

OVERVIEW OF HAMP

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Poll: What Is Your Knowledge Base of HAMP?

- Pick one
 - HAMP—what's that???
 - Handled a few cases, less than 10
 - See someone with HAMP issues every week

Why Learn About HAMP

- HAMP=Home Affordable Modification Program
- Can save homes
- Sets standard for all other modification programs
- Servicers unlikely to follow the rules on their own

OVERVIEW

- What is HAMP?
 - What loans are eligible?
 - How do you figure that out?
- How does HAMP work?
 - Waterfall for payment reduction
 - NPV test
 - Trial modifications
 - Denials/ appeals
- How does HAMP impact litigation?
 - Stopping a foreclosure
 - Bankruptcy
 - Waiver

What Is HAMP?

- Home Affordable Modification Program
- Component of Making Home Affordable initiative.
- Voluntary incentive-based plan
- Participating servicers supposed to screen everybody, subject only to investor limits
- Uniform modification characteristics
 - Payments reduced to 31%, following standard waterfall
 - Modification results in a positive Net Present Value (NPV) for investors
 - Trial modification followed by permanent modification

Where Is There Guidance?

- No regs or statute
- Guidance
 - Non-GSE: Handbook, Supplemental Directives, Model Forms & FAQs (hmpadmin.com)
 - Fannie Mae: Announcements & Chptr VII of the Servicing Guide (efanniemae.com)
 - Freddie Mac: Bulletins & Chptr C65 of Seller/Service Guide(freddiemac.com)
 - FHA: Mortgagee letters (hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm)
 - VA: Circulars (homeloans.va.gov/valeri.html)
 - USDA: Final rule (75 Fed. Reg. 52429 (Aug. 26, 2010))

Resources to Help Navigate HAMP

- Index
- What to do sheets
- <http://www.nclc.org/issues/loan-modification-programs.html>

HAMP Is Floor, Not Ceiling

- Servicers can do modifications that go deeper than HAMP and still receive incentive payments
- Servicers can offer non-HAMP modifications, although everyone should be screened for and offered a HAMP mod

Participating Servicers Must Modify Loans

- Servicers who sign contract must modify all eligible loans
 - Approximately 85% of eligible mortgage debt covered by HAMP servicers
- Servicers of GSE loans must modify GSE loans
- Servicers, not investors, participate

Who Are the Participating Servicers

- List with contact information available online
 - Applies to operating subsidiaries/affiliates
 - Servicer Participation Agreement (SPA) available online
- Websites:
 - www.makinghomeaffordable.gov
 - www.financialstability.gov
- All Fannie Mae/Freddie Mac loans covered
 - Search engine online to see if either owns the loan
- FHA, VA, USDA loans
 - Look for checkboxes on HUD-1
- NCLC “What to Do” Sheet

Transfer of Servicing

- Even if new servicer not participating in HAMP, takes subject to SPA requirements for loans not yet denied HAMP
- Notice to Fannie Mae
- Schedule of loans attached to contract

Can Investors Forbid HAMP Modifications?

- HAMP doesn't override PSAs, BUT, the program follows "the "usual and customary industry standards"
- If the PSA only prohibits one step in the HAMP waterfall, servicer must still modify, omitting only the prohibited step
- If investor forbids modification, servicer must request waiver
- 15 U.S.C. §1639a creates safe harbor from investor litigation for servicers who modify under HAMP
- NCLC "What to Do" Sheet

Property Eligibility

- Primary residence. Investment properties not eligible.
- One to four units

Loan Eligibility

- Unpaid principal balance cap
 - 1 unit: \$729,450
 - 2 unit: \$934,200
 - 3 unit: \$1,129,250
 - 4 unit: \$1,403,400
- Not previously modified under HAMP
 - Means can't come back and get a new modification

Two Step Screening Process: Borrower Eligibility

- Is the borrower eligible?
 - Default or imminent risk of default
 - Current payment greater than 31% of income
- Does the borrower qualify?
 - Hardship affidavit
 - Verified income
 - NPV test (will the investor profit more by a mod than without a mod?)

Default?

