ATTORNEY GENERAL OF COLORADO
John W. Suthers

January 23, 2014

Via Hand Delivery

Governor John Hickenlooper
Senate President Morgan Carroll
House Speaker Mark Ferrandino
Senate Minority Leader Bill Cadman
House Minority Leader Brian DelGrosso
JBC Chair Crisanta Duran
200 East Colfax
Denver, Colorado 80203

Re: Custodial Funds Recovered From National Mortgage Settlement

Dear Governor and Distinguished Members of the General Assembly:

I am writing regarding the $51.17 Million in custodial funds Colorado recovered from the National Mortgage Settlement. The relief granted under the settlement and the assistance made available under Colorado-specific programs funded from the settlement have helped mitigate the foreclosure crisis and shore up Colorado's housing market. The settlement has been in effect just under two years. During this time Colorado's economy has improved, the foreclosure crisis has subsided for most areas of the state, and most parts of the state have enjoyed an improving housing market.

But while the housing market has improved, a rental crunch has developed. Rental vacancies have plunged and rental rates have steadily increased. Coloradoans caught in this rental crunch have had difficulty finding affordable housing. As the floods of September 2013 have shown, natural disasters can only worsen this problem. Fortunately, the improving economy and lessening foreclosure crisis put us in a position to do something about this affordable housing dilemma. For this reason I intend to exercise my discretion over the custodial funds to reallocate a portion of them to meet this new challenge.

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Background – The National Mortgage Settlement and the Changing Nature of Colorado's Housing Market

In early 2012, Colorado along with the U.S. Department of Justice, HUD and 48 other states reached an historic $25.0 Billion settlement with the five major banks regarding their foreclosure practices. These banks serviced almost two-thirds of all mortgages and were accused of a variety of servicing misconduct. The relief provided for under this settlement was designed to slow the foreclosure crisis and boost the housing market. Under the settlement the participating banks had a financial incentive to extend loan modifications and other alternatives to foreclosure to homeowners who were trying to save their homes. Under the settlement, the nation's largest mortgage servicers received a credit towards a $20.0 Billion obligation for granting loan relief to homeowners. This loan relief came in the form of reduction of the principal balance of a loan in order to secure a modification that provided an affordable mortgage payment. Credits were also earned for granting loan relief as part of a short sale or other foreclosure alternative. The banks also earned credits for refinancing homeowners who were underwater on their loans. The participating mortgage servicing companies have certified to the monitor, Joe Smith, that they have satisfied this $20.0 Billion obligation. In fact, the settlement led to over $50.0 Billion in total relief.

I am happy to report that the Colorado housing market has seen significant progress since this settlement was reached. No doubt, this is due in large part to the improvement in the economy. The relief provided under the National Mortgage Settlement has also helped Coloradoans avoid foreclosure and has made affordable housing more available.

In most parts of the state, foreclosure filings and sales continue to trend downward. Foreclosure filings have dropped to pre-crisis levels. See Div. of Housing 3rd Quarter 2013 Foreclosure Report, https://dola.colorado.gov/app_uploads/docs/2013_3rdQ%20Foreclosure%20Report2.pdf. At the same time the housing market across most parts of the state have seen rising home values. Home sales are picking up.
This situation, however, has created a tight rental market. Rental vacancies are at all-time lows and rental rates continue to increase. https://dola.colorado.gov/app_uploads/docs/2013-3%20-%20Colorado%20Survey%20-%20Public%20(1).pdf. Affordable housing is difficult to come by for residents who cannot afford these market rate rents.

The National Mortgage Settlement has contributed to this improvement in the housing market. The loan modifications and foreclosure alternatives under the settlement have helped 7,500 Coloradoans avoid foreclosure. These Coloradoans have received loan relief in the amount of $425.0 Million. The operational enhancements

made as a result of the servicing standards under the settlement have also made it easier for struggling homeowners to access this relief.

In addition to the relief provided for under the settlement, Colorado homeowners have also benefited from state specific programs that were funded with the $51.17 Million in custodial funds that were paid to Colorado under the settlement. The settlement confers custodial authority with the Attorney General to use these funds for foreclosure prevention and housing programs.

