All the President's HAMPmen -
Screaming from the Rooftop of the White House!

[New July 2009 HAMP Guidelines & Special Treasury Meeting]
[HAMP Foreclosure Forbearance – Supplemental Directive 09-01]

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Are the President's Goals at Risk?

On or about, Monday July 20, 2009, Treasury pre-released its new HAMP Guidelines to servicers requiring comprehensive efforts to ignite what must be the closest demand for *en masse* loss mitigation that we have seen to date. The Treasury simultaneously summoned the major legacy banks, lenders, and servicers to a special meeting to discuss how they will super-size their HAMP efforts. It is safe to say the President is greatly concerned about falling short of his (HAMP) goals and is shouting through his Treasury from the rooftop of the Whitehouse – directly to the legacy banks, lenders, and servicers.

At the July 28, 2009 meeting, Treasury set a goal of reaching 500,000 trial modifications by Nov. 1. Through a statement made by Treasury Secretary Timothy Geithner, the point was made: "With over 200,000 trial modifications already under way, we are on track to reach the goals. Still, too many homeowners are at risk of foreclosure right now. [Tuesday's] meeting was an opportunity to identify ways to accelerate the program and bring relief faster." [DS News, 7/28/09]

Servicer participation is voluntary for non-GSE loans, and mandatory for loans owned or guaranteed by Fannie Mae or Freddie Mac. Participating servicers generally are required to:

> (1) Identify borrowers who may qualify and assess their eligibility (including determination of financial hardship, reduction or loss of income, increase in expense, change in household financial circumstances, lack of sufficient cash reserves, excessive monthly debt, or other reasons for hardship),
> (2) Perform NPV test to determine if a modification is required (if the NPV is positive the HAMP modification is required; if negative, it is within the Servicer/Investor discretion, however if not offered, other loss mitigation alternatives for foreclosure are required to be explored including Hope for Homeowners (short) refinance option),
> (3) Calculate proposed payment amount, and send documents to borrowers to complete and return,
> (4) Receive borrowers completed documents and first trial payment, then confirm borrowers eligibility, and
> (5) Provided terms of trial period are satisfied, execute modification.

How We Can Improve HAMP?

Reportedly, present at the meeting were Treasury's Assistant Secretary for Financial Institutions, Michael S. Barr, and Assistant Secretary for Financial Stability Herb Allison, as well as the U.S. Department of Housing and Urban Development's FHA Commissioner David Stevens, and HUD Senior Advisor to the Secretary, William Apgar. HUD Secretary Shaun Donovan also participated in his announcement by saying:

> "Servicers in attendance committed to significantly increasing the rate at which they are performing loan modifications"
>
> and that our goal could be reached with:
>
> (1) more transparent reporting, and
> (2) better communication and a strong commitment from servicers.

Some 200,000 modifications have been recorded under the program since its inception. With the significant rise of unemployment (9.5%: Dept of Labor), soft home prices (notwithstanding a recent jump up, 17.1 percent down/year over year (Standard & Poor's/Case-Shiller home price index)), the swelling second wave of defaults through resetting Option Arms on Alt-A and Prime borrowers, the yet-to-be-processed post-moratorium foreclosures, the barrage of some 1 million *default notices* sent this year so far, the bulging consumer debt loads, and the commercial shoe starting to fall, there is every expectation that the demand for en masse loss mitigation and modification solutions outweigh the actual solutions available, the eligibility parameters of the federal programs, and the capacity of the legacy banks, lender and servicers to meet the President's (HAMP and H4H) program goals; all of which could jeopardize the President's economic recovery plans.

The industry reached out for help, and offered some ideas for solutions at the Treasury meeting as follows:

a. the need for standardized documentation, and
b. a single Web site to accept all applications (government or industry), and
c. the need for clarification of 'imminent default' (to help clear up confusion).

The government made several announcements, demands, or observations by way of the Treasury's new HAMP Draft Servicing Guidelines issued last week, and at the meeting as follows:

1. the need for substantial improvement of the ***rate for modification approval***
2. the need for full servicer participation,
3. its choice to use the HAMP compliance agent, Freddie Mac, to sample denials and review same in a second-look process. The government asked Freddie Mac to develop a second-look process that will minimize the

chance of modification applications being overlooked or inadvertently denied. Freddie will audit a sample of denied modifications then address general operational weaknesses and systematic errors with each servicer.
4. the starting of actual reporting on Aug. 4 2009 of the HAMP efforts and results per lender/servicer

The recent Treasury Guidelines issued to the servicers should cause great concern for the following reasons:

1. most legacy banks, lenders, and servicers are not set-up to comply with such requests/demands,
2. most may not be able to afford the implementation of same, and
3. most could not immediately comply with such demands over the next 30 days or in the near future.

Very few, and certainly *select* servicers and legacy banks only may be able to implement such requests, substantially, within the time frame demanded.

Recent Treasury Draft HAMP Servicing Guidelines: Subjective vs. Objective Standards?

