

Supplemental Directive 10-16

November 23, 2010

Making Home Affordable Program –Policy Update

In February 2009, the Obama Administration introduced the Making Home Affordable (MHA) Program to stabilize the housing market and help struggling homeowners obtain relief and avoid foreclosure. In March 2009, the Treasury Department (Treasury) issued uniform guidance for loan modifications by participants in MHA across the mortgage industry and subsequently updated and expanded that guidance. In August 2010, Treasury issued 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 new guidance related to borrowers affected by a federally declared disaster. It also provides policy enhancements to the Home Affordable Modification Program (HAMP), the Home Affordable Unemployment Program (UP) and the Second Lien Modification Program (2MP), and amends and supersedes the notated portions of the *Handbook* for guidance that is effective immediately. Guidance that is effective February 1, 2011 will be incorporated into a subsequent version of the *Handbook*.

Servicers that have executed a servicer participation agreement and related documents (SPA) must follow the guidance set forth in this Supplemental Directive. This guidance does not apply to first and second lien mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac, or insured or guaranteed by a federal agency, such as the Federal Housing Administration, Veterans Administration or the Department of Agriculture's Rural Housing Service.

This Supplemental Directive is effective immediately for the following topics:

- Help for Borrowers Affected by a Federally Declared Disaster
- Investor Participation List (pool level identification information will not be subject to compliance review until February 1, 2011)
- Third-Party Authorization
- Solicitation of Borrowers Discharged from Chapter 7 Bankruptcy
- Impact of Loan-to-Value Ratio on Borrower Eligibility
- Escrow Analysis
- Principal Forbearance Limit in Alternative Modification Waterfall
- Treatment of Interest Accrued During the Trial Period Plan
- UP Policy Enhancements (except guidance related to UP time periods)
- 2MP Policy Enhancements

This Supplemental Directive is effective February 1, 2011 for the topics below; however, servicers are encouraged to implement this guidance as soon as possible.

- Clarification of Initial Package Requirement
- Pending ARM Resets
- Prohibitions on Modifications that Increase Principal and Interest
- UP Policy Enhancements (guidance related to UP time periods)

Help for Borrowers Affected by a Federally Declared Disaster

When a borrower's ability to make monthly mortgage payments has been interrupted by a federally declared disaster (FDD), many servicers offer a period of forbearance in accordance with industry practice and investor guidelines. This Supplemental Directive provides guidance concerning the implementation of an FDD forbearance plan when a borrower with a loan that is eligible for HAMP (as set forth in Section 1 of Chapter II of the *Handbook*) is (1) in the process of being evaluated for a HAMP trial period plan or 2MP trial period, (2) in a HAMP trial period plan or 2MP trial period, or (3) in a permanent HAMP or 2MP modification.

Servicers should, in accordance with investor guidelines, offer a minimum of three months of forbearance to a borrower with a loan that is eligible for HAMP who requests forbearance as a result of an FDD and meets the following minimum eligibility criteria:

- The borrower suffered a hardship, such as a loss of employment, reduction in income or increase in expenses, or has been displaced from his or her home and cannot make the monthly mortgage payments as a result of an FDD.
- The location of either (i) the property securing the loan or (ii) the borrower's principal place of business or employment, is located in an area designated by the Federal Emergency Management Agency (FEMA) as being covered by the FDD as set forth at www.fema.gov/news/disasters.fema or as confirmed by the local FEMA office.

Servicers should follow their standard practice with respect to the evaluation of borrowers and documentation of FDD forbearance plans.

Late charges may accrue while the servicer is determining borrower eligibility for an FDD forbearance plan and during the forbearance period. However, a servicer must not collect late charges from the borrower during the forbearance period. Additionally, all late charges must be waived in the event the borrower subsequently receives a permanent HAMP or 2MP modification.

Servicers may not refer a loan to foreclosure or conduct a scheduled foreclosure sale (a) if a borrower has requested consideration and is being evaluated for an FDD forbearance plan or (b) during the initial FDD forbearance plan or any extension thereof. Servicers will not be in violation if a scheduled foreclosure sale cannot be halted because a court with jurisdiction over the foreclosure proceeding (if any), or the bankruptcy court in a bankruptcy case, or the public official charged with carrying out the activity or event, fails or refuses to halt the sale after the

servicer has made reasonable efforts to move the court or request the public official, as applicable, for a cessation of the sale. The servicer must document in the servicing system and/or mortgage file if the foregoing exception to the requirement to suspend an existing foreclosure sale is applicable.

HAMP Trial Period Plans and 2MP Trial Periods

In accordance with investor guidelines, any borrower in a HAMP trial period plan or 2MP trial period who suffers an FDD-related hardship, meets the eligibility criteria and requests a forbearance, should be offered an FDD forbearance plan. Likewise, servicers should offer an FDD forbearance plan to borrowers who are in the process of being evaluated for a HAMP trial period plan or 2MP trial period at the time they are impacted by an FDD if they request an FDD forbearance plan and meet the eligibility criteria, even if their trial period plan has not started.

If a borrower who is currently in a HAMP trial period plan accepts the FDD forbearance plan, the HAMP trial period plan must be cancelled. If the borrower made timely payments during the trial period prior to the FDD forbearance plan, the borrower will be eligible for reconsideration for HAMP after the FDD forbearance plan ends. In order to be reconsidered for HAMP, the borrower must submit a new Initial Package with updated documentation. If the borrower is eligible for HAMP based on the updated documentation, he or she must enter a new trial period plan.

The servicer must provide notice to the borrower in writing that, if the FDD forbearance plan is accepted, their HAMP trial period plan will be cancelled and in order to be reconsidered for HAMP in the future the borrower will have to submit a new Initial Package and be re-evaluated. The notice should advise that the borrower may not qualify for HAMP at the time of reconsideration if the borrower's financial circumstances have changed.

