Veterans Benefits Administration
Department of Veterans Affairs
Washington, DC 20420

Circular 26-10-6
May 24, 2010

REVISED VA MAKING HOME AFFORDABLE PROGRAM

1. PURPOSE. This circular provides authority and revised instructions for modifying VA-guaranteed home loans in accordance with the President's Making Home Affordable (MHA) program. These new procedures will be effective immediately, and replace the instructions issued in Circular 26-10-2, dated January 8, 2010. The intent of these instructions is to ensure that veteran borrowers receive the opportunity to be considered for affordable loan modifications when other home retention loss mitigation options are not feasible.

2. BACKGROUND. VA has a longstanding policy of encouraging servicers to work with veteran borrowers to explore all reasonable options to help them retain their homes, or when that is not feasible, to mitigate losses by pursuing alternatives to foreclosure. In an effort to help homeowners avoid foreclosure, the President announced the MHA program to make home loans more affordable. Two main features of this program are the Home Affordable Refinance Program (HARP) and the Home Affordable Modification Program (HAMP). HARP was introduced to help borrowers refinance at lower interest rates despite high loan-to-value (LTV) ratios, and provides relief similar to VA's existing Interest Rate Reduction Refinancing Loan (IRRRL) program. HAMP was introduced to avoid foreclosures by modifying loans to increase affordability relative to borrower income. Under HAMP, an affordable modification is defined as a new monthly mortgage payment (including principal, interest, property taxes, insurance, and condominium or homeowners' association fees (PITIA)) that is no greater than 31 percent of the borrower's monthly gross income. This circular explains how VA loan modifications conform to the MHA program.

3. GUIDANCE TO SERVICERS

a. Priority of Review. VA expects servicers to exert all reasonable efforts to assist veteran borrowers in retaining ownership of their homes or mitigating losses when retention is not possible. Before considering HAMP-style modifications, servicers must first evaluate defaulted mortgages for traditional loss mitigation actions cited in Title 38, Code of Federal Regulations, section 36.4819 (38 CFR 36.4819); i.e., repayment plans, special forbearances, and traditional loan modifications. If the payments are affordable, then the traditional loss mitigation option will be used to help the veteran retain the home and avoid foreclosure. If none of the traditional home retention loss mitigation options provide an affordable payment, the servicer must evaluate the loan for a HAMP-style modification prior to deciding that the default is insoluble and exploring alternatives to foreclosure. VA expects servicers to complete all loss mitigation activities, including review for HAMP-style modifications, expeditiously, as interest on any claim under guaranty on an unsuccessful case is limited to 210 days from the due date of the last paid installment plus the published timeframe for foreclosure in the State where the security is located. This circular provides servicers with temporary authority to modify VA-guaranteed loans in a manner similar to HAMP. This VA HAMP-style modification authority can be utilized only if the following three requirements are met: 1) borrower does not qualify for traditional home retention loss mitigation, 2) the property is the borrower's primary residence, and 3) the VA HAMP modification is agreed upon prior to the HAMP expiration date (currently December 31, 2012). While Treasury restricts HAMP modifications to loans originated on or before January 1, 2009, VA will allow servicers to use HAMP-style modifications on any VA-guaranteed loan, subject to the requirement in 38 CFR 36.4815(a) that prior VA approval must be obtained if less than 12 payments have been made since the loan closed. The VA guaranty amount on a HAMP-style modification will be calculated pursuant to 38 CFR 36.4815(h), which could increase the maximum guaranty amount on the modified loan.

b. Servicer Evaluates Loan for HAMP-style Modification. Before evaluating whether a VA-guaranteed loan can be made affordable with a HAMP-style modification, the servicer will first document its case notes with the reason why traditional loss mitigation options are not appropriate. If the servicer was unable to contact the borrower to obtain financial information, or if the borrower declined to provide financial information, then it will not be possible to evaluate the loan for a HAMP-style modification. However, if verified financial information indicates insufficient income to justify a traditional loss mitigation option, then the servicer will use the financial information obtained to evaluate the possibility of a HAMP-style modification. Follow the Treasury guidelines on income consideration at https://www.hmpadmin.com/portal/index.html, which may involve different treatment of unemployment, disability, or rental income than provided in standard VA underwriting protocols found in 38 CFR 36.4840, and will utilize a debt to income standard rather than VA's traditional residual income underwriting.

