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Making Home Affordable Update: Second Lien Program, H4H and Participating Servicers

The Obama Administration's [Homeowner Affordability and Stability Plan](#) ("HASP") has added a second lien modification program (the "[Second Lien Program](#)") to the [Home Affordable Modification Program](#) ("HAMP"). HASP is a part of the Administration's comprehensive Financial Stability Plan, designed to stabilize the U.S. housing market, which also includes the [Public-Private Investment Program](#) ("PPIP"). Residential mortgage loan servicers who want to participate in the PPIP must also participate in the new Second Lien Program, in addition to HAMP and the Hope for Homeowners ("H4H") refinancing program.

When the Administration first announced HASP in February 2009, part of its loan modification strategies included providing incentive payments to encourage servicers to modify or eliminate second lien mortgage loans. As the Administration announced additional details of the HAMP in March and April, however, no new information was provided about how servicers would be encouraged to modify second lien mortgage loans.

Those details were finally made public on April 28, 2009, when the Treasury announced the creation of the Second Lien Program. The Second Lien Program

is intended to help, by the Treasury's estimate, approximately 1 to 1.5 million at-risk borrowers who may be eligible for HAMP modifications of their first lien mortgage loans but have second lien mortgage loans that could delay or impede a successful HAMP loan modification.

How the Second Lien Program Works

The Second Lien Program is intended to work in tandem with a HAMP modification to a borrower's first lien mortgage loan. When a HAMP modification is initiated on the first lien mortgage loan, the servicer automatically must reduce payments on the related second lien mortgage loan in accordance with the protocol set out in the Second Lien Program. The protocol includes a reduction in the second lien mortgage loan's interest rate to either 1 or 2 percent per annum (depending on whether the loan is an amortizing or interest-only loan) for five years, after which the interest rate will step up, generally to the then-current rate on the related modified first lien mortgage loan. In addition, the second mortgage loan must be reamortized (generally to match the amortization schedule of the modified first lien mortgage loan) and, if there is a principal forbearance on the first lien mortgage loan, then there must be a proportionate

amount of principal forbearance on the second lien mortgage loan.

The Second Lien Program has a “pay-for-success” incentive structure similar to that of HAMP: the participating servicer is eligible to receive a \$500 up-front incentive payment for each successful second lien modification and continued “success” payments of \$250 per year (up to three years) so long as the modified loan remains current. In addition, the borrower can receive “success” payments of \$250 per year for up to five years, with those payments being applied to reduce the balance of the related first lien mortgage loan. Investors also receive incentive payments in connection with reduction of the interest rate on the modified second lien mortgage loan, with the amount of the incentive payment depending on the type of second lien mortgage and the rate adjustment.

As an alternative to modifying the second lien mortgage loan, the related investor may choose to extinguish its loan. The investor will be paid an incentive payment of 3 cents for each dollar of the principal amount extinguished for loans more than 180 days past due. For second lien mortgage loans less than 180 days past due, the incentive payment ranges from 4 cents to 12 cents per dollar of principal based on the back-end (post-modification) debt-to-income and second lien loan-to-value ratios of the loan.

How Does H4H Relate to HAMP, the Second Lien Program and PPIP?

The Administration’s April 28 press release also announced that the H4H

program, a temporary Federal Housing Administration mortgage insurance program created by Congress in the Housing and Economic Recovery Act of 2008, will become part of the Making Home Affordable Program. Under H4H, eligible borrowers may refinance their first lien mortgage loans into new 30-year or 40-year fixed rate FHA-insured mortgage loans, with the holders of the first lien mortgage loans being required to accept payoffs below the current market value of the homes (which may be less than the outstanding principal balance of the loan being refinanced). Although the Administration, HUD and the federal banking agencies have vigorously promoted use of the H4H program, it appears that few H4H refinancings have been accomplished.

HAMP provides that in evaluating whether a borrower is eligible for a HAMP loan modification, the servicer also must consider whether the borrower is eligible for an H4H refinancing. If an H4H refinancing appears viable, then the servicer must offer H4H refinancing to the borrower.

Under the changes announced on April 28, “pay for success” incentive payments are available for H4H refinancings, but only for servicers and originators who participate in HAMP. Servicers can receive a \$2,500 up-front incentive payment for each successful H4H refinancing, and lenders who originate H4H refinancings are eligible for success incentive payments of up to \$1,000 per year (up to three years) for each refinanced loan so long as the loan remains current.

The Administration also announced that it is pursuing legislation to improve, and encourage increased participation in, the H4H refinancing program. The improvements will include reducing FHA insurance fees, increasing flexibility to lenders to refinance at-risk loans and permitting borrowers with higher debt burdens to qualify for H4H refinancings.

Who Are the Participating Servicers?

As of April 28, the Making Home Affordable website listed the following servicers as having executed HAMP contracts: Bank of America, N.A.; Chase Financial LLC; CitiMortgage, Inc.; Countrywide Home Loans Servicing LP; GMAC Mortgage LLC; Home Loan Services, Inc.; Ocwen Financial Corporation, Inc.; Saxon Mortgage Services; Select Portfolio Servicing; Wells Fargo Bank, N.A.; and Wilshire Credit Corporation.

In mid-April, the Treasury separately revealed that approximately \$9.9 billion of the \$75 billion allocated to loan modification efforts had been allocated to the first six mortgage servicers that signed HAMP contracts: Chase (\$3.6 billion), Wells Fargo (\$2.87 billion), CitiMortgage (\$2.07 billion), GMAC (\$633 million), Saxon (\$407 million) and Select Portfolio (\$376 million). The allocations represent “caps” on the incentive payments that can be received in connection with HAMP modifications made under each servicer’s contract. The Treasury’s April 28 announcement did not discuss how the established caps will relate to incentive payments for modifications under the Second Lien Program and H4H refinancings.

Incentive payments under the HAMP contracts are expected to be made beginning in June. Servicers were authorized to begin making HAMP modifications in March, when the program was first announced and even before any HAMP contracts were signed, but no incentive payments can be made with respect to a HAMP-modified loan until the borrower has completed his or her three-month trial modification period.

Is Anything Still Missing?

As reported in our [March](#) and [April](#) client alerts regarding the Administration's efforts to encourage home loan modifications, some details remain elusive. The April 28 announcement did not include any new information about the "home price depreciation payments" for investors or payments for short sales or deeds-in-lieu of foreclosure

promised under HASP. In addition, the logistics and mechanics of how incentive payments will be paid have not yet been addressed in the Administration's announcements or program guidelines.

If you have any questions about any of the programs discussed above, feel free to contact one of the individuals noted in this client alert.



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