March 25, 2009

The Honorable Timothy Geithner
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

The Honorable Lawrence Summers
Director
National Economic Council
1600 Pennsylvania Ave. NW
Washington, DC 20500

Honorable Shaun Donovan
Secretary
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Dear Secretary Geithner, Secretary Donovan, and Director Summers,

The undersigned organizations request the opportunity to meet with you to discuss the Treasury Department's loan modification program. Our organizations represent the people and communities hardest hit by the current economic crisis, and we have been working on the frontlines to provide assistance to distressed homeowners. We have seen how the stated policies of loan servicers are implemented on the ground, and understand the kinds of loan modifications that do and don't offer long-term sustainability.

The Administration's new Home Affordable Modification Program ("HAMP") is a significant step toward sustaining communities by providing homeowners with affordable loans. We applaud the Administration's efforts to develop a program focused on the needs of homeowners. Among its strengths, we are especially pleased that the program:

- Supports affordable loan modifications based on modest debt-to-income ratios with substantial decreases in payments and interest rates;
- Stops foreclosures while loan modification analyses are occurring;
- Requires participating institutions to apply the program to all loans they own, in whole or in part, and/or service and to take reasonable steps to secure additional authority where needed;
- Waives any partial prepayment penalties when principal is modified; and
- Permits more aggressive modifications when appropriate to achieve affordability and sustainability.

We also appreciate the Administration's efforts to address second liens. Many homeowners can not maintain long-term stability without addressing this issue.

While the HAMP program has various strengths, there are also several key issues that warrant further examination. We enumerate them briefly below and request a meeting to discuss them further. These are issues that directly affect the HAMP program's ability to provide meaningful relief to many of the hardest hit communities.

Homeowners with loans unaffordable at the outset should qualify for loan modifications based on risk of imminent default, even if they have not yet defaulted. The definition refers only to interest rate reset or change of life circumstances; however, many homeowners who received subprime ARMs never were able to afford even the initial payments and face extraordinarily high rates of default long before the reset.

HAMP program agreements should explicitly require participating institutions to apply the loan modification NPV analysis to the whole portfolio prior to foreclosure, as per the program guidelines, and to use all reasonable means to reach out to homeowners to obtain necessary information for the analysis. Where the servicer has not conducted such review, the homeowner should be able to use the institution's contract language to halt the foreclosure and obtain such an analysis, and, where appropriate, a loan modification. This process would augment any regulator oversight and ensure maximum compliance.

Default servicing fees should be waived in the HAMP process. Default servicing fees can increase a homeowner's outstanding loan balance by a substantial amount and many of these fees are attributable to abusive valuation practices and high attorney and title fees.

Where needed, principal forgiveness should be a requirement of the HAMP program. While it is a step forward that the program permits forgiveness and provides incentives for it, the primary reliance on principal forbearance greatly limits the effectiveness of the loan modifications. Homeowners with payment option ARMs and those with inflated appraisals are more likely to have elevated principal amounts, as are homeowners with significant delinquencies who have their arrears capitalized. While forbearance provides better payments today, it locks a homeowner in without options to sell or even refinance after the initial five year period has expired. It also robs the homeowner of any accrued equity, the main source of wealth in many low-income communities and communities of color.

The interest rate increases after five years should be capped for homeowners with higher debt-to-income ratios and eliminated for homeowners on fixed incomes, such as those facing disability. While the steps up in interest rate after the first five years are intended to be gradual and capped at a reasonable market rate, for homeowners with low and moderate incomes, these changes still may result in significant—and unaffordable—debt load increases. Accordingly, the interest rate increases should not bring a homeowner to a front-end debt-to-income ratio above 38%. Moreover, where a homeowner is on a fixed income at the time of the modification, or starts receiving benefits for permanent disability after the modification, the payment terms for the first five years should be made permanent.

Waivers of claims and defenses should be explicitly prohibited, even for homeowners not in active litigation. These waivers, which are unfair to homeowners, are still being required by many servicers. While the program prohibits waivers for homeowners in active litigation, it is silent with respect to those not in litigation at the time of the loan modification. Homeowners who are not in active litigation need protection from waivers even more than homeowners in litigation, since homeowners not in active litigation are less likely to be represented by counsel and advised of what rights they are waiving.

Mortgages should be assumable for spouses, children, and other persons with a homestead interest in the property. Such transfers are most likely to occur upon death or divorce; they may happen in the context of domestic violence. Home owners who have just suffered the death of a loved one should not find themselves immediately faced with foreclosure or suddenly elevated mortgage payments.

Homeowners who suffer an involuntary drop in income after a Home Affordable modification should not be refused additional assistance under HAMP. Even after a loan modification is done successfully and is performing, homeowners may still become disabled, spouses may die, or homeowners may suffer a job loss. We are going into two years of elevated unemployment. In cases of a loss of income and 90 days delinquency, the HAMP program should permit servicers to reopen a HAMP modification, adjust the terms of the modification, and once timely payment is re-established restore the program incentives. Foreclosing on homes where homeowners have suffered an involuntary drop in income without evaluating the feasibility of a further modification is punitive to homeowners already suffering a loss, does not serve the interests of investors, and will only sustain the current economic downturn.

Public disclosure of the participating institutions is critical. Public disclosure would simplify the process for homeowners, housing counselors, and other advocates and provide accountability for servicers and other institutions.

It is essential to collect and make public data to ensure that the program complies with fair lending requirements and provides sustainable loan modifications. In order to provide the transparency and accountability that are stated objectives of the program, systems must be put in place at the outset to collect information from servicers about the types of modifications being offered to homeowners and how those modifications are performing. This must include information about homeowner characteristics, including race and national origin, which is essential for monitoring fair lending compliance. These data must be made publicly available so that the public can have confidence that loan modifications are being offered in a fair and non-discriminatory manner.

TARP Funds should be used to fund housing counseling and outreach services. The HAMP program places significant requirements on housing counseling agencies and increases the need to contact and connect with homeowners. It would be appropriate to use TARP funds to address this need.

We believe that all of these are critical to successfully ending the foreclosure crisis and turning our economy around. We look forward to discussing them with you in more detail in the near future. Please contact Alys Cohen at the National Consumer Law Center at (202) 452-6252 x102 or acohen@nclcdc.org to set up a meeting time.

Sincerely,

ACORN
ACORN Housing
AFL-CIO
Center for American Progress Action Fund
Consumer Action
Consumers Union
Lawyers Committee for Civil Rights Under Law
Leadership Conference on Civil Rights
NAACP
National Association of Consumer Advocates
National Association of Neighborhoods
National Community Reinvestment Coalition
National Consumer Law Center on behalf of its low-income clients
National Consumers League
National Council of La Raza
National Fair Housing Alliance
National NeighborWorks Association
Rural Advancement Foundation International – USA (RAFI-USA)
U.S. Public Interest Research Group

cc: Michael Barr, Counselor to the Director**,** National Economic Council
Nancy Fleetwood, Chief, Office of Homeownership Preservation, Treasury Dept.
Seth Wheeler, Deputy Assistant Secretary for Federal Finance, Treasury Dept.