

August 21, 2009

Ms. Laurie Maggiano
Director of Policy, Homeownership Preservation Office
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20229

Re: Draft Servicing Guidelines

Dear Laurie,

The American Legal and Financial Network, the Housing Policy Council, and the Mortgage Bankers Association (collectively, Mortgage Trade Groups¹) appreciate the opportunity to comment on the draft Servicing Guidelines version 1.0 dated July 20, 2009, for Treasury's, Fannie Mae's and Freddie Mac's Home Affordable Modification Programs (HAMP). The Mortgage Trade Groups have also consulted with the HOPE NOW Alliance² and its Servicer Guideline Workgroup in developing our response. They have been an invaluable forum to discuss issues with a view toward keeping borrowers in their homes whenever possible. This is a goal we share as well.

The guidelines establish specific operational expectations for servicers in their communications with and evaluations of borrowers for Home Affordable Modification Program (HAMP). Specifically the guidelines establish timelines for underwriting of trial modification requests, staffing levels, and communications with the borrower (and other third parties). As discussed in detail below, we are concerned that imposing additional requirements will make an already complex and burdensome process even more difficult for the servicing industry to implement, which will only impede the extraordinary efforts being undertaken to offer more modifications to at risk homeowners. Additional guidelines also create greater risk of inconsistency with Office of the Comptroller of the

¹ The mission of the American Legal & Financial Network (AFN) is to serve the Legal and Residential Mortgage Banking Professional through leadership, education and professional development. The AFN is a professional organization comprised of members of the Residential Mortgage Banking and Legal Communities. www.e-afn.org. The Housing Policy Council (HPC) is made up of twenty-six companies that are among the nation's leaders in mortgage finance. Member companies originate sixty-five percent of the mortgages for American home buyers. Member companies participate in the Council through the senior mortgage executive in their company. HPC is part of the Financial Services Roundtable (the Roundtable), a trade association for 100 of the nation's largest banking, securities and insurance companies. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$85.2 trillion in managed assets, \$980 billion in revenue, and 2.3 million jobs. The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,400 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mortgagebankers.org.

² HOPE NOW is an alliance between counselors, mortgage market participants, and mortgage servicers to create a unified, coordinated plan to reach and help as many homeowners as possible in an effort to assist homeowners in staying in their homes. www.hopenow.com.

Currency (OCC), the Office of Thrift Supervision (OTS) and other government agency regulations, particularly when these regulators and agencies are not participants in this process. We suggest that there is no need for a separate and additional set of guidelines beyond those already issued by Fannie Mae and Freddie Mac (collectively "the GSEs") and by Treasury. At the very least, these should be offered as suggested "best practices" for the industry rather than guidelines upon which servicer performance will be measured.

We agree that it is important for borrowers to be informed of the progress of their HAMP request. Indeed, some of the proposed requirements are already in practice by some of our members, including communicating with borrowers regarding the status of their formal requests for assistance. However, other proposals, such as the complaint tracking and reporting requirement, are new and would require considerable staffing and monetary support. Many servicers are already struggling with the complexity of the program and the existing reporting and tracking obligations. Any new procedures must not further tax an industry working at maximum capacity. As an overarching statement, we believe any final guidelines or best practices should be streamlined, cost efficient, subject to automation and generally consistent with industry practice and capabilities. Addressing the complexities in the program would go a long way towards resolving concerns for staffing, communication, and timeliness of resolutions.

To assist your review of our comments, we have attached a copy of the draft guidelines redlined with edits, questions, and comments of the Mortgage Trade Groups. In some cases, we deleted entire sections for the reasons stated in this letter and in the attached draft. In other cases, we edited concepts to make them consistent with HAMP requirements or with what we consider to be accepted servicing standards or industry practice.