If a borrower who is currently in a 2MP trial period accepts the FDD forbearance plan, the 2MP trial period must be cancelled.¹ If the borrower made timely payments during the 2MP trial period prior to the FDD forbearance plan, the borrower will be eligible for reconsideration for 2MP after the FDD forbearance plan ends. At the time of reconsideration, servicers must confirm that the borrower has a corresponding permanent HAMP-modified first lien, or a HAMP trial period plan, if applicable, and that the HAMP modified first lien is in good standing. If the borrower is eligible for 2MP upon reconsideration, he or she must enter a new 2MP trial period. The servicer must provide notice to the borrower in writing that, if the FDD forbearance plan is accepted, their 2MP trial period will be cancelled and they will be reconsidered for 2MP in the future. The notice should advise that the borrower may not qualify for 2MP at the time of reconsideration if the borrower's first lien loses good standing under HAMP.

A borrower is not obligated to accept an FDD forbearance plan, and a servicer may not require that a borrower in a HAMP trial period plan or 2MP trial period convert to an FDD forbearance plan.

¹ Note that no action needs to be taken in the HAMP Reporting Tool when cancelling a 2MP trial period.

HAMP and 2MP Permanent Modifications

A borrower in a permanent HAMP or 2MP modification that suffers an FDD-related hardship may also be considered for an FDD forbearance plan. If a borrower in a permanent modification is eligible for an FDD forbearance plan and has the capacity to make partial payments, the servicer should make every effort to structure the forbearance plan such that the borrower retains good standing (as defined in Section 9.4 of Chapter II of the *Handbook*) during the FDD forbearance period. For example, the servicer may require the borrower to make partial payments during the forbearance period such that the loan at no time becomes delinquent by three full monthly payments during the forbearance plan. If a borrower loses good standing, even as a result of an FDD forbearance plan, the loan is not eligible to receive or accrue borrower, servicer or investor incentives in connection with the loan. In addition, the borrower would not be eligible for another HAMP or 2MP modification. If paying in accordance with the FDD forbearance plan would result in the borrower becoming three full monthly payments past due, then the servicer must inform the borrower in writing at the time the FDD forbearance plan is offered that by paying in accordance with the plan, the borrower may lose good standing under HAMP or 2MP, as applicable. In the event a borrower loses good standing, the servicer must work with the borrower to cure the delinquency regardless of the fact that the borrower is unable to regain good standing. If this is not possible, the servicer should evaluate the borrower for any other loss mitigation alternative prior to commencing foreclosure proceedings.

Interaction with UP

As set forth in Section 2 of Chapter III of the *Handbook*, servicers are required to consider borrowers who request consideration for HAMP and who are unemployed for UP, which grants eligible borrowers a minimum three-month forbearance. If a borrower is unemployed when requesting an FDD forbearance plan and is eligible for both an FDD forbearance plan and an UP forbearance plan, or is currently in an UP forbearance plan, the servicer may utilize both forbearance plans consecutively. The first three months of forbearance should be considered part of the FDD forbearance plan. If the borrower is still unemployed at the end of the FDD forbearance period, the borrower must be moved to an UP forbearance plan or, at the borrower's request, be considered for the Home Affordable Foreclosure Alternatives Program.

Reporting

Servicers are required to provide loan level reporting of a Trial Fallout Reason Code when a borrower exits from a HAMP trial period plan to enter an FDD forbearance plan. Specifically, the existing trial period plan must be cancelled by submitting a Trial Fallout reason code of "20 – Federally Declared Disaster" to the HAMP Reporting Tool.

If a borrower is in a HAMP or 2MP permanent modification and loses good standing as a result of an FDD forbearance plan, the servicer should report this event as it would other permanent modifications that lose good standing. No special reporting or action code is required.

Compliance and Documentation

Servicers are required to maintain appropriate documentary evidence of their MHA-related activities and to provide that documentary evidence upon request to Freddie Mac as the Compliance Agent for Treasury (MHA-C). With respect to FDD forbearance plans offered pursuant to this Supplemental Directive, documentation that should be maintained by the servicer includes, but is not limited to, the following written policies and procedures relating to FDD forbearance plans:

- Determining eligibility for the FDD forbearance;
- Canceling existing HAMP trial period plans and 2MP trial periods when borrowers accept FDD forbearance plans;
- Terms of FDD forbearance plans offered to eligible borrowers;
- Coordination with UP; and
- HAMP trial period plan and 2MP trial period reconsideration, where applicable.

Servicers must also retain documentation in well-documented servicer system notes or in loan files of all steps performed in evaluating and processing requests for an FDD forbearance plan.

For phone contact with borrowers related to FDD forbearance plans, well-documented servicer system notes (including but not limited to date, names of contact persons, and a summary of the conversation) will constitute appropriate documentation. Written correspondence should be retained in an accessible manner and made available upon request by MHA-C.

Investor Participation List

Servicers are no longer required to provide the Program Administrator with an Investor Participation List or notify the Program Administrator of changes to its Investor Participation List within 30 days of any change as currently set forth in Section 1.3 of Chapter I of the *Handbook*. Instead, servicers must maintain the Investor Participation List and identify the time period during which the list was applicable in its records and make it available to MHA-C upon request. The Investor Participation List should reflect any changes within 30 days of any such change. In addition, servicers are directed to provide pool-level identification information for loans serviced for any investor who does not participate in HAMP or whose participation is subject to any limitations or restrictions, such as pool name and pool number, in the Investor Participation List and to provide a copy of the servicing agreement or other pool documentation to Treasury or its agents upon request.

Third-Party Authorization

A model form for providing authorization to third parties to discuss a borrower's personal information related to the borrower's mortgage loan is attached as Exhibit B to this Supplemental Directive and is available on www.HMPadmin.com. Borrowers may use, and servicers, subject to applicable law, must accept, the form to provide third-party authorizations, including authorizations for state Housing Finance Agencies with respect to the HFA Hardest-Hit Fund. If submitted, the authorization form (or a proprietary authorization form substantially similar in

content) must be signed by all borrowers on the related note. A similar form was published as an exhibit to Supplemental Directive 10-07. It has been revised and is being re-published as Exhibit B to clarify that it may be used by all authorized third parties.

Solicitation of Borrowers Discharged from Chapter 7 Bankruptcy

Due to concerns about the manner in which borrowers who have been discharged from Chapter 7 bankruptcy and have not reaffirmed their first lien mortgage may be contacted, servicers may send four written notices to the last address of record to satisfy the Reasonable Effort solicitation standard set forth in Section 2.2.1 of Chapter II of the *Handbook*. At least one of these written notices must be sent via certified/express mail or via overnight delivery service with return receipt/delivery confirmation, and the remaining may be sent via regular mail.

