Supplemental Directive 12-02 ***March 9, 2012***

Making Home Affordable Program – MHA Extension and Expansion

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 December 15, 2011 Treasury issued version 3.4 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 or Freddie Mac (Non-GSE Mortgages).

In an effort to continue to provide meaningful solutions to the housing crisis, the Obama Administration is extending the deadline for the MHA Program to the end of 2013, and is expanding the population of homeowners that may be eligible for the Home Affordable Modification Program (HAMP) under a new "HAMP Tier 2" alternative, enabling more struggling homeowners to take advantage of affordable mortgage payment relief. This Supplemental Directive also expands the population of homeowners that may be eligible for the Home Affordable Unemployment Program (UP), the Home Affordable Foreclosure Alternatives (HAFA) Program, and the Second Lien Modification Program (2MP), and clarifies servicer requirements with respect to establishing right party contact and issuance of borrower notices.

On and after the Effective Date (defined below), HAMP will include an additional evaluation or "Tier" intended to extend modification opportunities to borrowers that do not meet the eligibility or underwriting requirements of the existing HAMP guidelines including, subject to certain limitations described herein, loans secured by properties that are not owner-occupied. For clarity, the existing HAMP modification is referred to as "HAMP Tier 1" and will continue to provide an affordable modification option for a loan secured by a property which is the borrower's principal residence. All references herein to HAMP Tier 1 will refer both to HAMP modifications completed under guidance in effect prior to the Effective Date and HAMP Tier 1 modifications completed after the Effective Date. The additional modification evaluation will be referred to as "HAMP Tier 2". Except as indicated herein, HAMP guidelines existing as of the date of this Supplemental Directive will be applicable to both HAMP Tier 1 and HAMP Tier 2 modifications.

This Supplemental Directive provides guidance to servicers for implementation of the extension and expansion of HAMP for Non-GSE Mortgages. This Supplemental Directive amends and supersedes the notated portions of the *Handbook*. The mapping of the *Handbook* is expected to be issued by mid-March and will delineate the changes thereto attributable to the guidance provided in this Supplemental Directive.

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. Except where noted, the guidance set forth in this Supplemental Directive is effective June 1, 2012 ("Effective Date"). 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, except as specifically noted herein, insured or guaranteed by the Department of Agriculture's Rural Housing Service (RHS) or the Federal Housing Administration (FHA).

This Supplemental Directive covers the following topics:

- Extension of MHA
- Owner Occupancy Definition
- UP Expansion
- HAMP Tier 2 Eligibility
- Borrower Solicitation
- Request for Mortgage Assistance
- Income Verification
- Net Present Value (NPV) Model
- Single Evaluation Process for Owner Occupants
- Underwriting HAMP Tier 2
- Investor Solicitation
- Non-Approval Notices
- Incentive Compensation
- HAFA
- 2MP
- Safe Harbor
- Servicing Transfers
- Annual Certifications
- Reporting

Extension of MHA

This Supplemental Directive extends the deadline for eligibility in MHA and all of its component programs through December 31, 2013.

- In order for a loan to be eligible for modification under HAMP an Initial Package, as defined in Section 4, Chapter II of the *Handbook,* must be submitted by the borrower on or before December 31, 2013.

- In order for a loan to be eligible for UP, a written (mail, fax or e-mail) request for UP must be submitted by the borrower on or before December 31, 2013.

- In order for a loan to be eligible for HAFA, either (i) a fully executed Short Sale Agreement (SSA) or Deed-in-lieu (DIL) agreement (DIL Agreement) from the borrower, or (ii) a written request (mail, fax or e-mail) requesting consideration for a SSA, DIL

Agreement or Alternative Request for Approval of Short Sale (Alternative RASS) must be submitted by the borrower on or before December 31, 2013.

- In order for a loan to be eligible for 2MP, the 2MP servicer must receive notification of a match with a permanent first lien modification that satisfied the deadline eligibility criteria described herein.

- In order for a loan to be eligible for incentive compensation under Treasury FHA-HAMP or Rural Development-HAMP (RD-HAMP), a request for modification assistance as defined by the FHA or the RHS must be postmarked by the borrower on or before December 31, 2013.

Evidence of borrower submission referenced above must be provided by postmark or other independent indicator such as a date and time stamp (electronic or otherwise) evidencing submission by the borrower on or before December 31, 2013.

In addition to the deadline definitions described above, in order for any MHA loss mitigation option to be eligible for incentive compensation, the transaction must be completed on or before September 30, 2014 (e.g., the HAMP or 2MP permanent modification must have a modification effective date on or before September 30, 2014 or the HAFA short sale or deed-in-lieu of foreclosure must have a transaction closing date on or before September 30, 2014). Although not eligible for incentive compensation, an UP forbearance plan must have a forbearance effective date on or before September 30, 2014. Additional guidance regarding requirements for timely processing of MHA assistance requests will be provided in a subsequent Supplemental Directive nearer the end of the MHA Program.

When a servicer has had contact with a borrower in connection with any of the above MHA programs, but is not in receipt of the minimum program participation documentation described above by December 31, 2013, or has determined it will be unable to complete (as described above) the HAMP, UP, 2MP or HAFA transaction on or before September 30, 2014, the servicer must notify the borrower in writing that he/she cannot be considered for the applicable MHA program and provide information about other available loss mitigation options.

All references to borrower in this Supplemental Directive refer to the primary borrower and any co-borrowers who are parties to the loan transaction.

Owner Occupancy Definition

This Supplemental Directive amends the eligibility criteria category of “Owner Occupied Single Family Property” in Section 1.1, Chapter II of the *Handbook*. Specifically, in addition to the current criteria, a property may be considered to be an owner-occupied property if the borrower has been displaced (e.g., military deployment, permanent change of station orders, out of area job transfer, foreign service assignment), but was occupying the property as a principal residence immediately prior to the displacement, intends to re-occupy the property as a principal residence in the future and the current occupant is not a tenant. Notwithstanding this amended definition of what constitutes an owner-occupied property, a borrower is entitled to only one modification under HAMP Tier 1.

