

*Supplemental Directive 13-12*

*December 10, 2013*

## ***Making Home Affordable<sup>®</sup> Program – Administrative Clarifications***

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

This Supplemental Directive provides administrative updates and clarifications to the Home Affordable Modification Program<sup>®</sup> (HAMP), the Second Lien Modification Program<sup>SM</sup> (2MP), the Home Affordable Foreclosure Alternatives<sup>®</sup> (HAFA) Program, Treasury FHA-HAMP and Rural Development-HAMP (RD-HAMP). Servicers that are subject to the terms of a Servicer Participation Agreement and related documents (SPA) must follow the guidance set forth in this Supplemental Directive. This Supplemental Directive amends and supersedes the notated portions of the *Handbook*, and except as stated herein, is effective immediately.

Except as noted herein, this guidance does not apply to mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac, or insured or guaranteed by the Veterans Administration, the Department of Agriculture's Rural Housing Service (RHS) or the Federal Housing Administration (FHA).

This Supplemental Directive covers the following topics:

- Suspension of a Referral to Foreclosure
- Reporting Requirement Beyond Five-Year Incentive Period
- HAFA<sup>®</sup> Consideration of Non-Borrowers Following Death and Divorce
- Debt to Income (DTI) Consideration for 2MP Eligibility
- Matching Second Liens to First Lien GSE Standard Modifications
- Federal Government Shutdown *Handbook* Mapping
- *Handbook* Mapping Clean-Up and Clarifications

## **Suspension of a Referral to Foreclosure**

The following guidance is effective January 10, 2014.

Under Section 3.1.1 of Chapter II of the *Handbook*, a servicer may not refer any loan to foreclosure or conduct a scheduled foreclosure sale unless and until at least one of the circumstances listed in that section exist. This Supplemental Directive provides an additional circumstance such that if the borrower submits an incomplete Loss Mitigation Application, the servicer may not refer the loan to foreclosure unless and until the later of (i) the 120<sup>th</sup> day of delinquency or (ii) at least 30 calendar days have passed since the date the servicer sent the borrower an Incomplete Information Notice as required under Section 4.5 (as amended in Supplemental Directives 13-09 and 13-11), and provided the borrower's Loss Mitigation Application remains incomplete on the date of referral.

## **Reporting Requirement Beyond Five-Year Incentive Period**

### ***Official Monthly and Other Reporting***

Section 11.3 of Chapter II of the *Handbook* provides that once a permanent modification has been set up in the HAMP Reporting Tool, servicers must begin reporting activity on a monthly basis by submitting Official Monthly Reports (OMRs) to the HAMP Reporting Tool. Section 9.2.2 of Chapter V of the *Handbook* similarly provides that once a permanent 2MP modification (with or without partial extinguishment) is reported, 2MP servicers are required to report information in the HAMP Reporting Tool on a monthly basis. In addition, Section 3.3 of Chapter VI of the *Handbook* requires servicers to provide Treasury FHA-HAMP or RD-HAMP loan level data reporting on a monthly basis after the modification is set up in the HAMP Reporting Tool.

This Supplemental Directive provides that once a permanent modification under HAMP<sup>®</sup>, Treasury FHA-HAMP or RD-HAMP has been set up in the HAMP Reporting Tool, servicers are required to report activity (including monthly OMRs, servicing transfers, corrections, etc., as appropriate) in the HAMP Reporting Tool until the earliest of the following occurs: (i) the subject loan loses good standing under the applicable MHA program, (ii) the subject loan is paid off in full, (iii) the subject loan is cancelled in the HAMP Reporting Tool, in accordance with MHA guidelines, or (iv) the subject loan is re-modified by the servicer outside of MHA. In addition, once a 2MP permanent modification has been set up in the HAMP Reporting Tool, servicers are required to report activity (including monthly OMRs, servicing transfers, corrections, etc., as appropriate) in the HAMP Reporting Tool until the earliest of the following occurs: (i) the 2MP loan loses good standing and the associated first lien either loses good standing or is paid off in full, (ii) the 2MP loan is paid off in full, (iii) the 2MP loan is cancelled in the HAMP Reporting Tool, in accordance with MHA guidelines, or (iv) the 2MP loan is re-modified by the servicer outside of MHA. Notwithstanding the foregoing, if more than five years have passed since the effective date of the 2MP modification, the servicer is not required to continue reporting on a 2MP loan that has lost good standing, even if the associated first lien is still in good standing. The HAMP Reporting Tool is being updated to accommodate reporting under this guidance.

