

October 28, 2008

The Honorable Henry M. Paulson, Jr.,  
Secretary of the Treasury  
The Honorable Neel Kashkari,  
Interim Assistant Secretary for Financial Stability  
and Assistant Secretary for International Affairs  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, D.C. 20220

***RE: Section 102 of the Emergency Economic Stabilization Act of 2008***

Dear Secretary Paulson and Assistant Secretary Kashkari:

The Center for Responsible Lending, Consumer Action, the Leadership Conference on Civil Rights, the National Community Reinvestment Coalition, the National Consumer Law Center, the National Fair Housing Alliance, and the Opportunity Finance Network appreciate the opportunity to comment to the Department of the Treasury about the insurance program to be established under Section 102 of the Emergency Economic Stabilization Act of 2008 (EESA).<sup>i</sup>

We are writing to underscore the urgency of the foreclosure crisis and the need for Treasury to use all of its new authorities under EESA to facilitate systematic loan modifications as quickly as possible. More than 10,000 new foreclosures are now being filed *per day*, quickly adding to more than 1.2 million foreclosures that have already occurred. Not only are foreclosures a tragic and irreversible event in the lives of families losing their homes, but the foreclosures also cost the neighborhoods and communities around them billions of dollars in lost wealth, lost tax revenues, and neighborhood degradation. Further, losses to financial institutions due to investments in mortgage-related assets and derivatives based on the performance of these assets will not cease until foreclosures are substantially reduced. Voluntary loan modifications are failing to keep up with the rising tide of foreclosures.

We urge Treasury to implement EESA with a clear focus on the goal of expanding the adoption of streamlined modification programs, such as the program the FDIC has implemented with IndyMac Bank, which is an approach now endorsed by numerous federal and state banking regulators. The loan modification problems should be formulated and implemented in a manner that affirmatively furthers fair housing. Only through dramatically expanding long-term affordable modifications will housing markets stabilize, allowing the performance of mortgage-backed securities to improve.

To this end, we believe that Treasury's top priority should be to develop the loan modification guarantee program described under Section 109 of EESA before turning its attention to the insurance program contemplated under Section 102. Until the details of the Section 109 program are established, it will be impossible to ensure that the Section 102 program does not undermine or conflict with servicer incentives to make affordable and sustainable loan modifications. For example, if financial institutions have paid insurance premiums to insure against substantial losses associated with future defaults and foreclosures, they may have a disincentive to allow modifications that do not trigger these insurance payments.

However, since you have asked about the Section 102 program, we have some general principles to suggest you follow in designing the Section 102 insurance program:

- Above all, the program must not *discourage* loan modifications that will keep homeowners in their homes.
- To be eligible to participate in this program (or any program funded under EESA), financial institutions should be required to have in place a systematic and streamlined approach to loan modifications for any loans within their control and must be in compliance with all civil rights statutes and orders, including the Fair Housing Act.
- The program should only cover mortgage-backed securities, not whole loans. Whole loans should be dealt with exclusively through the Section 109 program or through purchases and subsequent modifications by Treasury directly. Otherwise, this insurance program will reduce incentives for servicers to modify whole loans.
- Section 102 requires that the insurance program be paid for by participant premiums. Accurate risk-based pricing will help avoid the moral hazard of creating a windfall for investors who took significant risks.
- Adverse selection will likely be a problem in this program regardless of design, which emphasizes the importance of modifying current loans so that they continue to perform.

While Treasury alone cannot solve the massive problems caused by destructive lending practices, the new authority under EESA provides an opportunity to make a significant and immediate difference for millions of people. We encourage Treasury to move quickly in implementing a guarantee program for loan modifications under Section 109 and to ensure that any programs created under EESA or any other authority also work toward that goal.

Submitted by:

Center for Responsible Lending  
Consumer Action  
Leadership Conference on Civil Rights  
National Community Reinvestment Coalition  
National Consumer Law Center (on behalf of its low-income clients)  
National Fair Housing Alliance  
Opportunity Finance Network

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<sup>i</sup> The Center for Responsible Lending is a not-for-profit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. We are affiliated with a community development lender, Self Help, which provides carefully underwritten loans to people and small businesses who have been under-served by other lenders. Over 27 years of operation, Self Help has provided over \$5 billion of financing to 55,000 low-wealth families, small businesses, and nonprofit organizations through direct loan and secondary market programs.

Consumer Action is a national nonprofit education and advocacy organization serving more than 10,000 community based organizations with training, educational modules, and multi-lingual consumer publications since 1971. Consumer Action's advocacy work centers on credit, banking, and housing issues.

The Leadership Conference on Civil Rights (LCCR) is the nation's oldest, largest, and most diverse coalition of civil rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, LCCR seeks to further the goal of equality under law through legislative advocacy and public education. LCCR consists of approximately 200 national organizations representing persons of color, women, children, organized labor, people with disabilities, the elderly, gays and lesbians, and major religious groups.

The National Community Reinvestment Coalition is an association of more than 600 community-based organizations that use CRA to promote access to basic banking services, to create affordable housing, and promote job development and vibrant communities for America's working families.

The National Consumer Law Center (NCLC) is a non-profit organization specializing in low-income consumer issues, with an emphasis on consumer credit. On a daily basis, NCLC provides legal and technical consulting and assistance on consumer law issues to legal services, government, and private attorneys representing low-income consumers across the country. NCLC publishes a series of sixteen practice treatises and annual supplements on consumer credit laws, and its attorneys have written and advocated extensively on all aspects of consumer law affecting low-income people.

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The National Fair Housing Alliance is a non-profit civil rights organization working to eliminate housing discrimination and to ensure equal housing opportunity for all people through leadership, education and outreach, membership services, public policy initiatives, advocacy and enforcement.

The Opportunity Finance Network is a national network of more than 160 financial institutions, including CDFIs and other opportunity finance institutions that work just outside the margins of conventional finance to bring those markets into the economic mainstream and to help the economic mainstream flow into those markets. CDFI financing has resulted in significant numbers of new jobs, jobs preserved, quality, affordable housing units, and new commercial and community facility space in all 50 states. Over the past 30 years, the Opportunity Finance industry has provided more than \$23 billion in financing that would not otherwise have happened in markets that conventional finance would not otherwise reach.