



Questions and Answers: ML 09-23 / FHA-Home Affordable Modification Program, and subsequent guidance

A. Basic Program Guidelines

- 1) FHA-HAMP does not solve for Borrowers who are current on their mortgage, but claim imminent default, correct? FHA-HAMP requires that a Borrower be past due at least 1 installment, due to a valid reason for default (and not intentional default).

No. [Mortgagee Letter 2010-04](#), dated 01/22/2010, states in part, "...In order for an FHA-insured loan that is at risk of imminent default to qualify for modification under FHA-HAMP, the borrower must first successfully participate in a four-month trial modification period...."

- 2) Can you advise the effective date, and where to find online training?

Per Mortgagee Letter [2009-23](#), it is August 15, 2009. Please register and take online training at <https://eclass.hudtulsa.org/>.

- 3) GNMA recently updated their buy-out procedures, but is still only allowing buy-out at the 91st day of delinquency. If a Borrower is not 91 days delinquent or greater after the trial period, how can we complete the modification/partial claim piece if the loan is in a GNMA pool?

GNMA All Participants Memo [09-14](#) states in part, "...Issuers will be permitted to repurchase FHA loans from Ginnie Mae pools if a borrower has been approved to participate in FHA's trial modification program and the loan has been in a state of continuous default for more than 90 days, as of the date of repurchase." If the mortgage is in default, and three trial modification payments - which are less than the full unmodified mortgage payment - are made successfully, then the mortgage will have been in a state of continuous default for more than 90 days. If the mortgage is not delinquent, the trial period must be 4 months, as stated in Mortgagee Letter 2010-04. Therefore, any loan approved to participate in the HAMP program where any portion of any single payment is delinquent for 90 days meets the Ginnie Mae requirement and can be repurchased on the 91 day to execute the modification.

- 4) In general, when an issue is not addressed, can we follow HMP rules?

No. FHA-HAMP applies only to FHA insured mortgages. Consequently, when an issue is not specifically addressed, Mortgagee Letter 2009-23

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refers servicers to other mortgagee letters for FHA modification and FHA Partial Claim guidance.

- 5) Are servicers required to specifically reference the FHA-HAMP in the FHA Homeownership counseling letter or can the letter just reference modifications generally as being an alternative to foreclosure?

FHA-HAMP does not make changes to the Housing Counseling Notification requirement as set out in Mortgagee Letter 2002-12. The lender may choose to send out additional solicitations to the borrowers advising them of FHA-HAMP.

B. Debt to Income Ratios

No questions at this time. Refer to sections Z and AA

FHA HAMP Variance for Front End Debt to Income Ratio (DTI): FHA Lenders do not need to submit a Variance on a FHA-HAMP when the interest rate reduction and term extension back to 360 months (per Mortgagee Letter 2009-35) cause the Lender to go below the Front End DTI of 31% when no principal deferment is being used. See Example below:

Example: Loan is 5 months pas due. Lender approves the Borrower for the FHA-HAMP, as a result of the interest rate reduction and term extension back to 360 months the Borrower's Front End DTI is now reduced to 25%. A Partial Claim is needed for the arrearage of 5 months to bring the loan current no principal deferment is needed since the Borrowers DTI will be below 31%. The Lender may proceed without a Variance from policy from HUD's National Servicing Center (NSC). Any other policy Variance would require an approved Variance from HDU's NSC.

NSC will "NOT" approve Variances associated with the Back End DTI exceeding 55%.

C. Calculation of Maximum Partial Claim Amount Under FHA-HAMP

- 1) From what I'm reading it looks like we are just combining the Partial Claim and Loan Modification options in order to do a Principal Balance reduction. When we are preparing the figures for the customer are we basically doing loan modification figures to calculate the total due (including interest, overdrawn escrow, escrow replenishment and attorney fees) and then do we just do a Partial Claim for the total debt + principal balance forbearance in order to reduce the amount owed on the first lien by the customer?

See the example in the Mortgagee Letter 2009-23 on page 2. The borrower is limited to 12 months PITI for delinquent payments. If a buy down is

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needed to meet the 31% front end DTI ratio requirement, the amount up to 30% of the outstanding principal balance as of the date of default is deferred using a Partial Claim (inclusive of delinquent payments and legal costs), then a loan modification of the remaining principal balance amortized over 30 years and an interest rate reduction, as applicable, is executed.

