

SENATE BANKING COMMITTEE

Hearing on "Predatory Mortgage Lending: The Problem, Impact and Responses." First Hearing in a Series

Prepared Testimony of Ms. Mary Podelco Private Citizen

10:00 a.m., Thursday, July 26, 2001 - Dirksen 538

Mr. Chairman, thank you for the invitation to speak here today. My name is Mary Podelco and I live in Montgomery, West Virginia. I grew up in West Virginia and went through the sixth grade. I moved to Indiana where my husband and I worked in factories. I had four children with my husband of 19 years and was widowed for the first time in 1967. After I was widowed the first time, I moved back to West Virginia and worked as a waitress, paid all my bills and rent in cash. When I remarried in 1987, my husband Richard and I were very proud that we were finally able to purchase our own small home. He worked as a maintenance worker and passed away in June 1994. I became the sole owner. In July, 1994, I paid off the \$19,000 owed on the home from the insurance from my husband's death. Before my husband's death I had never had a checking account or a credit card. I had always paid my bills in cash and tried to be an upstanding, responsible citizen. I do not drive and never owned a car.

In 1995 I received a letter from Beneficial Finance offering to lend me money to do home improvements. I thought it was a good idea to put some new windows and a new heating system in my home. I signed a loan with Beneficial in May of 1995. This was the beginning of my troubles. My monthly income at that time was \$458 from Social Security and my payments were more than half of this. They took a loan on my house of about \$11,921. First flip: The very next month, Beneficial talked me into refinancing the home loan for \$16,256. I did not understand that every time I did a new loan, I was being charged a bunch of fees.

Second flip: I began getting calls from people trying to refinance my mortgage all hours of the day and night. I received a letter from United Companies Lending telling me that I could

save money by paying off the Beneficial loan. On September 28, 1995, I signed papers in their office; more fees were added and the loan went to \$24,300 at an interest rate of 13.5%.

Third flip: Just a few months later I received a letter from Beneficial telling me I could save money by paying off United and going back to Beneficial. The loan was about \$26,000. On December 14, 1995, according to the papers, Beneficial paid off United again charging me more fees and costs.

Fourth flip: In February of 1996, Beneficial advised me that it was time for me to refinance again. The loan papers show that I was charged a finance charge of \$18,192 plus other fees and an interest rate of 14%. By the end of February, I had had five different loans in ten months. I didn't understand that they were adding a lot of charges each time.

Fifth flip: After that I was called by Equity One by telephone to refinance the loan. On May 28, 1996, I signed papers with Equity One in Beckley, West Virginia. The new loan paid off the Beneficial loan (which was for sixty months) and replaced it with a loan for \$28,850 for 180 months which I understand

increased my total loan from \$45,000 to over \$64,000. I got \$21.70 cash out of the loan. My monthly payments were set at \$355.58. They charged me closing costs of over \$1,100. Sixth flip: Then on June 13, Equity One suggested that I needed another loan to pay off a side debt and they loaned me \$1,960 at over 26% interest. Monthly payments were \$79.00. This loan brought my monthly payments to Equity One to over \$434 a month. My monthly income at that time was \$470. I really couldn't make the payments. My granddaughter had a monthly income from SSI but by law I cannot use her money for my benefit.

Seventh flip: Then on August 13, Equity One started me on another loan. I was later told that Equity One was acting as a broker for an out of state lender - Cityscape. This new loan was all arranged through the Equity One office to "help me" by lowering my payments. This loan included \$2,770 in new fees and costs. There were a whole lot of papers with this Cityscape loan that I didn't understand. The payments were still too much.

Foreclosure: I missed my first payment when my brother died in December 1996. Cityscape said they wouldn't take any late payment from me unless I made up for the missed payment. I couldn't do it. Later in 1997, I lost my home to foreclosure by Cityscape. I now understand that these lenders pushed me into loans I couldn't pay. Adding all of these fees and costs each time caused me to lose my home, a home that I owned free and clear shortly after my husband died.

Statement of Counsel, Daniel F. Hedges,

Mountain State Justice, Inc. on Behalf of Mary Podelco

In thirty years of representing low income consumers, I have always observed some level of home improvement fraud (particularly in the decade of the '70s, to a lesser extent in the '80s). In the last five to seven years, however, there has been an explosion of predatory home equity lending and flipping. Predatory practices on low income consumers, and in particular, vulnerable consumers such as the elderly, illiterate working families and minorities, have become routine.