The Draft Servicing Guidelines issued by Treasury on or about July 20, 2009, is a request that servicers adhere to practices and principals subject to their contractual and fiduciary duties to investors, master servicers, and mortgage insurers. It appears that the sanctity of contract will be respected. However, recent laws, regulations, and guidelines may also subject the servicer to compliance with the duties owed to 'taxpayers' and 'borrowers.'

Generally, the draft guidelines layout 11 categories as follows:

1. Outreach and Communications via the internet, along with Making Home Affordable (MHA) event participation as sponsors or co-sponsors, dedicated intake lines, complaint resolution processes, and federal agency complaint escalation. Complaint resolution is to be separate from loss mitigation and all calls and requests are to be tracked to resolution with reporting logs (much like the software industry does with open ticket requests for help).
2. Staffing Levels, Training, and Coordination. Servicers are to maintain sufficient levels of staffing and resources for inbound calls and loss mitigation requests. The draft requires *reporting metrics* identifying the number of customer service representatives per case – in writing. All staff must comply with MHA training provided by Freddie or Fannie. A MHA desk reference must be available to staff. Also internal coordination must ensure that borrowers being considered for HAMP are NOT SENT TO FORECLOSURE (see points 5 and 6 below).

i. As a best practice a ***single-point-of-contact*** should be available to the borrower, and to leverage house staff, servicers should ***outsource*** to special servicers

3. Delinquent Borrower Outreach. A key responsibility of the servicers is to reach the borrowers to encourage participation in the MHA programs. The draft sets the minimum requirements as:
   i. Evaluation of Delinquent Borrowers – ***within 30 days*** of execution of the Servicer Participation Agreement and monthly thereafter, *identify all borrowers who meet the basic HAMP eligibility criteria* (i.e.: owner/occupant, originated before 1/1/09, loan amount within GSE limits, and [borrower at least 60 days delinquent]. Servicers must send solicitation letters similar to those found at www.hmpadmin.com.
   ii. Written Contact Attempts – by sending a *minimum of 3 letters* (email, courier or by hand).
   iii. Telephone Contact Attempts – by initiating at *least 4 telephone calls* per borrower
      1. Best Practice requires servicer to implement a ***face-to-face*** plan with staff, third party vendors, or HUD counselors.

4. Contact with Borrowers in Imminent Default. Until the servicers and Treasury can reach a definition of Imminent Default (not yet delinquent but are in imminent risk of default) and appropriate procedures, servicers are required to:
      1. Maintain a written policy of its determination and documentation of Imminent Default, and provide same to Freddie Mac in its role as Compliance Agent,
      2. Staff adequately to provide borrowers the same service as those in HAMP default,
      3. Provide borrowers a written explanation of its decision that Borrower is <u>not</u> in Imminent Default, and provide a recommendation of *Refinance* or other loss mitigation alternatives (to foreclosure), and counseling to reduce ***back-end ratio debt***.
      4. Best Practice – Establish a ***Imminent Default Team***

5. Metrics for Borrower Response. Acknowledge in *writing within 5 business days* a HAMP request or application of borrower or his/her representative; provide a HAMP process description with required documentation with any 3rd party approvals needed, and state that FORECLOSURE PROCEEDINGS WILL OR WILL NOT BE INITIATED OR CONTINED during the evaluation and trial modification period, and if continued, how it will impact the HAMP decision; within 10 days send borrower the trial period plan agreement if based on verbal income [~~and expense?~~] and within 30 days if based upon full documentation of income and expense;

    i. Best Practice – Standardized HAMP application and document package; Online MHA application and document upload site.

6. **Foreclosure Forbearance.** Generally, ***Supplemental Directive – 09-01*** requires servicers to forbear on foreclosure until borrower has been evaluated for MHA (HAMP modification). Servicers are required to have written policies for *at least a 30 day forbearance timeframe* during the full documentation period of the borrower under a HAMP evaluation. The 30 day period is measured from the time the servicer initiated contact with borrower and extensions for partial contact and partial documentation. Servicers must give CLEAR WRITTEN NOTICE to borrowers of deadlines for delivery of documents, payments and executed trial period plans before foreclosure forbearance will expire.
    i. **Foreclosure Forbearance Best Practice –** Servicers are encouraged NOT to initial any new foreclosures until a borrower has been evaluated for HAMP.

7. Fair Lending Data Collection. Race and ethnicity data collection is encouraged to be collected on the Hardship Affidavit including use of Scripts which servicers will provide to encourage voluntary data collection. If borrower does not voluntarily provide same, *servicer will complete the fair lending questions **based on visual observation or verbal communication** with the borrower*.

8. Coordination with HUD-Certified Housing Counseling Agencies. Servicers must use HUD counselors, cooperate with counselors and provide HAMP workout details, provide dedicated access and establish toll free hotlines, fax and subject to reasonable confidentiality encryption systems, email as direct ports of entry available to all HUD-certified housing counseling agencies and their counselors. Servicers will appoint a counseling agency ombudsman, and accept standard application forms as required for HAMP without requiring counselors or borrowers to complete servicer proprietary forms.
    i. Best Practice – servicer will provide minimum HUD compensation to counselors who refer qualified borrowers and to counselors who assist borrowers.

