

Supplemental Directive 13-09

October 18, 2013

Making Home Affordable[®] Program – CFPB Mortgage Servicing Regulations

In February 2009, the Obama Administration introduced the Making Home Affordable (MHA) Program to stabilize the housing market and to help struggling homeowners obtain relief and avoid foreclosure. In March 2009, the U.S. Department of the Treasury (Treasury) issued uniform guidance for loan modifications by participants in MHA[®] across the mortgage industry and subsequently updated and expanded that guidance. On September 16, 2013, Treasury issued version 4.3 of the Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages (*Handbook*), a consolidated resource for guidance related to the MHA Program for mortgage loans that are not owned or guaranteed by Fannie Mae and Freddie Mac (Non-GSE Mortgages).

This Supplemental Directive provides updated guidance to the Home Affordable Modification Program[®] (HAMP), the Home Affordable Unemployment Program[®] (UP), and the Home Affordable Foreclosure Alternatives (HAFA) Program[®] related to certain mortgage servicing rules under Regulation X (Regulation X), implementing the Real Estate Settlement Procedures Act of 1974 issued by the Bureau of Consumer Financial Protection (CFPB) on January 17, 2013 and amended on September 13, 2013 (collectively, CFPB Regulations). This Supplemental Directive amends and supersedes the notated portions of the *Handbook*. The mapping of the *Handbook* is expected to be issued in early November, 2013 and will delineate the changes thereto attributable to the guidance provided in this Supplemental Directive. This Supplemental Directive is effective January 10, 2014.

This guidance applies to servicers that are subject to the terms of a Servicer Participation Agreement and related documents (SPA). This guidance does not apply to mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac (GSEs), or insured or guaranteed by the Veterans Administration, the Department of Agriculture's Rural Housing Service (RHS) or the Federal Housing Administration (FHA).

This Supplemental Directive covers the following topics:

- Loss Mitigation Application
- Right Party Contact
- Acknowledgment and Incomplete Information Notices
- Review of Loss Mitigation Application
- Home Affordable Unemployment Program (UP)
- Home Affordable Foreclosure Alternative (HAFA) Program

Loss Mitigation Application

This Supplemental Directive introduces the concept of a “Loss Mitigation Application” which consists of (i) the “Initial Package” described in Section 2.2.2 of Chapter II of the *Handbook* and, (ii) to the extent a servicer is required under the CFPB Regulations to consider a borrower for HAMP contemporaneously with all other loss mitigation options available to the borrower, those other documents and information the servicer requires in order to evaluate the borrower for such options. However, servicers are reminded that the first loss mitigation option considered by servicers for each borrower shall continue to be HAMP, in accordance with existing guidance.

When servicers make a judgment regarding whether CFPB Regulations apply to a particular loan being evaluated for one or more MHA options, servicers must document their decision and the analysis supporting such judgment in the mortgage file for such loan.

Right Party Contact

Under Section 2.2.2 of Chapter II of the *Handbook*, after “Right Party Contact” is established and the borrower expresses an interest in HAMP, a servicer commences document collection efforts by sending a written communication to the borrower clearly describing the Initial Package. Thereafter, if the borrower does not submit, at a minimum, the Request for Mortgage Assistance (RMA), the servicer must re-send the Initial Package communication. This Supplemental Directive amends this guidance as follows:

- If a borrower submits any component of an Initial Package (whether the RMA, or any other component of the Initial Package), the servicer must send an acknowledgement and, to the extent applicable, an “Incomplete Information Notice”, as described below.
- If the servicer has not received any documents from the borrower in response to the Initial Package communication, the servicer must resend the Initial Package communication.

Acknowledgement and Incomplete Information Notices

Section 4.5 of Chapter II of the *Handbook* requires servicers to acknowledge in writing the borrower’s request for HAMP participation within 10 business days of receipt of an Initial Package. In addition, Section 2.2.2 of Chapter II of the *Handbook* requires servicers to determine within 30 calendar days how to respond to the borrower’s inquiry. Section 2.3.3 requires the servicer to send the borrower an Incomplete Information Notice where the Initial Package is not complete or additional documentation is needed to verify the borrower’s eligibility and income.

This Supplemental Directive amends such guidance to require that the written acknowledgement (a) be provided within five business days of the servicer’s receipt of any component of a Loss Mitigation Application and (b) inform the borrower whether such application is complete or incomplete. If the Loss Mitigation Application is incomplete, the written acknowledgment must include an Incomplete Information Notice stating the additional documents and information the borrower must submit to complete the Loss Mitigation Application. The Incomplete Information Notice must also include the date by which such documentation should be submitted, which date

must be no less than 30 calendar days after the date of the Incomplete Information Notice, except that the servicer may require a shorter period consistent with applicable law and the best interests of the borrower. The servicer must document in the mortgage file the reason(s) for any shorter time frame and the facts and circumstances supporting such determination.

This Supplemental Directive eliminates the requirement in Section 2.3.3 of Chapter II of the *Handbook* that servicers send a second Incomplete Information Notice to borrowers who have not submitted necessary documentation in response to an initial Incomplete Information Notice.

