

Concurrent Session

Consumer Workshop II: “True Grit” - Chasing Down Loan Modifications for Consumers

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Department of Justice



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FINANCIAL FRAUD ENFORCEMENT TASK FORCE ANNOUNCES RESULTS OF BROADEST MORTGAGE FRAUD SWEEP IN HISTORY

WASHINGTON – Attorney General Eric Holder, FBI Director Robert Mueller, Housing and Urban Development Inspector General (HUD-OIG) Kenneth M. Donohue, and other members of the Financial Fraud Enforcement Task Force today announced the results of a nationwide takedown, Operation Stolen Dreams, which targeted mortgage fraudsters throughout the country and is the largest collective enforcement effort ever brought to bear in confronting mortgage fraud.

The sweep was organized by President Obama’s interagency Financial Fraud Enforcement Task Force, which was established to lead an aggressive, coordinated and proactive effort to investigate and prosecute financial crimes. Starting on March 1, to date Operation Stolen Dreams has involved 1,215 criminal defendants nationwide, including 485 arrests, who are allegedly responsible for more than \$2.3 billion in losses. Additionally, to date the operation has resulted in 191 civil enforcement actions which have resulted in the recovery of more than \$147 million.

“Mortgage fraud ruins lives, destroys families and devastates whole communities, so attacking the problem from every possible direction is vital,” said Attorney General Holder. “We will use every tool available to investigate, prosecute and prevent mortgage fraud, and we will not rest until anyone preying on vulnerable American homeowners is brought to justice.”

“From home buyers to lenders, mortgage fraud has had a resounding impact on the nation’s economy,” said FBI Director Robert S. Mueller III. “Those who prey on the housing market should know that hundreds of FBI agents on task forces and their law enforcement partners are tracking down your schemes and you will be brought to justice.”

“The last several years have seen enormous and damaging developments in the mortgage and housing markets, and the government has stepped in to bolster unstable marketplaces and devastated communities,” said Inspector General Donohue. “The HUD-OIG, in partnership with other agencies, is deeply committed to ensuring that scarce resources are not diverted to those who seek to enrich themselves at the expense of those who so desperately need assistance today.”

ROCKY MOUNTAIN CONSUMER WORKSHOP

Unlike previous mortgage fraud sweeps, Operation Stolen Dreams focused not only on federal criminal cases, but also on civil enforcement, recovering money for victims and increasing cooperation with state and local partners. The operation was conducted in conjunction with the Department of Justice – including the FBI, U.S. Attorneys Offices, the U.S. Trustee Program and other components – as well as the Department of Housing and Urban Development, the Department of the Treasury, the Federal Trade Commission, the Internal Revenue Service, the U.S. Postal Inspection Service, the U.S. Secret Service, the National Association of Attorneys General and the National District Attorneys Association.

The President's Financial Fraud Enforcement Task Force includes representatives from a broad range of federal agencies, regulatory authorities, inspectors general, and state and local law enforcement who, working together, bring to bear a powerful array of criminal and civil enforcement resources. The task force is working to improve efforts across the federal executive branch, and with state and local partners, to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets, and recover proceeds for victims of financial crimes. For more information on the task force, visit StopFraud.gov.

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HAVE YOU OR HAS SOMEONE YOU KNOW BEEN THE VICTIM OF A FORECLOSURE

“RESCUE” SCHEME?

The Office of the United States Trustee¹ would like to know if you or someone you know has been the victim of a homeowner or foreclosure “rescue” scheme. Such schemes take many forms but promise desperate homeowners the ability to avoid foreclosure by various means. Such schemes often involve:

A transfer or “sale” of the home, or a fractional interest in the home, to “investors” or others who may not even know they have received an interest in the home.

The “rescuer” promises the homeowner that the homeowner will not lose the home.

The structure may be a sale with a leaseback where the homeowner is assured of lower monthly payments.

The rescuer might secretly refinance the home to draw out and keep all cash equity.

The homeowner makes “rent” payments to the rescuer, but the rescuer keeps the payments instead of making payments to keep the home.

High fees are charged to the homeowners. The fees NEVER go toward the mortgage.

Often the homeowner is placed into bankruptcy to delay the original foreclosure or the foreclosure on the refinanced mortgage. The homeowner may not know that they have been placed into bankruptcy.

Sadly, too many homeowners only learn they have been victims of a “rescue” scheme when they are facing eviction.

If you or someone you know has been the victim of a foreclosure “rescue” scheme, please contact the Office of the United States Trustee at 999 18th Street, Suite 1551, Denver, Colorado 80202 (303) 312-7230 or through the Bankruptcy Fraud Hotline at USTP.Bankruptcy.Fraud@usdoj.gov.

¹The Office of the United States Trustee acts in the public interest to promote the efficiency and to protect and preserve the integrity of the bankruptcy system. It works to secure the just, speedy and economical resolution of bankruptcy cases; monitors the conduct of parties and takes action to ensure compliance with applicable laws and procedures; identifies and investigates bankruptcy fraud and abuse; and oversees administrative functions in bankruptcy cases.



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OPERATION STOLEN DREAMS: CASE EXAMPLES

The following are examples of cases conducted under Operation Stolen Dreams:

Builder Bailout Scheme in Chico, Calif. On May 28, 2010, Anthony G. Symmes pleaded guilty to mail fraud conspiracy and money laundering, in connection with a large-scale builder-buyout mortgage fraud scheme. For many years, Symmes was the largest home builder in Chico, Calif. In 2006, as the market cooled, Symmes had a significant amount of unsold new homes in inventory. Symmes established relationships with several unlicensed mortgage brokers to “sell” his homes to straw buyers at inflated prices. The entire reported purchase price was 100 percent financed on each home with various subprime lenders. Typically, the day after escrow closed, Symmes then rebated \$40,000 to \$60,000 of the reported purchase price per home to shell companies controlled by the buyers’ agents. The rebates were not disclosed to the lenders. Altogether, from 2006 through 2008, Symmes sold 62 homes with undisclosed sales rebates. The homes were financed in the aggregate amount of \$21 million. To date, 38 of the homes have fallen into foreclosure and 10 more have been the subject of short sales, causing losses to date of \$5 million. Symmes has pleaded guilty, is presently cooperating in an ongoing mortgage fraud investigation, and has already paid \$4 million toward restitution/forfeiture. He is currently scheduled to be sentenced on Sept. 3, 2010. The Symmes case was a joint investigation involving the U.S. Attorney’s Office in the Eastern District of California, FBI, Internal Revenue Service Criminal Investigation Division (IRS-CI) and the Butte County District Attorney’s Office.

Miami Mortgage Fraud Case Targeting Haitian-American Community. On June 16, 2010, Yolette Antoine and Constance Powell were arrested and a six-count indictment was unsealed charging the individuals in a mortgage fraud scheme, resulting in the approval and disbursement of approximately \$4.4 million in fraudulent mortgage loans, and losses of approximately \$1.5 million to various lenders. Antoine advertised herself in the Haitian-American community as someone who could provide assistance with immigration issues and the manager of a government-sponsored housing programs. When individuals contacted her concerning the immigration assistance or the supposed housing program, Antoine would allegedly obtain their personal identifying information, including the individuals’ names, social security numbers and copies of their driver’s licenses. Together with Powell, the defendants were alleged to have used this personal information to fraudulently purchase various properties without the permission of the

individuals. After the closings for the properties, Antoine would prepare and execute false and fraudulent quit-claim deeds transferring title in the properties to The Antoine Investment Group. This case involved cooperation between the U.S. Attorneys Office in the Southern District of Florida, the U.S. Postal Inspection Service (USPIS), State of Florida Office of Financial Regulation and FBI.

Detroit “Ghost Loans” Mortgage Fraud Scheme. On June 16, 2010, Ronnie Edward Duke, William Camsell Wells, III, Wilinevah Jacqueline Richardson, Ryan Andrew Zundel, Robert Charles Brierley, Nicole Lynn Turcheck and Anthony Edward Peteres were charged in a criminal complaint. From 2003 to 2007, Duke and about 70 co-conspirators operated a mortgage fraud scheme to defraud 61 financial institutions throughout the United States. The conspirators posed as mortgage brokers, appraisers, real estate agents and title agents. They recruited over 108 straw buyers to obtain approximately 500 mortgages on 180 properties totaling over \$100 million. False information was provided to mortgage companies to enhance the straw buyers’ creditworthiness. The crux of the scheme was to place multiple “ghost loans,” or unrecorded loans, on one residential property without the other lender’s knowledge. This case involved cooperation between the U.S. Attorney’s Office for the Eastern District of Michigan, the FBI, and the Detroit Mortgage Fraud Task Force, which is comprised of the Offices of the Inspector General for the Department of Housing and Urban Development (HUD-OIG), Small Business Administration, U.S. Department of Agriculture, the Federal Reserve Board, the Federal Deposit Insurance Corporation, the USPIS and the U.S. Bankruptcy Trustee.

Duluth, Minnesota Loan Modification Scheme. Former mortgage broker Michael Fiorito was sentenced on April 29, 2010 to 270-months in federal prison for his role in a mortgage fraud and equity skimming scheme that stole approximately \$400,000 from homeowners who believed they were “only refinancing” their homes, not having their homes sold without their knowledge. Fiorito promised the victims they would receive home equity checks, but either intercepted the checks or used physical intimidation to force the vulnerable homeowners to endorse the checks over to them. During the sentencing hearing, the District Judge commented that society needed to be protected from this “unique danger” and a man “without conscience.” Fiorito was previously convicted at trial of six counts of mail fraud and one count of conspiracy to commit mail fraud. The investigation was conducted by the USPIS, working with the U.S. Attorneys Office and IRS-CI and stemmed as a referral from the Minnesota Financial Crimes Task Force.

\$108 Million Countrywide Settlement. Coordination between the Federal Trade Commission (FTC) and the Department of Justice’s U.S. Trustee Program resulted in a global settlement under which two Countrywide mortgage servicing companies will pay \$108 million to settle charges that they inflated fees charged to cash-strapped homeowners whose mortgages Countrywide was servicing, made false or unsupported claims about amounts owed by borrowers in bankruptcy, and charged fees to borrowers that were not disclosed until after the borrower’s bankruptcy when attempts were made to collect the fees. The FTC filed a proposed consent order resolving the FTC’s complaint

as well as the U.S. Trustee Program's challenges to Countrywide's mortgage servicing practices in bankruptcy court litigation throughout the country. Under the settlement, overcharged bankruptcy debtors and other borrowers whose loans were serviced by Countrywide before it was acquired by Bank of America in July 2008 will receive compensation from a \$108 million redress fund; Countrywide will establish internal procedures verified by a third party to ensure the accuracy of the data used to service homeowner loans; and Countrywide will provide borrowers in bankruptcy with adequate notice of its charges.

New Jersey Scheme Bankrupted Two Companies. Leroy Hayden, the servicing manager of U.S. Mortgage (USM) from 2004 through Jan. 28, 2009, entered a guilty plea on May 13, 2010 related to his role in the fraudulent sale of more than \$136 million in mortgage loans to Fannie Mae and other investors, which USM did not actually own. Last year, Michael McGrath Jr., the president of USM, pleaded guilty for his leadership role in this offense, and admitted to diverting the proceeds of those sales to fund USM's operations and for his personal use. In January 2009, the government searched USM's corporate headquarters and McGrath's residence and seized eight different bank and brokerage accounts controlled by or benefitting McGrath, with assets totaling nearly \$13 million. The scheme bankrupted USM and its wholly-owned subsidiary, CU National Mortgage, LLC. This case involved cooperation between the U.S. Attorney's Office, USPIS, IRS-CI, FBI and HUD-OIG.

Reverse Mortgage Scheme in Atlanta Targeted the Elderly. The U.S. Attorney's Office in Atlanta prosecuted one of the first reverse mortgage fraud prosecutions in the country, a type of scheme that targets the elderly. This case is also the first prosecution involving alterations to a Multiple Listing Service (MLS) routinely relied upon by appraisers, realtors, tax assessors and others in the mortgage industry to establish accurate property valuations. Defendants Kelsey Hull and Jonathan Kimpson profited from the corruption of an FHA-insured program designed to assist seniors 62 years or older with either cash for equity in their homes (refi reverses), or with funds toward the purchase of a home (purchase money reverses). The defendants faked down payments and arranged inflated appraisals to create bogus equity of up to \$100,000 in the properties securing these reverse mortgage loans, while diverting loan proceeds to themselves. Kimpson used the stolen identities and passwords of realtors to increase MLS listing and sale prices in support of inflated appraisals to create the substantial equity required to remain in the properties. Both defendants pleaded guilty on April 8, 2010, in separate cases, to conspiracy to defraud reverse mortgage lenders and the HUD/FHA insurer of the loans. Hull plead to an additional count of bank fraud and Kimpson to an additional count of aggravated identity theft. These cases were investigated by HUD-OIG and the FBI, assisted by the U.S. Secret Service, the U.S. Department of Treasury Financial Crimes Enforcement Network (FinCEN) and by local law enforcement including the DeKalb County Police Department, DeKalb County Probation Office, and the Cobb County Sheriff's Department.

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USTP Actions against Mortgage Fraud, Abuse Are Part of FFETF Sweep

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For the last several years, combating mortgage fraud and abuse has been a top priority of the U.S. Trustee Program (USTP), which has dedicated significant civil and criminal enforcement resources to address an array of issues ranging from mortgage-servicer abuse to rescue and loan modification schemes, many of which have been discussed in a series of articles published in the *ABI Journal*.¹ Through internal detection by the USTP and referrals from bankruptcy courts, trustees, bankruptcy clerks and other third parties, USTP has uncovered potential wrongdoing and pursued civil-enforcement actions against those who prey on vulnerable consumers and, where appropriate, referred suspected criminal conduct to law enforcement partners. The Federal Bureau of Investigation (FBI) recently reported that the use of the bankruptcy system by those engaged in rescue schemes is increasing as “perpetrators seize opportunities created by the current housing crisis and the more than 2.1 million properties in foreclosure.”²

In support of our efforts, the USTP is pleased to be a member of President Obama’s inter-agency Financial Fraud Enforcement Task Force (FFETF).³ On

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June 17, 2010, the FFETF announced Operation Stolen Dreams, a nationwide sweep targeting mortgage fraudsters throughout the country.⁴ Since March 1, more than 1,500 criminal defendants were charged and more than 190 civil-

Servicing LP (Countrywide), the Federal Trade Commission (FTC) and the USTP. More than three years ago, as part of its commitment to protect homeowners in bankruptcy, the USTP opened investigations of Countrywide, as well as other mortgage lenders, after receiving complaints of chronic accounting irregularities by mortgage-servicing companies. The USTP litigation against Countrywide focused on three types of practices: (1) inflating the mortgage claims Countrywide made against homeowners in chapter 13 bankruptcy; (2) failing to properly credit homeowners with payments made; and (3) failing to notify homeowners of extra

On Our Watch

enforcement actions were taken by federal agencies, regulatory authorities, inspectors general and state and local law enforcement as part of a coordinated, multifaceted strategy to hold accountable those who engage in such conduct. The USTP participated in the sweep, contributing to about 20 percent of the civil cases, which addressed a wide range of violations, including actions taken against mortgage servicers, foreclosure-rescue operators, loan origination and loan modification scams and real estate Ponzi schemes. In addition, more than two dozen of the criminal cases cited in Operation Stolen Dreams were attributable to the USTP.

Mortgage Servicing Abuse

One of the most significant bankruptcy-related cases included in the sweep was a major global settlement entered into by Countrywide Home Loans Inc. and BAC Home Loans

charges added to their mortgage bills. These improper accounting and billing practices can be catastrophic to debtors, who may emerge from bankruptcy only to end up losing the family home, and unfair to other creditors, who may receive less than their fair share from the bankruptcy estate because the mortgage company claimed more than it was entitled to receive.

