

August 10, 2009

The Honorable Chris Dodd
Senate Banking Committee
534 Dirksen Senate Building
Washington, DC 20510

The Honorable Barney Frank
House Financial Services Committee
2129 Rayburn House Building
Washington, DC 20515

Dear Chairmen Dodd and Frank:

The undersigned trade associations would like to provide additional information about the industry's implementation of the Home Affordable Modification Program (HAMP), its overall efforts to assist homeowners, and to recommend additional enhancements to the Making Home Affordable (MHA) and HOPE for Homeowners (H4H) programs to better assist homeowners.

From the third quarter of 2007 to June 2009, the mortgage industry offered more than 4.7 million workouts to homeowners to avoid foreclosures.¹ Mortgage loan servicers offered 1.5 million workouts to troubled mortgage borrowers in the first six months of this year alone. These borrower assistance programs continue to outpace foreclosures. On August 4, the administration reported that mortgage servicers had offered more than 400,000 HAMP trial modifications to homeowners and 230,000 trial modifications had already started. This is a very strong start for a program that contains detailed requirements for servicers and homeowners and that has only been in place for a short period of time.

Most servicers were only able to begin establishing operational parameters around the program at the end of April when final and revised rules were released by the Treasury Department, Fannie Mae and Freddie Mac. Servicers need time to implement such a complex program, to retool processes, train staff, develop tracking and reporting functionalities, obtain government approvals of net present value (NPV) models, and qualify borrowers. Servicers are subject to a high standard of accuracy when implementing the conditions of the program. Failing to follow every criterion of the program to the letter exposes the servicer to repurchase or indemnification risk from Fannie Mae or Freddie Mac. Additionally, the majority of the servicers now participating in MHA and offering HAMP modifications came onboard with the program in only the last few weeks.

Even now that it is mostly implemented, the structure of HAMP causes a perceived delay in implementation. Under the program, borrowers must complete a three-month trial period before the actual modification can be executed. During the trial period, the servicer reports the loss mitigation action as a repayment or forbearance plan. If the borrower performs under the plan, the trial modification will turn into an actual modification and only then be reported as such. As a result, HAMP modifications will not begin to be executed until this month or September at the earliest. We are pleased

¹ Since 2007, mortgage servicers have voluntarily reported loan workouts through the data collected by the HOPE NOW Alliance.

with the report that was released by the Treasury Department last week. It shows a significant and broad effort on the part of the servicing industry to help financially distressed borrowers.

We understand the tremendous focus on modifications and, in particular, modifications made through HAMP. However, the industry's success or failure in helping borrowers should not be judged solely on HAMP. Servicers should be recognized for all loss mitigation activities, including HAMP modifications, non-HAMP modifications, forbearances, other loss mitigation options, and refinances. All of these solutions help troubled homeowners avoid foreclosure and stay in their homes whenever possible.

Unfortunately, not all delinquent borrowers can be saved from foreclosure. Some borrowers simply have no means to sustain the mortgages on the homes in which they live or they do not desire to do so. With seasonally adjusted unemployment reaching 9.5 percent nationwide, many borrowers cannot qualify for a modification at any level. HAMP is also not available for investor properties and abandoned homes. According to a Mortgage Bankers Association (MBA) survey of some of its members, approximately 18 percent of loans in foreclosure were investment properties in 2008. MBA also estimates that 21 percent of loans where foreclosure action had commenced, but foreclosure sale had not yet occurred, were vacant. We urge you to keep these facts in mind.

Separately, and importantly, judicial modification of mortgage debt in bankruptcy is not likely to help borrowers who are unemployed because Chapter 13 filers must have regular income to qualify. Also, courts today do not modify mortgages on investment properties because these assets are not essential to the reorganization of the borrower. The bankruptcy process is costly and protracted, whereas modifications and other loss mitigation options are free (and even provide incentives) to borrowers and are executed faster than court proceedings, as the Treasury data suggests.

Finally, it is important to note that all borrowers who have a reasonable means to support a mortgage and the desire to live in their homes will be considered for assistance. Moreover, homeowners who submit required information and respond to their servicers will not lose their homes while loan modification and other decisions are pending.