A significant threshold concern of the Mortgage Trade Groups, however, is that in the less than four months that HAMP has been in existence it has already generated voluminous documentation and specific procedural requirements from providing notices to collecting fair lending data to being proactive about contacting potentially eligible borrowers. These requirements are considerable and comprehensive and should be given a chance to work without imposing yet another layer of expectations on an already over-burdened servicing industry. Additionally, in many cases, the requirements for particular activities vary depending on whether the servicer is servicing under the non-GSE HAMP program or for Fannie Mae or Freddie Mac as investors. Introducing yet another set of "guidelines" or required procedural steps is very problematic at this time when servicers are increasing staff and putting into place all the complex processes that need to be implemented for this program to succeed and allow servicers to help as many homeowners as possible. Given these concerns, we believe that these guidelines, if implemented at all, should not be binding but rather should be considered in the nature of "best practices" to the extent that they suggest new servicing activities.

We would like to comment on each section, but before we do we would like to make some general observations:

- 1) The guidelines require servicers to send borrowers various notices. In the vast majority of cases, we agree that such notices are helpful. However, the information to be communicated to borrowers is voluminous, cumbersome and in

many cases cannot be automated. We are also concerned with the borrower's level of understanding of these communications, which must be presented in the simplest of terms so that the average borrower can understand what is being stated. More generic letters and "check the box" formats will allow the process to be automated and speed up servicer response times.

- 2) The guidelines impose standards outside of the program parameters, including dictating staffing obligations. This item presumes staffing is the answer rather than automation and leveraging outsourcers for various functions. We believe that these requirements should be eliminated or revised.
- 3) The proposal appears to set out a considerable amount of new performance obligations. However, there is no discussion of how servicers will be measured or what the consequences will be for failing to comply with the standards. As stated previously, we believe that the proposal should establish at most suggested guidelines or "best practices" that are not binding or grant rights to third parties and that do not carry any penalties or disincentives for failure to perform. To the extent that provisions become mandatory, Treasury needs to communicate to the industry any implications for technical and material non-compliance so that servicers can make the appropriate adjustments.
- 4) Imposing these guidelines as program requirements or even best practices increases servicers' legal risk. Debtors counsel as well as investors will cite to them as industry standard even if that ultimately is not Treasury's intent, which could result in increased repurchase demands by investors and litigation by borrowers.
- 5) The draft guidelines do represent an important start for review and collaboration by all relevant regulators, administration officials, and servicers. We believe that it will be extremely useful to reach consensus (or as close as possible) among all the foregoing groups before issuing servicing guidelines.
- 6) Most of the residential servicing in the United States is concentrated in a few large institutions; however, there are millions of borrowers serviced by smaller institutions that do not have the economies of scale, capital, or market size that would justify the expense and operational changes that may be necessitated by several of the guidelines. We urge you to recognize that smaller servicers should not be expected to adopt the guidelines wholesale.
- 7) The announcement of HAMP indicated that the program was effective immediately. As a result, millions of borrowers believed help was immediately available, even though servicers required time to digest the rules and implement procedures to deal with the intricacies of the program. Servicers need to have lead time to adapt their processes to address these guidelines, even if best practices. Servicers urge Treasury to allow a general implementation period of between three to six months.
- 8) We recommend that the creation of a 45-60-day immediate special task force that produces a study on how to streamline the program to make it more efficient,

less costly and compliance-friendly would greatly assist companies to achieve the Treasury's timelines and goals. The task force should include GSE and non-GSE servicers and related vendors. The study could be used to streamline the original program requirements and revise any servicer requirements or best practices. The study should pay special attention to the following issues:

- a. costs and potential savings associated with systemic change and implementation;
- b. government or GSE assistance with automation;
- c. possible resources and sources of funds available for change and implementation including additional and more flexible government incentives;
- d. regulatory complexity; and
- e. incremental timeline for implementation.

Following are our comments and the rationale for the edits we proposed to the draft guidelines.

