TIME THESE LOANS GET TO THE FORECLOSURE PROCESS, THERE MOST LIKELY HAVE BEEN SEVERAL OPPORTUNITIES FOR THE BORROWER TO CURE THE DEFAULT. IT CERTAINLY WOULD BE UNDERSTANDABLE FOR US TO IMAGINE THAT IF A LOAN HAS NOT BEEN WORKED OUT BY NOW, SURELY ALL HOPE IS LOST. BUT WHAT WE HAVE SEEN IN OTHER PROJECTS WHERE WE HAVE PROVIDED, FOR THE FIRST TIME, AN ATTORNEY TO REPRESENT AN INDIVIDUAL IN A NEGOTIATION PROCESS, THE DYNAMICS OF THE PROCESS CHANGE. AND THIS IS PARTICULARLY TRUE FOR LOW-INCOME CLIENTS, WHO OFTEN

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EXPERIENCE FEELINGS, OFTEN JUSTIFIABLE, OF HOPELESSNESS AND BEING UP AGAINST THE BIG GUY. BUT WHEN THEY FINALLY HAVE SOMEONE ON THEIR SIDE, WHEN THEY FINALLY HAVE SOMEONE WHO'S GOT THEIR BACK, THEN THEIR CONFIDENCE IS ENHANCED AND THAT PARALYZING FEAR GOES AWAY, AND OFTEN THE PARTIES ARE ABLE TO REACH COMPROMISES THAT WERE NOT POSSIBLE BEFORE. SO WE SEE REPRESENTATION OF LOW-INCOME BORROWERS AS ESSENTIAL TO THE SUCCESS OF THIS PROGRAM.

WE HAVE ALREADY LAID THE FOUNDATION OF A PROGRAM IN AN EXISTING PROJECT OF THE PITTSBURGH PRO BONO PARTNERSHIP. THE PARTNERSHIP IS A CONSORTIUM OF LAW FIRMS, CORPORATE AND GOVERNMENTAL LEGAL DEPARTMENTS, AND LEGAL SERVICE PROVIDERS THAT CREATE SIGNATURE PRO BONO PROJECTS. FOR THE PAST SEVERAL YEARS THE PARTNERSHIP HAS RUN AN ANTI-PREDATORY LENDING CLINIC THAT TOOK ON CASES IN WHICH BORROWERS WERE VICTIMS OF PREDATORY LENDING PRACTICES. THAT PROJECT WAS STAFFED SOLELY BY VOLUNTEER LAWYERS FROM THE UNITED STATES STEEL CORPORATION AND PIETRAGALLO BOSICK AND GORDON. I WILL BE WORKING WITH ATTORNEYS FROM THOSE ENTITIES TO SEE HOW THE PROJECT MIGHT BE EXPANDED TO INCORPORATE THE PROPOSAL YOU ARE HEARING ABOUT TODAY.

TO SUM UP, THE ROLE OF THE BAR FOUNDATION AND ASSOCIATION WILL BE TO RECRUIT AND TRAIN VOLUNTEER ATTORNEYS TO REPRESENT LOW-INCOME BORROWERS IN THE MORTGAGE CONCILIATION PROCESS, AND TO MANAGE THE PROGRAM OF ASSIGNING CASES, KEEPING STATISTICS, AND WORKING CLOSELY WITH THE COURT, THE HOUSING COUNSELING AGENCIES, AND ALL THE OTHER STAKEHOLDERS IN THIS PROJECT THAT WE ALL HOPE WILL HELP TO LESSEN THE FLOW OF MORTAGE FORECLOSURES IN ALLEGHENY COUNTY. THANK YOU.

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KEEPING FAMILIES IN THEIR HOMES: HOW TO PREVENT FORECLOSURES—PART II

FRIDAY, OCTOBER 24, 2008

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC

The Committee met, pursuant to notice, at 10:00 a.m., at the Philadelphia Court of Common Pleas, Courtroom 653, Philadelphia, Pennsylvania, Hon. Arlen Specter presiding.

Present: Senator Bob Casey, Jr.

OPENING STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. The hearing of the U.S. Senate Judiciary Committee will now proceed on the program at issue at the Court of Common Pleas in Philadelphia County to try to keep people in their homes and not to be evicted through sheriff's agencies.

I am joined by my distinguished colleague, Senator Bob Casey—to courtroom—spend so many days a few weeks ago as an Assistant District Attorney, and then as—walk down the hall—which had for years been the District Attorney's office, and walked through the corridor where there had been a sheriff's cell room which went upstairs. This was before the—and all of the big—murder cases were tried there, where they had a lot of security problems.

In 1968, there was a beginning program on CBS. You may have heard about it: it was called 60 Minutes. I would—Mike Wallace was the coordinator and we had a major investigation that year about—young boys in the sheriff's cell room at—taking them to Holmesburg. Mike Wallace was in that back room filming, and an Assistant D.A. named Allen Davis and myself. It was the first investigation into brutality in prisons conducted in the United States and it was featured on 60 Minutes. Later when they went back for the highlights, they chose that as one of the highlights.

Well, ex-D.A.s are allowed up to 3 minutes to reminisce in this room, but only 3 minutes.

This hearing involves a matter of great importance to the city of Philadelphia and has very serious application on the national level. Last year, there were over—was higher than the national average. Under the very effective leadership of—Darnell Jones and Judge Annette Rizzo, a program has been initiated here which I think has—national model. The—in some detail, but it is what I would characterize as a win-win situation where people can stay in their homes by—mortgages and that obviously helped the—and the lenders are assisted in not having the cost of foreclosure and taking

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over property which is greatly depreciated in value, and the neighborhood is benefited by not having a house foreclosed. The tax rolls remain—the city is not confronted with greater fiscal—cutback in services.

The program received considerable national acclaim. There have been inquiries on it from Miami and Chicago and Prince George's County, Maryland,—Texas, and Florida, and New Mexico, and is quite a tribute to the working here of our colleagues who have come up with this kind of a program.

Senator Casey and I had a similar hearing last week in Pittsburgh and Senator Casey, I, and others in the Congress have been prepping the Treasury Department—to—authorized to the most basic level to keep people in their homes. We've taken steps for $250 billion of infusion of capital into banks. Well, that's fine. We've worked through bailouts of major companies, Bear Stearns and AIG.

But we think we need to deal with the people who really -and we're making some progress. The FBI—are now starting to look at the issue of guaranteeing mortgages. That would be a big step forward. The current fiscal crisis started with the mortgage problem and it ought to be addressed head on. But in the interim, it is really very gratifying to see a community like Philadelphia and the leadership of the Common Pleas Court digging into this issue with very—program that can keep people in their homes.

I now defer to my distinguished colleague, Senator Casey, who has many important committee assignments in Washington. He is—as an ex officio of the Judiciary Committee, which is not too bad for a first termer.

[Laughter.]

Senator SPECTER. Senator Casey.

STATEMENT OF HON. BOB CASEY, JR., A U.S. SENATOR FROM PENNSYLVANIA

Senator CASEY. Senator Specter, thank you very much. I want to thank Senator Specter for having us here in Philadelphia today and to be, as he mentioned, a member of the Judiciary Committee for a brief period of time. He's allowed me to do this every couple of weeks and then I have to go back to my other committees. But I am grateful for this opportunity.

I wanted to thank the witnesses who were here with us today who have been, shall I say, in the trenches: Judge Jones, Judge Rizzo, and so many others, whether as part of the Court of Common Pleas, Mayor Nutter and his work at the city at the municipal level, the people who are advocates who are in the lending community, advocates for homeowners, so many people coming together and working night and day to make sure that this program works.

What we know is the Philadelphia Residential Mortgage Foreclosure Diversion Program is now becoming one of the best programs of its kind in the country, as Senator Specter mentioned. And I'll tell you, we need it. When you look at the numbers just yesterday, when you look at third quarter 2007 to third quarter 2008 nationally, foreclosure filing is up 71 percent. In Pennsylvania, third quarter 2007 versus third quarter 2008 is up 73 percent.

So Pennsylvania as a whole has had a real spike in the number of foreclosures from last year to this year, so we need it badly. We know the challenge here in Philadelphia. I saw a chart today where Philadelphia was number 68, I think, out of the top 100 Metro areas. I hope that number continues and I hope we keep getting closer to 100, which means we're not as bad off. But we know the numbers here are too high, as they are in lots of parts of Pennsylvania.

This program is already succeeding. We know that. We also know that a lot of counties have been trying to replicate this program throughout Pennsylvania. We want to push that very hard. Back in July of this year, I wrote to Housing and Urban Development Secretary Preston and I sent a copy to Treasury Secretary Paulson, urging them to consider this program as a model for other cities and regions in the country to replicate and to emulate.

In August of this year, we had a roundtable session here in this building with Judge Jones, Judge Rizzo, and other participants from across Pennsylvania and throughout Philadelphia about the program and how to replicate this in other counties in Pennsylvania. Since that roundtable in August, we've had a great response from counties from western Pennsylvania, from Allegheny County out in the west, to my home county, Lackawanna County, throughout the Lehigh Valley, and throughout the region.

In September of this year, again, I urged Secretary Paulson and also urged Chairman Bernanke, chairman of the Federal Reserve, to consider this program as a model nationwide for foreclosure prevention efforts. I'm happy to be here again today to listen to important testimony.

Here's the final point I'll make. We are now at a point where there are 10,000 foreclosures every single weekday in America. We have to do everything possible to do more at the national level to prevent foreclosures, and this program is one of the best ways to do that. Thank you very much.

Senator SPECTER. Thank you very much, Senator Casey.

We will now proceed with our very distinguished panel of witnesses. In accordance with Judiciary Committee policy, witnesses will be allotted 5 minutes. We ask that everyone observe the time because we have many witnesses and we want to have some dialogue with Senator Casey and myself asking some questions. So, the light will signify green when 5 minutes begin, yellow when there's a minute left, and red on the interdiction to stop.

We will not bang the gavel—Chief Justice Rehnquist—President Judge Ed Becker had once commented that Chief Justice Rehnquist so enjoyed interrupting lawyers, that he'd interrupt someone in the middle of the word "if".

[Laughter.]

Senator SPECTER. Short of that, we do want to keep on time because we have time constraints and we hope to conclude the hearing by 11:30.

It is a pleasure to be in the courtroom of President Judge C. Darnell Jones. He's had a very distinguished career and is not long for these premises. He is—soon to the Federal courthouse, where Senator Casey and I had recommended him to the participant. Judge Jones was so warmly received, that he had—on Tuesday.

The Judiciary Committee—confirmation on Thursday. The Senate, which hasn't confirmed any judges in a long time, confirmed him on Friday.

[Applause.]

Senator SPECTER. Thank you for your hospitality today in his courthouse, and thank you for your innovations on this important program. We look forward to your testimony.

STATEMENT OF HON. C. DARNELL JONES, PRESIDENT JUDGE, FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

President Judge JONES. Thank you very much. Good morning, Senator Specter and Senator Casey.

As President Judge of the Court of Common Pleas and Chair of the Administrative Governing Board of the First Judicial District, I welcome you and the Committee as you continue to supply much-needed support to help an ever-increasing population in our communities.

Senators, your presence signifies that we in the First Judicial District are on the right track locally and nationally, and most assuredly underscores the need for us to continue what we have begun.

Senator Casey, we sincerely appreciate your letter to the Secretary of Housing and Urban Development acknowledging and praising the First Judicial District's program and urging them to support its implementation nationwide, as well as chair the roundtable to which you referred earlier. Senator Specter, that you would bring this Committee to this venue to investigate this problem and find solutions therefor is truly magnificent and well and deeply appreciated.

The genesis of our program was a resolution introduced in our City Council, supported by our sheriff, and made legal, feasible, and highly effective through the diligence of Judge Annette Rizzo, Administrative Judge D. Webster Keogh, Supervising Judge Esther Sylvester, and a number—a large number—of court support personnel.

The First Judicial District recognizes how vital home ownership is to the stability of any city. We know that neighborhoods and lives, locally and nationally, are on the brink of social and financial ruin due to the problem of the growing number of residential foreclosures.

We are acutely aware of what does and what does not work. In this instance, the foundation of our successful program is the cooperation between the court and the private bar, public interest bar, lender bar, and social agencies. Our program simply could not work without them.

Last night, I attended a town meeting in my neighborhood in East Oak Lane. More than one resident lamented that the by-product of having a home next door in foreclosure would be broken windows, and undesirables using it for crime and other illicit behavior. Add to that, when this occurs, other residents on the block and the blocks on either side abandon their homes. The tax base and vital services decline, and the downward spiral of once vibrant cities becomes uncontrollable.

We thank you, Senator Specter and Senator Casey, for your valiant efforts to assist the Nation in this much-needed and very successful program, as evidenced, by the way, Senator Specter, by your op-ed letter which appeared this morning in the Philadelphia Inquirer. Again, on behalf of the First Judicial District and the citizens of this Commonwealth and this country, we sincerely thank you.

[The prepared statement of Judge Jones appears as a submission for the record.]

Senator SPECTER. Thank you very much, President Judge Jones.

We have just been joined by a distinguished visitor, the Chief Justice of Pennsylvania, Ron Castillo.

Chief Justice Castillo. Good morning, Senator.

[Applause.]

Senator SPECTER. The Chief Justice has been heard to say that his most distinguished position, among many others, including the elected as District Attorney of Philadelphia, was his service as an Assistant District Attorney.

Chief Justice Castillo. Absolutely.

Senator SPECTER. I'm glad to have that admission on the record. Thank you for joining us, Chief Justice Castillo.

Chief Justice Castillo. It wasn't under oath, though.

[Laughter.]

Senator SPECTER. But it was said in open court.

[Laughter.]

Senator SPECTER. Our next witness is Judge Annette M. Rizzo, who has been the driving force behind this very unique and important program.

Judge Rizzo, we welcome you to the hearing. The floor is yours.

STATEMENT OF HON. ANNETTE M. RIZZO, JUDGE, FIRST JUDICIAL DISTRICT OF PENNSYLVANIA, COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

Judge RIZZO. Thank you. "Build it and they will come!" Senator Specter, Senator Casey, Councilman Jones, elected officials, Chief Justice Castillo, judicial colleagues, and distinguished members of the bar and community. A special thanks to you, Senator Specter and to Senator Casey, for bringing to the forefront our actions in Philadelphia to stem the burgeoning rise in residential foreclosures in our local community.

Our efforts here have been publicized in a variety of media outlets which span the country, and even the world. Just yesterday we were in conference and there was a TV crew there from Sweden for their national TV to film what our activities were. Requests have come in from numerous jurisdictions within the Commonwealth and across the Nation, which see us as a national model for early and direct resolution of foreclosure matters.

Senator Specter, Senator Casey, our mission here in Philadelphia is very simple: early intervention in the legal path to foreclosure and ultimate sale of owner-occupied residences, with the hope that homes may be saved one address at a time.

First and foremost, I want to share with you what the First Judicial District's Pilot Mortgage Foreclosure Diversionary Program. It is not about entitlements, it is not about give-aways, support of

delay tactics, unwarranted breaks, abuse of legal process, coercion to make deals, or the abrogation of any legal rights. What it is about, is about setting the stage to promote good-faith negotiations for parties to come to the table responsively, with the hope of borrowers remaining in their homes.

Our program was established in the spring of this year in response to our Sheriff, John Green, canceling the entire Sheriff's list in April of this year. He really was the catalyst for this program to kick off. His actions came on the heels of our City Council passing a resolution to request that our sheriff and President Judge Jones declare a moratorium on residential sales. In quick response, Judges Jones and Keogh took affirmative action by establishing our present program.

To understand what we are now in the present, one has to understand what we were in the past. The true genesis of our current program, which became fully operational in just 7 weeks, actually began in 2004. At that time, Sheriff Green had taken the step at that point to also cancel the sheriff's sale list for a given month. He then came to the court to seek injunctive relief to have a moratorium declared by the courts.