UP Expansion

UP Extension

As described in Chapter III of the *Handbook* and subject to the guidelines described therein, UP generally requires servicers to offer 12 months of forbearance assistance to borrowers who are unemployed, with the expectation that when the borrower has regained employment or the period of unemployment forbearance has expired, the borrower will be evaluated for HAMP. While servicers must consider borrowers for UP eligibility through the December 31, 2013 deadline, borrowers in UP who do not meet the HAMP, 2MP or HAFA deadlines described herein will not be eligible for those programs and, upon re-employment or the expiration of the UP forbearance period, must be considered for other available loss mitigation options.

UP Eligibility

This Supplemental Directive expands eligibility for UP unemployment forbearance as follows:

- Section 2.2, Chapter III of the *Handbook* is amended to provide that servicer may grant UP assistance to a borrower whose loan is secured by a vacant or tenant-occupied property. Servicers continue to be required to consider for UP forbearance mortgages secured by owner-occupied properties as defined in this Supplemental Directive.

- Section 2.2, Chapter III of the *Handbook* is amended to require a servicer to consider a borrower for UP assistance regardless of the borrower's monthly mortgage payment ratio.

- Sections 2.1 and 2.3, Chapter III of the *Handbook,* are amended to require a servicer to consider a borrower for UP assistance regardless of whether the borrower had a payment default on a HAMP trial period plan or lost good standing on a permanent HAMP modification.

Servicers may implement these changes prior to the effective date of this Supplemental Directive.

HAMP Tier 2 Eligibility

Expanded Eligibility Criteria

This Supplemental Directive expands eligibility for a HAMP modification to various borrowers previously ineligible for HAMP by establishing a second level HAMP evaluation protocol referred to herein as HAMP Tier 2.

A loan may be eligible for HAMP Tier 2 if the loan has not previously been modified under HAMP Tier 2 and the loan satisfies the HAMP basic eligibility criteria (origination date on or before January 1, 2009[1], documented hardship, one to four-unit property, unpaid principal balance (UPB) limitations and not condemned). In addition, one or more of the following may apply:

- The borrower is evaluated for HAMP Tier 1 following the Effective Date but fails to satisfy the eligibility requirements for a HAMP Tier 1 modification (e.g., the loan is not secured by an owner-occupied property or the borrower's pre-modification monthly mortgage payment is below the minimum 31 percent front end debt-to-income (DTI) ratio) or underwriting requirements for a HAMP Tier 1 modification (e.g., the servicer cannot achieve the target monthly mortgage payment ratio without excessive forbearance or the result of the NPV test is negative).

- The borrower was evaluated for, but not offered, a HAMP modification prior to the Effective Date; provided, however, the non-approval was not due to borrower fraud or non-compliance with Section 1481 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, in which case the borrower would not be eligible for HAMP Tier 2.

- The borrower had a payment default on a HAMP Tier 1 trial period plan entered into before or after the Effective Date.

- The borrower lost good standing under a HAMP Tier 1 permanent modification entered into before or after the Effective Date and, at the time of evaluation for HAMP Tier 2, at least 12 months have passed since the HAMP Tier 1 modification effective date or the borrower has experienced a change of circumstance.

- The mortgage is secured by a rental property (described below).

Additionally, this Supplemental Directive amends Section 1.2, Chapter II of the *Handbook*, to clarify that only natural persons are eligible for assistance under MHA. Loans made to, or secured by properties owned by, corporations, partnerships, limited liability companies or other business entities are not eligible for assistance under MHA.

Rental Property

A "rental property" is a property that is used by the borrower for rental purposes only and not occupied by the borrower, whether as a principal residence, second home, vacation home or otherwise ("rental property"). A rental property may be eligible for HAMP Tier 2 if:

- Two or more mortgage payments are due and unpaid (rental properties are not eligible for imminent default consideration);

- The borrower certifies that he or she does not own more than five single family properties;

[1] The term "origination date" refers to the date on which the loan was first originated (i.e., not the date a loan may have been modified).

- The rental property is currently occupied by a tenant as a principal residence or is vacant; and

- The borrower certifies in writing that he or she intends to rent the property to a tenant or tenants for at least five years following the effective date of any permanent modification and that he or she will make reasonable efforts to rent the property on a year-round basis if the property is or becomes vacant during such period. Notwithstanding the foregoing, during such five year period the borrower may sell the property, occupy it as the borrower's principal residence, or permit any dependent, parent or grandparent to occupy the property as such party's principal residence with no rent charged or collected.

If a property is occupied as a principal residence by a legal dependent, parent or grandparent of the borrower but the borrower does not charge or collect rent, the property is considered a "rental property" that is occupied by a tenant for purposes of any HAMP Tier 2 requirement.

A property that is or will be offered for rent on a seasonal basis and is available for use by the borrower when it is not rented is not eligible for a HAMP modification. Furthermore, a borrower must certify that he or she does not intend to use the property as a secondary residence for at least five years following the effective date of any permanent modification.

The certifications described above are referred to in this Supplemental Directive as the borrower's "rental property certifications."

<u>Updated Forms</u>

Updated forms of the Request for Mortgage Assistance (RMA) and Hardship Affidavit, to be posted on HMPAdmin.com, will include a distinct rental property certification section. The rental property certification of the RMA must be completed in conjunction with all requests for modification of rental property loans and will provide the servicer with information about the current occupancy and income status of the rental property or the borrower's intent to rent the property on a year-round basis and to make reasonable efforts to market such property.

Servicers are not required to obtain third party verification of the borrower's rental property certifications when evaluating a borrower for HAMP, unless it is necessary to resolve inconsistencies with other information provided by the borrower or is required by the investor or the servicer's internal underwriting policies. The servicer must use good business judgment in reconciling any such inconsistencies and in accordance with Section 5.5, Chapter II of the *Handbook*, should not modify a mortgage loan if there is reasonable evidence that the borrower has made false or misleading statements in connection with the modification request. If, following the effective date of a permanent HAMP Tier 2 modification of a loan secured by a rental property, it is determined that the borrower misrepresented or is non-compliant with representations made in the Rental Property Certification, Treasury or its agents may enforce all available rights and remedies against such borrower. The servicer will be held responsible for compliance with its obligations under MHA guidelines, but will not be held responsible for the borrower's misrepresentation or non-compliance.

