

# HAMP Rules on Loss Mitigation

California  
Homeowner  
Bill of Rights  
COLLABORATIVE



National Housing Law Project  
Western Center on Law & Poverty  
National Consumer Law Center  
Tenants Together

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National Consumer Law Center  
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National Consumer Law Center

**September 24, 2013**

**NCLC**<sup>®</sup>  
NATIONAL  
CONSUMER  
LAW  
CENTER<sup>®</sup>

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

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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
- NCLC's website:  
<http://www.nclc.org/nmschecklist-form.html>

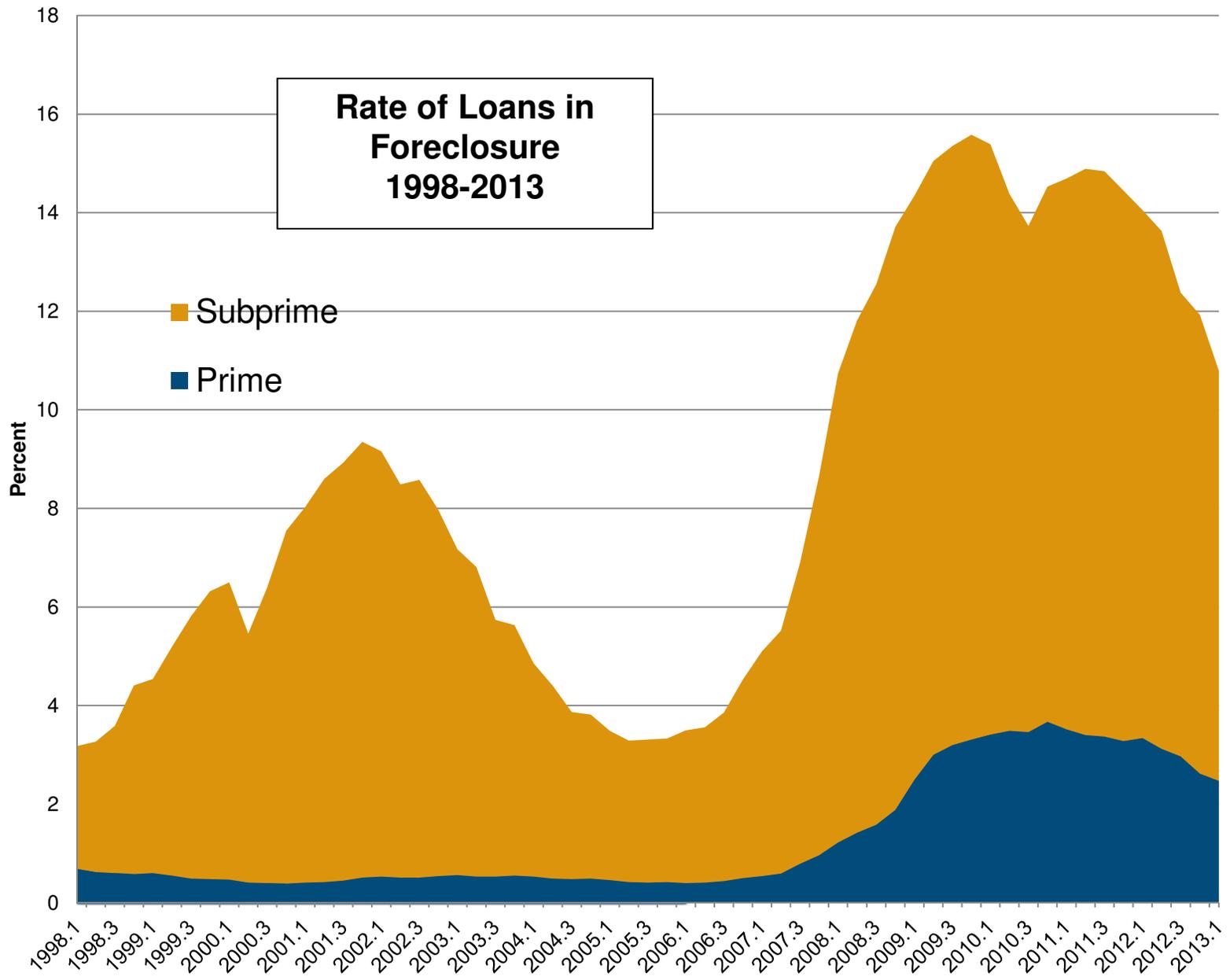




# Loan Modifications 101

- 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)



