

Supplemental Directive 11-08***August 9, 2011******Home Affordable Foreclosure Alternatives 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 get 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 to include the Home Affordable Foreclosure Alternatives Program (HAFA) to provide borrower with an alternative to foreclosure through a short sale or deed-in-lieu (DIL) of foreclosure. In June 2011 Treasury issued version 3.2 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 policy enhancements to HAFA and amends and supersedes the notated portions of the *Handbook*. Except as specifically noted herein, this Supplemental Directive is effective immediately. As to those changes that are not effective immediately by the terms of this Supplemental Directive, servicers may begin to implement such changes immediately.

Except as provided below, servicers that are subject to the Home Affordable Modification Program (HAMP) under a servicer participation agreement and related documents (SPA) must follow the guidance set forth in this Supplemental Directive. This guidance does not apply to mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac, insured or guaranteed by the Veterans Administration or the Department of Agriculture's Rural Housing Service or insured by the Federal Housing Administration.

This Supplemental Directive includes the following topics:

- Eligibility Matrix
- Intent of Borrower Communication Timeframes
- Consideration of Borrowers for HAFA
- Subordinate Liens
- List Price / Acceptable Sale Proceeds
- Use of Borrower Relocation Incentive
- Reporting

Eligibility Matrix

Though all servicers that are subject to HAMP under a SPA must consider borrowers for HAFA in accordance with Chapter IV of the *Handbook*, each servicer when formulating the written policy under which it will offer HAFA to borrowers (HAFA Policy) has discretion in determining additional eligibility criteria and certain program rules. In order to assist

borrowers and their representatives in understanding any unique components of a servicer's HAFA Policy, Treasury has developed a template matrix, posted to HMPadmin.com, that assists in identifying each servicer's unique HAFA eligibility criteria and program rules (HAFA Matrix). The HAFA Matrix includes a servicer's process for re-evaluating a property value, as more fully described below. The topics and language in the HAFA Matrix are provided only as an example of what a servicer might include as an aspect of its HAFA Policy that is unique. Each servicer must draft the language in its HAFA Matrix to be consistent with its HAFA Policy and any specific investor requirements or prohibitions.

No later than October 15, 2011, each servicer must complete and post its HAFA Matrix to its website and provide Fannie Mae, as the Program Administrator, with the web address where the completed matrix can be located. Treasury will identify to the public the web location of each servicer's HAFA Matrix on MakingHomeAffordable.gov.

Each servicer must keep the information in their HAFA Matrix up to date, including any changes to the servicer's HAFA Policy. If the web address where the HAFA Matrix can be located is changed, a servicer is required to notify the Program Administrator of the new web address five days prior to the change and provide a re-direct from the old web address to the new web address.

Intent of Borrower Communication Timeframes

Pursuant to Section 4 of Chapter IV of the *Handbook*, if a servicer determines that a borrower is eligible for a HAFA offer based on the servicer's HAFA Policy and the guidance provided in the *Handbook*, and the borrower did not initiate the request for a short sale or DIL, the servicer must proactively notify the borrower in writing of the availability of HAFA and allow the borrower 14 calendar days from the date of the notification to contact the servicer by verbal or written communication and request consideration under HAFA. This Supplemental Directive clarifies that the 14 calendar-day response period is only intended to establish a minimum requirement on a servicer's obligation to consider a borrower for HAFA. Servicers may still consider a borrower for HAFA whether or not that borrower responds to the HAFA solicitation within the 14 calendar-day response period.

Consideration of Borrowers for HAFA

Unless prohibited by investor guidance, servicers should utilize HAFA rather than a proprietary short sale or DIL option in all cases where a short sale or DIL is approved by the servicer and the transaction otherwise meets the guidance provided in Chapter IV of the *Handbook*. If utilization of HAFA is prohibited by investor guidance, servicers must document any applicable investor restriction or prohibition in the servicing system and/or mortgage file in accordance with Section 2.2.3 of Chapter I.

Subordinate Liens

As part of a HAFA short sale or DIL, in addition to satisfying the primary mortgage debt, the borrower must be fully released from liability for subordinate liens. As described in Section

6.2.4.2 of Chapter IV of the *Handbook*, a servicer, on behalf of an investor, will authorize the settlement agent to allow a portion of the gross proceeds as payment(s) to subordinate mortgage/lien holder(s) in exchange for a lien release and full release of borrower liability. This Supplemental Directive changes earlier policy to provide that the aggregate cap of \$6,000 available to satisfy subordinate liens applies only to subordinate liens secured by a mortgage on the subject property. The cap is not applicable to non-mortgage subordinate liens such as mechanics' liens or liens associated with assessments owing to homeowner's associations. Servicers will authorize the settlement agent to allow any portion of the gross proceeds to be used as payment(s) to subordinate non-mortgage lien holders in exchange for a lien release and full release of borrower liability.

