National Association of Mortgage Brokers (NAMB)
Position Paper
Loan Modification and Foreclosure Avoidance Rules and Legislation

Prepared By: David Bartels
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On February 4, 2010, the FTC requested public input, particularly from attorneys and other professionals, on a proposed rule that would require mortgage relief companies to make good on their promised results before charging or accepting payment from consumers. Under the proposed rule, companies could not be paid until they had a documented offer from a mortgage lender or servicer that lives up to the promises they have made.

While we agree with the tone of the proposed rule that homeowners should not pay for modification services until they receive an official offer of modification from the lender, it does not solve the real issue of eligible borrowers being approved for permanent loan modifications.

It is our position that it is in the best interest of distressed homeowners, loan servicers, and those legislative and regulatory agencies whose mission is to provide relief to struggling homeowners that the rule be amended to include, or legislation be approved that will accomplish the following:

1) Eliminate trial loan modifications in favor of permanent loan modifications

There have been nearly 1,300,000 trial modifications offered under Home Affordable Modification Program (HAMP) with approximately 116,000 permanent modifications through January 2010. As of June 1, 2010, loan servicers will only be able to evaluate borrowers for trial loan modification eligibility if the borrower submits evidence of qualified income in advance. Currently, borrowers are able to verbally state income to get approved for a trial loan modification, and later verify income in writing to obtain a permanent loan modification.

We agree the evaluation of a borrower's eligibility for a trial loan modification based on verification of qualified income in advance is an optimal solution as opposed to the current verbal method of approval used by many loan servicers.

If loan servicers are going to manually underwrite the loan modification in advance, why the need for a trial modification period at all? We believe that the way to fix HAMP is by eliminating trial modifications completely by making them all permanent based on upfront underwriting.

When a consumer applies for a new loan, they are either approved or denied based on

the lender's underwriting guidelines. There is no trial period if they are approved. Underwriting does not continue. Trial loan approvals do not exist. The borrower either performs on their contractual obligation or they do not.

Trial modifications have become a nightmare from public relations and financial perspectives for loan servicers in particular and the banking industry, HAMP, Treasury, and policy makers in general.

This change alone would significantly compress the amount of time needed to convert trial loan modifications into permanent loan modifications. Loan servicers would save millions of dollars while simultaneously providing better service to the millions of distressed homeowners HAMP was designed to assist.

2) Allow loan servicers to include foreclosure acceleration language as a condition of the loan modification approval

To protect loan servicers from additional risk associated with re-defaults on modified mortgages, the terms of modification should allow the mortgage note to revert to the pre-modified terms of the original mortgage agreement. Loan servicers should be permitted to proceed with an accelerated foreclosure process should the borrower fail to perform as agreed during the first three payments of the new loan contract (The proposed equivalent of a trial period).

Giving loan servicers the right to act quickly to foreclose should the borrower fail to pay as agreed during the first three months (trial period) will be an incentive for loan servicers to approve more permanent loan modifications.

With default rates approaching 100% for borrowers who are thirty days or more delinquent on their mortgage, many loan servicers prefer to cut their losses and foreclose versus modify. If a homeowner fails to perform under the new proposed terms during the first three months, the loan servicer would have the right to accelerate the foreclosure process. This will save the loan servicers significant time and expense and is a fair exchange for giving the homeowner the opportunity to cure default or imminent default via a permanent loan modification.

This change will deter borrowers from gaming the system and save the loan servicers significant time (months) and money (tens of thousands of dollars) trying to cure the default, and then foreclose.

Lawmakers and policy makers will get credit for better supporting distressed homeowners and loan servicers will strengthen their case for foreclosure, and place the pressure on the borrower to perform as agreed post modification or quickly vacate.