Ways the Government Can Help Increase Loss Mitigation Solutions that Assist At-risk Homeowners

Congressional Action

Congress has provided the industry with assistance. Most significantly, Congress expanded HUD's authority to offer partial claim modifications for up to 30 percent of a borrower's unpaid principal balance. We believe this will help achieve affordability for many borrowers. While Congress enhanced the HOPE for Homeowners program, the program's design is still not the best it can be. We want the program to be successful,

but a number of obstacles remain. Among the changes that need to be made in order for the program to work, the two most prominent are:

- First payment default: We continue to express concern with the program's first payment default feature. This provision subjects an originator that has no current credit exposure to credit losses if a high-risk borrower fails to make the first payment (typically due the second month after closing). The likelihood of such an event is high and most originators will not take such risks. To participate in H4H, therefore, borrowers must make their first payment at closing with good funds. This puts a strain on an already financially strapped borrower to come to the closing with cash. Moreover, the first payment default policy does not guarantee any better performance in future months. This feature should be removed.
- Junior liens: Standard FHA refinance programs no longer have a combined loan-to-value limitation. While borrowers must demonstrate they can pay both first and junior mortgages, borrowers can still qualify if a decline in property value has eroded equity for the junior mortgagees. Given that many borrowers are not paying their "under water" second mortgages today (knowing the junior lien holder will not foreclose), H4H should allow subordinations of junior liens rather than mandate write offs. The borrower will be in no worse position if the lender subordinates. In fact, it could mean a substantial reduction in the first mortgage payment.

Administrative Action

Many of our member institutions have been working closely with Treasury to identify and resolve HAMP program requirements that are creating obstacles to optimal performance. We would like to inform you of some of the industry's suggested improvements, including:

- Making the trial modification period voluntary. As designed, servicing staff must touch each loan multiple times – increasing the staff time necessary to complete one modification. When permitted by pooling and servicing agreements, servicers should be given the option to go straight to official modification.
- Creating an interest-only modification that will allow more borrowers to qualify.
- Streamlining HAMP by reducing documentation, reporting, evaluation standards and the proposed servicing requirements. The program requires a significant amount of documentation, tracking and reporting that could be streamlined. Servicing staff that is already stretched thin will soon be asked to perform excessive due diligence under Treasury's proposed servicing guidelines. The process must be streamlined and simplified, through

standardization, reduction in documentation, central and uniform reporting to all sources.

- Providing servicers a grace period from buy-backs, indemnification requests, curtailment of claims and loss of incentives for technical non-compliance. This grace period would allow servicers to implement program changes or new features faster. The industry would be happy to work on appropriate controls and thresholds.
- Encouraging Fannie Mae and Freddie Mac to eliminate the need to run the NPV calculation when it is not required to grant the borrower a modification.
- Treasury and the GSEs should underwrite the borrower based on current unemployment benefits, regardless of when such guaranteed payments expire. Today, borrowers must prove guaranteed payments for nine months. Unrealized extensions of unemployment benefits are not recognized.
- Working with FHA to create a special forbearance program for unemployed borrowers that uses the new partial claim authority to pay or reduce mortgage payments for up to 24 months, which coincides with federal retraining programs.
- Ultimately, the GSEs need to integrate the HAMP program requirements into their AU systems so that the modification process can be streamlined and executed on a more timely basis.

Ongoing Industry Efforts

The industry wants to perform at optimal capacity. We are constantly looking for ways to be faster, more helpful and more accurate, and we are working to implement additional improvements to help in this area right now, including:

- A single Web portal for borrowers and counselors to submit requests for loss mitigation and required documentation.
- Ombudsmen who can escalate key issues or concerns from Congress or the administration to the highest level of management within each MHA servicer.
- Increased outsourcing and staffing to handle volume. Servicers have already tripled, quadrupled or increased their loss mitigation staff at even greater rates compared to two years ago. Some servicers are also placing greater reliance on third parties to assist in processing loss mitigation requests.
- Continued support for borrowers by paying for housing counseling sessions.

Additional improvements are likely to be suggested as discussions and evaluations of the various programs continue.

The industry is striving to meet the administration's objectives and we believe that the administration's stated goal of reaching 500,000 trial modifications by November can be achieved. If several of the changes suggested above are made quickly, we believe this number could be reached even more quickly.

In sum, while more work can and will be done, the industry shares your goal and that of the President to help delinquent borrowers.

Sincerely,

**American Financial Services Association
Consumer Mortgage Coalition
Financial Services Roundtable
Housing Policy Council
Mortgage Bankers Association**

cc: The Honorable Richard Shelby
The Honorable Spencer Baucus