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March 16, 2010

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Geithner:

The Department of the Treasury ("Treasury") continues to widely overstate the impact of the Home Affordable Modification Program (HAMP) on the nation's foreclosure crisis. Treasury's February monthly performance report for the Administration's homeowner initiatives,¹ issued last Friday afternoon, is more of the same. By misstating HAMP's goal of generating 3-4 million permanent mortgage modifications, glossing over disappointing results, and even changing color codes, the report paints a rosy picture of a failed program. Your promises of transparency and accountability for HAMP – promises you repeated earlier this month² – ring hollow. Treasury needs to confront the failure of technocratic tinkering to generate meaningful relief for distressed homeowners.

HAMP's goal is "[t]o help as many as 3 to 4 million financially struggling homeowners avoid foreclosure by modifying loans to a level that is affordable for borrowers now and *sustainable over the long term*."³ Treasury's Making Home Affordable website currently describes the program this way: "The Home Affordable Modification Program commits \$75 billion to keep up to 3 to 4 million Americans in

¹ Making Home Affordable Program Servicer Performance Report Through February 2010, March 12, 2010, available at <http://www.makinghomeaffordable.gov/docs/Feb%20Report%20031210.pdf> ("February Report").

² See Letter from Timothy Geithner to Darrell Issa, March 5, 2010.

³ Fannie Mae, "Home Affordable Modification Program: Overview," available at <https://www.hmpadmin.com/portal/programs/hamp.html> (accessed March 14, 2010) (emphasis added). Treasury's initial announcement of HAMP promised the program would "reach up to 3 to 4 million at-risk homeowners" and reduce their monthly payments to "sustainable" levels. Department of the Treasury, Press Release, "Homeowner Affordability and Stability Plan: Executive Summary," March 2, 2009, available at <http://www.financialstability.gov/latest/tg33.html> at heading 2.

their homes by preventing avoidable foreclosures.”⁴ HAMP has logged only 170,207 permanent mortgage modifications, representing about 4-6% of the target of 3 to 4 million.

Rather than acknowledge the program’s failure, Treasury is trying to confuse the American people by counting HAMP’s higher number of temporary modifications – fewer than one-third of which are successfully converting to permanent ones⁵ – toward the goal. In sworn testimony before the Domestic Policy subcommittee, Homeownership Preservation Office chief Phyllis Caldwell insisted that “the program was designed to offer three to four [million] homeowners an opportunity for a mortgage modification – not a permanent modification, an opportunity.”⁶ Subcommittee members disputed Caldwell’s attempt to manipulate HAMP’s target.⁷ Undeterred, Treasury continues to conflate temporary and permanent modifications in its February report: “More than 1.3 million homeowners have received offers for trial modifications, representing 34-45% toward the goal of 3-4 million offers extended through 2012.”⁸

These statements are not honest. HAMP’s true goal, as Treasury initially described it, was 3 to 4 million permanent – *not temporary* – modifications.⁹ Trial mortgage modifications that fail to mature into permanent ones are not in any way “sustainable.”¹⁰ Nor do they “prevent” eventual foreclosure. To now claim that Treasury has always been seeking mere temporary modifications is Orwellian.

Moreover, Treasury’s attempt to substitute temporary for permanent modifications as a measure of HAMP’s success is belied by its harsh words for servicers with low temporary-to-permanent modification conversion rates.¹¹ Temporary modifications offer little help to homeowners who do not receive permanent ones and end up defaulting anyway. In fact, these homeowners, whose mortgage payments could

⁴ Department of the Treasury, “About Making Home Affordable,” *available at* <http://makinghomeaffordable.gov/about.html> (accessed March 13, 2010).

⁵ See February Report at 4 (reporting that 32% of completed trial modifications had been approved for conversion to permanent by servicers).

⁶ Hearing of the House Committee on Oversight and Government Reform Domestic Policy Subcommittee, “Foreclosures Continue: What Needs to Change in the Administration’s Response,” Feb. 22, 2010.

⁷ See *id.* (questioning by Reps. Jim Jordan and Darrell Issa).

⁸ February Report at 1. The report falsely represents that HAMP’s goal is “*offering* 3-4 million homeowners lower mortgage payments through a modification through 2012.” February Report at 2 (emphasis added).

⁹ See *supra* notes 3-4.