Over a two-year period, the USTP worked closely with the FTC to carry out parallel investigations relating to Countrywide’s improper conduct in servicing home loans of borrowers in default or chapter 13 bankruptcy. On June 7, 2010, the FTC and USTP announced the settlement under which Countrywide will pay \$108 million to settle charges that they inflated fees charged to cash-strapped homeowners whose mortgages Countrywide was servicing, made false

¹ Sandra Taliani Rasnak, “USTP’s Civil Enforcement Activity Targets Mortgage Fraud and Mortgage Rescue Schemes,” *ABI Journal*, March 2010, at 72-73; Sandra R. Klein, “USTP Initiative Combats Bankruptcy-Related Mortgage and Real Estate Fraud,” *ABI Journal*, July/August 2009, at 18; and Sandra R. Klein and Philip Crewson, “USTP’s Report on Criminal Referrals Highlights Criminal Enforcement Activity,” *ABI Journal*, November 2009, at 20.

² FBI, 2009 Mortgage Fraud Report “Year in Review,” available at www.fbi.gov/publications/fraud/mortgage_fraud09.htm#5.

³ The FFETF is working to improve efforts across the federal executive branch and with state and local partners, to investigate and prosecute significant financial crimes, ensure just and effective punishment for those who perpetrate financial crimes, combat discrimination in the lending and financial markets, and recover proceeds for victims of financial crimes. For more information, visit www.stopfraud.gov.

⁴ The Department of Justice’s press release is posted at www.justice.gov/opa/pr/2010/June/10-opa-708.html.

or unsupported claims about amounts owed by homeowners in bankruptcy and attempted to collect fees from borrowers that were not disclosed until after the borrower's bankruptcy case was closed.⁵

The FTC consent order entered on June 15, 2010, resolves the FTC's complaint as well as the USTP's challenges to Countrywide's mortgage-servicing practices in bankruptcy court litigation throughout the country. Under the settlement, (1) overcharged bankruptcy debtors and other borrowers whose loans were serviced by Countrywide before it was acquired by Bank of America in July 2008 will receive compensation from a \$108 million redress fund administered by the FTC; (2) Countrywide will establish internal procedures to be verified by a third party to ensure the accuracy of the data used to service homeowners' loans; and (3) Countrywide will provide homeowners in bankruptcy with adequate notice of its charges.

Rescue Fraud

Over half of the USTP's sweep cases involved foreclosure rescue fraud schemes targeting financially distressed homeowners, including non-English speakers and minorities, in which the perpetrators used the bankruptcy system to further the scheme. As the FBI noted in its 2009 *Mortgage Fraud Report*, "[m]ortgage fraud perpetrators are exploiting the U.S. bankruptcy system by filing fraudulent bankruptcy petitions to delay the foreclosure process and extract the maximum profit from victims during the commission of advance fee, fractional transfer and sale-leaseback-repurchase foreclosure rescue schemes."⁶ In addition, the FBI reported that perpetrators involved in loan-modification schemes in the form of advanced fee rescue schemes also file bankruptcy cases to take advantage of the automatic stay and stall foreclosure, allowing them to collect more fees from their victims. These schemes are increasing in popularity and involve soliciting homeowners with offers to help them stop the foreclosure process on their homes.⁷ Homeowners are falsely told that the perpetrators will renegotiate their mortgages, including covering delinquent payments, and that

their monthly mortgage payments will be reduced. Perpetrators require substantial up-front payments from the homeowners and often instruct homeowners to stop making mortgage payments and communicating with their lenders.⁸

Several cases included in Operation Stolen Dreams illustrate the USTP's civil enforcement efforts against rescue fraud.⁹ In one case, the U.S. Trustee's Atlanta office filed a complaint against six defendants alleging that they targeted Hispanic consumers in a fraudulent mortgage foreclosure rescue scheme. The U.S. Trustee asked the bankruptcy court to permanently bar the defendants from performing document preparation services for consumers, award damages to each affected consumer and impose civil penalties and fines under 11 U.S.C. § 110. According to the complaint, the defendants, promising foreclosure relief, charged homeowners \$1,000 to \$2,545 in up-front fees. The U.S. Trustee also alleged that one of the defendants contracted with agents of a paralegal service to prepare bankruptcy petitions for the homeowners, and that the defendants collected inflated fees and prepared faulty bankruptcy documents. The U.S. Trustee's litigation is ongoing.

Another example demonstrates the coordinated efforts of multiple U.S. Trustee offices. Four offices in three states have filed actions against a California law firm seeking sanctions, disgorgement and injunctive relief. The USTP alleges that the law firm engaged in unfair, deceptive or unlawful practices in connection with offering debt settlement, loan modification and bankruptcy services to financially distressed homeowners facing foreclosure. In their complaints and motions, the U.S. Trustees allege that homeowners paid significant fees to the defendant for loan-modification services that produced no results. Further, they allege that the defendant persuaded the homeowners to file for bankruptcy, and charged them additional fees for bankruptcy document preparation services and purported legal representation. Although the defendant prepared the bankruptcy documents, it failed to make the required bankruptcy disclosures that would have revealed the significant fees it received from the debtors for its loan modification and bankruptcy services. The U.S. Trustee's litigation is ongoing.

The U.S. Trustee's San Diego office filed complaints against three defendants alleging violations of § 110 in multiple bankruptcy cases filed on behalf of four debtors as part of a fraudulent loan-modification scheme. The complaints sought fines and disgorgement of fees. The U.S. Trustee alleged that the defendants fraudulently induced homeowners to engage their services with promises of assistance with modification of their mortgages. Rather than providing such assistance, the defendants allegedly filed multiple bankruptcy cases in the names of the homeowners to stall foreclosure. The defendants were also named in 64 separate enforcement actions seeking the imposition of additional fines and disgorgement of fees for violations of § 110. In those matters, the defendants allegedly filed multiple bankruptcy cases on behalf of debtors, but those cases were dismissed by the bankruptcy court because no bankruptcy schedules were filed. The U.S. Trustee is seeking the entry of default judgments.

Debtor Fraud and Abuse

The USTP also addressed fraud and abuse by debtors in connection with mortgage fraud schemes as part of Operation Stolen Dreams. As the following cases illustrate, these debtors were not innocent victims but rather were active participants in the schemes who sought to use the bankruptcy system to escape paying the losses sustained as a result of their schemes.

In one case, two defendants entered into a stipulation waiving their bankruptcy discharges to resolve a complaint filed under 11 U.S.C. § 727 by the U.S. Trustee's Oklahoma City office. The U.S. Trustee alleged that the debtors concealed significant transfers of real estate, concealed their ownership of bank accounts and other assets and substantially under-reported their income. According to the U.S. Trustee's investigation and the allegations contained in 21 dischargeability lawsuits filed by 35 victims, the debtors created two entities to market their mortgage rescue program to homeowners facing foreclosure. The debtors convinced homeowners to transfer their houses into trusts created by the debtors; the debtors then found renters for each property to generate cash flow to purportedly service the mortgages. In some cases, the debtors falsely

⁵ The USTP's press release, the statement of Clifford J. White III, Director of the Executive Office for U.S. Trustees and the complaint and consent order filed by the FTC are posted on the USTP's press release page at www.justice.gov/ust/ea/public_affairs/press/docs/2010/pr20100607_statement.pdf.

⁶ FBI, available at www.fbi.gov/publications/fraud/mortgage_fraud09.htm#5.

⁷ *Id.*

⁸ *Id.*

⁹ Several of the civil case examples included in this article involve motions or complaints that are not yet resolved by court order and contain allegations that may be disputed by other parties.

led renters into believing they were purchasing the homes via rent-to-own or land contracts. In addition, the debtors allegedly diverted the rent proceeds. The waiver of the defendants' discharges resolved all pending complaints.

In another case, the U.S. Trustee's Milwaukee office successfully prevented a debtor from receiving a discharge of about \$1 million of unsecured debt related to his purchase of nine properties. At trial on the U.S. Trustee's objection to discharge, the debtor admitted that he served as a purchaser for nine properties and that he failed to disclose in his bankruptcy documents rent proceeds, income from property purchases, bank accounts and businesses he owned. The U.S. Trustee also uncovered a number of significant undisclosed deposits into the debtor's bank accounts, for which the debtor could not provide adequate explanation. The U.S. Bankruptcy Court for the Eastern District of Wisconsin entered an order denying the debtor's discharge and finding that the debtor did not keep or preserve records, did not disclose all of his income, bank accounts or required information and provided false information on his bankruptcy schedules.

In a third case, the U.S. Trustee's Cleveland office filed a motion to dismiss a debtor's chapter 7 case for bad faith. The U.S. Trustee alleged that the debtor was seeking to discharge more than \$3.7 million dollars in unsecured mortgage debt incurred as part of a mortgage fraud scheme, that she never intended to repay the debt and that it would be an abuse of the system for the debtor to receive a discharge. The motion also alleged that the debtor had previously pleaded guilty to charges arising out of a mortgage fraud scheme and that the unsecured mortgage obligations listed in her case arose out of the same scheme. The U.S. Bankruptcy Court for the Northern District of Ohio granted the U.S. Trustee's motion and dismissed the case with prejudice.

Conclusion

The USTP is committed to continuing its fight against mortgage servicer abuses, rescue fraud schemes and debtor fraud through civil and criminal enforcement actions. As a member of the FFETF, the USTP will continue to work with our partners in addressing financial crimes and abuses that affect all segments of the nation's

economy. Additional information about mortgage and financial fraud schemes can be found at the FFETE's website, www.stopfraud.gov, and the FTC's website, www.ftc.gov. We encourage judges, attorneys, trustees and others in the bankruptcy community to report suspected bankruptcy fraud and abuse to the USTP, either through your local field office or ustp.bankruptcy.fraud@usdoj.gov. ■

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THE WHITE HOUSE
Office of the Press Secretary

FOR IMMEDIATE RELEASE

October 20, 2010

**FACT SHEET: Federal Government Efforts to Support
Accountability, Stability and Clarity in the Housing Market**

Today the Department of Housing and Urban Development, the Department of the Treasury, the Department of Justice, the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Federal Trade Commission, the Securities and Exchange Commission, the Federal Housing Finance Agency and the Office of Thrift Supervision met to discuss ongoing interagency action to support accountability, stability, and clarity in the housing market and residential mortgage backed securities markets.

We are working together to review practices that do not comply with state foreclosure law or applicable federal laws, including taking the following actions:

- The Federal Housing Administration (FHA) has been reviewing servicers for compliance with loss mitigation requirements. These reviews are being broadened to include a larger range of processes, focusing in particular on servicer procedures during the final stages of the foreclosure process. These reviews are expected to be complete within nine weeks.
- The Financial Fraud Enforcement Task Force, led by the Department of Justice, has brought together more than 20 federal agencies, 94 US Attorney's Offices and dozens of state and local partners to share information about foreclosure and servicing practices. The Task Force's collaborative efforts are ensuring that the full resources of the federal and state regulatory and enforcement authorities are being brought to bear in addressing this issue.
- The Financial Fraud Enforcement Task Force has also been coordinating with State Attorneys General in their joint review of "robo-signing" practices in foreclosure cases.
- The Department of Justice, including through the Executive Office for U.S. Trustees, is also working with regulators to investigate and, where appropriate, litigate against servicers, their law firms, and third-party providers regarding their foreclosure and bankruptcy processes.
- The Federal Housing Finance Agency (FHFA) directed Fannie Mae and Freddie Mac to remind servicers of their contractual and legal responsibilities in foreclosure processing. On October 13, FHFA directed Fannie Mae and Freddie Mac to implement a policy framework for dealing with possible foreclosure process deficiencies that requires servicers to review their foreclosure processes and fix any processing problems they identify. The FHFA policy framework includes specific steps servicers should take to remedy mistakes in foreclosure affidavits so that the information contained in the affidavits is correct and that the affidavits are completed in compliance with applicable law.

ROCKY MOUNTAIN CONSUMER WORKSHOP

- The Office of the Comptroller of the Currency (OCC) directed all large national bank servicers on September 29 to review their foreclosure management processes, including file review, affidavit processing and signatures, to ensure that the processes are fully compliant with all applicable state laws.
- The Office of the Comptroller of the Currency and the Federal Reserve System are jointly examining foreclosure and securitization practices at the nation's largest servicers. The examinations will include intensive review of the firms' policies, procedures, and internal controls related to loan modifications, foreclosures and securitizations, seeking to determine whether systematic weaknesses are leading to improper foreclosures. The reviews will also evaluate controls over the selection and management of third-party service providers.
- In coordination with the work of the other agencies, the Office of Thrift Supervision (OTS) is reviewing the mortgage related policies, foreclosure processes and staffing levels of the largest servicers it supervises. The OTS has gathered preliminary information through its regional offices about the servicer practices across the country. It also issued correspondence on October 8 to all savings associations involved in servicing residential mortgages requiring the immediate review of their actual practices associated with the execution of documents related to the foreclosure process.
- The Federal Deposit Insurance Corporation is participating in the reviews by the OCC, the Federal Reserve System, and the OTS of the foreclosure and securitization practices of the largest mortgage servicers in its role as back-up supervisor. The FDIC also is verifying that the servicers it supervises do not exhibit the problems that others have identified as well as reviewing the processes used by servicers of loans subject to loss share agreements and other loans from receiverships of failed banks. The regulators are also evaluating foreclosure and securitization practices in electronic registration systems.
- The Federal Trade Commission (FTC) is monitoring servicers under existing public orders to confirm proper servicing and foreclosure processes, is conducting reviews in line with past servicing abuses and monitoring the market closely for any fraud or foreclosure scams.
- The US Treasury has implemented a strong compliance framework for the Home Affordable Modification Program (HAMP) servicers. On October 6, Treasury issued a notice to HAMP servicers reminding them of their requirement to comply with all applicable state and federal laws, as well as a reminder that prior to foreclosure sale, servicers must certify to the foreclosure attorney or trustee that all loss mitigation options have been considered and exhausted. Treasury also recently instructed its HAMP compliance agent to review internal policies, procedures, and processes for completing the pre-foreclosure certifications at the ten largest servicers.
- In addition to its role enforcing the federal securities laws, the Securities and Exchange Commission (SEC) has issued proposed rules that would provide greater transparency and disclosures in the securitization market and provide investors with additional tools to evaluate actions in the securitization market.

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**CONSUMER ISSUES:
LOSS MITIGATION IN BANKRUPTCY
INCLUDING HAMP**

by:

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Housing Initiative Successes

- ✓ Lower Interest Rates: Families continue to see the lowest interest rates in history for 30 year mortgages. Since April of 2009, record low rates have helped more than 7.1 million homeowners to refinance, resulting in more stable home prices and \$12.7 billion in total borrower savings.

- ✓ More than 3.52 million modification arrangements, including HAMP modifications, were started between April 2009 and the end of August 2010 – modifications nearly triple the number of foreclosures during this time.

- ✓ At nine months, almost 90 percent of homeowners remain in their permanent HAMP modification; less than 16 percent of permanent modifications are delinquent at sixty plus days.

- ✓ Homeowners in permanent modifications are experiencing a median payment reduction of 36 percent.

