

**TESTIMONY OF  
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PRESIDENT AND CEO  
AMERICAN HOME MORTGAGE  
SERVICING, INC.**

**Before the**

**HOUSE COMMITTEE  
ON OVERSIGHT AND  
GOVERNMENT REFORM**

**WASHINGTON, D.C.**

**June 24, 2010**

Chairman Towns, Ranking Member Issa, and Members of the Committee, thank you for the opportunity to discuss the efforts of American Home Mortgage Servicing, Inc. (AHMSI), to implement the Home Affordable Modification Program (HAMP) and to share steps that AHMSI has taken to assist borrowers facing financial challenges. We appreciate the Committee's consideration of the complex issues surrounding these endeavors.

Before responding to the Committee's questions, we would like to inform you that AHMSI is a large, non-prime residential loan servicer that does not originate loans and that did not originate any of the loans it currently services. Rising out of the aftermath of the sub-prime mortgage crisis, equity funds ultimately controlled by WL Ross & Co. purchased from bankruptcy the servicing platform and mortgage servicing rights of American Home Mortgage in November 2007. These loans had a principal balance of approximately \$45 billion and many were pay option adjustable rate mortgage loans (Option Arms). In April 2008, AHMSI added another \$45 billion in sub-prime loans when it purchased the servicing platform, facilities, and mortgage servicing rights of Option One Mortgage Corporation. The final significant acquisition in February 2009 was of the servicing rights to \$28 billion of sub-prime loans that had been originated by Ameriquest Mortgage. Second lien mortgage loans represent only a small fraction of these acquisitions. As a result of these three large servicing acquisitions, AHMSI became the largest independent, non-prime servicer in the country, servicing more than \$120 billion of loans having very high delinquency rates and with many loans in bankruptcy and foreclosure. Our portfolio is a high-touch, high-defaulted portfolio with many borrowers over laden with excessive debt, both mortgage and non-mortgage.

As a monoline servicer, AHMSI does not hold these loans or the underlying mortgage securities. We are focused solely on ensuring that the cash flows to investors are maximized. For borrowers, this means AHMSI does not have other significant economic interests that could interfere with our contractual responsibility to take actions that will enhance the cash flows to investors and keep borrowers in their homes. As a result, our incentives are well aligned with the interests of both our investors and borrowers – restoring cash flow to distressed mortgages through loan modifications is in the best interest of investors and of borrowers who want to keep their homes and have the reasonable capacity to do so.

Although, as mentioned above, AHMSI did not originate any of the loans it services, we nevertheless have made it our primary focus to develop suitable home retention and loss mitigation solutions to help prevent foreclosures. Before the announcement of HAMP, AHMSI worked with its master servicers and investors to successfully educate them as to the benefits of modifying loans. We also readily acknowledge that it is to our advantage, as a monoline servicer, to service loans with positive cash flows and that we (and the investors in the securities we service) benefit from modifications, even beyond the incentives available under HAMP.

We also believe it is important that you understand that, contrary to some opinions recently expressed in the media, servicers do not make money foreclosing on loans. That

is one of the great myths of the foreclosure crisis. The simple fact is that foreclosures are bad for everyone – borrowers, lenders, servicers, investors, and the community at large. Foreclosures are undertaken as a last resort only when we are unable to resolve delinquency matters through other means. Acting as a contract servicer in securitizations, we recognize that the assets are owned by the investors in the securities that are backed by the loans that we service, and our contractual duty is to act in the best interest of the trusts and to maximize recoveries. In the current economic environment foreclosures generally are not economically advantageous to the securitization trusts, or, more precisely, to the classes of investors in the related securities taken as a whole. Furthermore, while a loan is delinquent, we do not earn our fee for servicing the loan. During that time, we also incur costs associated with protecting the property and must pay real estate taxes and insurance premiums related to the loan. In addition, we must advance principal and interest payments to the investor. However, upon the successful completion of a modification, and to the extent allowed by our servicing agreements, we reimburse ourselves for all the principal, interest, taxes, insurance, and property protection advances that we made during the delinquency and default of the loan and which remain outstanding.

