July 15, 2013

Mr. Timothy G. Massad
Assistant Secretary and Counselor to the Secretary
Office of Financial Stability
U.S. Department of the Treasury
1550 Pennsylvania Ave, N.W.
Washington, DC 20036

Re: Home Affordable Modification Program

Dear Assistant Secretary Massad,

The extension of the HAMP program—a welcome development—offers an opportunity for improved enforcement of its rules, along with some needed fine tuning of program guidelines and a chance to increase access to the program for certain homeowners who could benefit from modest program adjustments. The HAMP rules haves provided a strong model for how to increase the availability of affordable loan modifications while providing sustainable outcomes for investors, but more should be done to make its benefits available to more homeowners and prevent unnecessary foreclosures. Increased transparency about program outcomes also would ensure fair access to the program and inform the broader debate about the housing recovery and the effects of ongoing foreclosures. We look forward to working with you to address the issues we discuss below.

A. Improve Servicer Compliance with Program Rules.

1. HAMP enforcement still needs to be significantly strengthened.

Dual tracking and other violations of HAMP remain endemic despite the HAMP rules, the National Mortgage Settlement, improved guidance from Fannie and Freddie, and the OCC and FRB consent agreements. Treasury must actively monitor servicers' compliance, ensure that servicers' internal policies, procedures, and compensation systems encourage compliance, and take effective action when servicers breach the contract rules to which the servicers themselves have already agreed. Treasury should ensure that homeowners who have been subject to wrongful foreclosure receive relief.

2. Homeowners need an effective third-party appeals process.

Servicers' in-house escalation teams are often no more responsive than line-level loan modification staff. Homeowners and their advocates have difficulty accessing the HAMP Solutions Center (HSC). Homeowners who are unrepresented cannot access the HSC. Attorneys are sometimes told that they also cannot access the HSC, particularly if they do not work for a nonprofit. Advocates circulate lists of tips to get better results in dealing with HSC, which include: if you get an email response and the response is not helpful, clearing the subject line will ensure that the email goes to a different person at HSC; asking for the supervisor of the HSC by name will often give you a different answer, even though you never talk to the supervisor; putting "Foreclosure Sale Scheduled" in the subject line may get you a response in less than a week's time.

HSC representatives are often reluctant or unable to challenge a servicer's response. Often, even in cases where the HSC representative agrees that the servicer violated the rules, the HSC will close the case if the servicer refuses to change its position. HSC fails to provide the most needed relief—access to loan modifications that homeowners are eligible for—while rubber stamping too many servicer decisions. Further, homeowners in bankruptcy or litigation need full access to escalations and should not be held hostage to the servicer's election to participate in escalations.

B. HAMP Should Be Fine Tuned To Better Meet Program Goals.

1. Trial modifications automatically should become permanent after three months of payments.

In many instances, servicers have refused to sign and return to the borrower a fully executed copy of the permanent modification agreement, even after the borrower signs and returns the agreement to the servicer. Too often, servicers then use their own failure to sign and return the modification agreement as an excuse for failing to honor the agreement. Servicers often cite the MHA Handbook Chapter II at 9.1, which provides that the permanent modification becomes effective when " the servicer has returned a fully executed copy of the Modification Agreement to the borrower."

Problems for borrowers are compounded when servicing of the loan is transferred because the transferee servicer records may not show that the borrower has obtained a loan modification. Borrowers are too often required to "start over" and submit a new initial package.

One too-common result of servicers failure to return signed permanent modification is that borrowers who continue to fulfill all their obligations under the modification find themselves facing foreclosure and pulled into litigation in order to save their homes. It should not be necessary for borrowers to resort to litigation in order to obtain a final loan modification. Moreover, homeowners making timely trial payments should not have to unravel an unwarranted foreclosure.

Trial modifications should automatically convert to permanent modifications after three months of payments. If Treasury declines to adopt automatic conversions, it should at least require servicers to return the signed permanent modification promptly to borrowers; their failure to do so should be held against the servicer, not the borrower. This approach, however, still relies on an affirmative action by the servicer.

