

Supplemental Directive 11-10***September 29, 2011******Making Home Affordable Program – Administrative Clarifications and Updates***

In February 2009, the Obama Administration introduced the Making Home Affordable (MHA) Program to stabilize the housing market and to 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. On September 1, 2011 Treasury issued version 3.3 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 administrative clarifications and updates to the Home Affordable Modification Program (HAMP), the Second Lien Modification Program (2MP), the Home Affordable Unemployment Program (UP) and the Home Affordable Foreclosure Alternatives Program (HAFA), and amends and supersedes the notated portions of the *Handbook*.

Except as stated herein, this Supplemental Directive is effective December 1, 2011; however, servicers may begin to implement the changes immediately.

Servicers that are subject to 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 covers the following topics:

- 2MP Clarifications
- Case Escalation and Pending Litigation
- HAMP Clarifications
- UP Clarifications
- Changes to RMA, Hardship Affidavit and Dodd-Frank Certification Forms
- Interactions with Non-MHA Unemployment Assistance Programs
- HAFA Clarifications

2MP Clarifications

Sending Dodd-Frank Certification under 2MP

As set forth in Section 1.7 of Chapter I of the *Handbook*, as of January 1, 2011, 2MP servicers cannot offer a 2MP trial period, 2MP permanent modification or extinguishment until the certification (Dodd-Frank Certification) required by Treasury under Section 1481 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) is received. If a 2MP servicer cannot verify that a completed Dodd-Frank Certification was received in connection with the related HAMP-modified first lien, the 2MP servicer is required to obtain a completed Dodd-Frank Certification.

Effective immediately, this Supplemental Directive clarifies that the 2MP servicer may send the Dodd-Frank Certification to the borrower concurrently with a 2MP trial period offer, or permanent modification offer if no trial period is required, or extinguishment as long as the servicer clearly informs the borrower in writing that the 2MP offer or extinguishment is contingent upon the borrower returning the completed Dodd-Frank Certification. As an alternative and subject to applicable laws and regulations, servicers may incorporate the complete text of the Dodd-Frank Certification in their 2MP modification agreement. The completed Dodd-Frank Certification must be received by the servicer prior to the 2MP permanent modification or extinguishment effective date or, if a trial period is required, prior to the trial period effective date. All other requirements as noted in Section 1.7 of Chapter I of the *Handbook* still apply.

2MP Eligibility Notice

This Supplemental Directive clarifies that each borrower who receives a HAMP permanent modification must be informed by the first lien servicer of the borrower's potential eligibility for a 2MP modification. The Home Affordable Modification Agreement Cover Letter form has been updated to include the following model clauses. Use of the model clauses is optional; however, they illustrate the level of specificity that is deemed to be in compliance with language requirements of 2MP.

- Once your first mortgage is permanently modified under HAMP if you have a second mortgage on the same property, you may be eligible for a modification on your second mortgage under the Second Lien Modification Program (2MP). Please visit www.MakingHomeAffordable.gov/programs/second-mortgage-help/Pages/default.aspx to see if your second mortgage servicer is participating in 2MP. If your second mortgage servicer is participating, you should hear from them within 60 days. If not, please contact them directly to see if you are eligible for a modification; or
- [Name of Servicer] also services a second mortgage loan on your property. Within the next 60 days, [Name of Servicer] will review your second mortgage loan to determine if it is eligible for modification and will communicate our determination to you in writing. If you have not received communication from

[Name of Servicer] within that time you may contact [provide relationship manager/single point of contact information].

The new Modification Agreement Cover Letter form will be posted on HMPAdmin.com.

Case Escalation and Pending Litigation

As described in Section 3.3 of Chapter I of the *Handbook*, a servicer is required to determine the accuracy of each borrower inquiry and dispute that rises to the level of an “Escalated Case” and reach a resolution. Effective immediately, this Supplemental Directive clarifies that, in the course of such a determination, if the servicer is advised by its legal counsel that the servicer cannot provide any information regarding the issues relating to the Escalated Case due to pending litigation involving the servicer and the borrower, the servicer should resolve the Escalated Case by communicating this in writing to the authorized party who filed the Escalated Case (Requestor) and providing the Requestor with the relevant litigation case name, case number and date and court of filing. The Resolution Category “Action Not Allowed – Bankruptcy in Process” will be revised to “Action Not Allowed – Litigation/Bankruptcy in Process.”

If the Requestor is the HAMP Solution Center (HSC) or MHA Help, the servicer still must obtain concurrence from either HSC or MHA Help before the case can be considered resolved and upon concurrence, use the Resolution Category of “Action not Allowed – Litigation/Bankruptcy in Process”. The “Servicer Case Resolution Form” and “Servicer Template Guide” located on HMPAdmin.com have been updated for this clarification.

HAMP Clarifications

Borrower Reconsideration

As set forth in Section 1.2 of Chapter II of the *Handbook*, a borrower who has been evaluated for HAMP but does not meet the minimum eligibility criteria or who meets such criteria but is not qualified for HAMP by virtue of a negative NPV test result, excessive forbearance or other financial reason, may request reconsideration for HAMP at a future time if such borrower experiences a change in circumstance. This Supplemental Directive clarifies that servicers must have an internal written policy which defines what the servicer considers a change in circumstance and outlines when a borrower will be re-evaluated for HAMP. Servicers may limit the number of reconsideration requests in accordance with its written policy and must apply the policy consistently for all similarly situated borrowers. The servicer’s policy must allow a borrower to request re-evaluation based on a change in circumstance at least one time. A servicer may reconsider a borrower multiple times if the borrower claims multiple changes in circumstance. In addition to the policy regarding consideration of a borrower with a change in circumstance, servicers must continue to allow a borrower to request re-evaluations based on disputed NPV inputs in accordance with existing guidance. Any determination regarding whether a change of circumstance has or has not occurred must be communicated to the borrower and documented in the mortgage file and/or servicing system.