D. Requirements to Use FHA-HAMP

- 1) What if the Borrower fails the trial payment, but does not complete the modification/PC piece of FHA-HAMP - can they be re-evaluated at a later date?

If the borrower fails the trial modification, they should be considered for standard loss mitigation options, excluding FHA-HAMP.

- 2) What if the Borrower fails to send documents back, and never enters the trial period - can they be re-evaluated for FHA-HAMP at a later date?

Yes.

- 3) Do we have to launch a separate HAMP Solicitation Campaign As of right now we solicit all borrowers for Loss Mitigation Assistance at the 50, 95, 105, 125 day of delinquency. Our Collections Department tries to call the customer up until the date of foreclosure sale.

No, FHA is not prescribing each lender's HAMP Solicitation Campaign.

- 4) If a customer has ignored all Loss Mitigation Solicitation and Collection Attempts does this imply that the customer is not interested in LM Assistance and we can start Foreclosure? If a customer has applied for LM Assistance we should not be starting foreclosure until we have reviewed the financial package in order to determine if the customer would qualify for assistance, correct?

Loss Mitigation is based on the borrower cooperating and providing the requested information. If a lender is in the Loss Mitigation review process they should be aware of the first legal deadline (FLD). If the lender needs additional time to complete the review, they should submit an extension of time request through EVARS (FHA's online extensions and variances submission system) prior to the FLD. Under Mortgagee Letter 2000-05, General Program Requirements, Section L, if the lender approves a borrower for a loss mitigation option, documents it in their servicing notes and reports it to Single Family Default Monitoring System (SFDMS) but is unable to complete it prior to the expiration of the FLD date, the lender is entitled to a 90 day extension of the FLD. Enter the expiration date of this automatic extension to Form HUD-27011, Part A, block 19, when filing a

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disposition claim (e.g., conveyance, preforeclosure, etc.).

- 5) Based on the question asked in #4, should the same logic be applied to customers who are currently facing a Foreclosure Sale?

It depends on whether or not the borrower has provided information to the lender to review for Loss Mitigation. Lenders are required to review for Loss Mitigation through the whole default cycle including foreclosure. Likewise, they must take into consideration FLD and request an extension - if needed -- through EVARS, especially in start/stop states.

- 6) Should we foreclose on a borrower who has not responded to LM Solicitations and avoided collection attempts?

The borrower must cooperate and provide the requested financial information needed to perform a review for Loss Mitigation.

- 7) Do we need to mail a separate HAMP Solicitation to the customers facing a foreclosure sale?

The lender must determine if the borrower is eligible for a FHA HAMP prior to foreclosure. It is up to the lender to determine how it best meets this requirement.

- 8) Will HUD allow private investors (such as FNMA RMIC, Truman Capital, CalHFA, etc) to "trump" HUD rules and avoid participation in FHA-HAMP? Currently, some investors prohibit term extensions (required by FHA-HAMP), or wish to provide approval prior to loss mitigation execution. Others, such as CalHFA do not allow modifications on their FHA loan types.

No. Lenders must follow FHA loss mitigation guidelines. FHA will monitor program participants and take administrative actions for non-compliance when required.

- 9) Will HUD utilize any standard documentation for the modification/partial claim portion of FHA-HAMP? I saw that HUD requires the use of the standard Reason for Default affidavit, but was not sure whether any standardized loss mitigation docs were to be utilized.

No, HUD does not require standard documentation for modifications and Partial Claims. Lenders should continue to use the documents they use now for modifications and Partial Claims.

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- 10) Can you validate the 'waterfall' review under FHA-HAMP? This would be utilized only after the Borrower was deemed not to qualify for the HUD standard loss mitigation waterfall of SFB > Modification > Partial Claim.

Yes, that is correct. ML 09-23 defines the priority order for loss mitigation home retention options under Requirements to Use FHA-HAMP.

- 11) Do we need to review all loans in our pre-sale inventory that have already been declined for a workout (Referred but the property has not yet been taken to sale). Or is HUD going to establish a cutoff period to determine if any loans will need to be reviewed for FHA-HAMP and what will that cutoff period be?