2. Additional guidelines should be issued to prevent frequent rejections of borrower's tax forms.

Disputes over whether the borrower has completely and correctly filled out the IRS Form 4506-T or Form 4506T-EZ often delay modifications. Servicers require resubmission of the forms if the borrower fills in the incorrect mailing address or telephone number for the servicer as requested on line 5. Servicers reject the form if signed by only one taxpayer, even though the IRS instructions on the form itself state that only one signature is required for joint filers. Although the forms are, by their own terms, valid for 120 days after the taxpayers' signature, servicers will often require borrowers to update the forms, even though 120 days is well beyond the timeframe that servicers are required to conduct their review for HAMP. In cases where a 4506-T or 4506T-EZ was filled out incorrectly, servicers are reporting to homeowners and housing counselors that the form was not submitted, rather than explaining that the form was received and what corrections are needed.

To minimize these problems, servicers should send borrowers a pre-populated Form 4506-T or 4506-T EZ with the servicer's mailing address and telephone number. In addition, servicers should be required to accept the IRS form signed according to the signatures required by the IRS. Finally, servicer delay in reviewing the documentation should not result in repeated requests for more recently signed forms, since the form expressly states that it is valid for 120 days. Servicers should be required to communicate to homeowners and their representatives any corrections needed on 4506-T or 4506T-EZ forms.

3. Surviving family members and divorced spouses should have access to a modification on the same terms as other homeowners.

The limited guidance in the Handbook does not clearly protect the rights of homeowners who either inherit their property from a family member or receive it in a divorce decree. As a result, servicers continue to routinely block modifications from these homeowners when they apply. HAMP must provide, as required by existing law and reaffirmed in new guidance from Fannie Mae, that any homeowner protected from the exercise of a due-on-sale acceleration clause has the same right to be evaluated for a loan modification as any other homeowner facing imminent default or in default. Servicers must be instructed to process loan modification applications and assumptions simultaneously, to allow homeowners to delay assumption until the loan modification application is approved. Servicers must recognize the homeowner's right under law to assume the mortgage and note independent of any additional underwriting review. Furthermore, regardless of the status of the modification, servicers must be instructed to communicate with and accept payments from homeowners who are protected from the exercise of a due-on-sale acceleration clause to the same extent as with any other homeowner.

4. Homeowners with HAMP modifications should be eligible for an additional first-tier modification after documented hardship.

Borrowers who receive HAMP modifications should be allowed to apply for new modifications if they suffer a subsequent hardship. Death, divorce, and disability can strike homeowners at any time. The negotiation of a HAMP modification does not protect borrowers from subsequent adverse life events beyond their control. Borrowers who have received HAMP modifications typically face a significant amount of debt and other obligations, such as second mortgages, mortgage insurance, medical bills, unsecured debt, and child support, which leave them more vulnerable to subsequent financial crises. None of these obligations are addressed in the one-size-fits-all approach of the 31% of gross income target of HAMP Tier 1 or HAMP Tier 2's waterfall.

Borrowers who default on their HAMP modification, but can demonstrate that the default was the result of a new hardship, should be allowed to reapply for a HAMP modification. If they qualify, they should be offered the better of HAMP Tier 1 or HAMP Tier 2, depending on which one is more affordable for them. This protects both homeowners and investors.

5. Some homeowners may need a new modification or interest rate freeze when their rate resets.

Homeowners with HAMP modifications will soon be facing rate resets and for some homeowners this may result in an unaffordable interest rate shock. Changes in terms that retain the dual benefits of the modification to both borrower and investor should be offered to eligible, affected homeowners to ensure continued affordability. A quick review should be done for each HAMP homeowner who will receive a rate increase to determine if the loan will remain affordable under HAMP guidelines. Any new modifications or rate freeze should be for the remaining life of the loan to avoid multiple reviews. Unemployment and underemployment remain high. Without an expedited review process prior to reset, unnecessary defaults and foreclosures will be triggered.