Outreach and Communications (Item 1)

Web site: The proposal would require each HAMP and Fannie Mae or Freddie Mac servicer to have a specific website link for loss mitigation. We interpret this provision to allow a servicer to establish a specific page on a corporate Web site dedicated to loss mitigation and HAMP. Also, we urge Treasury to recognize that some small servicers do not have Web sites and do not need them given their size.

Event Participation: Changes in the attached redlined document clarify that servicers should consider participating in Treasury- and GSE-sponsored events. As drafted, the proposal could be read to *require* participation in any Making Home Affordable (MHA) event, regardless of who sponsors.

Complaint Resolution Process: The proposal would require servicers to track complaint *calls* and their resolution and to provide these complaint logs to Freddie Mac. The draft guidelines do not state how these logs will be used, any performance thresholds or calculations, or what, if any, consequences there are to a specific performance rating.

The ability to create the tracking mechanism for identifying and reporting complaints is also of great concern. At this time, there is no automated method of consolidating complaints and resolutions. The process will be manual, costly, time consuming and yield results that cannot be easily compared from company to company. For example, the proposed guidelines appear to measure calls, rather than written complaints or escalated and unresolved borrower calls. We do not believe that this is an appropriate standard. Ideally, tracking should be limited to (1) *written* complaints tracked to specific issues and sent to a specific address established by the servicer and (2) aggravated complaints stemming from call service. In either event, the industry has established protocols that are in place for handling and tracking both written and verbal escalated complaints, thus obviating the need for additional requirements here.

As a policy matter, servicers' efforts to resolve customer complaints and issues would be enhanced if Treasury, and any other agency responsible for regulating or administering HAMP, were to notify the servicer of the HAMP-related complaint immediately upon the agencies' receipt. Also, many complaints arise from borrowers' misconceived expectations of outcomes at outreach events. Many of these misconceptions would be alleviated if these agencies were to coordinate with servicers and HOPE NOW to better communicate likely outcomes at these events.

Staffing Levels, Training and Coordination (item 2)

Staffing Levels: The proposal would require servicers to establish and monitor appropriate staffing levels according to a written staffing plan. Servicers do not object to this requirement as a best practice, but they do object to the proposal if the staffing plans must be reviewed and approved by Treasury or the GSEs or if such agencies can impose specific staffing requirements. Also, there is no recognition that some companies can manage higher caseloads due to scripting, automation, leveraging of outsourcers, software, etc. Without taking this into account, the guidelines will unfairly be biased against servicers that are highly efficient.

Training: The proposal would require that all loss mitigation staff participate in MHA training provided by Fannie Mae or Freddie Mac. Servicers should be permitted to train their staff with internally generated materials or use third party educational services beyond or in addition to those provided by Fannie Mae and Freddie Mac.

Internal Coordination: The proposal states that borrowers being evaluated for HAMP should not be sent foreclosure notices. While we support coordination between loss mitigation and foreclosure staff, HAMP does not and should not prohibit a servicer from taking foreclosure steps other than foreclosure sale while borrowers are being evaluated for HAMP. We also recognize that servicers are not permitted to initiate foreclosure or conduct a foreclosure sale for the 30-day period that the borrower has to submit documents evidencing intent to accept the Trial Period Plan offer. The proposed statement appears contradictory to this policy. Our comments above are reflected in the attached redline.

Best Practice of Single Contact: The suggestion that a borrower be given a single point of contact may not be a best practice in all situations, given that employees go on vacation, travel for work, get sick, go on medical leave, and change jobs. Many servicers find it better to use automation and have a large number of employees able to process a borrower's case and to assign calls to "next in line." Both are proven effective ways to balance caseloads in modern call centers. As a result, we have stricken this provision in the redlined version.

Best Practice on Capacity: Our revisions recognize as a best practice that servicers sometimes outsource aspects of servicing to *vendors* in addition to "special servicers."

Delinquent Borrower Outreach (Item 3)

Evaluation of Delinquent Borrowers: Technical changes are made to conform to current HAMP requirements.