I was the judge sitting in the program at the time which heard the matter. It was before me, and though I did not grant the direct relief sought, I did establish what would amount to be the prototype of the program we now have, taking time to look at cases and homeowner situations on a micro basis and foster the opportunity for lenders and homeowners, through counsel, to negotiate favorable resolutions. Success was seen with many of the homeowners based on newly available State funding criteria, being the HEMAP program.

Now the Sheriff—came before me and argued to the court that the Sheriff's sale system was "Fundamentally broken" and needed to be fixed. I challenged them and the consumer and lender bar to work together "to fix it!" Such was the birth of the Mortgage Foreclosure Steering Committee, which has been in force for some 4 years. During that time, meeting on a monthly or bi-monthly basis, the group has come together to tackle several procedural fixes to the local foreclosure process. Though advocates on opposing side of the issue, we have come together to make the process work, such as working on the reduction of advertising costs in the foreclosure process.

Now, let's fast-forward to 2008. This group was primed to face the present challenges and move swiftly to form our diversionary program. It has been chaired by counsel to the Sheriff, Ms. Lasia Kuzma, with member stakeholders who were on all sides of this issue, including representatives of the consumer bar, the lender bar, housing counselors, the Office of Housing and Community Development, our Sheriff's office, the Philadelphia Bar Association, and other related community groups, some of whom are present today. At this point I would just ask them to stand and be recognized.

[Members of the audience stood to be recognized.]

Judge RIZZO. Thank you.

[Applause.]

Judge RIZZO. Senators, I never miss an opportunity to openly acknowledge their efforts.

There are two major criteria of our program, and they're simple. That is, only cases in foreclosure which deal with residential owner-occupied properties are part of the program. The regulation put into force by Judge Jones and Judge Keogh indicate that no property of that like, owner-occupied residential, can go to Sheriff's sale without the scheduling of a conciliation conference.

The intent of our "Day Forward Program" is, at the moment a complaint in foreclosure is filed, a notice comes from the court to have a conciliation conference scheduled. Our hope then is to put the homeowner in what I affectionately call "the chute", to get them into housing counseling as quickly as possible so when the conference comes up with the hope and help of pro bono counsel, the conciliation conference can be fruitful, that is, with the lender bar. That is our intent. Our intent has always been early intervention so that there are less arrearages that we're likely to find for homeowners, and that the property will be in a better state.

The program as well, just from a statistical standpoint, has seen, from April to September, some 1,500 cases coming through, with about 63 percent of homeowners participating, and of that, successes in approximately 490 properties where we have seen some type of settlement of the case or resolution wherein they did remain in their property, a postponement so either deals can be worked out or deals have been made out.

With that, we have to give great credit, of course, to the fact that creative solutions are given to what would be standard problems. We will have the opportunity to hear from several homeowners today about their stories and how they have been impacted in a positive way from our program.

The most frequently asked question to me is: how did you get the lenders to "buy in" to the program? The question is most simply answered: because they helped create it. I do believe, Senators, in this discussion of a national model, there has to be the suggestion that those who live under the rules of a program must have buy-in to help develop it. That, I believe, is a key success of the program we have here.

In addition, to stage such theater in the courtroom requires coordination of housing counselors, volunteer lawyers, and our beloved judge pro tems, extensions of our court who are senior members of our bar who volunteer their time and have to this point given in-kind services which amount to almost $50,000 of fine legal advice from retired judges, senior chancellors, and other very, very prestigious members of our bar.

It's a collective effort and the true spirit of the program. Senator Casey, you got to see that energy. I believe you even were pushed aside to make sure that some particular counsel got to his client. It all takes cooperation and coordination, both among the bar, the courts, and the local officials, but also our Mayor, our City Council, and, of course, leadership within our courts and our wonderful, wonderful court administrators.

In sum, we continue to be a pilot program with a capital "P". We are evolving as a living process as we gain more experience with these cases. Our mission, however, never waivers. We are here to

provide the micro focus to citizen homeowners and lenders in the hopes of achieving as many performing mortgage agreements as possible for the sanctity of these individuals, their families, and our community.

With the continued support and input from our valued stakeholders and the commitment of the wonderful members of the court and our First Judicial District staff, we are encouraged that our efforts will continue to be fruitful. We invite other jurisdictions within our Commonwealth and across the country to partner with us in this endeavor, and we avail ourselves for that purpose.

Senator Specter, Senator Casey, we appreciate the radar that you have placed on our program. Your interest and outreach to other jurisdictions has put a real face to the current national—no, let's say international—debate. We applaud you for not forgetting that the undercurrent of the mammoth financial challenges now facing us as a Nation begin with a Tania Harrigan, a Jean Ruffin, an Arlene Richardson, an Eric Rhaney, individuals who you will hear from, and the countless others like them.

Senator Specter, Senator Casey: build it and they will come. Thank you.

Senator SPECTER. Thank you very much, Judge Rizzo.

[Applause.]

[The prepared statement of Judge Rizzo appears as a submission for the record.]

Senator SPECTER. The next witness is Councilman Curtis Jones. Thank you for joining us, Councilman Jones. We look forward to your testimony.

STATEMENT OF CURTIS JONES, JR., MEMBER, PHILADELPHIA CITY COUNCIL

Councilman JONES. Good morning, Senator Specter, Senator Casey, and members of the Judiciary Committee. My name is Curtis Jones, Jr., and I am a member of the Philadelphia City Council, representing the Fourth Council District.

I actually represent Senator Specter; he is one of my constituents, and I am honored to serve you, as well as share with this Committee my perspective of how the city of Philadelphia has been able to help stop mortgage foreclosure sales in a process of helping to create a Mortgage Foreclosure Diversion Program. This is the first of its kind in the Nation.

I have also shared this information on our program with all of the Presidential candidates. The importance of the Philadelphia experience is two-fold. First, it is provocative, and second, it is collaborative. In January of this year, I introduced a City Council ordinance that passed unanimously, Resolution 08–90095, which authorized the Council's Committee on Housing, Neighborhood Development, and Homelessness to hold hearings on the issue of foreclosures.

This resolution anticipated the scheduled re-set of over 2 million subprime adjustable rate mortgages, ARMs, over the ensuing 18 months, which would create an economic tsunami of foreclosures, if not preventive measures taken.

The hearing was held February 21, 2008 and brought together advocacy groups such as the Philadelphia Unemployment Project,

ACORN, Community Legal Services, bar—and representatives from our courts and our sheriff's office. The one weakness in the hearing was that there were no representatives from the lending community present.

In the—weeks, that led to a second council resolution, number 08–0331, which called upon the sheriff and the Court of Common Pleas to impose a moratorium on residential foreclosure sales in Philadelphia. Thus, this began a meeting of the lenders that brought them into the process. It was our belief that if lenders and borrowers could agree to convert unaffordable loans into performing ones, it would create a win-win scenario. This would occur by keeping homeowners in their homes, preventing deteriorating neighborhoods, and sparing lenders the cost of both time and money for mortgage foreclosure sales.

I view this action taken by the Council as the beginning of a relay race. I would be remiss if I did not acknowledge the groundbreaking work of my colleague, Councilwoman Marian Tasco, who has been a champion against predatory lending practices, who recognize the role of these unscrupulous loans, and how they created a crisis in both her District, my District, and in the city of Philadelphia.

The race was run, and vigorously run, by those who are in a relationship with us. Also, the courts, the sheriff's office, the mayor's office also were—at the time. The court was successful in creating and implementing a residential mortgage foreclosure diversion program, which I believe can be replicated throughout the Nation.

The pilot also, in most cases, has brought reworking loans back onto the books. The—of our city, if replicated, could pave the way toward rebuilding communities ravaged by foreclosures in our country. The biggest problem we face, Senators, is fear. People won't open the mail, won't realize that they're in trouble, and won't seek help.

Congress recently passed legislation that will deal with this pilot program in Philadelphia and could be replicated on a national level, bringing bar owners and lenders together in a court-ordered process that could re-work loans that could not only help Main Street, but help to save Wall Street.

Other financial mortgage foreclosure diversion programs should be expanded to a Federal level. I would suggest that there be a national suspension of foreclosures throughout our Nation for the next 90 days. This would allow the agencies to develop help, to allow the agencies to develop programs that could be brought to local levels and create a win-win scenario for citizens in this country.

The bottom line is that if we do help create this win-win scenario, it will help Wall Street and help Main Street. I believe that what was done here today can be replicated throughout the Nation, and I urge you to bring that process forward.

Thank you.

Senator SPECTER. Thank you very much, Councilman Jones.

[The prepared statement of Curtis Jones appears as a submission for the record.]

Senator SPECTER. At the suggestion of Judge Rizzo, some of the homeowners have been invited in today. Judge Rizzo suggested

that this would be a good spot to hear from them, on a limited basis, trying to adhere to a one-minute time limit.

So, Judge Rizzo, you may proceed.

Judge RIZZO. Yes. Thank you. Thank you, Senator Specter.

We are blessed with the attendance of certain homeowners who have been through various conference phases of our program in this early offering, and want to share with you and the Committee some of the successes that they personally have experienced, but not only that, what had brought them to the point of having a situation such as this come into the court.

Before we go to our witnesses at table, I'd like to reference a Jean Ruffin in the audience, who is accompanied by Ian Phillips from ACORN. Jean was one of the true success stories when—Senator Casey visited. The mortgage commitment that she had from GMAC, based on a hearing and understanding the underpinnings of it and her situation as a senior in a residential home, which she had been in for many, many years, GMAC took the step to forgive the entire loan.

So, it is a success story to keep a woman who has had her homestead for many, many years there in residence with her family, so for that we always like to talk about Ms. Ruffin. She likes to come and participate, due to her gratefulness for the program. Ms. Ruffin.

[Applause.]

STATEMENT OF ERIC RHANEY, HOMEOWNER

Judge RIZZO. We have at table some other homeowners who have gone through the recent process, and I would like to start with Eric Rhaney, who is first, to speak just briefly about his experience.

Senator SPECTER. Thank you for joining us, Mr. Rhaney. We look forward to your comments.

Mr. RHANEY. Good morning, Senators, panel. My name is Eric Rhaney. I'm a union construction-laborer for Local 332. I've been a member for some 20 years. I live on West Oak Lane. I've been in my home for 40 years. My mother brought me in, raised me there. Later, we purchased the property. I assumed the property in 1986. How I got behind in my mortgage, I was hurt, job-related, unable to collect Workman's Comp.

During the same period of time, I went through, and continue to go through, a separation with my wife. That kind of messed up my funding. I'm also getting custody of my two children right now, so I'm having to pay a lawyer as well. Also, I didn't qualify for unemployment until February of 2008, and by that time it was too late for me to try to talk to the mortgage company.

Eventually I did manage to borrow some money and I approached my mortgage company, Citicorp, with $15,000. They refused the $15,000 because they wanted $16,000. During this time, I was working with the housing counselor, Tony Grant, from the Housing Association Information program, and he introduced me to this court and got me through all the hard work and late nights. He just got me through with this.

Judge RIZZO. Mr. Rainey, just to assist in this, you were in conference just recently, as of yesterday. Is that correct?

Mr. RHANEY. Yes, Your Honor.

Judge RIZZO. Yes. Okay. And actually a deal was struck yesterday with the help of a volunteer lawyer from Philadelphia VIP, Dan Siegel.

Mr. RHANEY. Dan Siegel, yes.

Senator SPECTER. So Mr. Rainey, you came into the program that Judge Rizzo administers. Then what happened?

Mr. RHANEY. Well, we struck a deal and I'm supposed to start my mortgage payments in December.

Senator SPECTER. You say you struck a deal and you're still in your home?

Mr. RHANEY. Yes.

Senator SPECTER. Okay. That's a good story.

Judge RIZZO. Yes.

Senator SPECTER. Next, Judge Rizzo?

[Applause.]

Judge RIZZO. Again, with the competent help of our housing counsel and our volunteer counsel. But let's hear also from Cynthia Henderson.

Ms. HENDERSON. I'm sorry. Can we go to the next witness?

Judge RIZZO. We can. Deborah Jackson Smith. Please.

STATEMENT OF DEBORAH JACKSON-SMITH, HOMEOWNER

Ms. JACKSON-SMITH. Good morning. Good morning, Senator Casey, Senator Specter.

Senator SPECTER. Good morning.

Senator CASEY. Good morning.

Ms. JACKSON-SMITH. Thank you very much, Judge Jones, and especially Judge Rizzo. I want to thank you for being here. I'm a homeowner as well. I've been in my home for approximately 20, 25 years. I am now in foreclosure. I originally started, in 1999, to have home repairs done and there was so much paperwork that had taken place, I was signing this, signing this for the home repairs, that I really and truly was not told what I really and truly was signing. I was just happy with getting the home repairs done.

Down the line, the home repairs fell through. The roof collapsed. It just was a disaster. I tried to make arrangements for them to come out to repair the home. Throughout the years, things just escalated, and escalated, and escalated. I'm paying them. I'm paying them. Before you know it, now I'm being told I have, now, another loan, another banker that has now taken over this loan.

Originally it started with the home repair service, then it became a bank. Then from the bank it became another bank, and then another bank, and during this time the interest increased, increased, increased. During this time I became a single parent of two, divorced. My job. I no longer had it after 13 years. I became in arrears. During this time, I'm trying to still pay, trying to still struggle and pay. Before you know it, boom. Now I have a letter that is sent out to me that—

Senator SPECTER. Did they then proceed for eviction?

Ms. JACKSON-SMITH. Yes.

Senator SPECTER. And you became part of Judge Rizzo's program?

Ms. JACKSON-SMITH. Judge Rizzo's program. And I want to say—

Senator SPECTER. And what happened?

Ms. JACKSON-SMITH. And from this I've had—thank goodness, I was introduced to PUP, which is the Public Unemployment Project, and I was introduced to a counsel by the name of Pamela Kinnebrew and Thurston Hymen, and the director, John Dodds. They have now introduced me to Judge Rizzo's program, which is the Foreclosure Diversion Program, which now has helped me.

Senator SPECTER. You're still in your home?

Ms. JACKSON-SMITH. I'm still in my home today because of this program.

Senator SPECTER. And you've worked out arrangements through Judge Rizzo's program to work it out?

Ms. JACKSON-SMITH. Yes. We are now in the process of that. I've had one—I've come to one conference. I've had one conference. Now what has happened is that, from that conference, we're going back again and we're going to be handling this outside of court because the bank did not have all of their paperwork correct on the day.

Senator SPECTER. But you're on your way to solving it?

Ms. JACKSON-SMITH. Yes. Yes. It's a good program and I want to say thank you.

Senator SPECTER. Judge Rizzo, let's see the next witness.

Ms. JACKSON-SMITH. Yes.

Judge RIZZO. Okay. Thank you. All right.

Tania Harrigan.

STATEMENT OF TANIA HARRIGAN, HOMEOWNER

Ms. HARRIGAN. Good morning, Senator Specter and Senator Casey. Thank you for taking time to hear our testimonies. My name is Tania Harrigan, and I'm also a member of the Philadelphia Unemployment Project. I reside in south Philly and I've been in my home for 8 years. I refinanced my mortgage because I needed renovations done after we bought the home. The broker came to my home and my interest rate was 9.75 percent. Our trouble began when my husband got laid off of work. We became behind in our mortgage and filed for bankruptcy. Our bankruptcy was dismissed because we could no longer afford the bankruptcy.

I came to PUP and my counselors were Pamela Kennebrew and Thurston Hymen, directed under the fellowship of Johnny Dodds. I've learned about the Foreclosure Diversion Pilot Program, which afforded me to have reconciliation with Judge Rizzo and able to obtain and stay in my home.

I was able to get a modified low interest, which went from 9.75 percent to 7 percent. The mortgage payments were reduced from $437 to $411. If it wasn't for the diversion program, I would have been facing a sheriff's sale on November 4th.

Senator SPECTER. Were you able to come to a figure that you could pay and stay in the house?