3) Require loan servicers to decision a loan modification application without requiring updated docs within 30 days of confirming they have the required information needed to decision file

Loan servicers are taking 6 months or so to decision a file. By the time they get around to reviewing the file, the documents provided are updated or lost. The biggest complaint by professionals trying to help distressed homeowners and from the homeowners

themselves is the need to provided updated versions of the same documents every 30 days or having to send the same information repeatedly even after the loan servicer has acknowledged being in receipt of all documents needed to decision a file.

Many have concluded that requiring updated docs repeatedly and losing paperwork is a stall strategy loan servicers have implemented to avoid having to decision a file at all. It appears that the loan servicers' objective is to delay a decision with the hope that the borrowers will abandon their request for a loan modification or the hardship will be cured and the homeowner will no longer be eligible for a loan modification. Whether intentional or not, the delays are not in the spirit of HAMP and cause more harm than good to the homeowners HAMP was created to assist.

If loan servicers can approve an application for a new loan in less than thirty days with one complete set of required documents, they can approve a loan modification to an existing borrower within thirty days using one complete set of qualified documents.

4) Loan servicers should be required to specifically disclose why the borrower was denied a loan modification

Loan servicers unilaterally decision applications for loan modifications based on a single factor. Do they make more money by modifying the loan or foreclosing on the loan? If the loan servicer believes they will earn more money by modifying a loan, the loan modification is approved. If they believe they will earn more money by foreclosing on the property, they will decline the modification and force the borrower to perform or default.

We believe it is in the best interest of all parties to require loan servicers to specifically disclose the reason an application for a loan modification is denied and how they arrived at their decision to deny.

- What income/expenses were used by the loan servicer (we frequently find errors in their calculations) to decision a file?

- If a file is declined for Net Present Value (NPV), the loan servicer should be required to disclose the assessed value used to decision the file.

- Homeowners should have an oversight agency they could turn to if they feel there was an error based on the denial disclosures.

5) When a modification fails or the homeowner is not eligible for a modification, foreclosure alternatives should automatically and instantly be offered to the homeowner

Before commencing any foreclosure action for any reason, the loan servicer should be required to provide the homeowner with a written explanation of the foreclosure process, including estimated timelines and credit consequences. The explanation should have written proof of service to avoid borrowers claims of improper notice.

As part of the explanation process, loan servicers should offer standardized short sale and deed-in-lieu of foreclosure options.

Deed-in-lieu of foreclosure should be offered to every homeowner once a notice of default has been filed. The homeowner should receive a cash offer (based on size of mortgage and not less than $3,000) to vacate the property by a certain date (not more than 90 days) and leave the property in “swept clean” condition.

In most cases, a short sale is a better alternative for the homeowner because it allows the homeowner to experience closure through the selling of the home versus the loss of the home through foreclosure. The homeowner receives the equivalent net proceeds as they would via a foreclosure; however, the stress associated with the anticipation of the 3-day notice to vacate is alleviated.

A short sale is more beneficial for the loan servicer than foreclosure or deed-in-lieu of foreclosure because the homeowner assists the loan servicer in disposing of the property more quickly and for more money than the loan servicer could typically receive by selling the property via auction.

Federal guidelines for short sales should include:

- All short sale offers should be reviewed and decisioned within 14 days of receiving all required documents.

- Upon acceptance and successful conclusion of the short sale transaction, the homeowner should receive $3,000 from the loan servicer to assist them in their transition to a new home.

- Loan Servicers should not prohibit investors from buying and selling homes within 30 days of closing (clearing inventory is the fastest way to reduce supply, increase demand and get home prices appreciating again. This is best solution for our economy.)

  If a real estate investor wants to buy a house at a price agreed to in advance by the loan servicer, the real estate investor should have the right to resell the house for a profit or a loss at anytime after closing. Some banks are agreeing to sell houses to real estate investors with a condition that they are not permitted to resell the property for 30 days.

- If a loan servicer denies a short sale offer, the loan servicer should be required to counter with a minimally acceptable offer so the buyer can raise their offer or pass on the transaction. Loan servicers are denying short sale offers from retail buyers and real estate investors and selling the same property at auction, months or years later for less than the short sale offer price.

