

Director: Hello.

Combating mortgage fraud and abuse continues to be a top priority of the United States Trustee Program. We have dedicated significant civil and criminal enforcement resources to address an array of issues, ranging from loan origination scams to mortgage servicer violations to foreclosure rescue fraud. Through detection by Program staff and, through referrals from trustees, counsel, and other third parties, we have uncovered wrongdoing and taken civil enforcement actions against those who prey upon vulnerable homeowners. Where appropriate, we also have referred suspected criminal conduct to our law enforcement partners.

As an adjunct to combating mortgage fraud and abuse, we also can help homeowners in bankruptcy by making sure they are aware of the potential to save their homes through the government's Home Affordable Modification Program, also known as HAMP.

HAMP helps struggling homeowners stay in their homes by modifying their monthly mortgage payments to make them more affordable. Though not all homeowners will qualify for this program, for those who do, HAMP may provide a real opportunity to save their homes.

As members of the bankruptcy community, United States Trustee Program staff, as well as chapter 7 and 13 trustees, have a unique opportunity to ensure that struggling homeowners are aware of HAMP. I am asking each of you to help get the word out to consumers about this important assistance program. The few moments it will take to educate consumer debtors about HAMP may be all that is needed to help many of them save their homes.

While HAMP has been around since 2009, the Treasury Department, which oversees HAMP, recently enhanced the guidelines to make it clear that borrowers in chapter 7 or 13 can be considered for a HAMP modification. This is an important clarification.

Accordingly, the United States Trustee Program is taking a number of steps, including by making available a Fact Sheet for all debtors at sections 341 meetings, by posting Frequently Asked Questions on our Web site, and by distributing this

video, to ensure that debtors are aware that HAMP may be an option to help them keep their home.

But your help is needed. This video will provide you not only with information about HAMP, but also with the tools you will need to help debtors begin the process.

I would like to thank the many individuals who have been involved in developing this awareness video, especially United States Trustee Program Assistant Director Doreen Solomon, Chapter 13 Trustee Kevin Anderson, and the Program's National Bankruptcy Training Institute for its continuing efforts to broaden its educational outreach.

Thanks also to you for taking the time to learn about HAMP and the important role you can play in helping qualified debtors save their homes.

Solomon: Hi, I'm Doreen Solomon with the United States Trustee Program.

Anderson: And I am Kevin Anderson, a chapter 13 Standing Trustee and Past President of the National Association of Chapter 13 Trustees. Welcome.

Solomon: Kevin and I are here to talk with you about HAMP, the Home Affordable Modification Program. With the Treasury Department's recent clarifications, this home saving program is now available to consumer debtors who are in active chapter 7 or 13 cases now or in the future.

Anderson: We are going to give you the information you need, both to understand HAMP and to be a referring resource to homeowners in bankruptcy.

Anderson: Now, your first thought might be, "How am I going to fit this additional task into my workload?" That was my first reaction as well, but as I thought about it, I realized that all I really need to do is raise my awareness of the HAMP program so that I can easily spot potential HAMP candidates and then ensure that they are aware of this program that may help them save their homes.

Anderson: And no one has a better opportunity to spot them and come face-to-face with these folks to ensure they know about HAMP than we do as trustees.

Solomon: To assist you in educating your bar and your staff, the U.S. Trustee Program has prepared and is distributing to you a one-page handout that you can use to streamline this most important communication.

Now, let's talk about HAMP basics, how to identify eligible consumer debtors, and what you can do in either a chapter 7 or 13 case.

Solomon: Here are the basics. HAMP was announced by Treasury in March 2009. HAMP's goal is to assist struggling homeowners get relief and avoid foreclosure by reducing the homeowner's monthly mortgage payments so that the payments are more affordable. HAMP modifications were originally limited to first mortgages, but recently were expanded to include modifications of second loans in tandem with the modification of the first lien.

Homeowners in bankruptcy have always been eligible for HAMP, however, Treasury recently expanded its guidelines specifically for homeowner's in bankruptcy. These guidelines went into effect on June 1st, 2010.

Another recent HAMP amendment allows mortgage servicers to evaluate whether unemployed homeowners who request assistance under HAMP qualify for a forbearance plan.

Anderson: So Doreen, what are the fact patterns we should be looking for to identify debtors who might be eligible for HAMP?

Solomon: Good question Kevin, let me give you a five-part eligibility test.

First, the homeowner must be the owner-occupant of a one- to four-unit home.

