Questions about Hope for Homeowners
August 27, 2008
Compiled by the American Bankers Association, the Housing Policy Council/The Financial Services Roundtable, and the Mortgage Bankers Association

General Questions

1. If a full and complete application is presented on October 1, when will the FHA approve the loan? What is the process for obtaining a new loan? Will borrowers be required to apply through their servicer if their servicer is participating in the H4H program? Timing will be important to the servicer - the write down will not necessarily occur if the new loan is not approved.

   Recommendation: While only the FHA can answer these questions definitively, we would urge that the turnaround of a full and complete application be no longer than 10 days, and that FHA immediately obtain the needed assistance to process large numbers of applications within that time frame.

   We do not believe that borrowers should be restricted to applying through the servicer, but the servicer clearly must be a part of the process to enable the refinancing to occur.

2. Will DE lenders be granted delegated approval authority under the H4H program?

   Recommendation: We would urge that they be granted such authority.

3. When will regulations be published? Will there be a comment period? Will the regulations be published before the Sept 17 hearing date of the HFSC?

   Recommendation: We would urge that the regulations be published, and that there be a comment period, even if it is a very brief duration. In order to make the September 17 hearing of HFSC as useful as possible, it would be useful if the regulators could provide some guidance on some regulations by then.

   To avoid disappointed debtors, we would encourage HUD to refrain from encouraging homeowners to apply for a loan under this program until regulatory guidance has been published. Encouraging homeowners who are concerned that they might not be able to make payments to contact their servicers, however is desirable.

   It is essential that HUD be permitted to promulgate rules that will lead to efficient operation of the program, such as allowing servicing operations staff the flexibility to negotiate the H4H new loan terms with the borrower.

Forbearance/Role of Investors

4. Have the regulators discussed forbearance with Fannie and Freddie? Are they accommodating forbearance for an indeterminate period when FHA finally approves an application for refinancing for the property, or makes a decision that the application will not be approved?

Recommendation: Whether and to what extent Fannie Mae and Freddie Mac permit forbearance by servicers will, to a great extent, determine whether servicers can forebear. Such forbearance, of course, must run until FHA has acted on the H4H application.

Approval of New Loan- Standards and Process

5. Does the FTC "Do Not Solicit" standard have an impact on the ability of lenders/servicers to contact borrowers to get them into H4H?

   Recommendation: The regulators must ensure that servicers and non-servicer lenders may approach any borrower to inform him or her of the provisions of the H4H Act without subjecting itself to sanctions from other regulators.

6. Will the regulators produce model forms or documents that will be acceptable if used by servicer?

   Recommendation: It will expedite processing if the regulators produce model forms as long as the forms are not mandatory. Requiring use of the forms may require reprogramming on the part of servicers and other lenders, particularly if the forms are not published well in advance of October 1. HUD, however, must provide the new mortgage instrument and any other contracts or legal documents that lenders are required to use to address the appreciation and equity sharing requirement.

7. Will any support be provided to Lenders that do not have FHA capabilities?

   Recommendation: For both competitive reasons and to encourage wider use of the program, FHA must provide detailed and easy to understand support to non-FHA lenders from the beginning of the program.

8. What are the specific credit standards for the Hope for Homeowners program? What will be the approval conditions of the new loan? The Bill only indicates an affordable payment.

   a. What level of delinquency? How will this tie into "adverse selection" standards?

      Recommendation: If the Board is to assign parameters, it should consider allowing non-delinquent borrowers all the way up to those who are 120-days delinquent to apply.

   b. Must the home be in foreclosure?

      Recommendation: We do not believe the home need be in foreclosure to utilize the H4H program.

   c. What are the hardship criteria?

Recommendation: HUD should establish hardship requirements requiring the borrower to have: 1) an involuntary loss of income, (2) an involuntary increase in debt, or (3) a rate or payment adjustment.

d. What are the required income ratios for a new H4H loan?

   i. Will the 31% debt ratio on the old loan also be the target "affordable payment" ratio for the new FHA loan? What if the borrower has the ability to support a higher payment ratio on the new loan?
   ii. Housing payment ratio?

