

Supplemental Directive 10-10

September 17, 2010

Home Affordable Modification Program – Modifications of Loans Guaranteed by the Rural Housing Service

In Supplemental Directive 09-01, the Treasury Department (Treasury) announced the eligibility, underwriting and servicing requirements for the Home Affordable Modification Program (HAMP). Under HAMP, servicers apply a uniform loan modification process to provide eligible borrowers with sustainable monthly payments for their first lien mortgage loans. At that time, loans insured, guaranteed or held by a federal government agency such as the Department of Agriculture's Rural Housing Service (RHS) were addressed as potentially eligible for modification under HAMP.

In August 2010, RHS published its final rule (Final Rule)¹ providing guidance for certain modifications to loans in its Single Family Housing Guaranteed Loan Program (referred to as Special Loan Servicing). Similar to the Treasury program, Special Loan Servicing provides a borrower with an affordable monthly payment equal to 31 percent of his or her monthly gross income and requires the borrower to complete a trial payment plan before the loan is permanently modified. The effective date of the Final Rule is September 24, 2010.

This Supplemental Directive provides guidance on pay-for-performance compensation for borrowers and pay-for-success compensation for servicers from Treasury for RHS-guaranteed first lien mortgages that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages) that are modified pursuant to the Final Rule on or after September 24, 2010 (RD-HAMP). This guidance is being issued as a new Chapter VI, *Government Loans*, of the *Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages (Handbook)*, which also incorporates and supersedes in its entirety the guidance related to Treasury FHA-HAMP issued in Supplemental Directive 10-03. The effective date of Treasury FHA-HAMP of August 15, 2009 remains unchanged.

I. NEW HANDBOOK CHAPTER

The text below is being inserted in its entirety as Chapter VI of the *Handbook*. The substance of Supplemental Directive 10-03 has not changed; however, revisions were made to conform that guidance to the *Handbook*. Text that was not included in Supplemental Directive 10-03 is

¹ The Final Rule was published at 75 Fed. Reg. 52,429 (August 26, 2010).

indicated in italics. Text that is lined through has been deleted from the Supplemental Directive 10-03.

CHAPTER VI – GOVERNMENT LOANS

1 Introduction

Both FHA and RHS have implemented programs to provide eligible borrowers with sustainable mortgage payments through modification of FHA-insured or RHS-guaranteed first lien mortgage loans in a manner complementary to HAMP. Similar to HAMP, each of these programs provides a borrower with an affordable monthly mortgage payment equal to 31 percent of his or her monthly gross income and requires the borrower to complete a trial payment plan before the loan is permanently modified. If the FHA-insured or RHS-guaranteed mortgage loan meets Treasury’s eligibility criteria, the borrower is eligible for pay-for-performance compensation and the servicer is eligible for pay-for-success compensation from Treasury.

2 Eligibility and Underwriting

2.1 Treasury FHA-HAMP

In July 2009, FHA launched FHA-HAMP through Mortgagee Letter 2009-23. The effective date of FHA-HAMP was August 15, 2009. The guidance in Mortgagee Letter 2009-23, including any attachments and Questions and Answers, and Mortgagee Letters 2009-35, 2009-39, 2010-04 and 2010-11, are incorporated by reference into this *Handbook*. Servicers should consult only these Mortgagee Letters and other existing or future guidance issued by FHA for requirements related to eligibility, underwriting and administration of FHA-HAMP (hereafter referred to as FHA-HAMP Mortgagee Letters), with the exception of the specific requirements of Treasury FHA-HAMP *set forth in this Handbook*. In addition to any guidance provided by FHA, to be eligible for Treasury FHA-HAMP, the first lien mortgage loan must have been originated on or before January 1, 2009 and the servicer must be in receipt of the borrower’s first trial payment by December 31, 2012.

2.2 RD-HAMP

In August 2010, RHS published its Final Rule providing guidance for Special Loan Servicing modifications to RHS-guaranteed loans. The guidance in the Final Rule is incorporated by reference into this Handbook. Servicers should consult the Final Rule and other existing or future guidance issued by RHS for requirements related to eligibility, underwriting and administration of Special Loan Servicing, with the exception of the specific requirements of RD-HAMP. In addition to any guidance provided by RHS, to be eligible for RD-HAMP, all borrowers must execute a Hardship Affidavit (as described in Section 4.1.1 of Chapter II), the first lien mortgage loan must have been originated on or before January 1, 2009, and the servicer must be in receipt of the borrower’s first trial payment by December 31, 2012.

