HAMP Rules on Loss Mitigation

Alys Cohen, staff attorney, National Consumer Law Center
Tara Twomey, of counsel, National Consumer Law Center

Jessica Hiemenz
National Consumer Law Center

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This Webinar is provided by the National Consumer Law Center and the National Housing Law Project (NHLP).

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Moderator – Tara Twomey

• Is currently Of Counsel to the National Consumer Law Center and the Amicus Project Director for the National Association of Consumer Bankruptcy Attorneys.
• She has been a Lecturer in Law at Stanford, Harvard and Boston College Law Schools.
• Ms. Twomey is a former Clinical Instructor at the Hale and Dorr Legal Services Center of Harvard Law School where her practice focused, in part, on sustainable homeownership for low- and moderate-income homeowners.
• She is a contributing author of several books published by the National Consumer Law Center including, Foreclosures: Defenses, Workouts and Mortgage Servicing and Bankruptcy Basics..
Presenter – Alys Cohen

- Staff attorney at the National Consumer Law Center’s Washington office, where she advocates before Congress and federal regulatory agencies on predatory lending and sustainable homeownership issues.
- Ms. Cohen also trains and consults with attorneys and other advocates nationwide on mortgage lending matters.
- She is a co-author of *Stop Predatory Lending*, and a contributing author to the Center’s *Cost of Credit, Credit Discrimination* and *Truth in Lending* treatises.
- Prior to joining the NCLC staff, Ms. Cohen served as an attorney in the Federal Trade Commission’s Bureau of Consumer Protection, Division of Financial Practices, where she focused on predatory lending and discrimination matters.
Checklist for Housing Counselors

- **Designed** for busy housing counselors
- **Streamlines** reporting of violations of the Settlement’s servicing standards
- **Escalation tool** for resolving client complaints
• Poll #1:

• My level of experience with foreclosure defense cases is:
  • a. Beginner (little to no experience)
  • b. Intermediate (a few cases)
  • c. Advanced (substantial number of cases)
Rate of Loans in Foreclosure 1998-2013

Source: National Delinquency Survey, Mortgage Bankers Assoc. of America
California Mods v. Delinquencies
1Q2013

- HAMP Trial Mods, 7,533
- OCC-OTS Reported Non-HAMP Mods, 17,496
- Unmodified Loans 60+ Days Delinquent, 282,812

Cure
Default
Bankruptcy or Litigation
Walk Away
Loss Mitigation
Cure Default

Bankruptcy or Litigation

Walk Away

Loss Mitigation
Repayment Plans
HAMP Mod
Non-HAMP Mods
Short Sale DIL
Who Is the Servicer?

Who Is the Investor/Owner/Insurer?
Identifying the Servicer

• Homeowner usually knows
  – check account statements

• Check MERS
  – [www.mers-servicerid.org](http://www.mers-servicerid.org) (search by many methods)
  – 888-679-6377 (search by MIN or SSN)
  – MERS data on loan ownership is not reliable

• Servicing Transfer Notices 12 USC §2605(b)
  – identify former as well as current servicer2605(k)(1)(D)?
MERS® ServicerID
Search for servicer information

Search by MIN
Search by a MERS Mortgage Identification Number.

Enter an 18 digit MIN:  
For example, "1000123-9876543212-3" or "100012398765432123"

Search

Search by Property Address/Borrower Details
Search by property address and borrower information.

Search by FHA/VA/MI Certificate
Search by Federal Housing Administration / Veterans Administration Case Number or Mortgage Insurance Certificate Number.

For more information about MERS please go to www.mersinc.org

Homeowners: Visit MERS for Homeowners for information about the duties and responsibilities of your mortgage company and a link to Hope Now, which provides support and guidance for homeowners in distress.

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Owner/Investors/Insurers

Identifying the owner/investor is critical:
- GSE
- Federal agency like the FHA
- None of the above (typically a mortgage pool)

Mortgage Pools
Investors in mortgage pools have little say in which loans are modified and what guidelines will be used. Servicers instead rely on PSAs.
Getting Information

- www.mersinc.org
- freddiemac.com/mymortgage/
- fanniemae.com/loanlookup/
- TILA § 1641(f)(2)
- RESPA § 2605(k)(1)(D)
- RESPA § 2605(e)
- AG Settlement 14-day notice
Identifying the Owners

• Servicer must, upon written request, provide borrower with contact information for the owner. TILA 15 U.S.C. § 1641(f)(2)

• New Note owner must inform borrower of change in ownership within 30 days. TILA 15 U.S.C. § 1641(g)