## ***2MP Reporting Impact***

Section 9.2.2 of Chapter V of the *Handbook* requires that a 2MP servicer resume monthly reporting for the 2MP modification if the 2MP servicer is notified through the LPS matching facility that the associated first lien has been re-modified under HAMP. The 2MP modification is not eligible for further incentive payments if the first lien loan loses good standing or is paid off in full, but 2MP incentive payments will resume upon re-modification of the first lien under HAMP Tier 2 or pursuant to certain Fannie Mae or Freddie Mac (together, the Government Sponsored Enterprises (GSEs)) requirements that servicers modify first lien GSE loans using standard modification terms that are substantially similar to the modification terms for first liens modified under HAMP Tier 2 (GSE Standard Modification) and the resumption of 2MP monthly reporting. In accordance with the above, this Supplemental Directive requires 2MP servicers to continue monthly reporting for the 2MP modification while the 2MP is in good standing, regardless of the status of the first lien.

## ***Re-modifications of Loans Modified Under MHA***

As provided in Section 9.4 of Chapter II of the *Handbook*, 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. This Supplemental Directive expressly extends this guidance to 2MP such that a servicer may not re-modify a loan that has received a 2MP permanent modification until either (i) the 2MP has lost good standing or (ii) more than five years have passed since the effective date of the 2MP permanent modification.

Servicers should consult existing and future guidance issued by FHA or RHS for requirements related to eligibility, underwriting and administration of FHA-HAMP or Special Loan Servicing, respectively, and particularly as to when a servicer may re-modify a loan under these programs. Nonetheless, as provided in Section 3.2 of Chapter VI of the *Handbook*, once a borrower has defaulted on a TPP or lost good standing on a Treasury FHA-HAMP or RD-HAMP permanent modification, no incentives will be paid on any subsequent Treasury FHA-HAMP or RD-HAMP modification. Likewise, no incentives will be paid after a Treasury FHA-HAMP or RD-HAMP permanent modification is subsequently re-modified.

## ***HAFAs Consideration of Non-Borrowers Following Death and Divorce***

Section 8.8 of Chapter II of the *Handbook* provides guidance for considering non-borrowers who inherit or are awarded sole title to a property for HAMP even if the borrower was not already in a trial period plan. This Supplemental Directive extends this guidance to HAFAs, and provides that non-borrowers who inherit or are awarded sole title to a property and who decline HAMP and other home retention programs may be evaluated for HAFAs upon the non-borrower's request. The servicer is not required to solicit the non-borrower; however, upon a request initiated by the non-borrower, servicers should follow the guidance in Section 3.3 of Chapter IV of the *Handbook* as if the titleholder was the borrower.

If the non-borrower is eligible for HAFA and assumption of the loan is permitted by investor guidelines or applicable law, the servicer should process the assumption and HAFA closing contemporaneously. In connection with any assumption, servicers are reminded that they must comply with disclosure obligations under applicable law. For certain non-borrower titleholders who are not legally responsible for the mortgage debt, an assumption of the note may not be in their best interest if they do not wish to retain their homes. Therefore, the servicer must inform the non-borrower requesting consideration of the consequences of such assumption.