Ms. HARRIGAN. Yes.

Senator SPECTER. And you're in your house now?

Ms. HARRIGAN. They were able to work out a figure which would afford me to stay in my home, to have a place to live, and still continue to pay my mortgage payments.

Senator SPECTER. So you have a place to live and you're paying your mortgage payments, and it's all because of the program you've worked through with Judge Rizzo?

Ms. HARRIGAN. Yes. I thank God for Judge Rizzo for having great compassion, taking this in her bosom and just being able to live it.

Senator SPECTER. Thank you. Thank you very much for your testimony.

Is there another witness, Judge Rizzo?

Judge RIZZO. Our last witness, just briefly, would be Deborah Jackson-Smith to share her comments. I'm sorry, I apologize. Cynthia Henderson. I apologize.

STATEMENT OF CYNTHIA HENDERSON, HOMEOWNER

Ms. HENDERSON. Good morning, Senator Arlen Specter, Senator Casey, staff officials, and staff. I'm honored, first of all, to have the opportunity to speak on behalf—on my own behalf, as well as for some others, particularly my friends and family who find themselves in this very challenging position. Thank you for taking the time to listen.

I'm here to share with you the benefits and/or advantages I received from the HACE program, H–A–C–E, which, after some research I did, which was begun by ACORN, which is another housing counseling agency in this city, helped me to navigate some of the bill, if you will, with the foreclosure program.

As a teacher, I had an inkling to do some research and got it. This is what was given to me by LeAnn Washington—couldn't really understand all of the bill that was supposedly passed. After several encounters with the helpful people at HACE—beginning with Marybell Rosario, I was able to unravel some things concerning my home after facing the ARM.

I'm sure you're familiar with the adjustable rate mortgage. My home became problematic—divorce settlement and using my TSA—tax sheltered annuity—my mortgage changed from Challenge Financial Investors in Florida to Wells Fargo M&A Bank, which did not include, by the way, the tax and insurances.

Judge RIZZO. Ms. Henderson, could you share with the Senators your experience in our program?

Ms. HENDERSON. Yes.

Judge RIZZO. That would be great.

Ms. HENDERSON. I was allowed to propose—help to have a proposal written for me from Brendy Lopez and I was able to come down and meet with the attorney and Judge Anne Rizzo, who was phenomenal in helping to sort through some of these things. I'd still have to get a fixed rate and the adjustable ARM, we're still negotiating. I am still in my home.

Senator SPECTER. You are? You say you are still in your home?

Ms. HENDERSON. Yes, sir.

Senator SPECTER. And have you worked out an arrangement through Judge Rizzo's program to stay there?

Ms. HENDERSON. Yes, sir. We're still working on some things because—simply because—

Senator SPECTER. You're still working on it, but you think you're on your way to getting it worked out?

Ms. HENDERSON. Yes, I do, sir. I'm very confident of that. I'd like to have this not as an option, but mandatory for—situation that have had catastrophic effect on their lives—illness, medical situa-

tions, because if I did not seek the help that's there, I may not have known. I'd like to see something in place for people who are—

Senator SPECTER. We're going to come to that in our—Judge Rizzo, do you have one more final witness here?

Judge RIZZO. Not at this point with respect to our homeowners.

Senator SPECTER. Let us proceed with the final witness from the people who have been helped.

Judge RIZZO. Thank you.

Senator SPECTER. Who is the witness, Judge Rizzo?

Judge RIZZO. We will then go to George Gould, who is with Community Legal Services. He's managing attorney.

STATEMENT OF GEORGE GOULD, MANAGING ATTORNEY, HOUSING AND ENERGY UNIT, COMMUNITY LEGAL SERVICES, PHILADELPHIA

Mr. GOULD. Thank you very much, Senators Casey and Specter, for holding the hearing here today. My name is George Gould. I am the managing attorney of the Housing and Energy Units at Community Legal Services in Philadelphia.

Our office has been substantially involved in the problems of mortgage foreclosures for many, many years. In addition to having represented thousands of individuals in mortgage foreclosure cases, our office has also been involved in numerous broader issues to try to confront the serious problems that foreclosures cause in this country.

For example, in 1983, working with the Philadelphia Unemployment Project, PUP, John Dodds, sitting next to me, and the local sheriff, we were able to obtain through the Common Pleas Court a postponement of sheriff sales on owner-occupied properties for almost a year until our State legislature passed the Homeowners Emergency Mortgage Assistance Program, HEMAP, a program which provides substantial foreclosure relief to homeowners facing financial problems because of the country's economic recession.

In 2004, we again petitioned the Common Pleas Court with the sheriff to postpone foreclosure sales, which Judge Rizzo mentioned, which again led to the resolutions of hundreds of cases. Out of that case, the Honorable Annette Rizzo, Judge of the Common Pleas Court, instituted the Mortgage Foreclosure Steering Committee which created a court-supervised dialog between foreclosure attorneys and consumer attorneys and advocates.

In March of this year, President Judge Jones and Judge Rizzo convened an emergency meeting of the committee and informed the committee of the framework of the proposed residential diversion program. The committee has since had substantial input into the formulation and implementation of the diversion program.

Our office, along with the Philadelphia Legal Assistance, PLA, our sister agency, which also provides legal services to low-income persons, have continued to play an important role in the program. We have been actively involved in the training of the counseling agencies, private attorneys recruited by VIP, and JPTs, judge pro tems, who preside over the conciliation conferences. Our office also represents individual homeowners involved in the process and we continue to play an active role in the steering committee's involvement in the implementation of the program.

The Residential Mortgage Foreclosure Diversion Program is a bold and creative measure taken by our local Common Pleas Court under the strong leadership of Judge Jones and Judge Rizzo to address this most pressing problem.

There are numerous problems in communication between lenders and homeowners. Homeowners have often had great difficulty in trying to communicate with lenders or mortgage loan servicers regarding their mortgage problems. Under-staffed servicers of mortgage loans also had difficulty in trying to communicate with the homeowner, who was often overwhelmed by their circumstances and sometimes not able to adequately deal with the problem on their own.

The project created by our court helps to resolve many of these issues. It brings together both parties in a structured and organized way to help bring about a resolution of the issues. By postponing the sheriff's sale and setting up a conciliation conference presided by a judge pro tem, it gives the homeowner an opportunity, with the help of professional counseling and attorneys, to try to resolve their problems.

However, unlike the past where many of the problems were solely related to the financial circumstances of the homeowner, today we are faced with situations where the mortgage itself is often predatory and unaffordable, one that must be modified to become affordable and a performing loan.

The pilot created by the diversion program is a major step forward, however, it is not one without cost. Monies are needed to fund the counselors and foreclosure hotline operated by PLA that takes calls from homeowners and connects them with counseling agencies to help them prepare a financial analysis and suggested modification or work out other loans, VIP, and our office and PLA to help provide individual representation.

While the Housing and Economic Recovery Act of 2008 provided $30 million for legal assistance to homeowners facing foreclosure, the law had been recently interpreted to preclude any funding for legal assistance after a foreclosure action has been filed in court. This must be changed.

In addition to these resources, what has also proved to be extremely effective is outreach to the homeowner. What we have found is that the time the person is in foreclosure, they receive numerous mailings and are often very confused. If someone can literally go to their door, knock on it, and explain the program, this has been extremely helpful. Many groups, including ACORN in this city, have been extremely effective in getting people involved and getting people to participate in the program.

The program has been successful because it brings people together who often would have great difficulty or not even communicate with each other, but the program has some limits. For example, while clearly it is in the lender's interests to modify the loan so as to create a performing loan, situations occur because of the mortgage servicer's contract where resolutions are not achieved even though—

Senator SPECTER. Mr. Gould, how much more?

Mr. GOULD. Just about a minute.

Senator SPECTER. Thank you.

Mr. GOULD. Where resolutions are not achieved, even though it would be in the financial interest for the investor to do so. This is so because some of the servicers' contracts create incentives for servicers to foreclosure—they will be reimbursed their fees—rather than to modify a mortgage, which will create no additional compensation for them.

The recently passed financial rescue plan provides the Federal Government with the tools to make major inroads in the foreclosure problem. The Federal Government must take steps to obtain some of these mortgages and modify them to become affordable. By obtaining these mortgages, the government has the ability to make these loans affordable by reducing principal and interest rates and turn them into performing loans.

Another alternative would be for the Federal Government to take over the servicing of these loans, or the Federal Government should require any bank it invests in—this is under the recent bail-out-bill—it adopt procedures that systematically modify loans.

Senator SPECTER. Mr. Gould, your additional minute is now up.

Mr. GOULD. Excuse me?

Senator SPECTER. Your additional minute is now up.

Mr. GOULD. Okay. Anyway, we strongly urge the passage of legislation also allowing the modifications of mortgages within the bankruptcy process. Thank you.

Senator SPECTER. Thank you very much.

[The prepared statement of Mr. Gould appears as a submission for the record.]

Senator SPECTER. Our next witness is Mr. Brian Hudson, the CEO of the Pennsylvania Housing Finance Agency.

Welcome, Mr. Hudson. You have 5 minutes.

STATEMENT OF BRIAN HUDSON, CEO, PENNSYLVANIA HOUSING FINANCE AGENCY

Mr. HUDSON. Thank you, Senator Specter and Senator Casey. Thank you for the opportunity to speak to you today, and thank you for your support of affordable housing. I applaud your efforts to keep Pennsylvanians in their home. I also want to applaud Judge Rizzo, Judge Jones, and Councilman Jones.

PHFA was created in 1972 to provide safe, decent, affordable housing for Pennsylvanians. I would like to talk this morning about our foreclosure preventions. You heard the acronym HEMAP, Homeowners Emergency Mortgage Assistance Program, which was created in 1983 as a result of the downturn in the steel industry, which quickly spread throughout the Commonwealth.

HEMAP is funded by the general assembly. The requirement is that the homeowner has to be in default or in foreclosure through no fault of their own. In most cases, the homeowner receives a foreclosure notice after they are 60 days delinquent, which is known as an Act 91 notice. Applications may be made at any of the 100 counseling agencies that we have throughout the Commonwealth. If approved, the Agency will pay a partial or full mortgage payment on behalf of that homeowner for up to 24 months, and HEMAP would also serve two separate mortgages, if need be. We can be in no less than a third lien position.

Homeowners are only required to pay, at a minimum, $25 per month. Act 91 specifies that the home has to be the principal residence, and it has to be through no fault of their own. The qualifying criteria is that the homeowner must show the ability to resume its mortgage payments within 24 months. The average HEMAP model is about 11,000. To give you a comparison, the average cost of foreclosure runs about $35,000.

The Homeowners Emergency Mortgage Assistance Program is an example of how State government has, for a quarter century, successfully put its financial resources into helping homeowners, having saved 41,000 Pennsylvania homes from foreclosure, which is 170,000 separate individuals, to avoid the loss of their home.

The Commonwealth has appropriated $239 million since inception of the program. We have lent $430 million under this program. Repayments total approximately $240 million. HEMAP is recognized by Harvard University for two consecutive years as a top innovation in American government. A number of places have begun to duplicate the HEMAP program, Delaware and North Carolina, to name a few; 19,500 have fully repaid their loan to the Commonwealth.

But HEMAP was not designed to deal with our current crisis that we find ourselves in now, so I want to talk about some initiatives that we launched over a year ago: two refinance products to refinance homeowners who were in trouble.

The first one is called REAL, Refinance Through an Affordable Loan. That's for those homeowners who are just beginning to slip in their mortgages. They are no later than two late payments, just realizing that they're struggling with their mortgage. We have over 80 lenders' networks throughout Pennsylvania that will help underwrite that loan on behalf of PHFA, and then we will service that loan in-house and we will buy that loan from that lender.

We will do up to 100 percent loan-to-value for the REAL program. But REAL doesn't cover all of the problems that we're having, so we created another product called HERO, Homeowner Equity Recovery Opportunity. Now, this is for those homeowners who are clearly upside down in their mortgage, they were loaned more than the property's value. In that case, PHFA will negotiate on behalf of the homeowner with the lender to do a reduced mortgage and assign that mortgage to PHFA.

Again, we will do 100 percent of the loan-to-value. We do a new appraisal for the property and then have that loan assigned to PHFA. Over overriding criteria is, can we improve the financial situation of that homeowner? PFHA is going to the table with HERO to negotiate on behalf of that homeowner. In some cases, we are just beginning to see some of the lenders step forward. If not, lenders are willing to do modifications. We just want to make sure that homeowner stays in their home.

PHFA has put aside about $21 million so far. We've helped 170 homeowners in both REAL and HERO stay in their homes, and we are doing a direct mailing to over 20,000 Pennsylvanians that have adjustable rate mortgages, to have them come in and seek the help of either HERO, REAL, or get through the counseling network. We have a state-wide counseling network of over 120 agencies designed to analyze these loans and see if they fit for REAL or HERO.

What are the issues? A recent survey showed that Pennsylvania has 194,000 subprime mortgages. Of those total subprime mortgages, 132,000 were fixed rate that are at 15.3 percent delinquent, and 63,000 are adjustable rate mortgages, or ARMs, at 24 percent delinquent. So we're targeting those ARMs to get those people into our counseling network to see if we can get them refinanced into a HERO or REAL loan.

Many services or lenders are very slow and reluctant to negotiate and restructure their loans for fear of being held liable by investors. The service will allow them to modify their loans and—

Senator SPECTER. Mr. Hudson, how much more time will you need?

Mr. HUDSON. I'm just about done, Senator. Thank you. We will help restructure them. Establishing a reserve fund as a National Housing Trust Fund that the Senators have endorsed would be helpful to conserve the lost reserve. I hope this brief review of the programs being offered to the citizens of Pennsylvania will assist Congress and the members of the Senate in its efforts to hard-pressed homeowners.

Thank you very much for the opportunity today. Please, my best wishes, and your continued service is needed and appreciated. Thank you very much.

Senator SPECTER. Thanks very much, Mr. Hudson.

[The prepared statement of Mr. Hudson appears as a submission for the record.]

Senator SPECTER. Our next witness is Ms. Stephanie Seldin, managing attorney for the Philadelphia Law Works/Philadelphia VIP.

Thank you for joining us, Ms. Seldin. We look forward to your testimony.

STATEMENT OF STEFHANIE SELDIN, MANAGING ATTORNEY, PHILADELPHIA LAW WORKS/PHILADELPHIA VIP

Ms. SELDIN. Thank you for having me. Good morning, Senator Casey, Senator Specter, and distinguished witnesses and audience members. As the Senator said, I am managing attorney at Philadelphia VIP, and a member of the Mortgage Foreclosure Steering Committee.

VIP's mission is to promote equal access to justice for the poor. We work to secure pro bono civil legal services for more than 1,000 low-income individuals and families annually, and have done so since our inception in 1981.

We created the Philadelphia foreclosure rescue effort to recruit, train, and provide private lawyers to represent low-income homeowners attending the conciliation conferences. During the conciliation conferences in June, July, August, and September, VIP attorneys assisted 233 clients. VIP volunteers provided approximately $325,000 in free legal services to homeowners in just four months.

One hundred and fifty private practitioners from mostly small- and medium-sized law firms or solo practices are helping homeowners negotiate affordable workouts to avoid foreclosure through the diversion project. I want to express my appreciation to the Philadelphia Bar Association, Chancellor Michael Pratt, Business Law Section Chair Steve Foxman, and Mike Balent of the Real

Property Section for their untiring efforts to promote and support this effort.

However, VIP needs help to continue to provide that service. Our volunteers are representing two, three, or four clients and cannot take on any more. Even with 150 volunteer lawyers, we still need more attorneys to sign on, particularly from the large law firms.

VIP enjoys extraordinary relationships with the large law firms of this city. They have told us they want to participate in the Mortgage Foreclosure Diversion Project, but their hands are tied by conflicts of interest because many large law firms represent lenders, or they want to represent lenders.

