



Regulatory Practice Letter

ADVISORY

RPL Number 09-29

Financial Stability Plan: Increased Focus on Loan Modifications under the Making Home Affordable Program

Executive Summary

On July 28, representatives of the Department of the Treasury ("Treasury") and the Federal Housing Administration's ("FHA") Department of Housing and Urban Development ("HUD") met with servicers participating in the Home Affordable Modification Program ("HAMP") under the Administration's Making Home Affordable ("MHA") program for the purpose of discussing ways to improve the MHA loan modification program and to accelerate its implementation. At the meeting, Treasury and HUD representatives outlined steps they plan to take to improve the program's performance, including publicly releasing results based on servicer-specific information, modifying operational metrics such as average wait times for borrower inquiries, and requiring audit-type oversight of declined applications. The actions of Treasury and HUD come amidst calls from Congress for the agencies to use their authority to address a growing foreclosure problem and ensure timely and effective implementation of loan modification programs.

Background

The Administration announced its Financial Stability Plan ("FSP") on February 10, 2009. One component of the FSP was an initiative to address the housing crisis through loan modification and foreclosure prevention programs funded with monies from the Troubled Assets Relief Program ("TARP"). Guidelines for this program, the MHA program, were released on March 4 and became immediately effective. They are expected to become standard industry practice for "pursuing affordable and sustainable mortgage modifications." (Please see RPL 09-12)

In press statements, the Treasury anticipated the MHA's HAMP would help as many as 4 million homeowners before it expires in 2012. On July 28, Treasury Secretary Timothy Geithner said that more than 200,000 trial loan modifications were underway, and he set a goal for servicers to bring this number to 500,000 by November 1.

Throughout June and July, the Congress has also focused considerable attention on the implementation of the

Subject:

Increased focus on loan modifications under the Home Affordable Mortgage Program of the Administration's Making Home Affordable program

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MHA HAMP with hearings being conducted in the both the House and the Senate, numerous letters being sent to the Administration encouraging increased oversight and accountability, and the release of a Report to Congressional Committees by the General Accountability Office (GAO-09-837, *Troubled Asset Relief Program, Treasury Actions Needed to Make Home Affordable Modification Program More Transparent and Accountable*).

Description

Treasury Actions

The Administration identified three steps aimed to improve effectiveness and efficiency of the MHA HAMP.

- The Treasury will publish monthly servicer-specific performance data on loan modification efforts including the:
 - Number of trial modification offers extended to eligible borrowers;
 - Number of trial plans that are underway;
 - Number of final modifications; and
 - Long term success of those modifications.
- In cooperation with servicers, the Administration will set and adopt new operational metrics to better measure the performance of the program, including:
 - Average wait time for inbound borrower inquiries;
 - The completeness and accuracy of information related to applications;
 - Document handling; and
 - Response time for completed applications.
- Freddie Mac will develop a "second review" process to minimize the likelihood that borrower

applications are overlooked or inadvertently denied a modification. Freddie Mac will be responsible for auditing a sample of modification applications that have been declined.

In addition, the Treasury announced on July 31 that it would begin providing additional incentive payments for modifications on properties located in areas where home prices have recently declined as part of the Home Price Decline Protection ("HPDP") program, a component of the HAMP. Loan modifications started after September 1, 2009 would be eligible for the new payments.

Servicer-Specific Performance Data

The Treasury published the first MHA Servicer Performance Report on August 4. Results indicated that:

- As of July 31, 2009, more than 400,000 loan modification offers have been extended and more than 230,000 trial modifications have been started;
- No loans have passed the 90-day trial period into a completed modification;
- 100 percent of all trial modifications have resulted in lower payments for the borrower;
- Servicer performance is "uneven";
- Based on a measure of "trial modification starts" as a percentage of "HAMP eligible loans", servicers show substantial variation in their pace of modifications, generally ranging from zero to 25 percent (although some servicers with lower "eligible loans" have higher percentages).