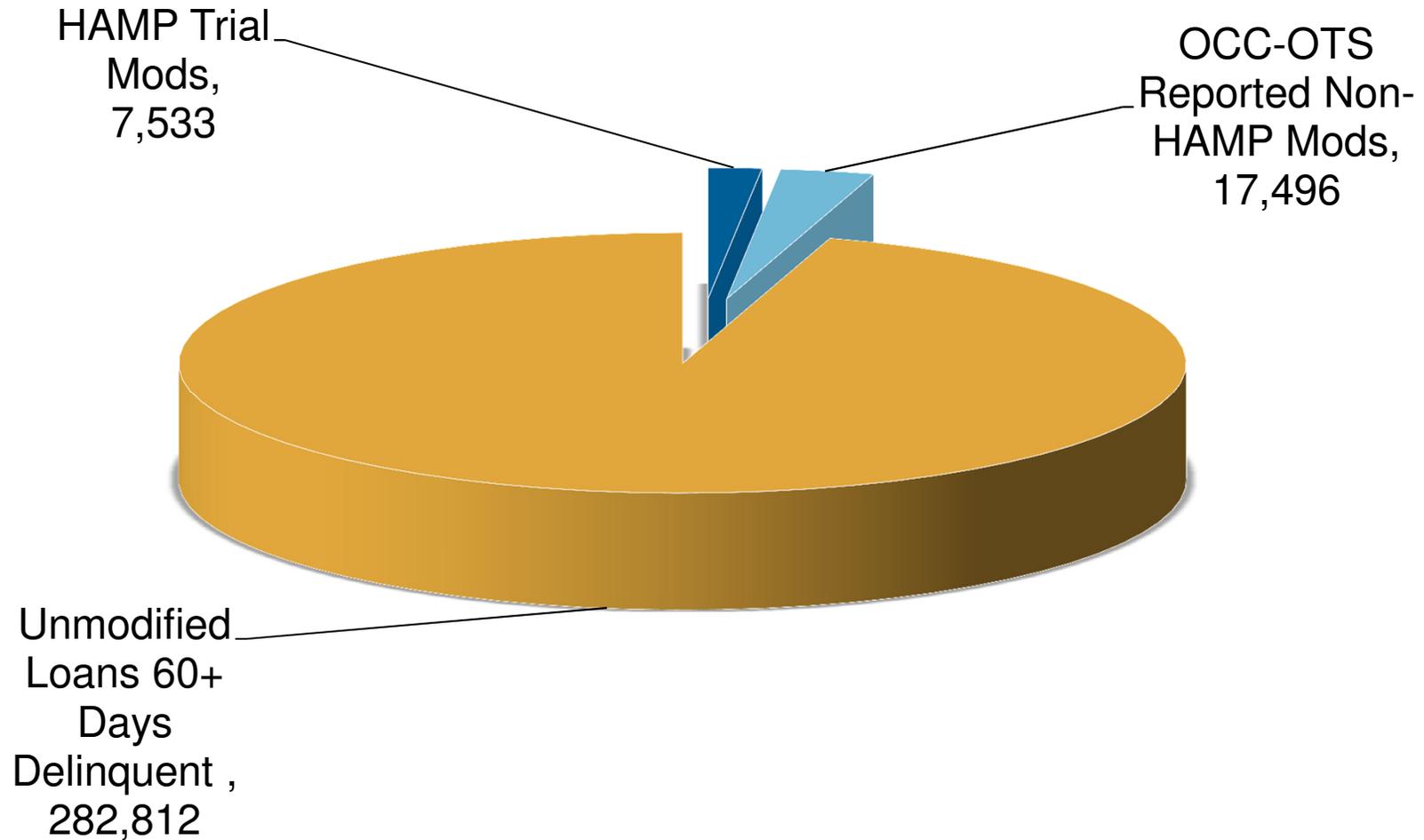


Source: National Delinquency Survey, Mortgage Bankers Assoc. of America

Year and Quarter

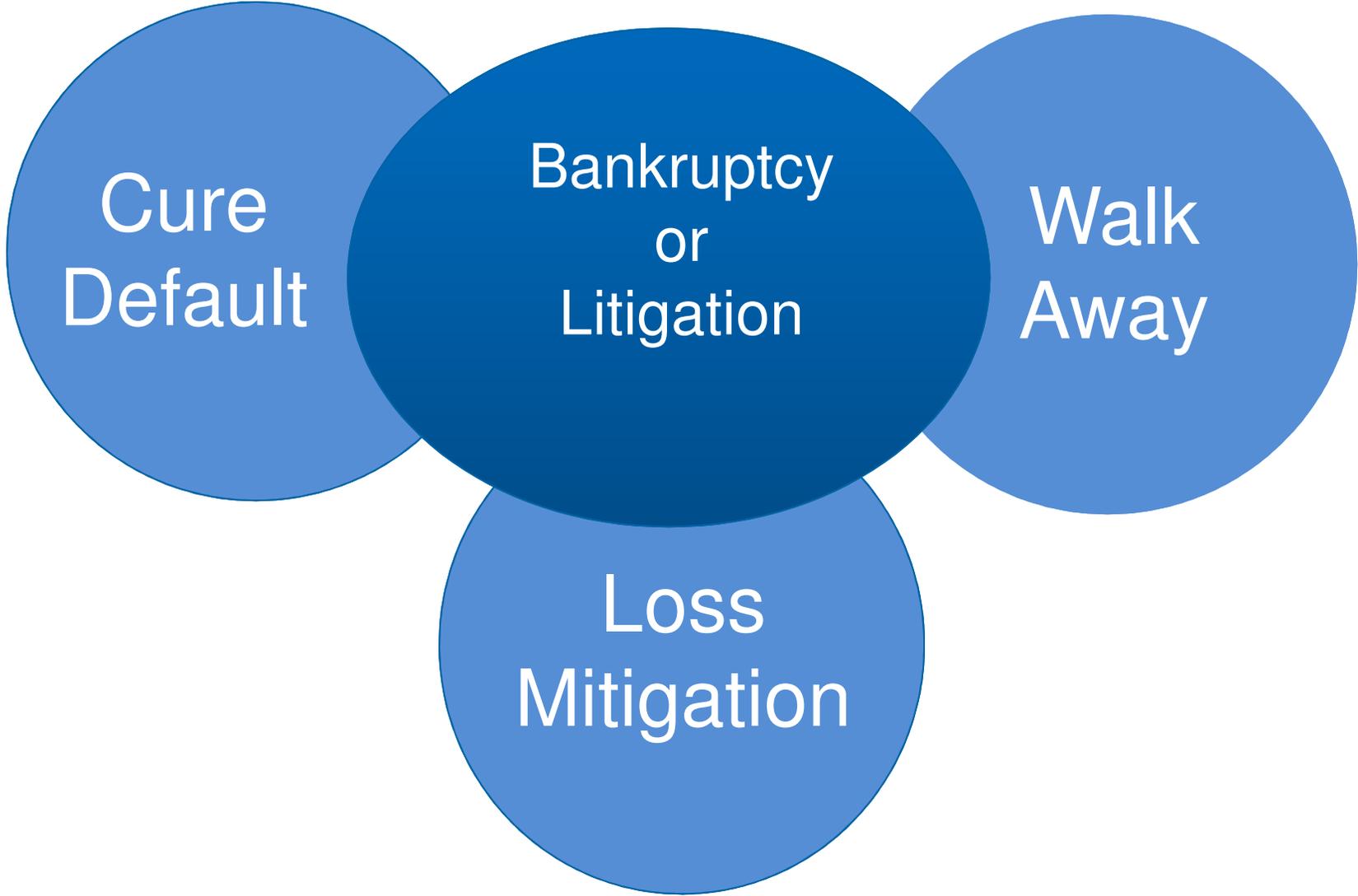


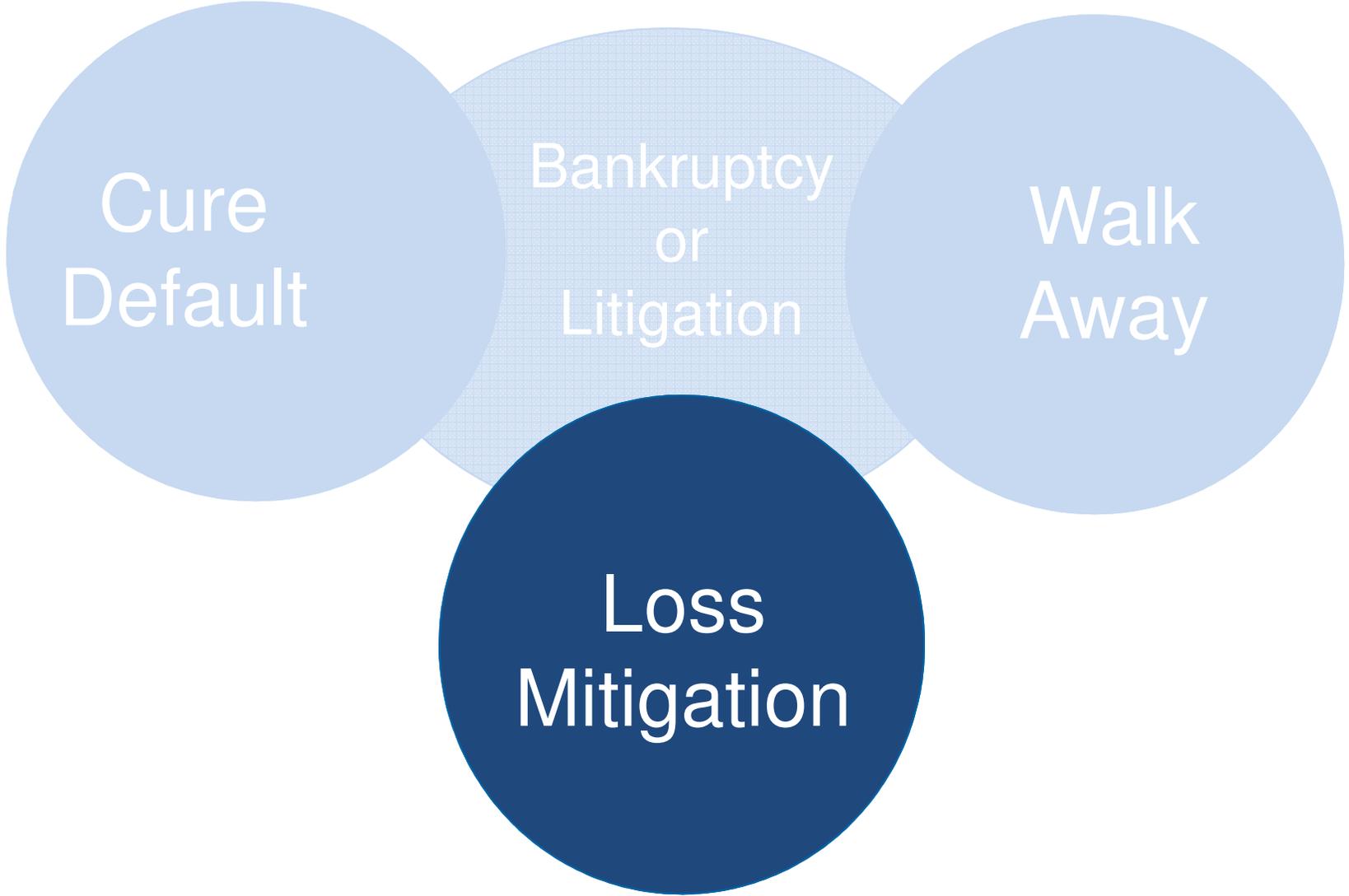
# California Mods v. Delinquencies 1Q2013

