

*Supplemental Directive 16-02**March 3, 2016****Making Home Affordable Program – MHA Program Termination and Borrower Application Sunset***

In February 2009, the Obama Administration introduced the Making Home Affordable (MHA) Program to stabilize the housing market and help struggling homeowners obtain relief and avoid foreclosure. In March 2009, the 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 January 6, 2016, Treasury issued version 5.0 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, securitized or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages). In addition, Fannie Mae and Freddie Mac (the GSEs) issued guidance with respect to the Home Affordable Modification Program (GSE HAMP) for loans owned, securitized or guaranteed by Fannie Mae and Freddie Mac (GSE Loans). Loans modified under GSE HAMP are referred to herein as GSE HAMP Loans.

On December 18, 2015, the Consolidated Appropriations Act, 2016, P.L. 114-113 was signed into law. Section 709(b) of the Act provides that the MHA Program will terminate on December 31, 2016, except with respect to certain loan modification applications made before such date. This Supplemental Directive provides guidance to servicers regarding the termination of MHA for Non-GSE Mortgages, particularly with respect to consideration and/or evaluation of borrowers who request assistance, or to whom an offer of assistance has been extended, under the Home Affordable Modification ProgramSM (HAMP[®]), the Home Affordable Unemployment ProgramSM (UPSM), the Home Affordable Foreclosure Alternatives[®] Program (HAFA[®]), the Second Lien Modification ProgramSM (2MPSM), Treasury Federal Housing Administration HAMP (Treasury FHA-HAMP) and Rural Development HAMP (RD-HAMP) prior to December 31, 2016. In addition, this Supplemental Directive provides guidance with respect to the eligibility of certain GSE HAMP Loans to receive pay-for-performance incentives through the Troubled Asset Relief Program (TARP).

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 relevant portions of the *Handbook* and, unless otherwise specified, is effective immediately.

This guidance does not apply to mortgage loans that are insured or guaranteed by the Department of Veterans Affairs, and except as noted herein, GSE Loans, or those insured or guaranteed by the Federal Housing Administration (FHA) or by the Department of Agriculture's Rural Housing Service. Servicers should look to the GSEs' respective servicing guides, announcements and bulletins for other matters relating to GSE Loans, including eligibility for and/or termination of GSE HAMP.

This Supplemental Directive covers the following topics:

- Policies and Procedures to Accommodate Deadlines
- Evidence of Borrower Submissions and Servicer Transmissions
- HAMP
- UP
- HAFA
- 2MP
- Treasury FHA-HAMP and RD-HAMP

Additional detailed guidance concerning termination of the MHA Program as well as the mapping of the *Handbook* for this Supplemental Directive will be provided in a forthcoming Supplemental Directive.

Policies and Procedures to Accommodate Deadlines

Servicers must establish or update policies and procedures to ensure that all relevant documents and information are processed in accordance with the requirements of the *Handbook*, as amended by this Supplemental Directive. Servicers should design such policies and procedures to reasonably ensure that trial period plans, extinguishments, short sales and deeds-in-lieu (DIL) of foreclosure under MHA can be converted to a permanent modification, effected or closed, as applicable, by December 1, 2017. Servicers must provide a copy of the new or updated policies and procedures to Treasury, the Program Administrator and/or MHA-C upon request.

Evidence of Borrower Submissions and Servicer Transmissions

Evidence of borrower submission referenced in this Supplemental Directive must be provided by postmark or other independent indicator such as a date and time stamp (electronic or otherwise).

In accordance with Section 2.2 of Chapter I of the *Handbook*, servicers must maintain evidence of the transmission of the offers, pre-approvals and approvals referenced in this Supplemental Directive in the servicing system and/or mortgage file.

HAMP

Eligibility

Section 1.1.1 of Chapter II of the *Handbook* provides that a borrower must submit an Initial Package (as defined in Section 4) on or before December 31, 2016 in order to be evaluated for HAMP and the Modification Effective Date must be on or before September 30, 2017. With respect to Streamline HAMP, the borrower is not required to submit an Initial Package, however, the Modification Effective Date of the loan must be on or before September 30, 2017.