As a result, we aggressively pursue all reasonable modification opportunities. In so doing, however, we must evaluate the effect the modification will have on the cash flow to each investor, taken as a whole, and make decisions with that in mind. To do that, we compare the net present value (NPV) of the modification to the NPV of a foreclosure. If the value to the investor in the modification solution provides a better outcome than a foreclosure, we will proceed to restructure the loan terms. To this end, since November 2007, AHMSI has completed over 135,000 long-term modifications or workouts, including nearly 19,000 reported HAMP trial modifications and approximately 8,400 reported HAMP permanent modifications. We also have assisted close to 12,000 borrowers with other foreclosure prevention alternatives, such as short sales and conveyances in lieu of foreclosure (DILs).

Given our strong economic interest and commitment to placing borrowers in affordable and, thus, sustainable permanent modifications, we strongly agree with the objective of HAMP to provide relief to distressed borrowers. We also commend the ideals of the program as well as the efforts of the Treasury Department in dealing with a crisis of such magnitude. However, the program has suffered and continues to suffer from certain deficiencies, and we appreciate the opportunity to discuss those deficiencies with the Committee today.

**AHMSI's efforts to extend HAMP participation or other loan modification programs to homeowners.**

Because of the economic challenges faced by many of our borrowers, AHMSI has made it a priority to affirmatively contact borrowers at the earliest sign of trouble and otherwise be as responsive as possible to their needs. Keeping the lines of communication open, whether homeowners are calling us or we are reaching out to them, is something we work hard to achieve. All loans in default or loans where default is reasonably foreseeable are

eligible for a loss mitigation workout if the borrower expresses a willingness to stay in his or her home and demonstrates an ability to afford a particular workout solution. Not every borrower can be provided assistance, but we carefully review each situation in hopes of being able to do so. One thing is clear though - borrowers must respond to our efforts to reach them and provide information for us to review, or we cannot assist them. In this regard, AHMSI routinely reviews all loans in default or in danger of defaulting for potential eligibility for a loss mitigation workout. We send solicitation letters and complete outbound calling campaigns designed to discuss opportunities with those who respond. We also provide information on our website to borrowers about all of our loss mitigation programs. First and foremost, we consider whether each borrower is eligible to be considered for a HAMP modification. If not, we then pursue other home retention and loss mitigation programs that are outside of the program.

With respect to this population, as it existed month-to-month from the time we entered HAMP, we have made certain that we provide eligible borrowers with every opportunity to obtain relief under HAMP. Since July 22, 2009, when AHMSI was accepted by the Treasury Department as a HAMP participating servicer, we have solicited in writing over 141,500 eligible borrowers who were delinquent in paying their mortgage loans by 50 days or more, including 47,562 loans that already were in the foreclosure process. In addition, in an effort to educate borrowers as to the opportunity afforded by HAMP our customer care center has placed over 9.7 million follow-up telephone calls, which is approximately 9 calls per month per borrower. While we believe these efforts have been thorough, we nevertheless are in the process of re-soliciting every potentially eligible borrower by sending each of them two written notices and placing at least four telephone calls over a thirty day period, in conformance with the directions of the Treasury Department, as set forth in HAMP Supplemental Directive 10-02.

We have a total loan population of 448,834 loans, all of which were originated prior to January 1, 2009, the latest date for potential coverage under HAMP. Of that number, as of June 10, 2010, we consider 65,826 to be susceptible to solicitation or re-solicitation. That figure is derived by considering the 130,934 loans we service as of that date that are 60 days delinquent and subtracting those loans that fall into the categories of exclusions for which HAMP was not intended. Following is the breakdown of those exclusions:

- Ineligible Loans (excessive unpaid principal balance, FHA or VA loan, or second lien): 4,624
- Loans with Ineligible Property (non-owner occupied property, second home, or vacant, foreclosed, more than four units, failure of the NPV test, or already modified under HAMP): 32,462
- Loans Already Considered for HAMP but Denied: 14,682
- Loans Subject to Securitizations Prohibiting or Restricting Loan Modifications: 6,763
- Loans in Active HAMP Trial Plans: 6,577

Despite these significant outreach efforts to contact potentially eligible HAMP borrowers about receiving consideration for a loan modification or alternative work-out solution, we

would like to stress to the Committee that a significant percentage of borrowers simply do not respond to our attempts to contact them. To protect both taxpayers and investors, borrowers that do not respond to these efforts should be removed from the universe of potential households that HAMP was designed or intended to assist.

We have made major commitments to achieve success in our stated endeavor to assist borrowers in avoiding foreclosure.

- We have carefully staffed our customer service and default areas so that our associates have manageable caseloads and can provide a high quality, responsive level of service to our borrowers.
- We use expert third party vendors, whose associates are able to access our technology directly and who are provided the same training as our own associates.
- With a focus on early intervention, AHMSI reaches out to each borrower facing an impending ARM reset up to 180 days in advance of the adjustment. We work with these borrowers to help them understand the potential payment increases at adjustment and evaluate opportunities for reduced payments, if needed.
- Many of our loans were subject to investor restrictions or limitations on modifications that prevented interest rate or payment reduction modifications. We proactively worked with investors to eliminate the vast majority of these restrictions and continue to work hard to eliminate any remaining obstacles.
- We have established a Homeownership Preservation Office with a separate toll-free number and a dedicated team of housing counselors who work directly with our borrowers. This department has been staffed with trained individuals who have expertise in loss mitigation negotiation or have designated resources within the loss mitigation area assigned to work with their cases.
- We have trained all call center associates as to loss mitigation options and deployed technology solutions to simplify our processes and provide appropriate loan modification terms or other suitable home retention strategies.
- We have made major investments in the development of improved proprietary information systems to enable AHMSI's associates to more quickly and efficiently assess a borrower's financial situation and offer appropriate loss mitigation alternatives. We are continually leveraging our proprietary default methods to enhance our rules engine and create new models for loss severity and mitigation workouts.
- We have redesigned our home retention alternatives and technologies to make it much easier for each borrower to obtain information about his or her loan through direct discussions with loan counselors and our interactive voice response system.
- We have built relationships with counseling agencies, with whom we engage to provide an objective viewpoint for borrowers on modification options.
- As members of the HOPE NOW Alliance and the Homeownership Preservation Foundation, AHMSI conducts coordinated monthly mailings to at-risk borrowers advising them of the potential availability of workout options.
- We participate extensively in outreach events and have played a part in 135 events over the past 18 months. These events allowed us to provide face-to-face

counseling and education seminars to nearly 17,000 borrowers, thus assisting them in avoiding foreclosure. Among the groups whose events we have joined are HOPE NOW, the Neighborhood Assistance Corporation of America, the Credit Counseling Resource Center, Fannie Mae, the Department of Housing and Urban Development (HUD), the Federal Reserve, HOPE/HOPI, NeighborWorks, and local fair housing offices.

- We are one of the first-phase participants in the HOPE NOW Alliance's new web portal called the HOPE LoanPort™, which allows HUD-approved housing counseling agencies the ability to submit completed HAMP applications for borrowers at risk of foreclosure. This one "port of entry," once validated and fully implemented, should improve service levels.
- We now are included in the top eight servicers for HAMP, which means heightened scrutiny and audits and dedicated access to Fannie Mae, as HAMP administrator, and Freddie Mac, as Making Home Affordable compliance auditor (MHA-C).
- In addition to loan modifications, we continue to offer other borrower solutions both under our proprietary programs and the Home Affordable Foreclosure Alternatives Program (HAFA). These other solutions include retention options such as repayment plans and forbearance agreements. We also offer liquidation options such as allowing qualified short sales or accepting qualified DILs where home retention is not feasible, thus providing an alternative to an expensive and credit-damaging foreclosure.