The ML goes into effect 8/15/09 and requires lenders to review everything for the FHA-HAMP prior to foreclosure sale. Lenders can submit an extension of time request to FHA through EVARS and request additional time to review for FHA-HAMP.

- 12) Does the FHA-HAMP list delinquency requirements? I saw that loans with delinquency of 91 days or greater must be run through the standard HUD waterfall (SFB, Mod, PC). Does this mean that if we can complete one of those options, we cannot review for FHA-HAMP?

Yes, the borrower has to be one full payment past due and placed in a 3-month trial plan, or if current, placed in a 4-month trial modification for the modified mortgage payment.

Borrowers who do not qualify for standard loss mitigation options must be reviewed for FHA-HAMP.

- 13) What if we can solve for the delinquency using one of the "standard" options, but this does not solve for 31% payment-to-income ratio? Do we proceed with FHA-HAMP review, or solve using a "standard" HUD option?

Lenders are required to use standard loss mitigation first.

- 14) Are the borrowers eligible for the HAMP program at day 31? Traditional modifications are at 61 days and partial claims are at 91 days for eligibility, which makes me think that anything less than 60 days delinquent would either be looked at for a Special Forbearance or the HAMP program. Is that correct?

Yes, the borrower has to be one full payment past due or placed in a trial modification for the modified mortgage payment.

- 15) Is this program mandatory? Are we required to solicit borrowers who may qualify?

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Yes. The evaluation of FHA borrowers for loss mitigation is mandatory. The loss mitigation priority order, as defined on page 3 of the attachment to Mortgagee Letter 09-23 states that FHA-HAMP can be utilized only if the Borrower(s) does not qualify for current home retention options.

E. Lender Incentives

- 1) From my understanding the customer will have to sign a loan modification agreement and a Partial Claim Subordinate Note and Mortgage?

Yes.

- 2) Do we use the traditional documents or are there new specific documents that HUD would require?

Lender would continue to use the same documents as they are currently using.

- 3) If we are to use the traditional documents do the same rules apply for the Partial Claim and Loan Mod, from the way I am reading the guidelines it says we are to follow the current mortgagee letters, but I just wanted to clarify?

Yes, that is correct.

F. Partial Claim Filing and Document Delivery

- 1) Confirm that the Partial Claim amount would be set up as a 0% 2nd lien that would be assigned to FHA. Investor/Chase would be paid claim amount at time of mod. Also confirm that the loans so modified can be re-delivered.

Yes, the subordinate lien is non-interest bearing and there is no lien priority. Lenders will file insurance benefits for this Partial Claim in the same manner as a traditional partial claim; See GNMA APM 09-14 (referenced above) for more information about re-pooling.

- 2) Are there any special claims instructions?

In addition to the requirement that the Partial Claim be filed and paid prior to the filing of the loan modification claim (see Page 3, Lender Incentives), [Mortgagee Letter 2009-39](#) includes claims instructions.

- 3) Regarding the repayment of the Partial Claim - what is the responsibility of the Servicer to FHA when a payoff is requested on the first lien? Is the Servicer

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responsible for notifying the Held Assets Servicing Contractor?

The requirements of Mortgagee Letter [2003-19](#), section K, are not changed by Mortgagee Letter 2009-23.

- 4) Is the Servicer responsible for maintaining the amount of the non interest bearing partial claim and including it with any payoff statements?

No, see Mortgagee Letter 2003-19

G. Monitoring

No questions at this time.

H. Remittance

No questions at this time.

I. SFDMS Reporting

- 1) Will HUD have special coding (for month-end delinquency reporting) for FHA-HAMP? If not, should we use the existing codes for partial payments, modifications, partial claims, etc?

Additional codes were announced October 9, 2009 via [Mortgagee Letter 2009-39](#).

J. Eligibility – Borrowers

- 1) Under FHA - HAMP is the Borrower is disqualified if they have moved out of the residence and are leasing it out because they can't sell it?

If the property is non- owner occupied, it is not eligible. If the owner moves back into the property and provides documentation it is now their primary residence, the borrower would be eligible provided they met all other requirements.

- 2) Can an FHA-HAMP be offered to a borrower in active bankruptcy? A borrower previously discharged?

Yes, lender would need to check with their legal counsel and may also need to obtain Bankruptcy Court approval.

