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Introduction

The Making Home Affordable Program was announced by the U.S. Department of the Treasury in February 2009 in an effort to help stabilize the housing market and provide relief for struggling homeowners. The Program has two components: the Home Affordable Refinance Program (HARP) and the Home Affordable Modification Program (HAMP). This summary focuses on HAMP. More information about the entire Making Home Affordable Program and HAMP can be found at http://www.nclc.org/issues/loan-modification-programs.html.

HAMP was announced on March 4, 2009 to help standardize industry practices regarding mortgage loan modifications. It is is slated to end December 31, 2015. Detailed HAMP guidelines are available at https://www.hmpadmin.com.

Lenders, Investors, and Servicers

Distinguishing between lenders, investors, and servicers is crucial. The mortgage lender is the financial institution that originally provided the mortgage. The mortgage note may have since been sold to another investor or a securitized trust. The servicer is the company responsible for collecting mortgage payments and management and accounting of the mortgage. The servicer is usually different from the investor.

Servicer Participation in HAMP

Servicers, not investors, participate in HAMP. Servicers' agreements with investors are contained in pooling and servicing agreements (PSAs). Most PSAs contain no meaningful restrictions on modifying loans in default. If a PSA contains such a restriction, the servicer must make "reasonable efforts" to get the investor to waive this restriction.

The majority of servicers have signed a Servicer Participation Agreement (SPA) with the U.S. Department of the Treasury, agreeing to participate in HAMP. All servicers who have agreed to participate are required to review the eligibility of any borrower who asks to be considered for the program. A list of participating servicers is available at http://makinghomeaffordable.gov/contact_servicer.html. Copies of the contracts are available at http://www.treasury.gov/initiatives/financial-stability/housing-programs/mha/Pages/default.aspx.

Loans owned by Fannie Mae and Freddie Mac must be modified under their versions of HAMP, whether or not the servicer is otherwise participating in HAMP. Similarly, VA, FHA, and USDA (RHS) loans have their own version of HAMP.

When a servicer transfers a mortgage modified under HAMP, the transferee servicer must assume the transferor's obligations under the SPA, including evaluating loans for HAMP, processing HAMP trial modifications, and timely converting trial modifications to permanent modifications.[1]

Protections Against Foreclosure

Servicers are prohibited from referring a loan to foreclosure or conducting a scheduled sale until the borrower has been evaluated and determined ineligible for HAMP, the borrower has failed to make the required trial plan payments, the borrower has failed to provide the required documents after at least two written requests, or the borrower has failed to respond entirely to the servicer, after the servicer has complied with HAMP's requirements of reasonable solicitation. Seven days before a foreclosure sale can take place, the servicer must provide its foreclosure counsel with a certification that all HAMP requirements have been complied with.

If a borrower requests a HAMP modification seven business days prior to a scheduled foreclosure sale, the servicer must suspend the foreclosure sale while it completes its evaluation of the borrower for HAMP. Similarly, if a borrower has escalated denial of a loan modification seven business days before the scheduled foreclosure sale, the sale must be suspended, pending the resolution of the escalation.

Once a borrower is in a trial plan based on verified income, the foreclosure process must be suspended.

Basic Program Eligibility

To be eligible for HAMP, borrowers must 1) meet the basic program requirements and 2) pass the Net Present Value (NPV) test, an evaluation to determine whether it is more cost effective to modify the loan or foreclose.

Basic Program Requirements

Both borrowers who are current on their mortgage and those who are delinquent are eligible for a modification under HAMP. If the borrower is current or less than sixty days delinquent, the borrower must demonstrate that default is imminent.

Borrowers must meet the following requirements:

- The loan must have originated before January 1, 2009.
- The monthly mortgage payment ratio must be greater than 31% of the borrower's monthly gross income.[2]
- The loan must be secured by a one-to-four unit property which is the borrower's principal residence. One-to-four unit investment properties are eligible for HAMP Tier 2 modifications, even if the borrower does not reside at the property.
- First lien mortgages must have an unpaid principal balance (prior to capitalization of the arrears) equal to or less than:

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[1] Servicers can transfer the Eligible Loan without SPA obligations if one of the circumstances in Section 3.1.1of Chapter 2 of the Making Home Affordable Handbook exists and applicable response periods have elapsed.
[2] Monthly gross income is the borrower's income before any payroll deductions.

