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Mortgage Servicers Have Wrongfully Terminated Homeowners Out of the HAMP Program

Special Inspector General for the Troubled Asset Relief Program

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TARP's major foreclosure prevention program, the Home Affordable Mortgage Program ("HAMP"), was created to provide sustainable and affordable mortgage assistance to homeowners at risk of foreclosure.¹ Although this program is at a turning point in its lifecycle, mortgage servicers administering HAMP will continue to need strict oversight in upcoming years. While HAMP was already scheduled to stop accepting homeowner applications on December 31, 2016, Congress recently terminated HAMP as of that date, but protected homeowners' ability to stay in HAMP and receive TARP-funded assistance for up to six years.²

To give homeowners in HAMP the best shot at keeping their homes, the greatest concern going forward should be helping the homeowners who are in HAMP to stay in HAMP for the full six years. Already, as of December 31, 2015, 507,359 homeowners with permanent HAMP modifications fell out of the program by missing three payments (referred to as "redefaulting") – which is almost one out of every three homeowners in HAMP.^{3,i}

The harm to a homeowner falling out of HAMP is significant, as they are no longer eligible to receive TARP incentive and other benefits.ⁱⁱ According to a Treasury survey of HAMP servicers:⁴

- 23% of all homeowners who redefaulted out of HAMP moved into foreclosure,
- 12% of redefaulted homeowners lost their homes through a short sale or deed-in-lieu of foreclosure, and
- 28% of redefaulted homeowners received an alternative modification, usually a private sector modification that is less advantageous than a HAMP modification.ⁱⁱⁱ

Given the high percentage of homeowners falling out of HAMP and known problems with servicers not following HAMP rules, in October 2013, SIGTARP recommended that Treasury research and analyze whether, and to what extent, the conduct of HAMP mortgage servicers contributed to homeowners redefaulting on HAMP permanent mortgage modifications.^{iv} Although Treasury has not conducted a full analysis, Treasury has partially implemented SIGTARP's recommendation, and reviews samples of 100 homeowners who had redefaulted out of HAMP at each of the largest HAMP servicers each quarter as part of Treasury's on-site and remote compliance testing at each of the largest servicers.

SIGTARP's concerns over servicer misconduct contributing to homeowner redefaults in HAMP have been borne out. Treasury's findings in its on-site visits to

ⁱ This number continues to rise. The longer a homeowner remains in HAMP, the more likely he or she is to redefault out of the program. Approximately half of all homeowners who came into the program with a permanent mortgage modification in 2009 have redefaulted, and nearly half of all homeowners who came into the program in 2010 have redefaulted. Taxpayers have lost \$1.9 billion in TARP funds paid to servicers and investors as incentives for homeowners who redefaulted out of HAMP.

ⁱⁱ Homeowners who redefault are again at risk of losing their homes through foreclosure, are no longer eligible to receive TARP incentive payments, and may lose deferred principal reduction benefits, although their HAMP modifications may remain in place.

ⁱⁱⁱ See OCC, Mortgage Metrics Report, "Mortgage Performance Improved During the Second Quarter of 2015," 10/2/2015, www.occ.treas.gov/publications/publications-by-type/other-publications-reports/mortgage-metrics/mortgage-metrics-q2-2015.pdf, accessed 10/22/2015 ("HAMP modifications generally reduce a greater percentage of borrowers' monthly payments and perform better over time than other modifications").

^{iv} Previously, in October of 2011, SIGTARP also recommended that Treasury establish benchmarks and goals for acceptable program performance for all MHA servicers, publish those findings and use financial remedies such as withholding or clawing back the program incentives of servicers that fail to meet those standards. Treasury summarizes the results of its compliance reviews in its published quarterly servicer assessments of the largest mortgage servicers in HAMP.

the largest seven mortgage servicers in HAMP over the most recent four quarters show disturbing and what should be unacceptable results, as 6 of 7 of the mortgage servicers had wrongfully terminated homeowners who were in “good standing” out of HAMP.^v

These staggering findings clearly show that servicer misconduct is contributing to some homeowners falling out of HAMP. Homeowners were wrongly terminated from HAMP by their servicer despite making timely mortgage payments, putting them at risk of losing their home. These homeowners were forced out of HAMP through no fault of their own. Mortgage servicers did not give these homeowners a fair shot. As these instances were found through sampling, Treasury does not know how many other homeowners were also wrongfully forced out of HAMP.