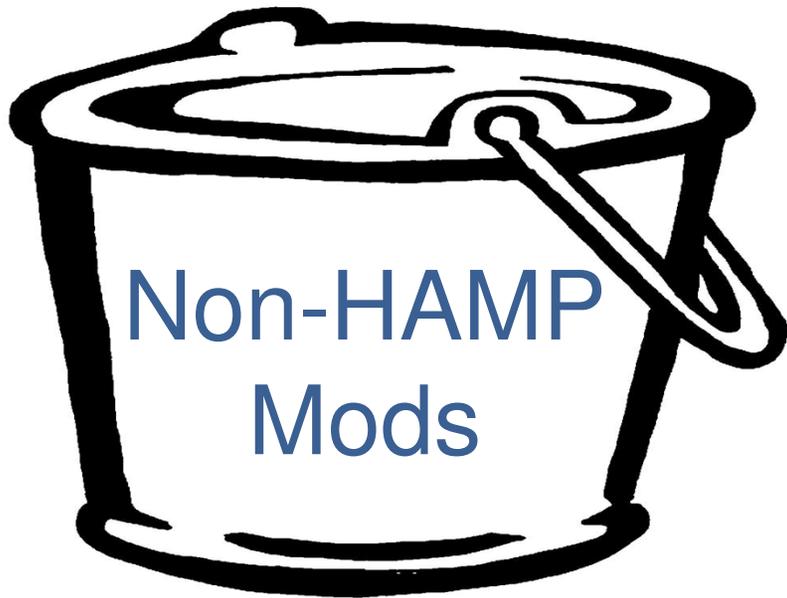
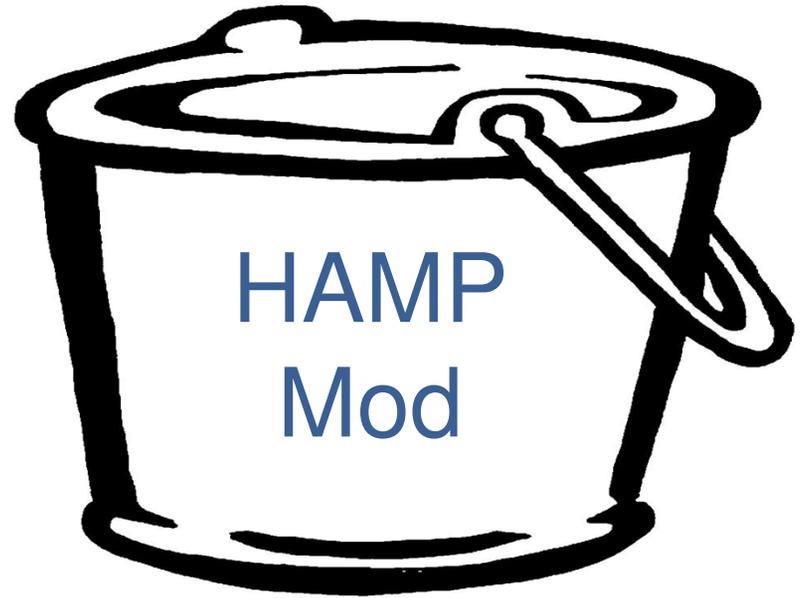


Source: OCC-OTS Mortgage Metrics Report, 1<sup>st</sup> Quarter 2013; National Delinquency Survey, Mortgage Bankers Association









**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)?





**Process Loans, Not Paperwork™**

## MERS® ServicerID

### Search for servicer information

**Search by MIN**

*Search by a MERS Mortgage Identification Number.*

**Need help?**

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](http://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](http://www.mersinc.org)
- [freddiemac.com/mymortgage/](http://freddiemac.com/mymortgage/)
- [fanniemae.com/loanlookup/](http://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



Select borrower type and enter borrower information to see Investor for MIN 1002706-0000560094-3.

**Investor for Individual Borrower**

Your entries may be either upper or lower case.  
Fields marked \* are required.

Last Name:  \*

SSN:  -  -  \*

By checking this box, the borrower or borrower's authorized representative is attesting to the fact that he or she is in fact the borrower or borrower's authorized representative for the loan in question. Additionally, borrowers wishing to learn the identity of their loan's investor must confirm their identity by entering their last name or corporation name as well as their SSN or TIN. If this information does not match the information contained in the MERS® System for the borrower of the loan, the investor information will not be displayed. Borrowers should verify the results with their loan servicer. \*

**Investor for Corporation/Non-Person Entity Borrower**

*MERS data on ownership is not reliable*



# Documents

- Note & Mortgage/DOT
- Complete Payment History
- Pooling and Servicing Agreement, GSE Servicing Regulations ([www.allregs.com](http://www.allregs.com)), FHA regulations
- HUD-1 Settlement Statement, TIL Disclosure, Notice of Right to Cancel, and Loan Application





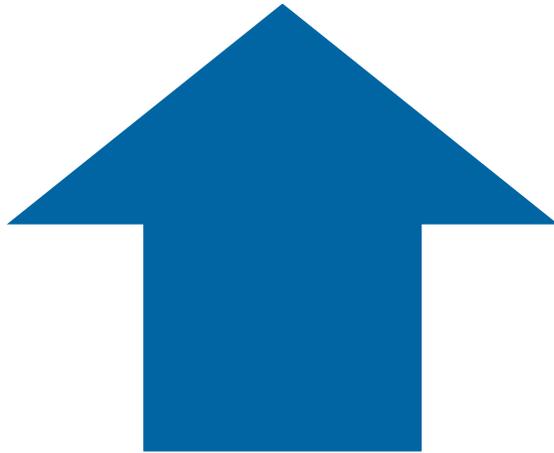
# Net Present Value Tests and How They Work

