

## **SUMMARY OF HAMP REGULATION CHANGES**

*PER U.S. TREASURY DEPT SUPPLEMENTAL DIRECTIVE 10-02 [effective June 1, 2010  
and PRIOR SUPPLEMENTAL DIRECTIVES*

### **HAMP Application Process – Non-Bankruptcy**

#### **Solicitations and Applications**

1. Servicer must use Reasonable Efforts ("RE") [SD 10-02, p. 2, l. 23-38, see also SD 10-01, p.1, l. 24-33 and p. 2, l. 1-28, 36-38] to solicit borrowers who are 60-days delinquent, except if verbal communications (or miscommunications) lead the servicer staff to believe that the borrower is not an Eligible Borrower ("EB") [SD 10-02, p. 2, l. 13-16, 39] or that 31% of his/her gross income is more than current monthly first mortgage, property taxes, insurance and homeowners association fees. [SD 10-02, p. 3, l. 35-38, p. 4, l. 1-2, see also SD 09-01]
2. If Right Party Contact ("RPC") [SD 10-02, p. 3, l. 1-3] is achieved, the borrower submits the Initial Package ("IP"). [SD 10-02, p. 3, l. 3-19]
3. If, after RPC, the borrower does not submit the IP, the servicer must resend the communication and may set a deadline for receiving the IP which must be at least 15 days. [SD 10-02, p. 3, l. 23-28]
4. If the servicer does not receive the IP within the IP deadline, the servicer may determine the borrower "to be ineligible for HAMP" [SD 10-02, p. 9, l. 7-21, see also SD 10-01, p. 4, l. 9-14]. [SD 10-02, p. 3, l. 31-34]

#### **Required Notices**

1. Incomplete Information Notices ("IIN") of either 30-day (the first notice) or 15-day (the second notice) are required. [SD 10-01, p. 3, l. 16-29] [SD 10-02, p. 3, l. 29-31]
2. Servicers must acknowledge receipt of the IP by written communication (or email, if the IP was sent by email) within 10 business days of receipt. [SD 10-02, p. 4, l. 4-11]
3. If the servicer denies the HAMP request, the servicer must provide a written Non-Approval Notice ("NAN") [SD 09-08, p. 1, l. 29-32, p. 2, l. 22-26, 30-39]
4. The borrower has 30 calendar days after the NAN date to contest the non-approval, unless the non-approval was based only on:
  - a. ineligible mortgage
  - b. ineligible property
  - c. borrower withdrew HAMP request [SD 09-08, p. 3, 37-41] or rejected offer
  - d. the loan was previously modified under HAMP

#### **Eligibility for Reconsideration**

1. A borrower who was denied a modification due to not meeting "minimum eligibility criteria" described in "HAMP Eligibility" of SD 09-01 [SD 09-01, p. 2, l. 10-41, p. 3, l. 1-6], may request reconsideration prior to the Foreclosure Deadline (FD) if there is a change of circumstances. [SD 10-02, p. 9, l. 7-10]
2. A borrower who was denied a modification may request reconsideration if the denial was due to:
  - a. a negative NPV result
  - b. excessive forbearance, or
  - c. other financial reason[SD 10-02 p. 9, l. 11-15]

3. A servicer's obligation to consider or reconsider a borrower for a modification is satisfied if the borrower:
  - a. received a HAMP offer and lost good standing, or
  - b. failed to provide the required documents by the end of the TPP[SD 10-02, p. 9, l. 16-21]

#### **Servicer Communication Capabilities**

1. Servicers must have written procedures; adequate staffing; toll-free numbers where borrower can reach a representative of the servicer capable of providing specific details about the HAMP modification process; and "a process through which borrowers may escalate disagreements to a supervisory level, where a separate review of the borrower's eligibility or qualifications can be performed" [SD 10-02, p. 4].

