February 23, 2009

The Honorable Timothy F. Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

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

Dear Secretary Geithner and Secretary Donovan:

On behalf of the Mortgage Bankers Association[1] (MBA), we greatly appreciate your efforts and those of the administration to restore vitality to the U.S. financial system and the housing market, including through the recently announced Homeowner Affordability and Stability Plan (HASP). While the economic challenges facing this country are historic in magnitude, MBA believes they can be conquered with a combination of determination and cooperation of public and private sector resources. MBA stands ready to work with the Department of the Treasury (Treasury) and the entire administration to return the housing finance system to health.

MBA agrees with the majority of the conceptual underpinnings of HASP, and we are pleased that the administration's plan is a multi-faceted approach to a vexing and complex challenge. We also share the administration's desire to direct assistance to the neediest of qualified borrowers and, where possible, to help "at risk" borrowers avoid falling behind on their financial obligations.

MBA believes that transparency and clarity are critical to HASP's success. In an effort to assist Treasury in shaping the specific parameters of HASP, MBA solicited input from its members on areas within HASP that would benefit from further specificity. An overview of MBA's member concerns and suggestions is presented below, accompanied by an attached compendium of MBA member questions.

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[1] 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.

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I. Uniform Industry Guidelines

MBA strongly supports the efforts of the administration to develop "clear and consistent guidelines for loan modifications." Servicers have worked hard in the face of an extraordinary workload to modify loans were appropriate and help troubled borrowers in a variety of ways. Moreover, the industry, through HOPE Now and other initiatives, has invested considerable resources to better reach and assist borrowers prior to their loan going into foreclosure. Development and implementation of uniform guidelines for resolving troubled mortgages across the single-family real estate finance industry is an important initiative to help restore the confidence of borrowers, lenders and investors. MBA would welcome the opportunity to work with Treasury and provide input from practitioners' perspectives from all sectors of the housing finance system.

II. Loan Refinancing Through Fannie Mae and Freddie Mac

Loan to Value Restrictions – MBA endorses HASP's feature that would enable a borrower to refinance a mortgage even if the loan amount exceeds the property's current market value (i.e. loan to value or "LTV") up to 105 percent. However, MBA urges Treasury to expand this program in order to provide assistance to a broader spectrum of financially troubled borrowers. Specifically, MBA requests eliminating the 105 percent LTV cap, or at a minimum raising the cap to a higher LTV ratio. Industry data consistently shows that areas of the country hardest hit by real estate price depreciation are also the areas with the highest mortgage delinquency rates, such as California, Nevada, Arizona, Florida, Ohio, Michigan and portions of the Atlantic seaboard. Many borrowers in these areas would be precluded from the benefits of the HASP refinance program if the LTV ratio on their loan is over 105 percent.

In the event that Treasury does not modify the current 105 percent LTV cap, MBA requests Treasury consider an alternative, complementary program for borrowers with LTV's in excess of 105 percent. Under the alternative program, the mortgage servicer would calculate the maximum loan amount that would result in a LTV at or below 100 percent with an interest rate that would provide a targeted debt-to-income (DTI) ratio. Eligible borrowers would refinance their current mortgage into a new 100 percent LTV first mortgage and a priority second lien mortgage for the balance that would not fit under the 100 LTV cap. The priority second lien mortgage would be purchased by the government through a new or recently created lending facility. The second lien would have the right of first repayment from any gain on the future sale of the residence or upon the future refinancing of the first lien mortgage.

Private Label Securities – Like the high LTV borrowers discussed above, financially troubled borrowers whose mortgages are pooled into non-agency mortgage-backed securities (private label MBS) currently are ineligible for HASP refinance assistance. MBA believes otherwise eligible borrowers should not be denied a refinance simply because Fannie Mae and Freddie Mac do not own or guarantee their loans. Because borrowers have little choice over the destination of their loans in the secondary market, MBA strongly urges Treasury to revise this HASP requirement so that government assistance is made available to borrowers based on consistent, relevant factors. The program suggested above involving a first and a priority second mortgage would be a good way to reach these borrowers.