**General Documentation Required for Loss
Mitigation Review in Bankruptcy**

Generally, to get started, the servicer requires the following documents:

1. Hardship letter stating reasons why the Borrower fell behind in payments, or for HAMP - a Request for Modification and Affidavit Form (form that captures information on borrower income, expenses, subordinate liens on property, and liquid assets, including a hardship affidavit, fraud notice, and information about the Trial Period Plan);
2. Financial worksheet including all monthly income and expenses, subordinate liens on the property, and liquid assets;
3. Proof of current income (approx. 60-90 days of most recent income);
4. Copies of most recent tax return, or for HAMP - Internal Revenue Service Form 4506T-EZ (form that gives permission to a mortgage servicer to request a copy of the most recent tax return the debtor has filed with the IRS); and
5. Letter from Borrower's counsel (on counsel's letterhead) providing authorization for servicer to speak to Borrower directly with respect to the loss mitigation review process.

Borrowers should contact their servicer directly for specific information. Loss mitigation information can be obtained directly through the servicer. Borrowers should be wary of any third party that represents that they will negotiate loss mitigation options with servicers for a fee.

Requirements and Review for HAMP Loss Mitigation in Bankruptcy

Effective as of June 1, 2010, the Treasury Department amended and extended its policies and procedures related to the initiation and continuation of foreclosure actions and extending HAMP benefits to borrowers who have filed for bankruptcy court protection.

Therefore, as of June 1, 2010, Borrowers in active Chapter 7 or Chapter 13 bankruptcy cases must be considered for HAMP if the borrower's counsel or bankruptcy trustee submits a request to a participating servicer. Servicers are not, however, required to proactively solicit borrowers in bankruptcy.

Not all servicers participate in HAMP. However, all servicers for loans owned or guaranteed by Fannie Mae and Freddie Mac are required to participate. A list of participating servicers is provided at:

http://www.makinghomeaffordable.com/contact_servicer.html.

Substitution Income Documentation for HAMP
Loss Mitigation Review in Bankruptcy

Due to the fact bankruptcy counsel already has in its possession a substantial amount of financial information pertaining to the debtor, bankruptcy counsel is in a unique position to assist its client in compiling the necessary documentation for loss mitigation review.

As of June 1, 2010, when a borrower is in an active Chapter 7 or Chapter 13 bankruptcy, participating servicers may accept copies of the bankruptcy schedules and tax returns in lieu of a Request for Modification and Hardship Affidavit and IRS Form 4506T-EZ or 4506-T, along with requested income documentation. However, if the bankruptcy schedules are more than 90 days old as of the date that the servicer receives the schedules, the debtor must provide to the servicer updated evidence of income and a hardship affidavit to determine HAMP eligibility.

Eligibility for HAMP

In order to be eligible for a HAMP modification, a debtor must meet certain requirements. Before advising your client that they may be eligible, certain threshold considerations should be reviewed:

1. Is the home the debtor's primary residence?
2. Is the amount the debtor owes on the first deed of trust equal to or less than \$729,750.00?
3. Is the debtor having trouble paying their mortgage? To what is the hardship attributed?
4. Is the mortgage under which the modification is sought a mortgage entered into before January 1, 2009?
5. Is the payment on the debtor's first mortgage (including principal, interest, taxes, insurance and homeowner's association dues, if applicable) more than 31% of the debtor's current gross income?

Seeking Reconsideration for a HAMP Modification

A debtor previously evaluated for HAMP and denied due to failure to meet the minimum eligibility criteria or who meets the minimum eligibility criteria but is not qualified due to an adverse financial reason may be reconsidered for HAMP upon a change in circumstances. In order to be reconsidered for HAMP, the debtor will need to re-submit the necessary documentation for review.

Debtors, however, will not be reconsidered for HAMP if the debtor either received a HAMP modification and lost good standing or the borrower received a HAMP offer and either failed to make one or more payments under a previous trial period or failed to provide all the required documents necessary for modification prior to the end of the trial period.

Items to Keep in Mind When Advising a Debtor Regarding HAMP in Bankruptcy:

As of June 1, 2010, Borrowers who are in a trial period plan and subsequently file for bankruptcy may not be denied a HAMP modification solely on the basis of the bankruptcy.

Servicers and debtor's counsel are required to cooperate and obtain any necessary court or trustee approval required according to local rules. Many servicers may require court approval or trustee approval even if not specifically required by the local rules.

Generally, the trial period for a HAMP modification is a term of three months. During that time, the trial period payment amount should be made to the servicer. If it becomes necessary to accommodate delays in obtaining court approval of a HAMP modification, the trial period may be extended for a period two months. However, servicers are not required to extend the trial period plan beyond a total of five months. During any applicable extension month, the debtor should continue making the trial period payment to the servicer.

Trial Period Payments in Chapter 13

If a debtor is in a trial period HAMP plan and is in an active Chapter 13 bankruptcy, a servicer may not object to confirmation of the debtor's Chapter 13 plan based on failure to make payments, to the extent that the debtor has timely made all their HAMP trial period payments. However, to avoid confusion, the servicer may file a notice or limited objection explaining that the payment terms are subject to change due to a pending loan modification. It is up to the Court to determine whether to delay confirmation or require a plan modification upon a change in terms that materially affects the payments set forth in the plan.

Ideally, the final loan modification should be approved prior to plan confirmation. This allows all parties to fully understand the payment responsibilities and debt obligations at the time of confirmation.

Additionally, a servicer will not have adequate grounds for relief from the automatic stay or for dismissal of the bankruptcy case (based solely on payment defaults)

to the extent that the debtor is current on all his trial period payments. A servicer may proceed with relief from stay while loss mitigation options are being considered, and in the context of HAMP, prior to approval of a trial period payment plan. A servicer may still proceed with relief from stay or dismissal on other grounds such as failure to maintain insurance or default under other terms of the note and deed of trust (or mortgage).

In order to confirm a plan of reorganization, the Debtor must provide a method to cure arrears and make regular monthly payments on his/her primary residence to the secured lender outside the plan. 11 U.S.C. § 1322(b)(2) and (b)(5). To facilitate this process, the servicer or the secured lender may file a proof of claim setting forth the amount of arrears as of the petition date. 11 U.S.C. § 501, 502. The proof of claim sets forth the arrears as of the petition date, based on the contractual obligations as of that date.

When there is a pending loan modification, the amount set forth as arrears may subsequently be re-amortized or added to the back of the loan. The servicer has the option to amend the proof of claim to show that the amount previously stated is no longer claimed as “arrears” but is now part of the loan modification. The main purpose of doing so is to assist the Chapter 13 Trustee in appropriately paying out claims. A loan modification often results in additional disposable income that may be administered by the Chapter 13 Trustee and additional funds available to pay unsecured claims.

Where possible, it is helpful to delay confirmation while a loan modification or other loss mitigation process is pending. Doing so allows a plan to be confirmed with the correct figures for the Chapter 13 Trustee and the Court. For example:

- If the Debtor is negotiating a short sale, the Plan can be amended after closing to show that the previously secured claim is now an unsecured claim in a reduced amount or that there is no deficiency owing, thereby providing more funds for Class 4 creditors. Additionally, Schedule J can be amended to show Debtor's actual housing costs.
- If a loan modification is approved, the actual modified monthly payment amounts can be reflected in the Debtor's budget and plan.
- If a Deed in Lieu is accepted by the servicer, the Proof of Claim amount can be reduced to zero and the Plan appropriately modified to reflect additional disposable income available to Class 4 creditors. Additionally, Schedule J can be amended to show Debtor's actual housing costs.

Waiver of Trial Period Plan in Chapter 13

At the sole discretion of the servicer, a participating servicer may permit a debtor who is eligible for HAMP and in an active Chapter 13 bankruptcy to convert to a permanent modification without completing a trial period plan if the following conditions are met:

- The debtor has made all post-petition mortgage payments due prior to the effective date of the HAMP, and at least three of those payments are equal to or greater than the proposed modified payment.
- The modification is approved by the bankruptcy court.

Please note that in order for a servicer to consider a waiver of the trial period plan in an active Chapter 13, the trial period plan waiver must be permitted by the applicable investor guidelines.

Loss Mitigation in Chapter 7

Debtors who obtain a discharge in a chapter 7 bankruptcy remain eligible for HAMP. It is not necessary for a debtor to re-affirm the mortgage debt in order to be eligible for HAMP.

HAMP or other loss mitigation negotiations generally may take place with or without relief from stay. However, it is recommended that permanent modifications be approved by the Bankruptcy Court, or, alternatively, be entered into after relief from stay has been granted.

Primarily, chapter 7 debtors are concerned with motions for relief from stay initiated by the servicer. The servicer may file a motion for limited relief in order to proceed with loss mitigation efforts, including but not limited to short sales, deeds in lieu or loan modifications. The order on a limited relief motion will specify what actions can be taken by the servicer. A separate motion may be filed to obtain complete relief if the limited relief does not result in a successful resolution.

Many servicers prefer to have an order for relief or limited relief entered prior to finalizing any loss mitigation program. This limited relief ensures that the servicer has court approval to negotiate with the Debtor directly and enter into such new agreements as are mutually desirable.

Often servicers will proceed with a motion for relief while simultaneously exploring loss mitigation options with the debtor. An order for relief does not necessarily end the loss mitigation effort. However, the servicer needs to be prepared to proceed with other state law options in the event a mutually agreeable loss mitigation option is not reached.

When responding to a motion for relief or objection to confirmation and asserting that the Debtor is in a loan modification program, it is very important to provide an executed copy of the final loan modification documents. Providing a copy of the loan modification agreement expedites review. It also allows the servicer to confirm whether the debtors have been the subject of foreclosure assistance fraud. This type of fraud is perpetrated by third parties posing as agents of the lender or servicer authorized to modify loan terms. The United States Trustee's office is actively investigating claims of foreclosure assistance fraud.

It is important to note that servicers may also participate in non-HAMP loan modifications, which may vary in terms and conditions from the HAMP program. Servicers are generally attempting to find means to limit the loss on properties and assist homeowners in staying in their homes. Servicers generally take a loss on foreclosed properties and they are working diligently to find alternative solutions.

Surrendered Properties and Deeds in Lieu

Debtors often want the lender to proceed to foreclosure or short sale quickly to stop the accrual of homeowners' association (HOA) fees on the property, as post-petition

HOA fees are chargeable to the debtor until title transfers, even if the Debtor indicates a desire to surrender the property. 11 U.S.C. § 523(a)(16). In these circumstances, it is often helpful to stipulate to relief from stay in order to allow the servicer to proceed more quickly to foreclosure or short sale.

In 2010, Colorado enacted HB 10-1249, providing servicers a new option in Colorado to conduct an expedited public trustee foreclosure proceeding for vacant or abandoned residential property or in the event the grantor consents to the expedited process. The bill is effective for foreclosures filed on or after August 1, 2010. The expedited foreclosure process assists servicers and debtors in moving more quickly to foreclose properties where the debtor has abandoned the property or desires to have the process move quickly to end their liability. The expedited foreclosure process can be a good option for a chapter 7 debtor who is surrendering his/her property and looking to quickly terminate HOA obligations that continue to accrue until property title transfers via foreclosure. This bill was widely supported as an effort to stabilize communities and assist in returning properties to home ownership.

Debtors often ask why servicers do not accept deeds in lieu of foreclosure on all properties when offered. A deed in lieu of foreclosure does not eliminate junior lien rights on the property. Accordingly, servicers generally require “clear title” before accepting a deed in lieu of foreclosure. If title is not clear, the servicer is required to complete a foreclosure in order to eliminate junior lien interests. Even with clear title, some servicers may not have authority to enter into deeds in lieu of foreclosure.

HAMP MODIFICATIONS IN CHAPTER 13 CASES

Kevin R. Anderson
Chapter 13 Trustee
District of Utah

WHAT IS HAMP

“Home Affordable Modification Program”

- Encourages servicers to modify first lien consumer mortgages to reduce monthly payments using various, prioritized options to no more than 31% of debtor’s gross monthly income.
- Servicers receive compensation from Treasury for modifying mortgages.
- Applies to Government Sponsored Enterprise (GSE) Loans (Fannie Mae & Freddie Mac).
- Servicers may not refer a loan to foreclosure or conduct foreclosure sale unless (i) the borrower has been evaluated and determined to be ineligible for HAMP; or (ii) reasonable solicitation efforts by the servicer to the borrower have failed. *Supp. Dir. 10-02.*
- Servicers are not required to solicit debtors in active Chapter 7 and 13 cases, but such debtors must be considered for a HAMP modification if requested by the debtor, debtor’s counsel, or the trustee. *Supp. Dir. 10-02.*
- Servicers must cease all foreclosure activity once borrower is in an approved HAMP trial period of three months (“Trial Period”). *Supp. Dir. 10-02.*
- Servicers must provide debtor notice of receipt of HAMP application within 10 business days. Within 30 calendar days, servicer must provide debtor a notification of decision or request for additional documentation. Servicer may not make requests for additional documents after this deadline. *Supp. Dir. 10-02.*
- If HAMP modification is denied, servicer must give borrower a “Non-Approval Notice,” and servicer may not conduct foreclosure sale within 30 days of giving such notice (does not apply if borrow was ineligible for HAMP). *Supp. Dir. 09-08.*

ELIGIBILITY FOR HAMP

- Filing a consumer bankruptcy petition before, during, or after HAMP process does not disqualify debtor.
- Mortgage must have originated on or before January 1, 2009.
- Principal balance must not be greater than \$729,750 (Jumbo Loan).
- Monthly mortgage payment (including taxes, insurance, and HOA fees) must be greater than 31% of debtor’s monthly gross income.
- Debtor must be facing a hardship (e.g., loss of income, increased expenses, debt payments are excessive and debtor is overextended, and cash reserves are insufficient to cover mortgage and living expenses).

ROCKY MOUNTAIN CONSUMER WORKSHOP

- Debtor must have sufficient, current income to make 31% mortgage payment.

OPTIONS TO REACH 31% PAYMENT RATIO (in order of priority)

- Re-capitalize total delinquency (except for late fees) into principal balance of note.
- Reduce interest rate in increments of .125% to no less than 2%. Reduced rate remains for 5 years and then can increase 1% per year up to market interest rate at time of modification.
- Re-amortize loan up to 40 years.
- Forebear interest accrual on a portion of principal; however, principal remains due.
- Can propose a HAMP modification of second mortgage if necessary to hit 31% goal (does not apply to 3rd or 4th mortgage liens).

PRINCIPAL FORGIVENESS (new as of June 1, 2010)

- Mortgage balance must exceed present home value by more than 115%.
- Amount above 115% can be forgiven to achieve 31% payment goal.
- Government provides financial incentives, but servicer retains discretion to grant principal forgiveness.
- Principal forgiven in 1/3 increments for each year debtor remains current on mortgage payments.
- Experts think it unlikely that servicers will exercise this option.

HAMP IN CHAPTER 13

- If debtor is in bankruptcy, servicer may, but is not required, to solicit HAMP modification. However, servicer must respond if it receives a HAMP request from a debtor, debtor's counsel, or trustee.
- To determine eligibility for HAMP modification, servicer can use bankruptcy schedules and tax returns in lieu of *Request for Modification and Affidavit* ("RMA") & Form 4506-EZ (still requires Affidavit of Hardship).
 - If bankruptcy schedules were filed more than 90 days after they are received by the servicer, the debtor must provide updated income information (see details below).
- If Chapter 13 debtor is timely performing under HAMP Trial Period, mortgage creditor may not take the following actions on the grounds that the debtor has made the lower HAMP mortgage payment rather than the original payment under the note:
 - object to confirmation;
 - move for relief from stay; or
 - move to dismiss
- Under certain conditions, servicer may waive Trial Period for Chapter 13 debtor if:
 - Debtor is current on post-petition mortgage payments;

- Bankruptcy court approves HAMP modification;
- Investor guidelines allow waiver.
- Experts think waiver is unlikely.
- If pre-petition mortgage arrearage is recapitalized into note balance, arrearage claim should be amended, objected to, or dealt with in order approving final modification (the trustee needs to know how to administer the filed claim).
- If HAMP modification is sought pre-confirmation, consider the following:
 - Disclosure of anticipated HAMP modification and impact on creditor's claim, mortgage payment, plan payment, and Schedules I & J.
 - Optional treatment if HAMP application or permanent modification is denied.
 - Does court require continuation of confirmation until final status of HAMP modification is known?
- Court approval:
 - Does court or Chapter 13 trustee require approval before debtor can enter into HAMP modification Trial Period?
 - Is approval required for HAMP modification to become permanent. Does court require continuation of confirmation until final status of HAMP modification is known.
- If HAMP modification is made post-confirmation, what changes should be made to debtor's Schedules I & J and/or Chapter 13 plan?