The American Lawyer magazine reported that pro bono efforts across the country are stymied because of the conflicts issue mentioned by Senator Specter in your op-ed in today's Philadelphia Inquirer.

The New York Federal Reserve recently asked 10 banks to provide conflict waivers to their outside counsel to allow them to participate in a New York City Bar Association Mortgage Foreclosure Pro Bono Project. Five of them said yes and sent their firms' waivers, only five, and only for the New York City Bar Association effort.

We need all banks involved in residential mortgage lending, especially those receiving bail-out money from the Federal Government, to not only allow, but to encourage, their outside counsel to participate in pro bono opportunities to negotiate affordable workouts everywhere in this country.

I am asking the Senate Judiciary Committee to help make this happen, and I am encouraging the Pennsylvania Bankers Association to endorse my proposal today.

The second way you can help grow this pioneering project is to invest resources. First, we need money for the attorney experts who are providing valuable expertise and mentoring to VIP attorneys. Those experts are the legal services attorneys at Community Legal Services and Philadelphia Legal Assistance. Most of the VIP volunteers knew nothing about mortgage foreclosure until they came to a training led by CLS's Beth Goodell.

Second, I want to endorse more funding for housing counselors who work hand-in-hand with our volunteers to help keep homeowners in their homes.

Third, VIP wants to measure the success of this program, but frankly we do not have the expertise or the staff to do it. I request funding for an evaluation of the diversion project to be implemented by the Fels Institute of Government in collaboration with VIP and the Court of Common Pleas. VIP reached out to John Kromer, an expert in neighborhood recovery, from the—Fels Institute at the University of Pennsylvania to help us not only measure the impact of our work, but also to summarize and promote this effort nationally.

Finally, VIP's management of this new initiative is a significant investment of time and resources on an already tight budget and overworked staff. With the 233 mortgage foreclosure clients, we have increased our capacity by over 50 percent with no new staff.

Please consider using some of the new money that was spoken of at yesterday's Senate Banking Committee hearing where Sen-

ator Casey was to support the Mortgage Foreclosure Diversion Project and to implement new projects across the country so other jurisdictions can benefit from Philadelphia's success.

I conclude by applauding President Judge Darnell Jones and Judge Annette Rizzo for their extraordinary vision and hard work on this exceptional collaboration. Also, thanks so much to the amazing staff at the FJD, and to my colleagues on the Mortgage Foreclosure Steering Committee, including the lenders' representatives. Together we are doing groundbreaking work.

Senator SPECTER. How much more time do you need?

Ms. SELDIN. That's it. I'm done.

Senator SPECTER. Okay. Thank you.

[The prepared statement of Ms. Seldin appears as a submission for the record.]

Senator SPECTER. We now turn to Mr. John Dodds, Director of the Philadelphia Unemployment Project.

Thank you for joining us, Mr. Dodds. We look forward to your testimony.

STATEMENT OF JOHN DODDS, DIRECTOR, PHILADELPHIA UNEMPLOYMENT PROJECT

Mr. DODDS. All right. I've been asked to be brief, so I will be brief.

This program has really made a difference for homeowners in the city of Philadelphia. Our organization has been doing these cases since the inception. Just real briefly, of 55 cases that we have handled since back in June, 27 of those have had their mortgages modified, 13 have had the modification in process, which is 73 percent of these homeowners that have programs—modified loans.

These are all homeowners who were severely behind on their mortgages, were already scheduled for sheriff's sales, so we think that's a fairly incredible solution but it will be difficult to become a national model. The only concern that we have is that the interests of the servicers of the loans are not the same as the interests of the investors or the homeowners. Very often, financially, they do not have that same financial interest.

I think what's key, and I think Sheila Bair from the FDIC is starting to talk about this, is that we somehow step in and do the modifying of these loans. If we're going to go to a national program, I don't think the services are set up to handle the volume we'll have. I think we really need the government to take a step to say that it's in the interest of the investors of the financial institutions, of the families, and the homeowners to have performing loans.

It's very unlikely that with the current situation with loan servicers in this country that that will happen. It's working in Philadelphia because we're the first, but I don't know that it'll happen nationally. I think it's very important that the Congress and the government find a way to modify these loans, make them performing loans that work for everybody. That's going to be a step that we need to take beyond the current program. So, I thank you very much.

Senator SPECTER. Well, thank you very much, Mr. Dodds.

[The prepared statement of Mr. Dodds appears as a submission for the record.]

Senator SPECTER. We now turn to Mr. Michael White from the Pennsylvania Bankers Association.

Mr. White.

STATEMENT OF MICHAEL WHITE, PENNSYLVANIA BANKERS ASSOCIATION

Mr. WHITE. Thank you, Senator Specter and Senator Casey, for this opportunity to meet with you today. My name is Michael White. I'm a senior vice president at VIS Financial, a financial services company that does bank insurance investment and mortgage services, based in Wyomissing, Berk's County, Pennsylvania. I'm here today in my capacity as a member of the Pennsylvania Bankers Association's Credit Access Task Force Committee.

The PBA's members include 186 commercial banks, savings institutions, trust companies, and their affiliates in Pennsylvania, from the smallest to the largest. Elected officials, regulators, lawyers, financial institutions, and homeowners share a common goal in preventing home mortgage foreclosure wherever possible.

Effective home mortgage foreclosure prevention starts long before a homeowner ever misses a single payment. In fact, it starts long before a home is purchased. Home buyer and financial education are key components to any mortgage foreclosure plan. Many loan programs that require home buyer education have seen favorable results in reducing mortgage delinquency.

As a member of the board of directors of Neighborhood Housing Services of Reading, I have seen firsthand the benefits of budget counseling. October 16th was "Get Smart About Credit Day". Twenty-five hundred bankers visited schools across our Nation to teach credit management skills to elementary and secondary students.

Since 2003, over 400,000 students have been reached through this volunteer banker program. Bankers invest their time to educate kids because we firmly believe that good credit management is best learned early in life. That being said, the values of living within one's means, guarding assets, and saving for the future are best exemplified at home.

Other witnesses have outlined foreclosure prevention from their perspective as judges, attorneys, government administrators, and housing advocates in their communities. I speak from my 23 years as a commercial bank mortgage lender. I lend through federally and State regulated financial institutions. My institution and other members of the PBA are highly regulated and examined at either the State and Federal levels. Strong and solvent banks are critical to the health of our local communities. Bank officers and employees live where they work.

The banking industry has every incentive to treat our customers and our communities well, and has absolutely no reason to do otherwise. As commercial banks and savings institutions, we depend on our customers' financial well-being. Risky lending or mistreatment of borrowers would expose us to negative scrutiny not only from our regulatory agencies, but also from our shareholders and the communities in which we operate.

My institution is not a mortgage loan investor in the sense some investment banks were, nor are we a stand-alone mortgage loan

company or broker. Non-bank lender-brokers or investors are primarily interested in selling mortgages to generate fees or commission and that has differed markedly from commercial banks and savings institutions.

Bankers understand that some of our borrowers will face tough financial times and need our assistance working through them. If there's one message I could leave here today, it's that homeowners who foresee difficulty coming their way must contact their lenders immediately.

If they wait until they have missed one or more payments, their lenders' ability to help them has been greatly diminished. Some lenders will reach out to customers even prior to the assessment of late charges, while most lenders will make contact by phone and mail upon payments exceeding the grace period, which is typically only 15 days. Reputable lenders such as PBA members are anxious to work with their troubled borrowers to avoid foreclosure and will actively continue to attempt contacting the borrower through available avenues.

Those customers that have made contact and responded to lenders will often begin the process of evaluation of their particular situation and potential solutions. Some strategies that banks use are skipping payments, extending payments, accepting reduced payments, refinancing the current loan, modifying the current loan rate, or terms.

In addition, an additional solution to avoiding foreclosure may be the liquidation of the home. Although we would always prefer to keep the homeowner in the property, there are situations where selling the property and benefiting from the equity do make sense. Most lenders will work with borrowers who are actively attempting to market their homes in an effort to satisfy their mortgage.

If the home value exceeds the amount remaining due on the mortgage, the homeowner may want to ask the lender to agree in writing not to seek further collection remedies and grant a reasonable period of time to find alternative housing and vacate the premises in an orderly fashion. Some lenders may be able to work out an orderly exit, even where proceeds of the sale will not cover the amount of the remaining mortgage.

There is other assistance available. Borrowers who anticipate payment issues can also work with reputable local credit counseling organizations. Pennsylvania Housing Finance Agency is here today and discussed the longstanding and highly regarded statewide Homeowners Emergency Mortgage Assistance Program, known as HEMAP, which can provide relief for many homeowners.

A newly launched—

Senator SPECTER. Mr. White, how much more time will you need?

Mr. WHITE. Thirty seconds. The newly launched Hope for Homeowners program, which was created by Congress to help those at risk of foreclosure to refinance into more affordable, sustainable loans, is also available.

Although mortgage foreclosure is a bank's last source for repayment of a loan, banks would prefer to work toward a solution that avoids the foreclosure process. That said, banks also have an obligation to follow safety and soundness regulations and make at-

tempts to limit their losses that may negatively impact the institution, its depositors, and shareholders.

Foreclosures not only affect borrowers and lenders, but also the community. It is in everyone's best interests to have a program that provides an equitable solution for all parties in a cost-effective and expeditious timeframe.

Thank you very much for the opportunity to appear before you today to share the banking industry's perspective on this critical issue, and I stand ready to answer any questions you may have regarding my testimony. Thank you.

Senator SPECTER. Thank you, Mr. White.

[The prepared statement of Mr. White appears as a submission for the record.]

Senator SPECTER. Our final witness is Mr. Hiram Carmona, Assistant Contract Administrator, Housing Counseling, for the city. Thank you for being here today. The floor is yours.

STATEMENT OF HIRAM CARMONA, ASSISTANT CONTRACT ADMINISTRATOR, HOUSING COUNSELING, CITY OF PHILADELPHIA

Mr. CARMONA. Good morning, Senator Specter, Senator Casey, and members of the audience. My name is Hiram Carmona and I oversee the city of Philadelphia's Housing Counseling program.

I want to talk briefly about the costs associated with this program and the resources that the city has put into it. First of all, as you may know, the city of Philadelphia funds the largest and longest-standing housing counseling program in the Nation, for over 30 years. This year, the city supports 29 housing counseling agencies, with $3.6 million of CDBG funds. In order to meet the additional number of homeowners facing foreclosure, we have put an additional $700,000 of City funds into the housing counseling program, for a total of $4.3 million. Even though we might think that's a lot of money, to tell you the truth, we need more.

The city of Philadelphia has established a hotline. It's called "Save Your Home, Philly" hotline, which is managed by the Philadelphia Legal Assistance Corporation. The number of the hotline is 215–334–HOME. It's an easy number to remember. We have put additional resources to fund the hotline—the way that the program works, homeowners will get letters from the court telling the homeowners to contact the hotline. Homeowners must contact the hotline. They will get an appointment with the housing counselor. The housing counselor then will meet with the client and they both attend a conciliation conference. So, the hotline is a crucial part of the whole program.

Another important part of the program is the outreach. The City has been able to do outreach through our Neighborhood Advisory Committees—we call them NACs—through housing counseling agencies, and other City agencies. The outreach program has been very successful in making sure that homeowners attend the conferences. In fact, we did a comparison of the successes and we found that 73 percent of the people that are contacted door-to-door attend the conferences; 43 percent of those that were not contacted attend the conferences. So face-to-face contact with the homeowner is definitely an important part of the program. We've heard some

stories of all the successes, so I really don't want to get into it for lack of time. But in conclusion, I do want to recommend that the diversion program be replicated throughout the country.

Now, on the resources for the diversion program, I want to say this, that unfortunately the Housing and Economic Recovery Act of 2008, as it stands now, cannot be looked upon to assist with the implementation of the programs throughout the country. I would recommend, and the city of Philadelphia would like to see, an amendment to the Act to allow funding for the implementation of diversion programs throughout the country.

I know that Judge Rizzo mentioned over 200 home have been saved. We had 4 days of conferences last week. We had another day of conference yesterday. It's over 300 homes saved since the inception of the program. Just to let you know, the crucial role that housing counselors have with the program, we have over 700 cases still being negotiated. So the housing counselors are doing a lot of work and that's how we're going to make the program successful. We just want to make sure that we replicate it. I would ask you to provide funding to replicate this throughout our great Nation.

Thank you.

Senator SPECTER. Thank you very much, Mr. Carmona.

[The prepared statement of Mr. Carmona appears as a submission for the record.]

Senator SPECTER. President Judge Jones, we will now turn to the questioning by Senator Casey and myself. We will have 5 minutes as well.

President Judge JONES. Yes, sir.

Senator SPECTER. The suggestion was made by Councilman Jones about having a national moratorium legislated by Congress. I think Congress does have the authority to do that. But the question that Councilman Jones raises in my mind is as to whether it's better to have an act that came out of Washington or to rely upon State governments where States may have different kinds of problems, or even beyond that, to rely on innovative programs like the one which was initiated here in Common Pleas Court. What do you think?

President Judge JONES. Well, initially, Senator, it has been our experience—and I say "our" meaning Judge Rizzo and myself—that we would not want to interfere with the contractual relationship between parties, recognizing that the mortgage is a contract, on a scale that would allow or would encourage the undermining of the intent of the two entities to bargain for a mortgage.

That having been said, to me it is most important that the local municipalities and the State-level governments be sufficiently funded to be able to implement the kind of program that we have, and we know, frankly, by reason of our budgets here in the city of Philadelphia, and perhaps the one state-wide, we simply don't have enough money to be able to do that. That's why I think there's a call upon the Federal Government to put some funds into this process.

But in terms of control, I, frankly, think that no one knows better what needs to be done than those of us who are at the local level.

Senator SPECTER. Judge Rizzo, a big issue has been bringing the homeowners to the table. They're inundated with letters, documents, and legal papers in a very, very confused state.

What is the best way to approach this? To what extent have you structured proactive matters so that people like Mr. Gould and other counseling services, Ms. Seldin, will go out and look for them and sort of bang on their doors, to grab them by the scruff of their neck and bring them in to help them help themselves?

Judge RIZZO. Well, in that situation I think there's been a description of the process. To get the people in the chute, the outreach is critical. I call it hand-to-hand combat, people going into neighborhoods, knocking on the door, handing a cell phone to a homeowner that—

Senator SPECTER. In a lot of neighborhoods, it is hand-to-hand combat. How about that?

Judge RIZZO. I can tell you, that's right. But we appreciate the fact that when people come in befuddled and hopeless on many occasions, we have an infrastructure that can address those issues through our wonderful housing counselors, through our Community Legal Services groups, and other volunteer lawyers. But we have to get them there. That's my point: build it and they will come.

We have to do the outreach that actually gets the process started, and it's one of education and hopefulness that may lead to some success of them remaining in the home, or, as I may affectionately say, a graceful exit, where there is control of how they will leave the property in a dignified manner and then have to look forward to what that next phase will be in terms of their living relationship. In many respects, Senator, I call that a success as well.

Senator SPECTER. Councilman Jones, there has been a concern about predatory lending practices, people being loaned money which they cannot afford to repay. The bankers have not been concerned to get a down payment, at least to some extent, to go through the financial status of the individual with other obligations to see to it that they can make the payments. Bankers have relied upon the guarantees of Fannie Mae and Freddie Mac.

To what extent do you think that this has arisen because of overreaching by the lenders?

Councilman JONES. Well, clearly, I think I wouldn't say either party was trying to be overtly predatory. It's by virtue of rate of return that people saw an opportunity, where people had bad credit, they could charge more, and took advantage of that in a business model.

Where we are now, however, is where can we get to a win-win scenario. When you mentioned about the moratorium on the sheriff's sale, what that moratorium did was bring all parties to the table. That is why we suggested that maybe a national moratorium—and also, Senator Obama agrees with that notion and has said it publicly, because what it does is get all parties to the table earnestly to work it out. So no matter how we got there, it will take good will to work it out. That's what I hope to do, whether at a Federal level or at local levels' discretion.