III. Homeowner Stability Initiative

"At Risk" Borrowers with High-Cost Conforming Loans Also Should Be Assisted Under HASP – Fannie Mae and Freddie Mac are permitted by law to purchase loans with values up to $417,000, and, temporarily, up to $729,750 in so-called "high-cost areas." As a result, the market recognizes two types of conforming loans – (1) standard and (2) high-cost. MBA notes that HASP currently does not differentiate between these two conforming loan types. While it is reasonable to assume that both standard and high-cost loans qualify for HASP assistance, MBA believes it would be prudent to expressly indicate this is the case.

MBA further requests HASP be modified so that financially troubled or at risk borrowers are eligible for assistance even if their loan amounts exceed the conforming loan limits. In many parts of the country, loans exceeding the conforming limit are a function of area housing costs rather than a borrower's socioeconomic profile. Moreover, MBA believes that robust levels of liquidity will not return to the market unless the crisis across the entire housing finance continuum is addressed.

Government Loans – The administration indicates its intensions to work with the government to apply the modification guidelines to all loans owned or guaranteed by the federal government, including Ginnie Mae, FHA, VA and Rural Housing. In doing so, the federal agencies should address the cost of buying loans out of Ginnie Mae securities and modifying them. In order to apply this program to government loans, two key statutory and regulatory changes must be made to allow the servicer to participate. They include:

1. **Expanded Partial Claim and Other Claim Authority**: FHA, VA and RHS must be permitted to pay servicers a partial claim for interest rate or principal modifications (including deferrals of principal). Statutory language also must be changed to allow the borrower to be current in order to qualify for a partial claim and to allow a claim in excess of 12 months of principal, interest, tax and insurance payments. If the loans remain in Ginnie Mae pools after they are modified, which is not permitted today, the agencies must provide an ongoing payment for the differential between the scheduled pass-through payment and the actual modified payment.

2. **Assignment Program**: In combination with partial claims, we believe that FHA, VA and RHS should provide for an assignment program whereby servicers would assign loans to the agencies. The assignment approach alleviates the capital constraints and borrowing constraints that servicers encounter when required to buy modified loans out of Ginnie Mae pools.

Until the complexities of the government lending programs are addressed, we do not believe FHA, VA and RHS loans will be able to benefit from the Home Stability Initiative as designed.

A Workable Safe Harbor Must Be Established to Enable Mortgage Servicers to Work with More Borrowers – As indicated, MBA appreciates that Treasury will develop uniform guidance for loan modifications across the mortgage industry. However, establishment of an effective safe harbor protecting servicers from legal liability for modifications is also essential to assuring

that securitized loans can be modified. Any such safe harbor should also assure that funds are available to defray the costs of servicer liability through indemnification or other means. We would like to work with Treasury and Congress on developing a safe harbor that will allay servicer concerns and clear the way for modification of loans in certain securities.

Accounting Issues May Affect Bank Capital – MBA has identified several accounting issues associated with the proposed loan modification plan that may affect bank capital. The proposed modification plan may preclude a securitization vehicle from qualification as a Qualifying Special Purpose Entity (QSPE), which would require the MBS's assets and liabilities to come back on the balance sheet of the transferor. MBA believes that two triggers within paragraph 35 of Statement of Financial Accounting Standards No. 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities* (FAS 140) may disqualify sale treatment: 1) added servicer discretion not anticipated in the pooling and servicing agreement (PSA) or voted on by a majority of beneficial interests held by a majority of holders other than the transferor (paragraph 35 b of FAS 140), and 2) the government guarantee or government interest rate subsidy that is put in place after securitization (paragraph 35 c of FAS 140). This would serve to reduce equity as a result of reversal of gain on sale, and increase assets as the securitization's assets come back on the balance sheet of transferors.

