
Introduction

The pace of loan modifications is still lagging behind foreclosures. Many homeowners who are eligible for modifications under the Home Affordable Modification Program (“HAMP”) are pushed into foreclosure, and even have their homes sold at foreclosure sale, without proper consideration for HAMP while others remain in the limbo of temporary modification without any final resolution in sight.¹

Supplemental Directive 09-08 (issued Nov. 3, 2009) purports to provide for servicer accountability. It requires notices to borrowers who fail to qualify for a temporary or permanent modification or who default on a temporary modification. The directive fails to provide homeowners with adequate information about HAMP reviews, and it creates new barriers to transparency in the HAMP review process.

Seven Suggested Improvements to the Borrower Notice Process

- Homeowners who fail the net present value (“NPV”) test are not automatically provided with input data; the burden is on the homeowner to affirmatively request the input data. *Homeowners should be provided with NPV inputs when the denial is first communicated.*
- Servicers are required to provide only limited data, even in response to homeowner requests. The list of available inputs does not include such critical values as the current fair market property value, a major factor in determining a homeowner’s eligibility for a loan modification. Moreover, homeowners are not provided with the dollar value of the NPV analysis, which shows how likely it is that a small error would affect a homeowner’s qualification. *Treasury should require servicers to disclose all NPV inputs and outputs related to a particular loan modification review.*
- The NPV model itself has remained shrouded in secrecy and unavailable to homeowners even when it is the cause of a HAMP denial. Homeowners are unable to determine independently whether a servicer conducted the analysis properly, and advocates are unable to review the biases and inconsistencies in the model itself. The limited available information suggests serious concerns about fair lending implications, as well as inadequacy of the model itself. *The NPV model should be made*

* This analysis was produced by Alys Cohen, Staff Attorney, & Diane E. Thompson, Of Counsel.

¹ Homeowners and their advocates report that servicers have declined to provide permanent contracts to large numbers of homeowners who have completed their paperwork and actively sought permanent modifications after completing the trial modification requirements. Servicers often claim they have inadequate staffing or computer systems to handle or convert to permanent modifications. In some cases, servicers notify homeowners to keep paying under the trial plan, but in many cases, homeowners receive no such notice.

available to the public. Homeowners and their advocates need immediate access to a web portal in order to independently determine HAMP qualification.

- A homeowner who finds errors or outdated information in the NPV inputs used is only entitled to a second review where the inaccuracies are “material” and “likely to change the NPV outcome.” Since the homeowner is not told what the NPV output is, nor given access to the NPV model, the homeowner is left at the mercy of front-line servicer staff in making this determination. Treasury provides no guidance on who should be making such a judgment or what the parameters of these terms might be. Re-running the NPV analysis should be a simple, quick task. *Servicers should be required to re-run the NPV analysis automatically when the homeowner provides updated or corrected information for the NPV inputs.*
- Disclosure of a denial based on investor or guarantor nonparticipation is both misleading and inadequate. Investors and guarantors are not participants in HAMP; servicers are participants. Investor or guarantor is not a reason under HAMP for denial. The model notice does not even require disclosure of the identity of the investor trust or guarantor, nor does it provide information identifying the contractual rules forbidding modification nor any reasonable efforts, as required by HAMP, taken by the servicer to obtain waiver of those rules. *Basic information including the investor or guarantor’s name, identification of the controlling document, and a summary of efforts taken to secure participation in HAMP should be provided in each relevant denial notice.*
- The directive offers the HOPE hotline as a dispute resolution mechanism. As described, the HOPE hotline can only contact the servicer; the HOPE hotline lacks any authority to enforce or monitor compliance with program requirements. *Homeowners need access to an independent escalation process, as well as an independent review process within the servicer.*
- Under the directive, the servicer’s receipt of a homeowner’s request for the NPV data triggers a stop to the foreclosure sale. Homeowners report, however, that servicers frequently lose all submitted documentation. As a result, reliance on servicer receipt and processing of a homeowners’ request will mean that many foreclosure sales proceed even when the homeowner has requested the NPV inputs. *NPV-based denials should automatically trigger a cease in the foreclosure process until the relevant timelines have elapsed.*