### **DTI Consideration for 2MP Eligibility**

Under Section 3.1 of Chapter V of the *Handbook*, borrowers are eligible for a 2MP modification if the corresponding first lien mortgage loan has received (i) a permanent HAMP modification, or (ii) a GSE Standard Modification that satisfies the specified HAMP eligibility criteria, including that the DTI ratio of the first lien modification is within the Expanded Acceptable DTI Range (as defined in Section 6.1 of Chapter II of the *Handbook*).

Separately, under Section 6.1 of Chapter II of the *Handbook*, servicers have the flexibility to select a DTI range suitable for their portfolio when modifying first lien loans under HAMP Tier 2 that is narrower than the Expanded Acceptable DTI Range (Servicer's DTI Range, as defined in Section 6.1).

This Supplemental Directive expands this flexibility to 2MP servicers and provides that a servicer may restrict 2MP eligibility to matches to first liens within the Servicer's DTI Range, or may establish a range broader than the Servicer's DTI Range, not to exceed the Expanded Acceptable DTI Range.

Notwithstanding the foregoing, a 2MP servicer may not employ a range that is narrower than the Servicer's DTI Range. Furthermore, if a 2MP servicer decides to restrict 2MP eligibility as set forth above, the servicer must apply this restriction consistently to all 2MP borrowers and document such restrictions in its written policies.

### **Matching Second Liens to First Lien GSE Standard Modifications**

Section 4.2.1 of Chapter V of the *Handbook* provides that a 2MP servicer must offer 2MP no later than 150 calendar days from "the Date of the First Match" in the first match file provided by LPS containing a match to a GSE Standard Modification. This Supplemental Directive provides that the "first match file," for purposes of complying with this guidance, was comprised of the match files that were provided by LPS in both September and October 2013 containing a match to a GSE Standard Modification.

### **Federal Government Shutdown *Handbook* Mapping**

On October 22, 2013, Treasury issued Supplemental Directive 13-10 providing guidance for assistance to borrowers adversely affected by the federal government shutdown. This Supplemental Directive provides mapping of the *Handbook* for the guidance provided in Supplemental Directive 13-10.

## ***Handbook Mapping Clean-Up and Clarifications***

The mapping attached hereto as Exhibit A includes the following clean-up and clarification items to the *Handbook*.

- Supplemental Directive 13-08 requires certain servicers to offer financial counseling to certain borrowers at no cost to the borrower and is effective March 1, 2014. However, in five instances, the *Handbook* mapping in Exhibit A references March 1, 2013. This Supplemental Directive corrects these references for March 1, 2014.
- Sections 6.7.1.1 and 6.7.2.2 of Chapter II of the *Handbook* (as added in Supplemental Directive 13-08) are amended to clarify that servicers are not required to offer a borrower the financial counseling described in Section 6.7 if the borrower has received two prior referrals to financial counseling in accordance with Section 6.7, including referrals made under both Sections 6.7.1.1 and 6.7.1.2, such that a referral made to a borrower entering a trial period plan counts towards this number.

**EXHIBIT A**  
**MHA HANDBOOK MAPPING**

**I. NEW HANDBOOK SECTIONS**

**A. A new section 6 of Chapter I is inserted as follows:**

**6 Federal Government Shutdown**

The federal government shutdown that occurred on October 1, 2013 and ended on October 17, 2013 may have impacted a borrower's ability to make scheduled trial period plan payments, or payments under a permanent modification. Borrowers who are not able to make monthly mortgage payments as a result of the government shutdown and who are (1) in the process of being evaluated for a trial period under either HAMP or 2MP; (2) in a trial period under either HAMP or 2MP; or (3) in a permanent modification under either HAMP or 2MP should be considered for a forbearance plan in accordance with industry practice and investor guidelines.

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 the government shutdown, and who has suffered a hardship, such as loss of employment, reduction in income or increase in expenses, and cannot make the monthly mortgage payments as a result of the shutdown. A servicer's obligation to offer forbearance under this Section 6 expires November 30, 2013.