Furthermore, with regard to borrowers who are not eligible for, or fail to meet the requirements for, a HAMP modification, we will consider them for a proprietary non-HAMP modification. Our proprietary modifications are very similar to a HAMP modification. We follow a net-spendable income approach based on a review of the borrower's income and expenses and establish an "affordable payment" based on that review. There are two primary differences between our HAMP and non-HAMP processes. First, our income support documentation criteria are not as stringent under our proprietary program as they are under HAMP. We believe that our documentation requirements under our proprietary program, however, are sufficient to provide assurance that the borrower's representations are accurate. Second, we use our own NPV model when analyzing a non-HAMP modification. While our model is similar to the Fannie Mae NPV model we use for HAMP loans, there are subtle differences that may lead to additional loan modification options for borrowers.

**Factors affecting the rate at which AHMSI borrowers are offered assistance through HAMP or other foreclosure prevention strategies.**

The industry has made significant progress in the implementation of HAMP. However, several barriers to a more effective industry and government response remain:

- The verification documents that borrowers are required to provide under the program are overly burdensome and, in some instances, complicated or unnecessary. As a result, we have been required to decline offering HAMP to

otherwise eligible borrowers who either did not have the required documents or were unable to provide them timely or in suitable form.

- Many borrowers simply fail to return the required verification documents, because (i) they did not have them, (ii) they believe that they are not eligible for the program, (iii) they cannot afford the amount of the proposed modified monthly payment due to other nonmortgage obligations, or (iv) they do not wish to keep the home, even with an affordable modification offer.
- Many borrowers delay in responding to our solicitations, often waiting until the loan has gone to foreclosure or mediation.
- Borrowers have been confused by program changes or enhancements that are announced to the public before they are ready to be implemented or before all the operational requirements have been resolved. As a consequence, borrowers develop false expectations as to the assistance being offered under HAMP and become discouraged when fully apprised of the actual date a particular change or enhancement becomes effective.
- The manner and frequency of program changes have overtaxed servicers' technology systems and change management processes. Many of these changes were announced with little or no time for implementation before they became effective, and others were announced as being only temporary in nature. Given the complexity of HAMP, even minor changes can lead to major process changes, which, in turn, take time to implement. As a result, to ensure compliance with the requirements of the program, we often have been forced to employ manual processes that inevitably lead to delays in our responses to borrowers.
- The process has been greatly slowed by borrowers who are ineligible for HAMP yet still request assistance. As a result, our loss mitigation departments are inundated with HAMP requests that we have no choice but to decline. Borrowers who do not occupy the properties as their primary residences represent a large number of these borrowers. A more troubling group is composed of so-called "strategic defaulters" – borrowers who are not experiencing a hardship but nevertheless stop paying on their mortgages to seek assistance under HAMP. Still others obtain temporary HAMP modifications in order to delay foreclosure but then never make payments under their new agreements. These behaviors have been encouraged by the national attention they have received.
- We were not permitted to consider many borrowers for HAMP until we were able to eliminate investor restrictions or limitations on modifications that prevented interest rate or payment reduction modifications. As noted previously, most of these restrictions have been addressed.
- Until recently, we lacked guidance as to how to provide assistance to borrowers with Option ARMs or interest-only mortgages. Because a borrower under an Option ARM may pay a monthly payment that is insufficient to fully amortize the loan, the borrower's current DTI ratio typically is less than or equal to 31%, thus making the borrower ineligible for HAMP. While Option ARM guidance has recently been provided by the Treasury Department, AHMSI initially was unable to assist many borrowers with these loans.
- With national unemployment hovering at nearly ten percent (and much higher in more severely distressed regions), many borrowers simply do not have sufficient

income to qualify for a loan modification. Although the Home Affordable Unemployment Program (HAUP) will go into effect on August 1, 2010, the program, as it currently is written, will not offer meaningful relief to many unemployed borrowers, who constitute the largest portion of borrowers in default. While it will provide welcome relief to a limited number of borrowers, HAUP still is only a temporary solution. Full relief cannot be provided until more borrowers obtain new employment.