Written and Telephone Contact Attempts: The proposal would require servicers to send a minimum of three letters in varying formats, such as email, courier services and hand delivery and no less than four telephone attempts to get borrowers to participate. This standard is excessive. First, it appears that the three written attempts are in addition to the original HAMP solicitation using U.S. Mail. The three alternate methods of delivery are expensive and not all servicers have the financial resources to solicit in this manner. Even if these solicitations were by U.S. mail, the cost can be exorbitant. Requiring four phone calls is also problematic. While granting borrowers many opportunities to acknowledge assistance is appropriate, at some point it is reasonable to expect that the borrower will open mail and respond to calls and other outreach. The outreach feature proposed may imbed significant delays in the servicer's ultimate resolution of the loan, and goes beyond what was provided for in the HAMP guidelines. Such delays are costly for the servicer and the investor. We suggest that servicers retain some discretion to develop reasonable contact policies and not have a specific number and types of attempts dictated to them. It is in everyone's interest under HAMP to make contact with potentially eligible borrowers, but in many cases, for reasons that are as varied as they may not be understood, many delinquent borrowers simply do not respond to their mortgage loan servicers.

Best Practice Outreach Events: Our comments highlight the need to retain the servicer's discretion in participating in face-to-face activities.

As stated previously, we believe borrower complaints could be reduced if Treasury, in coordination with the industry, could communicate what servicers are able to accomplish at outreach events so as not to create unrealistic borrower expectations that modification decisions can be made on the spot, especially for servicers that elect to underwrite and conduct verifications prior to offering a trial period plan, as authorized under HAMP.

Contact with Borrowers in Imminent Default (Item 4)

Written Policies: The proposal requires servicers to establish written policies for imminent default borrowers that clearly describe any additional documentation that may be required to determine eligibility and the standards upon which the determination will be made. The proposed guidelines also require that such policies must be provided to Freddie Mac and to borrowers or consumer advocates upon request.

Servicers support greater transparency in the process and do not object to providing borrowers with general information on how to apply for assistance, such as the need to provide: (1) a hardship affidavit; (2) listing of household expenses and outstanding debt obligations; (3) gross income and deductions from gross income; (4) listing of assets; (5) evidence of occupancy; and (6) other HAMP basic eligibility information. The industry believes borrowers should be given enough information to understand why they may or may not qualify for the program. We also have no objection to providing such information to Freddie Mac in its role as Compliance Agent.

However, we do not believe that written policies that may contain servicer internal underwriting standards for determining imminent default should have to be provided to borrowers or consumer advocates. Such information may be confusing to borrowers and is likely to generate more calls to servicers with questions. Perhaps more importantly, such information may provide some borrowers with a roadmap for how to

“game” the system by manipulating their information to meet the imminent default standards. Finally, having to produce internal policies would allow consumer advocates and plaintiff lawyers to perform discovery outside of litigation, thus burdening servicers’ staff with fishing expeditions to second-guess their decisions. It should be sufficient for Treasury’s purposes that its Compliance Agent will be able to review these policies and measure servicer practices.

As a result, the attached redlined version of the Guidelines merely provides that servicers will comply with the existing HAMP documentation.

Adequate Staffing: The proposal requires servicers to have adequate staff so that borrowers at risk of imminent default are provided service within the same time frame as delinquent borrowers. This is not a realistic standard and should be removed. Servicers must triage their borrowers. Clearly those in immediate risk of losing their homes to foreclosure should receive priority. By design, borrowers closer to foreclosure should expect faster responses than those who are current with no immediate risk of losing their home. Failure to triage in this manner would have undesirable results. Additionally, the evaluation of an imminent default borrower is more complex than a delinquent borrower. The servicer must review payroll deductions, household expenditures, and liquid assets for imminent default borrowers, for example. This, too, will result in differences in response times. Lastly, servicers are being inundated by current borrowers seeking modifications. In fact, a large servicer has publicly stated that about 40 percent of the borrowers who contact it are current borrowers, many of whom are not in financial distress. This behavior is clogging the system, stretching staff, and impacting servicer responsiveness.