Remaining Occupants Following Death or Divorce during a Trial Period Plan

Remaining Co-Borrower Occupant

If, during a trial period plan, a servicer learns that a co-borrower occupant has inherited sole title to the property upon the death of another co-borrower or was awarded sole title to the property through a divorce decree or other court action, the servicer must notify the remaining co-borrower occupant of the availability of the following options, subject to investor guidelines: (1) continuation of the existing trial period plan and conversion to permanent modification; (2) termination of the existing trial period plan and immediate evaluation for a new trial period plan based solely on the income of the remaining co-borrower occupant; or (3) termination of the trial period plan immediately followed by consideration of any other loss mitigation options that may be available. This notice must be provided in writing within 10 business days after the servicer learns of the death or award. If the remaining co-borrower occupant selects either option 2 or 3, the servicer must inform the co-borrower occupant in writing that there is no assurance that he or she will qualify for HAMP or, in the case of option 3, any other loss mitigation options based on any re-evaluation. In the event of death of a co-borrower, the servicer, should, when permitted under prevailing law, allow the personal representative of the estate to sign the HAMP modification documents.

Remaining Non-Borrower Occupant

If, during a trial period plan, a servicer learns that a non-borrower occupant has inherited sole title to the property upon the death of the borrower or was awarded sole title to the property through a divorce decree or other court action, the servicer must send written notice to the remaining occupant describing the requirements for assuming the note, subject to applicable law and investor guidelines, and the impact of a potential assumption on the trial period plan and the borrower's continued eligibility for assistance under MHA. Based on the amount of time required to complete the assumption, the servicer may extend the existing trial period plan or terminate the existing trial period plan and place the loan in a forbearance plan for a period the servicer deems sufficient to both complete the assumption and then re-evaluate the remaining occupant for HAMP. Servicers may not initiate or continue foreclosure proceedings during the period provided for the remaining occupant to attempt to assume the note and re-apply for HAMP.

If assumption is not permissible under applicable law or investor guidelines, the servicer must terminate the trial period plan and send written notice to the remaining non-borrower occupant of the termination and information about other loss mitigation options available.

In all cases, subject to applicable law and investor guidelines, the relevant notice must be provided in writing within 10 business days after the servicer learns of the death and inheritance or divorce and award of title. The servicer must document any assumption prohibitions, conditions and time extensions in the mortgage file and/or servicing system.

Reporting and Continued Eligibility

Whenever an existing trial period plan is terminated based on death or divorce of a borrower or co-borrower, servicers should promptly remove the loan from the HAMP Reporting Tool using trial fall-out reason code 8 – Offer Not Accepted by Borrower/Offer Withdrawn. The remaining co-borrower or non-borrower occupant who subsequently assumes an MHA eligible loan following the death or divorce of a borrower is not prohibited from participation in any MHA program.

Borrower Solicitation

Under Section 2.2 of Chapter II of the *Handbook*, a servicer must pre-screen all first lien mortgage loans where two or more payments are due and unpaid to determine if the borrowers meet the basic criteria for consideration under HAMP. If a borrower meets such basic criteria, the servicer must make a “Reasonable Effort” to solicit the borrower for HAMP. This Supplemental Directive clarifies that when a borrower who has never had a HAMP trial period plan or permanent modification cures a delinquency but later re-defaults by missing two or more payments, this is considered a new delinquency and the servicer must re-screen the borrower for HAMP eligibility and satisfy the Reasonable Effort requirement again. The Reasonable Effort requirement may be waived for borrowers who exhibit a pattern of repetitive delinquency and reinstatement if the servicer has established a written policy to identify such borrowers and applies that policy consistently for all similarly situated borrowers. Evidence of such pattern must be documented in the mortgage file and/or servicing system.

Eligibility of Non-Responsive Borrowers

Section 2.2.2 and Section 2.3.3 of Chapter II of the *Handbook* state that if a borrower fails to submit an Initial Package after a servicer has sent the two written requests asking the borrower to supply the required information needed to complete the borrower’s Initial Package, the servicer may determine the borrower to be ineligible for HAMP. This Supplement Directive amends that guidance to provide that a servicer, in such circumstances, may determine that a borrower is not currently eligible for HAMP. The effect of such a determination is to allow the servicer to commence or continue the foreclosure process as well as other non-HAMP loss mitigation alternatives. Such actions are subject to the requirements of Section 3.3 of Chapter II, that if a borrower submits a request for HAMP consideration after a foreclosure sale date has been scheduled and the request is received no later than midnight of the seventh business day prior to the foreclosure sale date (Deadline), the servicer must suspend the sale as necessary to evaluate the borrower for HAMP. Under such Section, a borrower is deemed to have requested consideration for HAMP when a complete Initial Package is received by the servicer or its foreclosure attorney/trustee prior to the Deadline.