CHAPTER 7 CASES

- Debtors with Chapter 7 discharge are eligible for HAMP – even if they did not reaffirm mortgage debt.
- HAMP loan document must reference that debtor previously received Chapter 7 discharge by including this language:
 - “I was discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Servicer agrees that I will not have personal liability on the debt pursuant to this Agreement.”

RECOMMENDED DOCUMENTS FOR HAMP APPLICATION

- Borrower Authorization Form - signed and dated by the Borrower.
- Hardship Affidavit - signed and dated by the Borrower.
- Tax return from immediate past tax year.
- Bankruptcy Schedules (must be received by servicer within 90 days of their filing date).
 - If more than 90 days old, submit the following updated income verification information with the HAMP application:
 - Financial Statement - signed and dated by the Borrower.

- IRS Form 4506-T- EZ - signed and dated by the Borrower.
- Most Recent Two (2) Pay Stubs.
- Most Recent Two (2) Month's Complete Bank Statement
- Most Recent Tax Return (if self-employed, then two (2) years tax returns are required and quarterly or year-to-date profit and loss statement).

NET PRESENT VALUE ANALYSIS

- Servicer determines whether loan has more value under HAMP modification or by pursuing foreclosure.
- No standardized formula and no disclosure as to how servicer makes this determination.

HAMP IN CHAPTER 13

- To determine eligibility for HAMP modification, servicer can use bankruptcy schedules and tax returns in lieu of *Request for Modification and Affidavit* ("RMA") & Form 4506-EZ (still requires Affidavit of Hardship).
- Bankruptcy papers older than 90 days must be updated.
- If Chapter 13 debtor is timely performing under HAMP Trial Period, mortgage creditor may not take the following actions on the grounds that the debtor has made the lower HAMP mortgage payment rather than the original payment under the note:
 - object to confirmation;
 - move for relief from stay; or
 - move to dismiss
- Under certain conditions, servicer may waive Trial Period for Chapter 13 debtor if:
 - Debtor is current on post-petition mortgage payments;
 - Bankruptcy court approves HAMP modification;
 - Investor guidelines allow waiver.
 - Experts think waiver is unlikely.
- Reamortize pre and post-petition arrearage into new note amount.
- Reduce post-petition mortgage payment to 31% of debtor's gross income.
 - Query: What impact does reduction in mortgage payment have on disposable income analysis?
- Counsel must consider and deal with HAMP's impact on budget, plan, and claims.

PRE-FILING HAMP CONSIDERATIONS

- Request HAMP modification as soon as possible.
- Best if Trial Period starts pre-petition so HAMP terms can be incorporated into proposed plan, noticed to all parties, and approved by bankruptcy court.

- Counsel may need to stipulate to order allowing servicer to communicate with debtor.
- Include plan language describing HAMP modification and its impact on claim(s).
- Prepare budget based on reduced HAMP mortgage payment.
- If debtor fails during the “Trial Period,” counsel must file motion to modify the plan to address the mortgage arrearage and/or post-petition default or relief from stay is likely.

POST-CONFIRMATION HAMP MODIFICATIONS

- File motion to modify plan and to enter into HAMP agreement.
- Motion should include relevant details of modification (e.g., new payment amount, new interest rate, new due date, etc.).

ROLE OF DEBTOR’S COUNSEL

- Debtors’ counsel can materially assist clients in the HAMP process because they will already have most of the information to submit a HAMP modification request.
- Trustee will not object to additional attorney fees for reasonable services rendered in connection with a HAMP modification.

COMMON CAUSES OF HAMP FAILURE

- Most Common Causes Trial Period Not Offered
 - Borrower is ineligible because first lien payment is already below 31% of household income.
 - Insufficient documentation.
 - Borrower did not provide evidence of “eminent default.”
- Most Common Causes Trial Period Cancellation
 - Insufficient documentation.
 - Missed payments during Trial Period.
 - Borrower is ineligible because first lien payment is already below 31% of household income.

HAMP ACTIVITY FOR UTAH AND COLORADO

- Utah: 1,506 active trial periods; 4,509 permanent modifications.
- Colorado: 2,002 active trial periods; 6,885 permanent modifications.

PROPOSED HAMP APPLICATION LETTER

Dear Servicer:

This office represents John and Jane Debtor (the “Debtors”) in a pending Chapter 13 case filed on _____, in the United States Bankruptcy Court for the District of Utah, Bankruptcy No. _____. The confirmation hearing in this case is scheduled for _____ (or the bankruptcy court confirmed the Debtor’s plan on _____).

The Debtors own the following real property that is subject to a first-position trust deed in favor of _____ (*insert recording information if available*).

[*Insert address or legal description*]

The estimated balance of the note as of the bankruptcy petition date is \$ _____ and the Debtors believe they are delinquent on the following mortgage payments in the estimated total amount of \$ _____

[List estimated month and year of missed mortgage payments]

Pursuant to the authorization give below, we hereby request a loan modification for the Debtors under the procedures of the Home Affordable Modification Program (“HAMP”) to reduce the monthly mortgage payment to no more than 31% of the Debtors’ gross monthly income (see <http://makinghomeaffordable.gov>).

The Debtors’ gross monthly income is presently \$ _____; therefore, we are seeking to reduce the monthly mortgage payment to no more than \$ _____ (31% of gross monthly income) consistent with the standards of HAMP (see attached calculation).

Because the Debtors are in bankruptcy, we are enclosing herewith the following documents in lieu of the *Request for Modification and Affidavit* & Form 4506-T-EZ:

1. The Debtors’ bankruptcy schedules filed on _____, (not more than 90 days from the anticipated date of your receipt of this application);
2. The Debtors’ tax return filed in this bankruptcy case for the most recently-due tax year; and
3. The Debtors’ Hardship Affidavit form.

The provisions of the trial and final HAMP modification will be included in the Debtors’ confirmed or modified Chapter 13 plan.

Within ten days of your receipt of this application, please acknowledge to this office in writing such receipt and provide specific contact information for working with you on this HAMP application.

Sincerely,

Debtors' Counsel

DEBTORS' AUTHORIZATION TO LENDER TO PROVIDE DOCUMENTATION TO LEGAL COUNSEL REGARDING HAMP MODIFICATION IN CHAPTER 13 CASE

We hereby authorize Lender and its employees and agents to provide documentation to our above-named legal counsel in connection with our request for a HAMP modification of our loan secured by our residence at the following address: _____

Dated: _____

Debtor's Signature: _____

Debtor's Signature: _____

HAMP PAYMENT REDUCTION ESTIMATOR

1	Total Monthly Mortgage Payment: Include principal, interest, taxes, insurance and homeowners' association dues if applicable.	\$
2	Current Gross Monthly Income: Include income of all borrowers who are liable on the mortgage.	\$
3	Current Debt-To-Income Ratio (divide line 1 by line 2) (must be greater than 31% to qualify for HAMP).	%
4	Target HAMP Monthly Mortgage Payment (multiply line 2 by .31)	\$
5	Reduction in Monthly Payment (subtract line 4 from line 1)	\$

Proposed Chapter 13 Plan Language For HAMP Loan Modification

Secured Mortgage Claim of *Servicer*:

The claim of *Servicer* secured by a deed of trust on the Debtor's residence shall be paid through a loan modification under the Making Home Affordable Program ("HAMP").

The Debtor has or will send an application for such modification to *Servicer's* HAMP department seeking to recapitalize any pre-petition mortgage arrearage into the principal balance of the note and to reduce the monthly mortgage payments to no more than 31% of the Debtor's applicable gross monthly income.

Subject to subsequent orders of the bankruptcy court, the Trustee shall not disburse any funds on *Servicer's* arrearage claim. Until the HAMP modification is approved, the Debtor will continue to directly make post-petition mortgage payments to *Servicer* under the original terms of the note. After approval of the HAMP modification, the Debtor will make payments to *Servicer* consistent with the terms of the HAMP trial-period modification and/or HAMP permanent modification.

If the trial and/or permanent HAMP modification occurs before confirmation of the plan, the Debtor will provide the Trustee with a copy of the HAMP modification agreement and will seek bankruptcy court approval of such modification in connection with the confirmation of this plan. Otherwise, the Debtor will seek bankruptcy court approval of any HAMP modification pursuant to a motion to modify the plan under § 1329 that includes the terms of the proposed modification.

If the HAMP modification fails to resolve the allowed claim of *Servicer*, *Servicer* may file a motion for relief from stay and the Debtor may seek to modify the plan or to provide for or otherwise resolve the claim of *Servicer*.

If the terms of the HAMP modification as finally approved are materially different than represented herein, the Debtor will seek court approval of such terms.

SUBMIT LOSS MITIGATION REQUESTS ONLINE THROUGH THE DMM PORTAL

www.dclmwp.com

Step 1: Register. It's **FREE** to Use.

- Go to www.dclmwp.com. Under “Create an Account”, click “Attorneys Click Here” if you are an attorney or click “Pro Se Filers Click Here” if you are a pro se filer.
- Complete and submit the registration information.
- Your account will be reviewed and approved by DMM. You will receive an email advising you that your account has been accepted.

Step 2: Log In

- After your account is approved, log in using the “Existing User” log in. Enter your email address and password. You do **not** need an invitation code.

Step 3: Submit Package

- Attorneys
 - Click “Add New Borrower” at the top of the screen.
 - Review the forms and documents required to be submitted to the selected servicer.
 - Follow the step-by-step instructions to create the Borrower record and upload all required documentation.
- Pro Se Filers
 - Review the forms and documents required to be submitted to the selected servicer.
 - Follow the step-by-step instructions to create the Borrower record and upload all required documentation.

Step 4: Track and Communicate

- The Servicer will use the Portal to acknowledge receipt of the package and advise you of any potential issues with the submission. If there are, you will be able to cure any deficiencies noted through the Portal.
- After the package is deemed complete, you and the Servicer can continue to message each other through the Portal to receive updates and/or provide additional information and documentation. You will receive email notification of any new activity and all new communications will be stored in a Message Center on the Portal.

**For complete details on how to use the Portal, please download the User Manual which is available online under the Tools section of the Portal after you log in. Call DMM at 1-800-481-1013 or email at support@defaultmitigation.com.*

ROCKY MOUNTAIN CONSUMER WORKSHOP

What is the DMM Loss Mitigation Web Portal?

The DMM Loss Mitigation Web Portal is a secure electronic interface that enables borrowers or their attorneys and loan servicers to exchange documents and communicate more effectively and efficiently about distressed loans in need of loss mitigation – before, during or after a bankruptcy.

Required Documentation

Through the Portal, borrowers select their servicer and are automatically notified of all of the servicer's requirements for submitting files for loss mitigation including all HAMP and servicer-specific forms and documentation that must be completed for a review to take place. Borrowers download these forms and documents and submit them through the Portal directly to the servicer.

Knowledge That Submissions Have Been Received

All information submitted by the borrower (including any documentation) is indexed, posted and stored on the Portal and available to the borrower and servicer to view at any time. As a result, borrowers have the confidence that their complete submission has been delivered to the servicer. And, servicers can proceed with a review knowing that they have received all of the information from the borrower. No more phone calls or searching for faxes to confirm packages have been delivered.

Dynamic Communications

The Portal opens up a whole new dedicated and direct channel for clear communication between borrowers and servicers. The Portal automatically tracks the status of every file – from submission to resolution. Borrowers and servicers can message each other through the Portal to resolve any issues that may arise throughout the process and submit any additional documentation that may be required. Servicers can even deliver loan modification packages to the borrower through the Portal. And, all communications between borrower and servicer are tracked; thus, ensuring that both parties know the exact status of any submission at any time. A full history of every account can be viewed at any time with a click of a button. In addition, both parties receive notice of any updates or changes to an account – on the Portal and via email.

Simple and Easy

The Portal is web-based and requires nothing more than an internet connection and an email address.

Cost

The Portal is free for the borrower and their attorneys and counselors. The Servicers pay a processing charge for each account delivered to them.

Trustee/Court/Mediator Access

Trustees, Courts and Mediators can view any file in their district that was submitted through Portal. This access enables them to assist the borrower and servicer in the loss mitigation process when necessary.

History of the Debtor's Counsel Loss Mitigation Web Portal

The Portal pioneered online loss mitigation and is the culmination of the work of many people representing the various stakeholders in the loss mitigation process. The Portal was developed by DMM in conjunction with the "Mortgage Issues Liaison Committee" of the National Association of Chapter Thirteen Trustee (NACTT) and the support of the Bankruptcy Judges.

In October 2008, DMM launched a pilot program for the Portal and went live on January 1, 2009. Today, servicers representing over 75% of the mortgage servicing volume are already using the Portal with more expected to join. Current participating servicers include Bank of America, Chase (including EMC and WaMU), GMAC (now known as Ally Bank), Litton, Ocwen, Resurgent, Select Portfolio Servicing, and Wells Fargo Home Mortgage/America's Servicing Company.



The Making Home Affordable Program Helps Homeowners in Bankruptcy

The Making Home Affordable Program is a critical part of the government's effort to stabilize the housing market and help struggling homeowners get relief and avoid foreclosure. The Program includes opportunities for homeowners in bankruptcy to modify their mortgage to make their payments more affordable through the Home Affordable Modification Program (HAMP).

Homeowners whose monthly mortgage payment exceeds 31 percent of their verified gross (pre-tax) income may apply for a HAMP modification before or after filing bankruptcy. To qualify for HAMP, a homeowner must:

- Own a one- to four-unit home that is their principal residence;
- Have received their mortgage on or before January 1, 2009;
- Have a mortgage payment (including taxes, insurance, and homeowners' association dues) that is more than 31 percent of their gross (pre-tax) monthly income;
- Owe an amount that is less than or equal to \$729,750 on their first mortgage for a one-unit property (there are higher limits for two- to four-unit properties); and
- Have a documented financial hardship.

To apply for HAMP, homeowners must submit an Initial Package to their mortgage servicer, which includes:

- A complete Request for Modification and Affidavit (RMA).*
- A complete Tax Authorization Form (IRS Form 4506T-EZ).*
- Proof of Income.*

* These forms and a Proof of Income checklist are available on the Making Home Affordable Web site -- www.MakingHomeAffordable.gov. Homeowners may also obtain copies of these forms from their bankruptcy trustee.

Mortgage servicers will determine whether homeowners qualify for a modification under HAMP. Homeowners who qualify must complete a trial period of three or four months to demonstrate that they will be able to make reduced payments on time before their mortgage will be permanently modified.

Homeowners should discuss HAMP with their bankruptcy attorney before making an application for a HAMP loan modification.

Please see www.MakingHomeAffordable.gov for additional details or call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673) to speak with a free HUD-certified counselor in English or Spanish.

Beware of Foreclosure Rescue Scams – Help is Free!