Impact of Loan-to-Value Ratio on Borrower Eligibility

Servicers should disregard the borrower's loan-to-value ratio when evaluating a borrower for HAMP eligibility, except to the extent it impacts the NPV evaluation or the principal forbearance limit set forth in Section 6.6 of Chapter II of the *Handbook*. Servicers may not refuse to evaluate an otherwise eligible borrower because the loan has a low loan-to-value ratio.

Escrow Analysis

As set forth in Section 9.3.7.1 of Chapter II of the *Handbook*, servicers must perform an escrow analysis for all borrowers in conjunction with determining HAMP eligibility. In addition, Section 9.3.7.4 of Chapter II of the *Handbook* requires that an escrow account be established for borrowers who do not currently escrow for property taxes and hazard insurance before beginning a trial period plan and therefore contemplates that an escrow analysis must be performed for these borrowers. By performing the escrow analysis when determining eligibility, servicers can determine if a borrower is eligible for HAMP before entering a trial period plan, and can therefore determine the appropriate monthly payment more accurately. The HAMP Data Dictionary will be modified to reflect that the escrow analysis result should be used as the pre-modification escrow amount in the HAMP Reporting Tool.

Principal Forbearance Limit in Alternative Modification Waterfall

Further clarification is hereby being provided for determining whether the forbearance limit described in Section 6.6.1 of Chapter II of the *Handbook* has been reached when applying the alternative modification waterfall set forth in Supplemental Directive 10-05. For purposes of calculating the principal forbearance limit, servicers should use the sum of any PRA Forbearance Amount initially set aside as principal forbearance and any principal forbearance created as a result of the final step of the modification waterfall.

Treatment of Interest Accrued During the Trial Period Plan

If a borrower in a prolonged trial period plan (a trial period plan lasting longer than three months) who has made each trial period payment by the last day of the month in which it was

due is subsequently determined to be ineligible for a permanent modification, the servicer is required to consider the borrower for all other available loss mitigation options, including, but not limited to, non-HAMP modifications. Such consideration may not be conditioned on a lump sum borrower contribution for unpaid interest and fees that accrued during the prolonged trial period plan.

UP Policy Enhancements

UP Safe Harbor. Each forbearance plan granted under UP is included in the list of items that Treasury has determined to be a “qualified loss mitigation plan” under the servicer safe harbor established by Congress under the Helping Families Save Their Homes Act of 2009.

UP eligibility. As set forth in Section 2.1 of Chapter III of the *Handbook*, a borrower who is unemployed and requests assistance under HAMP must be evaluated for UP and, if qualified, receive an UP forbearance plan before being considered for HAMP. As set forth in Section 2.4 of Chapter III of the *Handbook*, if the borrower does not meet the eligibility criteria for UP and is not offered a proprietary forbearance program related to unemployment, the borrower must be evaluated for HAMP. However, if a borrower who is eligible for UP declines an offer for an UP forbearance plan, the servicer is not required to offer the borrower a modification under HAMP. The servicer must notify the borrower that, if they are eligible for an UP forbearance plan but the borrower does not accept it, they may not be considered for a modification under HAMP or 2MP while they are eligible for an UP forbearance plan. The borrower may request reconsideration for HAMP or 2MP at a future time if the requirements of the “Continued Eligibility” guidance set forth in Section 1.2 of Chapter II of the *Handbook* or for 2MP eligibility, respectively, are met.

UP time periods. Effective February 1, 2011, upon receiving a borrower request for consideration for UP, a servicer must send the borrower a notice of all required documentation for UP consideration, including unemployment benefit information. The due date for the required documentation may not be less than 15 calendar days from the date of the notice. Servicers must document the date when it determines all required documentation has been received. Servicers should complete the evaluation of a borrower for UP within 30 calendar days of receiving all necessary documentation from the borrower.

2MP Policy Enhancements

The Handbook will be expanded in the near future to include policy guidance on 2MP. Until such expansion, servicers should follow prior guidance provided in Supplemental Directive 09-05 Revised, Supplemental Directive 10-05 and Supplemental Directive 10-07, as amended as indicated below. Changed or new text is indicated in italics. Text that has been lined out has been deleted.

A. The following guidance amends the guidance from Supplemental Directive 09-05 Revised.

The first paragraph in the section titled “Modification Process” is replaced with the text below.

When a borrower’s first lien is modified under HAMP, a participating second lien servicer must offer to modify *or extinguish* the borrower’s second lien according to a defined protocol. In addition, if the borrower’s first lien is modified under HAMP, a participating second lien servicer must dismiss any outstanding foreclosure action on the borrower’s second lien. ~~The 2MP modification offer may be prepared during the HAMP trial period for loans approved for a trial period plan under the fully verified protocol required in Supplemental Directive 10-01; or on or after the date the HAMP modification becomes effective with respect to any loan modified under HAMP. In addition, the permanent modification of the second lien under 2MP may not become effective unless and until the permanent modification of the first lien becomes effective under HAMP.~~

If the servicer is evaluating a borrower for 2MP and for its own second lien proprietary program, the servicer must offer 2MP first (or at least simultaneously) with the second lien proprietary modification, regardless of the terms of the second lien proprietary modification. If the servicer already has the borrower in a second lien proprietary modification, the servicer should still make a 2MP offer.

The text below is inserted following the last paragraph in the section titled “Matching Second Liens to HAMP First Liens.”

In some cases, information in the LPS database may not identify a match between a first lien HAMP modification and corresponding eligible second lien, but the servicer may have sufficient information to identify a match. A 2MP servicer may identify a match where: (i) the servicer services both the first and second liens or (ii) the 2MP servicer is confident that the first and second lien should be matched because the servicer obtains sufficient documentation of the first lien HAMP modification from the first lien servicer.