Review of Loss Mitigation Application

Incomplete Loss Mitigation Application

If the servicer has exercised reasonable diligence in obtaining documents and information to complete a Loss Mitigation Application but the Loss Mitigation Application remains incomplete for a significant period of time under the circumstances without further progress by the borrower to make the Loss Mitigation Application complete, this Supplemental Directive provides the following guidance:

- If the borrower has provided all documentation or information necessary to evaluate the borrower for HAMP, the servicer must evaluate the borrower's eligibility for HAMP per program guidelines.
- If the borrower has not provided all documentation or information necessary to evaluate the borrower for HAMP, the servicer may determine the borrower to be currently ineligible for HAMP. Such determination shall not preclude the borrower from being considered for HAMP in the future per program guidelines, including, but not limited to, the guidance related to changes in circumstance. If the servicer elects to make such a determination, the servicer must send the borrower a "Non-Approval Notice" satisfying the requirements of Section 2.3.2 of Chapter II of the *Handbook* and applicable law and regulations. This notice may be included with or incorporated into another notice sent to the borrower, and should inform the borrower of the circumstances, if any, under which the borrower may be eligible to be re-evaluated for HAMP in the future.

Each servicer must establish and maintain written policies that describe the servicer's methods of exercising reasonable diligence and how they will assess when a significant period of time under the circumstances without further progress by a borrower has elapsed for a given borrower, and must apply all such policies consistently to similarly situated borrowers. Servicers must provide copies of all such policies to Treasury and its agents upon request.

Complete Loss Mitigation Application

This Supplemental Directive provides that the receipt of a complete Loss Mitigation Application initiates the 30-day period during which the servicer evaluates the borrower as required under Section 4.6 of Chapter II of the *Handbook*.

If the borrower qualifies for HAMP, the servicer must send the borrower a trial period plan notice. If the borrower does not qualify for HAMP, the servicer must send the borrower a Non-Approval Notice satisfying the requirements of Section 2.3.2 of Chapter II of the *Handbook* and applicable law and regulations. This need not be a separate notice, and may be included with or incorporated into another notice sent to the borrower.

A servicer may be required under the CFPB Regulations to determine a borrower's eligibility in the absence of documents and information required from third parties and not in the borrower's control. In such case, this Supplemental Directive directs servicers to exercise reasonable diligence in obtaining the missing documents and information within the 30-day evaluation period. However, to the extent possible, servicers should not allow the absence of such information to adversely affect a borrower who has delivered a complete Loss Mitigation Application. If a servicer determines that the foregoing CFPB requirement does not apply, servicers may delay a borrower's evaluation until the servicer has received the necessary third party documents or information as set forth in Section 4.6 of Chapter II of the *Handbook*.

Home Affordable Unemployment Program

As provided under Section 4.2.1 of Chapter III of the *Handbook*, the minimum UP forbearance period is the lesser of 12 months or upon notification that the borrower has become re-employed.

CFPB regulations provide servicers discretion to offer short-term forbearance periods to borrowers based on an incomplete Loss Mitigation Application. If the borrower has requested assistance consistent with MHA Program guidance but has not otherwise submitted a complete Loss Mitigation Application, this Supplemental Directive provides that servicers may limit the forbearance period under UP to the lesser of six months or the length of time from the beginning of the forbearance period until the servicer receives notification that the borrower has been re-employed. In such a situation, 30 days prior to the expiration of the six-month forbearance period, the servicer must contact the borrower to determine if the borrower wishes to complete the Loss Mitigation Application and proceed with a full loss mitigation evaluation.

The submission of a complete Loss Mitigation Application near the end of a forbearance period offered based on an incomplete Loss Mitigation Application initiates the 30-day period during which the servicer evaluates the borrower as required under Section 4.6 of Chapter II and Section 5.2 of Chapter III of the *Handbook*.

If the borrower's Loss Mitigation Application remains incomplete at the expiration of the initial six-month forbearance period, a servicer reassessment indicates that extending the forbearance period is the best option for the borrower, and the borrower continues to meet the eligibility requirements under UP, the servicer must extend the initial six month forbearance period for one additional six month period. At the end of the second six month forbearance period, the servicer may extend the forbearance in additional increments at the servicer's discretion. Notwithstanding the foregoing, any forbearance period provided under this guidance shall expire earlier upon the borrower's re-employment. In no event is the servicer required to offer forbearance for a term that would cause the dollar amount of the borrower's delinquency to exceed 12 months of the borrower's scheduled monthly mortgage payment.

Program guidelines regarding evaluation for HAMP following an UP forbearance continue to apply.

Home Affordable Foreclosure Alternative

A servicer may be required under CFPB Regulations to consider a borrower for HAFA[®] contemporaneously with considering the borrower for HAMP and other home retention options. In such circumstances, unless the borrower has requested a non-home retention option, servicers are reminded that where a borrower has requested general mortgage assistance or specifically a home-retention option, servicers must determine that the borrower does not qualify for HAMP or any other home retention option prior to offering the borrower HAFA. Any such determination regarding HAFA must be communicated to the borrower in accordance with the timelines described above for evaluating a complete Loss Mitigation Application and informing the borrower of the results of such determination. In addition, under the foregoing circumstances, the offer for HAFA may be made subject to receipt of information not in the borrower's possession.