- Beware of anyone who asks you to pay a fee in exchange for a counseling service or modification of a delinquent loan.
- Scam artists often target homeowners who are struggling to meet their mortgage commitment or are anxious to sell their home. Recognize and avoid common scams.
- Assistance from a HUD-approved counselor is FREE.
- Beware of people who pressure you to sign papers immediately, or who try to convince you that they can "save" your home if you sign or transfer over the deed to your house.
- Do not sign over the deed to your property to any organization or individual unless you are working directly with your mortgage company to forgive your debt.
- Never make a mortgage payment to anyone other than your mortgage company without the mortgage company's approval.

Making Home Affordable Program and Home Affordable Modification Program Frequently Asked Questions for Bankruptcy Filers

Q1. What do these FAQs cover?

These FAQs provide information on the Home Affordable Modification Program (HAMP), which is one option under the government's Making Home Affordable Program. These FAQs are designed primarily for homeowners who have filed bankruptcy or are considering filing bankruptcy. For detailed information on HAMP and other options under the Making Home Affordable Program, including an extensive list of Frequently Asked Questions, please visit www.MakingHomeAffordable.gov.

Q2. What is the Making Home Affordable Program, and what is HAMP?

The Making Home Affordable Program is a critical part of the government's effort to stabilize the housing market and help struggling homeowners get relief and avoid foreclosure. HAMP helps homeowners who are struggling to keep their loans current or who are already behind on their mortgage payments. By providing mortgage loan servicers with financial incentives to modify existing first lien mortgages, the Treasury hopes to help homeowners avoid foreclosure regardless of who owns or guarantees the mortgage.

The Making Home Affordable Program includes the following programs:

- Home Affordable Refinance Program (HARP)
- Home Affordable Modification Program (HAMP)
 - Principal Reduction Alternative (PRA)
 - Home Affordable Unemployment Program (UP)
- Second Lien Modification Program (2MP)
- Home Affordable Foreclosure Alternatives (HAFA)
- Options for government-insured mortgages: FHA-HAMP, VA-HAMP, USDA-HAMP

For more information about these programs please visit www.MakingHomeAffordable.gov.

Q3. Who is eligible for a loan modification under HAMP?

To be eligible for a loan modification under HAMP, you must:

- Be the owner-occupant of a one- to four-unit home.

- Have an unpaid principal mortgage balance that is equal to or less than:
One unit: \$729,750
Two units: \$934,200
Three units: \$1,129,250
Four units: \$1,403,400
- Have a first lien mortgage that was originated on or before January 1, 2009.
- Have a monthly mortgage payment (including taxes, insurance, and homeowners' association dues) greater than 31 percent of your monthly gross (pre-tax) income.
- Have a mortgage payment that is not affordable due to a financial hardship that can be documented.

These are the basic eligibility requirements. After you apply for HAMP, your mortgage servicer will be able to tell you if you qualify.

Q4. Can I be considered for a HAMP modification if I am in bankruptcy?

Yes, if you are in an active (open) chapter 7 or chapter 13 bankruptcy case, you must be considered for a HAMP modification if you, your attorney, or the bankruptcy trustee submits a request to the servicer. With your permission, the bankruptcy trustee may contact the servicer to request a HAMP modification.

Q5. How do I apply for a modification under HAMP?

To apply for a modification under HAMP, you must submit an "Initial Package" to your mortgage servicer that includes:

- A complete Request for Modification and Affidavit (RMA).
 - This form captures information on your income, expenses, subordinate liens on the property, and liquid assets.
 - It also includes a Hardship Affidavit and fraud notice.
- A complete Tax Authorization Form (IRS Form 4506T-EZ).
 - This form gives permission for your servicer to request a copy of the most recent tax return you have filed with the IRS.
- Proof of Income.
 - A checklist explaining what documents can be used as evidence of income is available at <http://www.MakingHomeAffordable.gov/checklist.shtml>.

If you are in an active (open) chapter 7 or chapter 13 bankruptcy case, some servicers may accept copies of your bankruptcy schedules and tax returns (if returns are required to be filed) in place of the RMA and Form 4506T-EZ. You should consult with your

servicer to clarify the documents required. If your bankruptcy schedules are more than 90 days old when the mortgage servicer receives them, you must provide updated proof of income to determine HAMP eligibility.

The mortgage servicer's phone number and email address is on your monthly mortgage bill or coupon book. Please be patient yet persistent. Your servicer may be handling a large volume of inquiries about the program and it may take some time before your servicer is able to process your application.

For more details on the required information and forms, visit the "Request a Modification" section of www.MakingHomeAffordable.gov. You may also obtain copies of these forms from your bankruptcy trustee.

If you would like to speak to a housing counselor approved by the Department of Housing and Urban Development (HUD), call the Homeowner's HOPE™ Hotline at 888-995-HOPE (4673). HUD-approved housing counselors can help you evaluate your income and expenses, understand your options, and apply to your servicer for HAMP. This counseling is FREE.

If you have already missed one or more mortgage payments and have not yet spoken to your mortgage servicer, call your servicer immediately.

Q6: How much will a HAMP modification cost me?

If you qualify for HAMP, you will never be required to pay a modification fee or past-due late fees. If there are costs associated with the modification, such as payment of back taxes, your mortgage servicer will give you the option of adding them to the amount you owe on your mortgage or paying some or all of the expenses in advance. Paying these expenses in advance will reduce your new monthly payment and save interest costs over the life of your loan.

If you would like assistance from a housing counseling agency approved by HUD or are referred to a HUD-approved counselor as a condition of the modification, you will not be charged a counseling fee. Beware of any organization that attempts to charge an up-front fee for housing counseling or modification of a delinquent loan, or any organization that claims to guarantee success.

Q7. How will the HAMP modification affect my loan?

Your mortgage servicer may offer various options to you, including:

- Reducing your interest rate to as low as 2 percent.
- Extending the term of your loan up to 40 years.
- Deferring a portion of the principal payment to a balloon payment at the end of the loan term.
- Forgiving a portion of the principal.

Before you agree to a HAMP modification, consult with your attorney for information about the affect of the modification.

Q8. Do I have to go through a trial period for a HAMP modification?

Generally, if you are eligible for HAMP, your mortgage servicer will put you on a three-month trial plan to demonstrate your ability to make timely payments at the new monthly payment level. If you successfully make all required payments during the trial period and the income and expense information you provided is determined to be accurate, your servicer will execute an official modification agreement. You will be required to sign the modification agreement and other documents and attest that all of the information you provided to your servicer was true and accurate. Misrepresenting any required information is a violation of Federal law and has serious legal consequences.

At the discretion of the mortgage servicer, if you are in an active (open) chapter 13 bankruptcy case and you are determined to be eligible for HAMP, you might not have to complete a trial period plan. For more information about waiver of the trial period, consult with your attorney or, if you do not have an attorney, consult with the bankruptcy trustee.

Q9. What if my home is scheduled for a foreclosure sale?

Contact your mortgage servicer immediately and ask to be considered for HAMP. Servicers participating in the HAMP program are not allowed to proceed with a foreclosure sale while you are being evaluated for HAMP. In order to conduct the HAMP evaluation, your servicer must receive all the required documents prior to seven business days before the scheduled foreclosure sale date. You may also contact a HUD-approved housing counselor for help by calling 888-995-HOPE (4673).

Q10. Will I be able to get a modification if I am in a HAMP trial period plan and subsequently file bankruptcy?

Yes, if you are in a HAMP trial period plan and subsequently file bankruptcy, you may not be denied a HAMP modification on the basis of the bankruptcy filing. The mortgage servicer must work with you or your attorney to obtain any required court and/or trustee approvals. The servicer should extend the trial period plan as necessary to accommodate delays in obtaining court approvals or receiving your trial period payments when they are made to a trustee. However, servicers are not required to extend the trial period beyond two months, resulting in a maximum five-month trial period. If the trial period is extended, you shall make a trial period payment for each month of the trial period, including any extension month.

Q11. What happens in chapter 13 bankruptcy if I'm in a trial period plan under HAMP?

If you are in an active (open) chapter 13 bankruptcy case and, after filing bankruptcy, you made payments as required by a HAMP trial period plan, the mortgage servicer may not do any of the following: (1) object to confirmation of your chapter 13 plan, (2) move for relief from the automatic bankruptcy stay, or (3) move for dismissal of your chapter 13 case on the ground that you paid only the amounts due under the trial period plan.

Q12. Am I eligible for HAMP if I have received a chapter 7 bankruptcy discharge?

Yes, even if you have received a chapter 7 bankruptcy discharge, you are eligible for HAMP. If you did not reaffirm your mortgage debt, the following language must be inserted in the Home Affordable Modification Agreement:

“I was discharged in a chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement.”

Take Action

If you think you may be among the millions of homeowners who are eligible for the Making Home Affordable Program, act now.

- For more information about the Making Home Affordable Program, visit www.MakingHomeAffordable.gov.
- To determine if you have a Fannie Mae or Freddie Mac loan:
 - Fannie Mae
www.FannieMae.com/loanlookup
or 1-800-7FANNIE (Monday – Friday, 8 a.m. to 8 p.m. ET)
 - Freddie Mac
www.FreddieMac.com/mymortgage
or 1-800-FREDDIE (Monday – Friday, 8 a.m. to 8 p.m. ET)
- Contact your mortgage lender – the company to which you send your monthly mortgage payment – to determine if you qualify.
- To speak with a housing counselor:
 - Call the Homeowner’s Hope™ Hotline at 1-888-995-HOPE (4673). (Available 24/7 in English and Spanish. Other languages by appointment.)
 - Find a HUD-approved housing counselor at www.hud.gov.

These services are free!

- If you are scheduled for foreclosure, contact your mortgage lender or a housing counselor immediately. Your mortgage lender may postpone the foreclosure while your loan is evaluated.

Making Home Affordable

The Obama Administration's Making Home Affordable Program may be able to help millions of homeowners refinance or modify their mortgage payments to a level that is more affordable.

If you are looking for a way to make homeownership more affordable for you, the Home Affordable Refinance or the Home Affordable Modification may be able to help.



Home Affordable Modification

Are you struggling to make your monthly mortgage payment? Perhaps your interest rate has increased or you now have less income. The **Home Affordable Modification** may be the best option for you. The modification option is intended to help provide qualified homeowners with mortgage payments they can afford.

Eligibility

You may be eligible for the Home Affordable Modification if you:

- Have a payment that is not affordable based on your current income (debt-to-income > 31 percent).
- Own a 1- to 4-unit home that is your primary residence.
- Got your mortgage on or before January 1, 2009.
- Owe less than or equal to \$729,750 on your first mortgage for a 1-unit property (there is a higher limit for 2- to 4- unit properties – consult with your mortgage lender).
- Have a mortgage payment (including taxes, insurance, and homeowners association dues) that is more than 31 percent of gross (pre-tax) monthly income.

Affordability and Sustainability

To help foster long-term success, homeowners with modified loans will be offered success incentives. For every month a homeowner makes a payment on time, Making Home Affordable will pay a borrower incentive that will reduce the principal mortgage balance on their loan. The incentive will be applied directly to the homeowner’s loan balance annually and over five years. On time payments could reduce the amount owed on the mortgage by as much as \$5,000.

Home Affordable Refinance

Are you paying your mortgage on time, but are unable to refinance to a lower interest rate, perhaps due to a decrease in the value of your home? A **Home Affordable Refinance** may be the solution. The refinance option is designed to help homeowners whose loans are held by Fannie Mae or Freddie Mac refinance into more affordable mortgages.

Eligibility

You may be eligible for the Home Affordable Refinance if you:

- Own a 1- to 4-unit home that is your primary residence.
- Have a mortgage owned or guaranteed by Fannie Mae or Freddie Mac.
- Are current on your mortgage payments and have not been more than 30 days late making a payment within the past 12 months.
- Have a first mortgage that does not exceed 125 percent of the current market value of your home.
- Have income sufficient to support the new mortgage payments.
- Can improve the long term affordability or stability of the loan with the refinance.

To find out if your loan is owned or guaranteed by Fannie Mae or Freddie Mac use the easy lookup tool at www.MakingHomeAffordable.gov.

Affordability and Sustainability

Eligible homeowners whose mortgage interest rates are higher than the current market rate should see an immediate reduction in their payments. Homeowners who are paying interest only, or who had a low introductory rate that will increase in the future, may not see their current payment go down, but could save a great deal over the life of the loan.

Beware of Foreclosure Rescue Scams

Scam artists often target homeowners who are struggling to meet their mortgage commitment or anxious to sell their homes. Recognize and avoid common scams.

- Assistance from a HUD-approved housing counselor is FREE.
- Beware of anyone who asks you to pay a fee in exchange for a counseling service or modification of a delinquent loan.
- Beware of people who pressure you to sign papers immediately, or who try to convince you that they can “save” your home if you sign or transfer over the deed to your house.
- Do not sign over the deed to your property to any organization or individual unless you are working directly with your mortgage lender to forgive your debt.
- Never make a mortgage payment to anyone other than your mortgage lender without their approval.

Making Home Affordable Program

Servicer Performance Report Through October 2010

Report Highlights

Nearly 520,000 Permanent Modifications Begun

- On average, almost 37,000 new permanent modifications have been started monthly for the past 6 months, as servicers decision aged trials, with this month close to 24,000 new permanent modifications.
- Homeowners in active permanent modifications realize a median monthly payment reduction of 36%, or more than \$500 per month.
- For homeowners in permanent modifications, their median first-lien housing expense falls from 45% of their monthly income to 31%.

Nearly 1.4 Million Trial Modifications Started Under HAMP

- Since June, servicers have reported an average of 23,000 new trial starts as they implemented fully verified document collection.
- Of active trial modifications, 69,000 have lasted at least six months, down from more than 266,000 at the beginning of the 2nd quarter of 2010.
- Servicers have developed action plans to resolve the backlog of aged trial modifications.

Servicers Continue to Ramp Up Program Enhancements

- Servicers have expanded their program commitment to include additional efforts for homeowners struggling to pay their mortgages related to second liens, unemployment and “underwater” mortgages.
- 18 servicers have signed up for the Second-Lien Modification Program (2MP), covering nearly two-thirds of the second-lien mortgage market.
- Unemployed homeowners may be offered a minimum of three months’ forbearance prior to being considered for a HAMP trial modification.
- Reporting on these additional programs will begin in early 2011.

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Making Home Affordable Program Servicer Performance Report Through October 2010

HAMP Activity: All Servicers		Total
HAMP Eligibility (As of Sept. 30, 2010)	Eligible Delinquent Loans ¹	2,963,384
	Eligible Delinquent Borrowers ²	1,467,243
Trial Modifications	Trial Plan Offers Extended (Cumulative) ³	1,647,474
	All Trials Started ⁴	1,395,543
	Trials Reported Since Sept. 2010 Report ⁵	26,129
	Trial Modifications Canceled (Cumulative)	719,487
	Active Trials	156,408
Permanent Modifications	All Permanent Modifications Started	519,648
	Permanent Modifications Begun Since Sept. 2010 Report	23,750
	Permanent Modifications Canceled (Cumulative) ⁶	36,306
	Active Permanent Modifications	483,342

¹ Estimated eligible 60+ day delinquent loans as reported by servicers as of Sept. 30, 2010, include conventional loans:

- in foreclosure and bankruptcy.
- with a current unpaid principal balance less than \$729,750 on a one-unit property, \$934,200 on a two-unit property, \$1,129,250 on a three-unit property and \$1,403,400 on a four-unit property.
- on a property that was owner-occupied at origination.
- originated on or before January 1, 2009.

Estimated eligible 60+ day delinquent loans exclude:

- FHA and VA loans.
- loans that are current or less than 60 days delinquent, which may be eligible for HAMP if a borrower is in imminent default.

For servicers enrolling after August 1, 2010 that did not participate in the 60+ day delinquency survey, the delinquency count is from the servicer registration form.