**Factors affecting the rate at which HAMP trial mortgage modifications granted by AHMSI are converted into permanent modifications.**

Although now required under HAMP, AHMSI was one of the few servicers in the country that early on used an up-front verification process with regard to the vast majority of its loans. As a result, we were able to avoid many of the problems suffered by servicers who implemented the stated income approach to loan modifications. However, for the reasons that follow, even with the up-front verification approach, AHMSI has experienced significant issues in converting trial period plans to HAMP permanent modifications. We believe that some of these factors demonstrate deficiencies in the design of HAMP, while others simply demonstrate the inability or failure of borrowers to make payments or follow relatively easy instructions to save their homes.

- Many borrowers failed to make the second and third trial period payments by the end of the trial period itself, as was originally allowed. As a result, not only did these trial period plans fail to convert to HAMP permanent modifications, but these borrowers are now permanently ineligible for HAMP. Furthermore, as of June 1, 2010, borrowers are required to make each trial period payment by the end of the month in which it is due. This more stringent payment requirement likely will result in an increase in the number of permanently ineligible borrowers.
- Likewise, despite the efforts of AHMSI to collect the required documents—including going to borrowers' homes to do so—borrowers failed to return executed modification agreements in a timely fashion. As mentioned, some borrowers recognized their inability to make the modification payments over a prolonged period. Others were impacted by catastrophic events suffered during the trial period that served to worsen the hardship already being experienced.
- Deficiencies in and complexities of the HAMP reporting system, the IR2, have made it difficult to report as permanent many modifications that AHMSI considers to be final. Instead, we are required to devote an inordinate amount of manpower to work exceptions so as to make the loans reportable. This is manpower that would be better devoted to providing customer service and improving HAMP processes. In addition, IR2 reporting is continually being updated and changed. As a result, servicers have difficulty in meeting the changed IR2 official modification reporting requirements because they differ from those in effect at the time the trial period plans were reported. This has a direct impact on AHMSI in that we must withhold reporting the final modification until we are able to clear the exception or receive clarification or a variance from Fannie Mae or the Treasury Department.



In addition to the thousands of man-hours devoted to the IR2 reporting, we also are required to submit several regular weekly, monthly, and quarterly information reports to Fannie Mae, as HAMP administrator, and monthly loan file submissions to MHA-C. We believe the same information necessary for the Treasury Department to conduct oversight and reviews can be just as readily captured in regular quarterly reports.

- Regardless of the good intentions of HAMP, the fact remains that the program can only solve for borrowers' mortgage affordability problems. It does not address the problem of borrowers that are excessively leveraged with non-mortgage debt. In deciding whether to offer a HAMP solution to a borrower, we are not permitted to consider that other debt. As a result, even if we are able to assist an overextended borrower by reducing the monthly mortgage payments in accordance with HAMP, the likelihood that this borrower will successfully make payments under the modification remains unlikely.

**Reasons for which borrowers are denied mortgage modifications or otherwise fail to receive assistance from AHMSI in avoiding foreclosure.**

The predominant reasons borrowers are not offered a HAMP modification are:

- the property is not owner-occupied or not occupied as the borrower's primary residence;
- applicable securitization servicing documents restrict or prohibit modifications;
- the borrower failed to provide a complete verification document package;
- the mortgage is not secured by a first lien;
- the unpaid principal balance is excessive;
- the borrower's current DTI was less than or equal to 31%; and
- the borrower's income is insufficient to support the proposed modified monthly payment (this could be due to underemployment or unemployment).