Servicers should follow the guidance relating to federally declared disasters provided in Sections 5.3.1, 5.3.1.1, 5.3.1.2, 5.3.2, 5.4 and 5.5, including the guidance on late charges, exiting the forbearance plan and prohibitions on foreclosure, when offering forbearance under this Section 6 to borrowers adversely impacted by the government shutdown.

The requirement throughout this Handbook to report a "full-file" status report to the credit reporting agencies for each loan, whether under HAMP, 2MP or in forbearance, is suspended during the forbearance period for loans in a forbearance plan as a result of the federal government shutdown.

**B. A new section 3.4 of Chapter IV is inserted as follows:**

**3.4 Consideration of Non-Borrowers Following Death and Divorce**

Non-borrowers who inherit or are awarded sole title to a property and who decline HAMP and other home retention programs may be evaluated for HAFA upon the titleholder's request. The servicer is not required to solicit the non-borrower, however upon a request initiated by the non-borrower, servicers should follow the guidance in Section 3.3 as if the non-borrower was the borrower.

If the borrower is eligible for HAFA and assumption of the loan is permitted by investor guidelines or applicable law, the servicer should process the assumption and HAFA closing contemporaneously. In connection with any assumption, servicers are reminded that they must comply with disclosure obligations under applicable law. For certain non-borrower titleholders who are not legally responsible for the mortgage debt, an assumption of the note may not be in their best interest if they do not wish to retain their homes. Therefore, the servicer must inform the non-borrower requesting consideration of the consequences of such assumption.

## **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. A new paragraph is inserted at the end of Section 3.1.1 of Chapter II as follows:**

*In addition, if the borrower submits an incomplete Loss Mitigation Application, the servicer may not refer the loan to foreclosure unless and until the later of (i) the 120<sup>th</sup> day of delinquency or (ii) at least 30 calendar days have passed since the date the servicer sent the borrower an Incomplete Information Notice as required under Section 4.5, and provided the borrower's Loss Mitigation Application remains incomplete on the date of referral.*

### **B. The heading and first four sentences of Section 6.7.1.1 of Chapter II (as provided in Supplemental Directive 13-08) is amended as follows:**

#### **6.7.1.1 Borrowers Entering ~~New~~ HAMP TPPs**

Any borrower with a TPP Effective Date on or after March 1, 2013~~4~~ must be referred to financial counseling under this Section 6.7 at the start of the TPP. Servicers shall assign an employee, who understands the requirements of this Section 6.7, to serve as a “relationship manager” for purposes of this Section 6.7. In the case of servicers subject to Section 4.1 of Chapter I, such employee shall be the “relationship manager” described in such Section.

Servicers must provide written notice to borrowers entering a TPP on or after March 1, 2013~~4~~ informing them of the financial counseling services available to them and the contact information for the servicer's chosen HUD-approved housing counseling agency.

### **C. The heading and first two paragraphs of Section 6.7.1.2 of Chapter II (as provided in Supplemental Directive 13-08) is amended as follows:**

#### **6.7.1.2 Borrowers with ~~Existing~~ HAMP Permanent Modifications in Good Standing**

Each servicer must establish and maintain written guidelines and policies identifying the characteristics of borrowers in the servicer's portfolio of HAMP permanent modifications in good standing that the servicer considers to be at a high risk of re-default. Servicers must provide copies of all such guidelines and policies to Treasury and its agents upon request. At a minimum, such guidelines and policies must require a monthly review and determination, commencing on

March 1, 2013~~4~~ for each borrower in the servicer's portfolio of HAMP permanent modifications in good standing, of whether the borrower is a "Risk of Default Borrower" which is defined as a borrower (i) who is delinquent on the date of determination and (ii) who was delinquent on his or her HAMP permanent modification payment at any other time during the 12 month period preceding the determination. Servicers are encouraged to define additional borrower characteristics in their written guidelines and policies that may indicate a high risk of re-default for inclusion in the monthly determination process.