To facilitate modifications, the HAMP Reporting Tool is being updated to allow reporting of valid 2MP modifications for which the corresponding first lien match is unable to be confirmed by LPS. Therefore, participating 2MP servicers may offer and report a 2MP modification when the servicer identifies the match, even if the LPS database has not identified the match. For servicer identified matches, the 2MP servicer must be able to provide sufficient documentation that the borrower is entitled to the second lien modification being offered. Such documentation includes a copy of the fully-executed first lien modification agreement, and the information that must match includes, at a minimum, borrower name(s), social security number(s), property address and the first lien loan number. For servicer identified matches where the servicer services both the first and second liens, the servicer can rely on the executed HAMP documents in the servicer’s possession and the servicer must verify the HAMP modified first lien’s good standing. For servicer identified matches where the 2MP servicer does not service the first lien, the 2MP servicer can rely on a copy of the executed HAMP modification agreement obtained from the first lien servicer and verification from the first lien servicer of the HAMP modified first

lien's good standing. Under the modification agreement and the RMA, borrowers have consented to the disclosure of their personal information and the terms of their modification agreement to servicers of both their first and second lien loans.

All copies of documents validating the match of the first and second liens must be placed in the borrower's mortgage loan file and/or servicing system along with a record of the terms of the HAMP modification at the time the 2MP offer was sent to the borrower. Additionally, any communication with the first lien servicer where the 2MP servicer is not the servicer of the first lien, including discussions about the first lien modification and the first lien servicer contact information, must also be noted in the borrower's loan file and/or servicing system. Servicers must make this information available to MHA-C upon request.

LPS is also working with the Program Administrator to develop a long-term solution that will provide 2MP servicers with a list of probable first lien matches for instances in which information in the LPS database did not identify a match between a first lien HAMP modification and corresponding eligible second lien. Additional guidance will be provided when the enhancement to this matching process is available.

The second paragraph in the section titled "Reliance on First Lien Data" is replaced with the text below.

2MP servicers may rely on the first lien information provided by LPS at the time of the 2MP offer, even if the terms of the HAMP modification subsequently are updated or corrected in the HAMP Reporting Tool. Servicers should retain a record from the match file of the terms of the HAMP modification at the time the 2MP offer is sent to the borrower and must make this information available to MHA-C upon request.

2MP servicers are not required to verify any of the financial information provided by the borrower in connection with the HAMP modification. However, if the 2MP servicer has questions or concerns regarding the data provided by the first lien servicer through LPS and it is material to the terms of the 2MP modification (e.g., forbearance percentage, forgiveness percentage, monthly gross income), the 2MP servicer should contact LPS to confirm the data is accurately reflected. If LPS confirms that the data accurately reflects what is reported in the system but the 2MP servicer still has concerns about the data, the servicer should not proceed with the 2MP modification and should notify the Program Administrator via secure e-mail at support@HMPadmin.com so that the Program Administrator can be involved in the resolution of the issue. 2MP servicers must include the following information relating to the second lien: servicer name, servicer number, contact name, phone number and e-mail address, loan number, borrower name and property address. 2MP servicers must also include the following information relating to the first lien information received in the match file: servicer name, servicer number, loan number, borrower name and property address, and identify the data that is being disputed.

Unless there is evidence of fraud or misrepresentation (such as when the ~~second-lien~~ 2MP servicer is aware that a property is not owner-occupied), there is no additional responsibility on the part of the ~~second-lien~~ 2MP servicer to verify the information provided by the first lien

servicer through LPS. If the ~~second-lien~~ 2MP servicer identifies evidence of fraud or misrepresentation, *or evidence that the second lien does not meet the basic eligibility requirements of 2MP*, the servicer should not proceed with the 2MP modification and must notify the Program Administrator at Escalations@HMPadmin.com *and provide such evidence*.

The second paragraph in the section titled “Trial Period Requirements” is replaced with the text below.

When a borrower ~~hasis not current~~ (two or more payments *that are due and unpaid on the second lien* at the time of the 2MP offer), the borrower must ~~enter~~ *complete* a 2MP trial period plan with payments that reflect the terms of the proposed second lien modification *to be eligible for a permanent 2MP modification*. The 2MP trial period must be three months in duration (or longer if necessary to comply with applicable contractual obligations). *From the effective date of this Supplemental Directive, the 2MP trial period may only begin after the first lien modification becomes effective in cases where the 2MP servicer does not service the first lien. In cases where the servicer services both the first and second liens, at the servicer’s option in accordance with investor guidelines, the* ~~The~~ 2MP trial period may run concurrently or overlap in time with the trial period for a first lien approved for a trial period plan under the fully verified protocol. ~~required in Supplemental Directive 10-01.~~ However, ~~since~~ a modification of the second lien cannot be effective until the HAMP modification of the related first lien is effective *and the 2MP servicer is responsible for ensuring that the final 2MP terms match the final terms of the HAMP modification of the related first lien.* ~~†~~The trial period for the second lien may be longer than three months if it overlaps with the first lien trial period. If this occurs, the borrower must continue to make timely 2MP trial period payments throughout the trial period regardless of its length. A 2MP trial period for second liens related to first liens approved for a trial period plan based on stated income may not begin until the first lien has been converted to a permanent modification. Additionally, if the HAMP modified first lien falls out of good standing while the second lien is in a trial period, the servicer is not required to offer a 2MP modification to the borrower.

The second and third paragraph in the section titled “2MP Timing” is replaced with the text below.

~~No later than 120 calendar days after the later of (i) the effective date of the 2MP SPA Service Schedule, (ii) the date a servicer receives the first and second lien matching information from LPS or (iii) the date of the implementation of the 2MP reporting and payment processes (each, a Trigger Event), a servicer must offer a 2MP trial period plan or 2MP modification, as applicable to any eligible second lien borrower whose corresponding first lien was modified under HAMP at any time prior to the Trigger Event and the first lien modification remains in good standing. A servicer may offer a 2MP trial period plan or 2MP modification, as applicable, to a borrower prior to the occurrence of the Trigger Event described in clause (iii) above (but after the occurrence of the Trigger Events described in clauses (i) and (ii) above); provided, however, that no incentives will be paid with respect to the modified second lien unless both the first and second liens are in good standing as of the first day of the month following the occurrence of such Trigger Event. In addition, if the HAMP modified first lien falls out of good standing while~~

the second lien is in a trial period, the servicer is not required to offer a 2MP modification to the borrower.