Limitation on Multiple Modifications

A borrower may receive only one modification under HAMP Tier 1 and may not be reconsidered for HAMP Tier 1 with respect to the subject property or any other property after failing a HAMP Tier 1 trial period plan or losing good standing on a HAMP Tier 1 permanent modification. A borrower who fails a HAMP Tier 1 trial period plan or loses good standing under a HAMP Tier 1 permanent modification may be considered for a HAMP Tier 2 modification of the same mortgage loan.

No mortgage loan may be modified more than once in either Tier 1 or Tier 2. A borrower who fails a HAMP Tier 2 trial period plan, or loses good standing under a HAMP Tier 2 permanent modification (whether on a principal residence or a rental property), is not eligible to receive another HAMP Tier 2 modification or a HAMP Tier 1 modification on the same mortgage loan.

A borrower is eligible to receive up to a total of three permanent modifications of three different mortgages under HAMP Tier 2. A borrower that rejects a modification offer for a mortgage loan under either HAMP Tier 1 or HAMP Tier 2 is not eligible for future consideration under HAMP Tier 1 or HAMP Tier 2 for such mortgage loan unless the borrower experiences a change in circumstance. Borrowers who reject a HAMP modification offer must be considered for other available loss mitigation options, including HAFA.

Additional Factors Impacting HAMP Eligibility

Section 1.2, Chapter II of the *Handbook* is amended to state that servicers are not required to consider for HAMP a mortgage loan that has been charged off if the servicer has released the borrower from liability for the debt and provided a copy of such release to the borrower or the servicer has determined that a mortgage loan is secured by a property that is in such poor physical condition that it is not habitable even if it has not been condemned.

Borrower Solicitation

Pre-screening

The pre-screening requirements in Section 2.2, Chapter II of the *Handbook*, are amended to include borrowers who are potentially eligible for HAMP based on the expanded eligibility criteria for HAMP Tier 2. Servicers must pre-screen all first lien mortgage loans where two or more payments are due and unpaid after the Effective Date to determine if they meet the following basic criteria for consideration under HAMP:

- One-to-four unit residential property;
- Not condemned;
- Loan originated on or before January 1, 2009;
- UPB does not exceed HAMP limits; and
- Not previously modified under HAMP.

Servicers must proactively solicit for HAMP any borrower whose loan passes the pre-screen unless the servicer has documented that the investor is not willing to participate in HAMP pursuant to the requirements of Section 1.3, Chapter I of the *Handbook*, except that servicers are not required to solicit borrowers who, prior to the Effective Date:

- Were two or more payments delinquent and did not occupy the mortgaged property as a principal residence;
- Were two or more payments delinquent and were already solicited in accordance with the reasonable effort requirement;
- Were evaluated and determined to be ineligible for HAMP; or
- Had a payment default on a trial period plan or lost good standing on a permanent HAMP modification.

Though proactive solicitation is not required, all of these classes of borrowers may request consideration for HAMP after the Effective Date, and, upon submission of an Initial Package, must be evaluated for the appropriate Tier based on their eligibility. In addition, in the event any of these borrowers cure the original delinquency but subsequently re-default, servicers must re-screen them as appropriate and in accordance with Section 2.2.1, Chapter II of the *Handbook*. Solicitation is for general assistance under the MHA Program and need not be specific as to HAMP Tier 1 or Tier 2. The form of solicitation letter posted on HMPadmin.com will be updated to take into account the guidance in this Supplemental Directive.

<u>Solicitation of Borrowers Following a HAMP Tier 1 Trial Period Plan Payment Default</u>

Servicers may, but are not required to, proactively solicit for HAMP Tier 2 a borrower who defaulted on a HAMP Tier 1 trial period plan prior to the Effective Date. However, upon receipt of an Initial Package, a servicer must evaluate for HAMP Tier 2 any borrower who previously defaulted on a HAMP Tier 1 trial period plan.

With respect to borrowers who default on a HAMP Tier 1 trial period plan after the Effective Date, servicers may, but are not required to, automatically evaluate such borrowers for HAMP Tier 2 prior to sending a non-approval notice. In conducting an evaluation within 30 calendar days of a HAMP Tier 1 payment default, the servicer may rely on the income documentation used in the HAMP Tier 1 evaluation, unless the servicer has reason to believe that the income documentation is no longer accurate (e.g., the borrower is now unemployed).

If the HAMP Tier 1 trial period plan was based on an analysis done using NPV 5.0 (as described below) or subsequent NPV version, the servicer will use the results of the original NPV analysis in making the decision to offer HAMP Tier 2. If the HAMP Tier 1 trial period plan was based on an analysis prior to the release of NPV 5.0, the servicer must complete a new NPV analysis using the borrower income documentation used in the HAMP Tier 1 evaluation. In either case, in addition to satisfying the guidelines for a HAMP Tier 2 set forth herein, the NPV analysis must indicate that the borrower is eligible for HAMP Tier 2 and the servicer must ensure that the borrower's HAMP Tier 2 post-modification monthly principal and interest (P&I) payment must be at least 10 percent less than the monthly payment that was payable under the HAMP Tier 1 trial period plan.

If, as a result of an evaluation conducted within 30 calendar days of a HAMP Tier 1 trial payment default, a borrower is determined to be eligible for a HAMP Tier 2 trial period plan, rather than sending a non-approval notice for default under the HAMP Tier 1 trial period plan, the servicer should send written notice to the borrower that, due to the payment default on the HAMP Tier 1 trial period plan, the servicer is offering the borrower a new HAMP Tier 2 trial period plan. If a servicer elects not to automatically evaluate borrowers for HAMP Tier 2 following a HAMP Tier 1 trial period plan default, the required non-approval notice must describe all available loss mitigation options, including HAMP Tier 2.

If a servicer is evaluating a borrower for HAMP Tier 2 (either automatically or upon a borrower's request) after the failure of the HAMP Tier 1 trial period plan, the servicer cannot refer the loan to foreclosure or conduct a scheduled foreclosure sale until such evaluation is completed and only if the borrower is determined to be ineligible for HAMP Tier 2.

Even if a servicer elects to automatically evaluate borrower as described herein, whenever there is a payment default on a trial period plan, the servicer must first complete a re-calculation of the trial period payment in accordance with Section 5, Chapter II of the *Handbook*.