### **HAMP Application Process – Bankruptcy**

#### **No Discrimination Against Bankruptcy Debtors**

1. Chapter 7 or 13 debtors (in an active case) may not be denied consideration for HAMP if the borrower/debtor, the debtor's bankruptcy attorney or bankruptcy trustee submits a request to the servicer. Servicers are not required to proactively solicit bankruptcy debtors for HAMP modifications. [SD 10-02, p. 7, l. 27-30]

#### **Special Processes for Bankruptcy Debtors Applying for HAMP Modifications**

1. Servicers may, for Chapter 7 and 13 debtors in active cases, use the following for determining borrower eligibility, in lieu of the RMA and 4506-T:
  - a. copies of bankruptcy schedules
  - b. tax returns
  - c. A Hardship Affidavit or RMA[SD 10-02, p. 8, l. 16-25]
2. The borrower must provide updated evidence if the schedules are more than 90 days old when transmitted to the servicer. [SD 10-02, p. 8, l. 21-23]
3. When the HAMP data system has been upgraded to allow reporting, servicer may waive a TPP for a Chapter 13 debtor who is eligible for HAMP and offer a permanent modification if:
  - a. the borrower makes all post-petition mortgage payments and at least 3 of the payments are at least the amount of the proposed modified payment
  - b. the modification is approved by the bankruptcy court, if required and
  - c. a TPP waiver is permitted by investor guidelines[SD 10-02, p. 8, l. 26-36]

#### **Trial Period Plans and Bankruptcy**

1. Borrowers who file a bankruptcy while in a TPP, may not be denied a permanent modification because of the bankruptcy. [SD 10-02, p. 7, l. 31-32]
2. Servicers must work with the borrower to obtain court approvals in accordance with local court rules and procedures. Servicers should extend TPPs for at least two months, as necessary to obtain the necessary approvals. [SD 10-02, p. 7, l. 32-37 p. 8, l. 1-2]

3. If a Chapter 13 debtor is in a TPP and has made post-petition payments sufficient to cover the TPP payments, the servicer must not, based on the fact that the debtor has paid only the TPP amounts:
  - a. object to confirmation of the plan
  - b. move for relief from the automatic bankruptcy stay, or
  - c. move for dismissal of the Chapter 13 case[SD 10-02, p. 8, l. 3-8]

### **Chapter 7 Cases**

1. Chapter 7 debtors who did not reaffirm the mortgage are eligible for HAMP modifications. [SD 10-02, p. 8, l. 9-10]
2. A mandatory provision for discharged Chapter 7 debtors in the permanent modification agreement makes it clear that the debtor will not have personal liability for the debt. [SD 10-02, p. 8, l. 9-15]

### **Foreclosure Process**

#### **Prerequisites for Conducting a Foreclosure Sale**

1. A servicer may not conduct a foreclosure sale or refer any loan for foreclosure unless at least one of the following has occurred:
  - a. the borrower is evaluated for HAMP and determined to be ineligible
  - b. the borrower is offered a Trial Period Plan (“TPP”) by the servicer, but fails to make a TPP payment timely
  - c. the servicer has established RPC, followed up as required, but borrower has not provided the IP as requested
  - d. the servicer solicited the borrower and followed up as required, but has not been able to establish RPC
  - e. the borrower or co-borrower states s/he/they are not interested in a HAMP modification[SD 10-02, p. 5, l.1-15]
2. If the borrower “contacts the servicer prior to the Deadline [SD 10-02, p. 6, l. 10-11] (meaning that a foreclosure sale date has been set), the servicer must inform the borrower of the Deadline and any submission requirements.” [SD10-02, p. 6, l. 34-35]
3. If a borrower is in a TPP or being evaluated for HAMP and the servicer is also pursuing foreclosure, the servicer must provide written detailed notice (an example is attached as Exhibit B) to the borrower that must make clear that the house will not be sold in foreclosure while the evaluation or TPP is continuing. [SD 10-02, p. 6, l. 38-40 – p. 7, l. 1-7]