IN THE LAST YEAR, SIX OF THE SEVEN LARGEST HAMP SERVICERS WRONGFULLY TERMINATED HOMEOWNERS OUT OF HAMP WHO WERE PAYING THEIR MORTGAGE

In the last year, Treasury found in its on-site compliance testing that 6 of the 7 largest HAMP servicers wrongfully terminated homeowners out of HAMP. At each large servicer, each quarter Treasury selected samples of 100 homeowners who had been in HAMP but redefaulted, and reviewed the servicers’ loan files.^{vi} According to Treasury, within those sampled files, Treasury identified homeowners who had not defaulted in HAMP but who were nevertheless improperly terminated by their servicer.

^v As of December 31, 2015, the most recent four quarters of compliance reviews provided to SIGTARP by Treasury covered Q4 2014 through Q3 2015.

^{vi} The metric Treasury uses to rate servicers’ compliance with HAMP rules on redefaults is called “Disqualified Modification Non-Compliance,” which it describes as “the percentage of loans reviewed where [Treasury] did not concur with a servicer’s processing of defaulted HAMP modifications.” Treasury sets minimum benchmarks or error rates for each metric that servicers must meet. Under Treasury’s benchmark test for “Disqualified Modification Non-Compliance,” if Treasury finds problems in a servicer’s processing of defaulted HAMP modifications in fewer than 2% of the homeowner files it reviews, Treasury rates the benchmark as having been “met,” which means that minor improvement “may be indicated.”

TABLE 3.1

WRONGFUL TERMINATIONS OF HOMEOWNERS FROM HAMP BY TOP HAMP SERVICERS, Q4 2014 TO Q3 2015	
Servicer	Wrongful Terminations of Homeowners from HAMP
Bank of America, N.A.	X
CitiMortgage Inc	X
JPMorgan Chase Bank, N.A.	X
Nationstar Mortgage LLC	X
Ocwen Loan Servicing, LLC	X
Select Portfolio Servicing, Inc.	
Wells Fargo Bank, N.A.	X

X Wrongful terminations of homeowners from HAMP found by Treasury.

Source: Treasury's servicer compliance examination reports covering Q4 2014 through Q3 2015, as provided to SIGTARP.

According to Treasury's compliance reports provided to SIGTARP, the wrongful terminations often involved homeowners who in fact had conformed to HAMP rules. Homeowners who make their modified mortgage payments on time, or who do not fall three months behind on those payments, are entitled to remain in HAMP.⁵

Treasury's test results reveal that, within the last year, Bank of America, CitiMortgage, JP Morgan Chase, Nationstar, Ocwen and Wells Fargo all claimed that homeowners had redefaulted out of HAMP by missing three payments when, in reality, they had not. These six mortgage servicers account for 673,039 of the 915,699 (74%) non-GSE HAMP modifications funded solely by TARP since the start of the program.⁶

There has been no solution to this problem from Treasury despite Treasury identifying it repeatedly in its quarterly assessments throughout the year. Treasury found in its sampling that Nationstar, Ocwen, and Wells Fargo improperly terminated multiple homeowners in multiple quarters. Even in the most recent third quarter 2015 assessment, Treasury found improper terminations of homeowners by 4 of the top 7 HAMP servicers—Bank of America, CitiMortgage, JPMorgan Chase, and Wells Fargo.

TABLE 3.2

WRONGFUL TERMINATIONS OF HOMEOWNERS FROM HAMP DETECTED BY TREASURY, Q4 2014 THROUGH Q3 2015				
Servicer	Q4 2014	Q1 2015	Q2 2015	Q3 2015
Bank of America, N.A.				X
CitiMortgage Inc				X
JPMorgan Chase Bank, N.A.				X
Nationstar Mortgage LLC	X	X		
Ocwen Loan Servicing, LLC	X	X	X	
Select Portfolio Servicing, Inc.				
Wells Fargo Bank, N.A.	X	X		X

X Wrongful terminations of homeowners from HAMP found by Treasury in its sampling of 100 borrower files in the quarter.

Source: Treasury's servicer compliance examination reports covering Q4 2014 through Q3 2015, as provided to SIGTARP.

In its sampling, Treasury found that Nationstar had wrongfully terminated 8 homeowners out of HAMP in the last year. Nationstar claimed that these homeowners had missed three payments when, in fact, a review of the loans by Treasury showed that each homeowner had missed fewer than three payments. Treasury disagreed with Nationstar's claims. These homeowners should not have been deemed to have redefaulted, and should have been allowed to stay in HAMP.

Treasury sampling tests similarly found that Ocwen had wrongfully terminated 9 homeowners out of HAMP in the last year. Ocwen claimed that these homeowners had missed three payments, when it was really the misconduct of Ocwen that led to the redefault. Among the misconduct found by Treasury in its samples: Ocwen had improperly held the homeowner's payments in suspense accounts (*i.e.*, did not apply them to the homeowners mortgage), improperly reversed and reapplied the homeowner's payments, and/or mishandled rolling delinquencies (*i.e.*, homeowners who remained 1 or 2 payments behind over a period of time, but did not miss the third payment that triggers a legitimate HAMP redefault).