- Actual default
 - Must be due to financial hardship
 - Examples include:
 - “excessive expenses”
 - Fraud in origination
 - Low cash reserves
- Or default is “imminent”
 - Is the rate about to reset?
 - Lost income in the home?
 - Employment income
 - Divorce/ separation
 - Death
- Imminent default guidance:
 - Fannie Mae: Announcement 10-02
 - Freddie Mac: Bulletin 2010-01

31% of What? Expenses

- PITIA on first mortgage only
- Mortgage insurance not included
- Other expenses go into “back end ratio”
- A back-end ratio over 55% will require credit counseling, but is not a bar to a HAMP modification

31% of What? Income

- Gross income for all borrowers.
- Can include income for non-borrower household members.
- Child support or alimony optional
 - Non-taxable income (125%)
 - Rental income gets multiplied by 75%
 - Unemployment income complicated and cannot be considered at all for TPPs starting July 1 or later.
 - Must be able to **document** monthly income (except for non-wage income less than 20%)

Questions?

Applying for HAMP

- Submission of “Initial Package” triggers servicer’s duty to review for HAMP
 - Request for Modification and Affidavit (RMA)
 - 4506T-EZ form
 - RMA and 4506T-EZ Forms available at makinghomeaffordable.gov or hmpadmin.com
 - Proof of income
 - As of 6/1/10, will not accept oral/unverified income
 - Checklist available at <http://makinghomeaffordable.gov/checklist.shtml>
- Third party authorization forms

Servicer Response Time

- 10 business days from receipt of Initial Package to acknowledge borrower's request in writing.
- 30 calendar days from receipt to approve, deny, or request more information in writing

Borrower Response Time

- Borrowers usually have 30 days to respond
 - For more information or to challenge a denial
 - Only 15 days after second request for information
- Borrowers do not need to return signed trial modification, only make timely payments

Waterfall Analysis

- Driven by target payment
- Proceeds sequentially through the waterfall, unless
 - PSA forbids one step or
 - Principal reduction substituted for any step
- Standard waterfall
 - Capitalize arrearage
 - Reduce interest rate
 - Amortization term extended to 40 years
 - Principal forbearance

Capitalization of Arrearages=Principal Debt Increases

- Capitalized arrearage includes:
 - Past due principal and interest
 - Escrow deficiencies/advances, though doesn't have to be
 - Foreclosure costs
 - Servicing fees: property inspections, credit report fee
- CANNOT include:
 - Late fees: unpaid fees will be waived
 - Additional modification fees: no charge for HAMP

Interest Rate Reduction

- Reduced to as low as 2% for 5 years (to get to 31%)
- Can go lower, but incentives only paid down to 2%
- Increase at 1% after 5 years to lower of
 - Freddie Mac rate
 - Interest rate cap in note
- Once rate increases to cap, fixed for life of loan.

Amortization Term

- Payments extended up to 40 years
- Term can be extended even if payments can't be
→ balloon payments

Principal Forbearance vs. Principal Reduction

- Principal forbearance—interest free forbearance of principal until loan paid off → large balloon payments
- Servicers required to run an NPV analysis including principal reduction and investor incentives for principal reduction if LTV > 115%, but need not implement it
- Borrowers who stay current receive up to \$1,000 a year in principal reduction for 3 years

Excessive Principal Forbearance

- Limited to the greater of
 - 30% of unpaid principal balance or
 - 100% MTM LTV reduction

Excessive Principal Forbearance Examples

- Current value of home is \$90,000
- Current loan value is \$100,000

- 30% of unpaid principal balance is \$30,000
- 100% MTM LTV is a \$10,000 principal forbearance
- Forbearance capped at \$30,000, unpaid principal balance

- Current value of home is \$100,000
- Current loan value is \$300,000

- 30% of unpaid principal balance is \$90,000
- 100% MTM LTV is a \$200,000 principal forbearance
- Forbearance capped at \$200,000, MTM LTV

How to Review Excessive Forbearance

- What are the loan mod terms?
 - Payment
 - Income
 - Escrow
 - Forbearance required
 - FDIC Loan Mod in a Box
- What is the unpaid principal balance?
 - 30%
- What is the current value?
 - Difference between unpaid principal balance and current value