9. Trial Period and Final Modification Disclosures. The servicer shall send to borrower, along with the Trial Plan Offer a disclosure detailing the factors used to reach the trial offer decision and explaining some of the terms of the trial but at a minimum:
    a. Borrower and co-borrower's combined gross income,
    b. Current monthly mortgage payment
    c. Front and back end debt to income ratios
    d. Current unpaid principal balance
    e. Itemization of any amounts to be capitalized
    f. Proposed principal balance
    g. Current scheduled interest rate
    h. Proposed modified interest rate (first five years)

i. Interest rate cap
j. Change in modified payment
k. Original and extended term
l. The amount and repayment terms for any principal forbearance
m. Explanation of how trial and modified payments will be reported to credit reporting agencies
n. Notification that the borrower's failure to make trial payments will disqualify them from further consideration for HAMP.
o. If the terms of the final modification differ in any significant way from the trial period plan, the servicer will provide written explanation of the changed terms.

10. Rejection or Trial Plan Failure. Servicer shall send all borrowers who submit an application, ***written notice of specific reasons for ineligibility*** for HAMP or for failure under the trial period plan including explanations for: (a) No Imminent Default, (b) HAMP Ineligibility, (c) Investor Refusal to Participate or PSA Restrictions, (d) Failed NPV Test), (e) Failed Documentation by Borrower, (f) Rejection by Borrower, (g) Failed Borrower Trial Period Plan. Servicers will also evaluate borrowers who are ineligible or who fail a HAMP trial modification for other loss mitigation options including a short sale, deed in lieu, ***all before taking any further foreclosure action***.
11. Subordination and Compromise of Jr. Liens. Participants servicing junior liens will re-subordinate their loans to facilitate a HARP refinance or HAMP modification. Participants servicing junior liens should accept a discounted payoff to facilitate a short sale or deed in lieu consistent with MHA guidelines or a (short) refinance under H4H.

Many definitions and concepts remain unanswered or ambiguous, but the policy direction is clear. For example, will servicers have to pay back incentives for non-compliance, or will servicers have enhanced litigation risks and exposure?

Consumer Perceptions Will Become Reality if Major Changes Are Not Made!

Consumers and consumer groups are complaining that:

1. servicers are demanding payments before reviewing modification requests
2. denying modifications if the borrower is not yet in default
3. initiating foreclosures before reviewing or completing the modification process [DS News July 28, 2009]
4. they are passed from one representative to another
5. their documents are lost over and over again, and they are required to resend same over and over again
6. the representatives do not have any authority to effectively assist
7. during the loss mitigation process or evaluation, foreclosure continues
8. the process takes too long; they are placed on 'hold' and have to repeat the same information over and over again; circumstances change during the processing requiring varying the solution, or other options

The recent laws, regulations, and HAMP Guidelines generally prohibit charging a fee for the modification, allow for approval of borrowers not yet in default, and allow for a forbearance of the foreclosure sale during the review process. Moreover, systems should red flag and preclude foreclosure initiation or completion during the HAMP processing. Otherwise program non-compliance and litigation risks will be unnecessarily enhanced.

The government sent its last and final warning shot over the bow of the lenders/servicers. The administration will begin publicly reporting HAMP results by servicer on Aug. 4, including the number of trial modifications, the number of final modifications and the long-term success of the program. Treasury will also develop metrics for rate or completion or turnaround, the accuracy of information provided to borrowers and document handling. This information could have a direct reflection on the positive or negative headlines or branding of each legacy bank, lender, or servicer.

What's Needed: The Solution?

A new framework is needed; one that incorporates a computerized and highly efficient workflow model that can deliver a much faster rate of loss mitigation or modification processing from start to finish, including intake, documentation, signing, and delivery, while providing safe-harbor litigation or liability protections for all industry participants as well as the borrower. Such a solution is not readily compatible with servicer's solution structure as we know it, but a new solutions framework can be implemented on a central model basis that could fulfill the HAMP programs objectives.

Who can deliver and or execute such a solution? Legacy banks, lenders, and servicers will probably have to outsource or cooperate with third party solution providers including special servicers, HUD certified debt counseling groups, and new specialized broker and attorney groups.

Misaligned incentives, PSA and investor conflicts remain unresolved and must be re-structured. New incentivized PSA agreements must be structured to align incentives and avoid conflicts, litigation and liability risks, on a per servicer-function basis. Meanwhile, since the government has tried and failed to supply objective safe-harbors that can protect all participants to the mortgage transaction workout – from litigation and liability risks - the new solutions framework must offer an opt-in solution to reach a voluntary safe-harbor, so all participants to the workout are motivated to participate – en masse.

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