For financial institutions, these factors compound the issue because they would decrease the numerator (capital) and also increase the denominator (assets) in risk-based capital. Further, the losses associated with the loan modifications under the troubled debt restructuring rules will increase losses and may require additional capital under the capital adequacy rules. MBA recommends that Treasury request the Securities and Exchange Commission (SEC) encourage the Financial Accounting Standards Board (FASB) to temporarily suspend certain portions of paragraph 35 of FAS 140, and Treasury should request that bank regulators provide capital rule relief if such securitization assets do have to be put back on the balance sheet.

IV. Industry Capacity

Industry Capacity Will be Strained – Neither the quantity of work required by the proposed refinance and loan modification plans or the time to implement them should be underestimated. First, performing manual transactions on the millions of mortgages Treasury anticipates will be reviewed and/or modified by various government programs is difficult. Accordingly, the industry must move quickly to build systems to screen for qualification under each of the programs in order to automate the process. Second, current information on borrower income and debt and current value information for mortgaged properties will have to be obtained and put in these models so that front-end and back-end debt to income ratios and loan to value ratios can be determined. This process will necessarily be manual. Millions of credit reports, income verification correspondence and appraisals or broker opinions of value will have to be processed.

Servicing systems are generally mainframe applications. They currently are not programmed to track and record the proposed servicer compensation or reductions in indebtedness based on future borrower performance. These systems changes will take time. MBA likewise is concerned about capacity constraints to handle the added workload for industry partners in the

loan refinance or modification process including appraisers, title companies, closing agents and county recorders.

As you work to keep interest rates low and encourage refinancing and home purchases, consider that meeting the increasing mortgage demands of consumers has become an increasingly challenging problem due to the lack of adequate warehouse lines of credit for independent mortgage companies. Many warehouse lenders have gone out of business or terminated or added restrictions to their lines of credit, drastically limiting the ability of many mortgage bankers to serve their customers. MBA strongly urges the administration to consider solutions that would provide additional liquidity to independent mortgage bankers so that they can help support the administration's efforts to stabilize the housing market, especially in underserved areas. We have written separately on this issue to the Treasury and other government agencies.

An additional problem involves implementation of the S.A.F.E. Mortgage Licensing Act (S.A.F.E.). Under S.A.F.E., states are encouraged to enact licensing and registration laws for lenders and mortgage brokers by July 30, 2009. The Act was not designed or intended to cover mortgage servicers. Nonetheless, unless the Department of Housing and Urban Development (HUD), which has regulatory authority under the law, clarifies this point, a new patchwork of state laws governing servicing may be enacted relatively quickly. MBA and others are writing to HUD urging guidance to avoid unnecessary regulation that may impair loan modification efforts and make them much more costly as servicers seek to comply.

MBA notes that the proposed programs can be expected to result in a need for additional employees and contractors for the industry and utilize some excess capacity which is good for industry, the economy and ultimately consumers. However, MBA wants the government and borrowers to have realistic expectations of how quickly all of the loans eligible under the program can be identified and processed. MBA offers its resources to assist Treasury with the details of the plan to streamline the process as much as possible. MBA looks forward to assisting Treasury and our members on this very important aspect of the effort.

V. Judicial Modification

HASP, as announced, indicates it will "seek careful changes to personal bankruptcy provisions so that bankruptcy judges can modify mortgages written in the past few years when families run out of other options." It is well known that MBA opposes revisions to the bankruptcy code to allow judicial modification of mortgage indebtedness on primary residences as harmful to the market and expensive for consumers. We continue to strongly support alternatives. Considering the options available to borrowers under HASP, especially with the modifications we suggest in this letter, MBA would respectfully urge that the addition of bankruptcy modification to the plan is unnecessary and will likely have unintended negative consequences.