#### **Pending Foreclosures**

1. If foreclosure activity is already underway when the borrower executes and submits a TPP based upon verified income, during the TPP the servicer must “halt further activity and events in the foreclosure process ... including but not limited to refraining from scheduling a sale or causing a foreclosure judgment to be entered.” “The servicer shall not be in violation of this ... [SD 10-02, p. 5, l. 27 – p. 6, l. 7]
  - a. if the bankruptcy court in a bankruptcy case fails or refuses to halt some or all activities or events in the matter after the servicer has made reasonable efforts to move the court ... for a cessation of the activity or event

- b. the servicer must take some action to protect the interests of the ... investor ...; or
  - c. there is not sufficient time following the borrower's acceptance of the TPP for the servicer to halt the activity .., provided that in no event shall the servicer permit a sale to go forward.
  - d. the servicer must document all of the above.
2. If a foreclosure sale date has already been scheduled and the borrower submits a request for HAMP consideration (an IP is required) no later than midnight of the 7<sup>th</sup> *business* day prior to the foreclosure sale date (the "Foreclosure Deadline" or "Deadline"), the servicer must suspend the foreclosure sale as necessary to evaluate the borrower for HAMP, except if any of the following apply: [SD 10-02, p. 6, l. 8-35]
- a. request was received after the Deadline
  - b. borrower had received a HAMP modification (probably means a "permanent" modification, not a TPP), but lost "good standing"
  - c. borrower received a TPP offer, made the first payment, but did not timely make the subsequent payment(s)
  - d. borrower submitted an IP, was evaluated based upon it and was determined to be "ineligible under HAMP requirements"
  - e. if the borrower is in a bankruptcy and the bankruptcy court "fails or refuses to halt the sale after the servicer has made reasonable efforts to move the court ... for a cessation of the sale" – otherwise the servicer is "in violation" of the SD 10-02 instruction. [SD 10-02, p. 5, l. 34-37, p. 6, l. 1-7]

### **Required Notices**

1. Between 30 *calendar* days and 7 *business* days prior to the foreclosure sale date, the servicer may impose additional requirements for the IP. These additional requirements must be posted on the servicer's website and communicated to the borrower. [SD 10-02, p. 6, l. 24-33]
2. If the borrower "contacts the servicer prior to the Deadline (meaning that a foreclosure sale date has been set), the servicer must inform the borrower of the Deadline and any submission requirements," such as mentioned in #1 above. [SD10-02, p. 6, l. 34-35]
3. If a borrower is in a TPP or being evaluated for HAMP and the servicer is also pursuing foreclosure, the servicer must provide written detailed notice (an example is attached as Exhibit B) to the borrower that must make clear that the house will not be sold in foreclosure while the evaluation or TPP is continuing. [SD 10-02, p. 6, l. 38-40 – p. 7, l. 1-7]
4. If the borrower "contacts the servicer prior to the Deadline (meaning that a foreclosure sale date has been set), the servicer must inform the borrower of the Deadline and any submission requirements" such as the additional requirements mentioned in #1 above. [SD10-02, p. 6, l. 34-35]
5. If a borrower is in a TPP or being evaluated for HAMP and the servicer is also pursuing foreclosure, the servicer must provide written detailed notice (an example is attached as Exhibit B) to the borrower that must make clear that the house will not be sold in foreclosure while the evaluation or TPP is continuing. [SD 10-02, p. 6, l. 38-40 – p. 7, l. 1-7]

### **Required Procedures**

1. Servicers must develop, implement, and ensure compliance with written procedures to notify their foreclosure attorneys/trustees of borrowers' protection under these rules. [SD 10-02, p. 7, l. 8-16]
2. Servicers must develop and implement written procedures for loans potentially eligible for HAMP (and are subject to the Borrower Solicitation requirements) that require the servicer to provide the foreclosure attorney/trustee a written certification no earlier than seven business days

that at least one required circumstance exists (see SD 10-02, “Prohibition on Referral and Sale”) and all non-foreclosure alternatives have been exhausted. [SD 10-02, p. 7, l. 17-25]

