FARLEIGH WADA WITT
Attorneys

SPECIAL COMPLIANCE ALERT

March 6, 2009

TREASURY DEPARTMENT RELEASES GUIDELINES FOR "HOME AFFORDABLE MODIFICATIONS" PROGRAM

As promised, the Department of the Treasury has released its guidelines for a new program (the "Home Affordable Modification" program) in which the Treasury plans to invest up to $75 billion for payments to mortgage lenders, servicers, and borrowers in connection with successful loan modifications. Although the guidelines have been issued and the Treasury is encouraging lenders to begin modifying loans under the new guidelines, a number of details remain to be worked out, and a number of questions remain unanswered.

INSIDE THIS ISSUE:

Participation Requirements	1
Program Features	1
Unanswered Questions	2

Participation Requirements

Credit unions are free to modify mortgages at any time in accordance with the program guidelines. However, in order to receive incentive payments, credit unions must execute program agreements with the Treasury. These agreements are not likely to be issued until April.

Credit unions are free to modify mortgages at any time in accordance with the program guidelines. However, in order to receive incentive payments, credit unions must execute program agreements with the Treasury.

Credit unions participating in the program must evaluate and offer modifications under the guidelines to all potentially eligible borrowers who request a modification. If a modification under the guidelines is not available, participating credit unions must pursue "other foreclosure prevention alternatives, including alternative modification programs, deed in lieu, and short sale programs." In other words, participation in the program comes with significant strings attached. Credit unions will want to carefully evaluate the benefits and burdens of the program and review the program agreements before making a decision to participate.

Program Features

The following is a very brief summary of key features of the program:

1. Eligible Loans and Borrowers

The following eligibility requirements apply to loans and borrowers seeking to participate in the program:

- Loans must have been originated on or before January 1, 2009.
- Property must be owner occupied.
- Principal balances cannot exceed $729,750 for single family properties (higher limits apply for multi-family properties).
- Income, financial hardship, and property occupancy status must be verified through specified procedures.

HOME AFFORDABLE MODIFICATION PROGRAM (CONT.)

- Borrowers must have suffered a change in circumstances that causes financial hardship (i.e., decrease in income, recent or imminent increase in payment on the loan, increase in other expenses, etc.).
- Each loan may only be modified once under the program; a loan that has already been modified is no longer eligible for subsequent modifications.

2. Borrower Screening

Credit unions must conduct a two-step screening process of potentially eligible borrowers. First, the borrower's financial circumstances are evaluated to determine whether changed circumstances (such as decreased income or increased expenses, or an increase in mortgage loan payments) have created a financial hardship. These factors must be verified through appropriate documentation. Next, the credit union must evaluate the expected net present value from the loan without modifications as compared to the expected net present value from the loan as modified. The expected net present value without modifications will take into account the value of the property in foreclosure, costs of foreclosure, and likelihood of foreclosure. The expected net present value with modifications will include the incentive payments to be received from the Treasury. If the net present value from the modified loan equals or exceeds the net present value from the loan without modifications, a modification must be offered. The parameters for this analysis are specified by the Treasury.

3. Standard Modification Terms

The primary goal of modifications under the program is to reduce monthly payments to 31% of the borrower's monthly income. This is accomplished first by reducing the interest rate (subject to a 2% floor). If rate reductions alone cannot achieve the target debt-to-income ratio, the loan term can be extended up to 40 years from the start of the modification. If extension of the term and reduction of the interest rate do not achieve the target debt-to-income, the lender will reduce the principal amount through a "principal forbearance" which is due on sale of the property or a refinancing that may pay off the remaining portion of the loan. With principal forbearance, some or all of the principal portion of the payment is deferred. No interest accrues on the deferred principal amount.

If all of these steps do not reduce the loan payment to 31% of the borrower's monthly income (i.e., if interest-only payments at 2% exceed the borrower's monthly income), then a modification is not available.

4. Incentive Payments

A modification will not be accepted into the program until the end of a 90 day trial period. If a borrower is not current on their modified payments at the end of the trial period, no incentive payments will be made. For this reason, credit unions entering into modifications may wish to make the reduced rate and payments conditional on successful completion of the trial period. For borrowers current on their modified payments at the end of the trial period, the Treasury will pay the lender one-half of the difference between the monthly payment at the 31% debt-to-income ratio and the monthly payment that would apply at a 38% debt-to-income ratio.

Servicers will receive a $1,000 incentive fee for each eligible modification, and will receive an additional $1,000 per year (up to three years) for each borrower who continues in the program. In addition, a one-time incentive fee of $1,500 is available for loan modifications where the borrower was current before the start of the trial period.

In addition to the payments to the credit union, borrowers can receive up to $1,000 per year for as many as five years for participating in the program. Borrowers must make consistent timely payments in order to be eligible for these payments.

Unanswered Questions

There are a number of unanswered questions about the program. For example:

- Will the program agreements require a commitment to participate for the full three years that the program will run, or may institutions terminate their participation at any time?
- If a modification is not available under the program, what specific requirements must the credit union follow in seeking other alternatives?

FWW FARLEIGH WADA WITT
Attorneys

MODIFICATION PROGRAM (CONT.)

- Can modifications be conditioned on success (i.e., if the borrower does not successfully pay the loan as modified, can the modification require that the original terms will be reinstated)?
- Will the Treasury provide model (or mandatory) modification documents?

These questions will hopefully be answered soon, and more will no doubt be raised. The guidelines and additional explanatory material are available at www.financialstability.gov.

Even if a credit union chooses not to participate, nothing prevents the credit union from entering into modifications similar to (or different from) modifications on the program terms. Credit unions may wish to let interested borrowers compile the necessary information and provide it to the credit union so the credit union can evaluate a potential modification either way.

Hal Scoggins

NEWS & UPCOMING EVENTS:

CUAO eTrain Webinar: Loan Modifications and Deeds in Lieu of Foreclosure - Hal Scoggins will present a webinar on loan modifications, deeds in lieu of foreclosure, and forbearance agreements for the Credit Union Association of Oregon (CUAO) on March 19, 2009, from 10:00-10:30 a.m. For more information, please visit CUAO's website.

FARLEIGH WADA WITT CREDIT UNION ATTORNEYS:

Brian Witt ……………………………bwitt@fwwlaw.com

Hal Scoggins …………………..hscoggins@fwwlaw.com

Karen Saul ……………………….....ksaul@fwwlaw.com

Dean Sandow ……………………dsandow@fwwlaw.com

Valerie Tomasi …………………..vtomasi@fwwlaw.com

Dave Ludwig ……………………..dludwig@fwwlaw.com

Kathy Salyer ……………………....ksalyer@fwwlaw.com

Michelle Bertolino ……………mbertolino@fwwlaw.com

Kimberley McGair ………………kmcgair@fwwlaw.com

Kelly Tilden ………………………..ktilden@fwwlaw.com

David Simon ……………………...dsimon@fwwlaw.com

Chris Parnell ……………………..cparnell@fwwlaw.com

Portland Office:
121 SW Morrison Street, Suite 600
Portland, OR 97204
Phone: 503.228.6044
Fax: 503.228.1741

Central Oregon Office:
750 Buckaroo Trail, Suite 203
Sisters, OR 97759
Phone: 541.549.4958
Fax: 541.549.4959

www.fwwlaw.com

Who stands behind your credit union compliance?