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K. Eligibility – Existing Mortgage

No questions at this time.

L. Eligibility – Maximum Mortgage Amounts

No questions at this time.

M. Eligibility –Modified Mortgage

- 1) The existing FHA-insured mortgage must be re-amortized to a 30-year fixed rate mortgage, and must be modified in compliance with all FHA Mortgage Modification requirements, except those specifically modified under the FHA-HAMP program.

- a. We appreciate this tool but wish that a 40 year fixed rate mortgage could be made available to provide more relief for our at-risk borrowers.

The program was designed to align with GNMA pooling requirements. Consequently, at this time, only 30 year terms are allowed.

- b. As a state housing finance agency using mortgage revenue bond financing, we can't change the term of our loans to extend beyond the term originally stated in the bond offering.

If state bond requirements prohibit re-amortization to 30 years, lender needs to submit to the NSC, a Variance Request on Letterhead, detailing the reasons as to why you cannot re-amortize the FHA-insured mortgage to a 30-year fixed rate mortgage. NSC will review and respond in writing as to its approval and/or denial of the Variance.

- c. If re-amortizing the loan to 30 years extends the new maturity date by more than 10 years, can the loan still be modified under the FHA-HAMP?

Yes, ML 09-23 requires all loans be re-amortized to 30 years and supersedes the previous 10 years limitation.

- 2) A servicer must comply with all FHA Mortgage Modification requirements – previous and new requirements for the FHA-HAMP. In previous requirements the borrower needed to be seriously delinquent before certain treatments could be provided. For example, a borrower must be 120 days delinquent or > before a Partial Claim can be used. Also – incentives are not paid to the servicer if the borrower is not at least 90 days delinquent at the time of modification. Given the current housing market and economic environment, we believe these two

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requirements should be removed and allow servicers to be incented to work with borrowers earlier in the delinquency and provide relief sooner. Our analysis would prove the earlier the intervention the more often a solution can be found and the more successful the customer is at maintaining the new payment.

Yes, the borrower has to be one full payment past due and placed in a 3 month trial plan, or current and placed in a 4-month trial modification for the modified mortgage payment. The purpose of the evaluation for other loss mitigation options is that a lender may determine that a borrower has a temporary disruption of income, which may be overcome by standard loss mitigation retention tools. In those situations, the lender may choose to utilize a formal forbearance or repayment plan until the borrower is eligible for formal loss mitigation tools.

N. Property Eligibility

- 1) The FHA-insured property must be the Borrower's primary residence. This is fully understandable – but the statement goes on to say that it must be their ONLY residence. Are we to interpret the borrower cannot own a second home to qualify?

No. The purpose of that statement was that the borrower is eligible for loss mitigation assistance on only one owner-occupied house subject to FHA insurance.

O. Interest Rate – Modified New Mortgage

- 1) To determine the rate do we just use the GNMA Coupon rate for the month the Trial Period is approved and then once they complete the trial we just finalize the loan mod?

HUD does not set interest rates; the same rules apply the FHA-HAMP modifications as on standard Loan Modifications (see Mortgage Letters [2008-21](#) and [2009-35](#)).

- 2) The following is to clarify Mortgagee Letter 2009-23, whereas the Lender is to set the Interest Rate at the time of “Approval” for the FHA-HAMP Option and not execution of documents.

P. Current Loan to Value Requirements Mortgage

No questions at this time.

Q. Loan Purpose

- 1) If a customer has had a previous Partial Claim and have used the 12 month PITI

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allowance are they ineligible for an HAMP or is this amount just capitalized in with a loan mod and would have to be paid back during the life if the first lien modified mortgage?

A lifetime of 12 months PITI is the maximum allowance. If they have already used it then they would not be eligible for the FHA-HAMP.

- 2) Clarify whether there is a minimum requirement for lowering of monthly payment.

HUD has not set a minimum reduction; however, the new mortgage payment must be reduced to be as close as possible to 31% of the gross monthly income.

- 3) Guidelines state that all existing subordinate financing must be subordinated again to maintain the first lien priority of the HAMP mortgage. We would suggest that a new subordination agreement would not be needed if the capitalization/partial claim is < \$15,000.

