

Announcement 09-36

December 14, 2009

Amends These Guides: Servicing

Updates to the Home Affordable Modification Program – Borrower Notices and Requirements for Tax Returns, Income Documentation, Title Endorsement and Recordation

Introduction

This Announcement describes the following updates to the Home Affordable Modification Program (HAMP):

- Guidance to Fannie Mae-approved servicers related to the format, content, and timing of notices that must be provided to borrowers requesting consideration for a modification under HAMP
- Changes to federal income tax return requirements for borrowers facing imminent default
- Alternative documentation requirements for other earned income
- Changes to title endorsement and recordation requirements based on capitalized amounts

Effective Date

Servicers are encouraged to adopt the policies concerning borrower notices immediately; however, servicers are required to implement them no later than January 1, 2010. The requirements for tax returns, income documentation, and title endorsement and recordation are effective immediately.

Borrower Notices - Evaluation for HAMP

A mortgage loan is evaluated for HAMP when one of the following events has occurred:

- A borrower has submitted a written request (either hardcopy or electronic submission) for consideration for a HAMP modification that includes, at a minimum, current borrower income and a reason for default or explanation of hardship, as applicable.
- A borrower has verbally provided sufficient financial and other data to allow the servicer to complete a Net Present Value (NPV) analysis.
- A borrower has been offered a trial period plan.

A servicer must send a written notice to every borrower that has been evaluated for HAMP but is not offered a trial period plan, is not offered a permanent HAMP modification, or is at risk of losing eligibility for HAMP because he or she has failed to provide required financial documentation. The notices must comply with all laws, rules, and regulations including but not limited to, the Equal Credit Opportunity Act, applicable to the transaction.

When a borrower is evaluated for HAMP and the borrower is not offered a trial period plan or official HAMP modification, servicers are required to provide data specified in Schedule IV of [Supplemental Directive 09-06](#) to Fannie Mae as Treasury's program administrator. The data reporting requirements in Schedule IV are designed to document the disposition of borrowers evaluated for HAMP.

Whenever a servicer is required to provide data specified in Schedule IV, the servicer must also send the appropriate Borrower Notice. With the exception of the Notice of Incomplete Information, all borrower notices must be mailed no later than 10 business days following the date of the servicer's determination that a trial period plan or official HAMP modification will not be offered. Borrower notices may be sent electronically only if the borrower has previously agreed to exchange correspondence relating to the modification with the servicer electronically.

Content of Notices

The content of the notice will vary depending on the information intended to be conveyed or the determination made by the servicer. All notices must be written in clear, non-technical language, with acronyms and industry terms such as "NPV" explained in a manner that is easily understandable. The explanation(s) should relate to one or more of the model clauses specified in Attachment 1 of this Announcement. Use of the model clauses is optional; however, they illustrate a level of specificity that is deemed to be in compliance with the requirements of this Announcement.

Notice of Non-Approval

For borrowers not approved for a HAMP modification, this notice must provide the primary reason or reasons for the non-approval. The notice must also describe other foreclosure prevention alternatives for which the borrower may be eligible, if any, including but not limited to other modification programs, preforeclosure sale, or deed-in-lieu of foreclosure, and identify the steps the borrower must take in order to be considered for those alternatives. If the servicer has already approved the borrower for another foreclosure prevention alternative, information necessary to participate in or complete the alternative should be included. The notice should be clear that the borrower was considered for but is not eligible for HAMP.

When the borrower is not approved for a HAMP modification because the mortgage loan is deemed NPV negative as outlined in Announcement 09-31, *Updates and Clarifications to the Home Affordable Modification Program*, the notice must include a list of certain input fields that are considered to reach the NPV result and a statement that the borrower may, within 30 calendar days of the date of the notice, request the date the NPV test was completed and the values used to populate the NPV input fields defined in Attachment 1. The purpose of providing this

information is to allow the borrower the opportunity to correct values that may have impacted the analysis of the borrower's eligibility.

If the borrower (or the borrower's authorized representative) requests the specific NPV values orally or in writing within 30 calendar days from the date of the notice, the servicer must provide them to the borrower within 10 calendar days of the request. If the mortgage loan is scheduled for foreclosure sale when the borrower requests the NPV values, the servicer may not complete the foreclosure sale until 30 calendar days after the servicer delivers the NPV values to the borrower. This will allow the borrower time to make a request to correct any values that may have been inaccurate.