A secondary point is that many servicers may have staffs that work larger caseloads than what Treasury or others might think would be an appropriate size, but in many cases this is because of the smart use of technology, automation, process flow management, and data management. Expecting certain staffing levels without taking these other factors into account would penalize the more efficient companies if this provision became a review standard. These comments are reflected in the redlined attachment.

Explanation of Decision: This section was removed because it is covered in Section 10.

Best Practice on Staffing: This section was removed because it is premature.

Metrics for Borrower Response (Item 5)

An overarching concern with the proposal is the need to further personalize each letter in a way that can only be accomplished manually and to provide numerous additional disclosures. Servicers need an efficient, quick and simple way to inform the borrower of program requirements and steps. We, therefore, urge Treasury to make every effort to streamline the notice provisions. It is imperative that notices be generic when possible and to permit a “check the box” format so that servicers can accommodate most borrowers with a single form. Moreover, servicers need to automate this process. Generic and “check the box” forms can be automated which, in turn, increases compliance, speed and accuracy.

Acknowledgment of Application: Participating servicers would be required to acknowledge the receipt of a borrower's request "*seeking consideration*" for HAMP or a borrower's application for HAMP. We support the concept of an acknowledgment to let the borrower know that the information he or she has submitted was received and is being evaluated. However, the use of the phrase "seeking consideration" implies that the servicer must send an acknowledgment at an inquiry stage prior to having any information that can be acted upon – thus putting into question just what needs to be acknowledged. We do not believe this is the appropriate trigger. In many cases, borrowers "seeking consideration" need to be verbally referred to the servicer's Web site or given verbal information on what to submit. This practice should be allowed to continue without the need to supplement what is effectively an inquiry with a written acknowledgment. Once the borrower submits sufficient information (that is, income information and a Hardship Affidavit) should the servicer be expected to send a written acknowledgment of receipt and/or, alternatively, an approval with appropriate documentation, or a denial letter? We offer a comprehensive paragraph to cover this in the attached.

Process Description: As part of the acknowledgment, or other notice, the servicer would be required to provide a list of documentation that will be required to determine eligibility. This information may be helpful if it alerts the borrower to send in documentation that he or she may not have submitted. However, we do believe that the list of documentation should encompass both the trial modification period and the final modification agreement.

Item (iii) would require the servicer to indicate any third party approvals that are required for the particular account. This requirement alone requires the entire letter to be personalized for each borrower. Given that the borrower cannot and should not influence these approvals, we believe converting this requirement to a generic statement is appropriate. We suggest instead a generic statement as reflected in the redlined document.

Item (iv) states that the servicers must provide an affirmative statement that the foreclosure proceedings will or will not be initiated or continued during evaluation and the trial modification period, and if continued, how it will impact the HAMP decision. Supplemental Directive 09-01 provides that foreclosure is not to be initiated or completed during the 30-day evaluation period, so we are unsure why the guidelines provide for this choice. The attached reflects the current foreclosure forbearance requirements. Also, given that imminent default borrowers are current or not yet at risk of foreclosure, we believe this statement will confuse and irritate these current borrowers. As a result, the notice should allow for either a conditional statement relating to delinquent borrowers (e.g., if you are delinquent....") or should allow a "check the box" option specific to delinquent borrowers. A "check the box" feature should also be allowed to accommodate different investor foreclosure pause standards.

