FHFA HARP Oct 2011

Phil Hall Interview of Richard Rydstrom

Overview: Here we go again! Inch by pain staking inch! HARP as a program lags in its defining policy. The *eligibility pie* by actual market consumer, has become smaller and smaller as time expires over the course of this recession. Of course I am pleased to see yet another relaxation of the HARP short refinance rules; however, this is far from the second attempt at breathing life into this program. I have been calling for this program before HR 3221 (HR 1424) (TARP); the $300 Billion Voluntary Short Payoff Refinance Law/Housing and Economic Recovery Act of 2008 (with President Bush) (Section 257of National Housing Act (H4H or Hope for Homeowners Program).

Genesis: Recall, Section 109 (110, 124) thereof set the ground work for the Federal Housing Finance Agency as conservator of Fannie and Freddie to use of loan guarantees and credit enhancements as well as (voluntary) principal forgiveness modifications "to prevent avoidable foreclosures." The then new law was known as the HOPE Program (Housing and Economic Recovery Act of 2008) which was signed by President Bush on July 30, 2008 making $300 billion in FHA loan insurance guarantees available for distressed borrowers to refinance into lower-cost, fixed rate, government-insured mortgages. In return lenders would have to reduce the loan principal, and homeowners would share with the government any profit when the house is sold. The program was voluntary (Section 257(e)(4)(c)) requiring Note Holders to accept principal forgiveness, including an FHA insurance fee. Section 124 amended the National Housing Act with respect to extinguishment of subordinate liens for refinanced mortgages, to authorize the Secretary to make payments, which shall be accepted as payment in full of all indebtedness to any holder of an existing subordinate mortgage in lieu of certain future appreciation payments (Section 257 (e)(4)(A)) authorizing the Secretary to facilitate coordination and agreement between the lien holders, by creating the ability for subordinate lien holders to obtain some payment (to the extent of insurance proceeds) on its liens.) Section 113 and others (102, 109, 110), allowed the Secretary to create private-public purchase or insurance guarantee programs. Wilbur Ross and I discussed principal reduction/forgiveness solutions with respect to insurance guarantee programs in June 2008 at the DC CMIS Leadership Summit (See ALFN for program). Section 132 and 133 set the ground work for FAS 157 changes to avoid harsh losses on write-downs. The objections back then were to the voluntary program as lacking incentives and protections for the lender (holder and servicer), in part because of the costs to the holder, and the lack of holder claw-back as the borrower and government share in the future appreciation. The law failed to clarify or protect the lender from reimbursement claims from HUD and FHA, typically from insurance claims on bad loans. Also there was the uncertainty as to whether a Servicer/Lender had the requisite authority or protections to implement such (voluntary principal forgiveness) modifications in type, amount or number under its Pooling & Servicing Agreements (P&S), Revenue Procedure 2008-28, REMIC rules under IRC 860 et. seq., Financial Accounting Standards Board Statement 140 (plus 114, 118, 155, 156, 157, 159, 133, 134, 147, 149, 115, 107), etc., ASF Guidelines, Hope Now Guidelines, Income Tax Regulations §1.671-5(m), and other authorities or best practices. Eventually, over the last few years, changes were made that authorized such implementation.

<u>October 2011 HARP</u>: HR 3221 was the legislative goal. We have not met the goal. We have not used the authorized tools to meet the goal. The changes made during President Obamas administration also failed to relax the eligibility requirements sufficiently to affect meaningful change. It seems like this program is always months if not years behind the actual data set which supports the objective needs.

Eliminating the 125 percent Loan to Value restrictions (for fixed loans) and setting ARMs (at 105% LTV) are heading in the right direction to chip away at the negative equity mountain. However, the "lowering of the FICO score" is begging for attention. ***The program should base its criteria on verifiable "ability to pay" rather than FICO scores, equity, or strict definitions of "current."*** Borrowers with a verified "ability to pay" who are granted principal reduction/forgiveness with claw-backs and public/private insurance guarantees can satisfy risk and loss based standards. Negative equity and principal reductions must be addressed head-on with new risk replacement equivalents and new credit enhancement programs. Eliminating certain risk-based fees for borrowers who refinance will help, but it's not the preclusive factor. We need new flexible Public/Private Mortgage Insurance not necessarily paid by the borrower in monthly cash terms. Waiving certain lender representations and warranties may also add an additional incentive for lenders to enter the program and resolve put back claims. The requirement that one must be "current" (Borrowers must be current on their mortgage payments with no late payment in the past six months and no more than one late payment in the past 12 months.) will <u>not</u> add appreciably to the eligibility pie but result in a continued increase in the *new ineligibility pie*. Requiring the otherwise appropriate borrower to be current and have equity will unnecessarily eliminate many others. ***The original restructuring and HARP goals were 7-9 million (pursuant to Supplemental Directive 09-01 April 6, 2009: "On February 18, 2009, President Obama announced the Homeowner Affordability and Stability Plan to help up to 7 to 9 million families restructure or refinance their mortgages to avoid foreclosure. As part of this plan, the Treasury Department (Treasury) announced a national modification program aimed at helping 3 to 4 million at-risk homeowners – both those who are in default and those who are at imminent risk of default – by reducing monthly payments to sustainable levels.") We will never reach 3-4 million or 7-9 million families unless we actually relax the requirements to meet the new reality -as many more people are (1) in default, (2) are underwater, (3) suffer from lower FICO scores and (4) have experienced lower incomes, than originally estimated.***

The elimination of a physical BPO in favor of a 'reliable' AVM, assuming such, should not ring as advanced thinking. Many (confirming) AVM's with scalable bias (to 0) with (high) confidence levels should be implemented as technology advances. The question is: does the HARP short refi program requirements allow eligibility for 3-9 million, if not, it must be revamped to do so. Private public guarantee programs and credit enhancements must be implemented to pay for the enhanced risk and principal losses, although not necessarily in monthly cash terms. Guarantee programs and equivalent risk pricing vehicles may be implemented to pay for the enhanced risk and loss.

Public – Private Guarantee Solution: (Wilbur Ross and Richard Rydstrom June 2008)

- Set up an insurance guarantee program.

- The government would guarantee 50% of the mortgage that had been reduced to true net value after selling commissions, etc.
- The guaranteed amount (50% government amount) could be separately sold by holder/lender at a much lower yield than the mortgage itself.
- Enable the holder/lender to pay a 2 ½% per year Insurance Fee to the government.
- At first sale, share proceeds of appreciation as follows:

  1/3rd to Government
  1/3rd to Lender/Holder
  1/3rd to Borrower (Homeowner)

- Making it transferrable/assumable will lessen the need for new replacement mortgage.
- The 50% can come over to the next owner from the government guarantee at low rates and supply liquidity to the original lender.
- It can be backed by reinsurance.

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