# 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

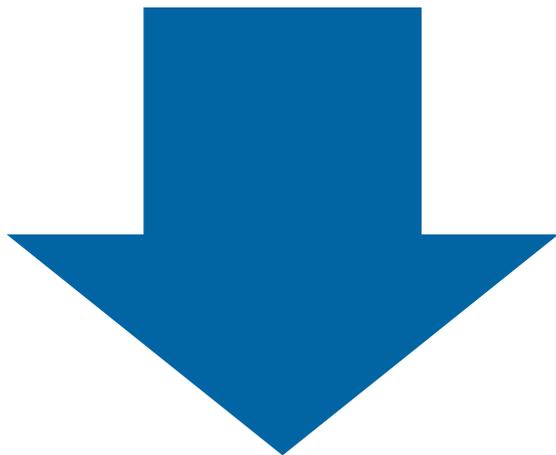


# Modified vs. Unmodified Loan



## Unmodified Loan

- Current payments
- Chance of foreclosure
- What the foreclosure net will be

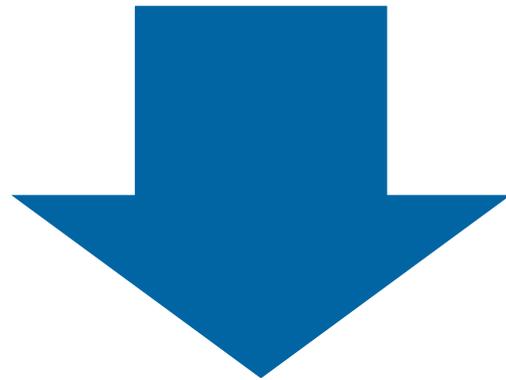


## Modified loan

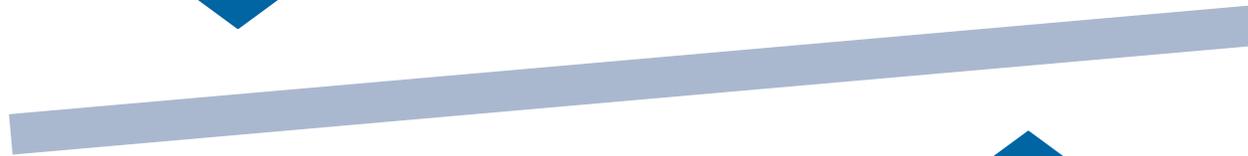
- Modified payments
- Chance of foreclosure after loan mod
- What the future foreclosure net will be



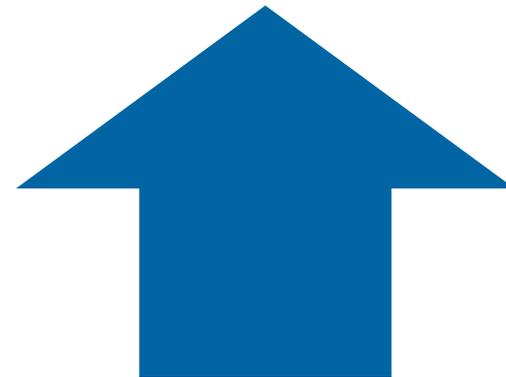
# Finding the Sweet Spot



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
  - <http://www.fdic.gov/consumers/loans/prevention/NPVCalculator.html>
- 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



01-22-2013 06:47 pm

## 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](#).

NPV Date	01-22-2013
Unpaid Principal Balance of the Proposed Modification	\$197275.02
Principal Forbearance Amount of the Proposed Modification	\$0.00
Interest Rate of the Proposed Modification	4.7500%
Principal and Interest Payment of the Proposed Modification	\$1081.63
Amortization Term of the Proposed Modification	324 months

### 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

## Standard HAMP

- List of participating servicers at [makinghomeaffordable.gov](http://makinghomeaffordable.gov)