Income and Expense Determinations

Effective immediately, this Supplemental Directive clarifies that for all adjustable rate mortgage loans, including pay option loans (i.e., loans where the borrower has an option to pay a fully amortizing monthly payment, a negative amortizing monthly payment or an interest only

payment), the servicer must evaluate the borrower for HAMP based on the maximum fully amortizing payment.

For loans that are scheduled for a rate reset more than 120 days from the evaluation date, the servicer must use the remaining term of the mortgage, the current unpaid principal balance (before capitalization) and the borrower's current scheduled fully amortizing payment (in the case of pay option loans, regardless of which payment the borrower elected to pay in the prior period) based on the current note rate.

For loans that are scheduled for a rate reset within 120 days of the evaluation date, the servicer must use the remaining term of the mortgage, the current unpaid principal balance (before capitalization) and the borrower's current scheduled fully amortizing payment (in the case of pay option loans, regardless of which payment the borrower elected to pay in the prior period) based on the reset rate.

NPV Input Data Fields and Values

Currently, the input data field for "Imminent Default Flag" in the NPV Input Data Fields and Values chart included in the *Handbook* as part of Exhibit A states that if two or more payments are due and unpaid at the end of the month in which they are due at the time of application the value of the field is "N." Effective immediately, this Supplemental Directive clarifies that the servicer must determine delinquency status as of the data collection date.

Borrower Incorrectly Denied HAMP

Section 9.5 of Chapter II of the *Handbook* describes situations where an eligible borrower successfully completed his or her trial period plan and should have been converted to a permanent modification, but for reasons beyond the borrower's control was not timely converted to a permanent modification. In those instances, the servicer is required to offer the borrower a permanent HAMP modification that puts the borrower in the same position as if converted timely.

This Supplemental Directive extends this guidance to those borrowers who were incorrectly denied a trial period plan. If a servicer determines on or after the date of this Supplemental Directive, as the result of an escalation, through the servicer's internal quality control process or through an MHA-C review, that a borrower was incorrectly denied a trial period plan, the servicer must offer the borrower a trial period plan based on the status of the borrower and loan at the time of the servicer's initial evaluation and must, to the greatest extent possible, put the borrower in the same position as he or she would have been in if the servicer had offered the borrower the trial period plan in accordance with MHA guidelines. A servicer may not back date the trial period plan to satisfy this requirement. If the servicer is unable to put the borrower in the same position as he or she would have been in if the servicer had offered the borrower the trial period plan in accordance with MHA guidelines, the servicer must document such inability in the mortgage file and/or servicing system.

Loss of Good Standing

Section 9.4 of Chapter II of the *Handbook* provides that a borrower with a permanent modification is deemed to have lost good standing if the borrower is delinquent by the equivalent of three full monthly payments at the end of the month in which the last of the three delinquent payments was due. Effective immediately, this Supplemental Directive clarifies that a servicer may not re-modify a loan that has received a HAMP permanent modification until either (i) the loan has lost good standing or (ii) more than five years have passed since the effective date of the permanent modification. Notwithstanding this prohibition, servicers may apply a principal curtailment at any time following a HAMP modification. Additionally, servicers may not refer a HAMP-modified loan to foreclosure until the loan has lost good standing.

This Supplemental Directive further amends Section 9.4 to clarify that in the event a monetary default occurs on a permanently modified loan, the servicer must work with the borrower to cure the default. If, the borrower fails to cure the default and the borrower loses good standing, the servicer must evaluate the borrower for other loss mitigation alternatives, e.g. HAFA, prior to commencing foreclosure proceedings.

Property Condition – Condemned Property

Section 1.1 of Chapter II of the *Handbook* states that a loan secured by a condemned property is not eligible for a HAMP modification. Section 11.4.2 of Chapter II of the *Handbook* appears to contradict that statement by requiring the servicer to enter “5” in the Property Condition field in the HAMP Reporting Tool if a property is condemned. Effective immediately, this Supplemental Directive eliminates the contradiction by deleting from Section 11.4.2 the requirement that a servicer enter any Property Condition code into the HAMP Reporting Tool with respect to a property that is condemned. This guidance does not change the reporting of condemned property as a reason for a loan not qualifying for a modification or trial period plan.

Investor Restriction/Investor Not Participating

Servicers are required to consider all potentially eligible borrowers for MHA programs unless specifically prohibited by the terms of an investor agreement. In making this determination, a servicer must consider the individual restrictions in the servicing or investor agreement and may not rely on general statements in a servicing or investor agreement that prohibit the taking of an action that is adverse to an investor's interest.

Section 6.5 of Chapter II of the *Handbook*, informs servicers that in the instance when investor guidelines restricts or prohibits a modification step in the standard or alternative waterfall, the servicer should partially perform or skip the restricted or prohibited step. When an investor restriction or prohibition results in non-approval of a modification the servicer must provide a written non-approval notice to the borrower in accordance with Section 2.3.2 of Chapter II of the *Handbook*. This Supplemental Directive clarifies the non-approval reason code use in the event of investor restrictions or non-participation.

If an investor is not participating in HAMP, the servicer should identify this prior to completing the waterfall analysis and NPV test and report “Investor/Guarantor not Participating” as the non-approval reason. These investors should have already submitted a current opt-out letter, or have prohibitions or restrictions in the servicing agreement that make it unfeasible to complete the HAMP waterfall evaluation (i.e., prohibition against any capitalization; a combination of restrictions related to rate reduction, term extension or forbearance; or a cap on the percentage of loans in a securitization that may be modified).