### **Transfers of Servicing While Borrower is in Foreclosure**

1. A servicer may transfer a loan free and clear of all HAMP-related obligations if at least one of the following has occurred, an applicable response period has elapsed, and the borrower has not requested reconsideration:
  - a. the borrower is evaluated for HAMP and determined to be ineligible
  - b. the borrower is offered a TPP by the servicer, but fails to make a TPP payment timely
  - c. the servicer has established RPC, followed up as required, but borrower has not provided the IP as requested
  - d. the servicer solicited the borrower and followed up as required, but has not been able to establish RPC
  - e. the borrower or co-borrower states s/he/they are not interested in a HAMP modification [SD 10-02, p. 9, l. 22-31, p. 5, l. 1-15]

### **Investor Participation**

1. Within 90 days of signing the Servicer Participation Agreement (“SPA”), the servicer must review all servicing agreements and its determine investor participation in HAMP. [SD 10-02, p. 9, l. 33-34]
2. Within 30 days of identifying an investor as a non-participant, the servicer must write to the investor at least once, inviting its participation. [SD 10-02, p. 9, l. 33-36]
3. Other notifications to Fannie Mae are required. [SD 10-02 p. 10, l. 1-9]

### **Definitions**

#### **BN (Borrower Notice):**

Written notification from the servicer informing the borrower that the borrower has been evaluated for HAMP, but one of the following has occurred:

1. The servicer is not offering a Trial Period Plan
2. The servicer is not offering an official HAMP modification
3. The borrower is at risk for “losing eligibility” (becoming ineligible) for HAMP because they have failed to provide required financial documentation

#### **EB (Eligible Borrower):**

A borrower is eligible for HAMP if he or she meets the following basic criteria for consideration under HAMP [SD 10-02, p. 2, l. 13-15]:

1. The property is one-to-four unit residential property,
2. The loan under consideration originated on or before January 1, 2009
3. The unpaid principal balance of the loan under consideration does not exceed \$729,750
4. The loan under consideration has not been previously modified under HAMP

#### **FA (Foreclosure Attorney):**

The servicer’s own attorney, who takes the necessary action to foreclose on the property.

FD (Foreclosure Deadline/Deadline):

Midnight on the 7th *business* day prior to the foreclosure sale date – it is critical in determining the following deadlines and periods:

1. Any requests for a HAMP modification made by the borrower after the FD will not justify postponement or cancellation of the upcoming foreclosure sale
2. The servicer must provide written certification to their foreclosure attorneys stating that “(i) one of the five circumstances under the “Prohibition on Referral and Sale” section” of SD 10-02 “exists, and (ii) all other available loss mitigation alternatives have been exhausted and a non-foreclosure outcome could not be reached.” The five circumstances are as follows:
  - a. The borrower is evaluated for HAMP and is determined to be ineligible for the program, or
  - b. The borrower is offered a TPP, but fails to make a trial period payment by the last day of the month in which such payment is due; or
  - c. The servicer has established RPC, has sent two written requests asking the borrower to supply required information in accordance with SD 10-02 and has otherwise satisfied the RE solicitation standard, and the borrower failed to respond by the dates indicated in those requests; or
  - d. The servicer has satisfied the RE solicitation standard without establishing RPC; or
  - e. The borrower or co-borrower states he or she is not interested in pursuing a HAMP modification and such statement is reflected by the servicer in their servicing system

IIN (Incomplete Information Notice):

If the servicer receives an incomplete Initial Package or needs additional documentation to verify the borrower’s eligibility and income, the servicer must send the borrower an Incomplete Information Notice that lists the additional required verification documents. The Incomplete Information Notice must include a specific date by which the documents must be received, which must be no less than 30 calendar days from the date of the Incomplete Information Notice. If the required documentation is not received after the 30 calendar days the servicer must send a second Incomplete Information Notice which must include a specific date by which the documents must be received, which must be no less than 15 calendar days from the date of the Incomplete Information Notice. [SD 10-01, p. 3, l. 16-29]