Senator SPECTER. Before turning to Senator Casey, on the same question, Mr. White, I appreciated your comments about education, letting people have information and instruction as to what is real-

istic. What do you suggest should be done in the future to guard against even the semblance of a predatory practice, where the lenders—and you represent lenders—would be under some sort of a code, or perhaps even a statutory obligation, to see to it that the borrowers are counseled so that they know what the realism is on repaying the loans.

Mr. WHITE. Yes. I think that there are several programs out there that have home buyer education required based on either credit level, income level. As I say, my work with Neighborhood Housing Services, which we work with low-and moderate-income people, our delinquency rate is less than 1 percent because of home buyer education and specific financial budget counseling.

Senator SPECTER. If yours is less than 1 percent, where are these foreclosures coming from?

Mr. WHITE. Well, that's just for the loans in Neighborhood Housing Services of Reading. That's a fairly small pool of loans. Obviously, the foreclosures are coming from a national level. But we have found that education has definitely made an impact on the performance of loans, at what level that's going to be implemented.

A lot of the credit criteria have been established by, and are established by, the GSEs, so Freddie, Fannie are establishing the credit criteria under which most of the lenders operate, even in the conforming sector. Those credit criteria may have to tighten up, and a component of that I would recommend would be the educational criteria.

Senator SPECTER. Senator Casey.

Senator CASEY. Thank you very much. I was listening to Judge Rizzo and was reminded of the day we were here for the roundtable in August. We had a roundtable, which was very productive. We had people from all over the State. Then we went across the hall, or on to a different floor. We went into a courtroom. Judge Jones, I'm not sure what courtroom that was, but it was yours. So we went in and I was watching this program live. I mean, with all the intensity of courtrooms across the country, except a lot more people gathered in that courtroom.

The reason I'm telling the story, to give you a sense of the intensity, I was in the back, or to the side of the room. I sat down, or I was standing there—I forget which—and there was a counselor, I think, there. She was very intense about her work. She wanted to make sure that they had a modification and had it coming together. I was standing there. She looked at me and said, "Sir, I have a counseling session going on here. Please move."

[Laughter.]

Senator CASEY. So it gives you a sense of the intensity of that effort. That's good news. I didn't mind being shoved aside for the good of the order.

But I wanted to get a sense of the numbers. My numbers—I want to read this so I get it right. Judge Rizzo and Judge Jones can correct me if I'm wrong. But to date, nearly 230 properties have been saved from sheriff's sale, and an additional 200 properties have been postponed after conciliation conferences due to reasons—and then it lists the reasons. Is that right, the numbers that I—

Judge RIZZO. Basically, going through September—we didn't crunch our numbers yet for October—of the 1,500 homes, 230 we note as being saved outright by having the sheriff's sale stayed.

Senator CASEY. Two hundred thirty out of 1,500?

Judge RIZZO. No, it's more reduced. It was the people who came in, which would be another 700; 230 were saved, but another 330 homeowners were permitted to remain in the household because postponements were by agreement of lenders to have a window of time in which further loan modifications or other agreements could be worked out. They could be forbearance agreements. They could be forgiveness for a brief period of time.

What we found in these conciliation conferences is that, on a micro basis, again, creative ideas are brought forward that really are pertinent to this particular home situation. So, various things are crafted, whether it's a down payment and then there's, say, a lapse of a couple of months before they catch up, or waiting for certain benefits which would kick in for the certain homeowners. So, creativity abounds. But we do consider homeowners who have postponements of sale as a success and an opportunity to give time to work things out.

Senator CASEY. A really simple thing for me, and I think for others who aren't as involved in the work day to do, what percent would you categorize as successful? I realize that's a broad term. But can you put a number on that, an estimate?

Judge RIZZO. Well, I believe, Senator Specter, in your outreach letter to the other jurisdictions, to president judges, for which we're ever grateful, it's a figure of approximately 80 percent. That figure constitutes success in various forms. Of the homeowners who availed themselves of the program—we did have those who failed to appear for whatever reason, had vacated the property, gave up hope, or did not avail themselves for whatever reason or follow through—those numbers reflect an average of approximately 80 percent, 78 percent, who have gotten some success from the program of either outright sale, loan modification, or postponement so that deals could be worked out. There is that small percentage as well, which I mentioned, of graceful exit, which I do see as a success in situations which really means that the person has got to move on.

One, in particular I think of, there were two disabled adults in the property. The lender gave a significant amount of time in which they had to vacate, and also provided $4,000 in moving costs for them, to assist them in that graceful exit with dignity and compassion.

Senator CASEY. I couldn't help but note in the testimony, the word kept coming back over, and over, and over again, and I'm glad it did because it's getting to the point: counselors, or counseling. Counseling, counseling, counseling. It's so successful across the country.

I was one of the leaders in the Senate to insist upon getting $180 million of Federal money that's already been spent. I think it was spent this spring. We got another $150 million. We've got to keep getting money, tens, if not hundreds of millions more, for counseling because it works. It's a good an expenditure of taxpayer money as you can think of to keep people in their homes. The

Treasury Department told us that even in the subprime context, if you get counseling even in subprime, don't have a problem. So for those who are making policy in this country, whether it's us in the Senate, whether it's the House, or whether it's State government or municipal government, counseling dollars work real well. Councilman Jones, I appreciate the fact that you've been an advocate for that, as well as Councilwoman Tasco, and so many others who have pushed hard on this.

Finally, my time is up, but I wanted to to commend—I won't ask them a question, but I did want to commend the people who were here giving personal witness. You are courageous to be here and to tell your own stories. I want to make sure I got all the names right: Jean is here, We met Jean in August. Eric, Deborah, Tania, and Cynthia. Anyone else? Any first name that I missed?

[No response].

Senator CASEY. Thank you very much for your personal witness and telling your own stories.

Senator SPECTER. Thank you, Senator Casey. I believe that you're really on to something here, Judge Jones, Judge Rizzo. We appreciate your coming in. I think Senator Casey is exactly right. When we've heard from the people who have gone through the process, the expression is widely used, it puts a human face on the nature of the problem. We are wrestling with this at the national level.

Senator Casey is on key committees, Banking and Housing & Urban Development, and I'm on the Judiciary and Appropriations. The proposals that we're talking about now to have the FDIC or the Federal Government come in and guarantee mortgages, I have some doubt about because it just may encourage what happened before with the guarantees of Fannie Mae and Freddie Mac, where people didn't take the individual responsibility, as you are doing here. You're putting the people who loaned the money and the people who borrowed the money into a room and you're trying to work it out.

If the Federal Government is going to solve all the problems by saying we'll take care of it, there is no incentive to try to work it out. There may be, and doubtless are, some cases where you can't quite close the gap. It's very close, but you can't quite close the gap. Now, there, I think the Federal Government has a role. But I believe we ought to operate out of Washington only as a last resort.

We are all concerned about the national debt and the deficit, but we put greater emphasis on the daily problems of people being ousted from their homes, evicted, just very, very seriously. So we thank you for what you're doing here. I am enormously impressed with all the inquiries that have come to you from all over the country. Senator Casey and I can give it some greater publicity. There are people here from Financial Times in London, I understand, Reuter's, and—like dropping a pebble in a pond and it spreads out. It's really very encouraging to see this kind of innovation coming from this courthouse and our State.

Senator Casey, closing comments?

Senator CASEY. Very briefly. I want to thank Senator Specter for bringing the Judiciary Committee to Philadelphia for this critically important issue to our Commonwealth and our country.

[Applause.]

Senator CASEY. I do want to thank Judge Jones and Judge Rizzo for having us here in this courtroom, and all of our witnesses.

[Applause.]

Senator CASEY. Judge Rizzo, you had mentioned, and I failed to mention in my opening comments when I was summarizing all of the parties that are represented here, and I probably missed some, but I failed to mention Sheriff Green and his early leadership on this. We are grateful for his work.

We have a long way to go, but today it is clear that a lot of the good ideas come from communities across the country. All the answers are not, everyone knows, in Washington. So we're grateful to be here to learn more and to hope that this becomes the model for the rest of the country. We're going to work hard to make it so.

Thank you very much.

[Applause.]

Senator SPECTER. Thank you very much. That concludes the hearing.

[Whereupon, at 11:36 a.m. the hearing was adjourned.]

[Submissions for the record follows.]

SUBMISSIONS FOR THE RECORD

Senate Judiciary Committee Meeting, October 24, 2008

Hon. Arlen Specter, United States Senate, Pennsylvania

Testimony for Hiram Carmona, Assistant Contract Administrator, City of Philadelphia, Office of Housing and Community Development

Good morning, Senator Specter. I am Hiram Carmona, Assistant Contract Administrator at the City's Office of Housing and Community Development. I also oversee the City's Housing Counseling Program. I am here today to submit testimony regarding the City of Philadelphia's role in the Residential Mortgage Foreclosure Diversion Program.

The Diversion Program offers owner occupied homeowners facing foreclosure the opportunity to meet with the lender and housing counselor at a Conciliation Conference under the auspices of the Philadelphia Court of Common Pleas, in an effort to help them save their home. Owner occupants are notified by the Court to contact the Save Your Home Philly Hotline (215-334-HOME) to access housing counseling. At the Conferences, loan workout and other viable alternatives to foreclosure are negotiated.

I would like to take this opportunity to emphasize the resources the City has devoted to this program.

Philadelphia has one of the largest and longest standing housing counseling programs in the nation. Over the past 30 years, Community Development Block Grant (CDBG) funds have been allocated to support community based housing counseling to low and moderate income residents of Philadelphia. This year the City supports 29 housing counseling agencies with $3.6 million dollars of CDBG funds. In addition, in order to meet the increasing numbers of homeowners facing foreclosure, an additional $700,000 in City funds was recently added, for a total support of $4.3 million dollars.

The City of Philadelphia also established the Save Your Home Philly Hotline, which is managed by Philadelphia Legal Assistance. $340,000 in CDBG funds is allocated to this program, and the City is searching for additional resources to fill a funding gap brought on by the increased caller demand on the Hotline. In fact, calls to the Hotline tripled since January - from 150 per month to 460 per month. Once the homeowner calls the Save Your Home Philly Hotline, they are given an appointment to meet with a housing counselor. Furthermore, the City funds Community Legal Services with $350,000, to provide legal assistance to homeowners with predatory loans or in foreclosure.

Another important aspect of the City's contribution is its Door-to-door outreach, which has become an integral part of the Diversion program. The participation rate for homeowners that answered the door and had a direct encounter with an outreach team was 73 percent, compared to 48 percent for families that received no outreach. The door-to-door outreach is carried out primarily by the City's Neighborhood Advisory Committees (NACs), housing counseling agencies, and other City agencies. Although every owner occupant receives an official notice from the courts, families facing the crisis of foreclosure may become overwhelmed or discouraged, thus begin to disregard their mail, Court Notices included. When direct contact cannot be made, the outreach workers leave informational flyers. Since May of 2008, outreach teams have knocked on more than 1000 doors.

The Conciliation Conferences have already resulted in hundreds of success stories, such as:

- "Sam" was contacted through the door-to-door outreach program. His Adjustable Rate Mortgage was modified from a 22% interest rate to a fixed interest rate of 6%.

- "Mary" met with the lender in conciliation meetings and her loan payments went from from $1479 to $1124, by a reduction of the interest rate from 9.9% to 5.5%.

- "Mrs. Clark", an elderly woman, became behind on a home repair loan after an illness. Initially, the lender rejected repayment offers. However, at the Conciliation Conference, a forbearance agreement was reached.

In conclusion, while the City of Philadelphia supports Senator Specter's efforts to pass a bill authorizing federal judges to modify the terms of residential mortgages, we would also like to see the Diversion Program replicated elsewhere. To this effect, additional federal resources must be made available to every municipality that implements a program similar to ours, for there are significant costs associated with such an implementation. Unfortunately, the Housing and Economic Recovery Act of 2008 cannot be looked upon for this. Foreclosure prevention is not part of the Act, since it addresses vacant and already foreclosed properties only. An amendment to the Act to allow funding for implementation of Diversion Programs and other foreclosure prevention activities throughout the country would be a great benefit to homeowners everywhere facing foreclosure.

I wish to thank Senator Specter and the Senate Judiciary Committee for granting me this opportunity to testify.

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Testimony of John Dodds,

Director Philadelphia Unemployment Project

On the Philadelphia Mortgage Foreclosure Diversion Pilot Program

and Foreclosure Prevention

Before the Senate Judiciary Committee

October 24, 2008

Philadelphia Unemployment Project 112 N. Broad St. Philadelphia, PA 19102 215-557-0822

www.Philaup.org

My name is John Dodds, Director of the Philadelphia Unemployment Project, a non-profit membership organization that works with unemployed and low income people. We have worked on preventing foreclosures since the early 1980's.

Thank you Senator Specter for holding these hearings to highlight our efforts in Philadelphia to reduce mortgage foreclosures through the Mortgage Foreclosure Diversion Pilot Program.

We think that this program has the potential to be a national model. Certainly it is a godsend to distressed homeowners in the city of Philadelphia. What it does is set up a structured way, under the oversight of the courts, to modify the terms of unaffordable mortgages for Philadelphia homeowners.

While Philadelphia has not had the extreme increase in foreclosures that have been seen in other areas of the country the city has been targeted by the sub prime lenders. Sub prime loans became an ever growing part of mortgage lending in Philadelphia. In 2004 20% of all new mortgages were sub prime, in 2005 it was 31% and by 2006 37% of all new mortgages were sub prime. In many neighborhoods over 50% of the loans made in 2005 were sub prime. Clearly we had a problem that needed to be addressed before Philadelphia became another Cleveland or Phoenix.

As we know the growth of the subprime mortgage lending and other unconventional lending products has led to one of the most severe economic crises in decades in the United States. Massive defaults on these loans have rocked the financial industry and the stock market and are leading to a potentially devastating recession. We could debate who was at fault for this crisis- and we believe that a major cause was the mortgage industries becoming transfixed with the massive profits that subprime and other exotic mortgages products produced in the short term. Some homeowners joined the gold rush, while others were conned into taking loans that they would not be able to afford. So there are different points of view on who is at fault, but ultimately we need to find a solution to the economic crisis that we find ourselves in and the Diversion program has all the elements of that solution.

In my judgment the key to this national economic calamity is turning defaulting loans and foreclosures into performing loans that will generate a steady stream of income to shore up the mortgages backed securities that are at the root of the financial crisis. I am not alone in this assessment. FDIC Chair Sheila Bair, speaking on bail out efforts taken by the government, was quoted in the October 16 Wall Street Journal as saying, "But we're attacking it at the institutional level as opposed to the borrower level, and it's the borrowers defaulting. That is what's causing the distress at the institution level. So why not tackle the borrower problem?" An October 21 New York Times editorial stated "The unfortunate reality is that as long as millions of Americans continue to default on their mortgages and housing prices continue to slide, banks will continue to suffer big losses."

By managing the foreclosure process and requiring lenders and borrowers to sit down and negotiate with the aim of preventing a foreclosure, the Phhiladelphia Foreclosure Diversion Program has allowed subprime and defaulted loans to be modified and turned into performing loans. We have been impressed with the deals that have been secured for homeowners,

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particularly with families who had already been scheduled for Sheriffs Sale and were thus, quite far behind on mortgage payments. The first wave of properties stayed from Sheriff Sales scheduled from April to July of this year by the program have seen 230 homes permanently removed from sale and 200 others have had their sales postponed from one to five months. This is out of a total of 552 properties for a 78% success rate.

Our organization has been a part of the Diversion Program since the beginning, working with Judge Rizzo and the Foreclosure Steering Committee and we have handled a large number of cases. We have been tracking results and the early numbers are fairly incredible. Of 55 cases that PUP has handled from the June and August Conciliation Conferences 27 or 49% have had the mortgage modified. 13 more or 24% have a loan modification in process and the Sheriffs Sale has been postponed. Remember all of these homeowners had already been scheduled for Sheriffs Sale and most were substantially behind on their payments, some over 2 years. 73% of thses families secured or are in the process of securing a loan modification.