Recommendation: These are crucial questions essential for a determination of whether or not the borrower fits within the program. We would urge that the regulations permit a 35% Housing DTI and a 55% Total DTI.

e. Minimum documentation standards besides tax transcripts?

Recommendation: We urge that use of tax transcripts, copies of the tax returns, or pay stubs from that period be sufficient documentation to represent both the March 1, 2008 date to apply the 31% ratio, as well as to verify the borrower's current income for purposes of qualifying for the new H4H loan.

f. Are there requirements or is their an anticipation that the lender will be in contact with the servicer prior to applying for a H4H loan, and if so, will there be standards accompanying those contacts?

Recommendation: We believe it is essential that the regulations require the borrower to contact the servicer before applying for an H4H loan.

g. Do the requirements as set forth in Handbook 4155.1 (or any other handbook) apply?

9. We assume H4H loans are eligible for GNMA pools. Will pricing be GNMA market pricing? Are there any limitations or requirements applicable to pricing? It is assumed that the 1.50% monthly MIP must be added as a separate escrow item in the borrower's monthly payment for the new FHA insured loan. Will they be handled similarly to FHA Secure loans (i.e., separate GNA II securities with different pool extensions)?

Recommendation: This question encompasses a variety of issues surrounding the use of H4H loans in GNMA securities. If substantial funding is to be found for these loans, GNMAs are the most likely source for it, so the rules must be adopted quickly to enable lenders to ensure the loans fit the criteria. We urge the use of GNMA market pricing, and that the 1.50% monthly MIP be added as a separate escrow item. It will provide some uniformity and make processing easier if these loans are handled similarly to FHA Secure loans.

10. What are the limitations on origination fees for current lien holders and originators?

    Recommendation: We do not believe that there should be any restriction on origination fees in excess of existing FHA requirements. If it is determined that additional restrictions must be put in place, then such restrictions can be imposed at a later time.

11. How will it be determined what DTI ratio will be chosen by the Board? 31% is listed in the statute, but Board has discretion to go higher. What standard may lenders use or be held to?

    Recommendation: We believe that the Board should allow the program to commence with a DTI of greater than 31% as the standard, and set a date one year in the future to reconsider the ratio. This will permit lenders to engage with the program without fears of additional systems changes in the near term.

    a. The Act suggests a total mortgage debt to income ratio>31% -- is this P&I only, or PITI? Should there be a higher level?

       Recommendation: We urge that this ratio include PITI.

    b. A standard definition of "income" is needed.

       Recommendation: We urge that income be defined in the regulations as money earned through employment, investments, sale of property, unemployment or disability payments, pension and social security payments, payments for welfare benefits, etc.

12. What standards will be used for determining reasonable ability to repay at 90% LTV?

    Recommendation: We urge that any regulations or guidance or other determinations made under sec 203(b)(4) of the National Housing Act be specifically incorporated into this regulation as a determinant of the ability of a borrower to repay the loan.

13. What kinds of reps and warranties will be needed, and is denial of insurance claims to be insisted upon regardless of what representations or warranties are breached?

    Recommendation: We assume that reps and warranties commonly provided in the market will be required, and would urge that denial of insurance claims be limited to material breaches of significant reps and warranties only. We would also urge that the board not require that "higher risk loans" be required to demonstrate payment performance for a longer period of time than other loans prior to being insured under the Program. "Failure to make the first payment" shall mean failure to make the first payment and all other payments. A borrower's first payment default should not exclude a servicer from receiving a claim provided the servicer did not underwrite

the loan and create a material breach of the underwriting and eligibility reps and warranties. HUD must determine that the foreclosure was due to a material failure to abide by the reps and warranties before requesting indemnification from the lender.

14. How can the servicer/new lender demonstrate that interest rates are commensurate with market rates on such loans? What is the proper benchmark rate that will ensure that these loans can be sold into GNMA securities at a price better than par?