If the investor has lesser restrictions (i.e., a limitation only on interest rate reduction, term extension or forbearance), the servicer should complete the waterfall analysis subject to such restriction(s). If the target monthly mortgage payment cannot be achieved without excessive forbearance, the servicer should not conduct an NPV test and should report “Excessive Forbearance” as the non-approval reason code. The specific restriction must be documented in the mortgage file and/or servicing system.

If, despite lesser investor restrictions, the servicer is able to achieve the target monthly mortgage payment and conducts an NPV test that results in a negative outcome, the servicer should report “Negative NPV” as the non-approval reason and the specific restriction must also be documented in the mortgage file and/or servicing system.

UP Clarifications

Expiration of Unemployment Benefits

Effective immediately, this Supplemental Directive amends Section 2.2 of Chapter III of the *Handbook* with respect to the eligibility requirements for UP. Borrowers who received unemployment benefits within the six month period prior to requesting UP assistance but whose benefits have expired at the time of the UP request must be considered for an UP forbearance plan if the borrower remains unemployed.

Upon receipt of a request from an unemployed borrower who was previously denied an UP forbearance plan because at the time of the request the borrower would not be in receipt of unemployment benefits in the month of the forbearance period effective date, but had received unemployment benefits within the six month period prior to requesting UP, the servicer must re-evaluate the borrower for an UP forbearance plan.

Borrower Not Approved for HAMP After UP

Supplemental Directive 11-07 provided guidance that at the expiration of an UP forbearance plan, if a borrower has made each required forbearance payment by the last day of the month in which it was due and is subsequently determined to be ineligible for HAMP, the servicer is required to consider the borrower for all other available loss mitigation options, including, but not limited to non-HAMP modifications. Supplemental Directive 11-07 furthermore prohibits servicers from conditioning such consideration on a lump sum borrower contribution for unpaid interest and fees that accrued during the UP forbearance plan. Effective immediately, servicers may consider alternatives including, but not limited to, (i) capitalizing the arrearages and re-amortizing the new balance into a non-HAMP modification or (ii) maintaining the current

scheduled payment by extending the loan term by the equivalent of the months of delinquency. In either event, the payments due under a non-HAMP modification must be based on an assessment of the borrower's income and ability to repay.

Changes to RMA, Hardship Affidavit and Dodd-Frank Certification Forms

In an effort to reduce the paperwork burden of MHA participation, Treasury has expanded the functionality of the current MHA Request for Modification and Affidavit (RMA) form to allow it to be used effectively to request participation in any MHA program. The document has been renamed as the Request for Mortgage Assistance, retaining the acronym RMA. Additionally, the RMA incorporates the Dodd-Frank Certification, eliminating the requirement that borrowers complete and submit separate RMA and Dodd-Frank Certification forms. The new form of the RMA will be posted to HMPadmin.com and may be used immediately. Similarly, the MHA Hardship Affidavit has been amended to incorporate the Dodd-Frank Certification, eliminating the requirement that borrowers complete and submit separate Hardship Affidavit and Dodd-Frank Certification forms. The new form of the MHA Hardship Affidavit will be posted to HMPadmin.com and may be used immediately.

The stand alone Dodd-Frank Certification form has also been updated to include the borrower's date of birth and social security number. The revised form will be posted to HMPadmin.com and may be used immediately.

Interactions with Non-MHA Unemployment Assistance Programs

Section 4 of Chapter VIII of the *Handbook* states that unemployment assistance payments from a Hardest Hit Fund (HHF) program cannot be used as income when qualifying a borrower for HAMP and may not be used by an unemployed borrower to make trial period plan payments. Supplemental Directive 11-07, which is effective October 1, 2011, expands the existing guidance, to include unemployment mortgage assistance programs provided by the Emergency Homeowner's Loan Program (EHLPP) and other state unemployment mortgage assistance programs (collectively, Non-MHA Unemployment Assistance). If after a borrower is placed in a trial period plan, the servicer learns that a borrower is receiving Non-MHA Unemployment Assistance, the servicer must cancel the trial period plan. The servicer must submit Trial Fallout reason code number 19, *Unemployment Forbearance Plan*. If the borrower made timely payments during the trial period prior to receiving Non-MHA Unemployment Assistance, the borrower will be eligible for reconsideration for HAMP after the Non-MHA Unemployment Assistance 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.

HAFAs Clarifications

Eligibility Clarification

Section 2 of Chapter IV of the *Handbook* identifies eligibility criteria for HAFAs including the requirement that the borrower has a documented financial hardship wherein the borrower has represented that he or she does not have sufficient liquid assets to make the monthly mortgage payments. Effective immediately, this Supplemental Directive amends Section 2 to provide an example of a financial hardship for HAFAs. Servicemembers citing a Permanent Change of Station order as the basis for their financial hardship when requesting HAFAs are eligible even if their income has not decreased, so long as the borrower does not have sufficient liquid assets to make their monthly mortgage payments.

Notice of HAFAs Non-Approval prior to Foreclosure

Section 5 of Chapter IV of the *Handbook* gives servicers the discretion to initiate foreclosure or continue with an existing foreclosure proceeding during the HAFAs process. However, it restricts a servicer from conducting a foreclosure sale until one of several conditions has been satisfied. This Supplemental Directive adds an additional condition to the list in Section 5. In the event a borrower who has requested HAFAs consideration is determined to be not eligible, the servicer may not conduct a foreclosure sale until 5 business days after the servicer sends the notice thereof to the borrower as required in Section 4.2.