² The estimated eligible 60+ day delinquent borrowers are those in HAMP-eligible loans, minus estimated exclusions of loans on vacant properties, loans with borrower debt-to-income ratio below 31%, loans that fail the NPV test, properties no longer owner-occupied, manufactured housing loans with title/chattel issues that exclude them from HAMP, and loans where the investor pooling and servicing agreements preclude modification. Exclusions for DTI and NPV results are estimated using market analytics.

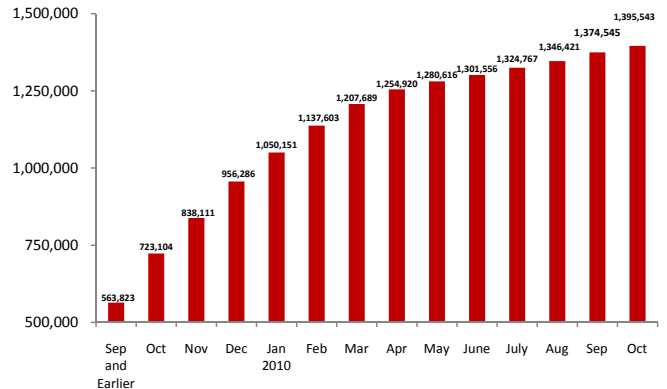
³ As reported in the weekly servicer survey of large SPA servicers through October 28, 2010.

⁴ Data includes FHA-HAMP modifications.

⁵ Servicers may enter new trial modifications into the HAMP system of record anytime before the loan converts to a permanent modification.

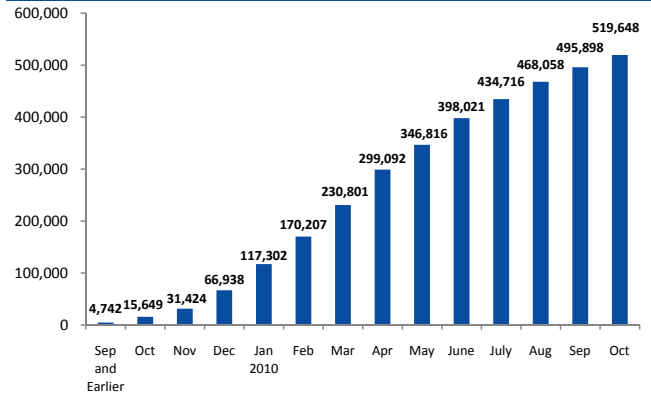
⁶ A permanent modification is canceled when the borrower has missed three consecutive monthly payments. Includes 491 loans paid off.

HAMP Trials Started (Cumulative)



Source: HAMP system of record. Servicers may enter new trial modifications into the HAMP system of record anytime before the loan converts to a permanent modification. For example, 26,129 trials have entered the HAMP system of record since the prior report; of those, 20,998 were trials with a first payment recorded in October.

Permanent Modifications Started (Cumulative)



Source: HAMP system of record.

Making Home Affordable Program

Servicer Performance Report Through October 2010

Modification Characteristics

- Aggregate reductions in monthly mortgage payments for borrowers who received permanent modifications total almost \$3.7 billion.
- The median savings for borrowers in active permanent modifications is \$522.28, or 36% of the median payment before modification.

Active Permanent Modifications by Modification Step

Interest Rate Reduction	100%
Term Extension	57.5%
Principal Forbearance	29.9%

Select Median Characteristics of Active Permanent Modifications

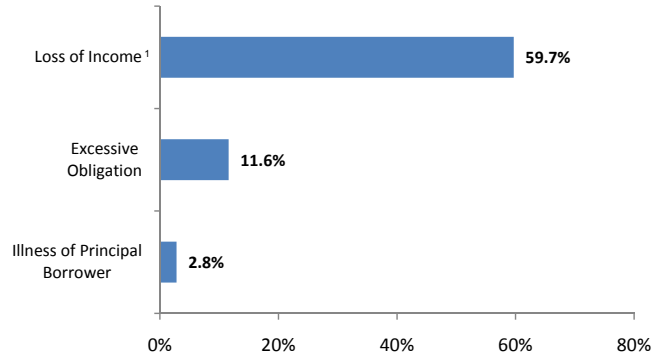
Loan Characteristic	Before Modification	After Modification	Median Decrease
Front-End Debt-to-Income Ratio ¹	45.1%	31.0%	-14.1 pct pts
Back-End Debt-to-Income Ratio ²	79.9%	63.4%	-14.7 pct pts
Median Monthly Housing Payment ³	\$1,433.74	\$838.11	-\$522.28

¹ Ratio of housing expenses (principal, interest, taxes, insurance and homeowners association and/or condo fees) to monthly gross income.

² Ratio of total monthly debt payments (including mortgage principal and interest, taxes, insurance, homeowners association and/or condo fees, plus payments on installment debts, junior liens, alimony, car lease payments and investment property payments) to monthly gross income. Borrowers who have a back-end debt-to-income ratio of greater than 55% are required to seek housing counseling under program guidelines.

³ Principal and interest payment.

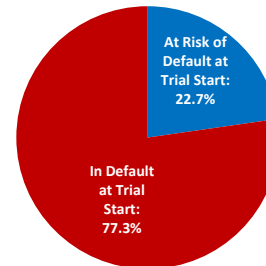
Predominant Hardship Reasons for Active Permanent Modifications



¹ Includes borrowers who are employed but have faced a reduction in hours and/or wages as well as those who have lost their jobs.

Note: Does not include 17.5% of permanent modifications reported as Other.

Loan Status Upon Entering Trial



Note: For all trial modifications started.

"At Risk of Default" includes borrowers up to 59 days delinquent at trial entry as well as those in imminent default. "In Default" refers to borrowers 60 or more days late at trial entry.

Note: Data on the performance of permanent modifications is reported quarterly.

Making Home Affordable Program Servicer Performance Report Through October 2010

HAMP Modification Activity by Servicer

Servicer	As of Sept. 30, 2010		Cumulative		As of Oct. 31, 2010	
	Estimated Eligible 60+ Day Delinquent Borrowers ¹	Trial Plan Offers Extended ²	All HAMP Trials Started ³	All HAMP Permanent Modifications Started ⁴	Active Trial Modifications ⁵	Active Permanent Modifications ⁶
American Home Mortgage Servicing Inc	51,417	30,830	27,527	15,770	9,983	14,949
Aurora Loan Services, LLC	28,731	52,701	38,089	13,703	1,315	12,700
Bank of America, NA ⁴	425,093	438,596	331,366	87,650	49,470	79,339
CitiMortgage, Inc.	116,746	165,127	151,761	53,305	8,538	51,899
GMAC Mortgage, LLC	16,192	63,393	52,398	35,143	4,191	33,012
Green Tree Servicing LLC	5,283	7,852	6,881	3,649	1,287	3,428
HomeEq Servicing ⁵	15,647	1,339	801	515	107	333
J.P. Morgan Chase Bank, NA ⁶	208,750	271,103	219,503	70,521	19,538	63,704
Litton Loan Servicing LP	46,714	38,249	35,793	9,476	1,605	8,833
Nationstar Mortgage LLC	18,294	27,975	24,854	12,336	2,090	11,477
Ocwen Financial Corp. Inc.	47,046	41,039	37,174	26,537	6,171	23,837
OneWest Bank	41,087	63,268	47,022	22,100	5,323	20,932
PNC Mortgage ⁷	15,561	23,096	18,553	4,499	848	4,220
Saxon Mortgage Services, Inc.	24,774	41,492	36,214	12,866	2,170	12,265
Select Portfolio Servicing	16,278	64,609	39,268	17,703	2,385	16,179
US Bank NA	16,461	14,966	13,514	8,434	2,513	7,986
Wachovia Mortgage, FSB ⁸	26,711	19,880	17,631	12,844	4,463	12,779
Wells Fargo Bank, NA ⁹	153,642	261,648	185,187	55,186	11,297	51,783
Other SPA servicers ¹⁰	20,655	20,311	21,410	12,732	4,214	11,934
Other GSE Servicers ¹¹	172,161	NA	90,597	44,679	18,900	41,753
Total	1,467,243	1,647,474	1,395,543	519,648	156,408	483,342

¹ Estimated eligible 60+ day delinquent borrowers as reported by servicers as of September 30, 2010, include those in conventional loans:

- in foreclosure and bankruptcy,
- with a current unpaid principal balance less than \$729,750 on a one-unit property, \$934,200 on a two-unit property, \$1,129,250 on a three-unit property and \$1,403,400 on a four-unit property,
- on a property that was owner-occupied at origination,
- originated prior to January 1, 2009.

Estimated eligible 60+ day delinquent borrowers excludes:

- Those in FHA and VA loans,
 - Those in loans that are current or less than 60 days delinquent, which may be eligible for HAMP if a borrower is in imminent default,
 - Those borrowers with debt-to-income ratios less than 31% or a negative NPV test,
 - Owners of vacant properties or properties otherwise excluded.
- Exclusions for DTI and NPV are estimated using market analytics.

For servicers enrolling after August 1, 2010 that did not participate in the 60+ day delinquency survey, the delinquency count is from the servicer registration form.

² As reported in the weekly servicer survey of large SPA servicers through October 28, 2010.

³ As reported into the HAMP system of record by servicers. Includes FHA-HAMP modifications. Subject to adjustment based on servicer reconciliation of historic loan files.

⁴ Bank of America, NA includes Bank of America, NA, BAC Home Loans Servicing LP, Home Loan Services and Wilshire Credit Corporation.

⁵ HomeEq's reporting reflects the in-process transfer of loans to other servicers.

⁶ J.P. Morgan Chase Bank, NA includes EMC Mortgage Corporation.

⁷ Formerly National City Bank.

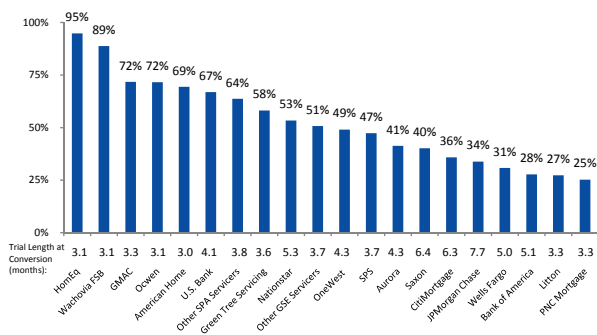
⁸ Wachovia Mortgage, FSB consists of Pick-a-Payment loans.

⁹ Wells Fargo Bank, NA includes a portion of the loans previously included in Wachovia Mortgage, FSB.

¹⁰ Other SPA servicers are entities with less than 5,000 estimated eligible 60+ day delinquent borrowers as of September 30, 2010, that have signed participation agreements with Treasury and Fannie Mae. A full list of participating servicers is in Appendix A.

¹¹ Includes servicers of loans owned or guaranteed by Fannie Mae and Freddie Mac. Includes GSE loans transferred from SPA servicers.

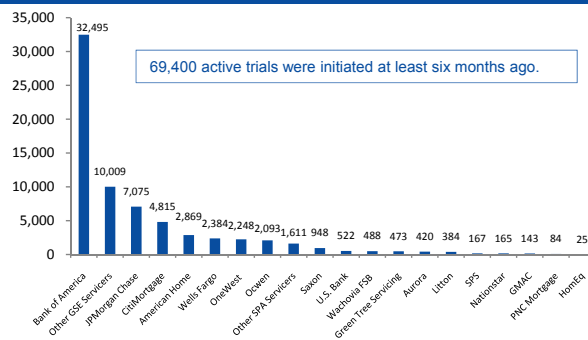
Conversion Rate¹



Note: Per program guidelines, effective June 1, 2010 all trials must be started using verified income. Prior to June 1, some servicers initiated trials using stated income information.

¹ As measured against trials eligible to convert – those three months in trial, or four months if the borrower was at risk of default. Permanent modifications transferred among servicers are credited to the originating servicer.

Aged Trials¹



¹ As of October 31, 2010. Active trials initiated at least six months ago.

Making Home Affordable Program

Servicer Performance Report Through October 2010

Disposition Path Homeowners in Canceled HAMP Trial Modifications Survey Data Through September 2010 (8 Largest Servicers)¹

Homeowners Whose HAMP Trial Modification Was Canceled Who Are in the Process of:

Servicer	Action Pending ²	Action Not Allowed – Bankruptcy in Process	Borrower Current	Alternative Modification	Payment Plan ³	Loan Payoff	Short Sale/Deed in Lieu	Foreclosure Starts	Foreclosure Completions	Total (As of September 2010)
American Home Mortgage Servicing Inc.	224	26	151	858	174	43	83	167	18	1,744
Bank of America, NA ⁴	56,638	3,930	15,387	40,025	9,601	1,940	32,396	15,045	3,084	178,046
CitiMortgage Inc.	21,277	3,579	8,147	36,144	982	1,053	1,963	11,477	2,561	87,183
GMAC Mortgage, LLC	1,665	316	1,075	6,044	192	252	556	1,522	727	12,349
JP Morgan Chase Bank NA ⁵	15,801	880	2,799	59,548	208	2,342	3,975	20,336	6,039	111,928
Litton Loan Servicing LP	3,350	589	1,922	13,733	358	115	1,021	2,515	630	24,233
OneWest Bank	4,768	653	391	7,476	147	14	866	2,238	1,610	18,163
Wells Fargo Bank NA ⁶	5,151	722	12,627	63,877	1,103	3,523	6,141	18,384	6,647	118,175
TOTAL (These 8 Servicers)	108,874 19.7%	10,695 1.9%	42,499 7.7%	227,705 41.3%	12,765 2.3%	9,282 1.7%	47,001 8.5%	71,684 13.0%	21,316 3.9%	551,821 100%

The most common causes of trial cancellations are:

- Insufficient documentation
- Trial plan payment default
- Ineligible borrower: first-lien housing expense is already below 31% of household income

Note: Data is as reported by servicers for actions completed through September 30, 2010.

¹ As defined by cap amount.

² Trial loans that have been canceled, but no further action has yet been taken.

³ An arrangement with the borrower and servicer that does not involve a formal loan modification.

⁴ Bank of America, NA includes Bank of America, NA, BAC Home Loans Servicing LP, Home Loan Services and Wilshire Credit Corporation.

⁵ J.P. Morgan Chase Bank, NA includes EMC Mortgage Corporation.

⁶ Wells Fargo Bank, NA includes a portion of the loans previously included in Wachovia Mortgage, FSB. Excludes Wachovia Mortgage FSB Pick-a-Payment Loans.

Note: Excludes cancellations pending data corrections and loans otherwise removed from servicing portfolios.

Making Home Affordable Program

Servicer Performance Report Through October 2010

Disposition Path Homeowners Not Accepted for HAMP Trial Modifications Survey Data Through September 2010 (8 Largest Servicers) ¹

Homeowners Not Accepted for a HAMP Trial Modification Who Are in the Process of:

Servicer	Action Pending ²	Action Not Allowed – Bankruptcy in Process	Borrower Current	Alternative Modification	Payment Plan ³	Loan Payoff	Short Sale/Deed in Lieu	Foreclosure Starts	Foreclosure Completions	Total (As of September 2010)
American Home Mortgage Servicing Inc.	3,160	924	8,844	28,706	720	541	2,065	6,876	669	52,505
Bank of America, NA ⁴	15,766	3,116	4,394	12,958	2,151	1,237	18,560	28,038	9,157	95,377
CitiMortgage Inc.	26,050	6,910	28,435	32,817	6,572	7,397	2,246	7,522	3,107	121,056
GMAC Mortgage, LLC	24,453	4,512	26,160	33,686	3,089	1,324	4,210	17,181	6,643	121,258
JP Morgan Chase Bank NA ⁵	41,061	3,093	90,287	85,354	526	19,191	6,864	22,022	6,733	275,131
Litton Loan Servicing LP	8,974	3,314	7,686	12,055	1,089	397	3,864	9,640	3,050	50,069
OneWest Bank	8,771	1,621	11,960	4,522	400	412	2,257	4,786	2,887	37,616
Wells Fargo Bank NA ⁶	6,589	1,071	20,812	35,599	891	3,672	4,760	10,638	5,392	89,424
TOTAL (These 8 Servicers)	134,824 16.0%	24,561 2.9%	198,578 23.6%	245,697 29.2%	15,438 1.8%	34,171 4.1%	44,826 5.3%	106,703 12.7%	37,638 4.5%	842,436 100%

The most common causes of trials not accepted are:

- Ineligible borrower: first-lien housing expense is already below 31% of household income
- Insufficient documentation
- Imminent default not evidenced by borrower

Note: Data is as reported by servicers for actions completed through September 30, 2010.

