

Legislative Highlights

HOPE for Homeowners (H4H) Created by Congress to Help At-risk Borrowers

The Federal Housing Administration (FHA) is responsible for administering the new HOPE for Homeowners program, created by Congress to help those at risk of default and foreclosure refinance into more affordable, sustainable loans. H4H is an additional mortgage option designed to keep borrowers in their homes. The program is effective from Oct. 1, 2008 to Sept. 30, 2011. As many as 400,000 homeowners could avoid foreclosure through this program over the next three years. H4H is intended to refinance loans into a new 30-year fixed rate loan with lower payments.

Under the plan, homeowners may contact their existing lender and/or a new lender to discuss how to qualify and their eligibility for this program. Servicers working with troubled homeowners may determine that the best solution for avoiding foreclosure is to refinance the homeowner into a HOPE for Homeowners loan. It is envisioned that the primary way homeowners will initially participate in this program is through the servicing lender on their existing mortgage. Servicers that do not have an underwriting component to their mortgage operations will partner with an FHA-approved lender that does.

Given their fiduciary responsibilities and financial obligations, lenders will assess their portfolio and perform a cost-benefit analysis to determine the feasibility of offering this program to struggling homeowners. Lenders will take a loss on the difference between the existing obligations and the new loan, which is set at 90 percent of current appraised value. The lender may choose to provide homeowners with an affordable monthly mortgage payment through a loan modification rather than accepting the losses associated with declining property values. For a borrower to be eligible, the existing mortgage must have been originated on or

before Jan. 1, 2008; the existing mortgage payment(s) as of March 1, 2008 must exceed 31 percent of the borrowers gross monthly income; the homeowner did not intentionally default, does not have an ownership interest in other residential real estate and has not been convicted of fraud in the last 10 years under federal and state law; and the homeowner did not provide materially false information (*e.g.*, lied about income) to obtain the mortgage that is being refinanced into the H4H mortgage.

The benefits of the program are home retention, a new affordable mortgage based on current appraised value and 10 percent equity. The costs of the program include a 3 percent up-front mortgage insurance premium and a 1.5 percent annual premium, equity sharing and a prohibition against new junior liens against the property unless they are directly related to property maintenance.

If the lender refinancing the loan does not hold the senior mortgage lien, it will need to secure an agreement from the existing lien holder to waive all prepayment penalties and default fees on the existing loan and accept the loan proceeds from the H4H loan as payment in full. The loan amount (including the 3 percent UFMIP) for the new H4H loan cannot exceed 90 percent of the current appraised value of the property. The lender will engage existing subordinate mortgage lienholders to extinguish all subordinate liens on the subject property. To entice subordinate lienholders to participate in the negotiation process and release their liens, FHA has the authority to share its future appreciation entitlement with them. Under the regulations (24 CFR Part 4001), the holder of a subordinate mortgage has the right to receive a maximum of 9-12 percent of the

unpaid principal and interest on the mortgage as a future appreciation payment upon sale or disposition of the property after the refinancing. The regulations contain a matrix for determining the exact percentage amount. During underwriting of the loan, the lender will calculate the future appreciation interest amount for each subordinate lienholder in accordance with instructions provided by FHA. At settlement, subordinate lienholders will receive a certificate that evidences their interest as an obligation backed by HUD, with payment conditional on the value of HUD's appreciation share.

Following funding of the loan, the lender will record—in addition to the typical security instrument and note for the first mortgage—a shared equity note and mortgage (SEM) and a shared appreciation note and mortgage (SAM). These mortgages will be serviced by FHA. The lender will also submit the new mortgage for insurance to FHA, certifying that it has been originated, underwritten and closed in accordance with the H4H program guidelines.

Upon sale of the property, the homeowner will use the sale proceeds to pay off the H4H mortgage as well as the shared equity and shared appreciation mortgages. FHA will provide instructions to the settlement agents regarding subordinate lienholders who are entitled to a portion of any appreciation. The lienholder that previously held the highest priority will receive payment up to the full dollar amount of its interest, not to exceed the amount of available appreciation, and so on, until all prior lienholders are satisfied or the amount of available appreciation is exhausted. All remaining appreciation is remitted to FHA. ■