This Supplemental Directive revises the current guidance such that a borrower must submit an Initial Package on or before December 30, 2016 in order to be considered for HAMP Tier 1 or

HAMP Tier 2. With respect to Streamline HAMP, servicers should continue to make offers as provided in the *Handbook* through December 30, 2016. To be eligible for an offer under Streamline HAMP on and after December 31, 2016, a borrower must have submitted at least one component of a Loss Mitigation Application (as defined in Section 4) on or before December 30, 2016 for which the servicer has not sent a Non-Approval Notice. In all cases—whether HAMP Tier 1, HAMP Tier 2 or Streamline HAMP—the Modification Effective Date must be on or before December 1, 2017.

Borrower Solicitation

Section 2.2 of Chapter II of the *Handbook* requires servicers to pre-screen all first lien mortgage loans where two or more payments are due and unpaid to determine if they meet the following basic criteria for consideration under HAMP and must proactively solicit any borrower whose loan passes this pre-screen. In addition, servicers must satisfy the “Reasonable Effort” requirement (described in Section 2.2.1) to solicit each borrower who passes the pre-screen over a period of at least 30 days. Effective September 1, 2016, this Supplemental Directive provides that servicers are no longer required to proactively solicit nor satisfy the Reasonable Effort standard with respect to any borrower who becomes eligible for HAMP after such date. Nonetheless, a borrower who submits an Initial Package on or before December 30, 2016 must be evaluated for HAMP, provided that such borrower meets all applicable eligibility criteria set forth in Section 1 of Chapter II.

Section 2.2 of Chapter II of the *Handbook* also requires that a servicer solicit borrowers for general assistance under the MHA Program and that such solicitation efforts must include written communication clearly describing HAMP, but may also identify other options potentially available to help the borrower cure the delinquency and retain homeownership. In addition, Section 2.3.1 of Chapter II requires servicers to include the telephone number for the HOPE™ Hotline on all borrower notices. This Supplemental Directive amends the current guidance such that, effective September 1, 2016, servicers are no longer required to include references specific to MHA or MHA related programs, pay for performance incentives, or MHA logos or branding, in written solicitation materials sent to borrowers. However, servicers must retain references to the HOPE™ Hotline number and, if requested by a borrower, provide the RMA (or other proprietary financial information form substantially similar in content to the RMA and, if not included, a Hardship Affidavit and Dodd-Frank Certification).

Section 2.2.2 of Chapter II of the *Handbook* provides that if Right Party Contact is established but a borrower does not submit any documents in response to the Initial Package communication, the servicer must resend the Initial Package communication or a written notice that references the Initial Package communication and contains instructions for obtaining a replacement Initial Package. This Supplemental Directive provides that, effective September 1, 2016, servicers may, but are not required, to send a second Initial Package communication (or written notice in lieu thereof) to a borrower with whom Right Party Contact is established but who does not submit any documents in response to the Initial Package communication.

Evaluation of Streamline HAMP-Eligible Borrowers upon Submission of an Initial Package

Section 4.6.2.2 of Chapter II of the *Handbook* states that a borrower who completes an Initial Package after a Streamline HAMP Offer is sent, but has not yet accepted the offer and the period for acceptance has not yet expired, must be evaluated for HAMP Tier 1 and/or HAMP Tier 2 and other modification alternatives in accordance with Section 4.6.1 of Chapter II.

In addition, Section 4.6.2.3 of Chapter II of the *Handbook* establishes that a borrower who completes an Initial Package after accepting a Streamline HAMP trial period plan, but prior to the servicer's mailing of the Streamline HAMP Documents to such borrower for signature, must be evaluated for HAMP Tier 1 and/or HAMP Tier 2, as applicable.

This Supplemental Directive provides that, on and after December 31, 2016, servicers may, but are not required to, consider a borrower for HAMP Tier 1 and Tier 2 who submits an Initial Package on or before December 30, 2016 and has either (i) already accepted a Streamline HAMP Offer, or (ii) is in receipt of a Streamline HAMP Offer that has not yet been accepted and for which the acceptance period has not yet expired.

Automatic Evaluation upon Trial Period Plan Default

Section 2.2 of Chapter II of the *Handbook* provides that, with respect to borrowers who default on a HAMP Tier 1 trial period plan after June 1, 2012, servicers may, but are not required to, automatically evaluate such borrowers for HAMP Tier 2 prior to sending a Non-Approval Notice. This Supplemental Directive revises the current guidance such that, with respect to borrowers who default on a HAMP Tier 1 trial period plan on or after December 31, 2016, servicers may, but are not required to, automatically evaluate such borrowers for HAMP Tier 2 within 30 calendar days of the default and prior to sending a Non-Approval Notice, unless the servicer has reason to believe that the income documentation or property valuation used to decision the borrower for HAMP Tier 1 is no longer accurate. If the servicer has reason to believe that such information is no longer accurate, the servicer may not evaluate the borrower for HAMP Tier 2 and must note such reason in the mortgage file and or servicing system.

