

Supplemental Directive 10-04

May 11, 2010

Home Affordable Unemployment Program

Background

In Supplemental Directive 09-01, the Treasury Department (Treasury) announced the eligibility, underwriting and servicing requirements for the Home Affordable Modification Program (HAMP). Under HAMP, servicers apply a uniform loan modification process to provide eligible borrowers with sustainable monthly housing payments. This Supplemental Directive provides servicers flexibility to provide assistance to borrowers whose hardship is related to unemployment. When a borrower is unemployed, a HAMP trial period plan or permanent HAMP modification may not be appropriate, and in some cases, the borrower may not have the ability to make the required payments.

This Supplemental Directive requires servicers to consider eligible borrowers for the Home Affordable Unemployment Program (UP), which grants borrowers a forbearance plan during which regular monthly mortgage payments are reduced or suspended. Borrowers will be evaluated for HAMP at the earlier of re-employment or 30 days prior to the expiration of the UP forbearance plan.

This Supplemental Directive provides guidance to servicers of first lien mortgage loans that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages) or insured or guaranteed by a federal agency, such as the Federal Housing Administration (FHA), and is effective for all participating servicers on July 1, 2010. However, servicers may begin to offer UP earlier so long as all unemployed borrowers that are potentially eligible are considered for UP as of the date the servicer begins offering UP. Servicers that have executed a servicer participation agreement and related documents (SPA) must follow the guidance set forth in this Supplemental Directive. Servicers of first lien mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac should refer to relevant guidance issued by the applicable GSE.

Help for Unemployed Borrowers

This guidance replaces the language under the heading “Unemployment Benefits” in the “Borrower Income/Asset Documentation and Verification of Eligibility” section of Supplemental Directive 10-01. A borrower who is unemployed and requests assistance under HAMP must be evaluated for and, if qualified, receive an UP forbearance plan before the borrower may be considered for HAMP. For borrowers being considered for trial period plans with effective dates on or after July 1, 2010, servicers may no longer consider unemployment insurance benefits as a source of income when evaluating borrowers for HAMP. For purposes of this Supplemental Directive, the term “borrower” includes any co-borrower.

UP Forbearance Plan Eligibility

Servicers are required to offer an UP forbearance plan to a borrower who meets the following HAMP minimum eligibility criteria:

- The mortgage loan is secured by a one- to four-unit property, one unit of which is the borrower's principal residence.
- The mortgage loan is a first lien mortgage loan originated on or before January 1, 2009.
- The current unpaid principal balance of the mortgage loan is equal to or less than \$729,750.¹
- The mortgage loan is delinquent or default is reasonably foreseeable.
- The mortgage loan has not been previously modified under HAMP and the borrower has not previously received an UP forbearance period.

Additional UP forbearance plan eligibility requirements include that the borrower:

- Makes a request before the first mortgage lien is seriously delinquent (before three monthly payments are due and unpaid). A request for UP may be made by phone, mail or email. Servicers must document the date of the UP request in the servicing file and, within 10 business days, confirm the receipt of the request with the borrower via mail or return email.
- Is unemployed at the date of the request for UP and is able to document that he or she will receive unemployment benefits in the month of the Forbearance Period Effective Date (defined below) even if his or her unemployment benefit eligibility is scheduled to expire before the end of the UP forbearance period.

The servicer may, pursuant to investor or regulator guidelines, require a borrower to have received unemployment benefits for up to three months before the forbearance period will begin. A borrower who has received unemployment benefits for less than the minimum time period required by the servicer may request consideration for an UP forbearance plan; however, the forbearance period will not begin until after the borrower has received unemployment benefits as required by the servicer. Servicers must have written procedures for determining when a borrower must be in receipt of up to three months of unemployment benefits and must consistently apply those procedures.

To be eligible for HAMP, a borrower's total monthly mortgage payment (principal, interest, taxes, insurance and association fees, if any) prior to the modification must exceed 31 percent of the borrower's gross income. To streamline the delivery of unemployment assistance, a servicer may waive this criterion for UP forbearance plan eligibility. However, servicers are not required to offer an UP forbearance plan to borrowers whose total monthly mortgage payment is less than or equal to 31 percent of the borrower's monthly gross income, including unemployment benefits. Servicers are not required to offer an UP forbearance plan if a household member that

¹ This amount refers to 1 unit properties. Higher amounts apply to 2 to 4 unit dwellings. See Supplemental Directive 09-01.

is not a borrower becomes unemployed, even if that income contributed to the mortgage payment.