~~For first liens modified under HAMP after the Trigger Event, servicers must offer a 2MP trial period plan or 2MP modification, as applicable, to a second lien borrower no later than 60 calendar days after the effective date of the related HAMP modification. In cases of an LPS provided match, a servicer must offer a 2MP trial or 2MP modification, as applicable, to a second lien borrower no later than:~~

- (i) for the first match file provided by LPS after the servicer goes into production with LPS, 120 calendar days from the date the servicer receives the notification of a match from LPS of the related permanent HAMP modification,*
- (ii) for any matches of permanent HAMP modifications provided by LPS before the date of this Supplemental Directive, 60 calendar days from the date of this Supplemental Directive, and*
- (iii) for all subsequent match files provided by LPS, 60 calendar days from the date the servicer receives the notification of a match from LPS of the related permanent HAMP modification.*

Servicers should record the date when they obtained information from LPS to use for the modification. If the HAMP modified first lien falls out of good standing while the second lien is in a trial period, the servicer is not required to offer a 2MP modification to the borrower.

In cases of a servicer identified match where the servicer services both the first and second liens, servicers must offer a 2MP trial period plan or 2MP modification, as applicable, to the borrower no later than 60 calendar days after the later of:

- (i) the date of this Supplemental Directive and*
- (ii) the effective date of the related permanent HAMP modification.*

In cases of a servicer identified match where the 2MP servicer does not service the first lien, servicers must offer a 2MP trial period plan or 2MP modification, as applicable, to the borrower no later than 60 calendar days after the later of:

- (i) the date of this Supplemental Directive and*
- (ii) the date the copy of the executed HAMP modification agreement is obtained from the first lien servicer and verification from the first lien servicer of the HAMP modified first lien's good standing.*

Servicers must record in the borrower's mortgage loan file and/or the servicing system the date it receives the information from the first lien servicer. If the HAMP-modified first lien falls out of good standing, the servicer is not required to offer a 2MP modification to the borrower.

The first paragraph in the section titled “Incentive Compensation” is replaced with the text below.

No 2MP incentives of any kind will be paid if the servicer has not executed a SPA to participate in 2MP. Additionally, no 2MP servicer or borrower incentives will be paid if *at the time the 2MP modification is entered into the HAMP Reporting Tool* (i) either the first or second lien is no longer in good standing under HAMP or 2MP, respectively, or (ii) either the first or second lien is paid in full. No 2MP investor cost share incentives will be paid if the first lien is no longer in good standing under HAMP or if either the first lien or second lien is paid in full.

B. The following guidance amends and supersedes the guidance from Supplemental Directive 10-07.

The language in the section titled “Second Lien Modification Program” is replaced with the text below.

As detailed in the program guidance set forth in Supplemental Directive 09-05 Revised, a 2MP participating servicer is required to modify or extinguish a second lien if the first lien is modified under HAMP. If a second lien has already been modified or is eligible for modification under 2MP, the servicer/investor is prohibited from accepting any fees, incentives or remuneration from an HFA for additional modification or extinguishment of the second lien. If the first lien is not in a trial period plan, has not been *permanently* modified ~~by~~ *under* HAMP or if the servicer does not participate in 2MP, the second lien may be modified or extinguished under an HHF program. If the corresponding first lien is subsequently modified under HAMP, and the second lien is otherwise eligible for 2MP, the participating servicer must modify the loan according to 2MP program guidance, ~~however,~~s. Servicers and investors are not eligible for any 2MP incentives in conjunction with a second lien ~~that has been previously modified or extinguished pursuant to an HHF program.~~ *modified or extinguished through an HHF program, but they will be eligible for 2MP incentives relating to additional modification or extinguishment as part of 2MP. For all purposes of 2MP, the pre-modification loan characteristics must take into account any HHF contributions.*

Servicers must document in their loan files and servicing systems all interactions between HHF programs and 2MP in a manner sufficient to determine the accuracy and appropriateness of processing, and make this information available to MHA-C on request.

Clarification of Initial Package Requirement

As set forth in Section 2.2.3 of Chapter II of the *Handbook*, a servicer is not required to send an Initial Package if, as a result of discussions with the borrower or based on information in the servicer’s possession, the servicer determines that the borrower’s monthly mortgage obligation is substantially less than 31 percent of the borrower’s monthly gross income. Pursuant to this Supplemental Directive, “substantially less” means the borrower’s monthly mortgage obligation is less than 26 percent of the borrower’s monthly gross income. If Right Party Contact is established and, as a result of discussions with the borrower or based on information in the

servicer's possession, the servicer determines that the borrower's monthly mortgage obligation is 26 percent or greater of the borrower's monthly gross income, the servicer must send the borrower an Initial Package and adhere to the other requirements of Section 2.2.2 of Chapter II of the *Handbook*.

Pending ARM Resets

With respect to borrowers who have ARM loans that have a rate reset scheduled within 120 days after the date of the evaluation for HAMP, the monthly mortgage payment used to determine HAMP eligibility should be the fully amortizing monthly mortgage payment based on the note reset rate using the index value as of the date of the evaluation. This guidance has been revised so that the rate used for determining HAMP eligibility is consistent with the rate used in version 4.0 of the Base NPV Model. Previously the guidance provided that either the greater of the current scheduled payment or the fully amortizing payment be used.

Prohibitions on Modifications that Increase Principal and Interest

A post-modification principal and interest payment that is greater than the pre-modification principal and interest payment is prohibited. For loans being evaluated for HAMP or currently in a trial period plan, if the post-modification principal and interest payment is higher than the pre-modification principal and interest payment, servicers must reapply the standard modification waterfall and, if applicable, the alternative modification waterfall while keeping the principal and interest payment the same pre- and post-modification. An NPV evaluation using the revised modification terms must be performed for these loans.

EXHIBIT A
MHA HANDBOOK MAPPING

I. NEW HANDBOOK SECTIONS

A. A new Section 8.8 of Chapter II related to the implementation of FDD forbearance plans with Trial Period Plans is inserted in its entirety with the following text:

8.8 FDD Forbearance Plan During Trial Period Plan

In accordance with investor guidelines, any borrower in a TPP who suffers an FDD-related hardship, meets the eligibility criteria set forth in Section 1.2 for FDD and requests a forbearance should be offered an FDD forbearance plan. Likewise, servicers should offer an FDD forbearance plan to borrowers who are in the process of being evaluated for a TPP at the time they are impacted by an FDD if they request an FDD forbearance plan and meet the eligibility criteria, even if their TPP has not started.