In its sampling of borrowers at Wells Fargo, Treasury found that Wells Fargo had wrongfully terminated 15 homeowners out of HAMP in the last year, misapplying the homeowners' monthly payments in most of those cases. Finally, Treasury found that Bank of America, CitiMortgage, and JPMorgan Chase had each wrongfully terminated one homeowner.

TREASURY'S FINDINGS THAT SERVICERS HAVE FORCED HOMEOWNERS OUT OF HAMP GIVES TREASURY INSIGHT INTO A VERY SERIOUS PROBLEM THAT IS NOT ADEQUATELY ADDRESSED IN TREASURY'S LIMITED REVIEWS

While even one homeowner who falls out of HAMP due to servicer misconduct should be unacceptable, the extent of servicer misconduct that contributes to homeowner redefaults out of HAMP is unknown and may be far greater than it appears, given that Treasury only looks at samples of 100 redefaulted homeowner files per servicer each quarter. That is a small percentage of the homeowners who have redefaulted at these large HAMP servicers, as shown in Table 3.3.

Under Treasury's servicer assessments, if servicers misapply HAMP's rules regarding redefaults in less than 2% of the samples that Treasury tests each quarter, Treasury rates the servicer as meeting their compliance benchmark.^{vii} Given the large numbers of homeowners reported to have redefaulted by these servicers, even the 2% error rate allowed by Treasury could mean a substantial number of homeowners wrongfully forced out of HAMP by their servicer.

Treasury should implement the rest of SIGTARP's recommendation in this area by determining the extent to which servicer misconduct is contributing to homeowners falling out of HAMP.

SERVICERS STILL FAIL TO REPORT COMPLETE AND TIMELY INFORMATION ABOUT HAMP REDEFAULTS TO TREASURY

Treasury also found that the largest servicers in HAMP are still failing to report complete and timely information about homeowners redefaulting in HAMP, making it even more difficult for Treasury to analyze the extent to which servicer misconduct led to homeowners redefaulting out of HAMP.

^{vii} According to its servicer assessments, Treasury rates servicers with an error rate of 2% or less for the for "Disqualified Modification Non-Compliance" metric as having "met" that benchmark, which means only that minor improvement "may be indicated." The 2% non-compliance threshold applies to all redefaulted modification exceptions Treasury identifies in a given quarter, not just improperly terminated HAMP modifications.

TABLE 3.4

HAMP REDEFAULT REPORTING ERRORS DETECTED BY TREASURY, Q4 2014 THROUGH Q3 2015				
Servicer	Q4 2014	Q1 2015	Q2 2015	Q3 2015
Bank of America, N.A.	X	X	X	X
CitiMortgage Inc	X	X	X	X
JPMorgan Chase Bank, N.A.				
Nationstar Mortgage LLC	X		X	X
Ocwen Loan Servicing, LLC	X	X	X	X
Select Portfolio Servicing, Inc.	X			
Wells Fargo Bank, N.A.	X	X	X	X

X Reporting errors found by Treasury in its sampling of 100 borrower files in the quarter.

Source: Treasury's servicer compliance review reports covering Q4 2014 through Q3 2015, as provided to SIGTARP.

Treasury's compliance reports provided to SIGTARP show that, even with its limited sample sizes, Treasury found that 6 of 7 of the largest HAMP mortgage servicers failed to properly report to Treasury about homeowners who had fell out of HAMP. Treasury's sample testing identified that Bank of America did not properly report on 12 homeowners who redefaulted out of HAMP in the past year, CitiMortgage did not properly report on 27 homeowners who fell out of HAMP, Nationstar did not properly report on 6 homeowners who fell out of HAMP, Ocwen did not properly report on 10 homeowners who fell out of HAMP, Wells Fargo did not properly report on 8 homeowners who fell out of HAMP, and Select Portfolio Servicing did not properly report on one homeowner who fell out of HAMP. Given that these results were from a limited sample, Treasury does not know the true extent to which the seven largest HAMP servicers failed to report properly on other homeowners redefaults.

After six years in HAMP, major servicers should not be improperly reporting information to Treasury about homeowners who redefault. These types of errors could affect the amount of assistance received by homeowners in HAMP, as well as lead to waste or abuse in the expenditure of TARP funds, as servicers may continue to receive TARP payments for homeowners no longer in HAMP.

