

## *Servicing Program Bulletin*

**September 11, 2012**

**Program Bulletin #2012-08**

**To: CalHFA Approved Lenders and Servicers**

### **CalHFA Approves Federal Home Affordable Modification Program (HAMP) for Use by Outside Servicers**

This bulletin updates CalHFA Program Bulletin #2009-12: CalHFA Loan Modification Program and supersedes guidance on loan modifications contained in the CalHFA Servicers Guide, Section 10, page 3 and Section 6, page 11.

Effective immediately, CalHFA will allow outside Servicers who are approved for the Federal Home Affordable Modification Program (HAMP) to modify CalHFA loans through this program.

#### HAMP Criteria Review

Servicer must follow all HAMP guidelines and requirements. CalHFA requires the Servicer to determine hardship, income verification, owner occupancy, Net Present Value (NPV) evaluation and length of trial payments for determination of HAMP approval. CalHFA will review the request to ensure package completion and income verification as well as mortgage insurer approval.

#### Using Keep Your Home California

Keep Your Home California (KYHC) has a Principal Reduction Program (PRP) that may work in conjunction with a HAMP modification to help eligible borrowers achieve desired income ratios and affordability.

#### Review the HAMP request:

Servicer must submit a completed HAMP package by mail or fax with all documentation outlined on the "HAMP Review Checklist" (Attachment A). Servicer is required to evaluate and pre-qualify all borrowers pursuant to HAMP guidelines prior to submission of the completed package. Due to the changes in the interest rates, the Servicer is encouraged to advise borrowers to seek advice from a Tax Professional to determine potential tax consequences. Servicers should send completed packages to:

California Housing Finance Agency  
Attn: Loan Modification – Underwriting  
1040 Riverside Parkway, Suite 110  
West Sacramento, CA 95605  
Fax: 916.326.6423

### Mortgage Insurer Approval:

The Loan Modification – Underwriting unit will obtain approval of HAMP requests from the mortgage insurer. Trial payments should not begin until the Servicer has received approval from CalHFA.

### Executing the HAMP Agreement:

The borrower is required to return the signed standard HAMP Agreement (Attachment B) to the Servicer after the trial period has expired. The signed HAMP agreement should be returned along with the next modified payment amount. (See "Recording the HAMP Agreement" below). After the HAMP Agreement is executed and recorded, the Servicer shall send CalHFA the original HAMP Agreement and a signed statement that the loan is current as of the commencement date of the modification.

### Recording the HAMP Agreement and Other Liens

For all mortgage loans that are modified under HAMP, the Servicer must take the necessary steps to ensure that the modified mortgage loan retains its first lien position and is fully enforceable, including a review of a current title report. Where a junior lien is held by a private (non-government) entity, the HAMP Agreement must be recorded, a subordination agreement obtained and a title endorsement issued to the original lender loan policy. These requirements do not apply where junior liens are held by a state or local government agency. Where a junior lien is held by a government agency, the Servicer must send written notification to the government agency informing them of the HAMP loan modification.

### Dodd-Frank Certification

Servicer must obtain a Dodd-Frank certification from each borrower on the loan.

### Incentive Fees

CalHFA will not pay an additional incentive fee. Any incentive fees that are paid through the HAMP process may be retained by the Servicer.

### HAMP Ineligible

If a borrower is determined to be HAMP ineligible, the Servicer is required to submit the package to CalHFA for review for eligibility for the California Housing Finance Agency Modification Program (CMP). This is CalHFA's "in-house" modification program that may be a more flexible alternative to HAMP.

Thank you for your continued support of CalHFA loan programs. With your assistance, many low and moderate income families who are facing foreclosure may retain their homes.

For questions about this bulletin, contact CalHFA Loan Modification – Underwriting:

Jim Poile

Phone: 916.373.2512

Fax: 916.326.6423

Email: [jpoile@calhfa.ca.gov](mailto:jpoile@calhfa.ca.gov)

You can always visit CalHFA's web site at: [www.calhfa.ca.gov](http://www.calhfa.ca.gov).