<u>Solicitation and Eligibility of Borrowers Following Loss of Good Standing in a Permanent Modification</u>

Servicers may, but are not required to, proactively solicit a borrower for HAMP Tier 2 if the borrower has lost good standing under a HAMP Tier 1 permanent modification. Borrowers who have lost good standing are eligible for reconsideration for HAMP Tier 2 on the earlier of (i) 12 months after the HAMP Tier 1 modification effective date or (ii) when the borrower has experienced a change of circumstance.

<u>Request for Mortgage Assistance</u>

Borrowers requesting HAMP assistance must submit an Initial Package consisting of the RMA, IRS Form 4506-T or 4506T-EZ and evidence of income. If the subject property is a rental property, the new rental property certification section of the RMA must be completed and evidence of rental income or loss provided. Servicers may substitute a proprietary modification application form that is substantially similar to the updated RMA, but in that event must use the Treasury Hardship Affidavit that includes the Dodd-Frank Certification required by Treasury under Section 1481 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203) and a rental property certification. For purposes of clarity all references to the RMA herein also include servicer proprietary modification application forms.

Incomplete Initial Packages

Section 2.2.2, Chapter II of the *Handbook* states that if a servicer has established right party contact with a borrower, the servicer must send written communications describing the Initial Package, and if the borrower submits an incomplete Initial Package, the servicer must send an Incomplete Information Notice as described in Section 2.3.3, Chapter II of the *Handbook*, requesting the documents required to complete the Initial Package.

Section 2.3.3, Chapter II of the *Handbook*, also states that if a servicer receives an incomplete Initial Package, the servicer must send an Incomplete Information Notice as defined in that section requesting the documents required to complete the Initial Package.

This Supplemental Directive amends both of these sections to provide that a servicer may, but is not required to, send an Incomplete Information Notice if the borrower has not, at a minimum, submitted an RMA. Section 2.2.2, Chapter II of the *Handbook* is amended to require that if the servicer makes right party contact and the borrower does not, at a minimum, submit the RMA, the servicer must resend the Initial Package communication. If the borrower submits an RMA but not the other components of the Initial Package, the servicer must send an Incomplete Information Notice in accordance with Section 2.3.3, Chapter II of the *Handbook*.

In addition, Sections 2.3 and 2.3.3, Chapter II of the *Handbook* are amended to clarify that a servicer's requirement to send borrower notices and Incomplete Information Notices as described in those Sections applies when the borrower has submitted either an Initial Package or an RMA.

Review of Initial Package

Currently, Section 4.6, Chapter II of the *Handbook* provides that within 30 calendar days of receipt of an Initial Package (RMA, IRS Form 4506-T or 4056T-EZ, evidence of income) the servicer must send an Incomplete Information Notice, a trial period plan notice or a Non-Approval Notice. It is Treasury's expectation that in most cases, a servicer will be able to reach a decision and send one of these notices within the 30 calendar day requirement.

However, in the event the servicer is unable to reach a timely decision because it does not have documentation required from a party other than the borrower, such as a taxing authority or home-owner's association, the borrower's relationship manager, where applicable, or other servicer representative must contact the borrower by mail, e-mail or phone, within 30 calendar days of receipt of the Initial Package to describe the cause of the delay and provide a date, which shall be no more than 30 calendar days thereafter, by which the servicer expects to complete the evaluation and issue a HAMP decision. If by that later date, the servicer still has not received necessary third-party documentation, the servicer must contact the borrower every 30 days with an updated status and the expected date of resolution until a decision is reached. All such communication must be documented in the servicer's file.

Income Verification

Except as amended in this Supplemental Directive, the rental income or loss verification guidance in Section 5, Chapter II of the *Handbook* applies to consideration of all borrowers being evaluated for HAMP including borrowers being evaluated only for HAMP Tier 2. Section 5.1.6, Chapter II of the *Handbook*, is amended to provide different standards for documentation of rental income that is used in calculating a borrower's gross income depending on whether the property that secures the mortgage being modified is the borrower's principal residence or is a rental property.

All net income or loss from a rental property that is the security for the loan being modified, as well as income from any other rental property owned by the borrower, must be documented and included in the calculation of the borrower's gross income. As in the case of a proposed modification of an owner-occupied property, such rental income would be documented on IRS Form 1040 Schedule E (Supplemental Income and Loss) of the borrower's tax return for the most recent tax year or, when IRS Form 1040 Schedule E is not available because the rental property was not rented in the most recent tax year, a current lease or other rental agreement and bank statements or evidence of damage deposits.

Monthly Income or Loss on Rental Property

The monthly net income or loss on a rental property is calculated as 75 percent of the monthly gross rental income, reduced by the monthly principal and interest payment, plus 1/12th of annual real property taxes, annual property insurance premiums and annual homeowners' associations dues, if applicable (i.e., PITIA). Section 5.1.8, Chapter II of the *Handbook* is hereby amended to exclude from the passive income guidance rental income from a rental property that secures the loan being evaluated for a HAMP Tier 2.

If the monthly net income of a rental property securing the mortgage loan being evaluated for modification under HAMP Tier 2 is equal to or greater than the pre-modification PITIA of that property, the servicer must verify and document the cause of the borrower's hardship as delinquency alone is not considered a hardship.

Net Present Value Model

An updated NPV model (NPV 5.0) that incorporates the applicable guidance in this Supplemental Directive is under development. The software application for NPV 5.0 will be available on the HAMP servicer web portal accessible at www.HMPadmin.com on or before the Effective Date. In addition to the current NPV Data Input Fields and Values required for HAMP Tier 1, a small number of additional input values will be required. When available, these input values and descriptions will also be posted at www.HMPadmin.com. Following the Effective Date, all loans that meet HAMP eligibility criteria for HAMP Tier 1 or Tier 2 must be evaluated using NPV 5.0.

With respect to borrowers of owner occupied homes who meet the eligibility criteria for HAMP Tier 1, NPV 5.0 will automatically evaluate for both HAMP Tier 1 and Tier 2 and will reflect the NPV results of modification under each Tier.