Shortly after the settlement I conferred with the Governor's Office, the leadership of the House and Senate and the housing community to develop a plan for the most effective use of these custodial funds. After receiving input from various stakeholders, we dedicated 100% of these custodial funds to foreclosure prevention and housing programs. Colorado stood out among the states in that all of these settlement funds were devoted to their custodial purposes. Holding true to these custodial purposes has gone some distance in helping Colorado out of the foreclosure crisis and stabilizing our housing market.

The programs funded with these custodial funds and the allocation of their funding is as follows:

Colorado Foreclosure Hotline	$ 1,100,000.00
Colorado Legal Services	$ 1,500,000.00
Housing Counseling Support	$ 5,625,000.00
Enforcement & Monitoring	$ 750,000.00
Affordable Housing	$18,195,188.00
Supplemental Loan Programs	$24,000,000.00
Total Funding	**$51,170,188.00**

When these programs were established in April 2012 they were designed with the flexibility to be reassessed on a periodic basis. The economy and the foreclosure crisis are constantly changing. The programs were designed to shift funding to respond to the most pressing need.

All of these programs were designed to have a three-year duration. Any leftover funds would then be granted to the Division of Housing to address affordable housing needs. This funding therefore established a legacy for Colorado's affordable housing needs. Our economy has changed in the two years since this settlement. Most parts of

Colorado have the fortunate circumstance of a dissipating foreclosure problem and a more stable housing market. To sustain this progress I intend to reallocate some of these funds to address Colorado's affordable housing situation. This problem has emerged as the largest challenge to the housing market and is made worse by the floods and fires that our state has endured. This is a need that will benefit from this funding reallocation.

The status of the current programs along with the portion that will be reallocated are summarized below.

Custodial Fund Settlement Programs

1. Colorado Foreclosure Hotline ($1.1 Million):

The Colorado Foreclosure Hotline was established in 2006 to as a statewide resource to connect struggling homeowners with a HUD-approved housing counselor. The counselors charge nothing for their services and are able to provide free advice about how to handle a mortgage delinquency. Counselors frequently work out loan modifications, thereby keeping homeowners in their homes. There are approximately 25 nonprofit, HUD-approved housing counseling agencies in the Hotline's statewide network. The Hotline has been effective in helping homeowners avoid foreclosure. Four out of five homeowners who meet with a housing counselor are successful in avoiding foreclosure.

The Hotline was originally designed to be a limited-time venture. As the foreclosure crisis dragged on the Hotline became a critical resource for Coloradoans who were trying to save their homes. Since the Hotline was started it has fielded nearly 174,000 calls.

The funding provided through the settlement has allowed the Hotline to expand its statewide marketing and outreach to struggling homeowners. Over $500,000 was used to design a statewide marketing plan and target grassroots outreach to hardest hit communities. The other $600,000 has provided critical funding to sustain the operations of the Hotline through FY 14-15.

2. Colorado Legal Services ($1.5 Million):

Colorado Legal Services (CLS) provides free legal aid to low income and elderly homeowners who are struggling to save their homes from foreclosure. As a result of this funding CLS has been able to expand its services to underserved and areas hit hardest by the foreclosure crisis including Denver, Mesa County and surrounding Western Slope communities, Northern Colorado including Ft. Collins and Greeley, and

Southern Colorado including Pueblo and Colorado Springs. With this funding CLS has launched a toll-free hotline as a way for potential clients to obtain legal assistance. CLS has also sponsored 56 community outreach events.

3. Housing Counseling Support ($5.625 Million):

This funding has allowed the network of housing counseling agencies across the state to expand their reach to homeowners. As a result of this funding, service has been expanded into previously underserved areas including Delta, Rifle, Salida, and Glenwood Springs. During the same period, outreach and expansion activities were conducted in Craig, Steamboat Springs, Lamar, Trinidad, and Cripple Creek.

This funding is administered by the Colorado Housing and Finance Authority (CHFA). The network expansion and the cost of administration account for $1,225,000 of this fund. The remaining $4.4 Million is reserved for reimbursement of the counseling agencies on fee-for-service basis. They may apply for $400 for each delinquent borrower they counsel. Before counseling agencies may apply for reimbursement, they must exhaust all other federal funding. This requirement combined with the slowdown in the foreclosure crisis has resulted in reimbursements of only $126,500 since the commencement of this program in 2012.

In order to stimulate demand for this funding, we have authorized CHFA to reimburse agencies that counsel homeowners affected by the September 2013 floods. As discussed below, the floods and other natural disasters have added to the affordable housing crunch in Colorado. Housing counselors can assist affected homeowners with their housing options.