## Fannie Mae

- <https://knowyouroptions.com/loanlookup>

## Freddie Mac

- <https://ww3.freddiemac.com/corporate/?intcmp=LLT-Hpimage>

## Governmental Insured Loans

- HUD-1

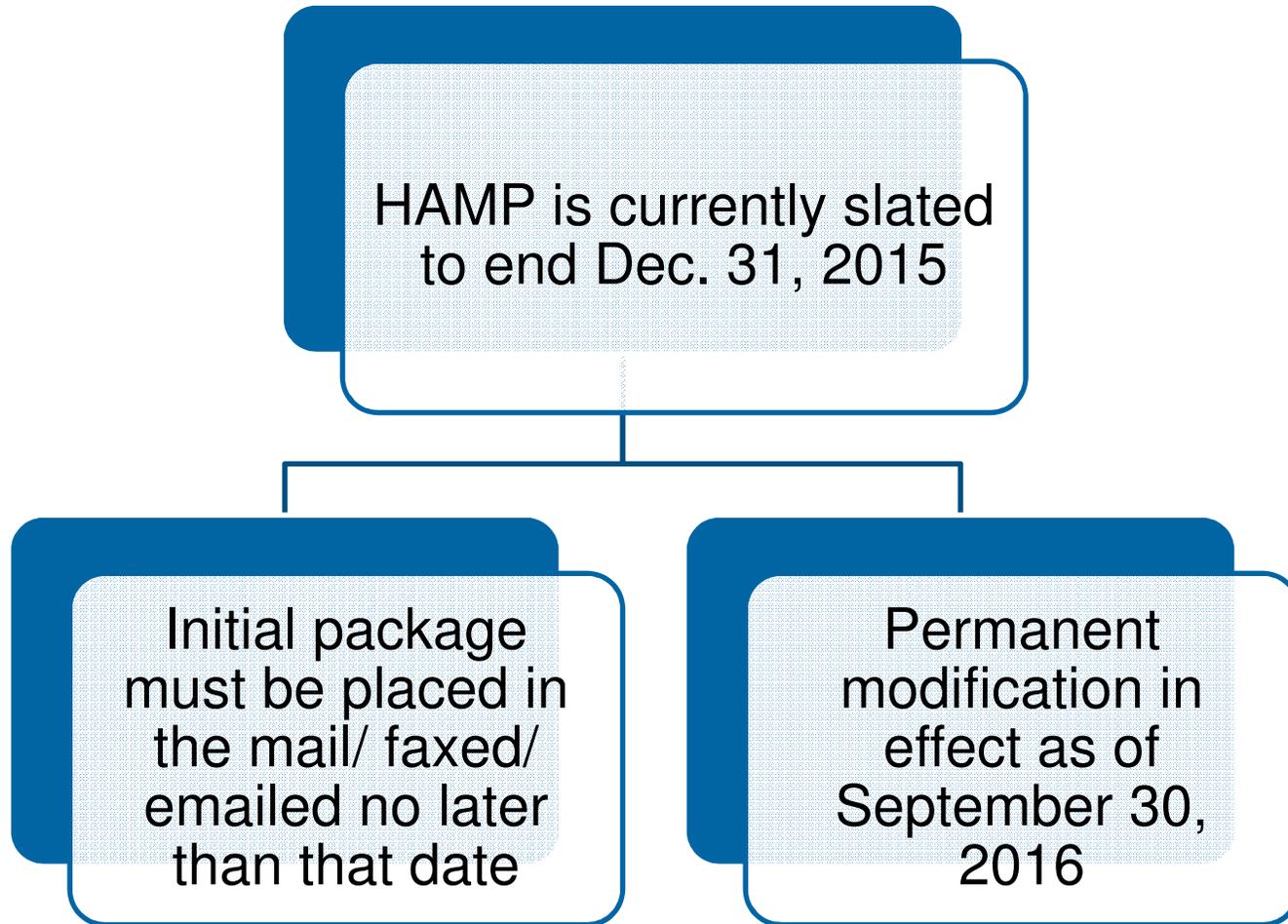


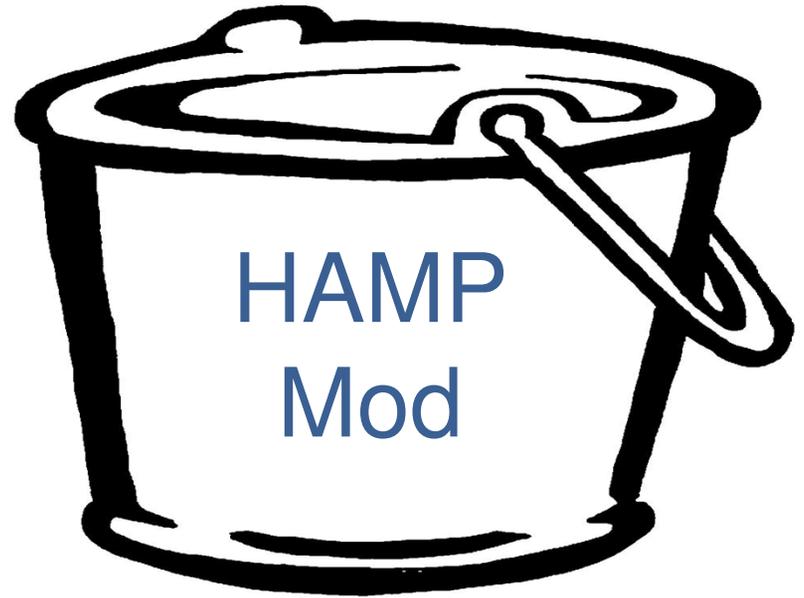
# HAMP Tier I and Tier II

- 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?

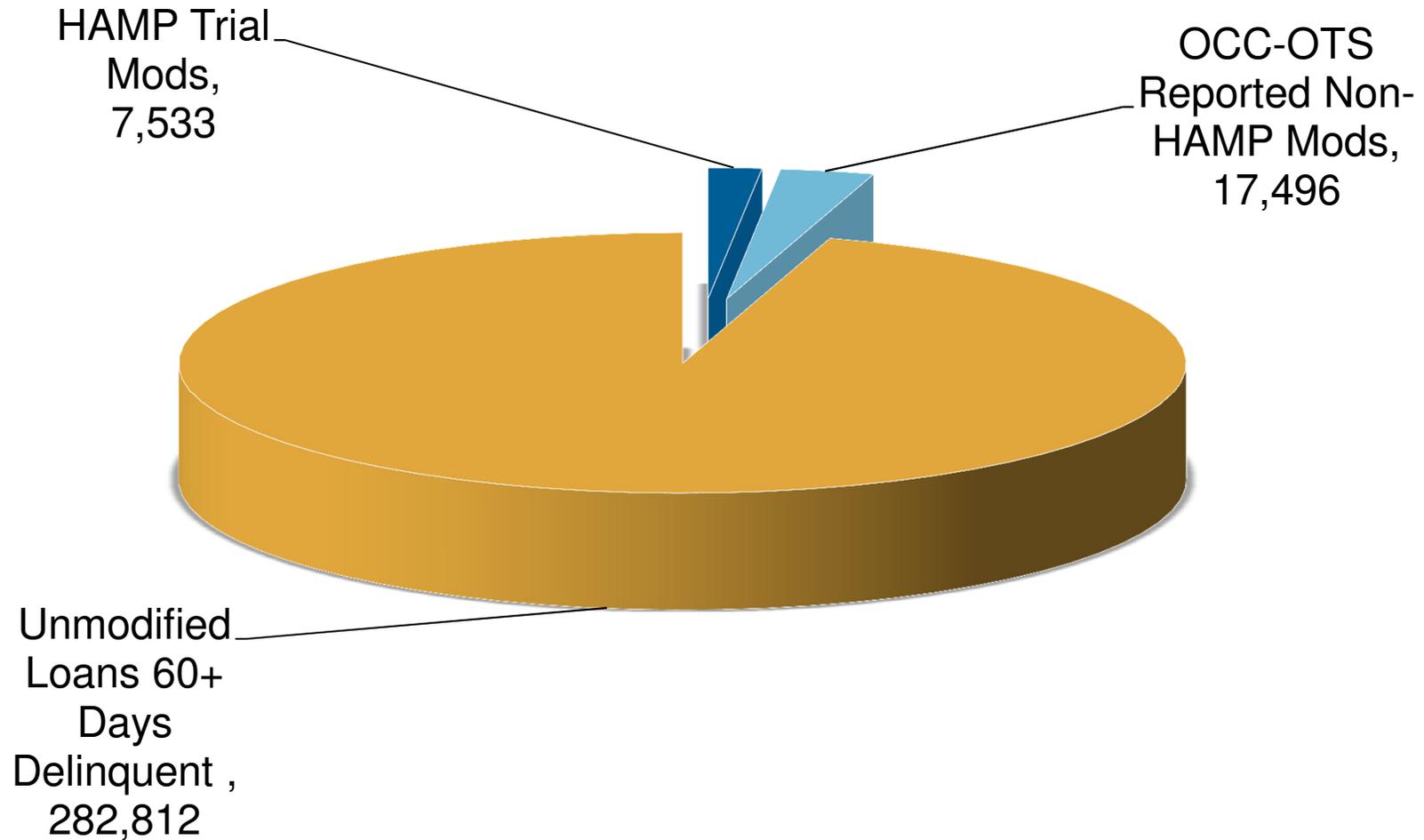




- Poll#3