Trial Period Plans Based on Verbal Income and Full Verification: These two sections would establish timeframes for sending Trial Period Plan Agreements to borrowers. If the servicer accepts verbal income, the timeline would be 10 business days. If the servicer requires verified income, the timeline would be 30 calendar days. Imposing hard deadlines on servicers is very problematic given the current and volatile volume of requests. We recommend that Treasury recognize the need for flexibility to handle

different types of borrowers (current versus delinquent) and spikes in volume, such as when the Treasury announces a new component or an enhancement, upon a significant campaign (such as Presidential address), or following an outreach event. Other agencies recognize the need to be flexible in high volume times and we request the same consideration here. Moreover, since verifications are provided by third parties, delays due to independent third parties should be given leniency. In general, however, our members believe that 10 business days for verbal approvals and 30 days for verified approvals is a reasonable amount of time to respond, other than during a period of extreme volume or more difficult cases. The concept of Effective Request is incorporated into these provisions.

Best Practices: Both best practices sections were removed because they are premature.

Foreclosure Forbearance (Item 6)

Forbearance Pending Receipt of Borrower Information: The proposal calls for servicers to establish written guidelines for foreclosure forbearance during the evaluation process. The proposal states that such forbearance period must be at least 30 calendar days and must include time extensions if partial contact or partial documentation is received. Servicers today forbear from foreclosure sale while a borrower is evaluated for loss mitigation. The Mortgage Trade Groups are concerned, however, that the guidelines fail to recognize appropriate finality to the evaluation process. Borrowers should be diligent to provide required documentation or to communicate with the servicer during the 30-day period. Extensions should be a rare occurrence and only in the case of special circumstances and not due to lack of documentation within the borrower's control or the borrower's failure to communicate with the servicer. Servicers should not be mandated to offer extensions beyond the expiration of the 30-day period, but should be allowed to do so at their discretion.

Observation and Use of Origination Data: The proposal would require servicers to encourage borrowers to complete the Government Monitoring Information with regard to race, ethnicity and gender. If, however, the borrower fails to provide the information, the proposal calls on servicers to complete this information based on visual observation *or verbal communication with the borrower* or, alternatively, use the data from the origination file, to the extent that such information is readily available. This proposed verbal requirement is problematic.

It is important to recognize that servicers generally have much less discretion in the modification process than originators have in the loan application process, who are required to report fair lending information in accordance with the Home Mortgage Disclosure Act (HMDA). At origination, many product options are available and there are numerous ways to structure the loans. Underwriting standards are somewhat flexible or subject to various alternatives. Servicers do not have the same level of flexibility when attempting to modify an existing loan in HAMP. Servicers are subject to the parameters of the program and have less underwriting discretion. Moreover, Freddie Mac will be conducting a second look program. Such features significantly limit the potential for abuse and predatory treatment in completing modifications.

Existing HAMP policies on this subject (SD 09-02) in many respects resemble the Home Mortgage Disclosure Act (HMDA) requirements for originations.³ The draft servicing guidelines, however, go beyond HMDA and Policy 09-02 by requiring race, ethnicity and gender determinations based solely on verbal communication. This implies that servicing staff will be required to complete the questions by guesswork during or after a phone conversation with an applicant. This guesswork is not an appropriate means of collecting such sensitive data and actually undermines the expected accuracy of such reporting.

The Mortgage Trade Groups request that Treasury not impose fair lending data collection requirements that are more onerous for modifications than for originations. Specifically, servicers should not have to guess as to the borrower's race, ethnicity or gender based on a telephone, mail, or Internet communication.

The edits in section 7 of the attached draft guidelines indicate changes consistent with the above concerns.

Coordination with HUD-Certified Housing Counseling Agencies (Item 8)

Cooperation with Counselors: The proposal requires servicers to communicate details of the HAMP workouts to counselors. No information is provided as to what must be communicated. Given the voluminous amount of information being suggested in this proposal, we urge Treasury to limit what information is relayed to the counselor. The counselors should communicate with the borrower as to status of any pending trial or permanent modification. Treasury should encourage counselors to alleviate the servicer's workload rather than add to it. As a result, servicers should not be mandated to provide copies of suggested notices to housing counselors. Moreover, not all counselors want that level of information. Our revisions recognize that servicers will *discuss* the details of the workouts with the counselors upon request.