3 Participation, Incentive Compensation, Treasury Reporting Requirements, Compliance

3.1 Participation

Participation in Treasury FHA-HAMP *or* RD-HAMP requires execution of a SPA on or before October 3, 2010. Servicers that previously executed a SPA are required to execute an Amended or Restated SPA or an additional Service Schedule that includes Treasury FHA-HAMP *or* RD-HAMP, as applicable. Servicers may execute a SPA that is applicable only to Treasury FHA-HAMP *or* RD-HAMP loans without the obligation to apply HAMP to *other loans that they service*. See Chapter I for the servicer participation requirements.

3.2 Incentive Compensation

Borrowers and servicers are eligible for incentive compensation under Treasury FHA-HAMP *and* RD-HAMP. *The Program Administrator will make incentive payments to the servicer via wire transfer in a consolidated fashion and will provide detailed loan-level accounting for incentives on a monthly basis. Upon receipt of such incentive compensation, each servicer must promptly apply or remit, as applicable, all borrower and investor compensation with respect to any modified loan. MHA-C will monitor to ensure that borrower pay-for-performance incentive payments are applied to borrower accounts in accordance with program guidelines.*

With respect to payment of any incentive that is predicated on a six percent reduction in the borrower's monthly mortgage payment, the reduction will be calculated by comparing the monthly mortgage payment used to determine eligibility (as defined in Section 6.1.2 of Chapter II)² and the borrower's payment under FHA-HAMP *and* Special Loan Servicing.

No incentives of any kind will be paid if:

- The servicer has not executed the SPA;
- *The servicer has reached its Program Participation Cap, as discussed in Section 1.5 of Chapter I;*
- The borrower does not meet the basic eligibility qualifications for FHA-HAMP and Treasury FHA-HAMP *or* Special Loan Servicing *and* RD-HAMP, *as applicable;*
- The borrower is no longer in good standing *or* the loan has been paid in full; *or*
- *The loan has not been reported to the Program Administrator through the HAMP Reporting Tool.*

3.2.1 Servicer Incentive Compensation

If a particular borrower's monthly mortgage payment is reduced through FHA-HAMP *or* Special Loan Servicing by six percent or more, a servicer will receive an annual pay-for-success fee for a period of three years. The fee will be equal to the lesser of:

- \$1,000 (\$83.33/month); *or*
- One-half of the reduction in the borrower's annualized monthly payment.

² For Treasury FHA-HAMP this will also include mortgage insurance.

The pay-for-success fee will be payable annually for each of the first three years after the anniversary of the first trial payment due date under FHA-HAMP or *Special Loan Servicing*, as long as the loan is in good standing and *has not been paid in full at the time the incentive is paid*.

If the loan ceases to be in good standing or is paid in full, the servicer will forfeit any incentive payments that have accrued but are unpaid and will cease to be eligible for any further incentive payments after that time, even if the borrower subsequently cures his or her delinquency.

3.2.2 Borrower Incentive Compensation

Borrowers whose monthly mortgage payment is reduced through FHA-HAMP or *Special Loan Servicing* by six percent or more and who make timely monthly payments will earn an annual pay-for-performance principal balance reduction payment equal to the lesser of:

- \$1,000 (\$83.33/month); or
- One-half of the reduction in the borrower's annualized monthly payment for each month a timely payment is made.

The pay-for-performance principal balance reduction payment will accrue for each month in which the borrower makes current payments. The payment will be payable annually for each of the first five years after the anniversary of the first trial payment due date under FHA-HAMP or *Special Loan Servicing* occurred as long as the loan is in good standing and *has not been paid in full at the time the incentive is paid*.

For example, if the borrower is current and makes 10 out of 12 payments on time, he or she will be credited for 10/12 of the annual incentive payment as long as the loan is in good standing and has not been paid in full at the time the annual incentive is paid. A borrower whose loan is delinquent on a rolling 30- or 60-day basis will not accrue annual incentive payments.

This payment will be paid to the mortgage servicer to be applied first towards reducing the interest-bearing UPB on the mortgage loan and then to any principal forbearance amount (if applicable). *In the event the borrower is delinquent, but still in good standing, the borrower's incentive payment should continue to be applied as a curtailment to the interest-bearing UPB.*

If the loan ceases to be in good standing or is paid in full, the borrower will forfeit any incentive payments that have accrued but are unpaid and will cease to be eligible for any further incentive payments after that time, even if the borrower subsequently cures his or her delinquency.

