FHA-HAMP Updates and GSE Flex Modifications

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Outline

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FHA Loss Mitigation Update

FHA-HAMP: What's New?

- FHA-HAMP applies to loans insured by the Federal Housing Administration. An FHA case number will be on the mortgage (top, right corner of the first page).

- FHA recently enacted changes to the program – the traditional FHA modification has been eliminated, and borrowers with pre-modification DTIs over 31% can be immediately evaluated for FHA-HAMP without first being considered for a forbearance plan.

- This is very unlikely to affect the outcome that homeowners receive, especially those more than a few months late. But, MFY has streamlined its FHA Waterfall Worksheet to reflect these changes.

FHA WATERFALL

FORMAL FORBEARANCE

Is front-end DTI at or less than 31%?

Current Payment	$ 1,971.33
Gross Monthly Income	$ 4,376.70
Ratio	45.04%
Result	**No**

Skip to FHA-HAMP

FHA-HAMP

Calculate FHA HAMP Target Payment

1. 31% of gross monthly income	$ 1,356.78
2. 80% of current PITIA	$ 1,577.06
3. 25% of gross monthly income	$ 1,094.18
4. Take greater of 2 & 3	$ 1,577.06
5. Take lesser of 1 & 4	$ 1,356.78
Target payment	**$ 1,356.78**

Calculate Maximum Partial Claim

1. 30% UPB at Default	$ 55,168.44
2. Less previous partial claims	$ -
Maximum Partial Claim	$ 55,168.44

Stand-Alone Partial Claim Analysis

All three of the following must be true

Is interest rate at or below market?	No
Is PITIA payment at or below target?	No
Does Max PC exceed Missed Payments + Fees?	No
Result	**No**

Continue to Modification with Partial Claim

Stand-Alone FHA HAMP Modification Analysis

Will modification result in PITIA at or below target?

Target payment	$ 1,356.78
Modification Payment	$ 1,799.36
Result	**No**

Continue to Modification with Partial Claim

Modification with Partial Claim

Is enough Partial Claim available to achieve target?

Partial Claim required to reach target payment	$ 87,349.61
Maximum Partial Claim	$ 55,168.44
Result	**No**

Modification with Payment Above Target

Is payment at or below 40% DTI?

Payment with maximum deferment	$ 1,519.83
Debt to income ratio	34.73%
Result	**Yes**

Borrower eligibile for FHA-HAMP modification.

FHA LOSS MITIGATION RESULTS

FHA-HAMP Modification with Partial Claim

Monthly PITIA	$ 1,519.83
Monthly P&I	$ 1,086.33
Interest Bearing Principal	$ 214,400.18
Partial Claim	$ 55,168.44
Interest Rate	4.500%
Remaining Term	360

[For questions or comments about this worksheet, please contact Joseph Rebella]

Flex Modifications: Terms and Conditions

Flex Modifications: What Loans?

- Only applies to Fannie Mae and Freddie Mac (GSEs) loans.

- The home does not need to be owner occupied, but it can’t be abandoned.

- Check if the loan is a Fannie Mae or Freddie Mac by using their lookup tools online:
  - Fannie: https://www.knowyouroptions.com/loanlookup
  - Freddie: https://ww3.freddiemac.com/loanlookup/

- Loans not held by a GSE or insured by FHA (or another government entity) have no unified loan modification program after the end of HAMP.

Flex Modifications: Implementation

- Prior to the end of 2016, both GSEs offered HAMP and Standard Modifications. Standard Modifications were a secondary option for when HAMP was not available.
- As of January 2017, new applications are not eligible for HAMP. Standard Modifications are being phased out in favor of Flex Modifications.
- Servicers decide when to switch from Standard to Flex. They can do it now or wait as long as October 1, 2017.
- Once servicers switch to Flex Modifications, they can no longer offer Standard Modifications. It does not remain a secondary option. The Flex Modification will be the only modification available.

Flex Modification Terms

- The Flex Modification Waterfall consists of four steps: (1) capitalization of arrears, (2) setting a fixed interest rate, (3) extending the term of the loan, and (4) forbearing principal.

- Capitalization of arrears should be familiar from other loan modification programs. Interest accrual, escrow advances and expenses are added to the principal balance to create a new, larger principal balance.

- The term is always extended to 480 months.