Upon receipt of written evidence from the borrower indicating that one or more of the NPV values is inaccurate, the servicer must verify the evidence and, if accurate, must re-run the NPV calculation if the correction is material and is likely to change the NPV outcome. Values that are not affected by the correction do not need to be changed from the first NPV calculation. If the borrower identifies inaccuracies in the NPV values, the servicer must suspend the foreclosure sale until the inaccuracies are reconciled. Servicers are not required to provide the numeric NPV results or NPV input values not enumerated in Attachment 1.

Notice of Payment Default During the Trial Period Plan

The servicer must inform the borrower that he or she failed to make all the trial period payments by the end of the trial period plan and is in default. The notice must also describe other foreclosure prevention alternatives for which the borrower may be eligible, if any, including but not limited to other modification programs, preforeclosure sale, or deed-in-lieu of foreclosure and identify the steps the borrower must take in order to be considered for these alternatives. If the servicer has already approved the borrower for another foreclosure alternative, information necessary to participate in or complete the alternative should be included. The notice should be clear that the borrower was considered for but is not eligible for HAMP.

Notice of Mortgage Loan Pay-Off or Reinstatement

To confirm that the mortgage loan was paid off or reinstated, the servicer must provide notice, which includes the payoff or reinstatement date. If the mortgage loan was reinstated, this notice must include a statement that the borrower may contact the servicer to request reconsideration under HAMP if he or she experiences a subsequent financial hardship.

Notice of Withdrawal of Request or Non-Acceptance of Offer

The servicer must confirm that the borrower withdrew the request for consideration for a HAMP modification or did not accept either a trial period plan or a HAMP modification offer. Failure to make the first trial period payment in a timely manner is considered non-acceptance of the trial period plan.

Notice of Incomplete Information

A servicer must develop and implement outreach procedures to obtain financial information from borrowers who do not provide financial documentation in a timely manner. A list of all the financial documents needed to complete the HAMP evaluation and a date by which the information must be received before the borrower becomes ineligible for HAMP must be included in a Notice of Incomplete Information. If the borrower fails to provide all required verification documents by the date provided in the notice, the servicer will declare the borrower ineligible for a modification and send the borrower a Non-Approval Notice.

When a borrower is evaluated for a trial period plan based on verified income, the servicer must send the notice to the borrower no earlier than 30 days after the date of the first written request for documentation and not less than 30 days before the servicer discontinues its evaluation for HAMP. When used in conjunction with a trial period plan based on stated income, the servicer must send the notice not less than 30 calendar days prior to the expiration of a trial period plan.

As provided in Announcement 09-05R: *Reissuance of the Introduction of the Home Affordable Modification Program, HomeSaver Forbearance™, and New Workout Hierarchy*, a servicer that offers a trial period plan to a borrower based on stated income must obtain financial documentation in order to verify the borrower's eligibility for a HAMP modification. Servicers are reminded that the servicer may, in its discretion, consider the offer of a trial period plan to have expired at the end of 60 days if the borrower has not submitted the required documentation. The servicer must consider the trial period plan to have expired if the borrower has not submitted the required documentation by the end of the trial period.

All notices must also include the following:

- a toll-free number through which the borrower can reach a servicer representative capable of providing specific details about the contents of the borrower notice and reasons for a non-approval determination;
- the HOPE Hotline number (888-995-HOPE), with an explanation that the borrower can seek assistance at no charge from HUD-approved housing counselors and can request assistance in understanding the notice by asking for MHA HELP; and
- any information, disclosures, or notices required by the borrower's mortgage documents and applicable federal, state, and local law.

Tax Return Requirements for Borrowers Facing Imminent Default

For a borrower facing imminent default, Announcement 09-31 states that servicers must obtain the most recently filed federal income tax return in addition to the signed and completed Internal Revenue Service (IRS) *Request for Transcript of Tax Return* (Form 4506-T) or *Short Form Request for Individual Tax Return Transcript* (Form 4506T-EZ). Effective immediately, a borrower facing imminent default may elect to provide signed federal income tax returns, but is not required to do so. The borrower must provide a signed and completed Form 4506-T or Form 4506T-EZ that will allow the servicer (directly or through an authorized designee) to obtain the borrower's most recent federal income tax transcript from the IRS. As provided in

Announcement 09-31, the servicer must submit the borrower's Form 4506-T or Form 4506T-EZ to the IRS for processing unless the borrower provides a signed copy of his or her most recent federal income tax return. The servicer must also submit the borrower's Form 4506-T or Form 4506T-EZ to the IRS for processing when required by the Compliance Agent.