Commencing on March 1, 2013~~4~~ and each month thereafter, each servicer must identify the Risk of Default Borrowers in its portfolio and each Risk of Default Borrower must be offered financial counseling as set forth in this Section 6.7. Servicers also must offer the financial counseling described above to any borrower whose mortgage loan is in a HAMP permanent modification in good standing who contacts the servicer with concerns about their ability to make the modified mortgage payment.

**D. A new heading is added above the last paragraph of Section 6.7.1.2 of Chapter II (as provided in Supplemental Directive 13-08) as follows:**

***6.7.1.3 Satisfaction of Solicitation Requirement***

Notwithstanding the foregoing, servicers are not required to ~~offer~~~~refer~~ a borrower ~~the~~ to financial counseling *described in Section 6.7* if the borrower (i) has received two prior referrals to financial counseling in accordance with this Section 6.7 (*including any referral made under Section 6.7.1.1*) or (ii) has completed a full financial counseling engagement as described above. Servicers, however, should feel free to refer borrowers to financial counseling at any time in appropriate cases (such as changes in circumstance) despite these limitations. For purposes of this Section 6.7, a "referral" is deemed to have been made when a servicer or a HUD-approved housing counseling agency, as applicable, has satisfied the reasonable effort standard (as described above) for contacting a borrower and offering financial counseling.

**E. Section 8.1.1 of Chapter II (as provided in Supplemental Directive 13-08) is amended as follows:**

For all borrowers entering a TPP on or after March 1, 2013~~4~~, servicers must include in the envelope with the borrower's TPP Notice a notice of available servicer-funded financial counseling pursuant to Section 6.7.

**F. The first paragraph of Section 11.3 of Chapter II is amended as follows:**

Once a permanent modification has been set up, servicers must begin reporting activity on a monthly basis *in the HAMP Reporting Tool until the earliest of the following occurs: (i) the loan loses good standing, (ii) the loan is paid off, (iii) the loan is cancelled in the HAMP Reporting Tool, in accordance with MHA guidelines, or (iv) the loan is re-modified outside of MHA.* The Official Monthly Report (OMR) is due by the fourth business day each month for any permanent modification with a Modification Effective Date at least one month prior. For example, if the Modification Effective Date is July, the first loan activity report is due by the fourth business day

of August for July activity. The monthly reporting attributes are posted on www.HMPadmin.com.

**G. The second row of the table in Section 3.1 of Chapter V is amended as follows:**

<p>First lien modified under HAMP or GSE Standard Modification</p>	<p>The mortgage loan is a second lien mortgage loan with a corresponding first lien mortgage loan that has received a permanent HAMP modification, or a GSE Standard Modification that satisfies the HAMP eligibility criteria in Section 1, the <del>second</del> <i>third</i> paragraph of Section 6.1 (at the Expanded Acceptable DTI Range) and Section 6.3.3 of Chapter II, and is in good standing.</p> <p><i>If the 2MP Servicer’s DTI Range under HAMP (as provided in Section 6.1 of Chapter II) is narrower than the Expanded Acceptable DTI Range, the servicer may restrict 2MP eligibility to second lien mortgage loans with a corresponding first lien mortgage loan modified within the Servicer’s DTI Range, or a broader range not to exceed the Expanded Acceptable DTI Range; provided that the restricted range not be narrower than the Servicer’s DTI Range. If a 2MP servicer restricts 2MP eligibility in this manner, the servicer must apply this restriction consistently to all 2MP borrowers and document such restrictions in its written policies.</i></p> <p>This guidance does not apply to loans modified under the GSE Streamlined Modification process.</p>
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**H. The second paragraph of Section 4.2.1 of Chapter V is amended as follows:**

A 2MP servicer must offer 2MP no later than 150 calendar days from “The Date of First Match” in the first match file provided by LPS containing a match to a GSE Standard Modification. *The “first match file” for these purposes, is comprised of the match files that were provided by LPS in both September and October 2013 containing a match to a GSE Standard Modification.* For all subsequent match files provided by LPS, a 2MP servicer must offer 2MP no later than 60 calendar days from “The Date of First Match” in the file for the related GSE Standard Modification.