(1) Calculate Target Affordable Payment. The gross monthly income will be multiplied by 31 percent to obtain the target HAMP-style modification total monthly payment. In accordance with Treasury Supplemental Directive 09-01, if net income or non-taxable income is provided, multiply that by 1.25 to obtain the gross income figure. From the target (31 percent) total monthly payment, subtract the monthly escrow amount for property taxes, insurance, and condominium or homeowners' association fees (TIA) to determine the target monthly principal and interest (PI) payment.

(2) Estimate Modified Loan Balance. Calculate the estimated balance of the modified loan by including unpaid principal balance, accrued interest, and all reimbursable advances and expenses and fees other than late charges. Because attorney fees and costs incurred in the foreclosure process are legitimate expenses that are typically chargeable to borrowers, and the Treasury guidelines preclude requiring the borrower to make any up-front cash contribution, VA will allow capitalization of foreclosure expenses in any HAMP-style modification.

(3) Establish Modified Loan Terms. Using the standard Treasury HAMP waterfall, reduce the interest rate as low as 2 percent, in increments of .125 percent, to get as close as possible to the target monthly PI payment. If necessary, extend the term as long as 480 months from the date of modification, and then provide for principal deferment to achieve the target monthly mortgage payment. If none of these measures result in the target monthly PI payment, then servicers must pursue alternatives to foreclosure.

(4) Determine Feasibility of HAMP-style Modification. ***VA does not require use of the Treasury NPV (net present value) model***. However, each servicer must conduct its own analysis to decide whether it is more advantageous to retain a VA-guaranteed loan and execute a

HAMP-style modification, or to refer the case to VA for refunding consideration (as described later), rather than exploring alternatives to foreclosure or proceeding with loan termination.

c. Servicer Authority to Complete HAMP-style Modifications. If the loan meets HAMP eligibility requirements, this circular grants the servicer prior approval to execute the modification pursuant to the HAMP guidelines located at https://www.hmpadmin.com/portal/index.html with the following exceptions:

(1) Standard VA servicer incentives apply.

(2) VA-guaranteed home loans are not eligible for any MHA incentives issued by the U.S. Department of Treasury at this time.

(3) VA will not pay servicer incentives for any modification completed on a current loan.

(4) VA will not pay borrower Pay-for-Success incentives.

(5) Servicer Participation Agreements are not required.

d. Modification of Current Loans. Current VA loans may not be solicited for HAMP-style modification, as they should be considered for refinancing using VA's IRRRL program. However, if a veteran borrower contacts a servicer to advise of "imminent danger of default," the loan may be evaluated under the HAMP guidelines if a traditional modification will not make payments affordable. Modification of current loans requires VA prior approval. See Circular 26-09-17, Interim Process for Pre-Approval of Loan Modifications on Current Loans, issued October 1, 2009, for instructions on seeking prior approval to modify current loans.

e. Referral to VA for Refunding Consideration. When the evaluation in subparagraph b above indicates that a loan may be modified to make it affordable under Treasury's guidelines, but the servicer's analysis indicates it would not be in its best interest to complete a HAMP-style modification, the servicer must e-mail the VALERI-assigned VA technician to request a prompt review for possible refunding (purchase of the loan by VA). Servicers must also copy a VA Servicing Officer (SO) at the same Regional Loan Center (RLC) on the e-mail, in case the technician is unavailable for an extended period of time. The case information in VALERI lists the assigned VA technician, and servicers should refer to the VA Regional Loan Center Contact Information link at http://www.homeloans.va.gov/valeri.htm to obtain the name of an SO at the same RLC. The subject line of the email must read "REFUNDING CONSIDERATION REQUESTED." The e-mail must include the following: total eligible indebtedness, the borrowers' expected gross monthly income, the expected monthly escrow amount (for taxes, insurance premiums, and condominium or homeowners' association fees), the borrowers' monthly expenses, the reason for default, and the reason why traditional loss mitigation options are not appropriate. The VA technician will e-mail the servicer within 7 calendar days with a determination of whether or not VA will proceed with refunding consideration. If VA decides to proceed with refunding consideration, the technician will advise the servicer to submit any verification of income previously obtained and the credit report used in its analysis. The technician will also ask the servicer to order a liquidation appraisal and a title report, and will notify the veteran that the loan is being considered for refunding. **The servicer's referral of a**

case to VA does not ensure that VA will proceed with refund consideration, nor does VA's decision to consider refunding ensure that a loan will be refunded.