IP (Initial Packet/Initial Package):

A collection of documents required by the servicer before a borrower can be evaluated for HAMP. The servicer may solicit the IP from the borrower or the borrower may submit the IP without prior solicitation from the servicer. The following documents are required to make a complete IP:

1. Proof of Income, e.g., paystubs, etc.
2. Request for Modification and Affidavit (RMA) (or other proprietary financial information form substantially similar in content to the RMA and, if necessary, a Hardship Affidavit); and
3. IRS Form 4506T-EZ (or 4506T)

NAN (Non-Approval Notice):

[SD 09-08, p. 1, l. 29-32, p. 2, l. 22-26, 30-39]

NPV (Net Present Value):

The result of a cost-benefit calculation performed by the servicer in order to determine if a HAMP modification will be offered to the borrower. The amount the borrower will likely be able to pay over the course of the HAMP modified loan is weighed against the profit of an immediate foreclosure sale. This calculation includes many variables selected by the servicer, some of which are not public, such as the re-default rate. If a servicer denies a modification due to a negative NPV result, the borrower can object to the denial within 30 calendar days of the Non-Approval Notice [SD 09-08, p. 3, l. 1-22]. A borrower who was denied a modification due to “negative NPV, excessive forbearance, or other financial reason, may

request reconsideration for HAMP at any time prior to the Deadline if s/he experiences a change in circumstance.” [SD 10-02, p 9, 10-15]

**RE (Reasonable Efforts):**

A series of tasks that the servicer must perform in an attempt to make RPC. A servicer is deemed to have made RE, if over a period of at least 30 calendar days:

1. the servicer makes a minimum of 4 telephone calls to the last known phone number of record, at different times of the day; and
2. the servicer sends 2 written notices to the last address of record by sending one letter via certified mail or via overnight delivery service with return receipt confirmation and one letter via regular mail.

**RMA ( Request for Modification and Affidavit):**

The uniform application form that includes a hardship affidavit. [SD 10-1, p. 1, 1. 28-30, p. 2, 1. 1-15]

**RPC (Right Party Communication/Contact):**

Successful efforts made by a servicer to communicate with the borrower or co-borrower about resolution of the resolution of the delinquency. [SD 10-02, p.3, 1. 1-3]

**SPA (Servicer Participation Agreement):**

The agreement between the servicer and Fannie Mae (acting as the representative of the U.S. government) that specifies the servicer’s obligations and benefits with regard to the HAMP program. The SPA requires the servicer to comply with the Supplemental Directives and FAQs published by the Treasury Department. A list of all current Servicer Participation Agreements can be found at:

[http://www.financialstability.gov/impact/contracts\\_list.htm](http://www.financialstability.gov/impact/contracts_list.htm)

**TPP (Trial Period Plan):**

Preliminary and temporary loan modification of the first mortgage with loan payments calculated to approximate the 31% of gross household income. TPP lasts a minimum of 3 months, but may be extended longer. If a borrower fails to make all TPP payments within the payments windows they lose “good standing” and may lose the ability to receive a HAMP loan modification in the future.

**Important Resources:**

1. Treasury Department Supplemental Directives & FAQs:  
<https://www.hmpadmin.com/portal/programs/directives.html>
2. Other notices regarding the HAMP program can be found on:  
[www.hmpadmin.com](http://www.hmpadmin.com)
3. HAMP Compliance office – call or email them and complain if the servicer is not following the regulations:  
1-866-939-4469 x 2  
[escalations@hmpadmin.com](mailto:escalations@hmpadmin.com)
4. Web portal (no charge) for submitting and tracking loan modification applications:  
Default Mitigation Management (DMM)  
1-800-481-1013  
[iroitburg@defaultmitigation.com](mailto:iroitburg@defaultmitigation.com)