• Statutory damages up to $4,000 per violation. 15 U.S.C. § 1640
MERS data on ownership is not reliable
Documents

• Note & Mortgage/DOT

• Complete Payment History

• Pooling and Servicing Agreement, GSE Servicing Regulations (www.allregs.com), FHA regulations

• HUD-1 Settlement Statement, TIL Disclosure, Notice of Right to Cancel, and Loan Application
Net Present Value Tests and How They Work
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

• A pass means value of loan mod, in present terms, allowing for possibility of redefault, is greater than the value of the loan unmodified
Modified vs. Unmodified Loan

Unmodified Loan
• Current payments
• Chance of foreclosure
• What the foreclosure net will be

Modified loan
• Modified payments
• Chance of foreclosure after loan mod
• What the future foreclosure net will be
Finding the Sweet Spot

Higher the payment, bigger the benefit to the investor of a mod (so long as no redefault)

Lower the property value, bigger the loss to the investor of a foreclosure
Poll #2

Quiz: True or False. The consumer can double check the servicer’s evaluation of the homeowner for a loan modification.

a. True
b. False
Two Public NPV Versions

- **HAMP NPV (CheckMyNPV.com)**
  - Standard used by all HAMP servicers
- **FDIC Loan Mod in a Box**
- **Can use either to check NPV with**
  - Computer
  - Internet
  - Excel
  - Basic info from servicer and homeowner
- Both produce the terms of the HAMP standard modification
NPV Evaluation Results

Based on the information you provided you may be eligible for a HAMP modification. Be sure to save a copy of the information below and share it with your mortgage servicer to discuss options available to you.

Please note, CheckMyNPV.com provides only an estimate of a servicer's NPV evaluation. While the NPV formula used is required to be the same as your mortgage servicer's, differences in input data and other industry-related data may result in different outputs.

Your session has ended and you will not be able to run an NPV evaluation without completing this process again.

Information Calculated For You

For more information about the proposed modification, visit the Frequently Asked Questions.

<table>
<thead>
<tr>
<th>NPV Date</th>
<th>01-22-2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unpaid Principal Balance of the Proposed Modification</td>
<td>$197275.02</td>
</tr>
<tr>
<td>Principal Forbearance Amount of the Proposed Modification</td>
<td>$0.00</td>
</tr>
<tr>
<td>Interest Rate of the Proposed Modification</td>
<td>4.7500%</td>
</tr>
<tr>
<td>Principal and Interest Payment of the Proposed Modification</td>
<td>$1081.63</td>
</tr>
<tr>
<td>Amortization Term of the Proposed Modification</td>
<td>324 months</td>
</tr>
</tbody>
</table>

Information That You Provided

Which Best Describes You? Other

Servicer & Investor Information

Your Investor Other

Your Mortgage Servicer Other

Discount Rate Risk Premium 2.5%

Homeowner & Property Information
Limitations to CheckMyNPV.com

• Doesn’t calculate principal reduction alternative
• Mortgage insurance partial claim information
• Can’t play with it to see how it works, as you can with FDIC Loan Mod in a Box
• Error codes not transparent

• Data entry issues
  – Can’t go back and forth
  – Can’t save
  – Can’t print out as spreadsheet
FDIC Loan Mod in a Box

- Downloadable Excel spreadsheet
- Allows you to adjust underlying assumptions and see math
- HAMP NPV based in part on FDIC Loan Mod in a Box
- More servicer and regional specificity built into CheckMyNPV
INTRODUCTION TO HAMP
What Is HAMP?

• Home Affordable Modification Program
• Component of Making Home Affordable initiative.
• 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
Flavors of HAMP

Treasury’s HAMP
Participating servicers screen everybody, subject only to investor limits

GSE HAMP
All loans guaranteed/owned by Fannie or Freddie must be screened for GSE HAMP

Other governmental insured loans
- FHA
- VA
- RHS
## Finding Out If a Loan Is Covered

<table>
<thead>
<tr>
<th>Category</th>
<th>Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Standard HAMP</td>
<td>• List of participating servicers at makinghomeaffordable.gov</td>
</tr>
<tr>
<td>Fannie Mae</td>
<td>• <a href="https://knowyouroptions.com/loanlookup">https://knowyouroptions.com/loanlookup</a></td>
</tr>
<tr>
<td>Freddie Mac</td>
<td>• <a href="https://ww3.freddiemac.com/corporate/?intcmp=LLT-Hpimage">https://ww3.freddiemac.com/corporate/?intcmp=LLT-Hpimage</a></td>
</tr>
<tr>
<td>Governmental Insured Loans</td>
<td>• HUD-1</td>
</tr>
</tbody>
</table>
HAMP Tier I and Tier II

• Our conversation will focus on Tier I
• Tier II mods are available for small landlords, as well as homeowners who have defaulted on Tier I mods
• Tier II mods essentially track the GSE mods
When Does HAMP End?