Attachments:

Attachment A: Home Affordable Modification Program (HAMP) Checklist & Stacking Order

Attachment B: Home Affordable Modification Agreement

## Attachment A

**Home Affordable Modification Program (HAMP)  
Checklist & Stacking Order**

Check Box	Prepare Loan Modification Package on right side of legal-sized folder
	<input type="checkbox"/> Servicer did not use PRP <input type="checkbox"/> KYHC PRP only    PRP \$ _____ <input type="checkbox"/> KYHC ineligible (per KYHC) <input type="checkbox"/> Borrower will not contact KYHC
	A schedule showing itemized delinquent amounts and costs (i.e. delinquent interest, escrow advances, etc.) to be capitalized and added to the Unpaid Principal Balance (UPB). These projections should be no shorter than 90 DAYS from submission to allow for review and processing.
	Twelve (12) month payment history (from loan Servicer)
	Hardship Letter explaining the reason for the delinquency with supporting documentation to verify hardship. Documentation of supporting hardship must be less than 90 days old as of the date the information is submitted to the servicer.
	Borrower(s) to provide a list of all personal expenditures (i.e. credit cards, loans, groceries, utilities, child care, insurance, gasoline, etc.)
	Credit report (for all borrowers)
	Verification of income [last two (2) months computer-generated pay stubs with YTD income]
	Verification of all supplemental income, if applicable
	Most recent two (2) years federal tax returns including all schedules and k-1s, if applicable. If a borrower is self-employed, provide two (2) years business tax returns and YTD Profit and Loss Statement and Balance Sheet.
	Verification of deposit [last two (2) months bank statements]
	Verification of owner occupancy
	Net Present Value (NPV) results
	Trial Payment Schedule <input type="checkbox"/> Three-month Trial Period <input type="checkbox"/> Four-month Trial Period
	<b>Below are items NOT needed at submission but necessary prior to Loan Modification closing</b>
	Verbal verification of employment. [To be completed no more than five (5) days prior to date of the modification agreement and first payment sent to CalHFA]
	Signed IRS Form 4506-T (Request for Transcript of Tax Return)
	Current preliminary title report (lot book is acceptable)

*HAMP packages will be reviewed for final approval upon receipt of a completed package which contains all the required documents. Delivery of incomplete and/or fraudulent information may result in program ineligibility.*

Investor Loan # \_\_\_\_\_

After Recording Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This document was prepared by \_\_\_\_\_

\_\_\_\_\_  
[Space Above This Line For Recording Data]\_\_\_\_\_

## HOME AFFORDABLE MODIFICATION AGREEMENT

Borrower ("I"):<sup>1</sup>

Lender or Servicer ("Lender"):

Date of first lien mortgage, deed of trust, or security deed ("Mortgage") and Note ("Note"):

Loan Number:

Property Address [and Legal Description if recordation is necessary] ("Property"):

If my representations and covenants in Section 1 continue to be true in all material respects, then this Home Affordable Modification Agreement ("Agreement") will, as set forth in Section 3, amend and supplement (1) the Mortgage on the Property, and (2) the Note secured by the Mortgage. The Mortgage and Note together, as they may previously have been amended, are referred to as the "Loan Documents." Capitalized terms used in this Agreement and not defined have the meaning given to them in Loan Documents.

I understand that after I sign and return two copies of this Agreement to the Lender, the Lender will send me a signed copy of this Agreement. This Agreement will not take effect unless the preconditions set forth in Section 2 have been satisfied.

1. **My Representations and Covenants.** I certify, represent to Lender, covenant and agree:

- A. I am experiencing a financial hardship, and as a result, (i) I am in default under the Loan Documents or my default is imminent, and (ii) I do not have sufficient income or access to sufficient liquid assets to make the monthly mortgage payments now or in the near future;
- B. One of the borrowers signing this Agreement lives in the Property as a principal residence, and the Property has not been condemned;
- C. There has been no impermissible change in the ownership of the Property since I signed the Loan Documents. A permissible change would be any transfer that the lender is required by law to allow, such as a transfer to add or remove a family member, spouse or domestic partner of the undersigned in the event of a death, divorce or marriage;
- D. I have provided documentation for **all** income that I receive (and I understand that I am not required to disclose child support or alimony unless I chose to rely on such income when requesting to qualify for the Home Affordable Modification Program ("Program"));
- E. Under penalty of perjury, all documents and information I have provided to Lender in connection with this Agreement, including the documents and information regarding my eligibility for the Program, are true and correct;
- F. If Lender requires me to obtain credit counseling in connection with the Program, I will do so; and
- G. I have made or will make all payments required under a trial period plan.

<sup>1</sup> If more than one Borrower or Mortgagor is executing this document, each is referred to as "I." For purposes of this document words signifying the singular (such as "I") shall include the plural (such as "we") and vice versa where appropriate.

2. **Acknowledgements and Preconditions to Modification.** I understand and acknowledge that:

- A. If prior to the Modification Effective Date as set forth in Section 3 the Lender determines that any of my representations in Section 1 are no longer true and correct or any covenant in Section 1 has not been performed, the Loan Documents will not be modified and this Agreement will terminate. In that event, the Lender will have all of the rights and remedies provided by the Loan Documents; and
- B. I understand that the Loan Documents will not be modified unless and until (i) the Lender accepts this Agreement by signing and returning a copy of it to me, and (ii) the Modification Effective Date (as defined in Section 3) has occurred. I further understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents if I fail to meet any one of the requirements under this Agreement.