With respect to loans being evaluated only for HAMP Tier 2, servicers will be required to input only fields relevant to HAMP Tier 2 including the new NPV Data Inputs for rental properties, as applicable.

Whether or not a modification is pursued, the servicer must maintain detailed documentation of the NPV model used, all NPV inputs and assumptions and the NPV results.

For loans that were evaluated under an NPV model before the Effective Date that are being re-evaluated for HAMP Tier 2, the servicer should use the first evaluation date that the loan is evaluated under NPV 5.0 (or, if applicable, later NPV version) as the "NPV Date". Any subsequent re-running of the loan through the NPV model must include such date, as the "NPV Date".

The Borrower NPV Calculator, which can be accessed at CheckMyNPV.com, will be updated to incorporate the changes attributable to the guidance in this Supplemental Directive. Treasury will issue a notification when it is available for use.

<u>Single Evaluation Process for Owner Occupants</u>

Servicers must evaluate owner-occupant borrowers that meet the basic eligibility requirements for HAMP Tier 1 based on HAMP Tier 1 monthly mortgage payment ratio and waterfall criteria as described in Section 6, Chapter II of the *Handbook*. If the borrower's monthly mortgage payment ratio is greater than 31 percent, and the servicer can achieve the target mortgage payment without excessive forbearance, the servicer will input the HAMP Tier 1 waterfall criteria into NPV 5.0 and, as described above, the model will return NPV results for both HAMP Tier 1 and HAMP Tier 2. Subject to investor guidance:

- If the loan is NPV positive for HAMP Tier 1 under the standard modification waterfall, a HAMP Tier 1 trial period plan must be offered to the borrower regardless of the HAMP Tier 2 NPV result.

- If the loan is NPV negative for HAMP Tier 1 under the standard modification waterfall and the investor has authorized a different threshold, the servicer may offer the borrower a HAMP Tier 1 trial period plan.

- If the borrower is not offered a HAMP Tier 1 trial period plan and is NPV positive under the HAMP Tier 2 standard modification waterfall, the borrower must be offered a HAMP Tier 2 trial period plan.

- If the borrower is NPV negative for the HAMP Tier 2 standard modification waterfall, the servicer may, based on investor guidance, offer a HAMP Tier 2 trial period plan or must consider the borrower for other available loss mitigation options including HAFA.

Underwriting HAMP Tier 2

HAMP Tier 2 Standard Modification Waterfall

Borrowers that do not qualify for Tier 1 will be evaluated for Tier 2 as follows:

- Step 1 – Capitalization. The servicer capitalizes accrued interest, out-of-pocket escrow advances to third parties, and any required escrow advances that will be paid to third parties by the servicer during the trial period plan as well those servicing advances that are made for costs and expenses incurred in performing servicing obligations. The terms of capitalization set forth in Section 6.3.1 Chapter II of the *Handbook* apply to capitalization under Tier 2.

- Step 2 - Interest Rate Adjustment. NPV 5.0 adjusts the interest rate to the current "Tier 2 Rate", which is a fixed-rate based on the weekly Freddie Mac Primary Mortgage Market Survey (PMMS) Rate for 30-year fixed rate conforming loans, rounded up to the nearest 0.125 percent plus a risk adjustment expressed in basis points. On the Effective Date the risk adjustment will be fifty basis points. Servicers will be notified of any changes to the risk adjustment.

- Step 3- Term Extension. NPV 5.0 extends the term and re-amortizes the mortgage to 480 months from the "as of" date of the loan information (e.g., UPB, term) provided by the servicer.

- Step 4 - Principal Forbearance. If the loan's pre-modification mark-to-market loan to value (LTV) ratio is greater than 115 percent, NPV 5.0 calculates principal forbearance in an amount equal to the lesser of (i) an amount that would create a post-modification mark-to-market LTV ratio of 115 percent using the interest bearing principal balance or (ii) an amount equal to 30 percent of the post-modified UPB of the mortgage loan (inclusive of capitalized arrearages). Unlike HAMP Tier 1 there is no excessive forbearance limit in HAMP Tier 2.

Using data inputs provided by the servicer, NPV 5.0 will use the HAMP Tier 2 standard modification waterfall to calculate the post-modification monthly mortgage payment and the borrower's post-modification DTI. Additionally, NPV 5.0 will determine if the proposed modification meets the two affordability requirements for HAMP Tier 2 approval:

- The borrower's post-modification DTI must not be less than 25 percent or greater than 42 percent (Acceptable DTI Range); and

- The modified monthly P&I payment must represent a reduction of at least 10 percent compared to the pre-modification monthly P&I payment in effect at the time of consideration for HAMP Tier 2. For adjustable rate mortgage (ARM) loans (including pay option loans and interest only ARM loans), the pre-modification monthly P&I payment used for the comparison should be determined in accordance with the current guidance set forth in Section 6.1.2.1 Chapter II of the *Handbook*.

Additionally, if the loan previously received a HAMP Tier 1 trial period plan but there was a default thereunder, the servicer must verify that the borrower's HAMP Tier 2 post-modification P&I payment is at least 10 percent less than the monthly P&I payment that was payable under the HAMP Tier 1 trial period plan.

If the modified P&I payment fails to meet the minimum 10 percent payment reduction from the pre-modification P&I payment in effect at the time of consideration for HAMP Tier 2 (or, if applicable, the 10 percent payment reduction from the post-modification P&I payment under the failed HAMP Tier 1 trial period plan) or the modified monthly mortgage payment-to-income ratio falls outside of Acceptable DTI Range, the borrower is not eligible for a HAMP Tier 2 modification. The servicer must send the borrower a Non-Approval Notice citing updated non-approval reasons described herein and must consider the borrower for alternative loss mitigation options including HAFA.

The post-modification monthly mortgage payment ratio is based on the trial period payment. The servicer is not required to re-calculate the ratio at the end of the trial period plan.

If an investor is not participating in HAMP or has restrictions that make it unfeasible to complete the HAMP Tier 1 or Tier 2 standard modification waterfall steps, such as a total prohibition on modification of rental properties or a prohibition on converting the loan to a fixed interest rate, the servicer should identify this prior to conducting the NPV analysis.