However, should the administration continue to pursue the option of judicial modification, MBA strongly supports the limitations contained in the plan released last week and additional limitations. Judicial modification should be a last resort and only available where other non-judicial options have been exhausted or are not available. Where a borrower has been offered a non-judicial modification under HASP, the ability of the borrower to seek a judicial

modification, or at the very least, the ability to shop for a more favorable modification in bankruptcy court, should be precluded. Where a judicial modification takes place, MBA believes that the lien should not be *reduced* to the fair market value of the property, but instead principal beyond the fair market value should be *deferred* to ensure affordability similar to what the HASP anticipates in its modification program. This will create a more level playing field between modification and bankruptcy. At a minimum, bankruptcy modification legislation should provide for a recapture provision that would allow the lender to recover the amounts written down to avoid unjust enrichment of the borrower upon sale or refinance of the property should the value of the home increase.

VI. Conclusion

Again, MBA greatly appreciates the administration's Homeowner Affordability and Stability Plan. We believe the plan has great promise to achieve its important purposes and we are committed to helping it succeed. We would like to meet with you to discuss the comments mentioned above or discuss the questions from our members in the attachment.

Sincerely,

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association

cc: The Honorable James B. Lockhart III, Director,
Federal Housing Finance Agency

The Honorable Ben S. Bernanke, Chairman,
Board of Governors of the Federal Reserve

The Honorable John Dugan, Comptroller,
Office of the Comptroller of the Currency

The Honorable John M. Reich, Director,
Office of Thrift Supervision

The Honorable Sheila Bair, Chair,
Federal Deposit Insurance Corporation

The Honorable Lawrence Summers, Director,
National Economic Council

Attachment

Questions from MBA members on the Homeowner Affordability and Stability Plan

Existing Loss Mitigation Program Questions

- Can a Fannie Mae or Freddie Mac Streamline Modification customer who closed on a modification have their loan converted to the new modification program? If not could an exception be made for a recent origination under the program and if so, how recent an origination would qualify?
- Will this new modification program be the first modification option among Fannie Mae, Freddie Mac, FHA, VA and USDA modification tools? Will any of their current programs such as Streamline Modification Program be eliminated?
- Currently investor Web sites such as Fannie Mae's Home Savers Solutions Network (HSSN) are not set up for the new program. Would the effective date be postponed until the GSEs and other investors can make the necessary changes to their Web sites? If these investor sites do not have the ability to accept the appropriate information, the servicer will not be able to reconcile its accounts with investors' accounting systems.

Refinance Program

- Is the refinance program substantively the same as the Fannie Mae "Refi Plus" program (and the Freddie Mac program)? If not, then how do these programs tie together?
- Will there be a way to determine if a borrower's loan is owned by Fannie Mae or Freddie Mac other than having the borrower call his existing servicer?
- Will the borrower have to refinance through the existing servicer's origination arm, or will provisions be made for another lender to do the refinance?
- Will Fannie and Freddie's loan level price adjustments (based on factors such as FICO, loan to value ratio (LTV), occupancy, etc.) apply to this refinance program?
- Will borrowers with a first lien loan and a home equity line of credit or a fixed second mortgage be able to combine the first and second mortgages into the new refinance if the 105 percent cap is not exceeded?
- Is the 105 percent LTV calculated on the amount owed before or after the refinance?
- Will there be a combined loan-to-value (CLTV) limit?
- How will subordinate lien holders be "motivated" financially to cooperate in subordinating their lien to the new refinance?
- Will there be any new fees associated with this program?
- In the two refinancing case studies, the refinancing balance is higher than the existing balance. We assume that the difference represents processing, underwriting, closing and other lender fees related to the refinance transaction. Will the forthcoming guidance include any new floors/caps on permissible fees

for such refinance transactions? Or will current seller/servicer regulations for Fannie Mae and Freddie Mac apply?
- Please define "sufficient income" and "acceptable mortgage payment history" as it applies to the refinance program.
- Borrowers can refinance into *either* a 30-year fixed rate or 15-year fixed rate mortgage. Could a borrower currently in a 30-year mortgage refinance into a 15-year mortgage under the program terms, resulting in higher monthly payment but earlier payoff?