- Non-HAMP proprietary modifications are now mirroring HAMP modifications and so whether you get a HAMP mod or not doesn't really matter.
  - a. True
  - b. False



# California Mods v. Delinquencies 1Q2013



Source: OCC-OTS Mortgage Metrics Report, 1<sup>st</sup> Quarter 2013; National Delinquency Survey, Mortgage Bankers Association



# HAMP vs. Proprietary Mods

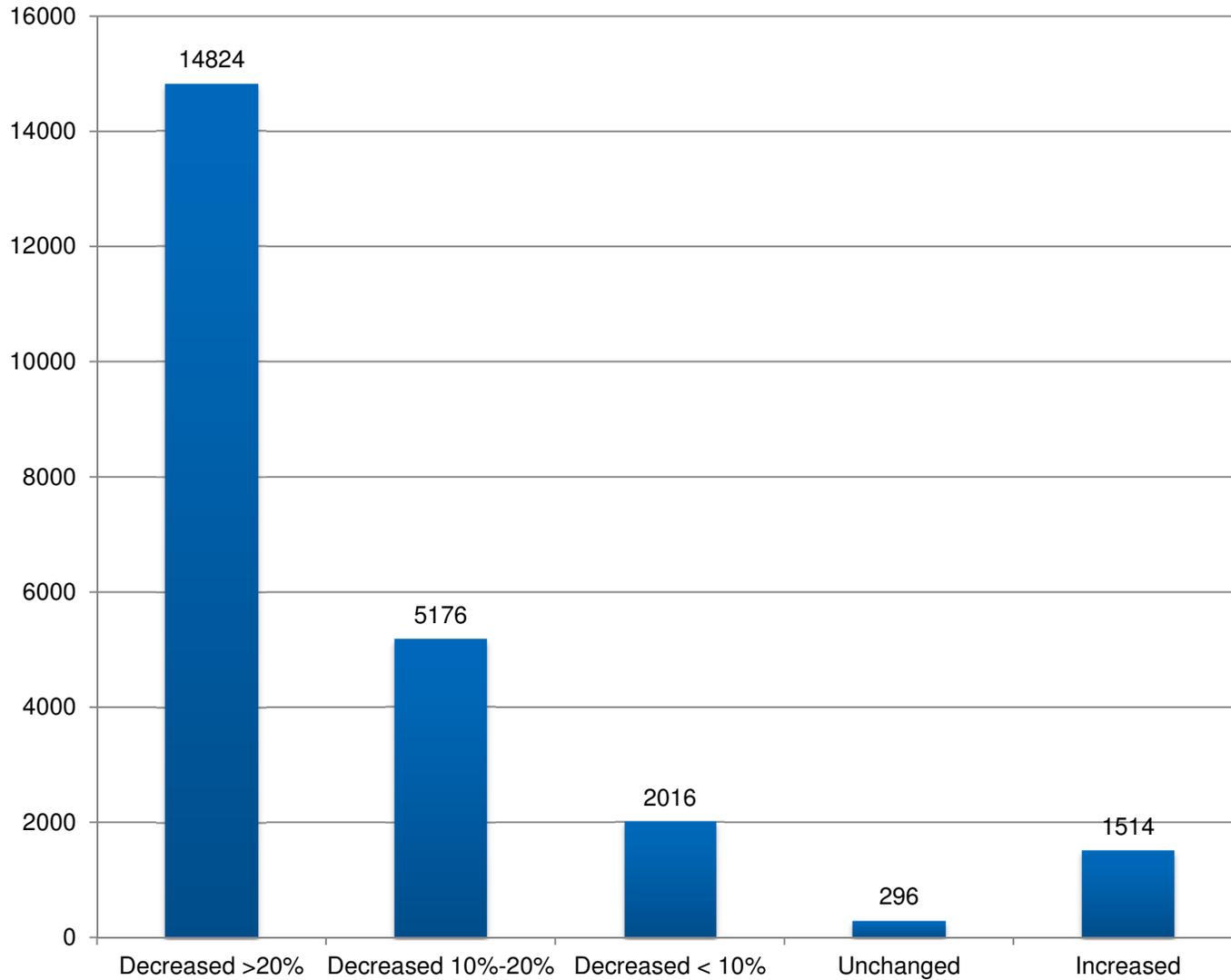
Generally  
less  
favorable  
than HAMP

