



## Home Affordable Modification Program

*Supplemental Directive 09-02*

*April 21, 2009*

### *Fair Housing Obligations under the Home Affordable Modification Program*

To help servicers implement the HAMP, this Supplemental Directive addresses the collection of data on the race, ethnicity, and sex of borrowers involved in potential loan modifications under the HAMP (Government Monitoring Data). To this end, the Treasury Department (Treasury) has directed Fannie Mae, in its capacity as a financial agent of the United States, to enter into agreements on behalf of the Department of Housing and Urban Development (HUD) with loan servicers participating in the HAMP for the purpose of directing servicers to request Government Monitoring Data in order to monitor compliance with the Fair Housing Act, 42 U.S.C. 3601 *et seq.* (the Act) and other applicable fair lending and consumer protection laws. HUD has informed Treasury that it is requesting the monitoring information pursuant to this authority and its general regulatory authority under the Fair Housing Act. HUD and Treasury consider any agreements entered into between servicers and Fannie Mae on behalf of HUD pursuant to this Supplemental Directive to be agreements entered into with an enforcement agency to monitor or enforce compliance with federal law, within the meaning of 12 C.F.R. 202.5(a)(2).

Treasury has specified that the Government Monitoring Data shall be collected in the *Home Affordable Modification Program Hardship Affidavit* (Hardship Affidavit). Servicers shall request, but not require, that each borrower who completes a Hardship Affidavit in connection with the HAMP furnish the Government Monitoring Data. If any borrower chooses not to provide the Government Monitoring Data, or any part of it, the servicer must note that fact on the Hardship Affidavit in the space provided. In such circumstances, and if the Hardship Affidavit is completed in a face-to-face setting, the servicer, its representative or agent shall then also note on the form, to the extent possible on the basis of visual observation or surname, the race, ethnicity and sex of any borrower or co-borrower who has not furnished the Government Monitoring Data. If any borrower declines or fails to provide the Government Monitoring Data on a Hardship Affidavit taken by mail or telephone or on the Internet, the data need not be provided. In such circumstances, the servicer must indicate that the Hardship Affidavit was received by mail, telephone, or Internet, if it is not otherwise evident on the face of the Hardship Affidavit.

Servicers must collect the Government Monitoring Data and report the data to Fannie Mae in accordance with the directions and schedule for phase-in provided in Exhibit D of Supplemental Directive 09-01.

Federal Reserve Board regulations interpreting the Equal Credit Opportunity Act (ECOA) permit creditors to collect information on the race, ethnicity and sex of

borrowers if the information is “required by a regulation, order, or agreement issued by, or entered into with a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with [ECOA], this regulation, or other federal or state statutes or regulations.” 12 C.F.R. 202.5(a)(2).

Fannie Mae, pursuant to the Servicer Participation Agreement, incorporates this Supplemental Directive into the Servicer Participation Agreement by reference. As a result, this Supplemental Directive: (a) constitutes an agreement entered into between Fannie Mae, on behalf of HUD, and servicers participating in the HAMP with respect to Non-GSE Mortgages; and (b) is an agreement entered into by participating servicers with an enforcement agency (HUD) to permit the enforcement agency to monitor or enforce compliance with federal law, within the meaning of 12 C.F.R. 202.5(a)(2).

Treasury and HUD believe that loan modifications under the Program are subject to the protections of the Fair Housing Act under 42 U.S.C. 3604(a), 3604(b), and 3604(f) and as “residential real estate related transactions” within the meaning of 42 U.S.C. 3605(b). This Supplemental Directive expresses no opinion with respect to the characterization of the loan modifications under other federal or state laws. Nothing in this Supplemental Directive shall be construed to express an opinion as to whether any particular loan modification involves a loan application or a new extension of credit under any federal or state law.