Second, the amount of the first lien must be less than \$729,750. This is the cap for a one-unit home. The amount for a two-unit home is \$934,200, a three-unit home is \$1,129,250, and a four-unit is \$1,403,400.

Third, the first lien mortgage must have originated before January 1, 2009.

Fourth, is the 31% test. The combined amount of the principal and interest payment, taxes, insurance, and any homeowner association fees must be greater than 31% of the homeowner's

current gross monthly income. So, the total combined amount of these mortgage related payments must exceed 31% of their monthly gross.

Fifth, the homeowner must demonstrate that the current mortgage payment is not affordable due to a documented financial hardship. Classic examples would be a job loss or a medical condition that impacts earning ability.

If the homeowner meets these five criteria, they are eligible to be considered for HAMP. That doesn't mean they be granted a modification; this is just the first step. If they are eligible, they can then apply for HAMP to see if they qualify.

Anderson: Doreen, before we get to qualifications, what if they don't meet these eligibility requirements? Are they just out of luck?

Solomon: Kevin, I'm glad you asked that. I think now is a good time to discuss a fundamental resource that you should keep at your fingertips.

The Treasury Department and HUD have created an outstanding Web page that contains detailed information about HAMP and other alternatives for distressed homeowners. The Web address is at the bottom of your screen. It's Making Home Affordable DOT GOV. I encourage you to browse through the site and refer it to anyone who has a question regarding trying to save their home.

I should also note there are excellent resources on the site on how to avoid scams aimed at distressed homeowners.

Now, back to your question regarding a homeowner who is not HAMP eligible. The site also details several other programs under the Making Home Affordable umbrella.

And for those homeowners who don't have access to the Internet, they can call the Homeowner's HOPE Hotline at 888 995 4673. If they call, they can speak with a HUD certified housing counselor who can explain the various programs.

Kevin, now is a good time to talk about how to apply for HAMP.

Anderson: Thanks Doreen. If a homeowner is HAMP eligible, they can then seek to become qualified for a HAMP modification to their mortgage.

The homeowner will need to gather the required income documentation and send it to their mortgage servicer. The mortgage servicer will confirm eligibility and determine whether they qualify.

To apply, the homeowner must submit proof of income and two forms which I will discuss in a moment. Generally, the two most recent pay stubs are all that are needed for proof of income, as long as they also contain year-to-date information. A person who is self-employed must provide the most recent quarterly or year-to-date profit/loss statement.

Now, to the two required forms.

The first form is an MHA Request for Modification and Affidavit. This form captures information on the homeowner's income, expenses, subordinate liens on the property, and liquid assets. It includes a Hardship Affidavit, fraud notice, and information about the trial period plan.

The second form is the IRS Form 4506T DASH EZ. That's the Short Form Request for Individual Tax Return Transcript. This form gives the mortgage servicer permission to request a copy of the homeowner's most recently filed tax return.

The Make Home Affordable DOT GOV Web site will walk the homeowner through the entire process under the Request a Modification tab. By the way, the site also has an eligibility tab that directs you to a page that will walk the homeowner through the eligibility questions and instantly lets the homeowner know if they are eligible, provided, of course, that they accurately answer the questions.

If they can't find the required documentation, need help with the forms, or have eligibility questions, they should call the HOPE Hotline number. This assistance is free.

I should also mention that if a homeowner is in an active chapter 7 or chapter 13 bankruptcy, the servicer may accept copies of the bankruptcy schedules and tax returns (if returns are required to be filed) in lieu of the two required forms. Homeowners able to use this option must separately submit a completed Hardship Affidavit to their mortgage servicer. If the bankruptcy schedules are more than 90 days old when

submitted to the servicer, the homeowner will be required to provide updated evidence of income.

So the homeowner has now completed and submitted the required forms to the loan servicer, what happens next Doreen?

Solomon: The servicer will review the information to verify eligibility. If the eligibility criteria are met, the servicer will ask questions about current income, assets, and expenses, as well as any specific hardship circumstances to determine if the homeowner is unable to make the mortgage payment.

The servicer will then go through a Net Present Value analysis to determine whether the value of the loan to the investor will be greater if the loan is modified, factoring in any government incentive payments, than if the loan is sold through a foreclosure sale. If the modified loan is of greater value, the servicer must offer the homeowner a HAMP trial period plan.

The homeowner must accept the trial period plan by making their first trial period payment. The trial period is typically a three-month period at a new lower payment amount.

If the homeowner successfully makes all of their trial period payments and the income and expense information provided is determined to be accurate, the servicer will then execute a permanent modification agreement.