    - $729,750 for one unit
    - $934,200 for two units
    - $1,129,250 for three units
    - $1,403,400 for four units
- The Property cannot be vacant or condemned.
- The loan cannot have been previously modified under HAMP for HAMP Tier 1 modifications.
- Borrowers must submit a hardship affidavit explaining why they cannot make full mortgage payments.[3]
- Borrowers must agree to set up an escrow account for taxes and hazard and flood insurance, if one does not already exist.
- Borrowers must certify that they have not been convicted within the last ten years of felony larceny, theft, fraud, forgery, money laundering, or tax evasion in connection with a mortgage or real estate transaction.

Servicers cannot do the following:

- Charge borrowers for the modification.
- Require dead or divorced borrowers on any modification documents.

Net Present Value Test

The purpose of the Net Present Value (NPV) test is to determine whether it is more cost effective to modify the loan or foreclose for the owners of the loan. The NPV test compares the net present value of money the investors in the loan would receive if the loan were modified with what would be received if no modification were made. Participating servicers are required to perform a NPV test if a borrower meets the basic eligibility test outlined above.

Modifications are "NPV positive" if the investors will get a greater return from modifying the mortgage than not. The servicer must modify the mortgage if it is NPV positive unless there is fraud or a prohibition in the securitization contracts. If prohibited by contract, servicers are required to use reasonable efforts to obtain waivers or approvals from the parties.

Modifications are "NPV negative" if the investor is forecast to profit more from proceeding with the foreclosure than from modifying. Servicers may modify under these circumstances, if permitted by investors.

Servicers are also required to run an NPV test with principal reduction if the unpaid principal balance of the loan is greater than 115% of the home's current market value.

Treasury has created a public site, CheckMyNPV.com, to allow homeowners, counselors, and other interested parties to confirm the servicers' NPV calculation. This tool provides a NPV evaluation estimate using the same formula servicers are required to use and the discount rates of the largest servicers are embedded in the program. Homeowners who receive an NPV denial letter from the servicer will have available the servicers' inputs to enter. Provided the

[3] The affidavit does not have to be notarized.

homeowner uses the inputs provided by the servicer in any NPV denial letter, the only variation could result from investor restrictions; servicers must document their efforts to seek waivers of any investor restrictions.

Income Verification

The borrower must provide the required income verification documents to qualify for a HAMP modification. This includes copies of two recent pay stubs for each wage earning borrower, and either IRS Form 4506-T or the most recent tax return, if the borrowers file taxes.

Income less than 20% or more of the borrower's total gross income need not be documented, including income from non-borrower residents, rental income, public benefit income.

Income verification is required for all borrowers on the loan. However, servicers cannot require income verification for dead or divorced borrowers.

Affordability Determination

Once the borrower is approved for modification, the terms of the modification are set through a standard modification waterfall. The goal of these steps is to alter the terms of a mortgage to reduce the total mortgage payment, including principal, interest, taxes, insurance, and association fees, to 31% of the monthly gross income of all borrowers on the mortgage.

First, the servicer must capitalize any accrued interest, escrow advances to third parties, and servicing advances paid to third parties related to the preservation of the property and enforcement of the mortgage, if allowed by state law. Second, the servicer can reduce the interest rate as low as 2%, fixed for five years. At the end of five years, the payments increase incrementally at one percentage point a year until they reach the level of the prime monthly mortgage survey rate as reported by Freddie Mac the week the loan is evaluated for modification. Third, if the payment is still not affordable, the servicer can extend the amortization of the loan to a maximum of 40 years. Fourth, the servicer can provide for principal forbearance in which a portion of the principal is deferred and no interest accrues on the deferred amount. The forbearance amount is due at the end of the loan term or when the loan is paid off or refinanced. Servicers may also forgive principal before or instead of any of these steps.

Trial Payment Period

After affordability is determined and before the modification becomes permanent, the borrower must complete a three-month trial payment period in which he or she makes monthly payments based on the proposed new loan terms determined by the standard modification waterfall.[4] The borrower must make each trial period payment by the last day of the month in which it is due in order to qualify for a permanent modification.

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[4] During this trial period the servicer is required to temporarily suspend the foreclosure process, if it has been initiated, and the servicer may not initiate foreclosure or conduct a sale.

If the trial payment period is successfully completed and the servicer confirms the borrower meets the eligibility criteria, the loan modification becomes permanent on the first day of the month following the trial period.

If the servicer fails to provide the homeowner with the necessary documents in a timely fashion, the servicer must still treat the borrower's account as if the modification had been made permanent in all respects, including the effective interest rate and the interest-bearing principal balance. The borrower need not continue making trial modification payments while waiting for the permanent modification documents.

Notice of Denial

If a modification is denied at any stage of the process, servicers are required to provide borrowers with a denial notice and a reason for the denial. The borrower may then correct NPV values if necessary. If a correction is accurate, material, and likely to change the NPV outcome, the servicer must re-run the NPV test using the same test and the same inputs, other than those challenged by the borrower. While the test is being re-run, the foreclosure sale must be suspended.