6. HAMP's forbearance balloons should be reduced or replaced.

Reliance on principal forbearance should be reduced and replaced with greater utilization of principal reductions. Forbearance traps homeowners in place and thwarts economic mobility. Homeowners with a large forbearance balloon are not building wealth, have no ability to borrow for major home repairs, and have no chance of selling their home to move for work. Further research should be done to explore the efficacy of adopting any shared equity program, such as the one adopted by Ocwen Financial and utilized by HUD's HOME Program.

7. States should receive more support in replicating successful programs using Hardest Hit funds, including for principal reduction.

Hardest Hit funds in a number of states have begun to work well to deliver principal reduction and sustainable modifications for borrowers. Treasury should provide more support to help replicate the most successful programs, consider ways to encourage greater servicer participation in such programs, and devote additional resources to expanding them.

C. Access to HAMP Should Be Expanded.

1. Better access should be provided to homeowners with Limited English Proficiency.

A significant percentage of homeowners with Limited English Proficiency ("LEP") are unable to access the HAMP program. While some provisions are in place for Spanish speakers, HAMP should expand the ability of LEP borrowers to obtain modifications. Treasury should take the following steps, in addition to the work it has already done, to improve access to HAMP modifications for LEP borrowers:

- Require servicers to note the borrower's preferred language in the files, including the language used in the hardship letter;

- Translate the most vital written documents into the most frequently encountered LEP language groups;

- Require servicers to accept government issued forms from Treasury (such as the Spanish language RMA), the Social Security Administration, and other agencies;

- Permit LEP borrowers to submit documents in their preferred language;

- Require servicers to communicate orally in the borrower's preferred language; and

- Provide detailed guidance to servicers with respect to their LEP obligations.

2. HAMP should apply to loans made after 2009.

Homeowners with mortgages originated after January 1, 2009 also should be able to access HAMP. Economic conditions continued to deteriorate well beyond this cut-off date. Unemployment peaked at 10 percent in October 2009, and remains elevated at 7.6 percent% overall and at 13.5 % for African Americans.[1] HAMP could provide critical relief to some of these struggling households with some income to help them stay in their homes. Because these modifications would only be approved if also beneficial to investors, this modest expansion would stop avoidable foreclosures while improving market function.

On the whole, mortgages originated after 2009 have lower serious delinquency rates than loans originated in the years leading up to the crisis and currently covered by HAMP.[2] Extending HAMP to households in financial distress who have post-2009 loans should not be financially burdensome for the program but could provide much-needed relief for households in distress and help stabilize the economy.

3. HAMP should be more widely available to low-income homeowners for whom 31% DTI is unaffordable.

Certain low-income homeowners with low residual income, due to high commuting costs, medical bills, or other factors, are facing financial hardship even with a mortgage payment that falls right at or slightly below 31%. For some of these homeowners, slightly lowering the DTI for a subset of homeowners with income below specified levels would provide a more accurate assessment of the affordability of the mortgage payment. These homeowners still need mortgage modifications even if their existing mortgage payment looks "affordable" in isolation. HAMP Tier II does not address this problem because it does not tie the modified payments to any measure of affordability. While

[1] Bureau of Labor Economics, "Employment Situation Summary," June 7, 2013.
[2] U.S. Department of Housing and Urban Development, "Annual Report to Congress Fiscal Year 2012 Financial Status FHA Mutual Mortgage Insurance Fund," at 27; Federal Housing Finance Agency, "Conservator's Report on the Enterprises' Financial Performance, Fourth Quarter, 2012."

some homeowners may not have enough income to sustain a modification that also benefits the investors, those who have sufficient income to support NPV-positive loan modifications but who face residual income challenges should be eligible for a lower DTI requirement. Lower overall debt burden leads to better debt payment. Investors in mortgages will benefit from deeper modifications that ensure affordability.

4. HAMP should be more widely available to homeowners with junior liens.

Junior liens should be included in the HAMP affordability calculation. Many homeowners are paying more than 31% of their income—in some cases more than 50% of their income—in mortgage related costs but are not eligible for HAMP because the payments on their first lien alone, without mortgage insurance, are less than 31% of their income. This result is unfair and penalizes those homeowners who may need HAMP the most, because of the complexity of modifying their loans and because the combined lien balances on their homes leave them deeply underwater. While servicers are required to modify junior liens as well, this promise often does not materialize for homeowners. Incorporating junior liens in the DTI analysis would make affordable modifications that also benefit investors available to homeowners with unsustainable mortgage payments.