First-lien status must be maintained. See Mortgagee Letter 2000-05, Page 22, Section G. Lien Status – these requirements have not changed.

R. Credit History

No questions at this time.

S. Seasoning Requirements on the Existing Mortgage

- 1) If the mortgage under review for FHA-HAMP is an FHA Streamline refinance, does the 12 month age and 4 payment requirement apply?

No, however, HUD's automated claim processing system (A43C) will suspend the claim in order to determine the age of the prior FHA mortgage. We strongly recommend that the prior FHA case number be entered into the Comments section of the claim.

- 2) Does seasoning include the trial period?

No

T. Property Valuation

No questions at this time.

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U. Trial Modification

- 1) During the Trial Period when we are collecting the estimated mortgage payment, does the due date have to move three times on the mortgage or do the funds just have to post to suspense? If this is allowed does this rule apply to the traditional Loan Modification requests where the customer is being required to demonstrate the ability to make the new estimated payment.

Since the trial modification payments are to be in the amount of the modified mortgage payment (see attachment page 2), the lender would post them to a suspense account tied to the borrower and track that 3 payments (or 4 payments for current loans) were made. This does not constitute a change to a Type II SFB that is referred to in the last part of the question.

- 2) To clarify, no matter what circumstances that occurred, if a borrower breaks the Trial Plan Arrangements they are not eligible for another HAMP?

Correct.

- 3) Does the trial payment plan end at the time of the first untimely payment? Is there a grace period for these payments?

Effective May 1, 2011, a successful Trial Payment Plan is one where the Borrower has made each of the three consecutive monthly payments by the last day of each month. The Borrower has six months to make the three consecutive payments.

- 4) Clarify how to determine that the trial mod payments have been made on time.”

Effective May 1, 2011, a successful Trial Payment Plan is one where the Borrower has made each of the three consecutive monthly payments by the last day of each month. The Borrower has six months to make the three consecutive payments.

V. Documentation Requirements

- 1) When collecting the [Home Affordable Affidavit](http://portal.hud.gov/hudportal/documents/huddoc?id=fhahamp_faq.pdf) can we send this document with the Trial Plan Forbearance or do we have to send this in a separate Loss Mitigation Solicitation?

The borrower must complete and return this document with the financial information since it explains the reason for the hardship. The lender would not be able to approve a borrower without this document. Trial modification is then sent out after approval.

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- 2) Will HUD require that we validate the Borrower's proof of income prior to sending FHA-HAMP documents to the Borrower? This pertains to the issue that we solved recently, where HUD does not recognize a "pre-qualified" modification, and we changed our process to ensure that the Borrower is financially approved prior to sending documents.

Yes, although the lender can take information verbally as most do now, they still have the requirement to verify the information before FHA-HAMP or any loss mitigation option can be approved, and before sending the FHA-HAMP documents to the Borrower.

W. Underwriting Requirements – General

- 1) What is the GSA exclusion list and HUD's LDP - where are they published?

The GSA exclusion list provides information on parties that are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits – see <https://www.epls.gov/>, HUD's Limited Denial of Participation (LDP) is an action taken by HUD which excludes a party from further participation in a HUD program - see <http://www.hud.gov/offices/enforce/ecldp.cfm>

X. Loss Mitigation – Priority Order

No questions at this time.

Y. Underwriting – Monthly Gross Income

- 1) Are customers who unemployed but are collecting unemployment benefits and meet the other requirements for the HAMP Eligible for this workout? If so is there a time restriction to the time when this workout is approved to the day when the benefits would run out? For example, the customer is unemployed but will receive unemployment benefits for the next 12 months and can provide proof of this? If this is allowed are we allowed to approve traditional loan modifications and partial claims using the same logic?

See Mortgagee Letter 2009-23's Attachment for income guidelines and Mortgagee Letter 2000-05 for the financial analysis guidelines.

- 2) Does PITI include HOA fees as in HMP program?

Yes.

- 3) How long must unemployment benefits last to be considered income?

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Unemployment income must be documented with reasonable assurance of its continuance for at least 12 months.

- 4) What is acceptable documentation to support alimony, child support or unemployment income?