The Foreclosure Diversion Pilot Program gave them a second chance and allowed them to secure an affordable mortgage and keep their homes. Next to none of them would have been able to achieve these work outs without the Diversion Program. These are wins for families, wins for investors in mortgage backed securities and wins for communities that would have seen foreclosures and abandonment of properties.

Let me give some examples of loan modifications that have been negotiated. One homeowner was 18 months behind on his mortgage which was an Adjustable Rate Mortgage at 11.65%. Litton Loan Services agreed to reduce the loan to an 8% fixed rate and the monthly payments were reduced from $1,275 to $1,051. His arrears were capitalized. Another homeowner had a 10.75% ARM, which was reduced to a 6% fixed rate mortgage. Payments went down from $1,014 to $775. A third homeowner had her interest reduced from 13.75% to 8% for 5 years. Payments went down from $520 to $427. If all payments are made for the 5 years she would have her principal reduced by 3.5%.

This program is a major step in the right direction. Prior to the Court Order promulgated by Judge Darnell Jones and run by Judge Annette Rizzo we had to rely on voluntary work outs from servicers. It was often a very frustrating process to try to get work outs for our clients with the lenders. You could find yourself in voice mail maze and trying to get someone on the phone could be a real problem. Servicers would lose track of files, different loan officers would take over the cases and there was often competition between the collections departments and the loss mitigation departments. Often both departments would be proceeding at the same time and a work out was being attempted at the same time as a file was being sent for Sheriffs Sale. This was caused by the tremendous volume of foreclosures from around the country and a culture within servicers that has focused on collections for decades rather than loss mitigation. It is hard for some servicers to switch to a role that has aspects of a social service agency. But now in Philadelphia we have a program that forces lenders to make a real effort to get an affordable loan for homeowners and has court oversight of the process.

Thus, we have a model, but it cannot be transferred nationally without some alterations. There is a capacity issue to get a program like the Foreclosure Diversion Pilot Program geared up to a

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much larger scale. Governor Corzine of New Jersey is planning to implement this program in New Jersey, starting with the seven counties with the highest foreclosure rates. The rest of the counties are to follow. Senator Specter has encouraged Pennsylvania counties to follow suit. Once more locations begin to use this model things will change. There is a need for additional housing counselors and legal services attorneys to make this work. I know that money for housing counseling has been allocated, but more may be required. Courts that do oversight may need additional dollars.

However, I think where the program could really bog down if were to be made a national program would be with the servicers. We still have to fight a culture of decades of foreclosures as the answer to a defaulting loan as well as understaffing of loss mitigation departments. The massive surge in foreclosures means that the case by case modifying of loans will take greatly expanded staffing for loss mitigation. Many thousands of homeowners just fall through the cracks today. The Diversion program forces servicers to consider workouts or the end result is just pushed back further and further by postponing of Sheriff Sales. However, part of the reason it works is that it is unique and not happening everywhere. And even now there are lenders who do not commit staff with authority to modify loans to participate in Conciliation Conferences.

The incentive of mortgage servicers is not the same as the incentive of investors to modify defaulting loans. While investors and financial institutions are being killed by defaulting loans and would benefit from having a performing loan, even at a reduced interest and principal the servicers of the loans are actually dis-incented to do loan modifications. They get paid to do foreclosures but not to do loan modifications. The managing director of Deutsche Bank Securities estimates that it costs servicers $750 to $1,000 to complete a loan modification. So while fixing these loans may be in the interest of the economy, homeowners and communities and the investors who hold the mortgage backed securities, we are relying on servicers who do have any incentive to do the right thing.

We have a great deal of money available to save the economy right now. We should be using it to modify these defaulting loans. Foreclosure activity rose 70% nationally in the third quarter of this year over the third quarter of 2007. Foreclosures undercut housing costs as they sell at steep discounts or remain vacant and pull down neighboring property values. Until these mortgages can perform and make the securities that they underlie have some value, we are not going to resolve the financial crisis in this country.

Just like we put billions of dollars into the banks, it seems to me that the government should take over the servicing of mortgages and make sure that servicers offer homeowners affordable work outs so that we can have performing loans and return some value to the so called "toxic securities" held by so many financial institutions. If we wanted to make mortgages performing loans the Philadelphia Foreclosure Diversion Program is a great model. But we must be sure that the interests of those servicing the loans are the same as those of the rest of the country. The Treasury or the FDIC should make sure that this is the case and use some of the $700 billion dollars the Congress has allocated to either buy out or take some controlling interest in mortgage servicers. Then, like the FDIC is doing with the IndyMac Bank that it took over, they could do large scale modifications of troubled mortgages. This would protect homeowners,

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communities, investors and the overall health of the nation. It is a win win situation for all of us and we hope that the Committee will give this idea serious consideration.

One last point I'd like to make is that the effort to change bankruptcy law to allow judges to modify loans in bankruptcy is an important initiative also. It is needed to guarantee that homeowners have a safety net if all other efforts fail. So far all efforts, even the Philadelphia Diversion Program, count on voluntary efforts by lenders. Bankruptcy reform would guarantee that a Sheriff Sale is halted and that a disinterested party could oversee the resolution of a mortgage default. I hope that the Congress speedily enactts legislation allowing judges to modify loans in the bankruptcy process.

Thank you.

Testimony of George D. Gould, Esq.
Before the United States Senate
Judiciary Committee on
"Keeping Families In Their Homes:
How To Prevent Foreclosures - Part II"

Thank you for inviting me to testify on this extremely important issue - the mortgage foreclosure crisis facing our city, our state and our country. I am pleased to speak today on the success of the Residential Mortgage Foreclosure Diversion Pilot Program in Philadelphia.

I am the Managing Attorney of the Housing and Energy Units at Community Legal Services in Philadelphia. Our office has been substantially involved in the problems of mortgage foreclosures for many years. In addition to having represented thousands of individuals in mortgage foreclosure cases, our office has also been involved in numerous broader issues to try to confront the serious problems that foreclosure cause in this county. In the 1970's and early 80's, we were instrumental through litigation to ensure that the HUD Assignment Program properly functioned and were able to save thousands of FHA homeowners from foreclosure. In 1983 working with the Philadelphia Unemployment Project (PUP) and the local sheriff, we were able to obtain through the Common Pleas Court, a postponement of sheriff sales on owner occupied properties for almost a year until our state legislature passed the Homeowner's Emergency Mortgage

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Assistance Program (HEMAP), a program which provided substantial foreclosure relief to homeowners facing financial problems because of the country's economic recession. In 2004 we again petitioned the Common Pleas Court to postpone foreclosure sales which led to the resolution of hundreds of cases.

Out of that case the Honorable Annette Rizzo, Judge of the Common Pleas Court instituted the Mortgage Foreclosure Steering Committee which created a court supervised dialogue between foreclosure attorneys and consumer attorneys and advocates. In March of this year, President Judge Jones and Judge Rizzo convened an emergency meeting of the Committee and informed the Committee of the framework of the proposed Residential Mortgage Foreclosure Diversion Pilot Program. The Committee has since had substantial input into the formulation and implementation of the Mortgage Foreclosure Diversion Program.

Our office along with Philadelphia Legal Assistance (PLA - our sister agency, which also provides legal service to low income persons) have continued to play an important role in the Foreclosure Diversion Program. We have been actively involved in the training of counseling agencies, private attorneys (recruited by the Volunteers For the Indigent Program (VIP) to represent homeowners in the negotiation and conciliation conferences) and jpts (judge pro tempore) who preside over the conciliation conferences. Our office also represent individual homeowners involved in the process and

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continue to play an active role in the Mortgage Foreclosure Steering Committee's involvement in the implementation of the program.

The Residential Mortgage Foreclosure Diversion Pilot Program is a bold and creative measure taken by our local Common Pleas Court under the strong leadership of Judge Jones and Judge Rizzo to address the problems of foreclosures in this city.

There are numerous problems in communication between lenders and homeowners. Homeowners have often had great difficulty in trying to communicate with the lenders or mortgage loan servicers regarding their mortgage problems. Understaffed servicers of mortgage loans have also had difficulty in trying to communicate with the homeowner who is often overwhelmed by their circumstances and sometimes not able to adequately deal with the problem on their own. The process created by our court helps to resolve many of these issues. It brings together both parties in a structured and organized way to help bring about a resolution of the issues. By postponing the sheriff's sale and setting up conciliation conferences presided over by judge pro temps it gives the homeowner an opportunity with the help of professional counselors and attorneys to try to resolve the mortgage problems. However, unlike the past where many of the problems were solely related to the financial circumstances of the homeowners, today we are faced with situations where the mortgage itself is often predatory and unaffordable, one that must be modified to become an affordable and performing loan.

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The process created by the Mortgage Foreclosure Diversion Program is a major step forward. However, it is not one without monetary costs. Monies are needed to fund the counselors, the foreclosure hotline (operated by PLA, it takes calls from homeowners and connects them with counseling agencies to help them prepare a financial analysis and suggested modification or workouts of their mortgage problems),VIP and our office and PLA to help provide individual representation and implementation of the diversion program. While the Housing and Economic Recovery Act of 2008 provided 30 million dollars for legal assistance to homeowners facing foreclosure, the law has been interpreted to preclude any funding for legal assistance after a foreclosure action has been filed in court. This must be changed. In addition to these resources, what has also proved to be very important is outreach to the homeowners.

At the time a homeowner is faced with foreclosure they are often in a confused and overwhelming situation. They receive numerous mailing, from the servicer of the mortgage, bankruptcy attorneys and rescue "scams" which purport to help them save their homes. The letters from the court about the Diversion Program can often get "lost" in the avalanche of other mailings that the homeowner receives. We have found that personal outreach to the homeowner with face to face contact with an explanation of the Diversion Program can be an extremely effective way to involve homeowners in the process.

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The Diversion Program has been successful because it brings together the parties, the homeowners and lender, who would have difficulty or even not communicate with each other. But, the program has its limits. For example, while clearly it is in the lenders interest to modify the loan so as to create a performing loan, situations occur because of

the mortgage servicer's contract where resolutions are not achieved even though it would be in the financial interest of the lender or investor to do so. This is so because some of the servicer's contracts create incentives for servicers to foreclosure (they will be reimbursed their fees) rather than to modify the mortgage which will create no additional compensation for them.

The recently passed "financial rescue plan" provides the federal government with the tools to make major inroads in the foreclosure problem. The federal government must take aggressive steps to obtain some of these troubled mortgages and modify them to become affordable. By obtaining these mortgages the government has the ability to make the loans affordable by reducing principal and interest rates and turn them into performing loans. Another alternative would be for the federal government to take over the servicing of these loans so they can be appropriately modified. In addition the federal government should require that any bank it invests in adopt procedures that systematically modify the mortgages of families facing foreclosure. The FDIC has recently instituted such a program. These steps should be done immediately. They can

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work in tandem with a program such as established in Philadelphia to prevent any unnecessary mortgage foreclosures.

In addition we would strongly urge the passage of legislation allowing the modification of mortgages within the bankruptcy process. If this happened it would create clear incentives for lenders to negotiate and agree to modify the mortgage loan.

Finally, I would like to add a note about tenants who are often the innocent victims in the foreclosure process. If tenants are required to leave after a foreclosure and sheriff sale, steps must be taken at the federal level to ensure they are given adequate notice and time to leave their units. All efforts however, should be made to allow the tenants to remain in their homes and continue paying rent.

Thank you.

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My name is Tania Harrigan and I am a member of the Philadelphia Unemployment Project (PUP). I live in South Philadelphia and have been in my home for 8 years. I refinanced my mortgage because I needed renovations after we bought the house. I got the new mortgage from Citi at a 9.75% interest rate. The broker came to my house to do the closing.

Our trouble began when my husband got laid off. We got behind on our mortgage payments and filed for bankruptcy. We could not afford our bankruptcy and it got dismissed. Our house was listed for Sheriff Sale. We came to PUP and heard about the Foreclosure Diversion Pilot Program. I came to the court with Pamela Kennebrew, housing counselor for PUP and a deal got worked out with the mortgage company in the court room before a Conciliation Conference was needed. They modified my loan and the interest rate was lowered from 9.75% to 7%. My mortgage payment was reduced from $437.00 to $411.00. They also waived $6,500 in fees. The arrears were put back into a new 30 year fixed mortgage.

Our house would have been sold at Sheriff Sale on November 4, 2008 but now I have a loan that we can afford. Also the mortgage company has a performing loan that will bring them steady income. I really appreciate this Diversion program and Judge Rizzo for leading it. I thank God that I still have my home.

One other thing, some of our other members have mortgages with Countywide. We understand than 11 states won a law suit against Countrywide that will require them to modify loans and provide up to $8.7 billion to assist homeowners. Pennsylvania is not included in those 11 states but press reports say that other states can sign on the suit. Countrywide is the second largest mortgage company in Philadelphia and Senator Specter, we would like you to help get Pennsylvania to be made part of the suit, so that our people can benefit.

Thank you for allowing me to testify today.

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Testimony
by
Brian A. Hudson, Sr.
Executive Director and CEO
PENNSYLVANIA HOUSING FINANCE AGENCY
regarding

"Keeping Families in Their Homes: How to Prevent Foreclosures – Part II"
before the
Senate Judiciary Committee
Philadelphia Court of Common Pleas
Courtroom 653
Philadelphia, Pennsylvania

Friday, October 24, 2008

Chairman Specter, distinguished Members of the Judiciary Committee, fellow witnesses, ladies and gentlemen. Thank you very much for the opportunity to present this testimony on the Pennsylvania Housing Finance Agency's efforts to prevent foreclosures in the Commonwealth. I am Brian Hudson, Executive Director and CEO of the Pennsylvania Housing Finance Agency.

PHFA was created by the General Assembly in 1972, and is charged with supplying the capital necessary to fund high quality, affordable housing for older Pennsylvanians, families of modest means, and persons with disabilities. From the beginning, the Agency has enjoyed the support of the Nation's highest elected body in meeting the needs of Commonwealth citizens to buy and rent good places to live and it is grateful for that confidence.

PHFA initiatives help Pennsylvanians in three important areas: single-family homeownership financing, funding for multifamily rental housing development, and foreclosure prevention. Today I will direct my remarks solely to the Agency's foreclosure prevention efforts.

National Leader in Foreclosure Prevention
The Homeowners' Emergency Mortgage Assistance Program is a Commonwealth foreclosure prevention effort that had its origins in the wholesale sheriffs' sales taking place in Western Pennsylvania in the early 1980s following the closing of iron and steel mills and other smokestack industries. Workers who for generations had enjoyed secure, long-term employment found themselves unable to meet their financial obligations and many had lost their homes as a result.

Pennsylvania's General Assembly passed Act 91 of 1983 as a measure to help reverse this sad decline. It created the program, which gave my Agency the responsibility of developing the method to help those who, through no fault of their own, were in danger of losing their homes.

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In the most general sense, here is how the program works:

•Once a homeowner becomes at least 60 days delinquent in mortgage payments, the lender issues an "Act 91" notice, explaining the borrower's rights and responsibilities and providing information about applying to the program. If a timely application is made any foreclosure action is suspended until a decision is made.

•Applications can be made at almost 100 participating credit counseling agencies. Completed applications are forwarded to the Pennsylvania Housing Finance Agency for consideration.

•If approved, the Housing Agency cures the mortgage delinquency and may make payments on the borrower's behalf for a total of up to 24 months of assistance.

•PHFA may assist up to two separate mortgages.

•Borrowers make payments of $25.00 a month for each mortgage receiving assistance, and begin repaying the loan when their financial conditions allow as determined by a formula in Act 91. Interest does not begin to accrue on the HEMAP loan until a repayment plan is established.