Unemployed borrowers who do not meet the eligibility criteria for an UP forbearance plan should be evaluated for other proprietary forbearance programs. Borrowers that are not offered any type of forbearance plan must be evaluated for HAMP, excluding from monthly gross income unemployment benefits and any other temporary sources of income related to unemployment, such as severance payments. If the borrower is not eligible for HAMP, the servicer must send the borrower a Non-Approval Notice in accordance with Supplemental Directive 09-08 and describe other foreclosure alternatives for which the borrower may be eligible, including but not limited to the Home Affordable Foreclosure Alternatives Program (HAFA) or other short sale or deed-in-lieu programs.

A borrower in a permanent HAMP modification that becomes unemployed is not eligible for an UP forbearance plan. A borrower who was previously determined to be ineligible for a HAMP modification may request consideration for an UP forbearance plan if the borrower meets all of the eligibility requirements.

Conversion from HAMP Trial Period Plan to an UP Forbearance Plan

A borrower who is currently in a HAMP trial period plan and becomes unemployed may seek consideration under UP if the borrower was not seriously delinquent (as defined above) as of the first payment due date of the HAMP trial period plan. A servicer may not require an unemployed borrower in a trial period plan to convert to an UP forbearance plan. However, upon receipt of a request for consideration for an UP forbearance plan by an unemployed borrower in a trial period plan and evidence that the borrower is or will be eligible for unemployment benefits, the servicer must cancel the trial period plan and follow the guidance for establishing the Forbearance Period Effective Date, as described below. The servicer may not impose a waiting period before commencement of the forbearance plan by requiring the borrower to be in receipt of unemployment benefit for a longer period than required by UP. If following an UP forbearance plan the borrower is determined to again be eligible for HAMP, the borrower must complete a new HAMP trial period plan. To determine eligibility, the borrower will be required to submit complete and updated HAMP documentation (including the RMA and updated proof of income), but will not be required to re-submit IRS Form 4506T-EZ if the servicer has already obtained a tax transcript for the most recent tax year.

UP Forbearance Plan Terms

The minimum UP forbearance period is the lesser of three months or upon notification that the borrower has become re-employed. Servicers should establish procedures for tracking borrowers' employment status and include any applicable borrower instructions in the Forbearance Plan Notice (FPN); as described below. Servicers may extend the minimum forbearance period in increments at the servicer's discretion, in accordance with investor and regulatory guidelines. Any borrower eligibility review or recertification documentation requirements that may apply after the initial forbearance period are at the servicer's discretion, in accordance with investor and regulatory guidelines.

During the UP forbearance plan, the borrower's monthly mortgage payment must be reduced to an amount that is no more than 31 percent of the borrower's gross monthly household income. In determining gross monthly income, the servicer may rely on stated income provided by the borrower or may require documentation of income. At the discretion of the servicer, the borrower's monthly mortgage payments may be suspended in full. The payment amount, if any, will be determined by the servicer in accordance with investor and regulator guidelines and applicable laws and regulations. Servicers must have written procedures for determining when a payment will be required during an UP forbearance plan and how the payment amount will be determined, and must consistently apply those procedures.

Commencement of UP Forbearance Plan

A borrower's UP forbearance plan starts on the Forbearance Period Effective Date. If the servicer transmits the FPN, to the borrower on or before the 15th day of a calendar month, then the servicer should insert the first day of the next month as the Forbearance Period Effective Date. If the servicer transmits the FPN to the borrower after the 15th day of a calendar month, the servicer may, as an alternative, use the first day of the month after the next month as the Forbearance Period Effective Date. Servicers who elect this alternative and require the borrower to have received unemployment benefits for up to three months should factor the additional month towards meeting the established requirement for unemployment benefits so that the forbearance period may begin immediately after meeting the requirement and must do so consistently for all borrowers in accordance with written policies and procedures. This determination should be based on the date that the FPN is sent to the borrower.

If the servicer requires a reduced monthly payment, the servicer must receive the borrower's reduced payment on or before the last day of the month in which it is due. If the borrower fails to make timely payments, the UP forbearance plan may be canceled and the borrower is not eligible for HAMP consideration. Servicers are instructed to use good business judgment in determining whether UP forbearance payments were received timely or if mitigating circumstances caused the payment to be late. Exceptions should be documented by the servicer.

Notices

After receiving the borrower's documentation of unemployment benefits the servicer is required to determine the borrower's eligibility for UP and mail an FPN or a Non-Approval Notice within 10 business days following the date of the servicer's determination. For existing UP forbearance plans, at least 30 days prior to the expiration date, the servicer is required to determine if an extension will be provided and mail an FPN, as applicable, within 10 day business days following the determination. A Non-Approval Notice is not required when an extension is not granted.