- The other calculations are a little more complicated…

Flex Modification: Interest Rate

- The resulting interest rate depends on post-modification mark to market loan to value ratio (“MTMLTV”) and the nature of the pre-modification interest rate.
- If the loan has a fixed interest rate, then the interest rate will not change if the MTMLTV is less than 80%; if the MTMLTV is more than 80%, then the interest rate will be set to the lesser of the contract rate and the GSE’s standard modification rate.
- If the loan has a step rate (HAMP mod) or adjustable rate, then the outcome depends on whether or not the current rate is at the final rate or the cap rate.
  - Loans that have reached the final or cap rate are treated in a manner identical to fixed rate loans.
  - Loans that have not reached the final or cap rate have the interest rate set the lesser of the GSE’s standard modification rate and the final or cap rate.
- Fannie Mae’s and Freddie Mac’s modification interest rates are available online. The worksheet has links built in.

Flex Modification: Principal Forbearance

Principal Forbearance Has Two Steps

The first step is forbear the lesser of:

(1) the amount necessary to create an amortizing loan to value ratio of 100%, and

(2) 30% of the capitalized unpaid principal balance.

Flex Modification: Additional Forbearance

The second step moves toward a target forbearance amount until the modification hits the loan's forbearance cap.

The target depends on the length of the mortgage default

- For loans more than 90 days in default, the target is the amount of forbearance to create a 20% reduction in principal and interest payment
- For loans less than 90 days in default, the target is the greater of: (1) the amount of forbearance needed to create a 40% housing expense to income ratio, and (2) the amount of forbearance to create a 20% reduction in principal and interest payment,

The forbearance cap prevents the amount of forbearance from exceeding either:

(1) the amount required to create an amortizing loan to value ratio of 80%; or

(2) 30% of unpaid principal balance.

Flex Modification: Affordability

- If the described waterfall steps reduce the monthly principal and interest payment, then the borrower is eligible for a modification.
- There is no income test for affordability (DTI). Income only matters if the borrower is less than 90 days delinquent, and even then, it only affects the amount of forbearance – it does not ever disqualify a borrower.

FANNIE MAE FLEX MODIFICATION

Cell Color Code

Requires Input	Linked Cell
Formula Cell	Result Cell

Gross Monthly Income	$ 4,175.00	

CURRENT MONTHLY PITIA AMOUNT

Principal & Interest	$ 1,798.65	
Taxes	$ 300.00	+
Insurance	$ 120.00	+
Association Fee	$ -	+
Monthly PITIA Payment	$ 2,218.65	
Remaining Term on Loan	249	months

STEP 1: CAPITALIZE THE ARREARAGE

Current Principal Balance	$ 272,904.37	
Total Eligible Arrears	$ 70,882.77	+
Unpaid Principal Balance	$ 343,787.14	

STEP 2: SET INTEREST RATE

Lesser of:

Fannie Mae Mod Rate	4.250%
Current Rate	6.000%
Result	4.250%

STEP 3: EXTEND THE TERM

New mortgage term	480	months

STEP 4: FORBEAR PRINCIPAL

Property value	$ 250,000.00
Capitalized UPB	$ 343,787.14
Post-Mod LTV	137.51%
Is post-mod LTV greater than 100%?	YES
Forbear the lesser of....	
(i) Post-mod LTV = 100%	
New UPB	$ 250,000.00
Forbearance	$ 93,787.14
(ii) 30% of capitalized UPB	
New UPB	$ 240,651.00
Forbearance	$ 103,136.14
Amount to forbear	$ 93,787.14
New interest-bearing principal balance	$ 250,000.00

STEP 5: TEST FOR FURTHER FORBEARANCE

Borrower Over 90 Days in Default. Target P&I Reduction Only

Target Amortizing UPB for 20% P&I Reduction	$ 331,839.05
Additional Forbearance Needed For Target	$ -
Forbearance Limits	
MTMLTV at 80%	$ 50,000.00
30% of Post-Mod UPB	$ 9,349.00
Additional Forbearance	$ -

MODIFICATION RESULTS

New P&I Payment	$ 1,084.05
New PITIA Payment	$ 1,504.05
New Principal Balance	$ 343,787.14
Principal Forbearance	$ 93,787.14
New Interest Rate	4.250%
New Term	480