We believe these proposed guidelines protect everyone involved in the transaction fairly and offer all parties, including the US housing market, the best possible financial conclusion.

If we are going to fix the housing crisis, we must begin by helping homeowners modify existing loans to affordable levels, or provide them with alternatives that minimize the emotional strain foreclosure has on the families that live in them.

We believe that these guidelines are constituent friendly, fair to the loan servicers, homeowners and in the short term and long-term economic interest of the US housing market.

It is suggested these guidelines be repurposed as a FTC rule, a revision to HAMP and Home Affordable Foreclosure Avoidance (HAFA) or presented as legislation with many co-sponsors.

Suggested names include The Foreclosure Prevention Act, Help for Homeowners and/or The Homeowner Protection Bill.

The National Association of Mortgage Brokers (NAMB) is a nonprofit organization providing education to mortgage industry members, establishing and promoting high industry standards and working to increase consumers' understanding of mortgage brokers' services and loan products. NAMB is highly committed to increasing consumer information and education, self-policing the industry, working with regulators and legislative bodies at the federal and state level to provide prudent products that make sense for the consumer, and continuing the fight against fraud in all its forms.

To learn more about NAMB call (703) 342-5900 or go to www.namb.org.

David Bartels is President of US Home Loan Advocates. He is a pioneer of no upfront fee (contingency based) loan modification services and a tireless advocate for the rights of distressed homeowners seeking a loan modification or other alternative to foreclosure.

US Home Loan Advocates, Inc. (USHLA) is a full service loss mitigation firm endorsed by the National Association of Mortgage Brokers and is recognized as the trusted referral source for real estate industry professionals working with distressed homeowners.

To learn more about USHLA call 877-496-5393, or visit www.ushla.com.

Addendum to Position Paper

On February 4, 2010 the FTC, publicly released the following news release.

FTC Proposes Rule That Would Bar Mortgage Relief Companies From Charging Up-Front Fees

The Federal Trade Commission moved to protect distressed homeowners from the promoters of bogus foreclosure rescue and mortgage modification services by proposing a new rule that would forbid companies to charge up-front for these services. Instead, companies could only collect payment after providing services.

“Homeowners facing foreclosure or struggling to make mortgage payments shouldn’t have to contend with fraudulent ‘companies’ that don’t provide what they promise,” FTC Chairman Jon Leibowitz said. “The proposed rule would outlaw up-front fees so companies can’t take the money and run.”

According to the Notice of Proposed Rulemaking announced today, historic levels of consumer debt, increased unemployment, and an unprecedented downturn in the housing and mortgage markets have contributed to high rates of mortgage loan delinquency and foreclosure. This mortgage crisis has launched an industry of companies purporting, for a fee, to obtain mortgage loan modifications or other relief for consumers facing foreclosure. The FTC has brought 28 cases in this area, and state and federal law enforcement partners have brought hundreds more. Generally these cases charged that companies do not provide the services they promise and that they misrepresent their affiliation with the government and government housing assistance programs, including the Making Home Affordable Program.

The FTC notice seeks public input, particularly from attorneys and other professionals, on a proposed rule that would require mortgage relief companies to make good on their promised results before charging or accepting payment from consumers. Under the proposed rule, companies could not be paid until they had a documented offer from a mortgage lender or servicer that lives up to the promises they have made.

“Far too many homeowners have paid up-front fees to bad actors who promised loan modifications but never delivered,” Treasury Secretary Timothy Geithner said. “I commend the FTC for proposing a strong set of safeguards to protect consumers from these predatory practices.”

The proposed rule also would bar providers from telling consumers to stop communicating with their lenders or mortgage servicers, and from misleading them about key facts such as:

- The likelihood of getting the results they want, and how long it will take.
- Their affiliation with public or private entities.
- Payment and other existing mortgage obligations.
- Refund and cancellation policies.