HAMP is currently slated to end Dec. 31, 2015

- Initial package must be placed in the mail/ faxed/ emailed no later than that date
- Permanent modification in effect as of September 30, 2016
Repayment Plans
HAMP Mod
Non-HAMP Mods
Short Sale DIL
Poll#3

Non-HAMP proprietary modifications are now mirroring HAMP modifications and so whether you get a HAMP mod or not doesn’t really matter.

a. True
b. False
California Mods v. Delinquencies
1Q2013

HAMP Trial Mods, 7,533

OCC-OTS Reported Non-HAMP Mods, 17,496

Unmodified Loans 60+ Days Delinquent, 282,812

HAMP vs. Proprietary Mods

Generally less favorable than HAMP

- Interest may not be permanently fixed
- May extend term before reducing interest
- Fewer payment reductions
- Waivers may sneak in

Should be evaluated for proprietary mod after HAMP turndown
CA Loan Mod Payment Changes – 1Q2013

Source: OCC-OTS Mortgage Metrics Report, 1st Quarter 2013
CA Redefault Rate for Loans Modified 3Q2012

Source: OCC-OTS Mortgage Metrics Report, 1st Quarter 2013
HAMP Outperforms Other Modifications

Source: OCC-OTS Mortgage Metrics Report, 1st Quarter 2013
Where Is There HAMP Guidance?

• Non-GSE:
  – Handbook (currently version 4.3)
  – Supplemental Directives
  – Model Forms
  – hmpadmin.com

• Fannie Mae: Announcements & Chptr VII of the Servicing Guide (efanniemae.com)

• Freddie Mac: Bulletins & Chptr C65 of Seller/Servicer Guide (freddiemac.com)

• FHA: Mortgagee letters (hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm)

• VA: Circulars (homeloans.va.gov/valeri.html)

HAMP Practice Aids

Practice Aids

- HAMP Summary for Judges (August 2013)
- Identifying Participating Servicers
- What to Do When the Servicer Says the Investor is Not Participating?
- What to Do When the Servicer Says No?
- What to Do When the Servicer Denies Because They Re-ran the NPV Test?
- What to Do When the Servicer Refuses to Accept or Process a HAMP Application Because Client is in an Active Bankruptcy Case?
- What to Do When the Servicer Denies a HAMP Modification Because the Client Received a Discharge in a Chapter 7 Case and Did Not Reaffirm the Mortgage Debt?
- What to Do for Widows, Orphans, and Divorcees?
- HAMP Index: The Supplemental Directives, FAQs and Handbooks

Administrative Guidance

- Handbook
- Common FAQs
- Conversion FAQs
- HAMP Borrower FAQs
- HAMP General Administration

The Institute for Foreclosure Legal Assistance
NCLC gratefully acknowledges the support of IFLA in the creation and maintenance of this page.
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
  - HSBC only major non-participating servicer
- Servicers of GSE loans must modify GSE loans (even if not a participating servicer)
- Servicers, not investors, participate
- [http://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/mha/Pages/contracts.aspx](http://www.treasury.gov/initiatives/financial-stability/TARP-Programs/housing/mha/Pages/contracts.aspx)
Servicer Transfer Mid-Mod

Must transfer loans subject to HAMP requirements

- SPA ¶ 8
- MHA Handbook 1.4

Attachment to the transfer agreement lists all the subject loans

- Old servicer
- New servicer
Property Eligibility

• Primary residence, not a rental
  – Can be a second home
  – Homeowner can be “displaced”
    • Job transfer
    • Military service
    • Permanent change of station assignment
    • Foreign service assignment
• One-to-four units
• Not condemned
  – No eligibility for mods if servicer deems property not habitable, even if not condemned

• Remember: Different rules for HAMP Tier II
Loan Eligibility

UPB cap
- 1 unit: $729,450
- 2 unit: $934,200
- 3 unit: $1,129,250
- 4 unit: $1,403,400

Not previously modified under HAMP

Loan entered into before January 2009
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?)
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 counselling, but is not a bar to a HAMP modification
31% of What? Income

- Gross income for all borrowers
- Unemployment income excluded

- Non-wage income (including baby-sitting and odd-jobs) less than 20% does not need to be documented; all other income does

- Some income is optional, at borrower’s election
  - Child support or alimony
  - Income of non-borrower household members

<table>
<thead>
<tr>
<th>Doing the Math</th>
<th>Multiplier</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-taxable income</td>
<td>125%</td>
</tr>
<tr>
<td>Rental income</td>
<td>75%</td>
</tr>
</tbody>
</table>
Incentives

Borrowers, servicers, and investors all receive payments for modifications.