*If the borrower elects to use **alimony or child support income** to qualify, acceptable documentation includes photocopies of the divorce decree, separation agreement or other type of legal written agreement or court decree that provides for the payment of alimony or child support and states the amount of the award and the period of time over which it will be received. **Servicers must determine that the income will continue for at least 12 months.** The borrower must present proof of full, regular and timely payment, such as deposit slips, bank statements or signed federal income tax returns.*

*If the borrower has other **income** such as **unemployment**, acceptable documentation includes letters, exhibits, or benefits statement from the provider that states the amount, frequency and duration of the benefit. The servicer must obtain copies of signed federal income tax returns, IRS W-2 forms, or copies of the two most recent bank statements.*

- 5) Can the Lender gross up Disability Income the .125% to qualify a Borrower for the FHA-HAMP if the Borrower is not taxed on the disability?

Based upon the origination requirement for FHA insured mortgages, NSC would conclude it would be acceptable to gross up Disability Income by .125% to qualify a Borrower for the FHA-HAMP Option; even if the Disability income is not taxed. The Borrower would be accountable to the Lender to provide documentation verifying this income.

Z. Underwriting – Front End Debt to Income Ratio

- 1) Does the target 31% DTI pertain to the payment calculation at the time of the qualification for the trial plan OR the final calculation of the HAMP plan following the accrual of additional past due amounts?

*FHA HAMP Variance for Front End Debt to Income Ratio (DTI): FHA Lenders do not need to submit a Variance on a FHA-HAMP when the interest rate reduction and **term** extension back to 360 months (per Mortgagee Letter 2009-35) cause the Lender to go below the Front End DTI of 31% when no principal deferment is being used. See Example below:*

Example: Loan is 5 months pas due. Lender approves the Borrower for the FHA-HAMP, as a result of the interest rate reduction and term extension back to 360 months the

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Borrower's Front End DTI is now reduced to 25%. A Partial Claim is needed for the arrearage of 5 months to bring the loan current no principal deferment is needed since the Borrowers DTI will be below 31%. The Lender may proceed without a Variance from policy from HUD's National Servicing Center (NSC). Any other policy Variance would require an approved Variance from HDU's NSC.

AA. Underwriting - Back End Debt to Income Ratio

NSC will "NOT" approve Variances associated with the Back End DTI exceeding 55%.

- 1) When calculating the back end ratio, what does HUD consider incremental monthly obligations? Does this mean all monthly obligations including Food and Housing Costs?

No, food housing, and utilities are excluded. Obligations to be included in the ratio are the credit report trade line items, and other items as stated on page 3 of the attachment to the HAMP Mortgagee Letter.

- 2) For debt-to-income requirements, does FHA-HAMP require that we utilize only what is on the credit report to calculate the Borrower's back-end ratio? Or will HUD require that we use the standard financial calculation and review all Borrower monthly expenses? The FNMA/FHLMC MHA program utilizes only the debts that are listed on the credit report.

Trade lines on the credit report can be used for verification; however, the servicer must also consider information obtained from the Borrower orally or in writing concerning incremental monthly obligations (see the attachment to Mortgagee Letter 2009-23).

Per HUD Handbook 4155.1, Paragraph 2-12, The borrower's liabilities include all installment loans, revolving charge accounts, real estate loans, alimony, child support, and all other continuing obligations. In computing the debt-to-income ratios, the lender must include the monthly housing expense and all other additional recurring charges extending ten months or more, including payments on installment accounts, child support or separate maintenance payments, revolving accounts and alimony, etc. Debts lasting less than ten months must be counted if the amount of the debt affects the borrower's ability to make the mortgage payment during the months immediately after loan closing; this is especially true if the borrower will have limited or no cash assets after loan closing.

The following additional information deals with revolving accounts and alimony payments:

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- *Revolving Accounts. If the account shown on the credit report has an outstanding balance, monthly payments for qualifying purposes must be calculated at the greater of 5 percent of the balance or \$10 (unless the account shows a specific minimum monthly payment).*
 - *Alimony. Because of the tax consequences of alimony payments, the lender may choose to treat the monthly alimony obligation as a reduction from the borrower's gross income in calculating qualifying ratios, rather than as a monthly obligation.*
- 3) The backend ratio cannot exceed 55%. Our interpretation is the FHA-HAMP will not be given if this condition exists. We would agree a backend ratio of 55% or greater does add risk to the sustainability of the modification but would also suggest we work with the borrower to get support in restructuring all of their debt through a HUD-approved counselor. The borrower could be given the opportunity to complete their trial modification payments while seeking counseling and restructuring of their other debt. This allows the borrower time and supplemental cash assistance during the three months.