Standard Applications: This section was removed because it is premature.

Best Practice: The proposal suggests a best practice to provide compensation to counselors who refer qualified borrowers to servicers. Not all servicers are financially capable of compensating for counseling. Moreover, if the investor is unwilling to pay for counseling, we do not believe the servicer should have an obligation to cover the cost.

Trial Period and Final Modification Disclosures (Item 9):

The proposal requires significant amounts of borrower specific information to be provided with the Trial Plan Offer, including features that were used to reach the decision. This is a vast amount of information that is not critical to the borrower because

³ Currently, under HMDA, originators are required to collect data on ethnicity, race and sex as part of the loan application process. Originators are required to ask the applicant for this information (but cannot require the applicant to provide it). The lender must inform the applicant that if the information is not provided when the application is taken *in person*, the lender is required to note the borrower's declination and fill out the data on the basis of visual observation and surname. However, if the application is taken *by mail, telephone or Internet* and the applicant declines to answer these questions, the originator is to indicate that the application was received by mail, telephone, or Internet, but is not required to complete the Fair Lending questions. HMDA does not apply to loan modifications. 12 CFR 203 and see Appendix B to Part 203—Form and Instructions for Data Collection on Ethnicity, Race, and Sex.

the borrower has received the trial offer and most of this information will be disclosed in the Trial Period Plan Agreement, a form prepared by Fannie Mae as program administrator or by the GSEs for their loans. If the trial period plan was approved on a stated income basis, then the servicer will not know much of the information called for in this section until it has verified the numbers and then this information will be disclosed in the final Modification Agreement. This section of the guidelines should be removed. The attached redlined version of the guidelines has edits consistent with these comments.

Rejection or Trial Plan Failure (Item 10)

The proposal would require servicers to send a rejection or failure notice if the borrower is ineligible or fails the trial modification period. This is a reasonable requirement. We also appreciate the ability to send this notice through any written format (for instance, U.S. mail, fax or e-mail). However, the amount of information to be provided is extremely burdensome and the trigger for the notice is unclear. Moreover, much of the specific information appears to be discovery or supervisory in nature and, in some respects, confusing to the consumer.

We urge Treasury to streamline the amount of information required to be disclosed and to allow a “check the box” format so that servicers can use one form for all or most borrowers and can automate the process. Further, a “check the box” approach will provide continuity across the industry in communicating to customers the reasons for rejecting loan modification requests. Failure to streamline this notice will require an inordinate amount of staffing and staff time. The amount of information proposed will likely increase the servicer’s error rate, especially because these notices require significant re-keying and original drafting. We urge Treasury’s assistance in streamlining this and the other notices. We also ask Treasury to identify when a denial/failure notice would be triggered, especially as it relates to a “request” for assistance or an “application.” Included in our redlined version is the concept of an “Effective Request.”

- No Imminent Default. This section was combined with subsection (ii) below.
- Borrower Does Not Meet Basic Eligibility. We agree that the servicer should identify what criteria were not met if a borrower is denied. However, we do not believe it is appropriate or necessary to do so in writing for the basic minimum eligibility criteria that are publicly available and discussed during initial requests for assistance without submission and evaluation of written documentation. Moreover, evidence relied on by the servicer also should not be required. Instead, for example, it should be sufficient to simply indicate that the borrower failed the income test rather than provide the combined gross monthly income back to the borrower. The borrower supplied the income information and thus restating it should not be necessary. Finally, most borrowers know what their mortgage payment is or can find out easily. While many servicers may do this to enhance customer experience, we do not believe the loss mitigation staff should be required to supply readily available information. Moreover, borrowers receive Adjustable-Rate Mortgage (ARM) adjustment notices when their interest rates will adjust. The information, therefore, does not need to be duplicated here.