Servicers may implement this guidance immediately and, until October 15, 2011, investors will continue to be reimbursed up to \$2,000 for short sale proceeds paid to any subordinate lien holder. This Supplemental Directive clarifies that for each Short Sale Agreement (SSA), or Alternative Request for Approval of Short Sale (Alternative RASS) entered into on and after October 15, 2011, investors will be reimbursed up to \$2,000 only for that portion of the short sale proceeds paid to subordinate mortgage lien holders and no investor will be reimbursed for short sale proceeds paid to subordinate non-mortgage lien holders.

The SSA, Request for Approval of Short Sale and Alternative RASS forms will be updated to reflect these changes and will be available on HMPAdmin.com.

List Price / Acceptable Sale Proceeds

Section 6.1.2 of Chapter IV of the *Handbook* requires servicers to independently assess the current value of a property in accordance with the applicable investor's guidelines prior to approving a HAFA transaction. Because accuracy of property value is critical to obtaining a successful purchase offer, this Supplemental Directive imposes a new requirement that on or before October 15, 2011, each servicer must develop and implement, as part of its HAFA Policy, procedures it will follow to periodically re-evaluate property value and to reconcile discrepancies between the servicer's independent assessment of value and market value data provided by the borrower or the borrower's real estate broker. Such procedures must be listed in each servicer's HAFA Matrix.

To the extent the new value determination is less than the value determination used in the SSA, the servicer is not required to amend the SSA, but must notify the borrower and/or the borrower's real estate broker either in writing or verbally of the new value determination, and confirm the new list price or acceptable sale proceeds based on the new value determination. Servicers must honor the new value determination and document it in the servicing system and/or mortgage file together with the updated list price or acceptable sale proceeds, and the communication(s) to the borrower about such changes. Servicers are reminded, however, that in accordance with Section 7.1 of Chapter IV of the *Handbook*, after signing an SSA, the servicer may not increase the minimum acceptable net proceeds required until the initial SSA termination date is reached.

Section 7.8 of Chapter IV of the *Handbook*, requires the servicer to accept a purchase offer if the net sales proceeds available for payment to the servicer equal or exceed the minimum acceptable net proceeds determined by the servicer prior to approving the SSA or in connection with the re-evaluation process as described above. This Supplemental Directive clarifies that servicers are not prohibited from accepting a purchase offer that results in net proceeds that are lower than the minimum acceptable net proceeds when the servicer determines that the proposed sale is in the best interest of the investor.

Use of Borrower Relocation Incentive

Section 12.1 of Chapter IV of the *Handbook* provides for a \$3,000 incentive payment to the borrower to assist with relocation expenses. This Supplemental Directive clarifies that the borrower may use this relocation incentive to pay for transaction costs that the borrower has instructed the closing agent, in writing, to pay on the borrower's behalf, such as the cost of legal representation, overdue utility bills or minor repairs identified during a property inspection. However, borrowers may not use this relocation incentive to pay for the release of subordinate mortgage or non-mortgage liens recorded against the property and may not be required by the servicer, as a condition of sale, to utilize the relocation incentive to pay any transaction expenses. The HUD-1 settlement statement must reflect the full \$3,000 relocation incentive as a credit to the borrower and must show any authorized transaction costs paid out of such incentive as charges to the borrower.

Reporting

The HAMP Additional Data Requirements Data Dictionary, available on HMPAdmin.com, will be updated to reflect this Supplemental Directive. Subsequent guidance will be provided on HMPAdmin.com. Servicers should continue reporting the key milestones in a HAFA transaction as described in Section 11.1 of Chapter IV of the *Handbook*.

**EXHIBIT A
MHA HANDBOOK MAPPING**

I. 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. The third bullet in Section 2.2.3 of Chapter I is replaced in its entirety with the following text:

The date and outcome of the consideration and evaluation for foreclosure alternatives under HAFA and specific justification with supporting details if foreclosure alternatives were denied *under HAFA including, if utilization of HAFA was prohibited by investor guidance, the applicable investor restriction or prohibition that prevented the servicer from offering a borrower a HAFA foreclosure alternative and* all records related to the termination of the SSA or expiration of HAFA transactions without a completed short sale or acceptance of a DIL.