As specified in Mortgagee Letter 2009-23, the Back End Ratio must not exceed 55%. If the Back End Ratio exceeds 55%, the FHA-HAMP cannot be offered to the Borrower. The Department encourages Lenders to work with borrowers to seek counseling to get support in restructuring their entire debt. However, when the Lender evaluates the borrower's eligibility for the FHA-HAMP, the Back End Ratio must not exceed 55%.

- 4) If a borrower eliminates debt in Chapter 7 to meet the 55 ratio requirement, would they be eligible for servicing (post discharge) alternatives including HAMP whether or not they reaffirmed the mortgage?

Yes, please refer to Mortgagee Letter 2008-32 and consult with your legal counsel.

BB. Underwriting – Subordinate Financing

No questions at this time.

CC. Underwriting – Upfront Mortgage Insurance Premium

- 1) Does the first mortgage principal reduction provided the borrower under HAMP trigger the 78% threshold under which MIP could be terminated?

No, because the borrower has simply bifurcated their total mortgage debt into two instruments. See also Section J of Mortgagee Letter 2000-05, which states in part that monthly MIP payments must be calculated on the original

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insurance amount.

DD. Underwriting – Annual Premium

No questions at this time.

EE. Underwriting - Calculation of Maximum Partial Claim Amount

- 1) Are we allowed to include all escrow shortages and amounts to fund escrow in the HAMP?

Yes.

- 2) If so, should we run an updated escrow analysis prior to preparing the final modifications?

Yes.

- 3) If we do this, what happens if the customer does not meet the required ratios to complete the loan modification. (This would occur in a case where the customer had Forced Placed Taxes or Insurance during the trial period)

The borrower has to meet the 31/55 ratios. If not, the borrower would have to be evaluated for standard loss mitigation options.

- 4) We fully understand the Partial Claim may not exceed the equivalent of 12 months PITI and allowable foreclosure costs, but need further clarification if we would be allowed to capitalize any remaining arrearage if this limit was hit and the borrower needed to capitalize the remaining to become current.

The FHA-HAMP Partial Claim is the sum of three amounts, not to exceed 30% of the outstanding principal balance.

1. *Arrearages not to exceed 12 months PITI; this includes existing partial claims*
 - a. *A partial claim (including under FHA-HAMP) would be limited to 4 months PITI today if a previous partial claim had already been granted for 8 months PITI.*
2. *Allowable Legal Fees and Foreclosure Costs related to the cancelled, incomplete foreclosure action.*
3. *Remaining Amounts to Principal Reduction (up to an amount necessary to achieve the 31% front-end debt to income ratio),*

Just as for the regular partial claim, no additional arrearage exceeding the maximum of 12 months PITI can be included in that portion of the FHA-

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HAMP Partial Claim total.

Below is an example for calculating the Partial Claim as part of the 30% unpaid principal balance deferral.

Existing Partial Claim

Unpaid Principal Balance = \$100,000

30% principal deferral maximum = \$30,000

Previous partial claim for 6 months unpaid PITI = \$6,000

Available partial claim for 6 months unpaid PIT = \$6,000

Note: the above example does not include escrow or fees

Calculation

\$100,000 – UPB

\$30,000 – 30% maximum for principal deferral

-6,000 – Previous Partial Claim

-6,000 – Available Partial Claim

\$18,000 – Available for principal deferral

No Existing Partial Claim

Unpaid Principal Balance = \$100,000

30% principal deferral maximum = \$30,000

Previous partial claim = \$0

Delinquency = 4 months PITI = \$ 4,000

Calculation

\$100,000 – UPB

30,000 – 30% maximum for principal deferral

-0- – Previous Partial Claim

-4,000 – Current Delinquency (4 months PITI)

\$26,000 – Available for principal deferral

FF. Partial Claim Guidelines

No questions at this time.

