March 9, 2011

The Honorable Timothy F. Geithner
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Mr. Secretary:

On Thursday, March 3, 2011, five of the nation's largest financial institutions received a draft settlement term sheet from the U.S. Department of Justice on behalf of other federal and state agencies to settle allegations related to improper foreclosures and other servicing problems. Although the Administration has not apprised the House Financial Services Committee — the Committee of jurisdiction on issues pertaining to the banking system and housing — of its role in the settlement negotiations or the potential terms of the settlement, part of the draft settlement term sheet has been made public.

If the terms of the draft settlement are implemented as proposed, the settlement would transform the mortgage servicing industry and fundamentally change the rules that have historically governed relationships among borrowers, servicers and investors. The breadth and scope of the draft settlement proposal raise significant concerns about its effect on the financial system, as well as concerns that the Administration and state agencies are attempting to legislate through litigation. In addition, reports about the role played by political appointees in the Treasury Department —including those affiliated with the Consumer Financial Protection Bureau (CFPB), an agency that does not yet have any regulatory or enforcement authority — raise further questions about the process through which the terms of the settlement are being negotiated .

Traditionally, the remedies imposed by federal banking regulators have been limited to restitution for victims specifically harmed by misconduct, money penalties, or injunctions requiring improvements in internal controls or management. Yet this draft settlement requires far more. The settlement agreement not only legislates new standards and practices for the servicing industry, it also resuscitates programs and policies that have not worked or that Congress has explicitly rejected. For instance, the settlement agreement seeks to revive the Home Affordable Modification Program (HAMP), a deeply flawed Administration initiative that Congress is currently considering terminating, and to require write-downs of mortgage principal, which both the House and Senate have rejected in the context of bankruptcy proceedings.[1]

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[1] On April 30, 2009, the Senate voted down an amendment to allow bankruptcy judges to reduce the principal on a mortgage backed by a borrower's primary residence by a vote of 45 to 51 (Durbin Amendment No. 1014, Vote #174, April 30, 2009). On December 11, 2009, the

The draft settlement agreement raises a number of important legal and public policy questions. Accordingly, we respectfully request a detailed response to the following questions by March 18, 2011.

- What specific legal authority grants federal and state regulators and agencies the power to require mortgage principal reductions when the House and Senate have voted down such proposals?

- What specific legal authority grants federal and state regulators and agencies the power to effectively legislate new rules and standards for the mortgage servicing industry?

- What role did persons associated with the CFPB have in drafting the proposals in the draft term sheet? What specific legal authority permits an official associated with an agency that does not have regulatory or enforcement authority to participate in settlement negotiations?

- How do the proposals in the draft settlement term sheet relate to parallel investigations or enforcement actions being carried out by the federal banking regulators?

- Were political appointees involved in drafting the draft settlement term sheet? If so, is their involvement consistent with provisions in the National Bank Act, the Home Owners' Loan Act and the Dodd-Frank Act which prevent the Treasury Secretary from intervening "in any matter or proceeding before the Comptroller of the Currency (including agency enforcement actions), unless otherwise specifically provided by law"?[2]

- What is the Treasury Department's policy related to political appointees' involvement in enforcement matters and actions?

- Under the draft term sheet, it appears that monetary penalties collected from servicers will be used to support mortgage modifications – including principal write-downs – for borrowers who were not affected by the foreclosure documentation irregularities that are at issue. What is the legal basis for using funds collected in an enforcement action to benefit parties who have not been harmed by the purported wrongdoing?

- Have the officials who drafted the term sheet considered how its terms would affect the safety and soundness of the financial institutions bound by it?

House voted to reject a measure that would have allowed a mortgage cram-down by a vote of 188 to 241 (H.R. 4173, Marshall Amendment, Vote #963, December 11, 2009).

[2] 12 U.S.C. 1; 12 U.S.C. 1462a(b)(3); Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. No. 111-203) Section 314(a).

- Will forcing servicers to fund principal reductions for underwater loans they service affect the incentive of mortgagors to stay current on their loans?

- Will additional foreclosure mitigation policies mandated by the draft term sheet delay recovery in the housing market and lead to further erosion of investor confidence? Will foreclosure mitigation policies deter private investment in the mortgage market?

- Recent estimates suggest that more than eleven million mortgages in the U.S. are currently underwater. Consequently, the financial institutions named in the draft term sheet service many more underwater loans than could possibly be written down as part of this settlement. What standards will govern the process by which servicers select which borrowers receive a principal write-down?

Thank you for your consideration of this request. We look forward to your prompt response.

Sincerely,