EXHIBIT A

MHA HANDBOOK MAPPING

I. NEW HANDBOOK SECTIONS

A. A new Section 3.3.5 of Chapter I is inserted in its entirety as follows:

3.3.5 Ongoing Litigation

If, in the course of determining the accuracy of an Escalated Case, a servicer is advised by its legal counsel that the servicer cannot provide any information regarding the issues related to the Escalated Case due to pending litigation involving the servicer and the borrower, the servicer should resolve the Escalated Case by communicating this in writing to the Requestor and providing the Requestor with the relevant litigation case name, case number and date and court of filing. The Resolution Category “Action not Allowed – Litigation/Bankruptcy in Process” should be used. If the Requestor is HSC or MHA Help, the servicer still must obtain concurrence from either HSC or MHA Help before the case can be resolved.

B. A new Section 8.9 of Chapter II is inserted in its entirety as follows:

8.9 Remaining Occupants Following Death and Divorce during TPP

Section 8.9.1 Remaining Co-Borrower Occupant

If during a TPP, the servicer learns that a co-borrower occupant has inherited sole title to the property upon the death of another co-borrower or was awarded sole title to the property through a divorce decree or other action, the servicer must notify the remaining co-borrower occupant of the availability of the following options, subject to investor guidelines: (1) continuation of the existing TPP and conversion to a permanent modification; (2) termination of the existing TPP and immediate evaluation for a new TPP based solely on the income of the remaining co-borrower occupant; or (3) termination of the TPP immediately followed by consideration of any other loss mitigation options that may be available. This notice must be provided in writing within 10 business days after the servicer learns of the death or award of title. If the remaining co-borrower occupant selects either option 2 or 3, the servicer must inform the co-borrower occupant in writing that there is not assurance that he or she will qualify for HAMP or, in the case of option 3, any other loss mitigation options based on any re-evaluation. In the event of the death of a co-borrower, the servicer should, when permitted under prevailing law, allow the personal representative of the estate to sign the HAMP modification documents.

Section 8.9.2 Remaining Non-Borrower Occupant

If, during a TPP, a servicer learns that a non-borrower occupant has inherited sole title to the property upon the death of the borrower or was awarded sole title to the property through a

divorce decree or other court action, the servicer must send written notice to the remaining occupant describing the requirements for assuming the note, subject to applicable law and investor guidelines, and the impact of a potential assumption on the TPP and the borrower's continued eligibility for assistance under MHA. Based on the amount of time required to complete the assumption, the servicer may extend the existing TPP or terminate the existing TPP and place the loan in a forbearance plan for a period the servicer deems sufficient to both complete the assumption and re-evaluate the remaining occupant for HAMP. Servicers may not initiate or continue foreclosure proceedings during the period provided for the remaining occupant to attempt to assume the note and re-apply for HAMP.

If assumption is not permissible under applicable law or investor guidelines, the servicer must terminate the TPP and send written notice to the remaining non-borrower occupant of the termination and information about other loss mitigation option available. In all cases, subject to applicable law and investor guidelines, the relevant notice must be provided in writing within 10 business days after the servicer learns of the death and inheritance or divorce and award of title. The servicer must document any assumption prohibitions, conditions and time extensions in the mortgage file and/or servicing system.

Section 8.9.3 Reporting and Continued Eligibility

When an existing TPP is terminated based on death or divorce of a borrower or co-borrower, servicers should promptly remove the loan from the HAMP Reporting Tool using Trial Fallout reason code number 8, *Offer Not Accepted by Borrower/Offer Withdrawn*. The remaining co-borrower or non-borrower occupant who assumes an MHA eligible loan following the death or divorce of a borrower or co-borrower is not prohibited from participating in any MHA program.

C. A new Section 3.2 of Chapter VIII is inserted in its entirety as follows:

Section 3.2 Trial Period Plans

If, after a borrower is placed in a TPP, the servicer learns that a borrower is receiving Non-MHA Unemployment Assistance, the servicer must cancel the TPP. The servicer must submit Trial Fallout reason code number 19, *Unemployment Forbearance Plan*. If the borrower made timely payments during the TPP prior to receiving Non-MHA Unemployment Assistance, the borrower will be eligible for reconsideration for HAMP after the Non-MHA Unemployment Assistance 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.

D: A new Section 9.5.2 of Chapter II is inserted in its entirety as follows:

Section 9.5.2 Incorrect Denial of TPP

If a servicer determines, as a result of an escalation, through the servicer's internal quality control process, or through an MHA-C review, that a borrower was incorrectly denied a TPP, the servicer must offer the borrower a TPP based on the status of the borrower and the loan at the time of the borrower's initial evaluation and must, to the greatest extent possible, put the borrower in the same

position as he or she would have been in if the servicer had offered the borrower the TPP in accordance with MHA guidelines. A servicer may not back date the trial period plan to satisfy this requirement. If a servicer is unable to put the borrower in the same position as he or she would have been if the servicer had offered the borrower the TPP in accordance with MHA guidelines, the servicer must document the reasons for such inability in the mortgage file and/or servicing system.