Redefault and Loss of "Good Standing"

If a borrower becomes more than 90 days delinquent, the borrower loses good standing. At that point, no further incentives are paid to the servicer, investor, or borrower and the borrower cannot be reconsidered for a future HAMP Tier 1 modification. However, the servicer is still required to work with the borrower to cure the default and consider other available loss mitigation options before initiating foreclosure. Homeowners who have defaulted on a HAMP Tier 1 modification may be considered for a HAMP Tier 2 modification.

However, borrowers who fail to make their first payment under a HAMP Tier 1 trial modification, or borrowers whose servicer miscalculated their income (a common error) with the result that the trial plan overstated the monthly payment by 10%, or borrowers who fail to accept the trial plan for any reason are eligible to reapply for a HAMP Tier 1 modification if they can show a change of circumstances.

Borrowers in Bankruptcy

Servicers cannot deny modification because of a borrower's pending bankruptcy. Borrowers who file for bankruptcy after entering a HAMP trial period plan may not be denied a permanent modification on the basis of a bankruptcy filing. Borrowers who received a chapter 7 discharge and who did not reaffirm the mortgage sought to be modified are eligible, and no reaffirmation of the debt may be required.

HAMP Tier 1 vs. HAMP Tier 2

HAMP Tier 2 modifications, unlike standard HAMP Tier 1 modifications, can be made on investment property that does not also serve as the borrower's residence. HAMP Tier 2 modifications are also available to homeowners who have redefaulted on a HAMP Tier 1 modification, even without a showing of change of circumstances.

Borrowers must otherwise meet the basic HAMP eligibility requirements. The HAMP Tier 2 modifications follow a set waterfall, without regard for the affordability of the final payment. For all HAMP Tier 2 modifications, the loan is modified by

- Capitalizing arrears
- Adjusting interest rate
- Extending term to 480 months
- Principal forbearance.

The interest rate is lowered, for all borrowers, to the current Freddie Mac Prime Mortgage Survey Rate plus 50 basis points, rounded to the nearest 1/8th of a percentage point. Similarly, all borrowers whose unpaid principal balance exceeds 115% of the current value of the property will recevie a fixed amount of principal forbearance, based on their loan terms, in a HAMP Tier 2 modification.

After the terms of the loan modification are set, it is checked against the Net Present Value test and screened for affordability. Affordability for HAMP Tier 2 modifications is defined as resulting in a debt-to-income ratio between 25% and 42% (in contrast to HAMP Tier 2's strict insistence on a post-modification debt-to-income ratio of 31%), coupled with a payment reduction, from the pre-modification payments, of 10%.

Second Lien Modification Program

Servicers who participate in the Second Lien Modification Program (2MP) must modify second liens they service if the corresponding first lien is modified. The second lien may be either extinguished or modified. If modified, it must be modified following the same steps as required for the first lien modification, with interest reduced to 1%, and the term extended out to the term on the modified first lien. If there is principal forbearance on the the modification of the first lien mortgage, there must be principal forbearance in the same proportion on the second line modification.

Unemployed Borrowers

A separate program known as the Home Affordable Unemployment Program (UP) exists for unemployed borrowers. If the borrower declines an offer for an UP forbearance plan, the servicer is not required to offer the borrower a modification under HAMP. However, the servicer, at its discretion, may offer to evaluate the borrower for HAMP in accordance with investor guidelines. Upon completion of the three month UP forbearance, the servicer must evaluate the borrower for HAMP.

Borrowers who live in a federal disaster area may combine their UP forbearance sequentially with a three month federal disaster forbearance.

Program Incentives

HAMP provides for the use of government funds to pay servicers for successful loan modifications. If the borrower completes the initial 3-month trial payment period, the servicer may receive $400 to $1,600 per loan modified, depending on delinquent the mortgage was when modified. Servicers are not permitted to require borrowers to pay down any arrearages in order to qualify the loan for higher incentive payments. If the borrower remains in the program and the borrower's monthly mortgage payment is reduced by 6% or more, the servicer may receive up to $1,000 each year for up to three years.

The investor receives a one-time $1,500 bonus if the borrower was current before the loan modification and the borrower's monthly mortgage payment is reduced by 6% or more, as well as additional subsidies to support the reduction of the payment, protect against further price declines, and support principal reduction.

If the borrower remains current on the modified mortgage, he or she will receive $1,000 each year for up to five years towards reducing the principal balance on the mortgage. These payments are made directly to the servicer and are not included in income for federal tax purposes.