

March 17, 2010

**VIA FACSIMILE OR ELECTRONIC MAIL**

Assistant Secretary Herbert Allison  
U.S. Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Dear Mr. Allison:

We are legal services organizations, participants in the Institute for Foreclosure Legal Assistance (IFLA)<sup>1</sup>, who represent low and moderate income homeowners around the country facing foreclosure. We work regularly with homeowners seeking loan modifications under President Obama's Home Affordable Modification Program (HAMP). We commend the Administration for recognizing that it has a significant role in solving the foreclosure crisis. However, almost a year into HAMP, foreclosures continue to climb and homeowners continue to be unreasonably denied affordable loan modifications. HAMP has not ensured that eligible homeowners receive permanent, affordable modifications.

In our daily work on housing and foreclosure-prevention issues, we see first hand how HAMP is flawed. We would like the opportunity to meet with you and your colleagues at Treasury to discuss the situation of homeowners on the ground and the ways the HAMP program could be improved to meet the needs of communities.

We have attached our complete list of proposed HAMP policy changes, developed with input from the legal aid organizations doing the work in the trenches and in collaboration with the National Association of Consumer Advocates (NACA)<sup>2</sup> and the National Consumer Law Center (NCLC)<sup>3</sup>. Below we highlight our top five priorities.

- 1.) ***Stop foreclosure referrals and existing foreclosures during HAMP review.*** We have observed numerous instances of servicers ignoring HAMP's guidelines altogether and foreclosing on homes without reviewing mortgages for modification. In November, 2009, NCLC and NACA informally surveyed NACA members about the prevalence of foreclosure sales in violation of HAMP.<sup>4</sup> Almost 95% of the 113 consumer advocates<sup>5</sup> responding from over 24 states<sup>6</sup> represented homeowners in cases where the servicer attempted to proceed with a foreclosure sale without a completed HAMP review. Nearly 50% of the respondents represented 10 or more households in this situation.<sup>7</sup> A halt to new foreclosure referrals and existing foreclosures would encourage efficient HAMP reviews while relieving homeowners and investors of increased costs associated with foreclosure. The Administration must:

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<sup>2</sup> The **National Association of Consumer Advocates** (NACA) is a non-profit corporation whose members are private and public sector attorneys, legal services attorneys, law professors, and law students, whose primary focus involves the protection and representation of consumers. NACA's mission is to promote justice for all consumers.

<sup>3</sup> The **National Consumer Law Center, Inc.** (NCLC) is a non-profit Massachusetts Corporation, founded in 1969, specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC has provided oral and written testimony to Congressional Committees on foreclosure and numerous related topics. NCLC publishes a series of eighteen practice treatises and annual supplements on consumer credit laws.

<sup>4</sup> <http://www.consumerlaw.org/issues/foreclosure/content/NCLC-NACA-Foreclosure-Sale-Survey-ResultsJan2010.pdf>.

<sup>5</sup> 40% of the survey participants responded on behalf of an office; 60% responded on individual experience.

<sup>6</sup> AL, AZ, CA, CO, DC, FL, IL, IN, IA, LA, MD, MA, MI, MN, MS, MO, NV, NJ, NY, NC, OH, PA, SC, and VA.

<sup>7</sup> 113 NACA members from 24 states participated in the survey.

- a. **End referrals to foreclosure during a HAMP review.**
- b. **Stop judicial and nonjudicial foreclosure actions during HAMP review.**
- c. **Cancel any scheduled foreclosure sales during HAMP review.**

2.) ***Increase HAMP Transparency.*** Servicers routinely deny HAMP modifications for what appear to be arbitrary or unfounded reasons. Recent guidance requiring notice to borrowers is some progress, but does not provide sufficient detail to enable homeowners to evaluate the legitimacy of denials and some servicers consistently disregard existing notice rules. Fundamentally, the HAMP program itself wholly lacks accountability for servicers; servicers routinely assert that they are not required to follow HAMP guidelines or offer HAMP modifications, even to qualified borrowers. It is essential that the Administration:

- a. **Make public the Net Present Value (“NPV”) test used by servicers.** The NPV model must be accessible to homeowners and advocates in order to determine whether the servicer used the test accurately in denying a HAMP modification. Without access to the NPV analysis, homeowners are entirely reliant on the servicer’s good faith.
- b. **Require that servicers issuing HAMP denials provide more detailed information.** When the basis of denial is a failure of the NPV test, all NPV inputs and outputs must be provided as part of the initial denial letter. Key investor information should be provided where that is the basis of the turn-down. Basic information including the investor or guarantor’s name, identification of the controlling documents, and a summary of efforts taken to secure investor approval for the proposed loan modification specifically and participation in HAMP generally should be provided in each relevant denial notice.
- c. **Establish a formal appeals process.** Homeowners need recourse beyond the servicer. The Administration must institute a formal appeals process by an independent government entity for borrowers who believe their HAMP application was not handled properly. The current Freddie Mac compliance process does not effectively address individual complaints; the escalation process available through either the HOPE hotline or [escalations@hmpadmin.com](mailto:escalations@hmpadmin.com) provides little more, in our experience, than a restatement of the initial denial. In order for HAMP to be effective, homeowners must be able to seek and obtain redress when a servicer has failed to comply with the Supplemental Directives.

3.) ***Change the terms of the trial modification program to mitigate adverse effects on homeowners.***

Homeowners are left worse off after entering into a trial modification. The reporting of payments under trial modifications means that even homeowners who are current upon entering a trial modification and make every trial modification payment in full and on time, still emerge with a negative mark against their credit, which can result in lost jobs and rental housing, as well as higher-priced credit. Moreover, since the trial modification payments are by definition less than the full contract payment under the mortgage, and the terms of the mortgage are not altered during the trial modification, homeowners finish a trial modification owing more on their homes than when they started. We have seen servicers use these arrears, accumulated during the trial modification, as the basis for initiating a foreclosure against a homeowner, post-trial modification. The Administration should revise the trial program by:

- a. **Requiring that trial modification payments be applied to principal and interest as specified under the permanent modification.** Treasury has already recognized the harm that can be done

by servicer delay in requiring any arrearages accumulated between the official end of the trial modification and the beginning of the permanent modification to be treated as principal forbearance. Treasury should go further and specify that all payments made during the duration of the trial modification be applied, retroactively if necessary, to principal and interest as specified under the terms of the permanent modification.

- b. Converting homeowners who make three on-time trial modification payments automatically to permanent modifications.** Servicer delays in converting trial modifications to permanent modifications are unacceptable. They increase costs to homeowners and create significant periods of uncertainty. An automatic conversion would address those problems.
  - c. Allowing homeowners who fail a trial modification an opportunity to pay back the arrears through regular monthly installments consistent with an affordable payment.** No lump sum payment should be required.
- 4.) *Designate Treasury official(s) for assistance with Court or other required mediation cases.*** Court-supervised mortgage mediation programs help borrowers and servicers find outcomes that benefit homeowners, communities and investors. Servicers, however, often do not negotiate in good faith, even with a mediator present. For example, representatives of servicers often attend mediations without the necessary authority to provide a modification, without any information about the matter at all and without any consideration of HAMP. Moreover, many judges and mediators often have questions regarding HAMP and seek input from counsel. For those communities with mediation programs, Treasury should designate an official or officials to provide assistance to mediators to ensure that HAMP is properly considered in mediation sessions, answer questions, and serve as a point of contact for escalated disputes. Designating a Treasury Department contact for such inquiries would substantially assist public officials seeking to interpret HAMP.
- 5.) *Expand HAMP eligibility and coverage. HAMP must recognize the realities of redefault and the limits of its program and revise its guidelines accordingly.*** The Administration should adopt changes, including:
  - a. Additional modifications for certain homeowners with unforeseeable future drops in income.** Due to the current state of economy, many homeowners who receive HAMP loan modifications will suffer subsequent drops in income. Under current HAMP policy, these homeowners are precluded from applying for a new loan modification. This policy should be changed for borrowers with involuntary reductions in income, such as unemployment, divorce or death of a spouse, or increases in expenses such as medical debt.
  - b. Availability of modifications for homeowners in bankruptcy.** Homeowners in bankruptcy should be able to obtain the same modified loan terms as other homeowners. There is no basis for excluding such homeowners from the program, which is the essential effect of providing servicer discretion on that issue.
  - c. Mandated principal reductions for homeowners who are underwater.** We need an aggressive principal reduction program to help troubled homeowners bring their mortgage debt back into alignment with their property values, restore affordability, and rebuild equity in their homes.
  - d. Revised analysis of affordability for homeowners with interest-only and option ARMs.** For interest-only and option ARMs, current payments do not reflect the long-term affordability of the loan. An evaluation should be made using a fully amortizing payment, calculated at the interest