Current law provides no meaningful restriction on the kind of flipping that occurred in Ms. Podelco's case and occurs in hundreds of other cases per year in my state, which results in the skimming of equity from borrowers in their homes. Meaningful prohibition of flipping calls for a simplified remedy (e.g., the prohibition of charging new fees and points). West Virginia had such a time limitation on refinancing by the same lender and charging new points and fees. The 2000 enactment was repealed in 2001, after the new Banking Commissioner pushed for the elimination of that restriction at the industry's behest.

The opportunity for recurring closing points and fees financed in the loan and the lender to be rewarded immediately for refinancing leads to disregard of whether or not a borrower can repay. Mrs. Podelco is typical of a frequent pattern of consistent loan flipping with the last loan pushed off onto another lender who takes the loss. Ms. Podelco provides one example of hundreds of West Virginians. On these loans no laws are being broken but the flipping is so exploitive that it results in loss of the individual's equity in their home, and ultimately in many cases the loss of the home, forcing the elderly or otherwise vulnerable citizens out of their residence.

A meaningful cap on fees and on financing points and fees would have a substantial impact upon these exploitive loans.

I would urge the Committee to consider an easy definition that limits high points and fees up front and provides other protections against exploitive equity based lending, a system that rewards the lender immediately on closing, no matter what the fees, regardless of whether the borrower pays, and provides economic incentive for this type of conduct to continue unchecked.

A single definition of high points and fees is easily enforceable. Lowering the HOEPA points and fee trigger to the greater of 4% of the loan amount or \$1,000 is a first step but it is still not low enough to prevent the abuses. The proposed legislation will be helpful in (1) prohibiting balloon mortgages, (2) creating additional protections in home improvement loans, (3) expanding the TILA rescission as a remedy for violations of all HOEPA prohibitions, (4) prohibiting the sale of lump sum credit insurance and other life and health insurance in conjunction with these loans, and (5) limiting mandatory arbitration.

Virtually all of the subprime balloon mortgages observed in my state are very exploitive to the consumer. The fact of such balloon payment predestines foreclosure for the consumer in many cases.

Mandatory arbitration clauses are now used by the majority of home equity lenders and they are increasing daily as the technique to deny consumers any meaningful opportunity to contest the loss of their home. Arbitrators selected by the creditors now decide whether a consumer gets to keep his home. Notwithstanding the fact that there are many exploitive abuses, the arbitrator designated by the lender in the loan agreement now decides the merits of all claims. Practically speaking, this means that the consumer loses, and arbitration rules provide that the practices of the lender are kept confidential.

In the subprime mortgage context, i.e outside of conventional loans, there is an urgency to address the following exploitive lending practices:

(1) Prohibition of mandatory arbitration clauses in all subprime loans.

(2) Prohibition of subprime balloon payment loans. Low income borrowers generally cannot meet these loans and the lender cannot expect them to make a balloon payment. Such loans assure (a) the loss of a home or (b) require refinancing on usually very exploitive terms if the borrower can even get the loan.

(3) Excessive interest rates, not justified by any additional risk, are frequent for the vulnerable consumer groups. The risk is covered by the real property security.

(4) Broker kickbacks should be prohibited. They are a very anti-competitive practice and in the subprime market result primarily in increasing the cost.

(5) Home solicitation scams have been with us for many years but as a means for skimming the equity from unsophisticated consumers, home equity lenders are now more frequently using them as a solicitation tool.

(6) Altered and falsified loan applications are now becoming commonplace in the subprime market. These are altered after signature by fudging the income of the prospective borrower or by alteration of the proposed loan amount. The impact is a level of payments that the consumer cannot make.

(7) Credit insurance packing (by consumer finance companies) into regular, non-home secured consumer loans and flipping them into home equity secured loans is commonplace. Consumer finance loans with five insurance policies are commonplace to a greater extent than home equity loans with

credit life insurance.

(8) Excessive loan points and broker fees are primary incentives to abuses. Conventional mortgages with 1 - 1 ½ % broker fees are standard, while the lack of sophistication of vulnerable groups leads to broker compensation of three to seven percent. These are very discriminatory to unsophisticated consumers given the similarity in the work performed.

(9) Excessive loan to value loans. 125% to 200% of actual market value loans are not uncommon for brokered loans given the financial incentives to flip, and the lack of any concern for ability of the borrower to pay. The broker's only concern is closing the loan for the fee.

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