GG. 90 days Past Due or In Foreclosure

**Questions and Answers: Mortgagee Letter 2009-23 -
FHA-Home Affordable Modification Program, and subsequent guidance**

- 1) *For loans in the foreclosure process - PRIOR to first legal being filed - will there be an automatic 90-day extension to review these loans for FHA-HAMP? Does this include loans in the foreclosure process prior to 8/15/09?*

Lenders would be granted an automatic 90 day extension under 24 CFR [203.355](#) for owner occupied properties to review for HAMP. As appropriate, enter the expiration date of this automatic extension to Form HUD-27011, Part A, block 19, when filing a disposition claim (e.g., conveyance, preforeclosure, etc.).

- 2) *For loans currently in our foreclosure process - AFTER the first legal has been filed - will HUD give servicers an extension for reasonable diligence to postpone sales and review files again for FHA-HAMP?*

Yes, when lenders exceed the reasonable diligence time frames they are required to document their servicing files and explain on their claim the reason for exceeding time frames.

- 3) *Can the loan be in foreclosure at the time of the loss mitigation review or does Foreclosure have to be put on hold?*

It is the same process as standard loss mitigation - complete the loss mitigation review and, if approved, cancel the foreclosure.

- 4) *If the loan is put on hold for review and ultimately foreclosure resumes, what percentage of the original foreclosure fees and costs are claimable?*

It is the standard percentage of up to 75% of foreclosure costs.

HH. Escrows

No questions at this time.

II. Unpaid Late Fees Waived

No questions at this time.

JJ. Credit Report

- 1) *For current borrowers who have imminent default, are we suppose to block credit and report them current during the trial plan?*

No, report them as usual.

**Questions and Answers: Mortgagee Letter 2009-23 -
FHA-Home Affordable Modification Program, and subsequent guidance**

- 2) When the Borrower enters the 3 month Trial period should credit reporting be blocked?

No, report them based on compliance with the contractual due date.

KK. Lender Incentives

Under FHA-HAMP, the Lender may receive an incentive fee of up to \$1,250. This total includes \$500 for the Partial Claim and \$750 for the Loan Modification.

LL. Borrower Cash Contribution

- 1) The mortgage is 14 months delinquent. Could we capitalize the extra 2 months into the modification so that we comply with the 12 month PITI delinquency cap?

No, the extra 2 months delinquency can neither be capitalized into the modification, nor can it be a different component in the Partial Claim mortgage. The borrower would need to pay down the delinquency on the first mortgage to be within the 12 month cap –a mortgage payment is not a cash contribution.

- 2) If the borrower does not contribute for costs associated with the Loan Modification, are we allowed to include those in the Partial Claim?

Per Mortgagee Letter 2008-21, HUD allows for certain costs such as attorney fees and costs to be included in a PC, late charges are not allowed.

MM. Disclosure

No questions at this time.

NN. Fair Lending

No questions at this time.

OO. Consumer Inquiries and Complaints

No questions at this time.

PP. Case/Mortgage Documentation

No questions at this time.

QQ. Anti-Fraud Measures

**Questions and Answers: Mortgage Letter 2009-23 -
FHA-Home Affordable Modification Program, and subsequent guidance**

No questions at this time.

RR. Data Collection

No questions at this time.

Revision History	
08/12/2009	Initial Publication
08/14/2009	New sections J and K added, all subsequent sections re-lettered. New questions/answers: F2, J1, S1, S2, Y4, Z1, CC1, JJ2, LL1, Revisions to answers: AA1 and AA2
10/28/2009	New questions/answers: A5, F3, F4, J2, J3, W1, LL2 Modified questions/answers: A2, D15, EE4(1)(a) Revisions to answers: A1, F2, I1, O1, V2 Reorganization: Z1 moved to AA4, M1 became M1a, b &c
01/22/2010	Revision to answer: A1
01/28/2010	Revision to answers: A3, D12, M2, U1, U5 Modified question/answer: U5
04/08/2010 07/19/2011 08/17/2011 11/10/2011	Modified response to answer EE4, pp. 15-16 Deleted NSC email box; Modified answer B. M1) b., O.1), Home Affordable Affidavit link is not working, Y.5. new answer, Z.1), AA.1), KK. Modified answers page 11,U. 4) and 5) and page 19, KK. Corrected D. Requirements to Use FHA-HAMP 3) deleted "have to" Deleted 2) under Paragraph U. Trial Modification