The Making Home Affordable Program
Offers Options for Homeowners in Bankruptcy

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Since the NACTT's annual meeting last summer, the U.S. Trustee Program (USTP) took several important steps to educate trustees and others in the bankruptcy system about the Making Home Affordable Program (MHA), specifically the Home Affordable Modification Program (HAMP). These efforts include creating a fact sheet and bankruptcy-specific Frequently Asked Questions (FAQs), and releasing a video aimed at trustees. The purpose of this article is to review the steps we took to promote HAMP, provide a reminder of how the program works including recent updates, and introduce you to some of the other foreclosure prevention options available under MHA.

Getting the Word Out on HAMP

The USTP made significant progress in getting the word out about HAMP, and we appreciate the trustees' continuing efforts to make debtors aware that HAMP may be an option to help them keep their homes. We posted a one-page HAMP fact sheet and FAQs, both of which are available in Spanish, to the General Consumer Information page of our Internet site, http://www.justice.gov/ust/eo/public_affairs/consumer_info.index.htm. We provided hard copies of the fact sheet and the forms needed to apply for a mortgage modification under HAMP in each of the section 341 meeting rooms.

We also filmed a 26-minute informational video on HAMP to help USTP staff and trustees become more familiar with the program so we can assist debtors and facilitate the HAMP process where appropriate. The video is accessible to the public via the General Consumer Information page of our Internet site. As of December 2010, more than 1,800 people viewed the video. Trustees who are interested in obtaining a DVD copy of the video should contact their local USTP office. In addition, the Treasury Department added a "Homeowners in Bankruptcy" section on the MHA Web site, www.MakingHomeAffordable.gov.

How HAMP Works

HAMP is part of MHA, which was originally designed to help struggling homeowners modify or refinance their mortgage to make their monthly payments more affordable. MHA was subsequently expanded to include a second lien modification program, a foreclosure alternatives program for homeowners seeking a short sale or deed-in-lieu of foreclosure and programs to help homeowners who are unemployed or "underwater" on their mortgages.

HAMP is available for mortgage loans that are owned or guaranteed by Fannie Mae and

Freddie Mac (Government Sponsored Enterprises, or GSEs) or serviced by over 100 participating Non-GSE servicers. A list of participating Non-GSE servicers can be found on the MHA Web site.

On March 26, 2010, the Treasury Department announced that homeowners in active bankruptcy with Non-GSE loans are eligible for HAMP if they request a modification. More information on HAMP bankruptcy guidance is available in Chapter II of the MHA Handbook for Servicers of Non-GSE Mortgages available at www.HMPadmin.com. In August 2010, Freddie Mac adopted bankruptcy provisions similar to Treasury's except for one important difference: Freddie Mac does not allow modified loans to be paid through the trustee. To date, Fannie Mae has not adopted similar guidance, however; homeowners in bankruptcy with Fannie Mae loans may obtain a HAMP modification in the servicer's discretion.

To be considered for HAMP, a homeowner must live in an owner-occupied principal residence, have a mortgage balance less than $729,750 for a one-unit property, have monthly payments on the first mortgage that are greater than 31 percent of their income and demonstrate financial hardship. HAMP focuses on affordability in an effort to ensure that homeowners who hope to remain in their homes are able to afford the modified mortgage payment. Every modification under HAMP is required to lower the homeowner's monthly mortgage payment to 31 percent of the homeowner's monthly gross (pre-tax) income, a level estimated to provide reasonable assurance that the modification will be sustainable. The proposed modification terms are then evaluated using a Net Present Value (NPV) calculation, which analyzes the cost/benefit of the loan modification to the investor. If the NPV with the proposed HAMP modification is greater than the NPV without the HAMP modification, the result is deemed "positive" and the servicer must offer the modification.

Before a mortgage is permanently modified, the homeowner must make the new, reduced monthly mortgage payment on time and in full during a trial period of three months to demonstrate that the modified monthly payment will be sustainable. After the three-month trial period is complete, the homeowner should be converted to a permanent modification.

HAMP Update

Treasury recently issued new guidance related to the case escalations process. Effective February 1, 2011, servicers were required to implement specific requirements designed to enhance the process for handling homeowner inquiries and disputes related to MHA. Each servicer must designate personnel trained in MHA guidance who possess the necessary authority to resolve cases and assist homeowners. Under the guidance, servicers must track escalated cases from a variety of sources and conduct reviews in a timely manner. More information is available in Section 3 of Chapter I of the MHA Handbook for Servicers of Non-GSE Mortgages.