I would note that even if the Net Present Value analysis doesn't satisfy the greater value threshold, the investor and servicer may still offer to modify the loan. However, modification in such cases is not required.

Solomon: Kevin, can you explain how the loan is modified?

Anderson: Sure. The servicer must follow sequential steps to lower the homeowner's monthly payment to reach the target of 31% gross income. It should be noted these steps may vary based on investor guidelines.

The first step is capitalization. The servicer must capitalize all outstanding interest, escrow advances and other out of pocket servicing expenses. Late fees cannot be capitalized and if the homeowner completes the trial successfully, the late fees are waived.

Interest rate reduction is the second step. The servicer begins to lower the interest rate on the principal and interest portion of the monthly payment in 1/8 increments. The servicer is able to reduce the interest rate to as low as 2%.

If the 31% target payment is not reached by lowering the interest rate to 2%, the third step is to extend the term up to 40 years.

If the target payment is still not reached by maximizing the term extension to 40 years, the fourth step is forbearance. The servicer would remove the principal needed from the unpaid principal balance to get to the target 31% payment. That forbore amount is placed into an interest-free account which will become payable as a balloon payment if the loan is refinanced, the home is sold, or the loan reaches maturity.

If the loan-to-value ratio for the first mortgage lien is greater than 115%, servicers must add a step after capitalization and consider principal reduction. The actual application of the principal reduction is at the servicer's discretion.

Solomon: Kevin as a Chapter 13 Standing Trustee, what will you be doing differently now to make debtors aware of or to focus on their rights under HAMP?

Anderson First, I will make sure that each of my debtors receives a copy of the "one-pager" pamphlet the U.S. Trustee Program has put together. Not only is it a quick and easy primer for the debtor, but most importantly, it gives them the Web address for Make Home Affordable DOT GOV and the phone number to the HOPE Hotline.

Then, in connection with my normal case review procedures, I will look for cases where a debtor may be eligible for a HAMP modification. A review of the debtor's bankruptcy schedules should answer the eligibility questions. Specifically, Schedule D will contain the basic mortgage information, and I should be able to quickly do the 31% payment calculation from the information on Schedules I and J. If I can't get it from the schedules, a question or two at the 341 meeting will help fill any holes.

If a debtor appears to be eligible, I am going to encourage them and their counsel to read the handout and to visit the Web site to learn more about their potential eligibility. And in some cases

where I deem it appropriate and with the debtor's permission, I may take a more active role by communicating with the servicer about a HAMP modification.

While doing this will take a little extra time, an important purpose of Chapter 13 relief is to give debtors the opportunity reorganize their finances so they can stay in their homes. This goal is even more important in light of the mortgage meltdown crisis. Section 1302 directs that I am to "assist the debtor in performance under the plan." I can't think of a better way to assist homeowners in Chapter 13 to successfully perform under their plan than to make them aware of the mortgage modification options available through HAMP. All I am talking about is using the Chapter 13 system in conjunction with HAMP to help folks pay for and stay in their homes.

Solomon: Well put, Kevin

Solomon: Now let's talk about how this affects chapter 13 standing trustees and what you and your colleagues can do to make debtors more aware of HAMP.

Anderson: Both chapter 7 debtors and chapter 13 debtors who are in a trial payment plan and subsequently file bankruptcy must still be considered by the servicer for HAMP. Under Treasury Directive 10-02, they will not lose the chance to receive a permanent modification simply because they filed for bankruptcy.

Likewise, both chapter 7 and chapter 13 debtors who file first and then decide to request a mortgage modification through HAMP must also be considered.

Solomon: Is it possible to skip the trial period?

Anderson: In chapter 13, there will be an opportunity for homeowners to bypass the trial period and go directly to a permanent HAMP modification. First, the debtor must make all post-petition payments on their first lien mortgage that came due prior to the effective date of modification. Second, at least three of those payments must be equal to or greater than the proposed modified payment. Third, if required by the jurisdiction's local rules, the modification must be approved by the bankruptcy court.

This option is not yet available, as it requires system modifications that are being developed.

Solomon: Kevin how do you see debtors listing HAMP trial modification in their schedules and repayment plan.

Anderson: I would expect that the plan to disclose not only that the debtor has or is in the process of applying for a HAMP modification, but also how the modification will impact the debtor's budget and plan. For example, if the debtor intends to use HAMP to recapitalize the pre-petition mortgage arrearage, that should be disclosed and the plan could reflect zero for arrears, and schedule J would list the amount of the modified mortgage payment-- even though the modification hadn't become final at the time of filing.

