CALIFORNIA ASSOCIATION OF REALTORS®

December 17, 2010

Department of Treasury
The Honorable Timothy Geithner
Secretary of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Federal Housing Finance Agency
Edward DeMarco
Acting Director
1700 G Street NW 4th Floor
Washington, DC 20552

Fannie Mae
Michael J. Williams
President/CEO
3900 Wisconsin Avenue, NW
Washington, DC 20016

Freddie Mac
Charles E. Haldeman Jr.
Chief Executive Officer
8200 Jones Branch Drive
McLean, VA 22102

Re: Home Affordable Foreclosure Alternative Program

Gentlemen:

On behalf of more than 170,000 members of the CALIFORNIA ASSOCIATION OF REALTORS® (C.A.R.), I am writing you to respectfully request some immediate changes to the Home Affordable Foreclosure Alternatives (HAFA) program and to recommend solutions so that the program can succeed in ensuring troubled homeowners and their communities avoid foreclosure. Initially, our members welcomed the announcement of the HAFA program as it seemed to address the problems homeowners and REALTORS® experienced with the short sale process, including the lack of standardization, the long approval process, the lack of lender approvals, and the possibility that lenders would pursue the borrowers for short sale deficiencies. Now, eight months after the implementation of HAFA, our members on behalf of their clients are extremely frustrated. HAFA short sale approvals are not only few and far between, but also generally unworkable. Our members are on the frontline fighting for the housing recovery, but for HAFA to have any chance of curbing the current onslaught of residential foreclosures and stabilizing the housing market, it must be immediately improved upon. Additionally, we strongly encourage you to consider implementing other policies or programs as a supplement for HAFA that will stimulate the housing recovery effectively and expediently.

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Below are recommendations C.A.R. believes will enhance and improve the HAFA program to ensure its success:

Require Servicers to Comply with HAFA Timelines

Real estate transactions are time-sensitive. The longer they take, the greater the odds of the deal falling through. Perhaps the most common complaint about short sales among REALTORS®, which HAFA was poised to resolve, is that lenders take too long to review and approve short sales. California REALTORS® have lost countless transactions, primarily because servicers took so long to review the short sales that the sellers gave up or the buyers eventually walked away from the deal. Oftentimes, good real estate agents refuse to handle short sale transactions because of the difficulty involved.

Instead of the ten business days HAFA provides for servicers to respond to a Request for Approval of a Short Sale (RASS) or the 45 days to close a transaction, homeowners are still experiencing 60- or even 90-day time frames for lenders to respond to a RASS. It may take equally as long to close the transaction once a RASS has been approved. In theory, HAFA lays out a realistic timeline for all participants in a short sale to follow, including REALTORS®. However, in practice, servicers are just not complying and we believe that the regulators have to find a way to make them do so!

Increase Monetary Incentives to Servicers, Investors, and Subordinate Lien Holders

One of the greatest hurdles that short sale borrowers face is obtaining approval from servicers, investors and subordinate lien holders, including the release from liability for the subordinate lien. Increasing the monetary incentive will increase the likelihood that these entities will approve HAFA short sales.

As for the subordinate lien holder, its loan is essentially worthless due to the lack of security for the loan and the devaluation of the property. Yet, these lien holders often refuse to accept the HAFA-approved payoff amount of $6,000, not to exceed 6% of the unpaid principal balance. Even when a subordinate lien holder accepts we have frequently seen them demand additional funds to be paid, secretly, outside of escrow, which may constitute loan fraud against the senior lien holder.

C.A.R. believes the current monetary incentive for both senior and subordinate liens should be increased and the percentage cap for subordinate liens should be removed to encourage subordinate lien holders to participate in a HAFA short sale. Recently, the Congressional Budget Office announced in November that the Home Affordable Modification Program (HAMP) is approximately $38 billion under budget. C.A.R. proposes that this surplus be utilized to at least triple the incentives under HAFA for servicers, investors and subordinate lien holders.

Regulators Must Enforce Other HAFA Rules

Everywhere I travel throughout California to discuss issues with our members, I am constantly being told of instances servicers are ignoring HAFA guidelines altogether. We conducted two surveys recently (attached) to quantify what we're hearing anecdotally from our members. The surveys' results and first-hand accounts of what REALTORS® are experiencing in the field demonstrate the huge lack of oversight and enforcement of this program.

Despite what we hear about HAFA violations, C.A.R. has yet to hear of any punitive action taken against a servicer or lender due to its disregard for HAFA guidelines. Perhaps the most disturbing aspect of this is that when a servicer fails to comply with HAFA, the likely consequence is not only foreclosure against a homeowner, which is one of the most severe consequences that can be taken, but also significantly harm toward an entire community. When a servicer's failure to comply with HAFA is so devastating to a family and community, the servicer should be held accountable. C.A.R. does not believe this is being done and is asking all of you to strengthen your enforcement of HAFA violations.

Provide Uniform Guidelines for all HAFA Programs

Despite the complexities surrounding short sale transactions, the U.S. Treasury and government-sponsored enterprises compound the matter by using three different versions of HAFA. The extra burden for servicers, borrowers, and REALTORS® to learn and comply with three separate HAFA guidelines is counterproductive and the antithesis of the Administration's goal for HAFA to standardize the short sale transaction. Whether the difference is small, such as an extra line in a form, or large, such as not requiring a borrower to be delinquent prior to HAFA consideration, the guidelines for all HAFA transactions should be the same. Redirecting the focus away from addressing regulatory nuances between the Treasury and the government sponsored enterprises, and toward one uniform, user-friendly HAFA program would greatly help homeowners, real estate agents, and lenders carry out HAFA short sales.

Mandate Lenders to Approve and Complete HAFA Short Sales

C.A.R. is asking that servicers be mandated to use the HAFA process when conducting a short sale transaction. Given that, under HAFA requirements, homeowners who apply for a HAFA short sale have already demonstrated an inability to complete or qualify for a HAMP loan modification, the best outcome for both the homeowner and the community may be to get that property into the hands of new homeowners in the most expeditious manner possible. HAFA is the way to achieve that goal. However, with reportedly less than 400 successful HAFA transactions through the end of September 2010, the lenders are decisively not utilizing HAFA. Instead of allowing lenders to devise their own HAFA underwriting guidelines, the Treasury should set forth the underwriting guidelines to which services and lenders must adhere. The government's unwillingness to mandate action by lenders to stem the current housing crisis relegates HAFA to yet another well- intentioned voluntary program, which servicers, lenders, and investors are all too happy to ignore, and which C.A.R. fears will fail.

C.A.R. respectfully requests that the Treasury, FHFA, Fannie Mae, and Freddie Mac address the issues above and take the steps necessary to ensure the success of their HAFA programs. C.A.R. has enjoyed working closely with all of you in the past, and as C.A.R. President, I know I speak for all our members and staff when I say we are ready to assist in the success of HAFA. If you would like to discuss these or any other HAFA or short sale related issues, please do not hesitate to contact Matt Roberts, C.A.R. Federal Government Affairs Manager, at (213) 739-8284 or by email at matthewr@car.org.

Sincerely,

Beth L. Peerce

Beth L. Peerce
2011 President
CALIFORNIA ASSOCIATION OF REALTORS®

cc: National Association of REALTORS®
California Congressional Delegation