Calculating Monthly Gross Income and Total Housing Expense for Rental Property Borrowers

Prior to evaluating a borrower for HAMP Tier 2, the servicer must determine the borrower's gross monthly income and total housing expense. The NPV model will use such amounts to determine whether the proposed HAMP Tier 2 modification falls within the Acceptable DTI Range. With respect to a loan secured by a rental property, the servicer will add net income from the subject rental property to the borrower's gross income from all other sources (including rental income from other rental properties) as described in Section 5.1.6, Chapter II of the *Handbook*, to calculate gross monthly income.

If the subject rental property has a net rental loss, the servicer will add the loss to the monthly PITIA of the borrower's principal residence to determine the borrower's total housing expense.

If there is no rental income from the subject property, the servicer will add the monthly post-modification PITIA of the subject rental property to the monthly PITIA of the borrower's principal residence to determine the total housing expense.

In the event there is more than one borrower obligated on a mortgage secured by a rental property, the income from all borrowers must be included in the gross monthly income calculation and the monthly PITIA of the principal residences of all borrowers must be included in the total housing expense calculation.

Prohibitions on Waterfall Steps

If investor guidelines or applicable law restricts or prohibits a step in either the HAMP Tier 1 or Tier 2 standard modification waterfall and the servicer partially performs it or skips it, the modification may still qualify for HAMP. Section 6.5, Chapter II of the *Handbook* is amended to state that if an investor or applicable law has such lesser restrictions (i.e., limits on capitalization, interest rate or term extension) the servicer should attempt to complete the waterfall steps subject to such restrictions as described below:

- If capitalization is not permitted by the investor or applicable law, the servicer should, if allowable, forgive the amount that would otherwise be capitalized or establish a non-interest bearing balloon payment (i.e., forbearance) due at maturity equal to the amount that would have been capitalized. Negative amortization after the modification effective date is prohibited.

- If the investor or applicable law does not permit the note rate of the mortgage to be modified below a certain value, the servicer should:

  - With respect to HAMP Tier 1, adjust the rate to the greater of the restriction rate or the rate required to achieve the target monthly mortgage payment.

  - With respect to HAMP Tier 2, adjust the rate to the greater of the restriction rate or the HAMP Tier 2 rate.

- If the investor or applicable law does not permit the note rate of the mortgage to be permanently modified, the servicer should:

  - With respect to HAMP Tier 1, adjust the rate to the rate required to achieve the target monthly mortgage payment for the maximum period allowed by the investor or under applicable law and then, as allowed by the investor or applicable law, step up to the note rate.

  - With respect to HAMP Tier 2, convert the note interest rate to a fixed rate if permitted and move to the next waterfall step.

- If the investor or applicable law does not permit an adjustable rate to be converted to a fixed rate, the loan is not eligible for HAMP modification in either HAMP Tier.

- If a term extension is limited or not permitted by the investor or applicable law, the servicer should extend the term as far as allowable and/or re-amortize the mortgage loan based upon the remaining term.

- If the current remaining term of the loan is greater than 480 months, the servicer should skip the term extension step.

Servicers must maintain evidence in the loan file documenting the nature of any deviation from the HAMP Tier 1 or Tier 2 standard modification waterfall steps and the fact that investor guidelines or applicable law restricted or prohibited the servicer from fully performing the modification step. The documentation must show that the servicer made a reasonable effort to seek a waiver from the investor and whether that waiver was approved or denied.

HAMP Tier 2 Alternative Modification Waterfall

Under HAMP Tier 2, the NPV model will evaluate any mortgage loan with a pre-modification mark-to-market LTV ratio greater than 115 percent using both the HAMP Tier 2 standard modification waterfall and the HAMP Tier 2 alternative modification waterfall that includes principal reduction down to the lesser of (i) an amount that would create a post modification mark-to-market LTV ratio of 115 percent using the interest bearing principal balance or (ii) 30 percent of the post-modified UPB (inclusive of arrearages), essentially replacing the required forbearance with principal forgiveness in the model. As in HAMP Tier 1, principal forgiveness in HAMP Tier 2 is optional; however investors who offer deferred principal forgiveness in accordance with the Principal Reduction Alternative (PRA) in HAMP Tier 2 are eligible for the same increased investor PRA incentives recently announced in Supplemental Directive 12-01.

Servicers may elect to forgive principal below 115 percent but in accordance with Section 13.3.4, Chapter 2 of the *Handbook*, will only be entitled to investor PRA incentives for amounts of forgiveness that result in a mark-to-market LTV ratio equal to or greater than 105 percent.

Investor Solicitation

Servicers are not required to re-solicit all investors for participation in MHA. However, in accordance with the provisions of Section 1.3, Chapter I of the *Handbook*, within 30 days of identifying an investor as unwilling to extend its participation in MHA or identifying a servicing agreement that limits or prohibits a servicer from offering HAMP Tier 2 (i.e., prohibition against modification of non-owner occupied mortgages or limits on multiple modification of the same mortgage), the servicer must contact the investor at least once, encouraging the investor to permit modifications under the extended and expanded MHA program. Within 30 days of identification of any change in investor participation, servicers must update their Investor Participation List.

Non-Approval Notices

Section 2.3, Chapter II of the *Handbook* describes conditions under which a non-approval notice must be sent to a borrower and discusses the contents of such notices. A borrower evaluated, but determined to be ineligible for HAMP Tier 2, must be sent a non-approval notice. The model clauses for borrower notices attached as Exhibit A to the *Handbook* will be amended to be consistent with the terms of HAMP Tier 2. Additionally, the current guidance in the *Handbook* is amended as follows:

- The offer of either a HAMP Tier 1 or HAMP Tier 2 trial period plan is considered a HAMP offer. Therefore, if an owner occupant borrower is evaluated, but determined to be ineligible for HAMP Tier 1, and is offered a HAMP Tier 2 trial period plan, the servicer will not send a Non-Approval Notice and is not required to send NPV inputs to a borrower. However, if the borrower files an Escalated Case (as defined in Section 3.2, Chapter I of the *Handbook*) and requests NPV inputs, the servicer must provide them.

- As discussed above, if a servicer elects not to automatically evaluate borrowers for HAMP Tier 2 following a HAMP Tier 1 trial period plan default, the required non-approval notice must describe all available loss mitigation options, including HAMP Tier 2.