8.8.1 Cancellation of HAMP Trial Period Plan

If a borrower who is currently in a TPP accepts the FDD forbearance plan, the TPP must be cancelled and the servicer must submit a Trial Fallout reason code indicating that the borrower is entering an FDD forbearance plan. If the borrower made timely payments during the trial period prior to the FDD forbearance plan, the borrower will be eligible for reconsideration for HAMP after the FDD forbearance plan ends. In order to be reconsidered for HAMP, the borrower must submit a new Initial Package with updated documentation. If the borrower is eligible for HAMP based on the updated documentation he or she must enter a new TPP.

The servicer must provide notice to the borrower in writing that, if the FDD forbearance plan is accepted, their TPP will be cancelled and in order to be reconsidered for HAMP in the future the borrower will have to submit a new Initial Package and be re-evaluated. The notice should advise that the borrower may not qualify for HAMP at the time of reconsideration if the borrower's financial circumstances have changed.

A borrower is not obligated to accept an FDD forbearance plan, and a servicer may not require that a borrower in a TPP convert to an FDD forbearance plan.

B. A new Section 9.3.7.7 of Chapter II related to pre-modification and post-modification principal and interest is inserted in its entirety with the following text:

9.3.7.7 Prohibitions on Modifications that Increase Principal and Interest

HAMP seeks to lower a borrower's monthly mortgage payment through waterfall steps that use principal and interest payment reductions to achieve the target monthly mortgage payment ratio. However, in some cases, all or most of the payment reduction is comprised of a reduction in required escrow payments, and the principal and interest component under the proposed modification could be greater than the borrower's current principal and interest component. A

modification with a post-modification principal and interest component that is greater than the pre-modification principal and interest component is prohibited under HAMP.

Any loans being evaluated for HAMP or currently in a TPP with a post-modification principal and interest component greater than the pre-modification principal and interest component must be re-run through the standard modification waterfall and, if applicable, the alternative modification waterfall while keeping the post-modification principal and interest component equal to the pre-modification principal and interest component. The servicer must perform a new NPV evaluation using the revised modification terms generated by keeping the proposed principal and interest component equal to the borrower's current principal and interest component. All other NPV inputs should remain constant when the borrower is retested in this situation.

C. A new Section 9.7 of Chapter II related to the implementation of FDD forbearance plans with HAMP modifications is inserted in its entirety with the following text:

9.7 FDD Forbearance Plan Following Modification

If a borrower in a permanent modification is eligible for an FDD forbearance plan and has the capacity to make partial payments, the servicer should make every effort to structure the forbearance plan such that the borrower retains good standing during the FDD forbearance period. For example, the servicer may require the borrower to make partial payments during the forbearance period such that the loan at no time becomes delinquent by three full monthly payments during the forbearance plan. If a borrower loses good standing, even as a result of an FDD forbearance plan, the loan is not eligible to receive or accrue borrower, servicer or investor incentives in connection with the loan. In addition, the borrower would not be eligible for another HAMP modification. If paying in accordance with the FDD forbearance plan would result in the borrower becoming three full monthly payments past due, then the servicer must inform the borrower in writing at the time the FDD forbearance plan is offered that by paying in accordance with the plan, the borrower may lose good standing under HAMP. In the event a borrower loses good standing, the servicer must work with the borrower to cure the delinquency regardless of the fact that the borrower is unable to regain good standing. If this is not possible, the servicer should evaluate the borrower for any other loss mitigation alternative prior to commencing foreclosure proceedings.

D. A new Section 2.5 of Chapter III related to when a borrower declines an UP forbearance plan is inserted in its entirety with the following text:

2.5 Borrower Declines UP

If a borrower who is eligible for UP declines an offer for an UP forbearance plan, the servicer is not required to offer the borrower a modification under HAMP. The servicer must notify the borrower that, if they are eligible for an UP forbearance plan but they do not accept it, they may not be considered for a modification under HAMP while they are eligible for an UP forbearance plan. The borrower may request reconsideration under HAMP at a future time if the

requirements of the “Continued Eligibility” guidance set forth in Section 1.2 of Chapter II are met.

E. A new Section 4.6 of Chapter III related to the interpretation of FDD forbearance plans with UP is inserted in its entirety with the following text:

4.6 Interaction of FDD Forbearance Plans with UP

If a borrower is unemployed when requesting an FDD forbearance plan and is eligible for both an FDD forbearance plan and an UP forbearance plan, or is currently in an UP forbearance plan, the servicer may utilize both forbearance plans consecutively. The first three months of forbearance should be considered part of the FDD forbearance plan. If the borrower is still unemployed at the end of the FDD forbearance period, the borrower must be moved to an UP forbearance plan or, at the borrower’s request, be considered for HAFA.

II. CONFORMING CHANGES TO EXISTING HANDBOOK SECTIONS

The following guidance amends and supersedes the notated portions of the *Handbook*. Changed or new text is indicated in italics. Text that has been lined out has been deleted.

A. Section 1.2 of Chapter I is replaced in its entirety with the text below.

As part of Helping Families Save Their Homes Act of 2009 (HFSTHA), Congress established the Servicer Safe Harbor by amending the Truth in Lending Act for the purpose of providing a safe harbor to enable such servicers to modify and refinance mortgage loans under a “qualified loss mitigation plan.” Treasury has determined that each residential loan modification under HAMP (including Principal Reduction Alternative modifications) and 2MP, as well as each short sale and deed-in-lieu of foreclosure under HAFA *and each forbearance plan under UP*, is a “qualified loss mitigation plan” as defined in the Servicer Safe Harbor. In addition, Treasury anticipates that the “FHA Program Adjustments to Support Refinancings for Underwater Homeowners,” which were previously announced by Treasury on March 26, 2010, will also constitute a “qualified loss mitigation plan” as defined in the Servicer Safe Harbor.

B. Section 1.3 of Chapter I is replaced in its entirety with the text below.

Within 90 days of executing a SPA, the servicer must review all servicing agreements to determine investor participation in HAMP. Within 30 days of identifying an investor as a non-participant, the servicer must contact the investor in writing at least once, encouraging the investor to permit modifications under HAMP.