However, some debtors might decide to list the arrears in the plan and reflect the full mortgage payment amount on schedule J on the theory that there is no guarantee the servicer will approve the modification and the debtor doesn't want the servicer to file an objection to confirmation or a motion for relief from stay if modification is denied. For this reason, some trustees are recommending that debtors file plans containing alternative language stating that the debtor is seeking to modify the mortgage through HAMP, but, if the modification is denied, the debtor will pay the arrears through the plan and make ongoing mortgage payments in the pre-petition amount.

Solomon: HAMP also provides certain protections for debtors. One deals with limiting actions by the servicer when a HAMP modification is involved and the other protects the debtor while any necessary court approvals are being sought.

When a homeowner is in the trial period plan and has made post-petition payments on the first lien mortgage in the amount required by the trial period plan, a servicer may not object to confirmation of the homeowner's chapter 13 plan, move for relief from the automatic stay, or move for dismissal of the chapter 13 case on the basis that the homeowner paid only the amounts due under the trial period plan.

Another protection is for debtors who have entered a trial repayment plan before filing and must get permission from the bankruptcy court and/or the trustee. Treasury Directive 10 Dash 2 requires servicers to work with the homeowner or homeowner's counsel to obtain any court and/or trustee

approvals required in accord with local court rules and procedures.

Anderson: The directive also gives servicers the ability to extend the trial period as necessary to accommodate delays in obtaining court approvals or to receive a full remittance of the homeowner's trial period payments when they are made through the trustee. I should note, however, that the servicer is not required to extend the trial period beyond two months. With the normal three-month trial period, this gives a debtor at least five months to obtain the required approvals to make the HAMP modification permanent

I also want to discuss a case management issue arising from the timing of a HAMP modification, because the modification should be included in the confirmation or plan-modification process. . If the HAMP modification occurs prior to confirmation, it should be disclosed and addressed in either the original plan or an amended plan so that the HAMP modification becomes a part of the final, confirmed plan. If the modification occurs post-confirmation, the debtor should file a motion to modify the plan under Section 1329 to disclose and seek approval of the modifications that will impact the debtor's mortgage payment and may impact the treatment of an arrearage claim.

Again, if the HAMP modification is included in the confirmed plan, a modified or amended plan may not be necessary.

Anderson: Doreen, do you see chapter 7 Panel trustees taking the same kind of proactive actions to inform debtors about HAMP as are contemplated for chapter 13 Standing trustees?

Solomon: We expect that Chapter 7 trustees will be doing much of what chapter 13 trustees will be doing, that is making sure that each debtor receives the one-pager on HAMP and using the schedules to spot potentially eligible debtors. Although, given the number of cases they administer, it would not be practical for chapter 7 trustees to calculate whether the debtor's mortgage exceeds 31% of the debtor's gross income. I think it would be perfectly acceptable for the trustee to "eyeball" schedules I and J to see if the mortgage payment looks like it's more than one-third of the debtor's income. Again, the key is to make sure that debtors are aware of HAMP and how to find out more about it.

I also agree that this may require a little extra effort. But, as you said, we are helping folks save their homes.

Anderson: One other issue that you may encounter in a chapter 13 case is where the debtor has previously received a discharge in a chapter 7 case. Can they still get a HAMP modification? The answer is yes. However, if the debtor did not reaffirm the mortgage debt in the prior chapter 7, then a specific representation from the debtor has to be added to the permanent modification agreement.

That required representation reads: "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."

Trustees should visit [H M P ADMIN DOT COM](http://HMPADMIN.DOT.COM) to read Treasury's directives and learn more details about HAMP. Additionally, the Making Home Affordable public report is published monthly and can be found on [Financial Stability Dot Gov](http://FinancialStabilityDotGov).

Back to you, Doreen.

Solomon: Kevin, thank you for helping us understand HAMP and its implications in Chapter 7 and 13 cases. More importantly, thank you for your commitment to taking the necessary steps to ensure that eligible debtors learn about this home saving opportunity.

On behalf of the United States Trustee Program, I also want to thank each of you for taking the time to watch this video and your anticipated efforts as a member of the bankruptcy community to make sure the word on HAMP gets out.

HAMP INFORMATION AVAILABLE AT:



HELP FOR AMERICA'S HOMEOWNERS

makinghomeaffordable.gov
1-888-995-HOPE (4673)

ADDITIONAL INFORMATION AVAILABLE AT:



Administrative Website for Servicers

Home Affordable Modification Program

Administered by Fannie Mae

www.hmpadmin.com

AND

www.FinancialStability.gov

www.financialstability.gov

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