Act 91 also specifies a number of criteria that determine HEMAP eligibility. Some of the more basic of these are:

•The dwelling involved must be an owner-occupied one-family or two-family property in Pennsylvania that is the borrower's principal residence.

•The delinquency must have been caused through no fault of the borrower.

•The borrower must have a "reasonable prospect" of being able to resume unassisted mortgage payments after HEMAP assistance ends.

The average size of a HEMAP loan is about $11,000, and the overwhelming reason for delinquency is the loss of a job.

The Homeowners' Emergency Mortgage Assistance Program is an example of how a state government has, for a quarter-century, successfully put its financial resources into helping homeowners having temporary financial setbacks. It has helped 41,000 families, nearly 170,000 separate individuals, avoid the loss of their homes.

By giving homeowners the assurance of steady mortgage payments for a reasonable length of time, the program allows them the opportunity to seek education, job training and alternate employment. This helps support family and community stability. The program is another layer of home insurance for beleaguered borrowers at a difficult time in their lives.

Because assistance is made as a loan with strict eligibility standards, HEMAP is able to

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leverage its own resources. Recipients are expected to be able to stand on their own financial feet after being enrolled in the program. Since inception, it has received $239,000,000 of appropriations, but has paid out nearly $430,000,000 in assistance loans. The difference is made up by the more than $240,000,000 of repayments from persons who have been enabled to make not only their own mortgage payments again, but to pay back their HEMAP loans. More than 19,500 recipients have repaid in full the money they borrowed.

HEMAP has been a national model of how foreclosures can be prevented, but it was never intended to handle the situation that has arisen over the past few years, with the onslaught of inflated appraisals, predatory lending, sub-prime mortgages, and adjustable rate loans forcing an ever greater number of families into delinquency.

New Initiatives to assist Homeowners with Sub-prime Mortgages

In August 2004, PHFA and the Department of Banking released a report on lending practices in Monroe County, Pennsylvania, which was being hit especially hard by foreclosures. That county, adjacent to the greater New York City metropolitan area, was being targeted with questionable marketing, lending and appraisal tactics. An outgrowth of this experience was PHFA's development of a statewide network offering free homeownership and foreclosure mitigation counseling. Additionally, legislation was developed and approved that required lenders to forward Act 91 foreclosure information to PHFA, and the Banking Department's regulatory authority over lending practices was strengthened.

Working parallel with these measures, PHFA developed the REAL and HERO programs to address the current mortgage foreclosure threat. REAL is an acronym for Refinance to an Affordable Loan. HERO stands for Homeowners Equity Recovery Opportunity.

Both programs are funded through PHFA's sale of taxable, and, subsequent to Congress's approval of the housing rescue package this summer, tax-exempt securities. Along with that, PHFA has set aside $10 million for a loss reserve fund, and PNC Bank has also loaned PHFA $5 million at a below-market interest rate for 15 years to assist. The City of Philadelphia has provided an additional million dollars of loss reserve funds to help City residents.

REAL
The REAL program offers affordable 30-year fixed interest rates to homeowners who are no longer able to afford their mortgage payments. Because the REAL program combines 100 percent financing with flexible credit underwriting, it offers relief to borrowers who otherwise may not qualify for existing mortgage refinance programs.

A network of approved lenders originates, closes, and sells REAL loans to the Agency.

The following is a summary of the program guidelines:
•The combined gross annual income of all borrowers may not exceed $120,000. This may

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be waived for consumers not eligible for a refinance loan available in the general market.

•Applicants may be up to 59 days behind on their existing mortgage and can include arrearages in the REAL loan amount.

•The applicant's monthly total debt obligations including the REAL loan payment may not be more than 50 percent of total gross monthly income (or 45 percent for borrowers with a credit score below 620).

•The REAL loan may be used to finance items such as subordinate mortgages, closing costs, prepayment penalties, delinquent property taxes, and arrearages that have occurred within the past 12 months after a payment reset.

•Borrowers must have a credit score of at least 620 or meet both of the following conditions:

1.The mortgage payment adjusted in the last 12 months to a higher interest rate or a fully amortized payment and the applicant has made no more than two, 30-day late payments since the adjustment. The mortgage payment history 12 months prior to the adjustment shows no history of late payments.

2.The credit history of other debt (car loan, credit cards, etc.) shows no more than three, 30-day late payments 12 months prior to the mortgage adjustment.

HERO Program
HERO is a loan program designed to improve the financial situation of Pennsylvanians who are not able to afford their current mortgage payments. This program is for borrowers not eligible for the REAL program or another mortgage refinance product available in the general market because of credit issues, or because they owe more than their home's current appraised value.

HERO provides for up to 100 percent financing, but, instead of the borrower refinancing into a new loan, PHFA purchases the loan directly from the current lender and then sets up an affordable repayment agreement with the homeowner. In cases where more is owed than the home's current value, PHFA may negotiate for a discounted purchase of the loan from the current lender or servicer. In some instances a HERO loan may be done as a refinance if the lender is not willing to sell but agrees to a short payoff.

Applicants will also be advised to contact the Pennsylvania Legal Aid Network office in their area to explore possible legal remedies to their mortgage situation. If appropriate, PHFA works with the Pennsylvania Department of Banking as well as the Pennsylvania Attorney General's Office to negotiate fair purchase terms with the current lender. PHFA-approved counseling agencies will provide debt and delinquency counseling to each HERO borrower to increase their level of financial literacy and help them learn how to more effectively manage their debt, budget their income and save money.

The interest rate for the HERO program is 7.95 percent with no points. This is a fixed rate,

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and there is no prepayment penalty. PHFA services all HERO loans. Property taxes and insurance are escrowed with the borrower's monthly mortgage payment.

The following is a summary of the program guidelines:
•The combined gross annual income of all borrowers may not exceed $120,000. This can be waived for consumers not eligible for a refinance loan available in the general market.

•Applicants must demonstrate an effort to meet financial obligations to the best of their ability.

•Applicants must have stable and sufficient income to maintain timely mortgage payments on the HERO loan.

•Applicants must own the mortgaged property and reside in it as a permanent residence.

•The home's current value must support the proposed HERO loan.

•The current lender must accept PHFA's terms and conditions for purchasing the loan.

ISSUES

A recent survey showed Pennsylvania having 194,430 sub-prime loans of which 18.3 percent were delinquent. Of the total sub-primes, 132,057 were fixed-rate with 15.31 percent being delinquent, and 63,373 were adjustable rate mortgages, showing 24.2 percent delinquencies.

Many servicers and lenders are very slow or reluctant to negotiate to restructure loans for fear of being held liable by investors. If servicers were allowed to modify loans with agreed upon standards, more homeowners could remain in their homes.

The establishment of a loss reserve fund for the restructured mortgages is critical for any refinancing initiative.

A strong education component should be mandatory to provide homeowners with an understanding of mortgage products and homeownership responsibilities.

Further information about PHFA programs may be viewed on the internet at www.phfa.org.

I hope this brief review of the programs being offered to citizens of Pennsylvania assists Congress in its efforts to help hard-pressed homeowners across the nation, and the Pennsylvania Housing Finance Agency stands ready to offer any advice and information it can to help with your efforts. I would like to extend my invitation to contact me or my staff if you have questions about any of the material provided to you.

Thank you very much for the opportunity to speak to you today, and please accept my best wishes as you continue your service. It is needed and appreciated.

TESTIMONY OF PHILADELPHIA CITY COUNCILMAN CURTIS JONES, JR.
BEFORE THE SENATE JUDICIARY COMMITTEE
ON
"KEEPING FAMILIES IN THEIR HOMES: HOW TO PREVENT FORECLOSURES—PART II"
Friday, October 24, 2008 10 AM
Philadelphia Court of Common Pleas, Courtroom 653

Good morning, Senator Specter and members of the Judiciary Committee. My name is Curtis Jones, Jr. and I am a member of the Philadelphia City Council representing the 4th Council District. Senator Specter is one of my constituents and I am honored to serve him as well as to have the opportunity to share with this committee my perspective on how the City of Philadelphia has been able to help stop mortgage foreclosure sales and in the process help create a mortgage foreclosure diversion program that is the first of its kind in the nation.

The importance of the Philadelphia experience is twofold. First, it was proactive and second, it was collaborative. In late January of this year I introduced, and City Council unanimously passed, Resolution 0890095 which authorized Council's Committee on Housing, Neighborhood Development and the Homeless to hold hearings on the issue of foreclosures. This resolution anticipated that the scheduled resetting of over two million sub-prime Adjustable Rate Mortgages (ARMs) over the ensuing 18 months could create a tsunami of foreclosures if something wasn't done. The hearing, which was held on February 21, 2008, brought together advocacy groups such as the

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Philadelphia Unemployment Project, ACORN and Community Legal Services, borrowers and representatives from our courts and the office of the Sheriff. The one weakness of the hearing was that no representatives from the lending community were present. In the upcoming weeks that led to the second Council resolution, Number 080331, which called upon the Sheriff and the Court of Common Pleas to impose a moratorium on residential foreclosure sales in Philadelphia, I began meeting with lenders to bring them into the process. It was my hope that if lenders and borrowers could agree to convert unaffordable loans into performing ones, a "win-win-win" scenario would occur—keeping homeowners in their homes, preventing the deterioration of neighborhoods and sparing lenders the costs, both in time and money, of a mortgage foreclosure sale.

I view the actions taken by Council as the beginning of a relay race. (And I would be remiss if I didn't acknowledge the groundbreaking work of my colleague Councilwoman Marian Tasco who has been a champion against predatory lending practices and who recognized the role that these unscrupulous loans play in the current foreclosure crisis.) That race was won because we vigorously ran our leg of the race, through the sponsoring of resolutions and holding hearings to focus a laser-beam on the problem. But we needed to hand the baton to other key players, the Sheriff, the Mayor and our Courts in order to see the successful creation and implementation of our Residential Mortgage Foreclosure Diversion Pilot Program. In the brief time that the

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Philadelphia Residential Mortgage Foreclosure Diversion Pilot Program has been in operation, almost all cases have resulted in re-worked loans. This bodes well for our city and if replicated, could pave the way toward the rebuilding of communities ravaged by foreclosures throughout our country.

Congress recently passed legislation to stem the current financial crisis that attacked Wall Street. The Philadelphia pilot program, which brings lenders and borrowers together in a court-sanctioned process to restructure non-performing loans into performing mortgages, helps Main Street. Our Residential Mortgage Foreclosure Diversion Program should be expanded into a federal program. I would suggest that there be a national suspension of residential foreclosures for 90 days, during which time an appropriate federal agency with oversight of mortgage banking regulations would help convert non-performing mortgages into performing loans. So as not to give the impression that this is a windfall for residential homeowners, the 90-day suspension period can be incorporated into the re-worked loan at the back end. Rather than wait until the borrower ends up in bankruptcy court, the Philadelphia approach helps to make an otherwise unaffordable loan affordable, and saves the mortgagor the expense and effort of having to put the property up for sale, which in the current market is a lengthy process.

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With strong commitment and leadership Congress can stem the flow of rampant residential mortgage foreclosures. If we can do it in Philadelphia, than I know it can work for the whole country.

Thank you for allowing me to address you and I'd be happy to answer any questions you might have.

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TESTIMONY OF THE HONORABLE ANNETTE M. RIZZO
COURT OF COMMON PLEAS, FIRST JUDICIAL DISTRICT
OF PENNSYLVANIA BEFORE
THE UNITED STATES SENATE JUDICIARY COMMITTEE

The Honorable Arlen Specter
The Honorable Robert C. Casey, ex-officio

October 24, 2008

"Build It and They Will Come!"

Senator Specter, Senator Casey, Councilman Jones, elected officials, judicial colleagues and distinguished members of the bar & community-

Special thanks to you, Senator Specter and Senator Casey for bringing to the forefront our actions in Philadelphia to stem the burgeoning rise of residential foreclosures in our local community-our efforts here have been publicized in a variety of media outlets which span the country and even the world.(Just yesterday Swedish National TV was in the courtroom during our session) Requests have come in from numerous jurisdictions within the Commonwealth and across the country which see us as a "national model" for early and direct resolution of foreclosure matters.

Senator Specter and Senator Casey-our mission here in Philadelphia is simple-early intervention in the legal path to foreclosure and ultimate sale of owner-occupied residences with the hope that homes may be saved-one address at a time!

First and foremost I want to share with you what the First Judicial District's Pilot Mortgage Foreclosure Diversionary Program is NOT about-it is NOT about entitlements, give aways, support of delay tactics, unwarranted breaks, abuse of the legal system, coercion to make deals or the abrogation of legal rights. It IS about setting the stage to promote good faith negotiations for parties to come to the table responsibly with the hope of borrowers remaining in their homes.

Our program was established in the Spring of this year in response to our Sheriff, John Green, canceling the entire Sheriff's Sale List in April of this year, 2008. His actions came on the heels of our City Council passing a Resolution to request of the Sheriff and our President Judge, C. Darnell Jones, to declare a moratorium on residential sales. In quick response Judges Jones and Webster Keogh, our Administrative Judge for the Trial Division, took affirmative action by establishing our present Program. To understand what we are now in the present-one has to understand what we were in the past!

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The true genesis of our current program, which became fully operational in just seven (7) weeks, actually began in 2004. At that time Sheriff Green had canceled the Sheriff's Sale list as well and had come before the Court to seek injunctive relief by way of a moratorium of sales. The matter was before me and though I did not grant the relief then sought, I did establish what would amount to be the prototype of the program we now have—taking time to look at cases/homeowner situations on a micro basis and foster the opportunity for the lenders and homeowners, through counsel, to negotiate favorable resolutions. Success was seen with many of the homeowners based on newly available state funding criteria-through HEMAP, however another significant result came from those proceedings.

The Sheriff at that time, argued to the Court that the Sheriff Sales system was "fundamentally broken" and needed to be fixed-I challenged him and the consumer and lender bar to work together to "fix it"! Such was the birth of the Mortgage Foreclosure Steering Committee which has been in force for some four years. During that time, meeting on a monthly or bi-monthly basis, the group has come together to tackle several procedural "fixes" to the local foreclosure process. Though the Committee members are advocates on opposing sides of the issues-they came together to make the process work- such as working on reduction of advertising costs for homeowners in the process, among other projects.

Now fast forwarding to 2008 this group was primed to face the present challenges and move swiftly to form our Diversionary Program. It is chaired by counsel to the Sheriff-Lesia Kuzma with stakeholder members on all sides of the issue along with representatives from the City's Office of Housing and Community Development, Housing Counseling Agencies, the Sheriff's Office, the Philadelphia Bar Association and other related community outreach groups some of whom are present here and I would ask they stand-the full Committee is listed in the Program's materials and I never miss an opportunity to openly applaud their ongoing efforts.

There exist two (2) major criteria of the Program-
1. The only cases eligible for the Program must involve Residential/Owner-Occupied Properties; and,
2. NO such property can go to Sheriff's Sale in Philadelphia without a "Conciliation Conference".

With respect to the "Day Forward" part of the Program, at the filing and service of a "Complaint in Foreclosure" upon the homeowner, "NOTICE" is given of a scheduled, mandatory conciliation conference. The Notice provides for the homeowner to call the "Save Your Home Hotline" to schedule an appointment with a Housing Counselor in preparation for the conference- homework must be done to make the discussions fruitful.

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With early intervention the goal is to reach homeowners who have not abandoned the properties out of hopelessness, and therefore will be maintaining the properties in better physical condition, subject to less arrearage with their mortgages, taxes, utilities, etc.

The Court made a tactical decision to create a "Day Backward" Program reaching back to literally pull homes off of the Sale block- aged and difficult cases where judgment against the homeowners had already been entered. In long discussion with our President Judge Jones we took the leap to attempt to save these homes from the gavel- our thinking and feeling being that the effort would be worth it and prove a testing ground for the program; i.e., if we could find any success with these cases- we would hope to have even more success with cases of less vintage.