In addition, the proposed rule would require providers to tell consumers that they are for-profit businesses, the total amount consumers will have to pay, that neither the

government nor the consumer's lender has approved their services, and that there is no guarantee that the lender will agree to change their loan.
The proposed rules would apply to for-profit companies that, in exchange for a fee, offer to work with lenders and servicers on behalf of consumers to modify the terms of mortgage loans or to take other steps to avoid foreclosure on those loans. The proposed rules generally exempt entities that own or service mortgage loans. Attorneys would have a limited exemption from the proposed advance fee ban if they represent consumers in a bankruptcy or other legal proceeding.

The FTC rulemaking proceeding is required by legislation secured in 2009 by Senator Byron Dorgan and Chairman Jay Rockefeller. Any proposed rule would apply only to entities within the FTC's jurisdiction under the FTC Act, which excludes, among others, banks, thrifts, and federal credit unions. As the first step in the rulemaking process, on June 1, 2009, the FTC issued an Advance Notice of Proposed Rulemaking seeking comment on the practices of for-profit mortgage relief services providers.

By a 4-0 vote, the Commission authorized publication in the Federal Register of the Notice of Proposed Rulemaking, which has a 45-day public comment period ending March 29, 2010. Full instructions for submitting comments are found in the Address section of the Notice.

The Federal Trade Commission works for consumers to prevent fraudulent, deceptive, and unfair business practices and to provide information to help spot, stop, and avoid them. To file a complaint in English or Spanish, visit the FTC's online Complaint Assistant or call 1-877-FTC-HELP (1-877-382-4357). The FTC enters complaints into Consumer Sentinel, a secure, online database available to more than 1,700 civil and criminal law enforcement agencies in the U.S. and abroad. The FTC's Web site provides free information on a variety of consumer topics.

MEDIA CONTACT:
Office of Public Affairs
202-326-2180

STAFF CONTACT:
Laura Sullivan or Evan Zullow
Bureau of Consumer Protection
202-326-3224

California Association of Mortgage Professionals (CAMP)
Position Paper
Loan Modification and Foreclosure Avoidance Rules and Legislation

Prepared By: David Bartels
President, US Home Loan Advocates
Director, CAMP-Central Coast Chapter

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While we agree with the tone of the proposed rule that homeowners should not pay for modification services until they receive an official offer of modification from the lender, it does not solve the real issue of eligible borrowers being approved for permanent loan modifications.

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We agree the evaluation of a borrower's eligibility for a trial loan modification based on verification of qualified income in advance is an optimal solution as opposed to the current verbal method of approval used by many loan servicers.

If loan servicers are going to manually underwrite the loan modification in advance, why the need for a trial modification period at all? We believe that the way to fix HAMP is by eliminating trial modifications completely by making them all permanent based on upfront underwriting.

When a consumer applies for a new loan, they are either approved or denied based on the lender's underwriting guidelines. There is no trial period if they are approved.

Underwriting does not continue. Trial loan approvals do not exist. The borrower either performs on their contractual obligation or they do not.

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This change alone would significantly compress the amount of time needed to convert trial loan modifications into permanent loan modifications. Loan servicers would save millions of dollars while simultaneously providing better service to the millions of distressed homeowners HAMP was designed to assist.

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Giving loan servicers the right to act quickly to foreclose should the borrower fail to pay as agreed during the first three months (trial period) will be an incentive for loan servicers to approve more permanent loan modifications.

With default rates approaching 100% for borrowers who are thirty days or more delinquent on their mortgage, many loan servicers prefer to cut their losses and foreclose versus modify. If a homeowner fails to perform under the new proposed terms during the first three months, the loan servicer would have the right to accelerate the foreclosure process. This will save the loan servicers significant time and expense and is a fair exchange for giving the homeowner the opportunity to cure default or imminent default via a permanent loan modification.

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Deed-in-lieu of foreclosure should be offered to every homeowner once a notice of

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To learn more about CAMP call 916.448.8236, email consumer-protection@cambweb.org or go to www.cambweb.org.

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