¹⁰ Treasury itself has suggested that only permanent modifications are “sustainable.” See Written Testimony of Phyllis Caldwell Before the House Committee on Oversight and Government Reform Domestic Policy Subcommittee, Feb. 25, 2010, at 2 (“We continue to improve HAMP implementation, understanding that we face many challenges [including] helping more borrowers in trial modifications convert to permanent modifications so sustainable help can be offered” (emphasis added)).

¹¹ See, e.g., Peter Goodman, “U.S. Will Push Mortgage Firms to Reduce More Loan Payments,” *The New York Times*, Nov. 29, 2009, *available at* http://www.nytimes.com/2009/11/29/business/economy/29modify.htm?_r=1 (quoting Assistant Secretary Michael Barr: “The banks are not doing a good enough job [converting temporary modifications to permanent status] ... Some of the firms ought to be embarrassed, and they will be”).

otherwise have been spent on moving expenses and rent, may actually be made worse off by HAMP.¹² If homeowners are in fact being harmed, then to count their temporary modifications toward HAMP's goal of helping "3 to 4 million" homeowners is doubly cynical.

Treasury's determination to change the goals of the program mid-implementation is not the only way in which Treasury has resorted to using spin over substance. The February report touts a 32 percent conversion rate from temporary to permanent modifications,¹³ but does not provide the proper context for that rate. Assistant Secretary for Financial Stability Herbert Allison testified to the Congressional Oversight Panel that he would deem 50 percent to be a "bare minimum":

[ELIZABETH] WARREN: ... you must have a projection for what number you're using for the conversion rate from temporary modifications to permanent modifications. Treasury must. ... So the question I'm asking is, what is your projection on the proportion that will make it from temporary modifications to permanent modifications ...?

ALLISON: Yes, yes, right. Again, based on past experience with different types of modifications which were not materially reducing people's monthly payments, you saw a failure rate of about 50 percent. So we could use that as a bare minimum success rate, but we'd like to achieve a much higher rate. If we were to get to something like 75 percent, which is an aspiration, we would deem this quite a successful program.¹⁴

True transparency requires comparability. Treasury's monthly HAMP reports have hindered comparability by repeatedly switching metrics, rearranging tables, and changing visual elements. For example, Treasury changed the color scheme of the February report's color-coded national map¹⁵ showing mortgage delinquency rates by state. In the January report's map,¹⁶ states colored red had delinquency rates of 12.51% and higher. A month later, red was only assigned to states with delinquency rates of 20.01% or higher. The truest test of HAMP is whether it has made progress in ameliorating foreclosures, and the color scheme change seems to hide, rather than reveal, that trend. Foreclosure rates hit an all-time high in February,¹⁷ but that fact is nowhere admitted in the February report.

¹² See Peter Goodman, "U.S. Loan Effort is Seen as Adding to Housing Woes," *New York Times*, Jan. 1, 2010.

¹³ February Report at 4.

¹⁴ See Congressional Oversight Panel, "COP Hearing with Assistant Treasury Secretary Herbert M. Allison, Jr.," Oct. 22, 2009, available at <http://cop.senate.gov/hearings/library/hearing-102209-allison.cfm>.

¹⁵ February Report at 8.

¹⁶ Making Home Affordable Program Servicer Performance Report Through January 2010, Feb. 18, 2010, available at

<http://www.financialstability.gov/docs/press/January%20Report%20FINAL%2002%2016%2010.pdf> ("January Report").

¹⁷ See Julie Haviv, "Mortgages foreclosing, delinquent at 16 percent in Q4," *Washington Post*, Feb. 19, 2010.

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If Treasury is to regain the confidence of the American people, it must become more candid about the success or failure of its policies. With unemployment still hovering near ten percent, now is not the time for politically-motivated attempts to gloss over the failure of HAMP's simplistic, market-distorting approach. We appreciate that Treasury has shown some desire to address our calls for transparency,¹⁸ but we believe you must do much more.

Sincerely,



Darrell Issa
Ranking Member



Jim Jordan
Ranking Member
Subcommittee on Domestic Policy

cc: The Honorable Edolphus Towns, Chairman
The Honorable Dennis Kucinich, Chairman, Subcommittee on Domestic Policy

¹⁸ See Letter from Timothy Geithner to Darrell Issa, March 5, 2010.