In addition, Sections 1.2 and 8.3 of Chapter II of the *Handbook* provide that a borrower who receives a HAMP Tier 1 or HAMP Tier 2 modification may receive a Streamline HAMP modification of the same loan and, more specifically, that a borrower who fails to make current trial period payments for a HAMP Tier 1 trial period plan may be eligible for Streamline HAMP if Streamline HAMP eligibility and underwriting criteria are satisfied. This Supplemental Directive grants servicers the ability, subject to Streamline HAMP eligibility requirements, to extend Streamline HAMP offers to borrowers who default on a HAMP Tier 1 or HAMP Tier 2 trial period plan on or after December 31, 2016, provided that the servicer's decision to offer Streamline HAMP to such borrowers is specified in its Streamline HAMP Policy and the modification has a Modification Effective Date on or before December 1, 2017.

“Pay for Performance” Incentive for GSE HAMP Loans under a GSE Amended SPA

Section 13.2.4 of Chapter II of the *Handbook* provides that borrowers with GSE HAMP Loans are eligible to earn a \$5,000 pay for performance incentive with respect to the Sixth Anniversary Date, provided that certain requirements are met as of such date. This Supplemental Directive establishes the additional requirement that in order to be eligible for payment of such incentive under a GSE Amended SPA, the borrower’s loan modification application (as defined by the respective GSE) with respect to its modification under GSE HAMP be submitted on or before December 30, 2016.

UP

Eligibility

Section 2.1 of Chapter III of the *Handbook* requires that a servicer evaluate a borrower or co-borrower who is unemployed and requests assistance under HAMP for an UP forbearance plan and, if qualified, must offer such a forbearance plan to such borrower or co-borrower. This Supplemental Directive amends this requirement by allowing servicers to consider borrowers for a proprietary forbearance plan in lieu of an UP forbearance plan beginning May 1, 2016. Servicers shall document its decision to offer a proprietary forbearance plan in lieu of UP and the date from which it will offer it.

Request for UP Forbearance

Sections 2.1 and 4.1 of Chapter III of the *Handbook* provide that, in order to be eligible for UP, the borrower must have submitted a request (phone, mail, fax or e-mail) for UP on or before December 31, 2016. This Supplemental Directive amends this guidance by stating that in order to be eligible for UP the borrower must have submitted such a request on or before a date determined by the servicer and documented in the servicer’s policy (which shall be no earlier than May 1, 2016) and in any event on or before December 30, 2016. In addition, this Supplemental Directive introduces the requirement that, in order for a borrower to be eligible for UP, the servicer must offer the borrower a forbearance plan under the program on or before December 30, 2016. This Supplemental Directive further requires that servicers must provide borrowers who enter an UP forbearance plan after May 1, 2016 with verbal or written notification of the loss mitigation solutions that may be available once the UP forbearance plan terminates.

Protections against Unnecessary Foreclosure

Section 3.1 of Chapter III of the *Handbook* prohibits servicers from referring any loan to foreclosure or conducting a scheduled foreclosure sale in the circumstances set forth therein. This Supplemental Directive expands such guidance, such that if in accordance with the guidance outlined in this Supplemental Directive the servicer opts to consider the borrower for a proprietary forbearance plan in lieu of an UP forbearance plan, the servicer may not refer such loan to foreclosure or conduct a scheduled foreclosure sale in the circumstances set forth in Section 3.1. References to “UP” and the “Forbearance Plan Notice” in Section 3.1 shall be construed as references to the proprietary forbearance plan and the offer or extension of the proprietary forbearance plan, as the case may require.

Consideration of Borrowers for HAMP after Forbearance

Section 5.1 of Chapter III of the *Handbook* states that borrowers should be considered for a HAMP modification following re-employment or expiration of the forbearance period in the circumstances set forth in Section 5.1. This Supplemental Directive amends such guidance by providing that servicers may not consider borrowers for HAMP who, on or after December 31, 2016, complete an UP forbearance plan, become reemployed, or request to be considered for other loss mitigation alternatives, except in the case of borrowers who have submitted either an Initial Package (in the case of HAMP Tier 1 or HAMP Tier 2) or at least one component of a Loss Mitigation Application (in the case of Streamline HAMP), in either case on or before December 30, 2016.