Servicers' failures to report make it more difficult for Treasury to gain insight into redefaulting homeowners. The failure to report timely and accurate information on the number of redefaults prevents Treasury from getting a clear look at how effective the servicer is at providing sustainable relief through HAMP. Proper reporting of program metrics, including the number of redefaults, is an essential tool that Treasury can use to measure the success of HAMP and make appropriate changes to remove the obstacles that contribute to homeowners redefaulting.

IN 2015, FIVE OF THE SEVEN LARGEST HAMP SERVICERS FAILED TO CONSIDER REDEFAULTED HOMEOWNERS FOR OTHER TARP ASSISTANCE AS REQUIRED BY HAMP RULES

Starting in Q1 2015, Treasury began evaluating whether servicers were properly considering homeowners redefaulting in HAMP for additional MHA assistance. In the three quarterly reviews completed since then, Treasury found that 5 of the 7 largest HAMP servicers failed to properly consider homeowners who redefaulted out of HAMP for other TARP assistance, such as through a HAMP Tier 2 modification or HAFA, before commencing foreclosure activity, as required by HAMP rules.^{viii} The violations of HAMP rules were most prevalent at CitiMortgage, Nationstar, and Wells Fargo. Figure 3.5 shows the results of Treasury's testing.

TABLE 3.5

FAILURES TO CONSIDER HOMEOWNERS FOR OTHER MHA ASSISTANCE DETECTED BY TREASURY, Q1 2015 THROUGH Q3 2015			
Servicer	Q1 2015	Q2 2015	Q3 2015
Bank of America, N.A.			
CitiMortgage Inc	X		
JPMorgan Chase Bank, N.A.		X	
Nationstar Mortgage LLC	X	X	X
Ocwen Loan Servicing, LLC	X		
Select Portfolio Servicing, Inc.			
Wells Fargo Bank, N.A.	X	X	X

X Failures found by Treasury in its sampling of 100 borrower files in the quarter.

Source: Treasury's servicer compliance review reports covering Q4 2014 through Q3 2015, as provided to SIGTARP.

During 2015, Treasury's quarterly sample testing found that Nationstar failed to consider 12 redefaulted HAMP homeowners for other TARP assistance such as HAFA or HAMP Tier 2, as required by HAMP rules. Treasury found that Wells Fargo and CitiMortgage each failed to consider 5 redefaulted HAMP homeowners for other TARP assistance, Ocwen failed to consider 2 redefaulted HAMP homeowners for other TARP assistance, and JP Morgan Chase failed to consider 1 redefaulted HAMP homeowner for other TARP assistance. Given that these results were from limited samples, Treasury does not know the full extent of this problem.

^{viii} Treasury also evaluates servicers' consideration of homeowners for HAMP Tier 2 in connection with another part of its assessments, so-called "second look" reviews, regardless of whether the homeowner was in a prior HAMP modification.

CONCLUSION

Although compliance with all HAMP rules is important, problems with servicers failing to comply with rules relating to homeowners redefaulting (falling out) of HAMP are particularly critical for homeowners because this failure could be the first step in a homeowner losing his or her home. Treasury has designed HAMP so that mortgage servicers are the program's gatekeepers, responsible for making decisions that greatly impact homeowners. That Treasury has partially implemented SIGTARP's recommendation to see if servicer misconduct is contributing to homeowner redefaults brings good insight, but Treasury must act on what it is seeing.

Treasury's findings show clear harm from servicers to homeowners that require a strong response. Treasury should not assume that this is not a severe problem or that the servicers' wrongful terminations of homeowners from HAMP are limited to the instances that Treasury found. Given the risk that, after a redefault, the servicer could move the homeowner into the foreclosure process, the risk of harm to the homeowner is too great for Treasury to let any homeowner be wrongfully forced out of HAMP.

1. Treasury Press Release, "Relief for Responsible Homeowners: Treasury Announces Requirements for the Making Home Affordable Program", 3/4/2009, <https://www.treasury.gov/press-center/press-releases/Pages/200934145912322.aspx>, accessed 1/19/2016.
2. Public Law 114-113: Consolidated Appropriations Act, 2016, 12/18/2015, <https://www.congress.gov/bill/114th-congress/house-bill/2029/text>, accessed 1/19/2016.
3. Treasury, "HAMP IMP: Program Volumes - Program Type & Payor by Tier - December 2015," accessed 1/19/2016.
4. Treasury response to SIGTARP data call, 1/21/2016.
5. Treasury, "Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages, Version 4.5," 1/19/2016.
6. Treasury, "HAMP IMP: Program Volumes - Program Type & Payor by Tier - December 2015," accessed 1/19/2016.

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