B. Section 3 of Chapter IV is replaced in its entirety with the following text:

3 HAFA Consideration

Servicers may not solicit a borrower for HAFA until the borrower has been evaluated for HAMP in accordance with the requirements of Chapter II. Borrowers that meet the eligibility criteria for HAMP but who are not offered a TPP, do not successfully complete a TPP, or default on a permanent HAMP modification should first be considered for other loan modification or retention programs offered by the servicer prior to being evaluated for HAFA.

3.1 HAFA Policy

Each participating servicer must develop a written policy, consistent with investor guidelines, that describes the basis on which the servicer will offer HAFA to borrowers (HAFA Policy). A servicer's HAFA Policy must: (i) identify the circumstances under which the servicer will require monthly mortgage payments and how that payment will be determined, in accordance with applicable laws, rules and regulations; (ii) describe the basis on which the minimum acceptable net proceeds will be determined; (iii) describe how subordinate lien holders will be paid, whether by percentage of the UPB of their loan or some other determination; (iv) describe if and when the servicer will require income documentation; (v) if servicer has a program with an option for deed-for-lease or an opportunity for the borrower to repurchase the property at some future time, describe such program and conditions; (vi) describe if and when a borrower that was determined to be ineligible for HAFA prior to February 1, 2011 will be re-evaluated; (vii) *identify the procedures the servicer will follow to periodically re-evaluate property value and to reconcile discrepancies between the servicer's independent assessment of value and market value data provided by a borrower or the borrower's real estate broker;* and (viii) may incorporate such factors as:

- The severity of the loss involved;
- Local market conditions,
- The timing of pending foreclosure actions;
- Borrower motivation and cooperation;
- Customary transactional costs of short sales and DILs; and
- The amounts that may be required to release any subordinate liens on the property.

The date and outcome of the HAFAs consideration must be documented in the servicer's file.

3.2 HAFAs Matrix

Each servicer must complete and post to its website a matrix that identifies the servicer's unique HAFAs eligibility criteria and program rules (HAFAs Matrix). The HAFAs Matrix must also include the servicer's process for re-evaluation of property value as more fully described in Section 6.1.2. A template of the HAFAs Matrix is located on HMPadmin.com. The topics and language in the template HAFAs Matrix are provided only as an example of what a servicer might include as an aspect of its HAFAs Policy that is unique. Each servicer must draft the language in its HAFAs Matrix to be consistent with its HAFAs Policy and any specific investor requirements or prohibitions.

In addition to posting its HAFAs Matrix to its website, each servicer must provide the Program Administrator with the web address where the completed matrix can be located. Treasury will identify to the public the web location of each servicer's HAFAs Matrix on MakingHomeAffordable.gov.

Each servicer must keep the information in its HAFAs Matrix up to date, including any changes in the servicer's HAFAs Policy. If the web address where its HAFAs Matrix can be located is going to be changed, a servicer is required to notify the Program Administrator of the new web address five business days prior to the change and provide a re-direct from the old web address to the new web address.

3.3 Consideration of Borrowers for HAFAs

Servicers must consider possible HAMP-eligible borrowers for HAFAs within 30 calendar days of the date the borrower:

- Does not qualify for a TPP;
- Does not successfully complete a TPP; or
- Is delinquent on a HAMP modification by missing at least two consecutive payments.

If a borrower requests a short sale or DIL (whether such request is in response to a servicer's solicitation under the first paragraph of Section 4 or initiated by the borrower), within 45 days of such request the servicer must consider the borrower for HAFAs and send the SSA, DIL Agreement, a written notification that the borrower will not be offered a SSA or DIL or a written response to the Alternative RASS, in accordance with Section 4.2 and Section 7.4.

Borrowers in active Chapter 7 or Chapter 13 bankruptcy cases must be considered for HAFA if the borrower, borrower's counsel or bankruptcy trustee submits a request to the servicer. With the borrower's permission, a bankruptcy trustee may contact the servicer to request a short sale or DIL under HAFA. Servicers are not required to solicit these borrowers proactively for HAFA. The servicer and its counsel must work with the borrower or borrower's counsel to obtain any court and/or trustee approvals required in accordance with local court rules and procedures. Servicers should extend HAFA timeframes as necessary to accommodate delays in obtaining court approvals or receiving any periodic payment when they are made to a trustee.

Unless prohibited by investor guidelines, servicers should utilize HAFA, rather than a proprietary short sale or DIL option, in all cases where a short sale or DIL is approved by the servicer and the transaction otherwise meets the guidance provided in this Chapter IV.