- 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



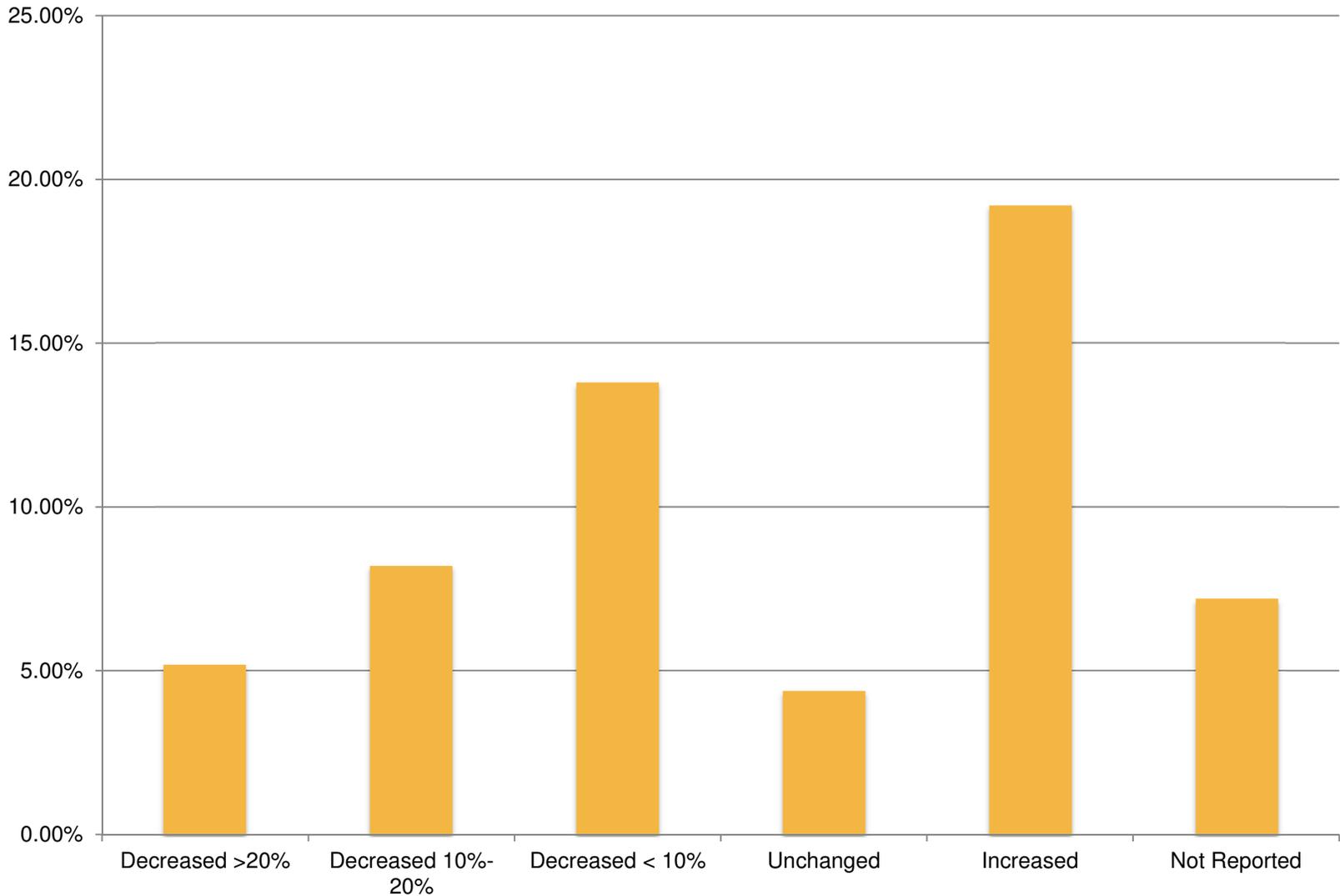
# CA Loan Mod Payment Changes – 1Q2013



Source: OCC-OTS Mortgage Metrics Report, 1<sup>st</sup> Quarter 2013



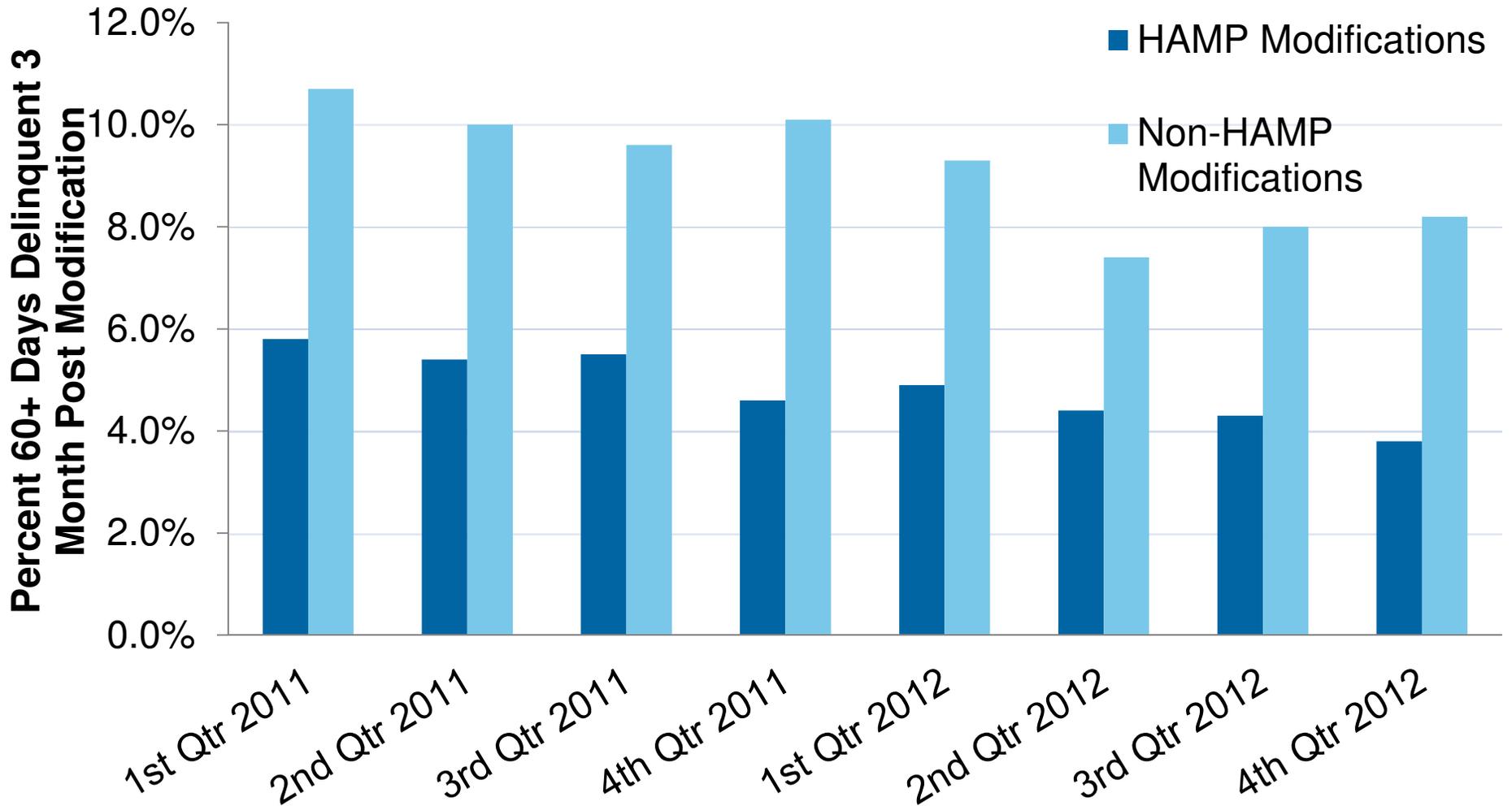
# CA Redefault Rate for Loans Modified 3Q2012



Source: OCC-OTS Mortgage Metrics Report, 1<sup>st</sup> Quarter 2013



# HAMP Outperforms Other Modifications



Source: OCC-OTS Mortgage Metrics Report, 1<sup>st</sup> Quarter 2013



# Where Is There HAMP Guidance?

- Non-GSE:
  - Handbook (currently version 4.3)
  - Supplemental Directives
  - Model Forms
  - [hmpadmin.com](http://hmpadmin.com)
- Fannie Mae: Announcements & Chptr VII of the Servicing Guide ([efanniemae.com](http://efanniemae.com))
- Freddie Mac: Bulletins & Chptr C65 of Seller/Service Guide([freddiemac.com](http://freddiemac.com))
- FHA: Mortgagee letters ([hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm](http://hud.gov/offices/adm/hudclips/letters/mortgagee/index.cfm))
- VA: Circulars ([homeloans.va.gov/valeri.html](http://homeloans.va.gov/valeri.html))
- USDA: Final rule (75 Fed. Reg. 52429 (Aug. 26, 2010))





Loan Servicing and Modifications & Foreclosure Assistance Programs

Predatory Mortgage Origination & Lending

State Foreclosure Laws & Policy

Training & Additional Resources

Back to Issues Homepage

Home > Foreclosures & Mortgages > Loan Servicing and Modifications & Foreclosure Assistance Programs > Loan Modification Programs & Foreclosure Assistance and Refinancing Programs > Home Affordable Modification Program (HAMP) > HAMP Practice Aids

## 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>



# 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

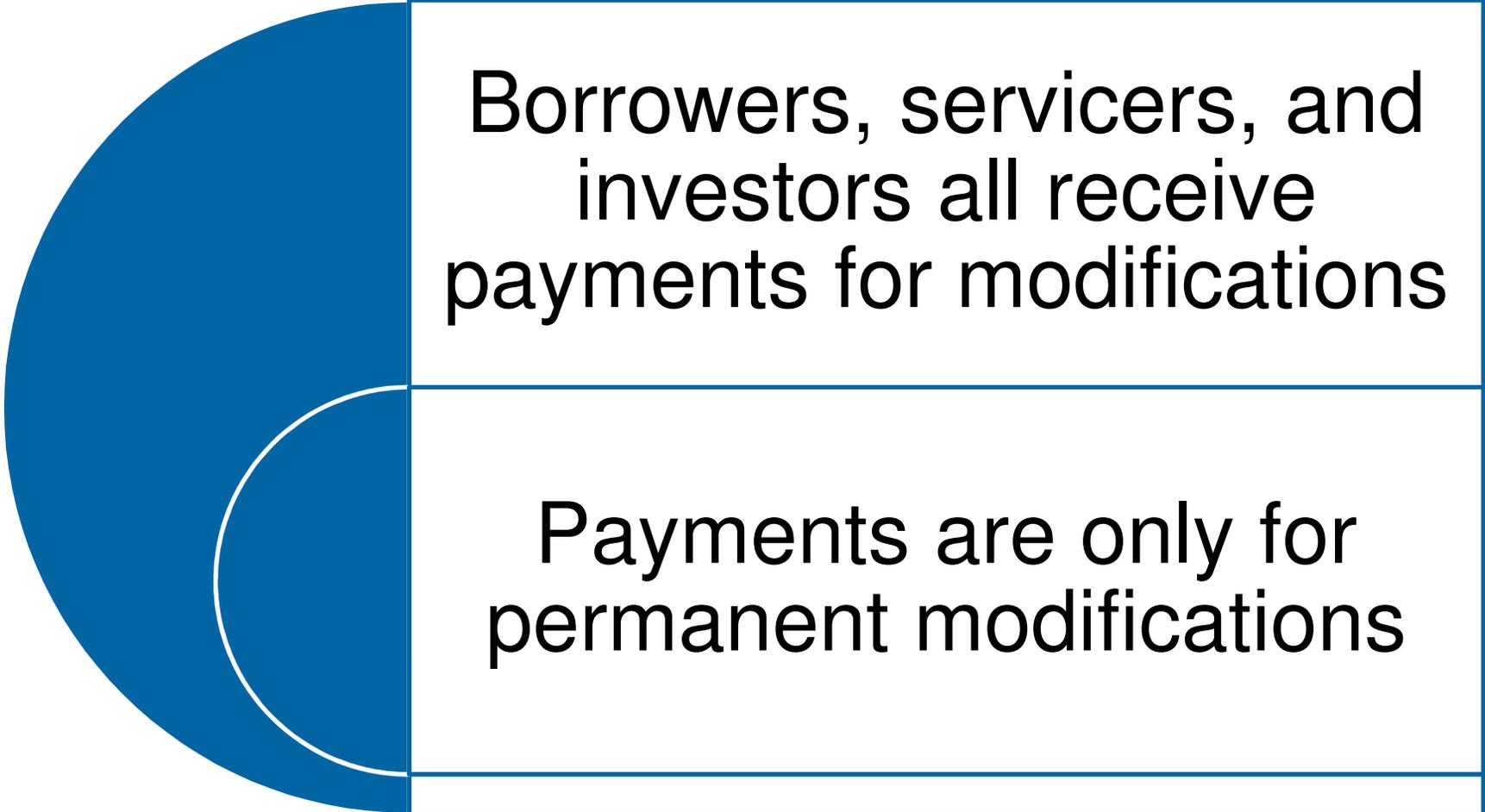
- Gross income for all borrowers
- Unemployment income excluded