Servicers are reminded that Form 4506T-EZ is a permissible substitute for Form 4506-T only for borrowers who filed a Form 1040 series tax return on a calendar year basis. All other borrowers must provide Form 4506-T.

Other Earned Income Documentation Requirements

In Announcement 09-05R, servicers were instructed to obtain a letter from the employer stating that the borrower's income will in all probability continue to document additional other earned income such as bonuses, commissions, fees, housing allowances, tips, and overtime. Effective immediately, servicers can also verify such income with reliable third-party documentation describing the nature of the income (e.g., an employment contract or printouts documenting tip income).

Changes to Title Insurance and Recordation Requirements

In Announcements 09-05R and 09-31, servicers were instructed to obtain a title endorsement or a similar insurance product and record the executed agreement if the amount capitalized is greater than \$20,000 (aggregate capitalized amount of all modifications of the mortgage loan). Effective immediately, this requirement is modified to require a title endorsement or a similar insurance product and recordation of the executed agreement if the amount capitalized is greater than \$50,000 (aggregate capitalized amount of all modifications of the mortgage loan). All other title insurance and recordation requirements set forth in 09-05R, as modified by 09-31 are still in effect.

Servicers are reminded that they must ensure that all mortgage loans modified pursuant to HAMP retain their first lien position and are fully enforceable.

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Servicers should contact their Servicing Consultant, Portfolio Manager, or the National Servicing Organization's Servicer Support Center at 1-888-FANNIE5 (888-326-6435) with any questions regarding this Announcement.

Marianne E. Sullivan
Senior Vice President
Single-Family Chief Risk Officer

Attachment 1

Model Clauses for Borrower Notices

The model clauses in this exhibit provide sample language that may be used to communicate the status of a borrower's request for a Home Affordable Modification. Use of the model clauses is optional; however, they illustrate a level of specificity that is deemed to be in compliance with requirements of the program.

Non Approval Notice

1. **Ineligible Mortgage.** We are unable to offer you a Home Affordable Modification because your loan did not meet one or more of the basic eligibility criteria of the Home Affordable Modification Program.
 - You did not obtain your loan on or before January 1, 2009.
 - Your loan with us is not a first lien mortgage.
 - The current unpaid principal balance on your loan is higher than the program limit. (\$729,750 for a one unit property, \$934,200 for a two unit property, \$1,129,250 for a three unit property and \$1,403,400 for a four unit property).
2. **Ineligible Borrower.** We are unable to offer you a Home Affordable Modification because your current monthly housing expense, which includes the monthly principal and interest payment on your first lien mortgage loan plus property taxes, hazard insurance, and homeowner's dues (if any) is less than or equal to 31% of your gross monthly income (your income before taxes and other deductions) which, (*select one*) [you told us is \$_____] OR [we verified as \$_____]. Your housing expense must be greater than 31% of your gross monthly income to be eligible for a Home Affordable Modification. If you believe this verified income is incorrect, please contact us at the number provided below.
3. **Property Not Owner Occupied.** We are unable to offer you a Home Affordable Modification because you do not live in the property as your primary residence.
4. **Ineligible Property.** We are unable to offer a Home Affordable Modification because your property:
 - Is vacant
 - Has been condemned.
 - Has more than four dwelling units.