Servicers, *within 120 days of signing the SPA, must create and maintain in their records that executed a SPA prior to March 24, 2010 must, by July 30, 2010, have provided to the Program Administrator* an Investor Participation List containing the following information: (1) the number of investors for whom it services loans; (2) a list of those investors who do not participate in HAMP; ~~and~~ (3) the number of loans serviced for each investor that does not participate in HAMP; *and (4) pool level identification data, such as pool name and pool number,*

for loans serviced for each investor that does not participate in HAMP or whose participation is subject to any limitations or restrictions. In addition, servicers must provide a copy of the servicing agreement or other pool documentation to Treasury or its agents upon request.

~~Participating servicers that execute a SPA after March 24, 2010 must provide the Investor Participation List to the Program Administrator within 120 days of SPA execution. Servicers are required to notify the Program Administrator of changes to the Investor Participation List within 30 calendar days of any change. All servicers must update their Investor Participation Lists within 30 days of any change and maintain both the old and revised versions of the lists, which should clearly identify the time period during which each list was applicable, on a system that MHA-C may access upon request.~~

C. Section 2.2 of Chapter I is amended to include the following text after the last bullet as new bullets related to documentation:

- Written policies and procedures relating to federally declared disaster (FDD) forbearance plans, including:
 - Determining eligibility for the FDD forbearance;
 - Canceling existing TPPs and 2MP trial periods when borrowers accept FDD forbearance plans;
 - Terms of FDD forbearance plans offered to eligible borrowers;
 - Coordination with UP; and
 - HAMP TPP and 2MP trial period reconsideration, where applicable.

- Documentation of all steps performed in evaluating and processing requests for an FDD forbearance plan.

D. Section 1.2 of Chapter II is amended to include the following as the last row in the chart related to HAMP eligibility:

Unemployed Borrower	<p>A borrower who is currently receiving unemployment benefits should be evaluated for the Home Affordable Unemployment Program (UP) as set forth in Chapter III.</p> <p><i>If a borrower who is eligible for UP declines an offer for an UP forbearance plan, the servicer is not required to offer the borrower a modification under HAMP.</i></p>
<i>Federally Declared Disaster Relief</i>	<p><i>Borrowers not able to make monthly mortgage payments due to a FDD who are (1) in the process of being evaluated for a TPP; (2) in a TPP; or (3) in a permanent HAMP modification should be considered for an FDD forbearance plan in accordance with industry practice and investor guidelines.</i></p> <p><i>Servicers should, in accordance with investor guidelines, offer a minimum of three months of forbearance to a borrower with a loan</i></p>

	<p><i>that is eligible for HAMP who requests forbearance as a result of an FDD and meets the following minimum eligibility criteria:</i></p> <ul style="list-style-type: none"> • <i>The borrower suffered a hardship, such as a loss of employment, reduction in income or increase in expenses, or has been displaced from his or her home and cannot make the monthly mortgage payments as a result of an FDD.</i> • <i>The location of either (i) the property securing the loan or (ii) the borrower’s principal place of business or employment, is located in an area designated by the Federal Emergency Management Agency (FEMA) as being covered by the FDD as set forth at www.fema.gov/news/disasters.fema or as confirmed by the local FEMA office.</i> <p><i>Servicers should follow their standard practice with respect to the evaluation of borrowers and documentation of FDD forbearance plans.</i></p> <p><i>Late charges may accrue while the servicer is determining borrower eligibility for an FDD forbearance plan and during the forbearance period. However, a servicer must not collect late charges from the borrower during the forbearance period.</i></p>
<p><i>LTV Ratio</i></p>	<p><i>Servicers may not refuse to evaluate an otherwise eligible borrower based on the LTV ratio of the mortgage loan except to the extent it impacts the NPV evaluation or the principal forbearance limit described in Section 6.6.</i></p>

E. Section 2.1 of Chapter II is amended to include the following text related to Authorized Advisors:

Cooperation with Authorized Advisors - Servicers must, subject to receipt of written authorization from the borrower, accept information and other required verification documents submitted by *state Housing Finance Agencies with respect to the HFA Hardest Hit Fund*, or a trusted advisor (e.g., HUD-approved housing counseling agencies, non-profit consumer advocacy organizations, legal guardians, powers of attorney, or legal counsel) on behalf of a borrower and should use that information to determine HAMP eligibility. Servicers may use written authorization previously received from the borrower or written authorization provided contemporaneously with the submission of the RMA.

A model written authorization form is available on www.HMPAdmin.com. When provided by or on behalf of a borrower, this model authorization, subject to applicable law, must be accepted by servicers in lieu of any servicer specific form(s). Servicers are encouraged to continue to accept other counseling agency, non-profit organization, legal services or other proprietary authorization forms that are substantially similar in content to the model authorization (provided such form complies with any applicable federal, state, or local privacy law, rule or regulation).

The authorization must be completed and executed by the borrower and, if applicable, the co-borrower. Servicers may refuse to accept an authorization because it is not signed by all borrowers on the related note.

F. Section 2.2.1 of Chapter II is amended to include the text below as a new second paragraph related to reasonable solicitation efforts.

For borrowers who received a Chapter 7 bankruptcy discharge in a case involving the first lien mortgage who did not reaffirm their first lien mortgage debt, a servicer is deemed to have made a Reasonable Effort to solicit the borrower after sending two additional written notices to the last address of record in addition to the two required written notices described above. The servicer is not required to make the four telephone calls described above.

G. Section 2.2.3 of Chapter II is replaced in its entirety with the text below.

The servicer is not required to send an Initial Package if, as a result of discussions with the borrower or based on information in the servicer's possession, the servicer determines that the borrower does not meet the basic eligibility criteria for HAMP as described in Section 1.1 or the servicer determines that the borrower's *estimated* monthly mortgage obligation (including principal, interest, taxes, insurance and when applicable, association fees) is ~~substantially~~ less than ~~34~~ 26 percent of the borrower's gross monthly income. Such decision must be documented in the applicable servicing file.

H. Section 3.1 of Chapter II is amended to include the text below as a new final paragraph related to foreclosure protections.

In addition, servicers may not refer a loan to foreclosure or conduct a scheduled foreclosure sale in the following circumstances:

- If the borrower requested consideration and is being evaluated for an FDD forbearance plan; or
- During an initial FDD forbearance plan or any extension thereof.