Doing the Math	
	<i>Multiplier</i>
Non-taxable income	125%
Rental income	75%

- 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



# 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  
or

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

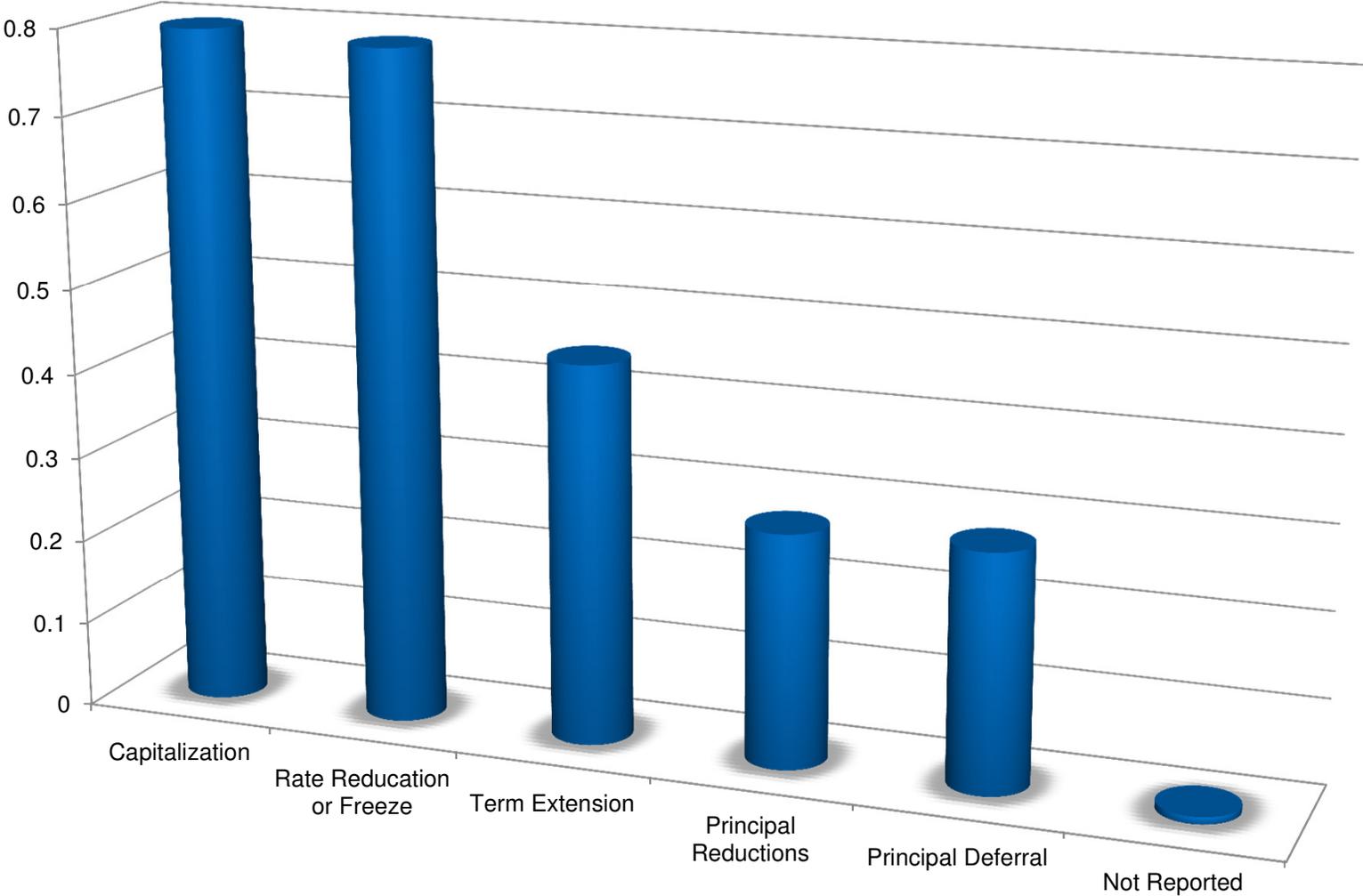


# Principal Forbearance vs. Principal Reduction

- 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, 1<sup>st</sup> Quarter 2013



# Applying for HAMP

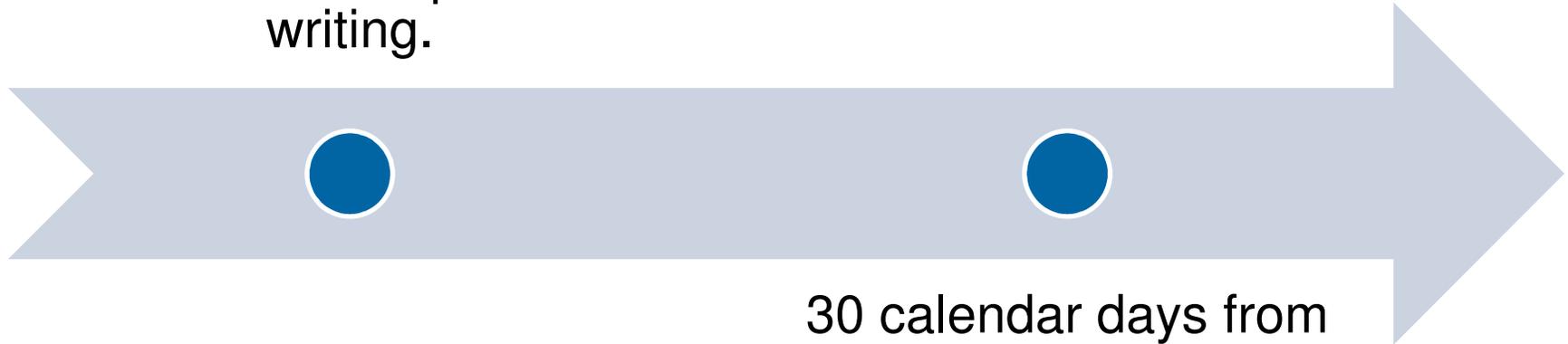
Submission of “Initial Package” triggers servicer’s duty to review for HAMP

- Request for Modification and Affidavit (RMA)
- 4506T-EZ form
  - RMA and 4506T-EZ Forms available at [makinghomeaffordable.gov](http://makinghomeaffordable.gov) or [hmpadmin.com](http://hmpadmin.com)
- Proof of income
  - Checklist available at <http://makinghomeaffordable.gov/checklist.shtml>



# 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](http://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](http://hmpadmin.com) 7 business days before foreclosure sale scheduled.

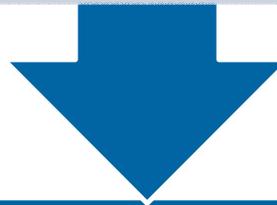


# Application After Foreclosure Sale Scheduled

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

## Inhouse

- Every servicer supposed to have a designated team

## Fannie Mae Loans:

- [resource\\_center@fanniemae.com](mailto:resource_center@fanniemae.com)
- Phone: 1-800-7FANNIE

## Freddie Mac Loans:

- [borrower\\_outreach@freddiemac.com](mailto:borrower_outreach@freddiemac.com)
- Phone: 1-800-FREDDIE

## Non-GSE Loans -- HAMP Solution Center:

- [escalations@hmpadmin.com](mailto: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](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](mailto:acohen@nclc.org), 202-452-6252
- 
- Full Day Training on HBOR in Sacramento on October 23, 2013. See [www.calhbor.org](http://www.calhbor.org) for more information.