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. The second row of the chart in Section 1.7 of Chapter I is replaced in its entirety with the following text:

2MP	If not obtained in connection with related HAMP evaluation, obtain completed Dodd-Frank Certification prior to permanent 2MP modification or extinguishment	If not obtained in connection with related HAMP evaluation, obtain completed Dodd-Frank Certification prior to offering 2MP trial period plan or prior to permanent 2MP modification or, <i>prior to</i> extinguishment, as applicable.
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B. Final paragraph of Section 1.7 of Chapter I is amended to add the following text at the end of such paragraph:

The 2MP servicer may send the Dodd-Frank Certification to the borrower concurrently with the 2MP trial period offer (or permanent modification offer if no trial period is required) or, subject to applicable laws and regulations, incorporate the Dodd-Frank Certification into the 2MP permanent modification agreement, in each case, as long as the servicer clearly informs the borrower in writing that the 2MP offer is contingent upon the borrower returning the completed Dodd-Frank Certification.

C. Section 2.2 of Chapter I is amended to add the following text as the fifth and sixth bullets:

- *Written policies which define what the servicer considers a change in circumstance and when a borrower will be re-evaluated for HAMP.*
- *Written policies to identify borrowers that exhibit a pattern of repetitive delinquency and reinstatement.*

D. The penultimate bullet in Section 3.3.3 of Chapter I is replaced in its entirety with the following text:

- Action Not Allowed – *Litigation/Bankruptcy in Process*

E. The ninth row of the chart in Section 1.2 of Chapter II is replaced in its entirety with the following text:

Continued Eligibility	<p>A borrower who has been evaluated for HAMP, but does not meet the minimum eligibility criteria described in Section 1.1, or who meets the minimum eligibility criteria, but is not qualified for HAMP by virtue of a negative NPV test result, excessive forbearance or other financial reason, may request reconsideration for HAMP at a future time if they experience a change in circumstance.</p> <p><i>Servicers must have an internal written policy which defines what the servicer considers a change in circumstance and outlines when a borrower will be re-evaluated for HAMP. Servicers may limit the number of reconsideration requests in accordance with its written policy and must apply the policy consistently for all similarly situated borrowers. The servicer’s policy must allow a borrower to request re-evaluation based on a change in circumstance at least one time. A servicer may reconsider a borrower multiple times if the borrower claims multiple changes in circumstance. In addition to the policy regarding consideration of a borrower with a change in circumstance, servicers must continue to allow a borrower to request re-evaluations based on disputed NPV inputs in accordance with the guidance set forth in Section 2.3.2.1. Any determination regarding whether a change of circumstance has or has not occurred must be communicated to the borrower and documented in the mortgage file and/or servicing system.</i></p> <p>A servicer’s obligation to offer the borrower a modification is considered satisfied, and the borrower is not eligible for a subsequent offer, if either (1) the borrower received a modification and lost good standing (as defined in Section 9.4); (2) for TPPs with effective dates on or after June 1, 2010, the borrower received a TPP offer and failed to make one or more payments by the last day of the month in which it was due; or (3) for TPPs with effective dates prior to June 1, 2010, the borrower received a TPP offer and either (i) failed to make all required payments by the end of the trial period, or (ii) failed to provide all required documents by the end of the trial period.</p>
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F. The chart in Section 1.2 of Chapter II is amended to add the following as the 10th row in such chart:

<i>Borrower Incorrectly Denied</i>	<i>If a servicer determines, as the result of an escalation, through the servicer’s internal quality control process or through an MHA-C review, that a borrower was incorrectly denied a TPP, the servicer</i>
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<i>HAMP</i>	<i>must offer the borrower a TPP based on the status of the borrower and the loan at the time of the servicer's initial evaluation and must, to the greatest extent possible, put the borrower in the same position as he or she would have been in if the servicer had offered the borrower the TPP in accordance with MHA guidelines. A servicer may not back date the TPP to satisfy this requirement. If a servicer is unable to put the borrower in the same position as he or she would have been if the servicer had offered the borrower the TPP in accordance with MHA guidelines, the servicer must document the reasons for such inability in the mortgage file and/or servicing system.</i>
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G. Section 2.2.1 of Chapter II is amended to add the following text as the second paragraph of such Section:

When a borrower who has never had a TPP or permanent modification cures a delinquency but later re-defaults by missing two or more payments, this is considered a new delinquency and the servicer must re-screen the borrower for HAMP eligibility and satisfy the Reasonable Effort requirement again. The Reasonable Effort requirement may be waived for borrowers who exhibit a pattern of repetitive delinquency and reinstatement if the servicer has established a written policy to identify such borrowers and applies that policy consistently for all similarly situated borrowers. Evidence of such pattern must be documented in the mortgage file and/or servicing system.

H. The third and fourth paragraphs of Section 2.2.2 of Chapter II are amended in their entirety with the following text:

If Right Party Contact is established, but the borrower does not submit an Initial Package, the servicer must resend the Initial Package communication. Again, the servicer must include a specific date by which the Initial Package must be returned, which must be no less than 15 calendar days from the date of the second communication. If the borrower does not respond by providing an Initial Package within the required time period set forth in the second communication, the servicer may determine the borrower to be *currently* ineligible for HAMP.

If Right Party Contact is established, but the borrower submits an incomplete Initial Package within the required time period, the servicer must comply with the “Incomplete Information Notice” requirements set forth below in Section 2.3.3. If the borrower does not respond to either the 30-day Incomplete Information Notice or the 15-day Incomplete Information Notice by providing an Initial Package within the required time period, the servicer may determine the borrower to be *currently* ineligible for HAMP.