If a borrower is eligible for UP and any extension thereof, the FPN should describe the terms and conditions of the initial UP forbearance plan or extension, which at a minimum must include the following:

- Duration of the forbearance plan along with the Forbearance Period Effective Date and the expiration date;

- Periodic payment amount, if any;
- Brief explanation regarding what will occur when the borrower is re-employed or when the forbearance plan expires; and
- Borrower's responsibility to provide updates to his or her employment status during the forbearance plan, if applicable.

Borrowers are not required to sign or return the FPN. However, servicers may require the borrower to execute and return a written forbearance plan agreement if required by investor guidelines. Servicers should retain a copy of the FPN in the applicable servicing file and note the date that it was sent to the borrower.

If a borrower is determined to be ineligible for forbearance, servicers must communicate this determination to the borrower in writing along with the primary reason for ineligibility. The notice must also describe other foreclosure alternatives for which the borrower may be eligible, if any, including but not limited to HAMP, other home retention programs, HAFA or other short sale or deed-in-lieu programs, and identify the steps the borrower must take in order to be considered for those options. Servicers may use the applicable non-approval model clause provided in Supplemental Directive 09-08. Model clauses specific to UP are attached as Exhibit B. Use of the model clauses is optional; however, they illustrate a level of specificity that is deemed to be in compliance with the language requirements of this Supplemental Directive.

Late Fees

Late charges may accrue while the servicer is determining borrower eligibility for an UP forbearance plan and during the forbearance period. However, a servicer must not collect late charges from the borrower during the forbearance period. Additionally, all accrued and unpaid late charges must be waived in the event the borrower receives a permanent HAMP modification.

Transition from Forbearance to HAMP

At the earlier of 30 days following notification that the borrower has found employment or 30 days prior to expiration of the a forbearance period, the servicer must provide a HAMP eligible borrower with an Initial Package of HAMP documents and, upon receipt of the completed Initial Package from the borrower, must evaluate the borrower for HAMP. Both the borrower and servicer must adhere to the timing and notice requirements in Supplemental Directive 10-02. The servicer may extend the forbearance period by a maximum of 30 days as needed to allow the borrower time to submit the needed documentation. If the borrower is determined to be ineligible for HAMP or other home retention options, the borrower must be considered for other foreclosure alternatives, such as HAFA or other short sale and deed-in-lieu programs.

When evaluating a borrower for HAMP and calculating the borrower's total monthly mortgage payment ratio prior to the modification, the borrower's monthly gross income must include the new employment income as verified by an offer letter, first pay stub or other documentation consistent with the judgment employed by servicers when modifying mortgage loans held in their own portfolio. Any missed payments prior to and during the UP forbearance plan should be capitalized as part of the standard HAMP modification process.

Suspension of Foreclosure Actions

Servicers may not refer any loan to foreclosure or conduct a scheduled foreclosure sale in the following circumstances:

- While the borrower is being evaluated for UP; evaluation begins when a borrower makes a request for UP;
- After the servicer mails the FPN even if the servicer requires the borrower to be in receipt of up to three months of unemployment benefits before commencement of the forbearance plan;
- During the initial UP forbearance plan or any extension thereof; and
- Following the UP forbearance plan while the borrower is being evaluated for or participating in HAMP or HAFA.

In addition, servicers are reminded of the solicitation and foreclosure provisions in Supplemental Directive 10-02.

Reporting Requirements

During the UP forbearance plan, servicers are required to provide monthly UP forbearance plan summary level data to Fannie Mae, in its capacity as program administrator. A list of the required summary level data, which may be updated periodically on www.HMPAdmin.com, is listed in Exhibit A. The data submitted must be accurate, complete, timely, and agree with the servicer's records.

As discussed previously, a borrower in an active HAMP trial period plan is eligible for an UP forbearance plan. However, a borrower may not simultaneously be in a HAMP trial period plan and an UP forbearance plan. Active trial period plans must be canceled in the Treasury system of record in the month in which the UP forbearance plan becomes effective. Thirty days prior to the expiration of the UP forbearance plan or when the borrower becomes re-employed, eligible borrowers may transition from an UP forbearance plan into a HAMP trial. Servicers are required to provide loan level reporting at the following key transition milestones:

- Exit from HAMP trial period plan to an UP forbearance plan – Servicers are required to submit applicable data pursuant to Supplemental Directive 09-06 including a Trial Fallout Reason Code indicating that the borrower is entering into an UP forbearance plan.
- Transition from an UP forbearance plan to HAMP Trial – If the borrower transitions from an UP forbearance plan into a HAMP trial period plan, servicers are required to submit a HAMP trial set up transaction with attributes indicating that the borrower had an UP forbearance plan.