**AHMSI's processes that have been put in place for borrowers to file HAMP complaints or appeal HAMP denials.**

We do not have a separate complaint process for HAMP complaints. However, because all of our acquired servicing assets have been distressed portfolios, we have always maintained a robust complaint process dedicated to handling all borrower complaints, which obviously would include borrower complaints about the HAMP modification process. Our complaint tracking and resolution process includes senior management oversight, trend and root cause analysis and reporting, and process improvement to avoid recurrences. Our associates that handle complaints, whether customer-facing or in our escalated complaint units, have been trained to recognize issues related to HAMP and to respond appropriately to our borrowers.

In addition and specifically related to HAMP, if AHMSI determines that a trial period plan or HAMP permanent modification will not be offered to the borrower, within ten business days

of that determination we will provide written notification of that decision to the borrower. In the notice, we will inform the borrower that he or she has thirty calendar days to call or write us to discuss the reason or reasons for the determination or to discuss alternative loss mitigation options that may be available. During that period or any longer period needed for us to review the borrower's response, no foreclosure sale will be conducted. Based upon any new information provided by the borrower, we will re-evaluate the loan for a HAMP modification and provide the borrower with the appropriate response.

However, as required under HAMP, this appeal process is not available to the borrower if the HAMP offer was not made for one of the following reasons: an ineligible mortgage, an ineligible property, the HAMP offer was not accepted by the borrower or the borrower withdrew the request for consideration under HAMP, or the loan was previously modified under HAMP.

In any event, under our second look program any loan that is denied during the HAMP evaluation process is reviewed by an independent team to confirm that the borrower, property, or both did not meet all of the requirements under HAMP. After it is confirmed that the HAMP modification is not an option for the borrower for that evaluation period, the borrower is reviewed for AHMSI's proprietary, non-HAMP loan modification program. If the borrower is unable to be placed into a non-HAMP loan modification, the borrower will be considered for a HAFA foreclosure alternative if he or she meets the basic requirements under that program. If at any time during this process the borrower provides new information that re-establishes his or her eligibility for HAMP, that borrower will be re-evaluated for a HAMP modification.

**Policies and procedures designed to avoid racial, ethnic, age, or gender disparities in the foreclosure rate or the overall operation of HAMP.**

To avoid racial, ethnic, age, and gender disparities, AHMSI has a strict policy of nondiscrimination under which no associate or representative of AHMSI may discriminate against any person on the basis of race, color, sex, religion, national origin or ancestry, age, marital status, familial status, handicap, or the customer's exercise of any right under the Consumer Credit Protection Act (any such category of borrower is referred to as a protected class.)

Pursuant to AHMSI's servicing practices, these prohibited factors may not be considered by any associate or representative in association with the treatment of any borrower or with respect to any servicing activity or function, including without limitation communication with the borrowers, collection of payments, offering of default remedies and loss mitigation options, or application of standards used to evaluate collateral. Furthermore, with respect to loss mitigation options, programs, and services, company associates and representatives, on the basis of prohibited factors, must not fail to provide or provide different information, selectively discourage or encourage customer inquiries, refuse to extend or use different standards in determining whether to extend relief, or vary terms offered.

Associates or representatives of AHMSI are cautioned to exercise care to ensure nondiscriminatory treatment in cases where it is unclear as to whether customers are well-qualified or unqualified for loss mitigation options. In these close-call cases, the approval decision may be associated with the level of assistance provided, decisioning discretion, or both. We also require that equal attention, information, encouragement, assistance, and efforts to identify compensating factors be given to all customers. In addition, we conduct a second review program for borrowers that constitute any protected class.

As a HAMP participating servicer, in the ordinary course of servicing, we simply apply neutral, and, in some cases objective, policies promulgated by the Treasury Department, and any differences in application generally are the result of prohibitions or limitations in HAMP itself or in our third party servicing agreements with which we are required to comply and not because of any prohibited factor.

We provide training with respect to Fair Lending issues related to loan servicing, including loss mitigation and HAMP modifications. We are starting to test the data we have collected under HAMP; however, a continuing problem is that borrowers do not always voluntarily provide this information and, because we did not originate the loans, we do not have this information in a large number of cases.