    Recommendation: There are no standard market rates of interest for loans such as these, and they will themselves establish a rate over time. To commence the program, any regulations must limit its guidance so that there can be a range of interest rates agreed to that will over time settle into an appropriate range. H4H loans must be excluded from HOEPA's higher cost loan treatment when they become effective or the Board must establish a specific index that represents the particular premiums and costs associated with this product. For example, if the Board defines the equity and appreciation sharing components of the loan as interest, those requirements must be accounted for in the index so that not all H4H loans are higher cost loans.

15. The statute requires that the subject property be the only residence in which the mortgagor has a present ownership interest. Does this apply to ownership by borrowers of real estate holding companies?

    Recommendation: The purpose of the restriction is to limit the benefits of the program to those whose primary residence is the collateral for the loan in question, and that they only have one residence. It should not be designed or implemented to control investments by homeowners of a share of an interest in other real estate properties provided that the share is not controlling or a significant percentage of total ownership of the properties.

16. What documentation is needed to prove mortgagor lives in the house as its primary dwelling? Is it sufficient to simply show documentation that mortgagor lives there, or must it be shown that mortgagor doesn't live anywhere else? Does lender have an ongoing obligation to verify occupancy status?

    Recommendation: Certain formal documents such as a deed of the property should be included by the regulators in a list of documentation that is sufficient, and in addition, lenders should be permitted to rely upon less formal documents such as a signed certification from the borrower that the property is the primary residence and the only residential property owned by the borrower.

17. Would these borrowers be rated as *settled for less than full balance* by the lenders (first and/or second lien holder) that settled debt (credit reporting question)?

    Recommendation: We recommend that the borrowers be rated as settled for less than full balance by the lenders that settled the debt.

18. Will borrowers be taxed on the lender's write down amount and should lenders provide related borrowers with 1099's for such write downs? Do lenders carry an obligation to inform borrowers of possible tax consequences?

    Recommendation: Lenders should not be required to provide tax information or advice to the borrower, and the guidance should make it clear that borrowers must contact tax advisors as to the taxable principal write downs.

19. How can a servicer determine that the mortgagor has not been convicted of fraud during the past 10 years? What would HUD consider acceptable sources for ensuring borrowers have no record of a fraud in the past 10 years?

    Recommendation: We urge that HUD provide a list of acceptable sources which lenders may and should check for fraud convictions, and that checking one or more of those sources should be conclusive evidence that the lender is in accord with its obligations under the Act. In addition lenders may rely upon the borrower’s signed certification that he or she has not been convicted or fraud.

20. Are accrued late fees and any of other default related expenses due to the current servicer recoverable at time of payoff? (***Note:*** We believe this is prohibited in the statute section (e)(3) but just want to be clear).

    Recommendation: The waiver or forgiveness fees and penalties related to the default or delinquency should not include third party **costs** incurred by the servicer, such as trustee fees, inspection fees, attorney’s fees and costs. The waiver or forgiveness of all other fees and penalties related to default or delinquency should not preclude the junior lien-holder from including these in the amounts in its ‘claim’ to the Secretary for “Appreciation in Value” upon any sale or disposition of the property to which the mortgage relates. In addition, late fees imposed by parties other than the creditor should not be within the definition, default expenses should not include advances of real estate taxes, insurance or other government imposed fees paid by servicers on behalf of borrowers. Any late fees already paid by the borrower must not now be reimbursable to the borrower, and other lender fees that are not charged specifically as a result of default should not be prohibited.

21. May the homeowner have investment property in addition to its primary residence and still be eligible under the program?

    Recommendation: We urge the regulators to distinguish between vacation or second homes and properties in which the mortgagee has an ownership interest for investment purposes only and does not personally occupy those properties during the year.

Additional Recommendations on Standards and Process

22. ***Recommendation:*** H4H loans must not be “assumable”.

23. ***Recommendation:*** Lenders should execute a 4506t to prevent income fraud. Lenders should be permitted to rely on the 4506t for purposes of qualifying the borrower for the 31% DTI test and for purposes of underwriting the H4H loan.

24. ***Recommendation:*** In order to prevent intentional reduction of borrowers to reduce the DTI, the same borrowers must be on both the old and new loans.