Pay-for-performance principal balance reduction payments are excluded from gross income for tax reporting purposes.

3.2.3 Re-default and Loss of Good Standing

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.

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.

3.3 Treasury Reporting Requirements

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. 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. Servicers are required to submit four separate data files using the HAMP Reporting Tool.

The Treasury FHA-HAMP Data Dictionary, accessible on www.HMPAdmin.com, provides details of all the data fields that must be reported for Treasury FHA-HAMP. *For RD-HAMP, servicers will be required to report the majority of the data fields in the Treasury FHA-HAMP Data Dictionary. However, certain data fields may be optional or the values modified to accommodate RD-HAMP loans.*

A reporting and payment process will be available in September 2010 for Treasury FHA-HAMP and in 2011 for RD-HAMP. *In addition, a new Data Dictionary for RD-HAMP will be available on www.HMPAdmin.com prior to the reporting and payment process being deployed. Treasury FHA-HAMP and RD-HAMP servicers should begin using the applicable reporting process as soon as feasible upon notification of its availability, but in no event later than 60 days from notification of system availability.*

Incentive compensation will accrue as described in Section 3.2.1 for servicers and 3.2.2 for borrowers for all Treasury FHA-HAMP *and RD-HAMP* modifications. However, servicer and borrower incentive payments will be made only following implementation of the reporting and payment processes and the servicer commencing reporting.

3.4 Compliance

Treasury has agreed with FHA *and RHS* that each has specific responsibilities to ensure program compliance *as described in Section 2.4 of Chapter I*.

END OF NEW CHAPTER

II. CONFORMING CHANGES TO EXISTING HANDBOOK CHAPTERS

The following guidance amends and supersedes the notated portions of the *Handbook*:

- A. **The Handbook Foreword** – is replaced in its entirety with the following text. New text is indicated in italics. Text that is lined through has been deleted from the *Handbook*.

In February 2009, the Obama Administration introduced the Making Home Affordable Program, a plan to stabilize the housing market and help struggling homeowners get relief and avoid foreclosure. In March 2009, the Treasury Department (Treasury) issued uniform guidance for loan modifications across the mortgage industry and subsequently updated and expanded that guidance in a series of policy announcements.

The Making Home Affordable Program Handbook for Servicers of Non-GSE Mortgages (Handbook) is intended to provide a consolidated resource for programmatic guidance related to the MHA Program for mortgage loans that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages). Servicers of mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac should refer to any relevant guidance issued by the applicable GSE.

This *Handbook* incorporates and supersedes in their entirety the following Supplemental Directives (SDs), as well as related frequently asked questions (FAQs) and waivers: SD 09-01; 09-02; 09-03; 09-04; 09-06; 09-07; 09-08; 09-10; 10-01; 10-02; ~~10-03~~; 10-04; *and 10-10*. In addition, this *Handbook* incorporates and supersedes in its entirety the guidance set forth in SD 10-05 under the headings “Servicer Safe Harbor” and “Treatment of Principal Forbearance in HAMP.” Should a servicer identify a discrepancy between this *Handbook* and a previously issued SD, FAQ or waiver, the servicer should rely on the guidance in this *Handbook*. Unless otherwise noted, each reference to a “Section” in a Chapter of this *Handbook* is a reference to the applicable Section of that Chapter.

This *Handbook* will be expanded in the near future to include policy guidance on related programs, including the Home Affordable Foreclosure Alternatives Program, the Second Lien Modification Program *and* Principal Reduction Alternative ~~and Treasury FHA-HAMP~~. Until such expansion, the relevant SDs, FAQs and waivers apply, and any references in such documents to guidance that has been incorporated into this *Handbook* are deemed to refer to the applicable Chapter and Section of this *Handbook* containing such guidance. This *Handbook* constitutes Program Documentation under the Servicer Participation Agreement and is incorporated by reference into the Servicer Participation Agreement.

This *Handbook* will be updated periodically with new policy or procedural changes as they are announced. Questions about the *Handbook* or compliance with *Handbook* guidance should be referred to the Program Administrator and the Compliance Agent, respectively. Fannie Mae serves as the Program Administrator and Freddie Mac serves as the Compliance Agent, each in its capacity as financial agent of the United States (as designated by Treasury).