5. **Investor Guarantor Not Participating.** We are unable to offer you a Home Affordable Modification because:
- We service your loan on behalf of an investor or group of investors that has not given us the contractual authority to modify your loan under the Home Affordable Modification Program.
 - Your loan is insured by a private mortgage insurance company that has not approved a modification under the Home Affordable Modification Program.
 - Your loan is guaranteed and the guarantor has not approved a modification under the Home Affordable Modification Program.
6. **Bankruptcy Court Declined.** We are unable to offer you a Home Affordable Modification because you have filed for bankruptcy protection, and the proposed modified loan terms were not approved by the Bankruptcy Court. You may wish to contact your bankruptcy counsel or trustee to discuss this decision.
7. **Negative NPV.** The Home Affordable Modification Program requires a calculation of the net present value (NPV) of a modification using a formula developed by the Department of the Treasury. The NPV calculation requires us to input certain financial information about your income and your loan including the factors listed below. When combined with other data in the Treasury model, these inputs estimate the cash flow the investor (owner) of your loan is likely to receive if the loan is modified and the investor's cash flow if the loan is not modified. Based on the NPV results, the owner of your loan has not approved a modification.

If we receive a request from you within 30 calendar days from the date of this letter, we will provide you with the date the NPV calculation was completed and the input values noted below. If within 30 calendar days of receiving this information you provide us with evidence that any of these input values are inaccurate, and those inaccuracies are material, for example a significant difference in your gross monthly income or an inaccurate zip code, we will conduct a new NPV evaluation. While there is no guarantee that a new NPV evaluation will result in the owner of your loan approving a modification, we want to ensure that the NPV evaluation is based on accurate information.

Available NPV Inputs

- a. Unpaid balance on the original loan as of [Data Collection Date]
- b. Interest rate before modification as of [Data Collection Date].
- c. Months delinquent as of [Data Collection Date]
- d. Next ARM reset date (if applicable)
- e. Next ARM reset rate (if applicable)
- f. Principal and interest payment before modification
- g. Monthly insurance payment
- h. Monthly real estate taxes
- i. Monthly HOA fees (if applicable)
- j. Monthly gross income
- k. Borrower's Total Monthly Obligations

- l. Borrower FICO
- m. Co-borrower FICO (if applicable)
- n. Zip Code
- o. State

8. **Default Not Imminent.** We are unable to offer you a Home Affordable Modification because you are current on your mortgage loan and, after reviewing the financial information you provided us, we have determined that you are not at risk of default because:

- You have not documented a financial hardship that has reduced your income or increased your expenses, thereby impacting your ability to pay your mortgage as agreed.
- You have sufficient net income to pay your current mortgage payment.
- You have the ability to pay your current mortgage payment using cash reserves or other assets.

9. **Excessive Forbearance.** We are unable to offer you a Home Affordable Modification because we are unable to create an affordable payment equal to 31% of your reported monthly gross income without changing the terms of your loan beyond the requirements of the program.

10. **Previous HAMP Modification.** We are unable to offer you a Home Affordable Modification because your loan was previously modified under the Home Affordable Modification Program. The program does not allow more than one modification.

11. **Request Incomplete.** We are unable to offer you a Home Affordable Modification because you did not provide us with the documents we requested. A notice which listed the specific documents we needed and the time frame required to provide them was sent to you more than 30 days ago.

12. **Trial Plan Default.** We are unable to offer you a Home Affordable Modification because you did not make all of the required Trial Period Plan payments by the end of the trial period.

Loan Paid Off or Reinstated. We are not considering your request for a modification because:

- Your loan was paid in full on _____.
- Your loan was reinstated on _____ and you no longer appear to be in need of modification. If you feel that you are at risk of default, please contact us to discuss your eligibility and qualification for a Home Affordable Modification.

Offer Not Accepted by Borrower / Request Withdrawn. We are not considering your request for a modification because:

- After being offered a Trial Period Plan or Home Affordable Modification you notified us on _____ that you did not wish to accept the offer.
- After initially asking to be considered for a Home Affordable Modification you withdrew that request on _____.

Incomplete Information Notice. We cannot continue to review your request for a Home Affordable Modification because:

- You are currently in a Trial Period Plan, however you have not provided all of the documentation we previously requested. If we do not receive the required documents by [insert expiration date of Trial Period Plan, but no less than 30 days from the date of the letter] we will terminate your Trial Period Plan and may resume other means to collect any amounts due on your account. The documents we need are: [Insert list of required documents]
- You have requested consideration for a Trial Period Plan, however, you have not provided all of the documentation we previously requested. If we do not receive the required documents by [insert date no less than 30 days from the date of the letter], we will consider that you have withdrawn your request for a modification and may resume other means to collect any amounts due on your account. The documents we need are: [Insert list of required documents.]