**I. Section 7.4 of Chapter V is amended as follows:**

If a borrower misses three consecutive payments at any time on his or her second lien following the execution of a 2MP modification (three monthly payments are due and unpaid on the last day of the third month), the second lien is no longer considered to be in “good standing.” A loan that is not in good standing permanently loses eligibility to receive further 2MP servicer and borrower incentives and reimbursements under the program. Undisbursed incentive payments to borrowers and 2MP servicers, even if accrued, will not be made. Once lost, good standing on the second lien cannot be restored and eligibility for incentives and interest reimbursements cannot be reclaimed, even if the borrower fully cures the delinquency or the corresponding first

mortgage lien is subsequently re-modified as described in Section 5.5. Further, the second lien is not eligible for another 2MP modification or extinguishment.

*A servicer may not re-modify a loan that has received a 2MP modification until either (i) the 2MP loan has lost good standing or (ii) more than five years have passed since the effective date of the 2MP modification.*

**J. Section 9.2.2 of Chapter V is amended as follows:**

Once a permanent 2MP modification (with or without a partial extinguishment) is reported, 2MP servicers are required to provide the following categories of information on a monthly basis to the Program Administrator:

- Loan Identifying Information
- Monthly Loan Activity

*2MP servicers are required to report activity in the HAMP Reporting Tool until the earliest of the following occurs: (i) the 2MP loan loses good standing and the associated first lien either loses good standing or is paid off, (ii) the 2MP loan is paid off, (iii) the 2MP loan is cancelled in the HAMP Reporting Tool, in accordance with MHA guidelines, or (iv) the 2MP is re-modified outside of MHA. 2MP servicers must not cease reporting for the 2MP if the first lien loan loses good standing or is paid in full. However, with respect to (i), if more than five years have passed since the effective date of the 2MP modification, the servicer is not required to continue reporting on a 2MP loan that loses good standing, even if the associated first lien is still in good standing.*

~~If the 2MP servicer is notified through the LPS matching facility that the associated first lien has been re-modified under HAMP, the 2MP servicer must resume monthly reporting for the 2MP modification in the HAMP Reporting Tool.~~

**K. Section 3.2.3 of Chapter VI is amended as follows:**

If a borrower defaults on a loan modification executed under FHA-HAMP or Special Loan Servicing (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” for purposes of Treasury FHA-HAMP or RD-HAMP, as applicable. 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 or servicer incentives and reimbursements and these payments will no longer accrue for that loan.

Furthermore, once a borrower has defaulted on a TPP or lost good standing on a Treasury FHAHAMP or RD-HAMP permanent modification, no incentives will be paid on any subsequent Treasury FHA-HAMP or RD-HAMP modification. *In addition, no incentives will be paid after a Treasury FHA-HAMP or RD-HAMP permanent modification is subsequently re-modified.* In the event a borrower defaults on the modified loan, the servicer should work with the borrower to cure the modified loan. If this is not possible, the servicer should evaluate the borrower for any other loss mitigation alternative prior to commencing foreclosure proceedings.

**L. The first paragraph of Section 3.3 of Chapter VI is amended as follows:**

Servicers are required to provide Treasury FHA-HAMP or RD-HAMP loan level data reporting to the Program Administrator at the start of the modification trial period, during the modification trial period, at loan set up of the permanent modification and monthly after the modification is set up *until the earliest of the following occurs: (i) the loan loses good standing, (ii) the loan is paid off, (iii) the loan is cancelled in the HAMP Reporting Tool, in accordance with MHA guidelines, or (iv) the loan is re-modified outside of MHA.* This data must be accurate, complete, and in agreement with the servicer's records. The loan level reporting requirements, timing, loan attributes and detailed guidelines for submitting data files are posted on [www.HMPadmin.com](http://www.HMPadmin.com). Servicers are required to submit four separate data files using the HAMP Reporting Tool.