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Traversing the HAMP Maze – Home Loan Modification Program

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Notwithstanding criticism that the Home Affordable Modification Program (HAMP), established by the Obama administration in March 2009, has been largely ineffectual, the program is starting to gain traction. According to the U.S. Department of the Treasury, as of May 2010, more than 25% of 1.2 million applicants received permanent home loan modifications, up from just 8% of applicants as of the end of 2009. While the fall-out rate is still disappointing, recent trends suggest that homeowners are receiving a more meaningful opportunity at a home loan modification. It is essential for attorneys to have a firm grasp of the complex details of the HAMP program and the process by which loan servicers evaluate their clients' eligibility for a home loan modification.

HAMP overview

HAMP is a component of the broader Making Home Affordable Program (MHAP). Other component programs under MHAP exist; however, the majority of homeowners seek relief through HAMP. The program is intended as a lifeline for borrowers with a financial hardship that places them at risk of losing their home.

Under HAMP, lenders receive financial incentives to modify home loans that make monthly payments more affordable and sustainable for financially distressed borrowers. Homeowners who apply to the program may be offered trial modifications consistent with detailed guidelines, and upon successful completion of program requirements homeowners may be granted a permanent loan modification.

Servicer participation is mandatory for all loans owned or guaranteed by Fannie Mae or Freddie Mac, which are Government Sponsored Enterprises (GSEs). Participation in the modification program is voluntary for servicers and investors of non-GSE loans; however, substantial incentives are available to servicers that complete loan modifications under HAMP.

To ensure that a borrower currently at risk of foreclosure has the opportunity to apply for a modification under HAMP, participating servicers may not proceed with a foreclosure sale on an eligible loan until the borrower has been evaluated for HAMP and, if eligible, a trial modification offer has been made.

Eligibility

- The mortgage to be modified is a first lien conventional mortgage originated on or before January 1, 2009.
- The home is an owner-occupied single-family or multi-family residence, up to a maximum of four units, in which the borrower occupies at least one unit.
- The home is not vacant or condemned.
- First lien loans must have an unpaid principal balance (prior to capitalization of arrearages) equal to or less than:
  1 Unit: $729,750
  2 Units: $934,200
  3 Units: $1,129,250
  4 Units: $1,403,400
- The borrower's mortgage payment is greater than 31% of the borrower's monthly gross income, which is not affordable due to a documented financial hardship.
- The borrower need not be delinquent on their mortgage if the borrower is at risk of imminent default.

Notably, borrowers in bankruptcy are not automatically eliminated from consideration for a modification. Further, borrowers in active litigation over the mortgage loan can qualify for a modification without waiving their legal rights. New borrowers will be accepted into the program until December 31, 2012.

Steps to obtaining a home loan modification

- Gather client documentation to verify the gross income of all co-borrowers.
- Initial telephone contact should be made with the loan servicer. Most servicers now have staff dedicated to processing loan modifications.

- Based on a cursory review, the servicer will recommend the best program for the borrower. The majority of borrowers are processed under HAMP.
- If upon review of preliminary income and expense data the borrower is deemed eligible, the servicer will offer a temporary loan modification with a reduced monthly payment that is calculated under program guidelines. Documents will be provided by the lender for signature by the co-borrowers.
- During the temporary modification period (typically ninety days), supporting documentation must be submitted and verified before a permanent modification can be granted. Make sure *all* requested documentation is submitted in a timely manner.
- Some borrowers may be required to meet with a HUD-approved housing counselor as a condition of permanent modification approval. Timely completion of this requirement is essential.
- Upon successful completion of all requirements and final verification of program eligibility, a permanent loan will be given and documentation forwarded for borrower execution.

Underwriting process
Loan servicers evaluate applicants in accordance with strict guidelines as outlined under HAMP. The objective is to modify the loan such that the resulting monthly payment for first lien principal, interest, taxes, insurance, and association dues (PITIA) is 31% of monthly gross income (referred to as the DTI target).

The servicer must first reduce the interest rate in increments of 0.125% (subject to a floor of 2%), bringing the resulting payment as close to the DTI target as possible, without going below 31%. If this fails to reduce the payment to the target level, the servicer must then extend the loan term or amortization period up to a maximum of forty years. If the resulting payment still does not reach the DTI target, the servicer must forbear principal in an amount necessary to achieve the targeted payment. Any forbearance of principal is due via a balloon payment on the loan maturity date, upon sale of the property, or upon payoff of the interest-bearing balance.

Finally, the servicer must perform a Net Present Value calculation in accordance with a complex formula prescribed by the Treasury Department. This calculation is used to determine if the proposed loan modification provides the lender with a better financial result than if no modification were given. If the NPV analysis provides a positive result, the servicer must modify the loan. If the result is negative, the servicer has the option to modify the borrower's loan, but there is no requirement to do so.

A strong understanding of the screening process, the underwriting standards, and documentation requirements for a home loan modification under HAMP enhances the probability of securing a permanent modification for your clients.

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