3. **The Modification.** If my representations and covenants in Section 1 continue to be true in all material respects and all preconditions to the modification set forth in Section 2 have been met, the Loan Documents will automatically become modified on \_\_\_\_\_ (the "Modification Effective Date") and all unpaid late charges that remain unpaid will be waived. I understand that if I have failed to make any payments as a precondition to this modification under a trial period plan, this modification will not take effect. The first modified payment will be due on \_\_\_\_\_.

- A. The Maturity Date will be: \_\_\_\_\_.
- B. The modified principal balance of my Note will include all amounts and arrearages that will be past due as of the Modification Effective Date (including unpaid and deferred interest, fees, escrow advances and other costs, but excluding unpaid late charges, collectively, "Unpaid Amounts") less any amounts paid to the Lender but not previously credited to my Loan. The new principal balance of my Note will be \$\_\_\_\_\_ (the "New Principal Balance"). I understand that by agreeing to add the Unpaid Amounts to the outstanding principal balance, the added Unpaid Amounts accrue interest based on the interest rate in effect under this Agreement. I also understand that this means interest will now accrue on the unpaid interest that is added to the outstanding principal balance, which would not happen without this Agreement.
- C. Interest at the rate of \_\_\_\_\_% will begin to accrue on the New Principal Balance as of \_\_\_\_\_ and the first new monthly payment on the New Principal Balance will be due on \_\_\_\_\_. My payment schedule for the modified Loan is as follows:

Years	Interest Rate	Interest Rate Change Date	Monthly Principal and Interest Payment Amount	Estimated Monthly Escrow Payment Amount*	Total Monthly Payment*	Payment Begins On	Number of Monthly Payments
[1-5]	[2.00%]	00/00/0000	\$0000.00	\$000.00, may adjust periodically	\$000.00, may adjust periodically	00/00/0000	[60]
[6]	[3.00%]	00/00/0000	\$0000.00	May adjust periodically	May adjust periodically	00/00/0000	[12]
[7]	[4.00%]	00/00/0000	\$0000.00	May adjust periodically	May adjust periodically	00/00/0000	[12]
[8]	[5.00%]	00/00/0000	\$0000.00	May adjust periodically	May adjust periodically	00/00/0000	[12]
[9-[40]]	[6.00%]	00/00/0000	\$0000.00	May adjust periodically	May adjust periodically	00/00/0000	[Insert Remaining months]

\*The escrow payments may be adjusted periodically in accordance with applicable law and therefore my total monthly payment may change accordingly.

The above terms in this Section 3.C. shall supersede any provisions to the contrary in the Loan Documents, including but not limited to, provisions for an adjustable, step or simple interest rate.

I understand that, if I have a pay option adjustable rate mortgage loan, upon modification, the minimum monthly payment option, the interest-only or any other payment options will no longer be offered and that the monthly payments described in the above payment schedule for my modified Loan will be the minimum payment that will be due each month for the remaining term of the Loan. My modified Loan will not have a negative amortization feature that would allow me to pay less than the interest due resulting in any unpaid interest being added to the outstanding principal balance.

- D. I will be in default if I do not comply with the terms of the Loan Documents, as modified by this Agreement.
- E. If a default rate of interest is permitted under the Loan Documents, then in the event of default under the Loan Documents, as amended, the interest that will be due will be the rate set forth in Section 3.C.

4. **Additional Agreements.** I agree to the following:

- A. That all persons who signed the Loan Documents or their authorized representative(s) have signed this Agreement, unless (i) a borrower or co-borrower is deceased; (ii) the borrower and co-borrower are divorced and the property has been transferred to one spouse in the divorce decree, the spouse who no longer has an interest in the property need not sign this Agreement (although the non-signing spouse may continue to be held liable for the obligation under the Loan Documents); or (iii) the Lender has waived this requirement in writing.
- B. That this Agreement shall supersede the terms of any modification, forbearance, trial period plan or other workout plan that I previously entered into with Lender.
- C. To comply, except to the extent that they are modified by this Agreement, with all covenants, agreements, and requirements of Loan Documents including my agreement to make all payments of taxes, insurance premiums, assessments, Escrow Items, impounds, and all other payments, the amount of which may change periodically over the term of my Loan.
- D. That this Agreement constitutes notice that the Lender's waiver as to payment of Escrow Items, if any, has been revoked, and I have been advised of the amount needed to fully fund my escrow account.
- E. That the Loan Documents as modified by this Agreement are duly valid, binding agreements, enforceable in accordance with their terms and are hereby reaffirmed.
- F. That all terms and provisions of the Loan Documents, except as expressly modified by this Agreement, remain in full force and effect; nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the obligations contained in the Loan Documents; and that except as otherwise specifically provided in, and as expressly modified by, this Agreement, the Lender and I will be bound by, and will comply with, all of the terms and conditions of the Loan Documents.