25. ***Recommendation:*** Any repayment to the FHA based upon misrepresentations in certifications and documentation by the borrower should be paid to the lien holders whose indebtedness has been reduced; such indebtedness should have a long statute of limitations.

Coordinating with 2nd Lien Holders

26. What standards will the Board adopt for facilitating coordination and agreement between holders of the existing senior and subordinate mortgages? How get 2nd mortgage holders to agree?

    Recommendation: Absent agreement from 2d lien holders, servicers will be unable to facilitate a refinancing under the Act. Regulators should focus promptly on resolution of this issue within the boundaries of the Act, including providing second lien holders with a portion (up to the amount of the subordinate lien that was extinguished) of the Secretary's share of the appreciation and the equity in the property when it is sold.

27. If the originating lender does not hold the first and/or the second lien on a property, who will be responsible for contacting and/or negotiating the write down on either/both liens?

    Recommendation: The lender originating the new loan must be held responsible for assuring that the liens are eliminated from the eligible loan to permit the new financing. The servicer of the loan should be obliged to assist that lender in that effort when they agree with the transaction.

28. Can/will the originating lender be required to provide details of the transaction of any other lien holder being requested to write down a balance (which we may not be able to get)?

    Recommendation: The originating lenders should be required to share information with the servicers or lien holders being negatively impacted. This should include sharing the appraisal, for example.

29. Can the entire government share of equity and appreciation be transferred to subordinate lien holders?

    Recommendation: There seems to be no limitation on the ability of the government to transfer its share of the equity and appreciation in the value of the property to subordinate lien holders. To provide the broadest appeal, HUD should provide

recoupment for those lien holders who wrote off debt prior to HUD acquiring any share of appreciation or equity.

Appraisals

30. May in-house appraisals be used in determining value of the property?

    Recommendation: In-house appraisers may be used in determining value of the property, subject to liability for fraudulent appraisals.

31. Will lenders be required to use the normal FHA appraiser roster for the new appraisal?

    Recommendation*:* While use of appraisers on the FHA roster will be acceptable, other appraisers may be used subject to normal rules concerning appropriate standards.

32. Since a significant portion of these refinances will be non-FHA to FHA will we have to worry about minimum property requirements (MPR) on the appraisal? One of the documents says meet standard appraisal requirements, but is this normal FHA requirements or TBD. If so, will we be required to pay for MPR in addition to our write down in situations where the borrower can not afford them?

33. In many states, “certified” appraisers are primarily involved in commercial and income property transactions, while “licensed” appraisers are involved in residential properties. Since there may not be enough certified appraisers, what professional designations can be used as an alternative to state certification?

    Recommendation: For purposes of appraising values of property in this Act, both certified and licensed appraisers may be used, as may other appraisers who meet appropriate standards promulgated by regulators for purposes of appraisals under this Act.

34. If borrower applies for a loan with a lender other that the servicer, can servicer require its own appraisal, and can servicer ask questions about the borrower’s appraisal without running afoul of the “appraiser pressure” provisions in the bill?

    Recommendation: Servicer should be permitted to order its own appraisal, even if another appraisal has been obtained, and servicer may ask questions about any other appraisal on the property, and asking questions shall not if itself constitute pressure on the appraiser. The Board should consider establishing an appeals process which would permit the appraisal of the servicer to be used for determining fair market value if the appraiser is an FHA-approved appraiser.

Principal Write-Down

35. The Bill requires the existing lender to write down the loans to 90% of the value. What is the basis for the value? BPO, appraisal, AVM?

Recommendation: If something other than a full appraisal is used, the servicer should have the right to appeal the valuation.

36. The statute states that the principal obligation amount may not exceed 90% of the appraised value. Can the 90% limitation be exceeded to include loan related closing or other costs?

    Recommendation: If HUD determines that the loan can exceed 90% LTV, we believe that other costs than closing costs, such as delinquent taxes, insurance advances and other costs permissible for recoupment should be included.

First Payment Default

37. If there are to be no benefits paid by FHA if mortgagor fails to make first payment, are there to be any exceptions (mortgagor dies, for example)?

    Recommendation: Appropriate exceptions should permit FHA to pay benefits even when first payment defaults occur.

