

**A Blueprint to Curb the Foreclosure Crisis**  
*National Consumer Law Center Attorney Testifies Before the U.S. Senate*

**Washington, D.C.** – The nation’s mortgage servicers—banks and other firms who accept mortgage payments and process foreclosures—have been lining their pockets at the expense of homeowners, communities and investors, and they must be reined in, according to Diane E. Thompson, counsel for the National Consumer Law Center. On May 12, 2011, Thompson [testified before a subcommittee of the U.S. Senate Banking Committee](#) in Washington, D.C. about the need for comprehensive national mortgage servicing standards and [submitted written testimony on behalf of the National Consumer Law Center’s low-income clients](#) and the [National Association of Consumer Attorneys](#).

“The lack of restraint on servicer abuses has created a moral hazard juggernaut that at best prolongs and deepens the current foreclosure crisis and at worst threatens our global economic security,” said Thompson. “Mortgage servicers do not believe that the rules that apply to everyone else apply to them. This lawless attitude, supported by financial incentives and too-often tolerated by regulators, is the root cause of the failure of the government’s Home Affordable Modification Program (HAMP), and the wrongful foreclosure of countless American families.”

Thompson urged Congress and the federal banking regulators to take bold action to establish comprehensive national servicing standards, and laid out more than 18 recommendations on how servicers should be regulated. “Key to any national servicing standards is the evaluation of a homeowner for a loan modification *prior* to the initiation of a foreclosure proceeding,” said Thompson. “The dual track system, of proceeding with a mortgage foreclosure and a loan modification at the same time, must be stopped and stopped absolutely to prevent wrongful foreclosures.”

Thompson pointed out that current measures are weak and ineffective, including HAMP, the new guidance for Fannie Mae and Freddie Mac, and the settlements between the bank regulators and the big banks. She also described why servicers foreclose instead of saving homes. At the root of servicer abuses is their own profit motive. “Forceplaced insurance and other excessive fees that push homeowners into default provide servicers with revenue. Modifications cost money in staffing that foreclosures do not. Robosigning can save servicers even more money.”

Ironically, while Thompson and others testified in the Senate about how to better protect homeowners after years of neglect and inaction by federal regulators, some members of Congress were attacking the only agency ever established to protect consumers in the face of industry overreaching: the new [U.S. Consumer Financial Protection Bureau](#).

The U.S. government must take immediate action to rein in servicer abuses and restore transparency to the mortgage markets. To restore rationality to our market, Thompson laid out the following blueprint for comprehensive national mortgage servicing standards.

### **Recommendations for National Mortgage Servicing Standards**

- Eliminate the two-track system. Homeowners should be evaluated for a loan modification before a foreclosure is initiated or continued, and that evaluation (and offer of a loan modification, if the homeowner qualifies for a loan modification) should be completed before any foreclosure fees are incurred. Such a requirement could be imposed by legislation or by regulation.
- The failure to offer loan modifications to homeowners, where doing so is predicted to save the investor money under the Net Present Value test, must be made a clear and absolute defense to foreclosure, in both judicial and non-judicial foreclosure states.
- Net Present Value tests for modifications should be standardized and made public.
- Loan modifications for qualified homeowners facing hardship, including those in bankruptcy, should be permanent, affordable, assumable, and available without any waiver of a homeowner's legal rights. Where appropriate, principal reduction should be prioritized and available in a modification as well through bankruptcy.
- Homeowners denied a loan modification should receive a written servicer communication documenting the NPV inputs, any relevant investor restrictions and efforts to obtain an exception, and the appeal process. Appeals should be processed before a foreclosure commences or continues.
- Borrowers should be provided with access to full documentation of any investor restrictions, as well as all servicer attempts to procure a waiver, upon any denial based on investor guidelines.
- Servicers must be required to seek, and investors should be encouraged to grant, waivers of any restrictions prohibiting modifications.
- Homeowners must be provided the tools to focus servicer attention on resolving individual cases.
- Quality mediation programs should be funded in every community to provide an opportunity to resolve disputes outside of litigation.

- Funding for legal services lawyers representing homeowners facing foreclosure must be increased to allow our adversarial justice system to function as designed.
- Principal reductions should be mandated where they return a net benefit to the investor and permitted via judicial modification.
- Fees to servicers must be limited to those both reasonable and necessary for them to carry out their legitimate activities. Default-related fees should not remain an unconstrained profit center for servicers.
- Force-placed insurance should be replaced by a default reliance on replacing the existing coverage at a reasonable price.
- Transfer notices and periodic statements should be used to increase servicing transparency.
- Application of payments and use of suspense accounts should be fair and reasonable.
- Foreclosure documentation and notice standards should be established.
- A national system for assisting unemployed homeowners should be established. Unemployed homeowners should be provided with substantial forbearance options and the nascent Emergency Homeowner Loan Program (EHLPP) must be made permanent and properly funded. In addition, the current funds for EHLPP should be distributed to the states on a timeline that allows maximum distribution. Unemployed homeowners were promised assistance over a year ago and most of them are still waiting for a program where they live to be finalized.
- National standards must be a floor, not a ceiling, so states can play the traditional role of legal laboratories to further protect homeowners, investors, and communities.

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National Consumer Law Center<sup>®</sup> (NCLC<sup>®</sup>) is a non-profit organization specializing in consumer issues on behalf of low-income and other vulnerable people. Since 1969, NCLC has worked with legal services and nonprofit organizations as well as government and private attorneys across the United States, to create sound public policy for low-income and elderly individuals on consumer issues.