Payments are only for permanent modifications.
HAMP Mods Are Standard Mods

- Capitalize arrearages
- Reduce interest rate
- Extend amortization term to 40 years
- Principal forbearance
- Payment reduced to 31% of the gross income
Waterfall Analysis

Driven by target payment

Proceeds sequentially through the waterfall, unless

- PSA forbids one step
- Principal reduction substituted for any step
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
California Modification Actions 1Q2013

Source: OCC-OTS Mortgage Metrics Report, 1st Quarter 2013
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
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
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
  - Borrower should not be penalized for servicer’s failure to timely convert

- If fails trial period: no further HAMP Tier 1 mod. “1 bite at the apple.”
  - Unless servicer set payments too high
Conversions

• Conversions to permanent mods often stalled
• If no mod, then arrearages due in lump sum
• If mod, capitalize arrearages
  – After effective date of trial plan (when permanent mod was supposed to start) interest accrues at reduced rate
If Denied . . . .

- Written denial notices providing basis of denial must be provided
- Borrower has, in general, 30 days to challenge denial
Investor Restriction Denials

• HAMP doesn't override PSAs, but the program follows the “usual and customary industry standards”
• Vast majority of all PSAs permit modifications
• If the PSA only prohibits one step in the HAMP waterfall, servicer must still modify, omitting only the prohibited step
• Servicers expected to use “all reasonable efforts” to get waivers
• 15 U.S.C. §1639a creates safe harbor from investor litigation for servicers who modify under HAMP
NPV Denials

- If an NPV test was run, even if not the reason for the denial, borrower is entitled to all inputs (2.3.2)
- If borrower identifies an error, and changing the error results in a different NPV result, the servicer must re-run the NPV
- The servicer should only change the value corrected by the homeowner; no other values should change

- CheckMyNPV.com
Excessive Forbearance Denials

Standard language in denial letter says:

- We are unable to offer you a Home Affordable Modification because we are unable to create an affordable payment equal to 31% of your reported monthly gross income without changing the terms of your loan beyond the requirements of the program.
What Is Excessive Forbearance?

Principal forbearance higher than the greater of

(i) 30 percent of the UPB (after capitalization under Step 1) or

(ii) UPB less the current mark-to-market. (amount underwater)
Can an Excessive Forbearance Be Resolved?

Substitute principal reduction for all or part of the excessive forbearance

Income increased, or escrow decreased may also reduce the required forbearance

Is the interest as low as it can go?
What Isn’t Grounds for Denial

**“Insufficient income”**
- Low income can cause NPV failure or excessive forbearance denial, but can’t be denied solely on low income.

**High DTI**
- Back end DTI over 55% requires the promise of housing counseling, but is not a basis for denial.

**Bankruptcy**
- Borrowers in an active bankruptcy filing must be considered.
- Borrowers cannot be denied because of prior bankruptcy filing.
Foreclosure Referral

• 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.
The Seven Business Day Rule

Servicer must provide foreclosure counsel certification of compliance with HAMP seven business days before sale.

Borrowers can still halt a foreclosure sale seven business days before a scheduled foreclosure sale if:

- Borrower submits an application received by the servicer 7 business days before foreclosure sale scheduled.
- Borrower escalates case with hmpadmin.com 7 business days before foreclosure sale scheduled.
Application After Foreclosure
Sale Scheduled

Happens when

- Prior applications lost, not acted on
- Borrower has a change in circumstance

Sale must be halted if application received 7 business days before sale
Common Servicer Violations

- Failure to process application in a timely way
- Failure to convert
- Requiring resubmission of income information
- Asking for an upfront downpayment
- Telling homeowners they have to be in default
- Using incorrect income information in processing NPV
- Inserting waiver into the documents
Conversion

- NPV should NOT be re-run
- Any arrearages are placed in a separate forbearance account, not counted against excessive forbearance standard
- Interest on principal balance accrues at the rate of the permanent modification from the date the loan should have converted
Default vs. Imminent Default

- Servicer by servicer standards for imminent default
- Everyone has some standards
- Entering into default has real costs for homeowners
Waiver