38. If all established rules and requirements of the program have been met, why would the lender have to indemnify HUD in cases of first payment default? Lenders will be reluctant to participate if there is no FHA insurance guaranteed once the program requirements have been met.

    Recommendation: If all appropriate program requirements have been met, FHA must make payments even in the case of first payment defaults. Indemnification should not be required when there is only a technical or non-material breach of the reps and warranties.

39. Can lender use a short term repayment plan that converts to an FHA H4H loan to establish payment capacity at the H4H payment level, and avoid this penalty?

Appreciation and Equity Sharing

40. How will the Board determine if holders of the interest in the loan will share in the appreciation in the property? How will the different interests of different holders be accommodated?

    The statute provides for shared appreciation between the borrower, the government and the existing second lien holder. First lien holders are excluded although they are potentially writing off sizable amounts to make loans eligible for insurance. Are there any plans to include first lien holders in the shared appreciation provision? Inclusion of the first lien holder in shared appreciation may make this program a more feasible option; especially in those instances when foreclosure may be the more financially viable option for the lender.

    Recommendation: To increase the use of this program, regulators must make an attempt to permit first lien holders to share in appreciation or the equity created by the Hope for Homeowners refinancing through utilizing part of the government share

of the equity, appreciation, or both. It is also important that the regulations provide second lien holders with a share of both these items in order to facilitate their participation in the Program.

41. Will the equity appreciation sharing provision be impacted by any state lending/consumer laws, especially TX?

    Recommendation: The equity sharing provisions must preempt state law on the issue.

42. What would prevent a borrower from selling the property to a relative/friend for a below market value (i.e. – payoff of outstanding lien) and then repurchasing and/or reselling through the relative/friend to avoid sharing the equity appreciation?

    Recommendation: Regulations must clarify that schemes such as this will not be permitted to avoid the purposes of the statute.

43. Clarification will be needed not only on the establishment of shared equity and appreciation, but also on tracking and administration so that the role of various parties is clear and unambiguous. Questions of additional reporting to IRS, HUD and others must be addressed.

44. How is shared equity calculated? Is it fixed at the time of origination at amount of write down or does it increase as the loan is paid down?

    Recommendation: We urge that the equity be calculated at the time of the write down and not deviate after that.

45. Doe the shared appreciation and shared equity portions need to be disclosed as a cost of credit for TILA disclosures? How? And does that trigger HOEPA implications?

Refinancing/ Obtaining a 2nd Lien

46. What are the standards or limitations for permitting 2nd liens on the property at or after refinancing?

    Recommendation: The regulations should make clear that 2d liens are permitted five years after the new loan is consummated, and that they may also be permitted within the first five years as the statute permits. Junior financing must be subordinate to the equity and appreciation sharing. Regulations should further clarify what is meant by ensuring the maintenance of property standards.

47. Will H4H loans be eligible for FHA streamline refinance transactions?

    Recommendation: H4H loans will be eligible for FHA streamline refinance transactions.

48. Can the H4H loan refinance to a new standard FHA loan and be eligible for standard UFMIP and annual MIP premiums, or - once a H4H always a H4H?

49. If the borrower needs a 2nd lien for purposes of property maintenance, will there be a requirement to show the repair/maintenance is actually needed as well as evidence that the work was completed? What would be the consequence to the borrower if the proceeds from the 2nd lien are not used to complete alleged necessary repairs/maintenance?

    Recommendation: The regulators should provide a clear path of needed documentation to support 2d liens for property maintenance, and establish penalties for circumstances in which the funds are not in fact used for that purpose. We would suggest that the regulations include some flexibility to obtain second liens to pay for such necessary items as medical and education expenses.

50. After the initial 5 years, what would prevent a borrower from obtaining a 2nd lien to cash-out the equity in the property and thereby reducing the shared equity appreciation?

    Recommendation: The Board must establish standards and policies that construe the term 'disposition' broadly to ensure that a new second lien after the first 5 years of the term of the mortgage triggers shared appreciation assessment and recovery. Subordinate lien holders must be subordinate to equity and appreciation sharing provisions.