4. GUIDANCE TO VA STAFF

a. VA Refunding with HAMP-style Modifications. A VA technician will receive an e-mail from a servicer after it has analyzed a loan under the HAMP guidelines and believes refunding may be appropriate. The VA technician will use the VA NPV refunding model described in the following paragraph and e-mail the servicer within 7 calendar days as to whether or not VA will proceed with refunding consideration. After this preliminary VA NPV review, in instances where a decision is made not to proceed with refunding consideration, SO approval must be obtained prior to notifying the servicer. However, SO approval is not required in instances when refunding consideration will proceed. All refund recommendations must be thoroughly documented. If VA will not refund the loan, the technician will notify the servicer to pursue alternatives to foreclosure. If a decision is made to continue with refunding consideration, the technician will open the "review refund" process and proceed with refunding as usual. VA will reimburse additional interest accrued in accordance with existing policies.

b. VA NPV Refunding Model. During the preliminary refunding review, the technician must use a newly introduced VA NPV refunding model available on the VA Intranet. The technician will input income and other required data and calculate the adjusted interest rate, term, and principal deferment for a loan modification needed to achieve a monthly mortgage payment (PITIA) of no greater than 31 percent of the borrower's gross income. The VA NPV refunding model provides for a fixed interest rate, with a floor of two percent for the life of the loan; a maximum term of up to 40 years; and principal deferment when appropriate. The U.S. Department of Treasury directive describes principal deferment as a non-interest bearing and non-amortizing amount, which is essentially a balloon payment fully due and payable upon the earliest of: the transfer of the property, the payoff of the interest bearing unpaid principal balance, or the maturity of the loan. The technician must document the VALERI case notes with the financial information provided by the servicer (it is acceptable to enter a copy of the servicer's e-mailed information) and upload a copy of the VA NPV results into VALERI.

c. Special Considerations. If the initial VA NPV analysis indicates the loan should not be refunded, the technician will thoroughly review the case and clearly document any special circumstances that could justify approval of the refunding. For example, if the present default was caused by unique circumstances beyond the veteran's control that have been resolved or will clearly soon be resolved, the technician may recommend approval to the SO with documentation to justify not following the VA NPV analysis. RLC management may contact VA Central Office for guidance in unusual situations.

d. Benefits of VA Refunding to Servicers and Veterans. If a loan is refunded by VA, the servicer generally receives payment for the loan (up to the net value of the property plus VA's maximum guaranty) within 90 days after refunding approval, rather than having to proceed with loan termination over a longer period of time and possibly incurring advances for taxes and insurance, as well as liquidation expenses. When the total loan indebtedness exceeds the net value plus VA's maximum guaranty, the servicer may still find it advantageous to agree to write-off such excess to allow VA to refund the loan, rather than facing a higher write-off if foreclosure is the only other option. In addition, the veteran receives a fresh start with affordable payments. Unlike the HAMP program, VA refunds do not have a trial period because the VA modification agreement immediately changes the installment amount to begin the fresh start sooner. Additionally, VA will not increase the interest rate after 5 years; instead the loan will retain the lower refunded rate for the life of the modification.

5. QUESTIONS. If you are a veteran with questions about your loan, please call our toll-free number (877) 827-3702 to reach the nearest trained VA Loan Technician who can counsel you about your situation.

6. RESCISSIONS:

a. Circular 26-10-2 and Change 1 are rescinded immediately.

b. This circular is rescinded July 1, 2012.

By Direction of the Under Secretary for Benefits

Mark Bologna, Director
Loan Guaranty Service

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