It should be noted that while AHMSI strictly prohibits any act of discrimination against a person in a protected class, including race, ethnicity, age, or gender, AHMSI requests and reports only that information required by HAMP pertaining to the race, sex, and ethnicity of any borrower or co-borrower who seeks a modification under HAMP.

### **Problems AHMSI has experienced in complying with agreements to participate in HAMP.**

Along with other servicers, AHMSI has struggled with the continually changing guidance issued by the Treasury Department through its program administrator, Fannie Mae. Since the Administration first announced the program in March 2009, Fannie Mae has issued fifteen supplemental directives, two revised supplemental directives, eleven waivers and amended waivers, answers to 175 frequently asked questions (FAQs), and countless announcements, updates, and revised FAQs. Often the guidance has been unclear, inconsistent, and conflicting. In addition, the Treasury Department has not always been quick to respond to questions and concerns raised by these ambiguities. Finally, given the complexity of HAMP, the responses themselves have not always been consistent.

This results in delays in our implementation of various aspects of the program as we struggle to obtain guidance. However, it should be noted that this problem has been greatly ameliorated by our close association and dealings with both the AHMSI-dedicated Fannie Mae HAMP Integration Team and the MHA-C Team that audits AHMSI's HAMP policies and procedures.

Even though, as indicated, AHMSI implemented a process that required the borrower to provide all verification information before a HAMP trial period plan is offered, we nevertheless experienced difficulty in obtaining the required documents from borrowers. This difficulty was exacerbated by the continual change in guidance provided by the Treasury Department, as the Department struggled to achieve a balance between stricter, more cautious, and, thus, more time consuming underwriting standards common to the origination of mortgage loans and those less robust but speedier standards that are more suitable to the underwriting of modification of existing loans.

Finally, we have struggled with the fact that the Treasury Department's HAMP guidance for loans that are not held or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Loans) differs from HAMP guidance issued by Fannie Mae and Freddie Mac for the loans they respectively hold or guarantee (GSE Loans). Consistency among the programs would be extremely beneficial. There is a similar inconsistency between Non-GSE and GSE Loans with regard to when a loan should be moved to foreclosure. Once again, consistency among the programs is crucial.

**Actions taken by the Treasury Department or its agents, specific to AHMSI, to enforce compliance with HAMP's policies, along with any corresponding remedial actions that AHMSI has implemented in response.**

Since becoming a participating servicer on July 22, 2009, AHMSI has been the subject of two separate reviews conducted by MHA-C. While MHA-C made several observations regarding our implementation of HAMP, none were considered major and no enforcement action resulted.

**Additional challenges related to the overall success of HAMP.**

Fitch Rating indicates that within twelve months, 55 to 65 percent of the prime loans modified under HAMP will likely re-default. For modifications on subprime and Alt-A loans, the projection is even higher – 65 to 75 percent. We believe that a major reason for this is an adherence to underwriting HAMP borrowers using a DTI ratio of 31%. However, one of the major contributors to the housing crisis was the fact that most subprime mortgage borrowers were also excessively leveraged with home equity lines of credit and non-mortgage debt, such as credit cards and large auto loans. Because HAMP does not consider all of the borrower's monthly obligations, a borrower making a mortgage payment that results in a 31% DTI ratio may have insufficient cash flow to meet those other obligations.

As stated above, we use a net-spendable income approach to underwrite our borrowers. While we adhere to the maximum 31% DTI ratio in determining the borrower's post-modification payment, we do not rely upon it as a sole means of underwriting the borrower. Instead, we will consider a lower payment to achieve an affordable, sustainable payment, provided that payment results in a positive NPV result. We believe our approach is better, because we consider a borrower's entire financial situation to make decisions regarding a loan restructuring. When coupled with the hardship

information we obtain, we believe we can render a decision to establish an "affordable payment" for the borrower that will be sustainable over time and provide a cash flow yield to the investor that is better than the foreclosure alternative. Often, this might include setting a modified monthly payment at an amount that would be less than the 31% DTI ratio specified in HAMP. For a borrower in that situation, so long as the NPV is still positive from an investor perspective, we move forward with the restructure of the loan because the modification is more likely to result in a sustainable, affordable modification than one structured at the HAMP-designated 31% DTI ratio, where the borrower may have insufficient cash flow to support that payment.