rate currently being assessed on the mortgage loan, regardless of when the payments will reset under the loan terms. Determination of affordability should not be made on the basis of a negatively amortizing, minimum payment.

- e. **Provision of modifications for homeowners with unaffordable payments, even when the first mortgage payment is 31% or less of current income.** Second mortgages or high medical debt can render a first mortgage payment of 31% or less unaffordable. Homeowners' actual, reasonable living expenses may mean that 31% is not, in fact, a sustainable and affordable payment when the total dollars available are quite low. Treasury should require and subsidize modifications below 31% where the homeowner has low residual income or high fixed expenses.
- f. **Targeted assistance for the unemployed until they can get a new job.** The new plan recently offered by the Administration to provide \$1.5 billion to five states is an important step in the right direction. Yet it is unclear whether these funds will be used to help the unemployed, and we also need assistance for the millions of unemployed in the other 45 states. The Administration should demonstrate leadership in this area and adopt a bridge program for unemployed homeowners. A temporary forbearance program on its own will not be adequate.

We look forward to speaking with you soon, and to working with you to ensure the future success of the program. Due to Legal Services Corporation (LSC) restrictions, some IFLA attorneys are prohibited from joining this letter; however, the concerns expressed above reflect the experiences of those attorneys and others across the country representing homeowners facing foreclosure. Please be in contact with Alys Cohen of the National Consumer Law Center, at (202) 452-6252, or Ellen Taverna of the National Association of Consumer Advocates, at (202) 452-1989 ext. 109, to set up a meeting.

Sincerely,

*Columbia Legal Services (on behalf of clients)*  
Olympia, Washington

*Community Legal Services of Philadelphia*  
Philadelphia, Pennsylvania

*Legal Aid Society of Southwest Ohio, LLC*  
Cincinnati, Ohio

*Legal Assistance Foundation of Metropolitan Chicago*  
*Home Ownership Preservation Project*  
Chicago, Illinois

*Neighborhood Legal Services, Inc.*  
Lawrence, Massachusetts

*North Carolina Justice Center*  
Raleigh, North Carolina

cc: Phyllis Caldwell, Office of Homeownership Preservation  
William C. Apgar, Office of the Secretary, HUD  
Peter Swire, National Economic Council

Enclosure

February 19, 2010

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On February 5, 2010, the National Association of Consumer Advocates (NACA)<sup>1</sup>, the National Consumer Law Center (NCLC)<sup>2</sup>, and over 20 attorneys from the Institute for Foreclosure Legal Assistance (IFLA)<sup>3</sup> came together to discuss the Obama Administration's Home Affordable Modification Program (HAMP). These IFLA attorneys once again confirmed that there are widespread problems occurring in HAMP. As a result of this meeting, NCLC and NACA have prioritized the following urgently-needed changes to HAMP that are essential for the program to effectively prevent foreclosures and provide sustainable modifications.