¹As defined by cap amount.

²Homeowners who were not approved for a HAMP trial modification, but no further action has yet been taken.

³An arrangement with the borrower and servicer that does not involve a formal loan modification.

⁴Bank of America, NA includes Bank of America, NA, BAC Home Loans Servicing LP, Home Loan Services and Wilshire Credit Corporation.

⁵J.P. Morgan Chase Bank, NA includes EMC Mortgage Corporation.

⁶Wells Fargo Bank, NA includes a portion of the loans previously included in Wachovia Mortgage, FSB. Excludes Wachovia Mortgage FSB Pick-a-Payment Loans.

Note: Excludes cancellations pending data corrections and loans otherwise removed from servicing portfolios.

Making Home Affordable Program

Servicer Performance Report Through October 2010

Selected Homeowner Outreach Measures	
Homeowner Outreach Events Hosted Nationally by Treasury and Partners (cumulative)	47
Homeowners Attending Treasury-Sponsored Events (cumulative)	46,930
Servicer Solicitation of Borrowers (cumulative) ¹	6,424,636
Page views on MakingHomeAffordable.gov (October 2010)	2,805,283
Page views on MakingHomeAffordable.gov (cumulative)	101,879,584
Percentage to Goal of 3-4 Million Modification Offers by 2012 ²	41-55%

Call Center Volume		
	Cumulative	October
Total Number of Calls Taken at 1-888-995-HOPE (since program inception)	1,722,795	105,297
Borrowers Receiving Free Housing Counseling Through the Homeowner's HOPE™ Hotline	830,666	48,486

Source: Homeowner's HOPE™ Hotline.

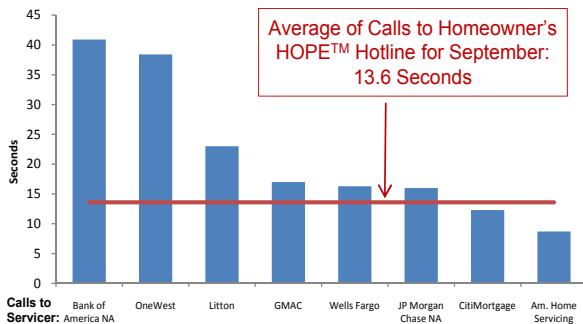
¹ Source: survey data provided by SPA servicers. Servicers are encouraged by HAMP to solicit information from borrowers 60+ days delinquent, regardless of eligibility for a HAMP modification.
² In 2009, Treasury set a goal of offering help to 3-4 million borrowers through the end of 2012.

Making Home Affordable Program

Servicer Performance Report Through October 2010

Homeowner Experience (8 Largest Servicers)*

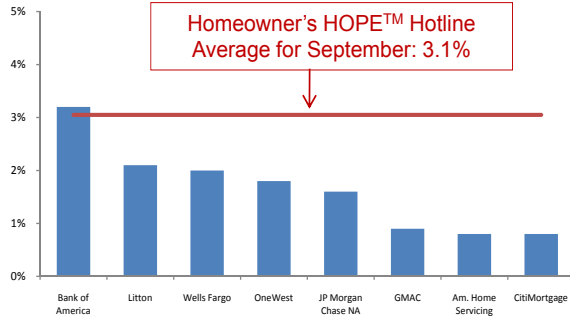
Average Speed to Answer Homeowner Calls (September)



Calls to Servicer:

Source: Survey data through September 30, 2010, from servicers on call volume to loss mitigation lines.

Call Abandon Rate (September)

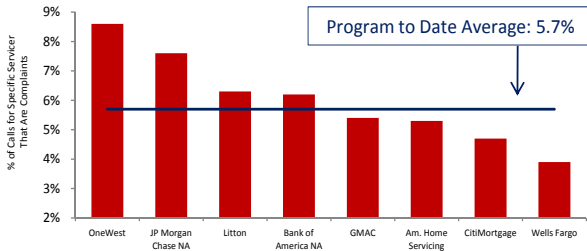


Source: Survey data through September 30, 2010, from servicers on call volume to loss mitigation lines.

*As defined by cap amount.

Servicer Complaint Rate to Homeowner's HOPE™ Hotline (Program to Date, Through October)

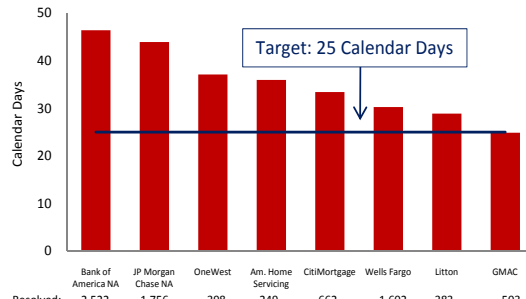
Program to date, there have been 837,255 calls to the Homeowner's HOPE™ Hotline regarding a specific SPA servicer, of which 5.7% included complaints. Below shows specific complaint rates.



Source: Homeowner's HOPE™ Hotline.

Note: Complaint rate is the share of a specific servicer's call volume that are complaints (i.e., for all calls about OneWest, 8.6% included complaints.)

Servicer Time to Resolve Third-Party Escalations (Program to Date, Through October)



Source: HAMP Solutions Center. Target of 25 calendar days includes an estimated 5 days processing by HAMP Solutions Center.

Making Home Affordable Program

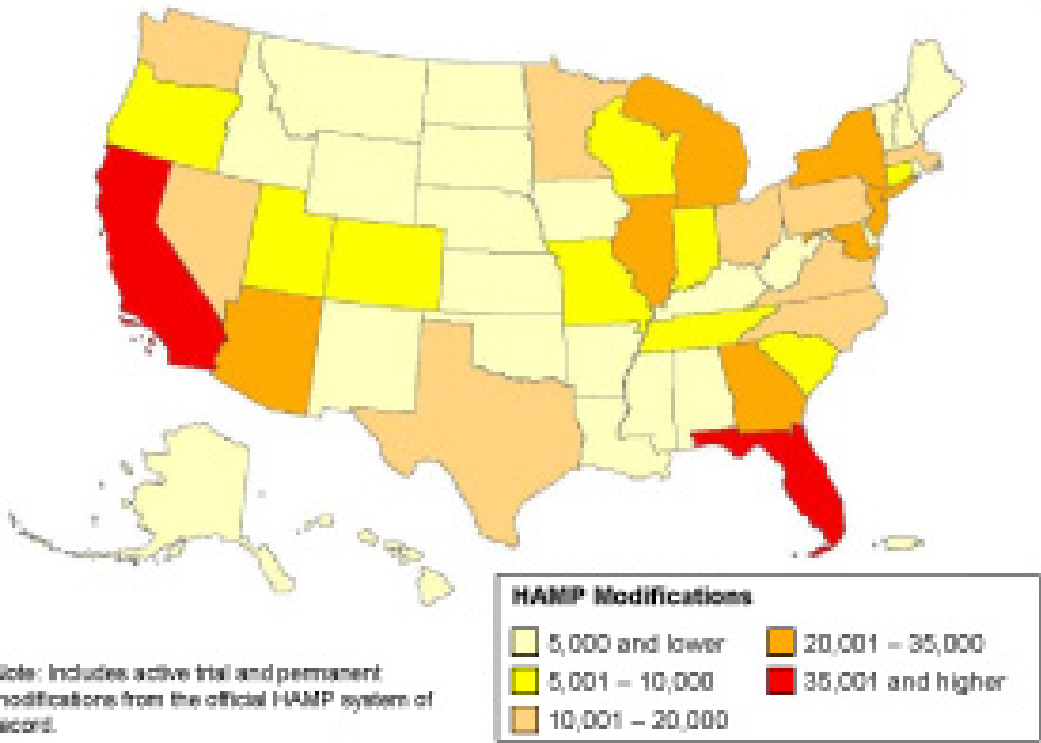
Servicer Performance Report Through October 2010

HAMP Activity by State

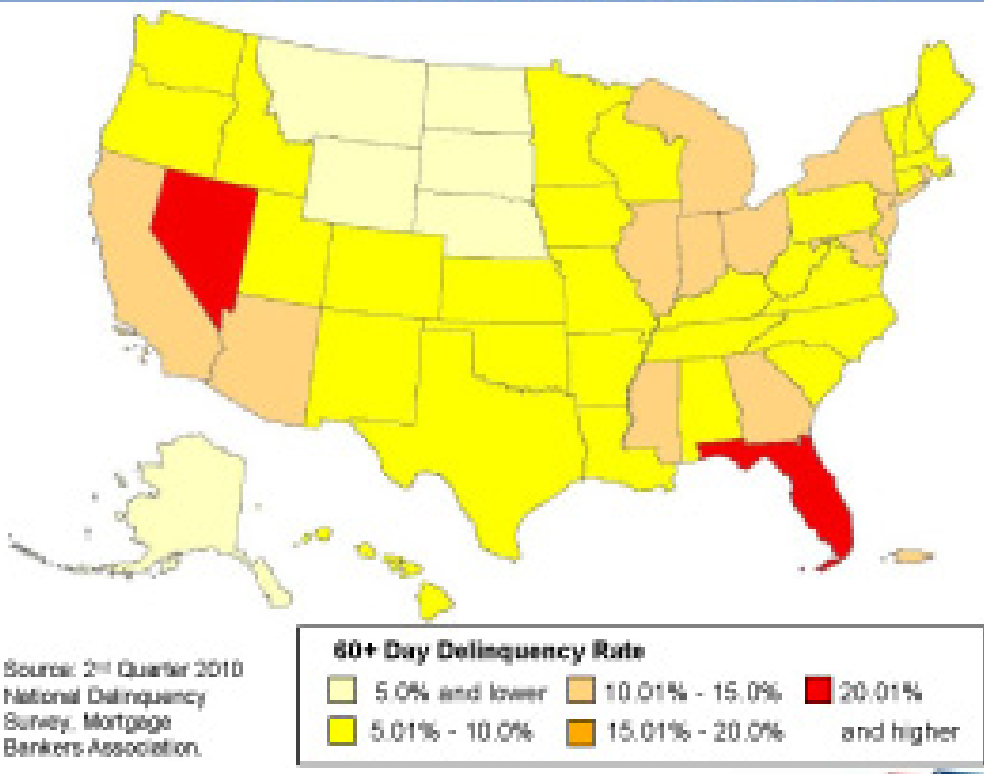
State	Active Trials	Permanent Modifications	Total	% of Total	State	Active Trials	Permanent Modifications	Total	% of Total
AK	77	193	270	0.0%	MT	207	510	717	0.1%
AL	1,007	2,810	3,817	0.6%	NC	2,813	9,137	11,950	1.9%
AR	320	1,147	1,467	0.2%	ND	26	86	112	0.0%
AZ	6,738	24,546	31,284	4.9%	NE	204	656	860	0.1%
CA	35,681	112,409	148,070	23.1%	NH	721	2,274	2,995	0.5%
CO	2,002	6,885	8,887	1.4%	NJ	5,212	15,609	20,821	3.3%
CT	1,964	6,205	8,169	1.3%	NM	575	1,510	2,085	0.3%
DC	252	812	1,064	0.2%	NV	4,188	12,735	16,923	2.6%
DE	522	1,506	2,028	0.3%	NY	7,571	20,906	28,477	4.5%
FL	18,626	57,722	76,348	11.9%	OH	3,886	10,903	14,589	2.3%
GA	5,802	17,558	23,360	3.7%	OK	436	1,110	1,546	0.2%
HI	653	1,804	2,457	0.4%	OR	1,869	5,273	6,942	1.1%
IA	358	1,237	1,595	0.2%	PA	3,377	10,119	13,496	2.1%
ID	676	1,799	2,475	0.4%	RI	780	2,478	3,258	0.5%
IL	8,297	25,892	34,189	5.3%	SC	1,417	4,721	6,138	1.0%
IN	1,571	4,825	6,396	1.0%	SD	53	185	238	0.0%
KS	403	1,138	1,541	0.2%	TN	1,702	5,012	6,714	1.0%
KY	582	1,881	2,463	0.4%	TX	4,829	12,077	16,906	2.6%
LA	1,010	2,437	3,447	0.5%	UT	1,506	4,509	6,015	0.9%
MA	3,897	12,154	16,051	2.5%	VA	3,809	12,016	15,825	2.5%
MD	4,936	15,992	20,928	3.3%	VT	111	403	514	0.1%
ME	484	1,317	1,801	0.3%	WA	3,095	9,319	12,414	1.9%
MI	5,104	16,387	21,491	3.4%	WI	1,587	4,807	6,404	1.0%
MN	2,436	9,167	11,603	1.8%	WV	225	746	971	0.2%
MO	1,667	5,304	6,971	1.1%	WY	81	244	325	0.1%
MS	593	1,853	2,446	0.4%	Other*	880	1,017	1,897	0.3%

* Includes Guam, Puerto Rico and the U.S. Virgin Islands.

Modification Activity by State



Mortgage Delinquency Rates by State



DEBTOR'S COUNSEL:
DEALING WITH LOSS MITIGATION AND HAMP WITH CLIENTS IN
BANKRUPTCY

by:

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303-296-3230

1. Debtor's struggles with HAMP
 - a. Which mortgage servicers participate in HAMP?
 - i. GSE servicers on Fannie or Freddie Loans
 1. Check servicer online
http://www.makinghomeaffordable.gov/contact_servicer.html
 - ii. Voluntary participation by other servicers
 - b. How to handle obtaining HAMP Modifications for clients in your practice and bankruptcy cases?
 - i. Stay out of it due to the potential liability
 - ii. Challenge standing as a fast track to all loan modifications
 - iii. Counsel clients that the balloon 40 year payment is not worth keeping the house and to let the house go
 - iv. Crunch the MPV calculations for all clients
 - v. Give them the application and their organized docs and have them apply themselves
 - vi. Use the loan modification portal established to aid attorneys
 - c. Getting paid in pursuing modifications in bankruptcy
 - i. Chapter 13 Fee Applications and possible objections by the Chapter 13 Trustee
 - ii. Include in Chapter 7 retainer

1. Chapter 7 Trustee's pursuing pre-petition retainers.
2. Do not bifurcate your services in your Chapter 7 fee agreement.