To date all of our Conferences up until yesterday only had listings of "Day Backward" cases- tough cases in many ways. We are pleased to report success beyond anything we could have conceived-

As of the end of September, 2008 some 1,540 cases were scheduled for Conciliation Conference- approximately 63% of the homeowners participated- of the group 490 properties were saved from sale- either from outright settlement of the cases, stays of the sale or postponement of conferences to facilitate proposed settlements- another 330 cases were further postponed for several reasons- for settlement agreements, loan modifications, forbearance agreements or "graceful exits".

We anticipate more precise capturing of data as the program matures?.

I want to take a moment to talk about "grateful exit", a phrase I use to describe a case where it is not feasible for the homeowner to remain in the property. These are cases where there is no means by which a loan can be performing, and therefore this process again, on a micro level, fosters discussion on planned departure from the property. The conferences bring certainty to the parties and dignity to the homeowners in planning for the next phase of their living situations.

Lenders have in specific cases agreed to and have even proposed creative plans. In a recent case before me, a disabled homeowner and her son, both in wheel chairs, could not sustain payment on their home. After the assistance of a Judge Pro Tem in a conference setting, the lender agreed to a reasonable time in which the homeowner had to vacate, and also provided a stipend of $4, 000 in moving costs-certainty, compassion, dignity?.

More importantly you WILL HEAR FROM SOME HOMEOWNERS who had such success LIKE-

Eric Rhaney

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Deborah Jackson-Smith
Tania Harrigan
Cynthia Henderson

Who will share their stories-

"Build it and they will Come?"

One of the most frequently asked question to me about the Program is "How did you get the lenders to 'Buy In' to the "Program?" The response- they didn't buy into the program-they were the architects OF the program! Like all the stakeholders to the program in our Committee-the lenders have partnered with the Court to develop our Program and this is what I believe is the essence of the Program's successful functioning- an element I suggest is needed for creation of a program similar to ours in other jurisdictions-to have those who locally must operate under such a program be the same individuals who have a voice in developing it.

The Diversion Program utilizes proven case management techniques in new ways. It is challenging-for unlike other dockets-the overwhelming number of defendant/ homeowners proceed "pro se" which is why outreach by community groups such as PUP, ACORN and Associations under the Office of Housing and Community Development are critical to bring homeowners into the program. Their methods of "hand-to-hand" outreach have proven statistically successful- an important piece of the process as it gets the homeowners into the "chute" for counseling and ultimate conferencing.

To "stage" such theatre in the Courtroom, requires an orchestration of a variety of entities coming together which you will hear about: housing counselors, volunteer lawyers, judge pro tems (JPT's). The estimation of in-kind legal services alone for the JPT's amounts to well over $50, 000. It demonstrates collective effort in the true spirit of the program. I invite you to attend a Conference Day- when we are in session- you will "feel" the energy in the room. I believe Senator Casey had such an experience when he visited in one of our August sessions. "Organized Chaos" with a purpose!

This program has been built on collaboration among all branches of government-our Mayor, Michael Nutter who quickly mobilized and got the word out with a press conference, Public Service Announcements and an infusion of money into more counseling and legal services as well as the "Hero Fund"- bridge funding for homeowners to "cure" mortgage loans in default. As well City Council, our Sheriff's Office and the wonderful court administrators and staff under Judges Jones, Keogh and Sylvester have supported the Program's success.

The cost to "stage" this program has been shouldered by existing court budget although

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admittedly it presents a strain to existing operations and a challenge to future court budget- we welcome your support in this regard.

In sum, we continue to be a PILOT Program with a capital "P"- we are evolving as a living process as we gain more experience with these cases- our mission, however never waivers-

We are here to provide a micro-focus to citizen borrowers and lenders in the hopes of achieving as many performing mortgage agreements as possible- for the sanctity of these individuals, their families, and our community-

With the continued support and input from our valued stakeholders and the commitment of the wonderful members of the Court and First Judicial District staff we are encouraged that our efforts will be fruitful. We invite other jurisdictions within our Commonwealth borders and on a national level to partner with us in this endeavor and avail ourselves to achieve that goal.

Senator Specter and Senator Casey-we appreciate the "radar" you have placed to our program- your interest and outreach to other jurisdictions has put a real face to the current national-no, international debate. We applaud you for not forgetting that the undercurrent of the mammoth financial challenges now facing us as a nation begins with a Tania Harrigan, a Cynthia Henderson, an Eric Rhaney and the countless others like them.

Senator Specter, Senator Casey-

"Build it and They Will Come!"

Thank you.

Hon. Annette M. Rizzo

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TESTIMONY OF STEFANIE FLEISCHER SELDIN
MANAGING ATTORNEY, PHILADELPHIA VIP
U.S. SENATE JUDICIARY COMMITTEE HEARING
PHILADELPHIA, PENNSYLVANIA
OCTOBER 24, 2008

Senator Specter and Members of the Judiciary Committee:

My name is Stefanie Fleischer Seldin, and I am Managing Attorney at Philadelphia VIP and a member of the Mortgage Foreclosure Steering Committee formed by the Honorable Annette Rizzo in 2004 to address long-term foreclosure issues.

VIP's mission is to promote equal access to justice for the poor. We work to secure pro bono civil legal services for more than 1,000 low-income individuals and families annually, and have done so since our inception in 1981.

The vast number of low-income homeowners facing foreclosure cannot afford to hire attorneys to represent them. Judge Rizzo knew that pro bono legal assistance would be critical to the success of the Mortgage Foreclosure Diversion Project, and she turned to VIP to provide those volunteers. We created the Philadelphia Foreclosure Rescue Effort (Philly FReE), to recruit, train and provide private lawyers to represent low-income homeowners attending the conciliation conferences.

During the conciliation conferences in June, July, August and September, VIP attorneys assisted 233 clients. VIP volunteers provided approximately $325,000 in free legal services to homeowners in just four months.

VIP's clients are facing foreclosure because of unemployment due to injury or the economy. They have left jobs to provide for sick children or parents. They are senior citizens on fixed incomes trying to repair their disintegrating homes. Many are living solely on income from disability benefits. Too many face foreclosure because of predatory lenders or mortgage brokers who focused on their fees rather than their clients.

One hundred fifty private practitioners from mostly small and medium-sized law firms or solo practices are helping homeowners negotiate affordable work-outs to

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avoid foreclosure through this Diversion project. I want to express my appreciation to the Philadelphia Bar Association and its Chancellor Michael Pratt for untiring efforts to promote and support this effort.

However, VIP needs help to continue to provide this service. Our volunteers are representing two, three or four clients and cannot take on any more. Even with 150 volunteer lawyers, we still need more attorneys to sign on, particularly from the large law firms. VIP enjoys extraordinary relationships with the large law firms of this city, which have told us they want to participate in the Mortgage Foreclosure Diversion project. But their hands are tied by conflicts of interests because they represent lenders, or they want to represent lenders. *The American Lawyer* magazine reported that pro bono efforts across the country are stymied because of the conflicts issue.

The New York Federal Reserve recently asked ten banks to provide conflict waivers to their outside counsel to allow them to participate in a New York City Bar Association mortgage foreclosure pro bono project. Five of them said yes and sent their firms waivers. The waivers are only for the New York City pro bono project.

We need all banks involved in residential mortgage lending, especially those receiving bailout money from the federal government, to not merely allow, but to encourage their outside counsel to participate in pro bono opportunities to negotiate affordable work-outs everywhere in the country. I am asking the Senate Judiciary Committee to help make this happen, and I am encouraging the Pennsylvania Bankers Association to endorse my proposal today.

The second way you can help grow this pioneering project is to invest resources. Resources should be provided to four different components of this project: to legal aid agencies, to outcomes analysis, to housing counseling, and to pro bono agencies.

First, we need money for the attorney experts who are providing valuable expertise and mentoring to VIP volunteers. Those experts are the legal services attorneys at Community Legal Services (CLS) and Philadelphia Legal Assistance (PLA). Most of the VIP volunteers knew nothing about mortgage foreclosure until they came to a training led by CLS's Beth Goodell. Until the Diversion Project was initiated, VIP handled mortgage foreclosures only occasionally, so we do not yet have the internal expertise to support our volunteers. Without any funding for their work with VIP, CLS and PLA nevertheless provide their time and talent to VIP attorneys to ensure a successful outcome for homeowners.

Second, I want to endorse more funding for housing counselors. The housing counselors and VIP volunteers work hand-in-hand to help our clients keep their homes. Specifically, money should be directed toward outreach to homeowners to increase their participation in the Conciliation Conferences and for intensive training for counselors on how to create affordable work-outs.

Third, VIP wants to measure the success of this program but, frankly, we do not have the staff or expertise to do it. I request funding for an evaluation of the Diversion project to be implemented by the Fels Institute of Government in collaboration with VIP and the Court of

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Common Pleas. VIP reached out to John Kromer, an expert in neighborhood recovery from the Fels Institute of the University of Pennsylvania, to help us not only measure the impact of our work but also to summarize and promote this effort nationally. VIP wants to know the results of pro bono assistance: what were the terms of the work-out? Was a lower interest rate negotiated? Was the loan principal partially reduced? Did the lender waive late fees? With the answers to those questions and others, VIP can help homeowners achieve equivalent and more consistent results. VIP is actively searching for funding to support this evaluation.

Finally, VIP's management of this new, vital initiative is a significant investment of time and resources on an already tight budget and overworked staff. Before taking on this project, VIP already managed over 400 long-term housing cases with only three housing legal staff – two attorneys and a paralegal. With the 233 mortgage foreclosure clients, we have increased our capacity by over 50% with no additional staff. VIP's housing staff attend all Conciliation Conferences to provide technical assistance to volunteer attorneys, conduct intake with walk-in clients, assist in negotiations, and match on-call attorneys with walk-in clients. Back at the office, we coordinate trainings, schedule attorneys for conciliation conference duty, attend Mortgage Foreclosure Steering Committee meetings and answer attorney questions or direct them to our legal aid experts. Without additional funding, we are struggling to provide quality services to meet the demand.

The Bush administration is weighing a roughly $40 billion proposal to help forestall foreclosures. Please consider using some of this money to support this Mortgage Foreclosure Diversion Project and to implement new projects across the country so other jurisdictions can benefit from Philadelphia's success.

I conclude by applauding President Judge Darnell Jones and Judge Annette Rizzo for their extraordinary vision and hard work on this exceptional collaboration, and by thanking my colleagues on the Mortgage Foreclosure Steering Committee, including the lender's bar representatives. Together, we are doing groundbreaking work to abate Philadelphia's foreclosure crisis. Thank you, Senator Specter, for inviting me to testify today.

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Testimony before the United States Senate Judiciary Committee's

Field Hearing on Keeping Families in their Homes

Philadelphia, PA

October 24, 2008

Thank you, Senator Specter and Senator Casey, for this opportunity to meet with you today. My name is Michael L. White. I am Senior Vice President of VIST Financial, a financial services company offering banking, insurance, investment, and mortgage services based in Wyomissing, Berks County, Pennsylvania. I am here today in my capacity as a member of the Pennsylvania Bankers Association's (PBA) Credit Access Task Force. The PBA's members include 186 commercial banks, savings institutions, trust companies and their affiliates in Pennsylvania – from the smallest to the largest.

Elected officials, regulators, lawyers, financial institutions, and home-owners share a common goal in preventing home mortgage foreclosure whenever possible.

The best means of foreclosure prevention

Effective home mortgage foreclosure preventions starts long before a homeowner ever misses a single payment. In fact, it starts long before a home is purchased.

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Homebuyer and financial education are key components to any foreclosure prevention plan. Many loan programs that require home-buyer education have seen favorable results in reducing mortgage delinquency.

October 16th was "Get Smart About Credit Day". Twenty-five hundred bankers visited schools across our nation to teach credit management skills to elementary and secondary students. Since 2003 over 400,000 students have been reached through this volunteer banker program.

Bankers invest their time to educate kids because we firmly believe that careful credit management is best learned early in life. That being said, the values of living within one's means, guarding assets and saving for the future are best exemplified at home.

Banks care about their borrowers

Other witnesses will outline foreclosure prevention from their perspectives as judges, attorneys, government administrators and housing advocates in their communities.

I speak from my 23 years as a commercial bank mortgage lender. I lend through a federally and state-regulated financial institution. My institution and the other members of the PBA are highly-regulated and examined at either or both the state and federal levels.

Strong, sound banks are crucial to the health of our local communities. Bank officers and employees live where they work. The banking industry has every incentive to treat our customers and our communities well and absolutely no reason to do otherwise.

As commercial banks and savings institutions, we depend on our customers' financial well-being. Risky lending or mistreatment of borrowers would expose us to negative scrutiny not only from our regulatory agencies but also from our shareholders and the communities in which we operate.

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My institution is not a mortgage loan investor in the sense some investment banks were, nor are we a stand-alone mortgage loan company or broker. Non-bank lenders, brokers or investors are primarily interested in selling mortgages to generate fees or commissions and thus differ markedly from commercial banks and savings institutions.

Bankers understand that some of our borrowers will face financial tough times and need our assistance working through them. If there is one message I could leave here today, it is that homeowners who foresee difficulty coming their way must contact their lenders ***immediately***. If they wait until they have missed one or more payments, their lenders' ability to help them has been critically diminished.

Home mortgage work-out strategies

Calling your lender on the telephone is the best way to start. Some lenders will reach out to customers even prior to the assessment of a late charge, while most lenders will make contact by phone and mail upon payments exceeding the "grace" period (usually 15 days). Reputable lenders such as PBA's members are anxious to work with their troubled borrowers to avoid foreclosure and will actively continue to attempt contacting the borrower through available avenues.

Those customers that have made contact with or responded to lenders inquiries will then begin the process of evaluating their particular situation and potential solutions. Some strategies and potential solutions utilized are:

- Skipping payments
- Extending payments' due dates
- Accepting reduced payment for a period of time

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- Refinancing the current loan
- Modifying the current loan rate or terms

When leaving the home is inevitable

An additional solution to avoiding foreclosure would be the liquidation of the home. Although we would always prefer to keep the owner in the property, there are situations where selling the property and benefiting from the equity make sense. Most lenders will work with borrowers who are actively attempting to market their homes to satisfy the mortgage.

If the home's value exceeds the amount remaining due on the mortgage, the homeowner may want to ask the lender to agree in writing not to seek further collection remedies and grant a reasonable period of time to find alternative housing and vacate the premises in an orderly fashion. Some lenders may be able to work-out an orderly exit even where the proceeds of the sale will not cover the amount of the mortgage remaining due.

Other Assistance Available

Borrowers who anticipate payment issues can also work with reputable, local credit counselors and organizations.

The Pennsylvania Housing Finance Agency is here today to discuss its long-standing, highly regarded statewide home mortgage prevention program known as HEMAP which can provide relief for many home owners

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The newly-launched HOPE for Homeowners (H4H) program[1] was created by Congress to help those at risk of foreclosure refinance into more affordable, sustainable loans. H4H is an additional mortgage option designed to keep borrowers in their homes.

Summary

Although mortgage foreclosure is the bank's last source for repayment of a loan, banks would prefer to work towards a solution that avoids the foreclosure process. Banks also have an obligation to follow safety and soundness regulations and make attempts to limit losses that may negatively impact the institution, its depositors and shareholders. Foreclosures affect not only the borrowers and lenders, but also the community. It is in everyone's best interest to have a program that provides equitable solutions for all parties in an expeditious time frame.

Thank you very much for the opportunity to appear before you today to share the banking industry's perspective on this critical issue. I stand ready to answer any questions you may have regarding my testimony.

[1] The HOPE for Homeowners (H4H) program is effective from October 1, 2008 to September 30, 2011. FHA estimates that as many as 400,000 homeowners could avoid foreclosure through this program over the next three years. If borrowers are having trouble making mortgage payments, HOPE for Homeowners may be able to help by refinancing the loan into a new, 30-year, fixed rate, loan with lower payments. 1-888-995-HOPE is the number for the HOPE Now counseling hotline.

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