5. Multi-layered outreach should be done to homeowners in foreclosure.

Treasury should further promote both door-to-door marketing of HAMP and expanded advertising. The experience of foreclosure mediation programs and housing counselors across the country has demonstrated that door-to-door outreach is an extremely effective way of reaching struggling homeowners. A homeowner facing foreclosure will most often avoid mail or phone calls that appear to have information about the foreclosure process out of fear and/or hopelessness. A conversation with a compassionate and knowledgeable person that comes to the door makes it much more likely that a struggling homeowner will reach out for assistance and try to find a mutually agreeable solution with the loan servicer. It is also important that the outreach worker speak the homeowner's preferred language.

Treasury also should invest in a high visibility marketing campaign through television, radio, print, and the internet. The campaign should guide homeowners to free housing counseling and legal services offices who can assist them in applying for the program. Ads should be multilingual with respected spokespeople from the administration, local elected officials, and celebrities. Grants can be given to HUD-approved Housing Counseling Agencies to place targeted ads in local and ethnic radio, television, and newspapers.

Given that only $4.3 billion of the $22.7 billion[3], of TARP funds allocated to HAMP have been used, investing a portion of that money in a multi-layered outreach program would increase this underutilized program.

[3] Office of the Special Inspector General for the Troubled Asset Relief Program, "Quarterly Report to Congress," (April: 2013) at 61.

D. Program Transparency Still Needs Enhancement.

HAMP reporting should provide a better picture of what is happening in communities.

While reports have begun to emerge that the housing market is recovering, that recovery is happening unevenly across communities. Loan-level data on HAMP modifications associated with small geographies is critical to understanding whether communities hit hardest by predatory lending and foreclosures are being adequately served by HAMP. More granular data would help housing counselors and outreach workers target their efforts. More information on the race, gender, and ethnicity of borrowers would help to better assess whether banks are complying with fair lending laws in their implementation of HAMP. Today, that information is voluntary, and only a small fraction of the loan-level public data have information on race, gender, and ethnicity.

At a minimum, Treasury should release the following information to the public at the census tract level:

- The number and length of active trial modifications;
- The estimated number of eligible loans that are 60+ days delinquent; and
- The number of trial modifications that have become permanent modifications.

Additionally, to hold servicers accountable for their performance under HAMP, more detailed, local data need to be made available. These include for each servicer at the census tract level:

- The number and length of active trial modifications;
- The estimated number of eligible loans that are 60+ days delinquent; and
- The number of trial modifications that have become permanent modifications.

Servicers also should collect and report information about the preferred language of borrowers, in order to assess more accurately the challenges faced by Limited English Proficiency borrowers attempting to modify their loans.

HAMP has established important standards regarding access and affordability of loan modifications for struggling homeowners. We request a meeting soon to discuss further progress that can be made.

Sincerely,

National Signatories:

AAA Fair Credit Foundation
American Civil Liberties Union

Americans for Financial Reform
Center for Responsible Lending
Consumer Action
Consumer Federation of America
Home Defenders League
Leadership Center for the Common Good
National Asian American Coalition
National Association of Consumer Advocates (NACA)
National Consumer Law Center (on behalf of its low-income clients)
National Council of La Raza
National Fair Housing Alliance
National Housing Law Project
National Housing Resource Center

State and Local Signatories:

Affordable Housing Alliance
Arizona Fair Housing Center
Asian American Homeownership Counseling, Inc.
Asian Community Development Corporation
Asian Law Alliance
Asian Services in Action, Inc.
Beyond Housing
Brooklyn Housing and Family Services, Inc.
California Reinvestment Coalition
Campesinos Sin Fronteras
CCCS of Greater Greensboro, A division of Family Service of the Piedmont Inc.
CEI (Coastal Enterprises, Inc.)
Center for New York City Neighborhoods
Center for Pan Asian Community Services, Inc.
Central Florida CDC
Central Vermont Community Land Trust
Centro De Appoyo Familiar
Centro Familiar (CA)
Chinese American Service League
Civic Center Barrio Housing Corp.
Clarifi
ClearPoint Credit Counseling Solutions
Community Action Human Resources Agency
Community Development Corporation of Brownsville
Community Development Corporation of Utah
Community Enterprise Investments Inc
Community Housing Council of Fresno
Community Legal Services, Philadelphia
Community Services of Nevada
Concilio (PA)
Consumer Credit Counseling Service of Buffalo, Inc.
Consumer Credit Counseling Service of West FL

Consumer Credit Management Services, Inc.
Council for Native Hawaiian Advancement
County of Union Government
Credit Advisors Foundation
Cypress Hills L.D.C.
Dalton-Whitfield Community Development Corporation
Debt Management Credit Counseling (FL)
East LA Community Corporation
Eastside Community Development Corporation, Inc.
Empire Justice Center
Empowering and Strengthening Ohio's People (ESOP)
Esperanza (PA)
Family Housing Resources
Family Management Credit Counselors
Family Services, Inc.
Financial Pathways of the Piedmont
Garwyn Oaks Northwest Housing Resource Center
Genesis Housing Development Corporation
Gilmore -Wilkins
Greater KC Housing Information Center
Greater Southwest Development Corporation
Green Forest H.O.M.E., Inc.
Hacienda CDC
Hagerstown Home Store
Help4Kidz (AZ)
HomeFree-USA
HomeSight
Homestead CS
Housing & Education Alliance
Housing Action Illinois
Housing and Community Services of Northern Virginia
Housing and Economic Rights Advocates
Housing Opportunities of Beaver County
Housing Options & Planning Enterprises, Inc
Iglesia de Dios Pentecostal (FL)
Inland Fair Housing and Mediation Board
Integra Home Counseling, Inc
InterIm Community Development Association
Joseph Corporation Of Il
Korean Churches for Community Development
Korean Resource Center
La Fuerza Unida, Inc.
Latino Policy Forum
Long Island Housing Services, Inc.
Louisville Urban League
Metro Community Development
Minkle
NANAY Community Economic Development Corporation

NCCCEED
Neighborhood Home Solutions
Neighborhood Housing Services if Greater Cleveland
Neighborhood Housing Services of Chicago, Inc.
Neighborhood Housing Services of Greater Berks, Inc.
Neighborhood Housing Services of NYC
Neighborhood Housing Services of Phoenix
Neighborhood Nonprofit Housing Corporation
New Economy Project (formerly NEDAP)
New Life (AZ)
Newark/Essex Foreclosure Taskforce
NEWSED (CO)
Nobel Neighbors (IL)
Northern Circle Indian Housing Authority
Northwest Side Housing Center
Novadebt
Nueva Esperanza, Inc. (PA)
Old Pueblo Community Services
Open Communities
Opportunities Credit Union
Parodneck Foundation for Self-Help Housing & Community Development, Inc
Partners In Community Building, Inc
Pennsylvania Interfaith Community Programs, Inc.
Philadelphia Chinatown Development Center
Philadelphia Neighborhood Housing Services, Inc.(PA)
PICO National Network
Project LIFT
Project Sentinel
Real Estate, Education and Community Housing,Inc. (REACH)
Residential Resources, Inc.
Ridgewood Bushwick Senior Citizens Council (RBSCC) (NY)
Schuylkill Community Action
SER Jobs for Progress (FL)
SouthEastern Arizona Governments Organization
Spanish American Committee
Thai Community Development Center
The Campaign for a Fair Settlement
The Development Corporation of Northwest Baltimore
Universal Housing Development Corporation
Urban League of Hampton Roads, Inc.
Vietnamese American Initiative for Development
Visionary Home Builders of California, Inc.
Watts/Century Latino Organization
West Angeles CDC
Westchester Residential Opportunities Inc
Woodstock Institute

cc: Mark McArdle, Acting Chief, Homeownership Preservation Office, U.S. Department of the Treasury