Additionally, if a homeowner is not approved for HAMP, the servicer must now send a list of the homeowner and mortgage-related NPV input fields and the values used in the NPV calculation to evaluate the homeowner for HAMP in the homeowner's Non-Approval Notice. The purpose of providing the NPV input values is to allow a homeowner who is ineligible because the transaction is NPV negative the opportunity to correct any information that may impact the evaluation of the homeowner's eligibility. Upon receipt, a homeowner has 30 calendar days from the date of the Non-Approval Notice to dispute any of the NPV inputs, including property value. If an appraisal was not used during the original HAMP evaluation, and a preliminary NPV test determines that the change in property value may make the homeowner eligible, the homeowner may request an appraisal by submitting $200 to the servicer. We anticipate that trustees will not require debtors to seek the bankruptcy court's permission in order to expend $200 to obtain an appraisal, as one creditor suggested may be necessary.

Other HAMP-Related Programs

Home Affordable Unemployment Program (UP)

Under UP, any unemployed homeowner who requests assistance under HAMP must first be considered for a forbearance where mortgage payments are reduced or suspended for a minimum of three months. Homeowners whose loans were previously modified under HAMP or who previously received UP forbearance are not eligible. Unemployed homeowners should make the request for assistance under UP before they become three or more months delinquent and must also show that they are eligible to receive unemployment benefits.

UP is not currently available for homeowners with mortgages held by Fannie Mae and Freddie Mac. However, both have issued their own guidance on forbearance arrangements for unemployed homeowners.

Principal Reduction Alternative (PRA)

Since October 1, 2010, mortgage servicers were required to evaluate every HAMP-eligible homeowner with high negative equity (owing more than 115 percent of the value of the home) to determine if the servicer can reduce the amount the homeowner owes to achieve an affordable monthly mortgage payment. Although a servicer is required to evaluate the homeowner for a HAMP modification that includes principal reduction, it is not obligated to actually modify the loan with principal reduction.

If the servicer determines that the homeowner qualifies for PRA, the principal reduction will initially be treated as a non-interest bearing principal forbearance. If the homeowner remains in good standing on his or her mortgage payment, he or she will receive the principal reduction in thirds: one-third per year for three years. Servicers may also offer PRA retroactively to homeowners in permanent modifications or trial period plans prior to October 1, 2010. Mortgages owned or guaranteed by Freddie Mac and Fannie Mae are currently not eligible for this program.

Home Affordable Foreclosure Alternatives Program (HAFA)

HAFA provides opportunities for homeowners to transition to more affordable housing through a short sale or deed-in-lieu (DIL) of foreclosure when they can no longer afford to stay in their home but want to avoid foreclosure. HAFA provides standardized processes, timelines and documents for short sale and DIL transactions on HAMP-eligible loans. Under HAFA, homeowners are released from future liability on the mortgage debt and receive $3,000 in relocation assistance upon successful closing of a short sale or DIL. HAFA is available for Non-GSE mortgage loans as well as loans owned or guaranteed by Freddie Mac and Fannie Mae. However, HAFA program requirements for Non-GSE, Freddie Mac and Fannie Mae loans vary and interested parties should refer to the appropriate Web site for specific guidance.

The HAFA short sale allows the homeowner to list and sell the mortgaged property with the understanding that the proceeds from the sale may be less than the total amount due on the loan. The servicer must prepare a Short Sale Agreement (SSA), which outlines the terms of the short sale, prior to the homeowner listing the home for sale and marketing the property. Once an offer is received, the servicer has 10 business days to approve or deny the offer. If the homeowner has an executed sales contract and requests the servicer to approve a short sale under HAFA before an SSA is executed, the transaction may still be eligible for HAFA incentives under the Alternative Request for Approval of Short Sale.

The HAFA DIL allows the homeowner to transfer ownership of the mortgaged property to the servicer in full satisfaction of the total amount due. The servicer may require the homeowner to list and market the property before agreeing to the DIL. Under both a short sale and DIL, the homeowner must provide marketable title, free and clear of other mortgages, liens and encumbrances.

Servicers must consider homeowners in active chapter 7 or chapter 13 bankruptcy cases for HAFA if a request is received from the homeowner, homeowner's counsel or bankruptcy trustee.

Other MHA Programs

In addition to HAMP and all its underlying programs, there are other programs offered under MHA that assist homeowners in avoiding foreclosure.