C. The second paragraph of Section 4 of Chapter IV is amended to add the following text as the final sentence in such paragraph:

The foregoing 14 calendar-day response period is only intended to establish a minimum requirement on a servicer's obligation to consider a borrower for HAFA. Servicers may still consider a borrower for HAFA whether or not that borrower responds to the HAFA solicitation within the 14 calendar-day response period.

D. Section 6.1.2 of Chapter IV is amended to add the following text at the end of such section:

Each servicer's HAFA Policy must include the procedures it will follow to periodically re-evaluate property value and to reconcile discrepancies between the servicer's independent assessment of value and market value data provided by the borrower or the borrower's real estate broker. To the extent the new value determination is less than the value determination used in the SSA, the servicer must notify the borrower and/or the borrower's real estate broker either in writing or verbally of the new value determination, and confirm the new list price or acceptable sale proceeds based on the new value determination. Servicers must document the new value determination in their servicing system and/or the mortgage file together with the updated list price or acceptable sale proceeds, and the communication(s) to the borrower about such changes. While the servicer is not required to amend the SSA to reflect the new list price or acceptable sale proceeds, the servicer must honor the new value determination. Servicers are reminded, however, that in accordance with Section 7.1, after signing an SSA, the servicer may not increase the minimum acceptable net proceeds required until the initial SSA termination date is reached.

E. Section 6.2.4.2 of Chapter IV is replaced in its entirety with the following text:

6.2.4.2 Subordinate Liens

It is the responsibility of the borrower to deliver clear marketable title to the purchaser or investor and to work with the listing broker, settlement agent and/or lien holders to clear title impediments. The servicer may, but is not required to, negotiate with subordinate lien holders on

behalf of the borrower. The servicer, on behalf of the investor, will authorize the settlement agent to allow a portion of the gross sale proceeds *to be used* as payment(s) to subordinate lien holder(s) in exchange for a lien release and full release of borrower liability. All subordinate lien holders will be paid in order of priority. ~~and—Subordinate mortgage lien holders with subordinate liens secured by a mortgage on the subject property may be paid no more than an aggregate cap of \$6,000. Such cap does not apply to non-mortgage subordinate lien holders with subordinate liens not secured by a mortgage on the subject property, such as mechanics' liens or liens associated with assessments owing to homeowner's associations.~~ Payments will be made at closing from the gross sale proceeds and must be reflected on the HUD-1 Settlement Statement.

F. The last sentence of the second paragraph of Section 7.1 of Chapter IV is replaced in its entirety by the following:

Subsequent changes to the minimum net *pursuant to the provisions of Section 6.1.2* or when the SSA is extended must be documented.

G. The second paragraph of Section 7.8 of Chapter IV amended to add the following text as the second sentence of such paragraph:

Servicers are not prohibited under HAFA from accepting a purchase offer that results in net sales proceeds that are lower than the Minimum Net so long as the proposed sale is in the best interests of the investor.

H. The first paragraph of Section 12.1 of Chapter IV is amended to delete the indicated text and to add the following text at the end of such paragraph:

~~The amount paid to the borrower must appear on the HUD-1 Settlement Statement.~~ *In addition to paying for relocation expenses, the borrower may use the relocation incentive payment to pay for transaction costs that the borrower has instructed the settlement agent, in writing, to pay on its behalf, such as the cost of legal representation in connection with representation of the borrower in the short sale or DIL, overdue utility bills on the property or minor repairs made as a result of being identified during a property inspection. Borrowers, however, may not use the relocation incentive payment for the release of subordinate mortgage or non-mortgage liens recorded against the property and may not be required by the servicer, as a condition of the sale, to utilize the relocation incentive to pay any transaction expenses. The HUD-1 Settlement Statement must show the full \$3,000 relocation incentive as a credit to the borrower and show any authorized transaction costs paid out of the relocation incentive in accordance with the foregoing guidance as charges to the borrower.*

I. Section 12.3 of Chapter IV is replaced in its entirety with the following text:

12.3 Investor Reimbursement for Subordinate Lien Releases

The investor will be paid a maximum of \$2,000 for allowing a portion of the short sale proceeds to be distributed to or paid to subordinate *mortgage* lien holders. This reimbursement will be

earned on a one-for-three matching basis. For each three dollars an investor pays to secure release of a subordinate *mortgage* lien, the investor will be entitled to one dollar of reimbursement up to the maximum reimbursement of \$2,000. To receive an incentive, subordinate *mortgage* lien holders must agree to release their *mortgage* liens and waive all future claims against the borrower. The servicer is not responsible for any future actions or claims against the borrower by such subordinate *mortgage* lien holders ~~or creditors~~. *No investor will be paid for allowing a portion of the short sale proceeds to be paid to subordinate non-mortgage lien holders.*