In addition, the required 31% DTI ratio excludes borrowers who might otherwise be eligible for HAMP. Many borrowers are able to afford a payment that results in a DTI ratio higher than 31%, but that is lower than what they are currently paying. This higher monthly payment would be sufficient to yield a NPV result more favorable than foreclosure. Unfortunately, because HAMP requires that the monthly payment be reduced to the 31% DTI ratio, these borrowers are being denied under HAMP because the modified terms fail the NPV test. The failure to allow servicers to offer modifications on such terms will result in the foreclosure of deserving homeowners.

The recent change in HAMP to move to underwriting the borrower up-front before offering the trial period plan is a positive step and one that we advocated since the beginning of the program. However, while this should cut down on defaults and non-compliance with documentation requests, we continue to believe there are too many onerous and unnecessary documents required for the underwriting process. Along these lines, processing and underwriting times would decrease dramatically if wage earners were not required to provide either IRS Form 4506-T or 4506T-EZ. Borrowers are either confused by the forms or distrustful of their intended purpose. Instead, servicers should be allowed to rely upon their proven underwriting requirements, so long as they have a good track record of lower-than-average re-default rates. We have assisted tens of thousands of borrowers with our own proprietary modification programs, which require verification documentation more suitable to the underwriting of a modification. Even with these streamlined standards, from April 2008 to May 2010, AHMSI's re-default rate over 6 months and over 12 months of 21.3 percent and 42.9 percent, respectively, is less than the industry averages of 42.4 percent and 58.4 percent, respectively, reported by OCC/OTS from the first quarter of 2008 to the last quarter of 2009.

Another aspect of the program that is problematic is the communication to the overall public. We believe that the communication actually encourages "strategic defaulters" because it implies that a borrower can obtain a modification with a principal reduction, so long as the borrower is delinquent. Not enough emphasis is put on the fact that the borrower must prove a valid hardship. We have seen a sharp increase in "strategic defaulters" over the last several months. We believe this to be, in part, in response to the Administration's release of information about the new principal forgiveness program.

Although we have not as yet implemented HAUP, we do not believe that it goes far enough to assist unemployed borrowers. We believe additional discussions and program enhancements are needed in order to adequately address this significant population.

In addition, the Treasury Department does not give due consideration to the number of non-HAMP modifications being completed by servicers. While HAMP may provide a catalyst for an increase in the number of modifications nationwide, the current structure of the program necessarily excludes a significant percentage of borrowers. The Treasury Department should recognize the sizeable efforts of servicers and provide them with the tools and encouragement to do more to assist borrowers outside of HAMP.

Finally, due to ambiguities in the program, borrowers have been able to delay foreclosures by “gaming the system.” Because a borrower does not become permanently ineligible for failing to provide all verification documents in a timely fashion, if a trial plan is not offered for that reason, the borrower nevertheless is not prohibited from requesting reconsideration for HAMP at a later date. In the past, borrowers were able to take advantage of that by once again submitting an incomplete package, thus re-starting the cycle. Although changes to HAMP that became effective on June 1, 2010, will help to eliminate some of this gaming, the program still does not penalize borrowers who fail to fully cooperate with servicers in this regard.

## **Conclusion**

American Home Mortgage Servicing, Inc., is firmly committed to HAMP and to compliance with its goals and standards. We recognize that a cash flowing mortgage loan benefits borrowers, investors, servicers, and society in general. We are anxious to see the program succeed and look forward to working with the Treasury Department and Congress to implement the needed improvements that will enhance its effectiveness for struggling borrowers and ensure that the taxpayers’ investment in HAMP is rewarded with a stabilized housing market.