2. Responsiveness of Obtaining the HAMP Modification

- a. Call the creditor firm handling the plan objection or that filed the Proof of Claim in your Chapter 13 and work with their Loss Mitigation Department
- b. Litigate the issues by filing Adversary Proceedings in the base bankruptcy cases. Some successful legal theories include:
 - i. Misrepresentation of material facts by the servicer
 - ii. Foreclosure by entrapment
 - iii. Unfair and Deceptive Trade Practice by the servicer
 - iv. FSCPA—Communication of False Information
 - v. Breach of HAMP contract signed with Treasury (Third Party Beneficiary)
 - vi. Breach of good faith and fair dealing based on the UCC
 - vii. Intentional bankruptcy tort of debtor harassment
 - viii. Violation of Equal Credit Opportunity Act.
 - ix. Truth in Lending Act (TILA)—Misapplying Payments
 - x. State UDAP Statutes – Offering trial modifications without the intent of honoring the proposed modification
 - xi. Breach of Contract – Misapplying payments by the servicer
 - xii. Motion for Order to Show Cause on why HAMP Modification was denied
 - xiii. Class Action against servicer for breaching its contract with Fannie Mae to receive subsidies in return for modifying mortgages under HAMP

3. False Hopes

- a. National Level

- i. In December, the Congressional Oversight Panel stated HAMP prevented far fewer foreclosures than expected. HAMP will only prevent about 700,000 foreclosures, which is much lower than the initial estimate of 3-4 million when the program began.
 - ii. Only \$4 Billion spent out of the \$30 Billion Troubled Asset Relief Program (TARP) U.S. Treasury funds.
 - iii. Poor data collection on recidivism and success rates
- b. Client Level
- i. Expectations are high with all the press mortgage lenders have been receiving. Many clients now expect most, if not all, of the following:
 - 1. Cure arrears
 - 2. Strip second mortgages
 - 3. Modify Loan(s)
 - 4. Obtain house free and clear of all encumbrances
 - ii. All clients think they should qualify for a loan modification even if they do not meet the qualifications.
 - iii. Servicers and 3rd party modifications companies tell clients in confirmed plans they need to fall behind 3 months to qualify. This often leads to a large number chapter 13's dismissed and increased Motions for Relief filed by lenders.

Helping Chapter 13 Homeowners Keep Their Homes

History Of The Home Affordable Modification Program (HAMP).

With the collapse of home values in 2006, the precipitous stock market drop in September 2008, and the sweeping political changes to Washington in January 2009, the Obama Administration wasted no time introducing on March 4, 2009, the Home Affordable Modification Program (HAMP) that allocated approximately \$50 billion in TARP funds to provide incentives to mortgage creditors to modify consumer home loans under specific conditions by reducing the interest rate, extending the note term, and forbearing interest accrual until the mortgage payment was no more than 31% of the homeowner's gross monthly income. It was originally estimated that HAMP would assist 7 to 9 million homeowners in making ongoing mortgage payments and would prevent 3 to 4 million foreclosures.¹

From its enactment, the National Association of Chapter 13 Trustees (NACTT) supported the use of HAMP as an additional tool, in coordination with a Chapter 13 plan of reorganization, to help debtors in saving their home from foreclosure while protecting the applicable contractual interests of mortgage creditors. However, the implementation of HAMP on such a massive scale proved challenging, and the complexities of the mortgage system regularly raised questions about the mechanics of the HAMP process, especially when a homeowner filed for relief under chapter 7 or 13 of the Bankruptcy Code.

Seeing a need for more specific bankruptcy guidelines, the NACTT worked with Treasury and other interest groups to establish procedures for accomplishing HAMP modifications in consumer bankruptcy cases. On March 24, 2010, Treasury issued Supplemental Directive 10-2 (Supp. Dir. 10-2) that included amended policies and procedures "especially with respect to ... extending HAMP benefits to borrowers who have filed for bankruptcy court protection." The NACTT and other groups then initiated a number of live and Internet educational programs on how to incorporate a HAMP modification in a chapter 13 plan and provided materials to individual chapter 13 trustees to offer training on a local level. The United States Trustee and NACTT further coordinated to provide education and training by producing a video on HAMP in consumer bankruptcy cases, creating a pamphlet on HAMP for trustees to give to all consumer debtors, and otherwise working with the courts, servicers, and the debtors' bar to expedite and bring consistency to the HAMP process in chapter 13 cases.

HAMP In Chapter 13

To date, HAMP has not assisted as many borrowers as projected;² yet, the Federal Reserve estimates there will be 2.25 million home foreclosures in 2011 and another 2 million foreclosures in 2012.³ Clearly, the need that hastened the creation of HAMP remains, and with

¹ Congressional Oversight Panel, April Oversight Report: *Evaluating Progress on TARP Foreclosure Mitigation Programs*, note 1 at 63 (Apr. 14, 2010).

² Congressional Oversight Panel, *A Review Of Treasury's Foreclosure Prevention Programs*, at 4-6 (Dec. 14, 2010).

³ Sarah Bloom Raskin, Board of Governors, Federal Reserve System, Remarks at the National Consumer Law Center's Consumer Rights Litigation Conference, *Problems in the Mortgage Servicing Industry*, at 2 (Nov. 12, 2010).

an expiration date of December 31, 2012,⁴ it is not too late to capitalize on HAMP's potential to help individuals – especially in the context of a chapter 13 plan of reorganization – to reorganize their finances, to cure mortgage arrearages, to make affordable their ongoing mortgage payments, and to thereby retain possession of their homes on a long-term basis.

Pursuant to Supp. Dir. 10-02, the following policies and procedures apply to HAMP modifications for debtors in consumer bankruptcy cases:

(1) Servicers may not refer a loan to foreclosure or conduct a foreclosure sale unless (a) the borrower has been evaluated and determined to be ineligible for HAMP; or (b) reasonable solicitation efforts by the servicer to the borrower have failed. Supp. Dir. 10-02 at 5.

(2) Servicers are not required to solicit debtors in active chapter 7 and 13 cases, but such debtors must be considered for a HAMP modification if requested by the debtor, the debtor's counsel, or the trustee. *Id.* at 7.

(3) Borrowers who are in a HAMP trial period before filing bankruptcy may not be denied a permanent modification based solely on such bankruptcy filing. *Id.*

(4) Servicers *may* accept a debtor's bankruptcy schedules and a copy of the tax return required under 11 U.S.C. § 521(e)(2)(A)(i) in lieu of the "Request for Modification and Affidavit" (RMA) and IRS Form 4506-EZ; however, the debtors must still submit the "Affidavit of Hardship" with the RMA. If the bankruptcy schedules are more than 90 days old, the debtor must provide updated evidence of income. *Id.* at 8.

(5) Within 10 business days, servicers must provide the debtor with a notice of receipt of the RMA; and within 30 calendar days, the servicers must provide the debtor a notification of decision or a request for additional documentation. *Id.* at 4-5.

(6) If a chapter 13 debtor is timely performing under a HAMP trial period, servicers *must* not object to confirmation, move for relief from stay, or move to dismiss the bankruptcy case on the grounds that the debtor has made the lower HAMP payment rather than the original mortgage payment. *Id.* at 8.

(7) If necessary to obtain required approvals from the bankruptcy court and/or the trustee, servicers *should* extend the HAMP trial period up to 5 months. *Id.* at 7-8.

(8) Servicers *may* waive the HAMP trial period if the chapter 13 debtor has timely made at least three complete post-petition mortgage payments (to date, servicers have generally declined to exercise such discretion). *Id.* at 8.

(9) If a HAMP modification is denied, servicers *must* give the debtor a "Non-Approval Notice," and servicers must not conduct a foreclosure sale within 30 days of giving such notice; however, this period does not apply if the modification was denied because the debtor was not eligible for HAMP. *Id.* at 5.

⁴

No HAMP trial-period modifications will be granted after this date.

How Can Debtor's Counsel Help?

While some counsel have been hesitant to act as the debtor's agent in the HAMP modification process, counsel can still provide substantial assistance to their clients in the following fashion:

(1) In connection with preparing the bankruptcy petition, counsel can conduct an analysis to determine if the debtor qualifies for HAMP and its potential impact on the mortgage payment. To simplify this process, counsel can use the "Are You Eligible"⁵ worksheet on the Making Home Affordable web site and then use the "Payment Reduction Estimator"⁶ to determine the potential change to the mortgage payment. On average, successful HAMP modifications reduced monthly mortgage payments by \$596.⁷

(2) In gathering the necessary documentation for the bankruptcy filing, counsel can assist the debtor in completing the HAMP "Request for Modification and Affidavit" and organizing the required documents (bankruptcy statements, schedules, and tax return) so there are no deficiencies in the application (approximately 30% of trial modifications are cancelled for this reason⁸).

(3) Counsel can direct debtors to on-line resources that provide counseling and assistance regarding HAMP. The HOPE NOW web site at <http://www.hopenow.com/> provides free access to counselors who can assist debtors in preparing and submitting a HAMP application. While still being developed, the Congressional Oversight Panel gave the HOPE NOW web site high marks for using credit counselors to coordinate the HAMP application process between the borrower and the servicer and to monitor the application's progress.⁹ The "DMM Loss Mitigation Web Portal" at <https://www.dclmwp.com> also offers a single communication point for debtors' counsel, creditors' counsel, mortgage servicers, bankruptcy trustees, and bankruptcy judges to facilitate HAMP modifications in Chapter 13. Finally, the official (and very user-friendly web site) for HAMP at <http://makinghomeaffordable.gov> provides forms, FAQs, information and free access to a HUD-approved housing counselor.

(4) In preparing the chapter 13 plan, counsel should disclose the debtor's intent to obtain a HAMP modification, the impact such modification will have on creditors and the debtor's budget, and contingency treatment of the mortgage claim if a permanent HAMP modification is denied (see below for other options to address mortgage issues in chapter 13).

⁵ See http://makinghomeaffordable.gov/modification_eligibility.html

⁶ See http://makinghomeaffordable.gov/payment_reduction_estimator.html

⁷ Congressional Oversight Panel, *A Review Of Treasury's Foreclosure Prevention Programs*, at 23 (Dec. 14, 2010).

⁸ *Id.* at 30.

⁹ *Id.* at 76.

(5) Counsel should then follow local procedures as to informing the bankruptcy court and/or the chapter 13 trustee regarding the status of the HAMP modification, and, if necessary, obtaining the required approvals from the court and/or the trustee.

(6) While in the HAMP trial period, it is essential that counsel advise debtors to bank the difference between the original mortgage payment and the HAMP payment. If the debtors do not receive a permanent HAMP modification, their mortgage delinquency will increase by the difference between the original mortgage payment and the HAMP trial-period payment. The possibility that a failed HAMP trial period could increase a homeowner's mortgage arrearage by thousands of dollars is one of the major criticisms of HAMP.¹⁰

While HAMP may not be everyone's remedy of choice,¹¹ it remains for the next two years a potentially powerful option for consumer debtors, in coordination with a chapter 13 plan, to cure a mortgage arrearage, make ongoing mortgage payments, stay in the home, and thereby help to stabilize the housing and lending markets.

Some Chapter 13 Options When the HAMP Loan Modification is Denied.

Cure and Reinstate the Mortgage.

Among the most powerful tools available to consumer debtors is the ability to reinstate a defaulted mortgage, and cure the default under a Chapter 13 plan. Rather than adding a default plus myriad collection fees and costs to the principal of a mortgage, and thus lose valuable equity; under Chapter 13, the default is cured separately from the on-going mortgage. The regular monthly mortgage payments thus may immediately be credited to the principal of the mortgage.¹² The default may be cured without interest.¹³ The fees, costs and other charges are subject to review and may be reduced or even eliminated.¹⁴ For the debtor who is unable to obtain a HAMP loan modification that reduces principal, interest rates and monthly payments, chapter 13 cure options may permit the debtor to keep his home and preserve the equity in his home.

Modify the Mortgage in Chapter 13.

Under Bankruptcy Code § 1322(d)(5), a chapter 13 plan may not modify a debt that is secured solely by a debtor's principal residence. If, however, the creditor is secured upon

¹⁰ See *Loan Modification Program Leads Utahns Into Deeper Trouble*, November 3, 2010 (available at <http://www.ksl.com/index.php?nid=309&sid=13138079>).

¹¹ In the first half of 2009, Congress considered but ultimately declined to amend chapter 13 to allow for the cramdown of a mortgage on a debtor's primary residence. See *Helping Families Save Their Homes in Bankruptcy Act of 2009*, H.R. 1106, 111th Cong (2009) and S. 61 111th Cong. (2009).

¹² 11 U.S.C. §§ 1322(b)(3), (5) and 1327.

¹³ 11 U.S.C. § 1322(e). Absent modification, rarely do mortgage loan documents require interest on the cure of a default.

¹⁴ The chapter 13 Trustee, along with the Office of the United States Trustee, review fees, costs and other charges claimed by creditors. When inappropriate charges are assessed, the trustees challenge the charges and assist debtors' counsel in challenging such fees or charges.

additional collateral, this prohibition is inapplicable. Sometimes, second and third mortgage holders acquire collateral in addition to a mortgage or deed of trust upon a residence. Examples of additional collateral may include personal property “contents,” life insurance, bank accounts or other personal property subject to liens from obligations cross collateralized with the mortgage or deed of trust, secured guaranties from co-debtors, and personal property subject to a judgment lien. Obtaining judgment, rather than foreclosure, has become increasingly common among the holders of inferior deeds of trust. The judgment lien may attach personal property, thereby removing the debt from the limitations of § 1322(b)(5), and accordingly from the discharge exception of § 1328(a)(1). Counsel should carefully review loan documents, collection history and state real estate records before assuming any deed of trust must be provided for under § 1322(b)(5).

Convert the Secured Mortgage into an Unsecured, Dischargeable Debt.

Under chapter 13, a debtor may be able to avoid a mortgage lien. One option available to debtors with whose property values are declining may be to strip off a wholly unsecured mortgage debt. This is accomplished by proving that the current market value of the real estate is insufficient to cover the superior lien or liens against the real estate. The authority is found in § 506. Courts differ on whether it is sufficient to simply incorporate this action into a plan provision or if a separate adversary proceeding is required.¹⁵ Notwithstanding this split, courts support these actions once the evidence proves a lack of value against which the inferior mortgage or deed of trust may attach.¹⁶ Practitioners should be careful not to confuse the valuation under § 506 with an action to void a lien under § 522(f). The mortgage or deed of trust is a consensual lien and accordingly not subject to § 522(f).

A second method under which a mortgage or deed of trust may be vacated is through avoidance actions under chapter five of the Bankruptcy Code. Debtors should be cautious, however, as these actions are not private rights. Thus, a chapter 13 debtor may be found to lack standing to pursue an avoidance action under sections 544, 547 or 548, or may be estopped from avoiding a consensual security agreement.¹⁷

Use the Trustee as Conduit.

Chapter 13 debtors enjoy a unique benefit. Chapter 13 debtors have the assistance of a standing trustee to serve as a conduit for, as well as a buffer between, the debtor and his creditors. For those chapter 13 debtors who are confused by inconsistent actions of mortgage companies who may simultaneously pursue foreclosure while promising loan modification, turning the matter over to a third party to manage the payments and the communication, is liberating and propitious. Through the services of a chapter 13 trustee and using the options available under existing bankruptcy law, chapter 13 homeowners can indeed keep their homes.

¹⁵ Compare *In re Forrest*, 140 B.R. 816 (Bankr. N.D. Ill. 2009) with *In re King*, 290 B.R. 641 (Bankr. C.D. Ill. 2003).

¹⁶ *Lane v. Western Intertate Bk Corp.*, 280 F.3d 663 (6th Cir. 2002); *Bartee v. Tara Colony Homeowners Assn.*, 212 F.3d 277 (5th Cir. 2000); *First Mariner Bk v. Johnson*, 411 B.R. 211 (D. Md. 2009).

¹⁷ See *In re Hansen*, 332 B.R. 8 (10th Cir. BAP 2005); *In re Crawley*, 318 B.R. 512 (Bankr. W.D. Wis. 2004); but see, *Thacker v. United Companies Lending Corp.*, 256 B.R. 724 (W.D. Ky. 2000); *In re Anderson*, 324 B.R. 609 (Bankr. W.D. Ky. 2005) (debtor has standing to bring strong arm action under §544).