NPV Test

- Measures the benefit to the investor of a loan mod
 - Not servicer
 - Not borrower
- Weighs value and probability of unmodified loan vs. modified loan
 - Current payments
 - Foreclosure
 - Loan mod
 - Foreclosure after loan mod
- A pass means value of loan mod, in present terms, allowing for possibility of redefault, is greater than the value of the loan unmodified
- FDIC Loan Mod in a Box

HAMP NPV Test

- Based on FDIC Loan Mod in a Box
- Servicers submit numbers to Fannie, Fannie runs the analysis
- Not yet public, but should be soon, under Dodd-Frank, Pub. L. No. 111-203
 - Methodology
 - Portal to test servicer results

NPV Test Should Only Be Run Once

- Should be run when verified income submitted
- Does not need to be re-run if other inputs change
- If borrower income changes, NPV version and all unrelated inputs must be held constant

- NCLC “What to Do” sheet

Failing the NPV Test

- Ask for all inputs
 - Dodd-Frank, § 1482
- See if you can increase the borrowers' income
 - Will increase payment and value of mod
 - All income included? Nonborrower income included? Correct amounts included?
- Try to get valuation of property
 - Higher current value, more attractive a foreclosure
- Use FDIC Loan Mod in a Box to check that the offered terms of the mod comply with the waterfall

If Approved

- 3 month Trial Period Plan
 - Arrears will accrue during trial. Payments are held in suspense and only credited when equal to full monthly payment under note.
 - Will be reported to credit bureaus as either in default or making payments under a plan
- Will be converted to permanent modification upon completion of trial modification
- If fails trial period: no further HAMP mod. “1 bite at the apple.”

Conversions

- Conversions to permanent mods often stalled
- If no mod, then supposed to offer other loan mod, lump sum should not not be required
- Failure to convert basis of most of HAMP class actions

Arrearage Accruals

- Handbook requires that any delay caused by the servicer should leave the homeowner in the same position as if the mod had been timely converted
- Capitalization of arrears stops as of the modification effective date; remaining arrears put in non-interest forbearance (does not count against forbearance limit)
- Interest rate of permanent mod as of the first day of the month before the modification effective date
- Modification effective date is defined in the Trial Period Plan, para. 2, as first day of the month following the month in which the last payment is due under the Trial Period Plan

Denial Notices

- Must be sent to borrower within 10 days of determining HAMP modification denied.
- Must state why homeowner was denied (including borrower withdrew)
- Must describe alternative loss mitigation options
- If due to NPV, must offer opportunity to request NPV inputs
- ECOA compliance required by Supp. Dir. 09-08 and FRB guidance
- FCRA not specifically cited, but surely included in all other applicable regs

Challenging Denials

- Process set out in Handbook
 - If NPV inputs inaccurate, servicer must re-run if “material”
 - No foreclosure sale until inaccuracies “resolved”
- In-house servicer escalation teams
- Contact appropriate escalation team
 - Non-GSE: escalations@hmpadmin.com; (866) 939 – 4469
 - Fannie Mae: resource_center@fanniemae.com; 1-800-7FANNIE
 - Freddie Mac: borrower_outreach@freddiemac.com; 1-800-FREDDIE
- Ask for Ken Hannold, Frederic White, Eudiel Tovar

Bankruptcy Eligibility

- As of June 1, 2010
- Borrowers in an active chapter 7 or chapter 13 bankruptcy case **must** be considered for HAMP if the borrower, borrower's counsel or bankruptcy trustee submits a request to the servicer.
- Borrowers may not be denied a permanent HAMP modification on the basis of a bankruptcy filing.
- Servicers cannot object to confirmation of a chapter 13 plan, move for relief from the automatic stay, or move to dismiss the chapter 13 case on the basis that the borrower paid only the trial period plan payments rather than the scheduled mortgage payments

Bankruptcy Documents

- Servicers may accept copies of the bankruptcy schedules and tax returns filed in the case in lieu of the RMA and Form 4506T-EZ, if they are within 90 days.
- Borrowers in a chapter 13 case who are determined eligible for HAMP may be converted to a permanent modification without completing a trial period plan if current on post-petition payments and if payments are >31% of gross monthly income.