Flex Modifications: Interactions with Other Laws

How the Flex Modification is Different

- The Flex Modification moves GSEs further away from the HAMP model of loan modification. Under HAMP, each term of the loan modification was tailored to the borrower's financial situation. The NPV of each loan modification was evaluated for benefit to the investor.
- Under the Flex Mod, if the borrower is over 90 days in default, the modification is completed without any reference to the borrower's financial situation. The GSEs do not even require submission of an application.
- This is probably meant to remove complications from the application process.
  - No doubt servicers are upset about spending money on underwriting mods.
  - Consumer advocates have been saying that servicers don't do a good job making the evaluation

Potential Impact of the Flex Modification Framework

- As of the 4th Quarter of 2016, Fannie Mae and Freddie Mac own or securitize roughly 44.7% of all 1-4 family residences (measured by dollar value).
- This means that servicers are seeing a significant portion of their portfolio move away from traditional underwriting and into an system that is much easier to automate and much cheaper to staff.
- Upon full implementation, the Flex Modification will be most common loan modification, and servicers may want to move to a similar model for the loans held by private label securities.

Flex Modifications and Regulation X

- The CFPB’s loss mitigation procedures rule (12 CFR § 1024.41) is based on HAMP.
  - Servicer duties come into effect upon the submission of a “loss mitigation application”.
  - There’s a set procedure for missing documents, submission of additional documents, time to review for loss mitigation, etc.

- But if the borrower’s information is completely unnecessary for the Flex Modification, what is the loss mitigation application?

Flex Modifications and Regulation X

- Loss Mitigation Application is a defined term under 12 CFR § 1024.31.
- “Loss mitigation application means an oral or written request for a loss mitigation option that is accompanied by any information required by a servicer for evaluation for a loss mitigation option.”
- The servicer does not need *any* borrower provided information to evaluate for a Flex Modification.

Flex Modifications and Regulation X

- Under the language of Regulation X, if a borrower calls the servicer and asks to be evaluated for a Flex Modification, that seems like a complete application!
- The servicer has to send a confirmatory letter (1024.41(b)(2)(i)(B)), pause the foreclosure if the request is made more than 37 days before a sale (1024.41(f)(2)), make a determination in 30 days (1024.41(c)(1)) and provide an appeal if the request is denied (1024.41(h)).
- Odds that any servicer will do this in response to a phone call?

Flex Modifications and Regulation X

- But, the Flex Modification is designed to be issued without an application. What about borrowers who are offered TPPs without making a request?
- “If a servicer receives a complete loss mitigation application 90 days or more before a foreclosure sale or during the period set forth in paragraph (f) of this section, a servicer shall permit a borrower to appeal the servicer's determination to deny a borrower's loss mitigation application for any trial or permanent loan modification program available to the borrower.” 1024.41(h)(1).
- If a borrower is issued a TPP, pays the TPP and is incorrectly denied, does the borrower have the right to appeal?
- What is the “loss mitigation application”? Is the borrower’s TPP payment “an oral or written request for a loss mitigation option”? If the borrower receives the TPP and tells the servicer that he/she would like to accept is that “an oral or written request for a loss mitigation option”? Hard to say at this point.

Flex Modifications and CPLR 3408

- When the only modification available for a loan is issued without any borrower information, what will it mean for the parties to negotiate in good faith?
- A servicer doing Flex Modifications should be making TPP offers before bringing suit. If the loan is eligible, there's no reason for a servicer not to show up to the first conference with a TPP.
- What will the role of legal services be in the conference part when there's no modification application to put together? Referees?
- It's easy enough to imagine TPP conversion issues, eligibility issues and property valuation coming up for discussion at conferences, but ultimately the 3408 case law puts these issues (value of the property, whether or not to issue a modification) in the discretion of the servicer.
- The bulk of the 3408 case law deals with issues such as delay, repeated missing document requests and failure to review applications. It's hard to see what issues will remain viable for litigation under 3408 for loans with these kinds of loss mitigation options.

Conclusion

- There are much more detailed descriptions of both the Flex Modification and FHA-HAMP modification in the user’s guides, available on MFY’s website.
- If you have any questions later, you can contact me at jrebella@mfy.org. Feel free to send over worksheet files for cases about which you have questions.
- Thank you, everybody.