Changes to several data reporting attributes under HAMP are required to enable servicers to report an exit from HAMP to an UP forbearance plan and a transition from an UP forbearance plan to a HAMP trial period plan. All UP forbearance plan reporting requirements and any updates will be posted on the servicer web portal at www.HMPAdmin.com.

Credit Reporting

The servicer should continue to report a “full-file” status report to the four major credit repositories for each loan in a UP forbearance plan in accordance with the Fair Credit Reporting Act and credit bureau requirements as provided by the Consumer Data Industry Association (the “CDIA”).

Compliance

Freddie Mac is Treasury’s compliance agent for HAMP. Supplemental Directive 09-01 describes the overall roles and responsibilities of both servicers and the compliance agent in performing servicer reviews and oversight, which are unchanged by this Supplemental Directive.

As compliance agent, Freddie Mac will incorporate an evaluation of UP implementation, processes, and controls into its servicer reviews. It is anticipated that the compliance agent will require a copy of servicers’ written policies and procedures in addition to other information which may be requested from the compliance agent to perform its compliance reviews.

Documentation Requirements

Servicers are required to maintain appropriate documentary evidence of their HAMP-related activities, and to provide that documentary evidence upon request to Freddie Mac as the Compliance Agent for Treasury. With respect to UP forbearance plans, documentation that should be maintained by the servicer includes, but is not limited to, the following:

- Written policies and procedures relating to UP forbearance plans, including:
 - Determining eligibility for the program including: unemployment status, any requirement for receipt of unemployment benefits prior to commencement of the forbearance period, duration and status of unemployment benefits; waiver of the 31 percent mortgage payment ratio threshold, and forbearance term extension criteria;
 - Determining any borrower eligibility recertification and re-employment status;
 - Determining when an UP forbearance plan requires a payment and how the payment amount is determined;
 - Canceling any existing HAMP trial modifications determined to be eligible for an UP forbearance plan; and
- The decision-making process when applying discretion or business judgment as outlined in this Supplemental Directive.

For phone contact with borrowers related to UP forbearance plans, well-documented servicer system notes (including but not limited to date, names of contact persons, and a summary of the conversation) will constitute appropriate documentation. Written correspondence should be retained in an accessible manner and made available upon request by the Compliance Agent.

Exhibit A
Monthly Survey Information
For All Loans that Enter an UP Forbearance Plan

| Data Description | Initiated in Current Month | Cumulative |
|---|----------------------------|------------|
| 1. Active UP Forbearance Plans (FP) including any extensions | | |
| 2. Active UP FP by investor a. PLS b. Portfolio | | |
| 3. Active UP FP by Source a. New request b. Cancelled HAMP trial period plan | | |
| 4. UP FP Payments a. FP with no payment required b. FP with some payment required c. Average payment reduction (%) | | |
| 5. Completed UP FP a. Ended as a result of Reemployment b. FP Term expired 5(a) + 5(b) must equal total | | |
| 6. Disposition of Completed UP FP a. Hardship resolved through re-employment b. HAMP Trial offered c. Other mod offered d. Short Sale offered e. DIL offered f. Foreclosure pending g. Reinstatement h. Other | | |
| 7. Duration of Completed UP FP a. Average b. Segregation by term (<i>optional</i>) i. 3 months ii. > 3 - 6 months iii. > 6 - 9 months iv. > 9 months | | |
| 8. UP FP Cancelations as a result of non-payment or borrower non-compliance. | | |
| 9. UP FP by State (<i>optional</i>) A separate state chart will be provided for this reporting | | |
| <i>Survey data may change</i> | | |

Exhibit B

Model Clauses

The model clauses in this exhibit provide sample language that may be used to communicate the status of a borrower's request for the Home Affordable Unemployment Program. The model clauses are in addition to the existing model clauses provided in Supplemental Directive 09-08 that relate to the Not Approved/Not Accepted reason codes in *Schedule IV* of Supplemental Directive 09-06. Use of the model clauses is optional; however, they illustrate a level of specificity that is deemed to be in compliance with language requirements of the program.

Non Approval Notice

1. Unemployment Program. We are unable to offer you a forbearance plan under the Home Affordable Unemployment Program because:

- As of the date of your request, you did not provide us with documentation that you are receiving or will receive unemployment benefits [*insert only if applicable:* for at least _____ months].
- As of the date of your request, your loan was delinquent by three or more monthly mortgage payments.
- Your total monthly mortgage payment is less than or equal to 31 percent of the household monthly gross income, including unemployment benefits.