I. The first paragraph of Section 6.1.2.1 of Chapter II is replaced in its entirety with the text below.

With respect to borrowers with adjustable rate mortgage (ARM) loans that have a rate reset scheduled within 120 days after the date of the evaluation (Reset ARM), the monthly mortgage payment used to determine eligibility will be the greater of: ~~(i) the borrower's current scheduled monthly mortgage payment, or (ii) a fully amortizing monthly mortgage payment based on the note reset rate using the index value as of the date of the evaluation (Reset Interest Rate).~~

J. Section 6.6.1 of Chapter II is replaced in its entirety with the text below.

With respect to both "positive" and "negative" NPV results, servicers are not required to forbear more than the greater of (i) 30 percent of the UPB of the mortgage loan (after any capitalization under Step 1 of the standard modification waterfall) or (ii) an amount resulting in a modified

interest-bearing balance that would create a current mark-to-market loan-to-value ratio equal to 100 percent. *For purposes of calculating the principal forbearance limit when applying the alternative modification waterfall, servicers should use the sum of any PRA Forbearance Amount initially set aside as principal forbearance and any principal forbearance created as a result of the final step of the modification waterfall.*

If the borrower's monthly mortgage payment cannot be reduced to the target monthly mortgage payment ratio of 31 percent unless the servicer forbears more than the amount described above, the servicer may consider the borrower ineligible for a HAMP modification. However, servicers are permitted, in accordance with existing servicing agreements and investor guidelines, to forbear the principal in excess of the amounts described above in order to achieve the target monthly mortgage payment of 31 percent for both NPV-positive and NPV-negative loans.

In the event a servicer elects to forbear principal in an amount resulting in a modified interest-bearing balance that would create a current mark-to-market loan-to-value ratio less than 100 percent in negative NPV situations, the servicer should ignore the error code and the flag for excessive forbearance that is returned by version 3.0 of the Base NPV Model. ~~Updates will be made to the NPV model in the future to eliminate this error code.~~ *This error code has been eliminated in version 4.0 of the Base NPV Model.*

K. Section 8.7 of Chapter II is amended to include the following text as a new second paragraph.

If a borrower in a prolonged TPP (a TPP lasting longer than three months), who has made each trial period payment by the last day of the month in which it was due, is subsequently determined to be ineligible for a permanent modification, the servicer is required to consider the borrower for all other available loss mitigation options, including, but not limited to, non-HAMP modifications. Such consideration may not be conditioned on a lump sum borrower contribution for unpaid interest and fees that accrued during the prolonged TPP.

L. Section 9.3.2 of Chapter II is replaced in its entirety with the text below.

All late charges, penalties, stop-payment fees, or similar fees must be waived upon the borrower receiving a permanent modification.

If applicable, late charges that accrue while the servicer is determining borrower eligibility for an FDD forbearance plan and during the forbearance period may not be collected during the forbearance period.

M. Section 9.3.7.1 of Chapter II is replaced in its entirety with the text below.

Servicers must perform an escrow analysis *for all borrowers, including borrowers who do not currently escrow for property taxes and hazard insurance*, to determine the exact escrow payments prior to establishment of the trial period payment. When performing an escrow analysis, servicers must take into consideration tax and insurance premiums that may come due during the trial period.

N. Section 4.1 of Chapter III is replaced in its entirety with the text below.

A request for UP consideration may be made by phone, mail or email. Servicers must document the date of the UP request in the servicing file. *Once the borrower requests consideration for UP, the servicer must send the borrower a written notice with a list of the required documentation, including unemployment benefit information. The due date for the required documentation may not be less than 15 calendar days from the date of the servicer communication. The servicer must indicate in the servicing system when it determines all required documentation has been received.*

After receiving the borrower's *required* documentation, ~~of unemployment benefits~~ the servicer ~~must is required to~~ determine the borrower's eligibility for UP *within 30 calendar days. The servicer must and* mail an FPN or a Non-Approval Notice *to the borrower* within 10 business days following the date of the servicer's determination.

EXHIBIT B
MHA THIRD-PARTY AUTHORIZATION FORM

Third-Party Authorization Form

Mortgage Lender/Servicer Name ("Servicer")

[Account][Loan] Number

The undersigned Borrower and Co-Borrower (if any) (individually and collectively, "Borrower" or "I"), authorize the above Servicer and the following third parties

[Counseling Agency]

[Agency Contact Name and Phone Number]

[State HFA Entity]

[State HFA Contact Name and Phone Number]

[Other Third Party]

[Third Party Contact Name and Phone Number]

[Relationship of Other Third Party to Borrower and Co-Borrower]

(individually and collectively, "Third Party") to share, release, discuss, and otherwise provide to and with each other public and non-public personal information contained in or related to the mortgage loan of the Borrower. This information may include (but is not limited to) the name, address, telephone number, social security number, credit score, income, government monitoring information, loss mitigation application status, account balances, program eligibility, and payment activity of the Borrower. I also understand and consent to the disclosure of my personal information and the terms of any agreements under the Making Home Affordable or Hardest Hit Fund Programs by Servicer or State HFA to the U.S. Department of the Treasury or their agents in connection with their responsibilities under the Emergency Economic Stabilization Act.

The Servicer will take reasonable steps to verify the identity of a Third Party, but has no responsibility or liability to verify the identity of such Third Party. The Servicer also has no responsibility or liability for what a Third Party does with such information.

Before signing this Third-Party Authorization, beware of foreclosure rescue scams!

- It is expected that a HUD-approved housing counselor, HFA representative or other authorized third party will work directly with your lender/mortgage servicer.
- Please visit <http://makinghomeaffordable.gov/counselor.html> to verify you are working with a HUD-approved housing counseling agency.
- Beware of anyone who asks you to pay a fee in exchange for a counseling service or modification of a delinquent loan.

This Third-Party Authorization is valid when signed by all borrowers and co-borrowers named on the mortgage and until the Servicer receives a written revocation signed by any borrower or co-borrower.

I UNDERSTAND AND AGREE WITH THE TERMS OF THIS THIRD-PARTY AUTHORIZATION:

Borrower

Co-Borrower

Printed Name

Printed Name

Signature

Signature

Date

Date

