Section Two: Additional Views

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I voted for the Panel's October Report (the "Report") and I agree with its central themes and recommendations. As directed by the Congress in EESA, Treasury's foreclosure mitigation efforts are vitally important to protecting homeowners, strengthening the housing market, and aiding economic recovery. I believe that much more needs to be done to help people in need now and during the foreclosure surge that will continue over the next several years.

I am providing these Additional Views to clarify some points in the Report and amplify others.

1. It Is Too Early to Make Conclusive Judgments About HAMP, HARP and MHA

MHA had many obstacles, problems, and operational and technological challenges getting started and the HAMP program is just now gaining momentum. Because we are in a period where so many trial modifications are on the books and so few have had time to convert to permanent modifications, I believe it is too early to judge the program or to imply that HAMP will not be successful.[391]

I think that Treasury's current run rate goal of 25,000 trial modifications per week – or 1.3 million per year – is a robust goal. If achieved and sustained with a solid conversion rate of trial modifications to permanent modification, HAMP can provide a tremendous benefit for millions of American homeowners.

Early trial-to-permanent modification conversion rates have been low, as the Report points out, but there are a range of reasons (e.g., the temporary 60 day extension of the trial modification period; early documentation and capacity issues; etc.) why it is still several months too early to draw any meaningful conclusions. I suggest that Treasury issue its own projections for trial-to-permanent conversion rates as soon as possible in order to provide guidance on this issue.

We should give the program time to work and re-visit HAMP within six months when a better track record and better service quality and performance results are available.

2. In Fact HAMP Has Great Potential

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[391] See *supra* p. 98 and accompanying notes (HAMP is "unlikely to have a substantial impact" and "is better than doing nothing.").

HAMP was designed to make loans more affordable for homeowners by lowering monthly payments thereby giving the most immediate and meaningful relief to the greatest number of homeowners.

Thus far, HAMP modifications have resulted in a mean interest rate reduction of 4.65 percent from approximately 7.58 percent to approximately 2.93 percent with mean monthly savings of $740 per loan reducing payments from on average $1890 to $1150, a 39 percent payment decline.[392] These are very impressive affordability numbers on a still-too-small base of loans. As HAMP gains momentum the direct savings to homeowners and investors and the benefits to society should be enormous. In fact, the Report contains a cost benefits study of mortgage modifications that found preliminarily, that the potential direct and indirect benefits to borrowers, investors, and society substantially outweigh the costs of HAMP loan modifications.[393]

3. Borrowers' Grievances are Real

The Panel's September 20th Philadelphia hearing, which featured lively testimony from servicers, borrower groups, Treasury, Fannie Mae and Freddie Mac, demonstrated that there is a lot of room for improvement in the programs. Borrowers have been frustrated with unresponsive servicers, lost documents, time delays, unclear reasons for denial, and a host of other problems.

The scale up period is over. Servicers have had time to make improvements and should by now be organized to handle the case load in a highly professional and expeditious manner. Consequently, there should be no further systemic excuses regarding capacity.

4. HAMP Does Not Address Every Defaulted Loan Other Issues Need Other Policy Solutions

It is not a design shortcoming of HAMP that it does not address every default-related issue. I agree with the Report that HAMP was not primarily designed to address the issues of negative equity, unemployment and option ARMs.

I endorse the view that Treasury should review these issues carefully and explain whether it intends to pursue additional policy solutions or program enhancements that are specifically targeted to these problems. One recommendation to address unemployment is to consider the use of TARP funds to support existing state programs or to encourage states to develop new programs that provide temporary secured loan payment assistance to the recently unemployed.[394]

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[392] See *supra* pp. 50, 53 and accompanying notes.

[393] See *supra* Annex B, "Potential Costs and Benefits of the Home Affordable Mortgage Modification Program," by Professor Alan M. White.

[394] See discussion of Pennsylvania's successful HEMAP program *supra* pp. 90-91.

In considering possible programs to address the effects of negative equity, policy makers must address issues of moral hazard, bank safety and soundness, contract, and fairness, including the fairness issue related to sharing future equity appreciation.

5. We Can Only Measure Success With a Comprehensive National Metric that Tracks Defaults and Foreclosures

The Report notes that even if HAMP modifies hundreds of thousands of loans a year it may not be enough to stem the rising tide of 2-3 million foreclosure starts a year. Yet, it is difficult to know how many foreclosures are preventable because we have poor national industry information. We need to know more about foreclosure starts: How many result in foreclosure sales? How many cure? How many go to short sale or other solution that results in a lost home? How many are modified and saved? How many cannot be prevented by any means?

There is a tremendous need for better residential mortgage default and foreclosure metrics and I would like to see the Treasury-GSE-MHA-Servicer partnership take the lead in providing clear understandable and comprehensive metrics about the housing market, especially delinquent loans and foreclosures, on a national basis by state of residence.[395]

I previously encouraged Congress to enact a national mortgage loan performance reporting requirement applicable to all institutions who service mortgage loans, to provide a source of comprehensive intelligence about loan performance, loss mitigation efforts and foreclosure.[396] Federal banking or housing regulators should be mandated to analyze the data and share the results with the public. A similar reporting requirement exists for new mortgage loan originations under the Home Mortgage Disclosure Act. Because lenders already report delinquency and foreclosure data to credit reporting bureaus, it would be feasible to create a tailored performance data standard that could be put into operation swiftly.

The country and its policy makers desperately need this kind of information and given the projections for a protracted period of foreclosures, it is well worth the effort.

6. Pushing Ahead

Mortgage reforms are critical at the state and national levels, reforms that I believe are necessary to aiding the millions of homeowners for whom unachievable mortgage payments and

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[395] Currently, for example, the OCC/OTS Mortgage Metrics Report reports on the subset of bank-serviced loans. However the OCC/OTS report (a) covers only 64% of the U.S. mortgage market, (b) is published three months after quarter end, and (c) does not break out information by state or servicer. Other databases have the same shortcoming of incompleteness making comparability nearly impossible and resulting in confusing and conflicting statistics.

[396] House Joint Economic Committee, Testimony of Richard H. Neiman on behalf of the Congressional Oversight Panel, *TARP Accountability and Oversight: Achieving Transparency* (Mar. 11, 2009) (online at jec.senate.gov/index.cfm?FuseAction=Files.View&FileStore_id=38237b7d-74fe-4960-9fc6-68f219a03c0f).

potential foreclosure are painful realities. We cannot turn back now. We must push ahead with the borrower-lender-government partnership that has been launched and build it out and improve on it. We need more hands on the oars, we need better cooperation and we need much better information and default mitigation tools