

AT A CROSSROADS

LESSONS FROM THE HOME AFFORDABLE MODIFICATION PROGRAM (HAMP)

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MORTGAGE SERVICING REFORM: SUMMARY RECOMMENDATIONS

I. Pre-Foreclosure Requirements

a. Make offers of sustainable loan modifications routine.

- i. A loan modification should be offered to every homeowner facing hardship at a minimum where the loan modification produces a positive net present value outcome for the investor. Loan modifications should be available regardless of what entity originates, insures, or services the loan.
- ii. The modification should be based on an affordable debt-to-income ratio, achieved through a waterfall that prioritizes principal reduction and reduces the interest rate before extending the loan term, and includes a proportional modification of any junior liens. Loan payments should be permanently set at an affordable level, without large balloon payments.
- iii. Additional modifications must be offered when a homeowner experiences subsequent hardship.

b. End dual track.

- i. No foreclosure should begin until a loan modification review has been completed or until designated outreach steps have been completed. The loan modification review should occur before foreclosure has been initiated and before any foreclosure-related fees have been incurred.
- ii. If a loan modification application is received after the foreclosure is initiated, judicial and non-judicial foreclosures should be stayed during review and scheduled sales should be set aside when the sale occurred as a result of the servicer's non-compliance.

c. Permit direct enforcement of rights and prohibit legal waivers.

- i. Homeowners should be able to enforce servicer compliance with requirements regarding loan modification reviews, foreclosure stays, and other foreclosure avoidance servicing reforms. A servicer's failure to comply with these requirements must be a complete defense to judicial and non-judicial foreclosure. Foreclosure sales not made to bona fide third party purchasers should be set aside based on the servicer's failure to comply with servicing requirements.

- ii. Modifications (other than those entered into as part of the settlement of litigation) should not include a waiver of a homeowner's legal rights.
- d. Make modifications broadly available to qualified homeowners.**
- i. Translation services should be available to homeowners needing such assistance when seeking a modification.
 - ii. Surviving family members and divorced spouses who live in the home should be able to assume the loan and obtain a modification.
 - iii. Homeowners in bankruptcy should be offered loan modifications on the same terms as homeowners not in bankruptcy. Homeowners in bankruptcy should be able to enter into these modifications as part of their Chapter 13 plans.
 - iv. Homeowners facing imminent default on their mortgage should be evaluated for a loan modification under a clear, objective, and public imminent default standard.
 - v. Homeowners suffering long-term unemployment or reduction in hours should have the opportunity to be evaluated for a loan modification. Such homeowners should not be required to accumulate substantial arrearages in forbearance before being evaluated for a modification. Arrearages accumulated during forbearance can disqualify homeowners for a loan modification or otherwise make a modification unaffordable. Few long-term unemployed homeowners have no income—many will have a second job, income from other household members, or public benefits income that can support a modification.
- e. Provide low-interest loans to cure arrearages for homeowners who have suffered long-term unemployment.** Pennsylvania's HEMAP program has, over its existence, made money for the state, while saving thousands of homes from foreclosure. The federal Emergency Homeowners' Loan Program (EHLPP) should be expanded and made permanent.
- f. Require other, sequential, loss mitigation methods.** Servicers should offer homeowners not eligible for an affordable modification other loss mitigation options in a timely manner and in the following order:
- i. temporary forbearance followed by a new analysis for a loan modification or payment plan, depending on the homeowner's ability to pay after the temporary forbearance;
 - ii. short sale; or
 - iii. deed in lieu of foreclosure.
- Servicers must waive deficiency judgments in the case of a short sale or deed-in-lieu.
- g. Establish mediation programs with standards.** Foreclosure mediation programs with judicial oversight, access to counseling, and legal support for homeowners dramatically increase the number of sustainable loan modifications and reduce foreclosures.
- h. Ensure that the tax consequences of modifications or other foreclosure alternatives do not cause additional hardships for borrowers.** Homeowners currently face confusing and overlapping reporting requirements in the event of

a modification, short sale, or foreclosure and potentially devastating tax liability, which can undermine the sustainability of a loan modification. Homeowners of limited means should be protected from adverse tax consequences and reporting should be simplified for all homeowners.

- i. **Allow states to act.** Federal servicing rules should be a floor, not a ceiling for regulation. Additional requirements imposed under state law or regulation should apply to mortgages secured by homes in that state.