B. In the Handbook Overview Section, Chapter VI: Government Loans - is replaced in its entirety with the following text. New text is indicated in italics. Text that is lined through has been deleted from the *Handbook*.

Chapter VI: Government Loans

Mortgage loans insured or guaranteed by a federal government agency, such as the Federal Housing Administration (FHA), the Department of Veterans Affairs (VA) or the Department of Agriculture's *Rural Housing Service (USDARHS)*, are eligible for modification under HAMP to the extent the applicable agency has issued HAMP guidance.

FHA announced FHA-HAMP to provide assistance to borrowers with FHA-insured loans who are unable to meet their mortgage payments. Treasury FHA-HAMP provides pay-for-performance compensation for borrowers and pay-for-success compensation to servicers for FHA-insured first lien Non-GSE Mortgages that are modified under FHA-HAMP on or after August 15, 2009. For specific guidance related to eligibility, underwriting and administration of FHA-HAMP, servicers should consult the guidance issued by FHA in Mortgagee Letter 2009-23 and other existing or future guidance issued by FHA.

~~This Handbook does not currently include policy guidance regarding Treasury FHA-HAMP, but it will be expanded to include such guidance in the near future. Until such time, servicers should comply with SD 10-03 as well as any related FAQs and waivers.~~

RHS announced Special Loan Servicing to provide assistance to borrowers with Single Family Housing Guaranteed Loan Program loans who are unable to meet their mortgage payments. RD-HAMP provides pay-for-performance compensation for borrowers and pay-for-success compensation for servicers for RHS-guaranteed first lien Non-GSE Mortgages that are modified under Special Loan Servicing on or after September 24, 2010. For specific guidance related to eligibility, underwriting and administration of Special Loan Servicing, servicers should consult the final rule published by RHS (75 Fed. Reg. 52,429 (August 26, 2010)) (Final Rule) and other existing or future guidance issued by RHS.

VA announced VA-HAMP to provide assistance to borrowers with VA guaranteed loans who are unable to meet their mortgage payments. Treasury does not provide incentive compensation related to VA-HAMP. For specific guidance related to eligibility, underwriting and administration of VA-HAMP, servicers should consult the guidance issued by VA in Circular 26-10-6 and other existing or future guidance issued by VA.

C. In the Handbook Overview Section, Supplemental Directives – is replaced in its entirety with the following text. New text is indicated in italics.

For reference purposes, a list of the SDs incorporated in and superseded by the guidance in this Handbook is provided in the following table.

SD	Issue Date of SD	Effective Date of SD	Title of SD
09-01	April 6, 2009	April 6, 2009	Introduction to the Home Affordable Modification Program
09-02	April 21, 2009	April 21, 2009	Fair Housing Obligations Under the Home Affordable Modification Program
09-03	July 6, 2009	July 6, 2009	Trial Period Guidance
09-04	July 31, 2009	September 1, 2009	Home Price Decline Protection Incentives
09-06	September 11, 2009	December 1, 2009	Data Collection and Reporting Requirements Guidance
09-07	October 8, 2009	October 8, 2009/ March 1, 2010	Streamlined Borrower Evaluation Process
09-08	November 3, 2009	January 1, 2010	Borrower Notices
09-10	December 23, 2009	December 23, 2009	Temporary Review Period for Active Trial Modifications Scheduled to Expire on or before January 31, 2010
10-01	January 28, 2010	June 1, 2010	Program Update and Resolution of Active Trial Modifications
10-02	March 24, 2010	June 1, 2010	Borrower Outreach and Communication
<i>10-03</i>	<i>March 26, 2010</i>	<i>August 15, 2009</i>	<i>Modifications of Loans Insured by the Federal Housing Administration (FHA)</i>
10-04	May 11, 2010	August 1, 2010	Home Affordable Unemployment Program
<i>10-10</i>	<i>September 17, 2010</i>	<i>September 24, 2010</i>	<i>Modifications of Loans Guaranteed by the Rural Housing Service</i>

D. Section 1.1 of Chapter I - is replaced in its entirety with the following text. New text is indicated in italics. Text that is lined through has been deleted from the *Handbook*.

To participate in MHA for Non-GSE Mortgages, the servicer must register and execute a Servicer Participation Agreement, ~~and~~ related documents, *and, if applicable, one or more Service Schedules (SPA)* with the Program Administrator on or before October 3, 2010. The SPA governs servicer participation in MHA for all Non-GSE Mortgages.