Congressional Actions

On June 24, twenty senators including Chris Dodd, Chairman of the Senate Committee on Banking, Housing and Urban Affairs, sent a letter to Treasury Secretary Geithner urging him to develop and implement a strategy requiring banks and loan servicers participating in the Administration's foreclosure prevention programs to effectively respond to qualified homeowners seeking assistance. They expressed concerns with reports that homeowners were waiting an average of 45 to 60 days to receive responses to their inquiries for modification assistance, and specifically asked for information about:

- Strategies to encourage servicer participation;
- Criteria to evaluate servicer performance;
- Strategies to meet the needs of borrowers that have not yet become delinquent; and
- Legislative tools needed to encourage more effective servicer responses to borrower inquiries.

Following a July 16 hearing by the Senate Committee on Banking, Housing and Urban Affairs, entitled "*Preserving Homeownership: Progress Needed to Prevent Foreclosures*," Committee Chairman Chris Dodd sent a letter to Treasury Secretary Geithner and HUD Secretary Donovan requesting they look into one witness' claims that some servicers participating the MHA HAMP are operating outside the program guidelines by:

- Demanding upfront payments in advance of review or trial modification;
- Requiring homeowners to waive all claims and defenses in order to apply for a review;

- Denying loan modification reviews to homeowners who are not yet in default; and
- Initiating foreclosures and selling homes while HAMP reviews are still pending.

On July 29, Carolyn Maloney, Chair of the Joint Economic Committee also sent a letter to Treasury Secretary Geithner and HUD Secretary Donovan following a hearing in which witnesses stated that servicers have “incentives to implement unsustainable repayment plans to depress or defer the recognition of losses in the loan pool” and should be “required to report information about the success of the loan modification process as well as their own overall performance.”

Also on July 29, Barney Frank, Chairman of the House Committee on Financial Services released a statement warning that if the progress with loan modifications the Administration foresees is not “soon evident,” legislative measures, such as a bankruptcy provision for personal residences, would be back on the congressional agenda. Earlier this year a bill to permit bankruptcy judges to modify mortgage terms passed the House but failed in the Senate.

General Accountability Reports

The Comptroller General of the United States conducts ongoing oversight of the activities and performance of the TARP through the GAO and reports to Congress every 60 days. The GAO released a report on July 23, GAO-09-837, *Troubled Asset Relief Program, Treasury Actions Needed to Make Home Affordable Modification Program More Transparent and Accountable.*, which included recommendations,

among others, for Treasury to finalize a comprehensive system of internal control over the HAMP; and systematically assess a servicer’s capacity to meet the HAMP requirements during program admission.

GAO also released a report on July 28, GAO-09-848R, *Characteristics and Performance of Nonprime Mortgages*, which highlights the potential risk for “hundreds of thousands of additional nonprime borrowers” to lose their homes in the near future based on the current number of seriously delinquent loans.

KPMG Commentary

Over the course of the summer the Administration has released numerous legislative proposals to implement its recommendations for regulatory reform and financial stability. As Congress considers these potentially new steps, it is natural to look back to measure the success of previously implemented plans. The fact that the MHA HAMP is not yet performing as the Administration expected has been a cause for concern, but the Administration’s initiative to improve the accountability of the program and its response to Congressional pressure are indicators of its commitment to show quick results and make necessary adjustments to a program that was very difficult for servicers to put into operation and that resulted in fewer borrowers qualifying for the program than initially expected.

Servicers will be directly affected by these actions in that:

- Servicers and investors will continue to be under regulatory pressure to either participate in the

loan modification program or make “HAMP-like” loan modifications;

- Servicers whose data will continue to be made public may begin to accelerate their processes, including changing to reliance on stated income, assets and expenses versus fully documented procedures prior to trial modification and outsourcing elements of the processes, such as call center or audit/testing functions.
- Mortgage service entities should begin or continue both waterfall and transactional testing, as well as “second look” reviews of their denied modifications to ensure not only that they are following the requirements of the program but also identifying programmatic and/or procedural impediments.

While mortgage service providers are directly experiencing increased requirements with respect to staffing, training, production, reporting and monitoring, the impacts will also likely be felt by lenders, investors and market participants as all avenues are explored to offer borrowers affordable mortgage payments and to stem the rising tide of foreclosures.

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