The expansion of this funding will still leave as much as $3.0 Million in funding left over. As discussed below, there are more urgent housing needs for this funding at this time. I therefore intend to reallocate $3.0 Million of this funding to the affordable housing programs discussed below.

4. Enforcement Monitoring and Complaint Escalations ($750,00.00):

My office retained these funds to monitor the settlement and provide assistance to homeowners who have exhausted all other options in an attempt to save their homes from foreclosure. I have used this funding to hire two full-time lawyers. One lawyer handles the monitoring of the settlement and administration of the settlement programs. Colorado is one of the states on the nationwide monitoring committee, which also includes representatives from the DOJ and HUD. In this capacity we work closely with the court-appointed monitor, Joe Smith, to ensure that the settlement's servicing standards are working for homeowners across the nation.

The other full-time lawyer reviews complaints that are filed with our office and escalates those complaints where a borrower appears to have no other options. Our office has executive level contacts at more than fifty servicers. This escalation allows the mortgage servicer to review the borrower's situation for possible assistance before the foreclosure goes through. Since 2012 our office has reviewed approximately 2,045 complaints and have escalated 824 to the servicers to the great benefit of Colorado borrowers.

5. Affordable Housing Programs ($18.195 Million):

The Division of Housing is administering affordable housing programs that have proven to be most effective in meeting Colorado's affordable housing needs. The programs receiving this funding are summarized below.

a. Affordable Housing – ($13.195 Million)

Approximately $13.2 Million was granted to the Division of Housing for the promotion of affordable housing. Ten projects have been approved for short term loan funding in the amount of $12.1 Million. Nearly 900 affordable housing units have been preserved or are under construction across the state. A summary of these projects is attached. As discussed above the greatest need for the Colorado housing market is affordable housing. Given this need and the success of this program I intend to reallocate other custodial funds to meet this continuing need and expand it to provide assistance to those homeowners affected by the floods and other natural disasters.

b. Veterans' Housing and Treatment Program ($5.0 Million)

This funding has facilitated the repurposing of Ft. Lyon as a residential treatment center. Ft. Lyon open during the fall of 2013 and it started receiving residents at that time.

6. Supplemental Loan Programs ($24.0 Million):

Two loan programs were established with this funding in order to help homeowners save their homes from foreclosure. These programs were designed to offer assistance where borrowers were not eligible for relief under the National Mortgage Settlement and where government programs were not available or did not apply to the homeowner's situation. The particulars of the Reinstatement Program and the Modification Assistance Program are reviewed below.

The demand for these assistance programs no longer supports funding in the amount of $24.0 Million. A few positive developments have made it possible to free up $20.0 Million from this funding. First, the economy has improved and the number of delinquencies and foreclosures across the state have dramatically declined. As a result, the need for these programs has diminished. Second, the major mortgage servicers have done a better job of reaching delinquent borrowers and addressing their situations. The servicing standards set forth in the National Mortgage Settlement required the servicing companies to provide greater response to borrowers and provide a meaningful opportunity to assess whether they can avoid foreclosure. In most cases this system is working well for a majority of borrowers. As a result, fewer borrowers have lingering delinquencies and are applying for assistance.

Because these programs are not seeing as much business, I intend to lower the funding allocation to these programs to $4.0 Million.

a. Reinstatement Program

This is a loan fund that is available to borrowers who suffered a one-time set back, such as a medical emergency, that has saddled them with unexpected expenses. They generally fell behind on their mortgage as they coped to pay all of their bills. Once they get back on their feet, they find themselves with a large, rolling delinquency on their mortgage. This program is designed to clear out this delinquency, thereby eliminating the risk that the home will go into foreclosure.

This program launched on November 7, 2012 and is administered by the Colorado Housing Assistance Corporation. It has been successful in helping Colorado borrowers overcome their setbacks and save their homes. To date, there have been 122 applications, with 62 approvals (including 56 closed loans), 28 denials, 16 withdrawals, and 16 applications in process. Loans to date total $888,488.98.

b. Modification Assistance Program

This program is designed to put a loan modification within reach of homeowners by reducing their principal balance by as much as $50,000. This funding is provided to borrowers in the form of a non-interest bearing subordinate loan. By reducing their principal balance it is anticipated that the mortgage servicer can modify the loan in order to make it affordable for the borrower. This program was designed mainly to reach mortgages that are owned by Freddie Mac and Fannie Mae. Neither of these loan guarantors allow principal reductions to be made in order for a loan to be modified.

