

Treasury Introduces Revised Model Documentation and Updates the Underwriting Requirements for the Home Affordable Modification Program; Obama Administration Releases New Data On HAMP Implementation

Treasury Introduces Revised Model Documentation and Updates the Underwriting Requirements for HAMP

On October 8, 2009, the U.S. Department of the Treasury (the “Treasury”) published Supplemental Directive 09-07 titled “Home Affordable Modification Program — Streamlined Borrower Evaluation Process” (the “Directive”), the latest in a series of supplemental directives¹ that provide additional guidance and clarification to servicers for the adoption and implementation of the Home Affordable Modification Program (“HAMP”), a national mortgage loan modification program aimed at helping homeowners that are either in default or at imminent risk of default, by reducing their monthly payments to sustainable levels. Under HAMP, participating servicers² apply a uniform loan modification process and receive certain monetary incentives to provide eligible borrowers with affordable monthly payments

¹ Hyperlinks to each of the Treasury’s Supplemental Directives may be found at <https://www.hmpadmin.com/portal/programs/directives.html>. Supplemental Directive 09-01 provides a detailed description of the eligibility, underwriting and servicing requirements of HAMP. Supplemental Directive 09-02 addresses the requirement that servicers must collect and report to Fannie Mae, in its capacity as an agent of the United States, data on race, ethnicity and sex of borrowers involved in potential loan modifications under HAMP, in order to monitor compliance with the Fair Housing Act and other fair lending and consumer protection laws. Supplemental Directive 09-03 provides additional guidance with respect to the commencement of the trial period, loan set-up and associated reporting requirements under HAMP. Supplemental Directive 09-04 introduces the Home Price Decline Protection incentives, an initiative designed to encourage modification of mortgages in markets hit hardest by home price declines. Supplemental Directive 09-05 introduces the Second Lien Modification Program, a program designed to work in tandem with HAMP. Supplemental Directive 09-06 provides further guidance with respect to a portion of the data requirements in Exhibit D of Supplemental Directive 09-01 that must be collected and reported to Fannie Mae in its capacity as HAMP program administrator.

² All Fannie Mae (a “GSE”) and Freddie Mac (also a “GSE”, and, together with Fannie Mae, the “GSEs”) approved servicers must participate in the program for all eligible GSE portfolio loans and MBS pool mortgage loans guaranteed by either of the GSEs. For mortgage loans not owned or guaranteed by the GSEs (such as mortgages, “Non-GSE Mortgages”), the servicer must execute a servicer participation agreement and related documents (a “Servicer Participation Agreement”) with Fannie Mae in its capacity as financial agent for the United States on or before December 31, 2009. As detailed in the Servicer Participation Agreement, participating servicers are required to consider all eligible mortgage loans unless prohibited by the rules of the applicable pooling and servicing agreements and/or other investor servicing agreements. Participating servicers are required to use reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties in order to carry out any modification under HAMP.

for such borrowers' first-lien mortgages.³ The Directive represents the Treasury's further efforts to streamline program documentation requirements and standardize the evaluation process that servicers use to determine if a borrower is eligible for a mortgage modification under HAMP.

The Directive provides that, effective immediately, a borrower who wants to be considered for HAMP may complete and submit to its servicer a new, standardized form of MHA Request for Modification and Affidavit (an "RMA"), which includes a new borrower financial information section and is intended to replace in their entirety the current Hardship Affidavit and SIGTARP fraud notice, as well as portions of the current Home Affordable Modification Trial Period Plan. Servicers may require use of the RMA by all borrowers requesting consideration under HAMP, or may continue to use other proprietary financial information forms that are substantially similar in content to the RMA. When provided by or on behalf of a borrower, however, the RMA must be accepted by servicers in lieu of any servicer specific form(s). When the RMA is not used, servicers must obtain an executed MHA Hardship Affidavit.

In addition, the Directive replaces the current cover letters and current Trial Period Plan with revised and updated Trial Period Notices ("TPP Notices"), which describe the terms and conditions of the trial period plan and must be sent to borrowers as described in the Directive. Although servicers should retain a copy of the TPP Notice in a borrower's file and note the date that it was sent to a borrower, borrowers are not required to sign or return the TPP Notice. Instead, timely receipt of the first payment under the TPP Notice is evidence of the borrower's acceptance of the trial period plan and its terms and conditions. A borrower's satisfaction of the trial period plan terms and conditions, and the making of all required payments during the trial period, are prerequisites to obtaining a loan modification under HAMP.

Copies of the new RMA and TPP Notices, as well as an updated version of the MHA Hardship Affidavit (including the SIGTARP notice), are attached to the Directive. In addition, all documents and forms described in the Directive are posted on www.HMPAdmin.com. The forms outlined in the Directive, except for the RMA (the use of which is discussed above), may be utilized immediately but must be used by March 1, 2010.

The Directive also provides for updated and simplified documentation and verification requirements that are to replace in its entirety the guidance in Supplemental Directive 09-01 under the heading "Underwriting — Verifying Borrower Income and Occupancy Status." The changes are effective immediately for loans that are currently in a HAMP trial period where income has yet to be verified, or for loans to be evaluated on or after the date of the Directive.

The last significant change addressed in the Directive is the following standardization of borrower response timeframes, which are effective for loans that begin a trial period after the date of the Directive:

- within 10 business days following receipt of borrower financial information, the servicer must acknowledge the borrower's request for HAMP participation in the manner specified in the Directive; and

³ On August 13, 2009, the Treasury published Supplemental Directive 09-05 to introduce the Second Lien Modification Program ("2MP"), a program designed to work in tandem with HAMP. Under 2MP, when a borrower's first lien is modified under HAMP and the servicer of the second lien is a 2MP participant, that servicer must offer to either modify the borrower's second lien according to a defined protocol, or to accept a lump sum payment from the Treasury in exchange for a full extinguishment of the second lien.

- within 30 calendar days following the servicer's receipt of a completed RMA (or its equivalent), Form 4506-T and all required income and other information, the servicer must complete its evaluation of borrower eligibility and notify the borrower of its determination as provided in the Directive.

Obama Administration Releases New Data On HAMP Implementation

On October 8, 2009, the Treasury and the U.S. Department of Housing and Urban Development ("HUD") announced that more than 500,000 trial loan modifications are currently in process under HAMP, almost one month ahead of the November 1 benchmark set earlier this year. Also on October 8, 2009, senior Treasury and HUD officials held the next in a series of meetings with servicers to discuss improved servicing efficiency and responsiveness to borrowers during the modification process as part of a continued effort to improve program performance.

In addition, according to the most recent monthly MHA Program Report,⁴ which tracks servicer performance through the month ending September 30, 2009:

- approximately 85% of eligible 60-plus day delinquent mortgage debt outstanding is covered by HAMP participating servicers;
- 63 servicers have signed servicer participation agreements to modify loans under HAMP;⁵ and
- approximately 2,300 participants service loans that are owned or guaranteed by Fannie Mae or Freddie Mac and, by reason thereof, automatically participate in HAMP.

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⁴ Available at <http://www.treas.gov/press/releases/docs/MHA%20Public%20100809%20Final.pdf>.

⁵ These participants service loans that are (a) owned or guaranteed by Fannie Mae or Freddie Mac, (b) held in portfolio, or (c) serviced on behalf of other investors.