Modification Program
- What is the "conforming loan limit" for the medication program? If the limit is $729,750, is that based on year of origination and geographic location?
- What is the distinction between "mortgage holder" and "servicer" with respect to the payment of $1,500/$500 on modifications done for borrowers who are current?
- What assistance will be available to borrowers that have recently become unemployed? Borrowers with no income other than unemployment insurance at the current time appear to be ineligible for the program. There is little if any discussion of forbearance aid to assist borrowers who have not yet found a job.
- What if the modification plan fails and the borrower re-defaults? Can borrowers "re-apply" to this same modification program with different terms the second time around?
- If a property under this modification plan is eventually sold (the borrower moves, for example), are there any changes to the distribution of the sale proceeds under this program?
- What are the tax implications of the $1,000 "incentive" that are to be given to borrowers as "incentives to stay current"?
- How will the government matching funds be remitted to the servicer? How will discrepancies be handled?
- How will the borrower incentives to stay current be paid?
- "Lenders will keep modified payments in place for five years. At that point, the interest rate can be gradually stepped-up to the conforming loan rate at the time of the modification." Please define what "gradually stepped up" means so that an accurate net present value (NPV) analysis may be conducted.
- Exactly when is it mandatory that servicers participate in the program? Are servicers required to modify loans they service but do not own if the servicer accepts Homeowner Stability Initiative Funds? What is the anticipate waterfall of modification options: term extension, interest rate reduction then principal deferral? Is the servicer able to select the waterfall order? Can the servicer chose principal deferrals over principal reductions?
- Will servicers be required to reduce principal?

- Depending on the position of the MBS holder, this modification program could hurt some MBS holders and help others. Who will decide which MBS holders to help?
- Borrowers are targeted for assistance with front-end housing ratios of 31-38 percent. Fannie Mae is still approving loans well above that level. This means borrowers can close a loan today, and ask for assistance next week. Will there be immediate coordination within our government so borrowers receiving loans don't immediately qualify for public assistance? Will the Fannie Mae approval levels be lowered or the assistance qualifying levels be raised?
- Will the forthcoming guidance declare one program for all five federal entities, and permit those agencies to only augment the guidance with specific "how to" operating instructions such as how to enter the proper information into Home Savers Solutions Network (HSSN). Without this requirement the agencies may vary the program and delay implementation?
- Will there be any required LTV ratios on these modifications?
- Are there any credit enhancement requirements for the loans to be included in this program?
- Will mortgage insurance (MI) companies need to approve each individual modification for the loans they insure or will the program provide for a blanket override? Moreover, does such a modification affect the MI companies' responsibilities to reimburse for losses sustained in the liquidation of the loan? How will the servicers' "pay for success" incentives be tracked and remitted? Who would perform these responsibilities?
- Will title updates be required?
- Will the borrower be required to supply a contribution amount such as one month's new payment to qualify?
- To avoid consumer fraud, will there be a specific and required statement that the borrower will sign, attesting to the accuracy of the submitted information under penalty of perjury with civil and criminal penalties?

Partial Guarantee Program

- How will "additional insurance payments to holder of mortgages" be linked to declines in the home price index? Which home price index will be used?
- How will the "reserve payments" for home price declines be administered? Through an application process? What if $10 billion is not enough to cover home price declines?
- If these payments are going to be tied to indices in local and regional markets, everyone needs complete confidence in the appraisals. Who will be selecting and paying the appraisers?

Miscellaneous:

- Are servicers who accept funds under this program subject to any TARP restrictions? If so, can servicers agree to modifications or refinances without accepting the compensation and thus avoid the TARP restrictions?
- What is the definition of “lender”, “servicer” and “mortgage lender”? Distinctions for these terms under this program would avoid any confusion about their roles and responsibilities.
- Will credit reporting continue and potentially show that a workout occurred?
- Are mandatory Tax and Insurance escrows to be required for both the refinance and modification programs?

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