This program launched February 25, 2013. It is administered by Funding Partners in Ft. Collins. This program requires extensive coordination with the mortgage servicers. Their systems must be modified in order to recognize this program. It has been challenging to integrate this program with the major servicers. To date, Wells Fargo (the largest mortgage servicer in the state) has integrated this program into its operations. We continue to work with JP Morgan Chase and Bank of America (the other two largest mortgage servicers in Colorado) to integrate this program into their systems. To date this program has received 21 applications with 5 approvals (including 4 loans closed), 11 denials, 2 withdrawals and 3 in process. Loans to date total $108,500.00

Given the efforts made to work with these major servicers, we still want some funding available to move this program forward. The improvements in the economy and lesser demand for this assistance, however, allows me to reallocate $20.0 Million from these assistance programs.

7. **Reallocation to Affordable Housing ($23.0 Million):**

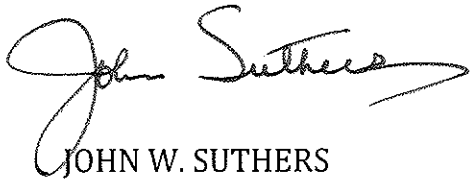
Colorado has been fortunate to see an improved economy and housing market. This fortunate circumstance presents an opportunity to reallocate $23 Million of these funds to another pressing need: affordable housing. This need is consistent with the overall custodial purpose which governs the use of these funds. These funds were paid in order to establish foreclosure prevention programs and promote housing. With the progress that has been made, the foreclosure prevention programs need less funding. Meanwhile, affordable housing continues to be harder to find, especially along the Front Range in those counties that were affected by the floods in September 2013.

As a result of this situation I intend to reallocate $23.0 Million in custodial funds to promote affordable housing, especially in those counties that have been affected by the September 2013 flooding and other natural disasters such as wildfires. Homeowners struggling to deal with these tragic events have an immediate need for housing assistance. Even after the disaster recedes and they locate temporary housing, these homeowners often have little equity in their homes or property with which they can start a new beginning. After the floods, the property has been designated as a flood plain making it uninhabitable and virtually worthless. Homeowners therefore need some assistance to reestablish a home. These funds can provide just such housing assistance in the wake of these disasters.

The Colorado Division of Housing is uniquely positioned to administer these affordable housing programs. It has already effectively used the custodial funds to promote the development or preservation of 900 affordable housing units throughout the state. I intend to reallocate these funds to greatly expand the ability to address

these needs with special emphasis on homeowners who are affected by natural disasters. Because these funds will be part of a revolving loan fund for affordable housing, they should be available to provide assistance far into the future.

Sincerely,



JOHN W. SUTHERS
Colorado Attorney General

Attachment

c: Shaun Donovan, Secretary, U.S. Department of Housing and Urban Development
David Blake, Deputy Attorney General, Legal Policy and Governmental Affairs
Jan Zavislan, Deputy Attorney General, Consumer Protection
Andrew McCallin, First Assistant Attorney General, Consumer Protection
Jack Finlaw, Legal Counsel, Office of Governor John Hickenlooper

Division of Housing- Affordable Housing Program status

Project	Location	Loan Amount	# of Units	Status	Comments
Wadsworth Apartments	Lakewood	$1,300,000	100	Closed (occupied)	
Madison Apartments	Loveland	$648,757	59	Closed (occupied)	
Cunningham Corners Apartments	Ft. Collins	$2,000,000	284	Closed (occupied)	
Ruby Hill Residences	Denver	$925,000	114	Not closed	Reworking their financing
The Suites	Longmont	$1,650,000 + $350,000	71	Closed (occupied)	
Park Hill Community Apartments	Denver	$2,000,000	140	Not closed	Reworking their financing
Loveland Green Houses	Loveland	$2,000,000	60	Closed (under construction)	
Overlook Village	Montezuma County	$690,000	30	Not closed	New approval
Odyssey Family Residences	Denver	$215,000	36	Not closed	New approval
Denver Metro TOD Fund	Jefferson, Arapahoe, Adams, Broomfield, Douglas and Boulder counties	$500,000	TBD	Not disbursed	New program
Total approved		**$12,278,757**	**894**		
Balance		**$916,431**			