- Should be no waiver in modification agreements
- Standard contract requires agreement that mortgage documents remain binding, but nothing more
- Can get a HAMP mod even if in active litigation or bankruptcy
- Increasingly seeing servicers trying to sneak it in on standing issues
# Escalations

<table>
<thead>
<tr>
<th><strong>Inhouse</strong></th>
<th>Every servicer supposed to have a designated team</th>
</tr>
</thead>
</table>
| **Fannie Mae Loans:** | resource_center@fanniemae.com  
Phone: 1-800-7FANNIE |
| **Freddie Mac Loans:** | borrower_outreach@freddiemac.com  
Phone: 1-800-FREDDIE |
| **Non-GSE Loans -- HAMP Solution Center:** | escalations@hmpadmin.com  
Phone: 1-866-939-4469; Fax: 1-240-699-3883 |
Other HAMP Programs, Government-Insured & GSE Loans
What Is HAMP Tier 2?

• Starts June 1, 2012
• Offered to people who fail or are not eligible for standard HAMP mod
• Basically, the Fannie/ Freddie standard mod
• Loan mods not as well tailored to individual circumstances, but broader eligibility
  – Cookie cutter mods that aren’t based on borrower income
  – Interest rate will not go as low, but fixed at standard rate
  – Less forbearance, but everyone gets some if underwater sufficiently, whether they need it or not
Second Mortgages – 2MP

• If the first mortgage is modified under HAMP AND

• Servicer of 2nd mortgage participates in 2MP
  http://www.makinghomeaffordable.gov/contact_servicer.html

• 2nd mortgage should be automatically modified if client is current on the 2nd mtg. Subject to a trial period if not.

  Handbook has more details.
UP (Unemployment Program)

- Temporary forbearance for unemployed borrowers receiving unemployment benefits
- Lesser of 12 months or until borrower is re-employed
- Payments must be reduced to 31% of gross income (included unemployment benefits), and may be suspended entirely
- At the end of the period, borrower considered for HAMP Tier 1 or Tier 2
GSE-HAMP: Basic Differences

• No Servicer Participation Agreement
• No investor bar on HAMP modifications
• Standard application form (Form 710, not RMA)
• Outreach timelines and requirements
• Borrower notices & foreclosure timelines
• Fannie Mae: variation in foreclosure stays and treatment of bankruptcy
• Some requirements for Fannie/Freddie approval
THREE FEDERAL AGENCIES

- HUD – manages FHA single-family insured loan program
- VA – manages VA single-family insured loan program
- USDA – manages two distinct programs:
  - USDA insured single-family home loan program
  - USDA direct loan program (purchase and home repair loans)
FHA-HAMP

• FHA-Home Affordable Modification Program (FHA-HAMP)
• Basic program description in HUD Mortgagee Letter 2009-23 (July 30, 2009)
• FHA-HAMP substantially revised in HUD Mortgagee Letter 2012-22 (Nov. 16, 2012)
RHS-HAMP

- For RHS-Guaranteed loans only
- Very similar to FHA-HAMP
- Appears in form of new final RHS Loan Modification Regulation: 7 C.F.R. § 980.373 (effective 9/24/10)
- HAMP Supplemental Directive 10-10 (9/17/10)
- MHA Handbook for Non-GSE Servicers Ch. VI
  - Handbook describes servicer & borrower incentives
  - Requires servicer participation agreement to get incentives
VA-HAMP

- As revised in VA Circular 26-10-6 effective May 24, 2010
- Servicer conducts standard Treasury HAMP waterfall, using Treasury HAMP income measures, to arrive at affordable payment.
- Servicer conducts “its own analysis” to determine suitability of modification over foreclosure.
- Servicer decides whether to modify or refer to VA for refund.
HBOR vs. HAMP

• Explicit private right of action plus sec.17200, breach of contract, breach of gffd
• 5 vs. 10 days for acknowledgement
• Dual track rules after foreclosure initiation
• No late fees during review
• Multiple applications
• Complete vs. initial application (HAMP better here)
SB 94 Issues

• No up front fees for loan mods (even if you are an attorney)

• You can not charge for loan modification services as you go.

• Retainers with up front fees should be permissible for litigation activities.
QUESTIONS?

• My contact information:
  • Alys Cohen, Staff Attorney
  • National Consumer Law Center
  • Washington, DC Office
  • acohen@nclc.org, 202-452-6252

• Full Day Training on HBOR in Sacramento on October 23, 2013. See www.calhbor.org for more information.