- If a loan is evaluated for both HAMP Tier 1 and HAMP Tier 2 but not approved for either Tier, the servicer will send a Non-Approval Notice that refers to the HAMP Tier 2 denial reason.

  - If a loan evaluated for HAMP Tier 2 does not meet the applicable minimum 10 percent payment reduction requirement, the servicer must send a non-approval notice and reference "Insufficient Monthly Payment Reduction" as the reason for denial.

  - If a loan evaluated for HAMP Tier 2 has a modified monthly mortgage payment-to-income ratio outside the Acceptable DTI Range, the servicer must send a non-approval notice and reference "Post-Modification DTI Outside Acceptable Range" as the reason for denial.

- If a borrower evaluated for HAMP is NPV negative for both Tiers, the servicer must send a Non-Approval Notice citing "NPV Negative Result" as the reason for the denial and include NPV inputs with the non-approval notice.

If a servicer has performed an NPV evaluation on any loan, including loans being evaluated for HAMP Tier 2, and the borrower is not offered a trial period plan or a permanent modification, the non-approval notice must include all NPV Data Input Fields, even if a negative NPV result was not the reason for denial. All borrower dispute procedures and timeframes in Section 2.3, Chapter I of the *Handbook* also apply to non-approvals for HAMP Tier 2. However, if a borrower has already received a HAMP Tier 2 permanent modification and executed the modification agreement, the servicer does not need to re-evaluate whether the borrower should have received a HAMP Tier 1 modification.

<u>Incentive Compensation</u>

Borrower, servicer and investor incentives for HAMP Tier 1 remain unchanged. The following incentives will be offered for loans modified under HAMP Tier 2:

- Upfront Servicer Compensation Incentive currently available under HAMP Tier 1 will be paid for permanent modifications under HAMP Tier 2.

- The investor Home Price Decline Protection and Current Borrower incentives currently available under HAMP Tier 1 will be paid for permanent modifications under HAMP

Tier 2, except that only modification of loans secured by owner occupied properties will be eligible for the Current Borrower incentive.

- Investors will be eligible for Payment Reduction Cost Share Incentives for HAMP Tier 2 permanent modifications equal to one-half of (i) the dollar difference between the borrower's post modification P&I payment under the HAMP Tier 2 modification and the borrower's pre-modification P&I payment or (ii) 15 percent of the borrower's pre-modification P&I payment, whichever is lower, paid out monthly over five years. To be clear, if the HAMP Tier 2 modification is on a loan that lost good standing on a HAMP Tier 1 permanent modification, the "pre-modification P&I payment" is the HAMP Tier 1 P&I payment.

- PRA investor incentives payable for HAMP Tier 2 permanent modifications that include PRA principal reduction will be paid in accordance with the schedule set forth in Supplemental Directive 12-01.

Loans modified under HAMP Tier 2 are not eligible for borrower pay-for-performance or servicer pay-for-success incentives.

HAFA

This Supplemental Directive amends HAFA policy as follows and allows servicers to implement such changes immediately:

- There are no longer any occupancy requirements for HAFA eligibility;

- Section 7.4, Chapter IV of the *Handbook* which states that the amount of the monthly mortgage payment during the term of the SSA, Alternative RASS or DIL Agreement must not exceed the equivalent of 31 percent of the borrower's monthly gross income is amended to allow a servicer to accept a full payment, if the borrower requests to make a full contractual payment in order to stay current on the loan; and

- Section 6.2.4.2, Chapter IV of the *Handbook* is amended to increase from $6,000 to $8,500 the amount a servicer may authorize the settlement agent to pay from gross proceeds to subordinate mortgage holder(s) in exchange for a lien release and full release of borrower liability. Investors will continue to be reimbursed one dollar for every three dollars of short sale proceeds paid to a subordinate mortgage holder up to $2,000.

- Borrower relocation incentives will be limited to HAFA short sale or DIL transactions where the property is occupied by a borrower or a tenant at the time the SSA, Alternative RASS or DIL Agreement is executed and who will be required to vacate the property as a result of the short sale or DIL. Servicers must determine if a property subject to a HAFA transaction is occupied by a borrower or tenant who will be required to vacate and may only authorize relocation incentives for such occupants. Servicers must ensure that the HUD-1 reflects a payment to the borrower or tenant, when appropriate.

- The requirements in Section 11.2, Chapter IV of the *Handbook* related to credit bureau reporting of HAFA transactions are amended as follows:

    - If the real estate is sold for less than the full balance owed and the deficiency balance is forgiven, report the following Base Segment fields as specified:

      Account Status Code = 13 (Paid or closed account/zero balance) or 65 (Account paid in full/a foreclosure was started), as applicable.

2MP

First lien loans in trial period plans and permanent modifications under HAMP Tier 2 will be included in the LPS matching process and, if there is a corresponding second lien serviced by a 2MP participant, such 2MP participating servicer must offer to modify the borrower's second lien in accordance with the guidance set forth in Chapter V of the *Handbook*.

Currently, if a HAMP Tier 1 first lien loan loses good standing, the related 2MP modification no longer receives incentives. This Supplemental Directive provides that a 2MP modification that is no longer receiving incentives because a HAMP Tier 1 loan lost good standing will be reinstated and may resume receiving incentives if the associated first mortgage is subsequently modified under HAMP Tier 2. The 2MP servicer will be notified through the LPS matching facility that the associated first lien has been re-modified and the 2MP servicer must resume monthly reporting for the 2MP modification in the HAMP Reporting Tool. Servicers will not be required to re-modify the loan, all prior modification terms apply. Upon receipt of the 2MP monthly report by the Program Administrator, 2MP incentive compensation will resume in accordance with the schedule set forth in current guidance. A true-up of incentives unpaid during the interim period between the Tier 1 and Tier 2 modifications will be calculated and paid, as appropriate.

Section 4.4, Chapter V of the *Handbook* states that if a 2MP servicer is aware that a property is not owner-occupied this would constitute fraud and the 2MP servicer should not proceed with the 2MP and must notify the Program Administrator. This section is amended to remove the parenthetical example of fraud.