- Investor Identification. While this information generally is available, providing it in the letter would require a unique letter for each borrower, thus eliminating “check the box” formats. Given that the servicer relays the investor’s decisions to the borrower, the information is of little or no use. Moreover, the loan servicer is authorized to communicate to the borrower on behalf of the investor of the loan and most investors will not have customer service units to discuss loans they own with the borrowers; they rely on the servicer to do this. Since the mid-1990’s, federal law has recognized that the loan servicer is the entity that speaks for the owner of the asset (See the Cranston-Gonzalez provisions of Real Estate Settlement Procedures Act (RESPA)). Also, borrowers are now able to go online to determine if their loans are owned or securitized by Fannie Mae or Freddie Mac. We would recommend that if the reason for a denial of a HAMP modification is that the investor will not allow the modification, or if the pooling and servicing agreement prohibits loan modifications of a type such as a HAMP modification, that the servicer simply identifies this as the reason for the denial.
- NPV Print Out. Providing the print out would require the letter to be personalized, making this process very inefficient. Servicers also indicate that Treasury’s NPV print outs or cash flows are not readable or understandable by most borrowers. This page will generate a tremendous number of calls to explain the information. Loss mitigation personnel often cannot explain the Treasury’s NPV model or reasons for the denial other than that the system generated a “no mod” answer or produced a result that was NPV negative. This detail should be removed. Servicers must use Fannie Mae’s NPV calculator, although some limited customization is permitted. Freddie Mac will conduct a second look program to determine if the NPV test was performed correctly and appropriate data entered. These safeguards should be enough to remove any request that the servicer explain the test to a borrower.
- Borrower Failed to Provide Documentation. The proposal requires the servicer to indicate that the denial was due to the borrower’s failure to provide documentation. This is reasonable. However, the proposal would require the servicer to detail the date the documentation was due and a summary of the servicer’s efforts to contact the borrower. The servicing guidelines already require the disclosure of deadlines for documentation and payments (see item 6) and thus this itemization is superfluous and should be removed.
- Borrower Rejected Offer. Given that the borrower rejected the offer, it would be helpful to eliminate the input of the date of the rejection so the disclosure can be more generic. We also note in the redlined version that the borrower may be ineligible due to a refusal to establish an escrow account.
- Borrower Failed Trial Period Plan. To streamline the disclosure requirement, we request that servicers have the ability to identify how the borrower failed the trial period, rather than identify non-performance dates.

Other Foreclosure Alternatives: We revised this section in the redlined draft to recognize that servicers will consider other loss mitigation alternatives according to investor authority and requirements. The revisions also recognize that non-HAMP

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modifications will likely be considered before short sales and deeds in lieu of foreclosure, most notably where the borrower is eligible for a non-HAMP modification despite not meeting basic eligibility under HAMP.

Subordination and Compromise of Jr. Liens (Item 11)

We support the Treasury's effort to encourage lenders to subordinate their junior liens to facilitate implementation of HAMP and HARP when economically appropriate. However, investors and even portfolio lenders have a contractual right to not further damage their lien position. We have suggested adoption of specific language to this effect.

Thank you for the opportunity to comment. Please feel to contact William Leroy, President and CEO, American Legal and Financial Network, (623) 414-3242 or wleroy@e-afn.org; Paul Leonard, Vice President of Government Affairs, Housing Policy Council, (202) 589-1921 or Paul@fsround.org; or Vicki Vidal, Associate Vice President of Loan Administration, Mortgage Bankers Association, at (202) 557-2861 or vvidal@mortgagebankers.org if you have any questions. We appreciate your consideration of the industry's concerns and would like the opportunity to discuss these issues with you personally. We will be contacting you shortly to set up a time to meet.

Sincerely,

American Legal and Financial Network
Housing Policy Council of the Financial Services Roundtable
Mortgage Bankers Association

Cc: Faith Schwartz, The HOPE NOW Alliance