

What to Do When the Servicer Says the Investor Is Not Participating

1) Ask who the investor is.

- Servicers participate, not investors.
- You can do a 15 U.S.C. §1641(f)(2) request to the servicer to identify the holder, and the servicer is liable for statutory damages and attorney fee's if it doesn't answer you.
- After June 1, 2010, servicers must provide Fannie Mae with a list of investors who are not participating; this list could be obtained in discovery or FOIA'ed and cross-checked. HB Section 1.3 (p. 11-12), SD10-02.
- If the loan is a Freddie, Fannie, or FHA loan, the servicer has to review for HAMP and offer a Freddie, Fannie or FHA HAMP modification if the homeowner qualifies. (Freddie and Fannie are the "investors," and you can find out if they hold the loan from their websites; FHA is the mortgage guarantor and requires FHA HAMP participation).

2) If there is mortgage insurance on the loan, contact the mortgage insurance company.

- FHA-insured loans must be evaluated for FHA HAMP.
- Private mortgage insurers may be involved in evaluating loans for modification; unlike the servicer, they stand to lose money if the loan forecloses.

3) Ask the servicer to identify the document forbidding the servicer from offering a HAMP modification.

- Investors do not make these decisions on a case-by-case basis; the directive will likely be in a PSA. Few PSAs forbid all modifications.
- Even if there is a conflict between the PSA and a HAMP modification, HAMP allows the servicer to skip steps in the waterfall if required by the PSA or to substitute amortization extension for term extension. HB Section 6.3.6 (p. 39-40), Supp. FAQs 2301, 2304.

4) Ask the servicer what "reasonable efforts" they've taken to get the investor to waive the restrictions on HAMP mods in the PSA.

- Reasonable efforts are required by HB Section 6.5 (p. 40), SD09-01 (p.1).
- Effective June 1, 2010, the servicer must write to the investor requesting a waiver at least once. HB Section 6.5 (p. 40), SD10-02.

5) If the servicer won't answer those questions, escalate!

- Ask for the servicer's in-house escalation team.
- E-mail escalations@hmpadmin.com.
- Ask for Ken Hannold if escalation isn't satisfactory.