I. The penultimate sentence in the first paragraph of Section 2.3.3 of Chapter II is amended in its entirety with the following text:

If a borrower is unresponsive to these requests for documentation the servicer may discontinue document collection efforts and determine the borrower to be *currently* ineligible for HAMP.

J. Section 3.1.1 of Chapter II is amended to add the following text as the last bullet:

- *The remaining non-borrower occupant was unable to assume the note and re-apply for HAMP during the period provided for by the servicer pursuant to Section 8.9.2.*

K. The title of Section 4 of Chapter II is amended in its entirety with the following text:

4 Request for ~~Modification~~-*Modification Assistance*

L. The last bullet in Section 4 of Chapter II is amended in its entirety with the following text:

- *Dodd-Frank Certification (either as part of the RMA or as a stand alone document).*

M. The title of Section 4.1 of Chapter II is amended in its entirety with the following text:

4.1 Request for ~~Modification and Affidavit~~ *Mortgage Assistance* (RMA) Form

N. Section 6.1.2.1 of Chapter II is replaced in its entirety with the following text:

For all adjustable rate mortgage (ARM) loans, including pay option loans (i.e., loans where the borrower has an option to pay a fully amortizing monthly payment, a negative amortizing monthly payment or an interest only payment), the servicer must evaluate the borrower for HAMP based on the maximum fully amortizing payment. For loans that are scheduled for a rate reset more than 120 days from the evaluation date, the servicer must use the remaining term of the mortgage, the current unpaid principal balance (before capitalization) and the borrower's current scheduled fully amortizing payment (in the case of pay option loans, regardless of which payment the borrower elected to pay in the prior period) based on the current note rate. For loans that are ~~With respect to borrowers with adjustable rate mortgage (ARM) loans that have a rate reset~~ scheduled for a rate reset within 120 days after the date of the evaluation date (Reset ARM), the servicer must use the remaining term of the mortgage, the current unpaid principal balance (before capitalization) and the borrower's current scheduled ~~the monthly mortgage payment used to determine eligibility will be the~~ fully amortizing monthly mortgage payment (in the case of pay option loans, regardless of which payment the borrower elected to pay in the prior period) based on the ~~note reset rate using the index value as of the date of the evaluation~~ (Reset Interest Rate).

~~The borrower's current scheduled monthly mortgage payment is used to determine eligibility for adjustable rate loans that reset more than 120 days after the date of the evaluation.~~

If a borrower has an ARM or interest-only mortgage loan, the mortgage loan will convert to a fixed interest rate, fully amortizing mortgage loan. ~~For ARM loans that provide for a monthly payment option (e.g., specified minimum payment, interest only payment, 30 year fully amortizing payment or 15 year fully amortizing payment), and a rate reset is scheduled within 120 days of the date of HAMP evaluation, the payment used to calculate the 31 percent monthly~~

~~mortgage payment ratio 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. For pay option loans (i.e., loans where the borrower has an option to pay a fully amortizing monthly payment, a negative amortizing monthly payment or an interest only monthly payment), the servicer in evaluating the borrower for HAMP must use the fully amortizing monthly payment amount. For loans where servicemembers are protected by the Servicemembers Civil Relief Act and temporary interest rate caps are imposed, the servicer in evaluating the borrower for HAMP must use the full contractual rate (regardless of the interest rate cap).~~

O. Section 6.3 of Chapter II is amended to add the following language as the end second paragraph of such Section:

If an investor is not participating in HAMP or has restrictions in the applicable servicing or investor agreement that make it unfeasible to complete the modification steps enumerated below (i.e., prohibition against any capitalization, a combination of restrictions related to rate reduction, term extension or forbearance, or a cap on the percentage of loans in a securitization that may be modified), the servicer should identify this fact prior to completing such modification steps or conducting the NPV analysis described in Section 7. In such an instance, when indicating in the HAMP Reporting Tool why the borrower was not offered a TPP, the servicer should use code number 5 – “Investor/Guarantor not Participating”.

P. The first paragraph Section 6.5 of Chapter II is replaced in its entirety with the following text:

If a servicing agreement, investor guidelines or applicable law restricts or prohibits a modification step in the standard or alternative modification waterfall and the servicer partially performs it or skips it, the modification still qualifies for HAMP. If an investor has lesser restrictions (i.e., a limitation only on interest rate reduction, term extension or forbearance), the servicer should complete the modification steps subject to such restriction(s). If the target monthly mortgage payment ratio cannot be achieved without excessive forbearance, the servicer should not perform an NPV evaluation. In such an instance, when indicating in the HAMP Reporting Tool why the borrower was not offered a TPP, the servicer should use code number 12 – “Excessive Forbearance”. If, despite lesser investor restrictions, a servicer is able to achieve the target monthly mortgage payment ratio and the servicer conducts the NPV evaluation the results of which are negative, the servicer should use code number 7 – “Negative NPV” when reporting the denial of the TPP in the HAMP Reporting Tool. Servicers must maintain evidence in the loan file documenting the nature of any deviation from taking any sequential modification step in the modification waterfall.

Q. The first paragraph of Section 9.1 of Chapter II is amended to add the following text as the final sentence of such paragraph:

Each borrower that receives a HAMP permanent modification must be informed by the servicer of the borrower’s potential eligibility for a 2MP modification. The Modification Agreement Cover Letter, which is available on www.HMPAdmin.com, contains model clauses. The use of

the model clauses is optional; however, they illustrate a level of specificity that is deemed to be in compliance with language requirements of 2MP.