Foreclosure Referral

- Effective June 1, 2010
- For non-GSE loans ONLY
- **Servicers may not refer a loan to foreclosure** until either
 - the borrower's eligibility is determined or
 - reasonable efforts at solicitation have failed.
- Pending foreclosure cases must stop once borrower in verified trial plan

Reasonable Efforts at Solicitation Defined

- 4 phone calls, at different times of the day, and
- 2 letters, one sent with confirmation of receipt and one sent regular mail.

- Contacts must extend AT LEAST 30 days before foreclosure action initiated
- This is a FLOOR for what reasonable solicitation efforts are.

Hold That Sale!

- Sale prior to evaluation always forbidden
- After denial, 30 day hold on sale (to allow borrower appeal), *unless*
 - property or mortgage is ineligible,
 - the borrower withdraws, or
 - the borrower failed to make payments under trial or permanent HAMP modification.

Stopping the Sale

- Timely submit a completed packet
 - Complete packet at hmpadmin.com (Servicers can impose additional documentation requirements but must accept these)
 - Submit 7 business days before sale
 - If less than 30 days before sale, make sure to follow servicer's "special" requirements, such as certified or express mail
- TRO/ principles of equity
- Check for the certification of HAMP compliance provided by servicer to foreclosure attorney at least 7 business days before the foreclosure sale

Waiver

- Should be no waiver
- Language in modification agreement, paragraph 4E appears to waive some defenses
- Can get a HAMP mod even if in active litigation or bankruptcy

Second Liens: 2MP

- Voluntary participation: signing separate SPA agreements.
 - List of participating servicers at makinghomeaffordable.gov
- To be eligible, borrower must have final HAMP mod on 1st lien
- Then, 2nd lien can be modified or extinguished, in whole or in part.
- Modification follows first lien:
 - Interest rate reduced to 1% for 5 years, then rate of first lien
 - Amortization to match first lien
 - Proportional principal forbearance

Unemployment

- If unemployed, evaluated for UP not HAMP
- Three-month “forbearance”
 - Payments scheduled at 31% of income
- Late fees accrue
- No referrals to foreclosure or judicial sale during evaluation for UP or during forbearance

Relationship Between HAMP and UP

- Evaluated for UP first
- Evaluated for HAMP mod if:
 - Not eligible for forbearance
 - Re-employed
 - 30 days prior to expiration of forbearance
- If not re-employed at end of “forbearance” could be considered for a short-sale or deed-in-lieu
- Forbearance does not count towards trial period
- Can switch from trial to UP, but have to start 3-month period over

Unemployment Timeline

- Homeowners must *request* forbearance plan before 3 months delinquent
- Servicers can require homeowners to receive unemployment benefits for up to 3 months before reviewing for forbearance
- Borrowers must demonstrate receipt of unemployment benefits through effective date of forbearance agreement
 - First day of the month following mailing of forbearance plan to homeowner by servicer
- Servicer must send notice of forbearance plan 10 business days after its determination

Federal Disaster Area Forbearance

- Can get a 3 month forbearance
- Will result in a trial mod's being cancelled
- If results in a 3 month delinquency in a permanent mod, will result in permanent's mod being cancelled
- Can get UP and FD forbearance sequentially

Related Programs: HAFA

- Homeowners can get \$3000 for completing a short-sale or DIL
- Must meet basic HAMP eligibility requirements
 - No NPV test
- Must be evaluated for HAMP and fail or request HAFA
 - If borrower requests HAFA, they must be informed of HAMP and given 14 days to consider pursuing HAMP
- Deficiency must be waived
- Borrowers may be required to make monthly payments of 31% of income
- Borrower supposed to clear subordinate liens; servicer may authorize up to a total of \$6K from sale proceeds paid to subordinate lienholders, no more than 6% of the subordinate lien's outstanding principal balance

Governmental Programs

- **VA HAMP**
 - Basic program guidance in Circular 26-10-02, available at <http://www.homeloans.va.gov/valeri.htm>
 - FAQs available at http://www.homeloans.va.gov/docs/VA_HAMP_FAQ_for_Servicers.pdf
- **FHA HAMP**
 - Mortgagee letters available at <http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm>
 - Mortgagee Letter 09-23 sets forth basic outline
- **USDA HAMP**
 - 75 Fed. Reg. 52,429 (Aug.26, 2010)