Home Affordable Refinance Program (HARP)

Some homeowners may be able to pay their mortgages on time, but are not able to refinance to take advantage of today's low interest rates, perhaps due to a decrease in the value of their home. HARP helps homeowners whose mortgages are current and held by Fannie Mae or Freddie Mac refinance into a more affordable mortgage. To qualify, the first mortgage on the property may not exceed 125 percent of the property's current market value and the homeowner must be able to show income sufficient to support the new mortgage payment.

HARP makes payments more affordable and/or stable, by replacing adjustable rate mortgages (ARMs), Option ARMs and similar types of mortgage loans with fixed-rate mortgages. A homeowner may also be able to reduce the amortization term of the loan in order to build equity. HARP was originally scheduled to expire in June 2010 but was extended through June 30, 2011. More information on how to apply for HARP is available on the MHA Web site.

Second Lien Modification Program (2MP)

Many homeowners may be struggling to make their monthly mortgage payments because they have a second lien. 2MP is designed to work in tandem with HAMP, providing a comprehensive solution for homeowners with second liens. When the first lien is modified, the participating 2MP servicer must offer to modify the second lien. 2MP is available through participating servicers until December 31, 2012. A list of participating servicers is available on the MHA Web site.

A homeowner is eligible for 2MP if he or she has a permanent HAMP modification and a second lien that is a mortgage-related lien originated on or before January 1, 2009, with an unpaid principal balance greater than $5,000 and a monthly second lien payment greater than $100 per month.

When there is a principal forbearance or reduction on the first lien under HAMP, the participating 2MP servicer must forbear or forgive at least the same proportion on the second lien. If the principal reduction is offered retroactively on a first lien, the second 2MP servicer may – but is not required to – forgive the principal retroactively on the second lien.

Servicers who participate in 2MP must consider homeowners in active chapter 7 or chapter 13 bankruptcy cases for 2MP upon request by the homeowner, the homeowner's counsel or the bankruptcy trustee. Moreover, a homeowner in a HAMP trial period plan who subsequently files bankruptcy may not be denied 2MP modification because of the bankruptcy filing.

Hardest Hit Fund

In February 2010, the Administration announced the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets (HHF) to provide targeted assistance to homeowners in states where housing prices had declined dramatically or where unemployment rates were high. HHF supports locally tailored programs designed and operated by state housing finance agencies to prevent foreclosures and stabilize housing markets. Programs may include principal reduction, assistance to unemployed homeowners who are not eligible for assistance under UP, funding to extinguish second liens and facilitation of short sales and deeds-in-lieu of foreclosure.

HHF is designed to complement MHA or reach homeowners who are ineligible for MHA. Under HHF, $7.6 billion was allocated to 18 states – Alabama, Arizona, California, Florida, Georgia, Illinois, Indiana, Kentucky, Michigan, Mississippi, Nevada, New Jersey, North Carolina, Ohio, Oregon, Rhode Island, South Carolina and Tennessee – and the District of Columbia. More information on each state's program is available at www.FinancialStability.gov.

Government Loans

The Federal Housing Administration (FHA), U.S. Department of Veterans Affairs (VA) and U.S. Department of Agriculture's Rural Housing Service (RHS) have all implemented loan modification programs similar to HAMP for loans insured, guaranteed or held by the applicable federal agency. More information about each of these programs is available as follows:

- FHA-HAMP: FHA National Servicing Center, (877) 622-8525, www.hud.gov/offices/hsg/sfh/nsc/nschome.cfm and FHA Mortgagee Letter 2009-23;

- VA-HAMP: (877) 827-3702, visit www.homeloans.va.gov or consult VA Circular 26-10-6, available at www.benefits.va.gov/homeloans; and

- RHS Special Loan Servicing: Centralized Service Center, (800) 414-1226 and 75 Fed. Reg. 52,429 (August 26, 2010).

Conclusion

As trustees, you are keenly aware of the serious consequences that the current housing crisis has had on the debtors who appear before you. While HAMP may not be a viable option in all cases, we hope that you will continue to encourage debtors to take the one-page fact sheet and visit the MHA Web site. Perhaps they will find that another of the options discussed in this article will help them avoid foreclosure. In addition, if you see what you believe is a violation of the Treasury's guidance regarding HAMP or any of the other programs outlined above, please refer the case (including the homeowner's loan number) to your local office of the U.S. Trustee or directly to the HAMP Solution Center at 1-866-939-4469 or escalations@HMPadmin.com.