The entity that has the direct contractual obligation to the investor to perform the servicing functions is the entity that will formally elect to participate in MHA by signing the SPA. This entity will sign the SPA regardless of whether (i) it has engaged one or more subservicers to perform some or all of the servicing functions on its behalf or (ii) it is subject to oversight by a master servicer that does not have a direct contractual obligation to the investor to perform the servicing functions. If the entity that signed the SPA sub-contracts out any portion of its responsibilities as a servicer to another party, the entity that signed the SPA will be liable for the acts and omissions of the sub-contracted party under the SPA.

MHA reflects usual and customary industry standards for mortgage loan modifications, short sales and DILs contained in typical servicing agreements, including pooling and servicing agreements (PSAs) governing private label securitizations. Participating servicers are required to consider all eligible mortgage loans for Services (as defined in the SPA) unless prohibited by the rules of the applicable PSA and/or other investor servicing agreements. As further described in Section 1.3, participating servicers are required to use reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties in order to carry out the requirements of the SPA.

E. A new Section 2.4 of Chapter I - is added incorporating Treasury FHA-HAMP and RD-HAMP into compliance responsibilities. Text that was not included in Supplemental Directive 10-03 is indicated in italics.

2.4 Treasury FHA-HAMP and RD-HAMP Compliance

FHA, *RHS* and Treasury have agreed that each will perform certain compliance activities for loans modified under Treasury FHA-HAMP *and RD-HAMP as described in Chapter VI*. FHA *and RHS, as applicable*, will:

- *Validate that each modified loan is an eligible mortgage loan under the eligibility criteria set forth in Section 2.1 of Chapter VI and FHA-HAMP Mortgagee Letters or Section 2.2 of Chapter VI and the Final Rule;*
- Establish a process to ensure that loans submitted to the HAMP Reporting Tool are properly modified under each of FHA's *or RHS's* own proprietary modification program requirements *and under the requirements of Section 2.1 or Section 2.2 of Chapter VI;*
- Notify the Program Administrator if any loans previously entered into the HAMP Reporting Tool are no longer valid under FHA-HAMP or *Special Loan Servicing;*
- Validate the submission of each such loan to the FHA Single Family Default Monitoring System (SFDMS) *or RHS Guaranteed Loan System (GLS);* and
- Assess each servicer's compliance with all FHA-HAMP or *Special Loan Servicing* requirements, as well as such servicer's internal control program under Treasury FHA-HAMP *or RD-HAMP.*

MHA-C will perform the following compliance activities with respect to Treasury FHA-HAMP and RD-HAMP loans, as applicable:

- Review servicers' cash records to determine if the related FHA-HAMP or *Special Loan Servicing* loan has been current for the appropriate period of time.
 - If such loan has been current, then MHA-C shall:
 - Calculate the six percent requirement for the servicer pay-for-success compensation and identify and report any discrepancies within the data in the HAMP Reporting Tool;
 - Compare results of the six percent calculation with the Program Administrator's payment record for the servicer and identify and report any discrepancies; and
 - Determine if the borrower pay-for-performance compensation was appropriately applied to the borrower's loan balance; and
 - If such *loan* was not current, MHA-C will report that loan as a discrepancy.

Each servicer is required to develop, enforce and review on a quarterly basis for effectiveness an internal control program designed to:

- Ensure effective delivery of Services in connection with Treasury FHA-HAMP and/or RD-HAMP and compliance with applicable Treasury FHA-HAMP and/or RD-HAMP documentation, including the FHA-HAMP Mortgagee Letters and the Final Rule and existing or future regulation or guidance issued by FHA or RHS for requirements related to eligibility, underwriting and administration of FHA-HAMP or *Special Loan Servicing*;
- Detect mortgage loan modification fraud; and
- Monitor compliance with applicable consumer protection and fair lending laws.

The internal control program must include documentation of the control objectives for Treasury FHA-HAMP and/or RD-HAMP activities, the associated control techniques, and mechanisms for testing and validating the controls.

Each servicer is also required to provide FHA or RHS, as applicable, with access to all internal control reviews and reports that relate in whole or in part to modifications under FHA-HAMP or *Special Loan Servicing* performed by it and any external parties or consultants hired by such servicer to enable FHA or RHS to fulfill its compliance duties.