II. Transparency and Accountability in Loss Mitigation

- a. **Standardize eligibility.** Servicers should use a standard net present value test, available to the public. Servicers should supply homeowners who were denied a modification all of the test inputs as well as the numerical result.
- b. **Document loan balances.** All homeowners seeking modifications or other loss mitigation options should be provided with a detailed accounting of the unpaid principal balance.
- c. **Disclose the loan modification process.** Homeowners should be notified in writing regarding the availability of a loan modification, the process for obtaining one, and any relevant information regarding investor restrictions. Denials based on restrictions imposed by investors should include documentation of the relevant investor contracts and correspondence, including servicer efforts to obtain exceptions. Homeowners should be given contact information for individuals at the servicer who oversee the loan modification process.
- d. **Establish timelines.** Time deadlines should be established for review and response.
- e. **Dispense with trial modifications.** Permanent modifications should be offered to borrowers with verified income to avoid the widespread problems with failure to convert trial modifications. Existing trial modifications should be automatically converted.
- f. **Oversee appeals.** A government-run administrative appeals or escalation process for wrongful denials and other modification problems should be established, modeled on the Office of the Taxpayer Advocate.
- g. **Eliminate fraud.** Default notices should be signed under penalty of perjury. Foreclosure notices should be personally served in all states.
- h. **Make data publically available.** Require and enforce thorough, loan-level, data collection, including data on race and national origin. Data should be available by individual servicer, so that the public can compare the performance of individual servicers.
- i. **Review performance.** The agencies should incorporate review of compliance with servicing standards in regular exams.

III. Force-Placed Insurance

- a. **Maintain existing policies.** If a policy lapses for non-payment, servicers should be required to advance the premium payments for existing policies, regardless of whether the loan is in default, whether there is an existing escrow account, or whether there are sufficient funds in the escrow account to cover the premium. Only if a policy lapses for reasons other than non-payment should a servicer be permitted to substitute alternate coverage, and the servicer must make all efforts to obtain a policy offering comparable coverage at a comparable price to the homeowner's lapsed policy.
- b. **Protect borrowers without escrow.** Servicers who advance the premiums when there is no escrow account should be required to spread out the collection of those premiums either in increments of 1/12 per month or through creation of an escrow account under RESPA.
- c. **Require disclosure.** Servicers should be required to fully and clearly disclose these procedures to homeowners.

IV. Application of Payments

- a. **Promptly credit payments.** Payments should be applied as of the date received.
- b. **Prioritize principal and interest payments.** Payments should be applied first to accrued and unpaid interest, then to principal. Late fees and other fees should not be deducted from a homeowner's payment if there remain outstanding amounts due for principal, interest, or escrow. This payment application order should apply as well to payments held in suspense accounts.
- c. **Limit costs.** Servicers should not require payment via a method more costly than certified check or attorney escrow account.

V. Foreclosure and Other Fees

- a. **Limit foreclosure related fees.** Permit only one property valuation and one title search fee per foreclosure. No fee for home preservation services should be allowed if any payments were submitted within 60 previous days, the home is occupied, or the servicer has contact with the borrower. All fees, including property valuation, home preservation, title fees, and attorney fees should be limited to the reasonable cost of the work actually done to date.
- b. **No retroactive fees.** No fee should be charged unless advance notice of the type of fee and the applicable circumstances has been provided. Servicers should be required to notify homeowners of the actual amount of any fees and the reason for the assessment of the fees within 30 days of the service that triggers the fees. The failure to notify the homeowner within this time should trigger a waiver of that fee.
- c. **Establish regular disclosure schedules.** The disclosure of fees that may be charged should be disclosed both when servicing is transferred to a new servicer and annually. This notice should provide meaningful information with reasonable specificity of the fee amount and the circumstances that may trigger

such a fee. A list of all assessed but unpaid fees should be included in all notices to the homeowner regarding amounts due.

- d. **Regulate late fees.** Late fees should be regulated as they are under the Uniform Consumer Credit Code. Homeowners should not be charged late payment fees on payments timely made, even if an earlier payment remains unpaid. Being late once should result in one late fee.

VI. Transfer of Servicing and Periodic Statements

- a. **Make transfer notices meaningful.** Transfer notices should advise if the homeowner is current, whether there are any unpaid fees, and whether a modification is pending. If the notice indicates that the homeowner is not current or fees, including late charges, have been incurred, the servicer should be required to provide the homeowner with a complete payment history, including a breakdown of any fees assessed. These disclosure requirements should apply to both the old and the new servicer, so that the homeowner may promptly ascertain if there is a discrepancy in the records.
- b. **Fee omissions in monthly statements and transfer notices should be binding.** If a fee is not listed on the monthly statements as having been incurred, or in the “goodbye letter” and “hello letter” to the homeowner, as having been incurred, it should be deemed to have been waived.
- c. **Disclose dispute procedures.** Monthly statements should advise of dispute procedures to address wrongly assessed fees and include contact information.
- d. **Provide disclosure during delinquency and default.** Periodic statements, servicing transfer notices, and escrow account statements should be provided notwithstanding delinquency or default status.
- e. **Mandate continuity upon transfer.** New servicers should be required to accept and continue processing prior loan modification requests; new servicers must honor loan modification agreements entered into by prior servicers.