- G. That, as of the Modification Effective Date, notwithstanding any other provision of the Loan Documents, if all or any part of the Property or any interest in it is sold or transferred without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by the Mortgage. Lender shall not exercise this option if state or federal law, rules or regulations prohibit the exercise of such option as of the date of such sale or transfer. If Lender exercises this option, Lender shall give me notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which I must pay all sums secured by the Mortgage. If I fail to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Mortgage without further notice or demand on me.
- H. That, as of the Modification Effective Date, I understand that the Lender will only allow the transfer and assumption of the Loan, including this Agreement, to a transferee of my property as permitted under the Garn St. Germain Act, 12 U.S.C. Section 1701j-3. A buyer or transferee of the Property will not be permitted, under any other circumstance, to assume the Loan. Except as noted herein, this Agreement may not be assigned to, or assumed by, a buyer or transferee of the Property.
- I. That, as of the Modification Effective Date, if any provision in the Note or in any addendum or amendment to the Note allowed for the assessment of a penalty for full or partial prepayment of the Note, such provision is null and void.
- J. That, I will cooperate fully with Lender in obtaining any title endorsement(s), or similar title insurance product(s), and/or subordination agreement(s) that are necessary or required by the Lender's procedures to ensure that the modified mortgage Loan is in first lien position and/or is fully enforceable upon modification and that if, under any circumstance and not withstanding anything else to the contrary in this Agreement, the Lender does not receive such title endorsement(s), title insurance product(s) and/or subordination agreement(s), then the terms of this Agreement will not become effective on the Modification Effective Date and the Agreement will be null and void.
- K. That I will execute such other documents as may be reasonably necessary to either (i) consummate the terms and conditions of this Agreement; or (ii) correct the terms and conditions of this Agreement if an error is detected after execution of this Agreement. I understand that either a corrected Agreement or a letter agreement containing the correction will be provided to me for my signature. At Lender's option, this Agreement will be void and of no legal effect upon notice of such error. If I elect not to sign any such corrective documentation, the terms of the original Loan Documents shall continue in full force and effect, such terms will not be modified by this Agreement, and I will not be eligible for a modification under the Home Affordable Modification Program.
- L. Mortgage Electronic Registration Systems, Inc. ("MERS") is a separate corporation organized and existing under the laws of Delaware and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, (888) 679-MERS. In cases where the loan has been registered with MERS who has only legal title to the interests granted by the borrower in the mortgage and who is acting solely as nominee for Lender and Lender's successors and assigns, MERS has the right to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of Lender including, but not limited to, releasing and canceling the mortgage loan.
- M. That Lender will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. In addition, I understand and consent to the disclosure of my personal information and the terms of the trial period plan and this Agreement by Lender to (i) the U.S. Department of the Treasury, (ii) Fannie Mae and Freddie Mac in connection with their responsibilities under the Home Affordability and Stability Plan; (iii) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan(s); (iv) companies that perform support services for the Home

Affordable Modification Program and the Second Lien Modification Program; and (v) any HUD certified housing counselor.

- N. That if any document related to the Loan Documents and/or this Agreement is lost, misplaced, misstated, inaccurately reflects the true and correct terms and conditions of the Loan as modified, or is otherwise missing, I will comply with the Lender's request to execute, acknowledge, initial and deliver to the Lender any documentation the Lender deems necessary. If the Note is replaced, the Lender hereby indemnifies me against any loss associated with a demand on the Note. All documents the Lender requests of me under this Section 4.N. shall be referred to as "Documents." I agree to deliver the Documents within ten (10) days after I receive the Lender's written request for such replacement.
- O. That the mortgage insurance premiums on my Loan, if applicable, may increase as a result of the capitalization which will result in a higher total monthly payment. Furthermore, the date on which I may request cancellation of mortgage insurance may change as a result of the New Principal Balance.

In Witness Whereof, the Lender and I have executed this Agreement.

\_\_\_\_\_  
Lender

By: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Borrower (Seal)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Borrower (Seal)

\_\_\_\_\_  
Date

\_\_\_\_\_  
[Space Below This Line For Acknowledgement]