R. Section 9.4 of Chapter II is replaced in its entirety with the following text:

If a borrower defaults on a loan modification executed under HAMP (delinquent by the equivalent of three full monthly payments at the end of the month in which the last of the three delinquent payments was due), the loan is no longer considered to be in “good standing.” Once lost, good standing cannot be restored even if the borrower subsequently cures the default. A loan that is not in good standing is not eligible to receive borrower, servicer or investor incentives and reimbursements and these payments will no longer accrue for that loan. Furthermore, the mortgage is not eligible for another HAMP modification.

A servicer may not re-modify a loan that has received a HAMP permanent modification until either (i) the loan has lost good standing or (ii) more than five years has passed since the effective date of the permanent modification. Notwithstanding this prohibition, a servicer may apply a principal curtailment at any time following a HAMP modification. Additionally, servicers may not refer a loan with a HAMP permanent modification to foreclosure until the loan has lost good standing.

In the event a borrower defaults on the modified loan, the servicer ~~must~~ *should* work with the borrower to cure the modified loan. If this is not possible the servicer ~~must~~ *should* evaluate the borrower for any other loss mitigation alternatives, *e.g., HAFA*, prior to commencing foreclosure proceedings. In any event, a servicer cannot refer a HAMP-modified first lien to foreclosure until the loan loses good standing under HAMP.

S. The title of Section 9.5 of is deleted and such Section is re-titled “Re-Consideration of Borrowers” and immediately prior to the first paragraph in Section 9.5 the following text is added:

Section 9.5.1 Delayed Conversion

T. Section 11.4.2 of Chapter II is replaced in its entirety with the following text:

If a servicer does not have the property condition from an appraisal or BPO, the servicer should enter “3” (Fair) in the HAMP Reporting Tool, provided the property meets HAMP eligibility requirements. ~~A servicer must enter “5” if the property is condemned.~~ When a servicer enters “3” because they do not have a property condition from an appraisal or a BPO:

- The “property condition” field in the HAMP Reporting Tool may not be relied on by the servicer as a justification or presumption that the loan qualifies for HAMP and that any subsequent payout based on the information in the HAMP Reporting Tool does not constitute a waiver on the part of the investor and/or Treasury, who reserves all rights to seek reimbursement of an improper payout or repurchase of the loan in the event the property does not meet HAMP eligibility requirements; and

- The “property condition” field in the HAMP Reporting Tool may not be relied on by the investor as grounds for repurchase of the loan due to a breach of a representation and warranty related to the property condition.

U. The third row of the chart in Section 2.2 of Chapter III is replaced in its entirety with the following:

Receipt of Unemployment Benefits	<p><i>Borrowers who received unemployment benefits within the six month period prior to requesting UP assistance but whose benefits have expired at the time of the UP request must be considered for an UP forbearance plan if the borrower remains unemployed.</i></p> <p><i>Upon receipt of a request from an unemployed borrower who was previously denied an UP forbearance plan because at the time of the request the borrower would not be in receipt of unemployment benefits in the month of the forbearance period effective date but had received unemployment benefits within the six-month period prior to requesting UP, the servicer must re-evaluate the borrower for an UP forbearance plan.</i></p> <p>The borrower will receive unemployment benefits in the month of the Forbearance Period Effective Date. The borrower’s unemployment benefit eligibility need not extend for the entire duration of the UP forbearance period.</p> <p>The servicer may, pursuant to investor or regulator guidelines, require that a borrower has already received unemployment benefits for up to three months before the UP forbearance period begins.</p> <p>A borrower who has received unemployment benefits for less than the minimum time period required by the servicer may request consideration for an UP forbearance plan; however, the forbearance period will not begin until after the borrower has received unemployment benefits for the minimum time period required by the servicer.</p> <p>Servicers must have written procedures for determining when a borrower must be in receipt of up to three months of unemployment benefits and must consistently apply those procedures.</p>
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V. Section 4.7 of Chapter III is amended to add the following as the third and fourth sentences of such Section (Note – the original text that is being amended can be found in Exhibit A, Paragraph P of Supplemental Directive 11-07):

Servicers may consider alternatives including, but not limited to, (i) capitalizing the arrearages and re-amortizing the new balance into a non-HAMP modification or (ii) maintaining the current scheduled payment by extending the loan term by the equivalent of the months of delinquency. In either event, the payments due under a non-HAMP modification must be based on an assessment of the borrower’s income and ability to repay.

W. The paragraph in the sixth row of the chart in Section 2 of Chapter IV is amended to add the following text at the end thereof:

An example of such hardship includes a servicemember citing a “Permanent Change of Station” order as the basis for his or her financial hardship when requesting HAFA even if such servicemember’s income has not been decreased, so long as the servicemember does not have sufficient liquid assets to make his or her monthly mortgage payments.

X. Section 5 of Chapter IV is amended to add the following text as the second bullet:

- *Until a date that is 5 business days after the date that the servicer sends the notice under Section 4.2 that a HAFA short sale or DIL is not available*

Y. The third sentence in row 9 of the NPV Input Data Fields and Values which is part of Exhibit A to the *Handbook* is replaced in its entirety by the following text:

If two or more payments are due and unpaid by the end of the month in which they are due *as of the Data Collection Date* ~~at the time of application~~, the value in this field is “N.”