HAFAs

Eligibility

Section 2 of Chapter IV of the *Handbook* provides that in order for a loan to be eligible for HAFAs, the borrower must have submitted a request (phone, mail, fax or e-mail) for consideration for a short sale or DIL or, before pre-approval of a HAFAs short sale, written request for approval of an executed sales contract on or before December 31, 2016. This Supplemental Directive amends this guidance by providing that in order for a loan to be eligible for HAFAs, (a) the borrower must have submitted such a request (where a request is applicable) on or before a date determined by the servicer and specified in servicer's HAFAs Policy (which shall be no earlier than September 1, 2016) and (b) for all offers of HAFAs, the servicer must have sent to the borrower on or before December 30, 2016:

- the short sale notice containing the pre-approval of a HAFAs short sale or DIL of foreclosure;
- the offer of a DIL of foreclosure transaction; or
- the approval of an executed sales contract for a short sale.

Section 2 of Chapter IV of the *Handbook* also specifies that the transaction closing date under HAFAs must be on or before September 30, 2017. This Supplemental Directive amends this guidance to provide that the closing date for a transaction under HAFAs must be on or before December 1, 2017.

Borrower Solicitation

Section 4 of Chapter IV of the *Handbook* requires a servicer to send written notification of the availability of HAFAs to a borrower who is eligible for HAFAs and has not requested a short sale or DIL. Effective September 1, 2016, this Supplemental Directive provides that servicers are no longer required to proactively send written notification of the availability of HAFAs to a borrower who becomes eligible for HAFAs after such date.

2MP

Eligibility

Section 3.1 of Chapter V of the *Handbook* provides that in order for a loan to be eligible for 2MP, the servicer must receive notification of a match with a permanent first lien modification under HAMP, or a GSE Standard Modification that satisfies the applicable HAMP eligibility criteria and the 2MP Modification Effective Date is on or before September 30, 2017. This Supplemental Directive amends such guidance to require that the borrower must have submitted an Initial Package (in the case of HAMP) or a loan modification application (in the case of GSE HAMP) for the corresponding first lien permanent modification on or before December 30, 2016, and the servicer must receive notification of such match to a first lien permanent modification in the Black Knight Financial Technology Solutions, LLC (Black Knight) match file on or before March 31, 2017. Servicers may continue to reasonably conclude that when a first lien appears on the Black Knight match file as permanently modified it satisfies such eligibility criteria. This Supplemental Directive also amends such guidance to provide that the 2MP Modification Effective Date and the date for any partial or full extinguishment of the second lien must be on or before December 1, 2017.

In addition, as described in Section 4.1.2 and 4.2.2 of Chapter V of the *Handbook*, servicers have discretion to offer and report a 2MP modification, even if the match is not confirmed through Black Knight, provided that the corresponding first lien meets the relevant eligibility criteria.

Servicers should use good business judgement to offer 2MP modifications after March 31, 2017. If a 2MP trial period cannot be converted to a permanent 2MP modification on or before December 1, 2017, servicers are encouraged to offer a proprietary second lien modification to the borrower. However, any such proprietary second lien modification is not eligible for incentive compensation under 2MP.

Program Cut-off Date for 2MP Offers based on GSE Standard Modifications

This Supplemental Directive amends the eligibility for 2MP based on GSE Standard Modifications by requiring that in order for a 2MP modification or extinguishment to be based on a match with a GSE Standard Modification, the servicer must have offered the borrower the 2MP trial period plan, a 2MP permanent modification or a 2MP partial or full extinguishment of the second lien on or before December 30, 2016.

Treasury FHA-HAMP and RD-HAMP

Sections 2.1 and 2.2 of Chapter VI of the *Handbook* state that in order to be eligible for incentive compensation under Treasury FHA-HAMP and RD-HAMP, respectively, a written request for modification assistance must be made by the borrower on or before December 31, 2016 and the effective date of the permanent modification must be on or before September 30, 2017. This Supplemental Directive amends this guidance by requiring that such written request must be made by the borrower on or before December 30, 2016 and the effective date of the permanent modification must be on or before December 1, 2017.