- 1.) **Stop all foreclosure actions while borrowers are being evaluated for HAMP loan modifications.**
  - a. No referrals during HAMP review.
  - b. Stop judicial and nonjudicial foreclosure actions during HAMP review.
  - c. Cancel any scheduled sales during HAMP review.
- 2.) **Institute a formal appeals process by an independent government entity for borrowers who believe their HAMP application was not handled properly.** The independent appeals process must be able to compel servicer compliance with HAMP guidelines. Also, create an independent review process within the servicer. Finally, Treasury must enforce HAMP guidelines and issue penalties for non-compliant servicers.
- 3.) **Mandate principal reductions for homeowners with negative equity.**
- 4.) **The trial modification program should be further formalized and clarified to protect borrowers from the negative impact of servicers' processing delays.**
  - a. Homeowners who make three on time trial modification payments should be converted automatically to permanent modifications.
  - b. Homeowners who obtain permanent modifications should have their trial modification payments applied under the terms of their permanent modifications (so that the permanent modification is back dated to the beginning of the trial modification period).
  - c. Homeowners who fail trial modifications should have the arrears accumulated during the trial modification paid off interest free over a period of time such that the combined monthly payment does not exceed the greater of 31% of the borrowers' income or the monthly payment due under the loan note. The arrears cannot be used as a basis for foreclosure so long as the monthly payments are made. Credit reporting must be corrected to show payments as current at all times, so long as the

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borrower was current before the trial modification, current during trial modification and current after trial modification.

- d. Homeowners offered trial modifications based on verified income should be notified in writing at that time what the permanent modification payment will be. There also should be clear disclosure about the escrow/PMI payment that would be required on top of the HAMP payment.
- e. At the time of the permanent modification, the servicer should provide a full and easily understandable accounting to the homeowner showing how the arrears accrued and how they were incorporated into the modification.

**5.) Increase transparency of servicer actions in order to limit summary denials and other unreasonable acts by servicers.**

- a. Homeowners should be provided with all NPV inputs and outputs when the denial is first communicated.
- b. Servicers should disclose to homeowners the terms of the proposed loan modification resulting in a denial.
- c. Servicers should be required to re-run the NPV analysis automatically when the homeowner provides updated or corrected information for the NPV inputs in response to an NPV-based denial.
- d. Where the investor is the basis of the denial, basic information including the investor or guarantor's name, identification of the controlling document, and a summary of efforts taken to secure investor approval for the proposed loan modification specifically and participation in HAMP generally should be provided in each relevant denial notice.
- e. NPV-based denials should automatically trigger a cease in the foreclosure process until the relevant timelines have elapsed.

**6.) Expand HAMP eligibility.**

- a. Homeowners with Interest only and Option ARMs with an adjustment more than 120 days in the future need a revised analysis of their eligibility. For Pay Option ARM and interest-only loans, current payments do not reflect long-term affordability of the loan. Evaluation should be made using a fully amortizing payment, calculated at the interest rate currently being assessed on the mortgage loan.
- b. Homeowners with a DTI below 31% and a high back end ratio need assistance.

**7.) Increase HAMP's sustainability.**

- a. Allow borrowers further loan modifications where they have experienced redefault due to factors beyond their control (illness, divorce, unemployment).
- b. Guarantee future affordability of payments for borrowers with fixed incomes or facing a drop in income due to loss of a child's income or retirement by permanently fixing the interest rate below the current Freddie Mac weekly rate.

**8.) Designate Treasury official(s) for assistance with Court or other required mediation cases.**

**9.) The NPV model for qualifying homeowners must be available to the public.**

**10.) Mandate access to HAMP for homeowners in bankruptcy and provide additional support for unemployed homeowners.**

**11.) Ensure that homeowners working with counselors are not steered toward third party corporate contractors for assistance with HAMP review.** Such contractors are not working on behalf of the borrowers; require more transparency regarding the interests of the third party contractors.