Safe Harbor

Section 1.2, Chapter I of the *Handbook* is amended as follows:

As part of the Helping Families Save Their Homes Act of 2009 (HFSTHA), Congress amended the Truth in Lending Act to, among other things, provide a safe harbor to servicers that modify mortgages and engage in other loss mitigation activities consistent with guidelines issued by Treasury. Treasury has determined that each residential loan modification under HAMP (Tier 1 and Tier 2) (including PRA modifications) and 2MP, as well as each short sale and deed-in-lieu of foreclosure under HAFA is a "qualified loss mitigation plan" as defined in Section 201 of HFSTHA. However, this guidance does not mean that each such qualified loss mitigation plan automatically qualifies for safe harbor protection under HFSTHA. Servicers are reminded to refer to Section 201 of the Act, which sets forth the specific requirements that must be satisfied. For example, these requirements include, among other items, that:

- The servicer must implement the qualified loss mitigation plan prior to December 31, 2012;

- Default on the payment of the related mortgage must have occurred, be imminent, or be reasonably foreseeable;

- The mortgagor must occupy the property securing the mortgage as his or her principal residence; and

- The servicer must reasonably determine that the qualified loss mitigation plan will likely provide an anticipated recovery on the outstanding principal mortgage debt in excess of the anticipated recovery through foreclosure.

Servicing Transfers

As set forth in Section 1.4.1, Chapter I of the Handbook, when a participating servicer transfers or assigns mortgage loans, or servicing rights relating to mortgage loans, that constitute Eligible Loans pursuant to the SPA, the transferee servicer must assume the transferor servicer's obligations under the SPA with respect to the Eligible Loans involved in the transfer. An "Eligible Loan" is defined in the SPA to include, among other things, any mortgage loan which is 60 days or more delinquent and otherwise eligible for consideration or process under one or more of the MHA programs at the time of transfer or assignment.

When determining whether a loan is an "Eligible Loan", servicers are reminded to take into consideration the expanded eligibility criteria described herein.

Annual Certification

As set forth in Section 2.6.2, Chapter I of the *Handbook*, servicers are required to certify on an annual basis as to their compliance pursuant to activities performed and obligations satisfied during the period from the effective date of the most recent prior certification through and including the subsequent certification effective date. This Supplemental Directive provides that a subsequent certification for HAMP is inclusive of HAMP Tier 2 for all subsequent certifications with an effective date on or after September 30, 2012. The due date for a servicer to deliver a subsequent certification to MHA-C is not later than 90 calendar days after the subsequent certification effective date.

Reporting

Reason Code Reporting

Section 11.4.1, Chapter II of the Handbook requires servicers to report a reason code for each loan that is evaluated for but not offered a trial period plan or where the borrower does not accept the offered trial period plan. Currently only one reason code may be reported for each loan. With the introduction of HAMP Tier 2, servicers must now report a reason code for each loan that is evaluated for but not offered HAMP Tier 1 (i.e., income less than 31 percent DTI; excessive forbearance; or NPV negative for Tier 1) and, if applicable, a separate reason code for HAMP Tier 2. An updated list of reason codes will be available in the HAMP Additional Data Requirements Data Dictionary at www.HMPadmin.com.

Reporting HAMP Tier 2 Transactions

The reporting and payment processes are currently being updated by the Program Administrator to implement the terms of this Supplemental Directive. Servicers will be notified when such update is complete and the HAMP Reporting Tool is capable of processing HAMP Tier 2 transactions under this Supplemental Directive. Servicers should not report HAMP Tier 2 trial period plans or permanent modifications until the functionality to process HAMP Tier 2 incentives has been implemented in the HAMP Reporting Tool.

During the interim period, servicers must enter into HAMP Tier 2 trial period plans and permanent modifications in accordance with the guidance set forth herein and in the *Handbook* and collect and store information regarding such HAMP Tier 2 trial period plans and permanent modifications so that they can be reported when the updated processes become available. Incentives for HAMP Tier 2 permanent modification on such loans will be paid on permanent HAMP Tier 2 modifications when the updated reporting and payment processes are in place. Servicers should continue to report all HAMP Tier 1 trial period plans and permanent modifications in accordance with the procedures currently in place; the reporting and payment processes for such loans are not impacted by this Supplemental Directive.

Servicers are reminded that they must report NPV inputs and outputs used for evaluation through SD0906 Schedule III and the applicable NPV fields for loan setup. When the reporting processes are available, for owner occupant borrowers who are evaluated under both HAMP Tier 1 and HAMP Tier 2, servicers will be required to report NPV data for both Tiers. Furthermore, for borrowers who are only evaluated under HAMP Tier 2, servicers will be required to report NPV data for HAMP Tier 2.

Reporting 2MP Modifications Associated with HAMP Tier 2 First Lien Modifications

The reporting and payment processes for 2MP modifications associated with a first lien modified under HAMP Tier 2 are currently being updated by the Program Administrator. Servicers will be notified when the update is complete and the HAMP Reporting Tool is capable of processing 2MP modifications associated with HAMP Tier 2 first lien modifications. 2MP servicers should not report 2MP permanent modifications associated with HAMP Tier 2 modifications until notified by the Program Administrator that this functionality has been implemented in the HAMP Reporting Tool.

During the interim period, 2MP servicers must enter into 2MP modifications associated with a permanent HAMP Tier 2 modification in accordance with the guidance set forth herein and in the *Handbook* and must collect and store information regarding such 2MP modification so that they can be reported when the updated processes become available. Incentives for 2MP modifications on such loans will be paid on 2MP modifications when the updated reporting and payment processes are in place. 2MP servicers should continue to report all 2MP modifications, associated with HAMP Tier 1 permanent modifications in accordance with the procedures currently in place; the reporting and payment processes for such loans are not impacted by this Supplemental Directive.

Reporting HAFA Transactions

The reporting and payment processes are currently being updated by the Program Administrator to implement the HAFA changes described in this Supplemental Directive. Servicers will be notified when such update is complete and the HAMP Reporting Tool is capable of processing HAFA transaction incorporating the HAFA changes described herein. During the interim period, submissions that are tied to a HAMP Tier 2 cancelled trial period plan or permanent modification should be held for reporting until such time that the reporting and payment processes are updated and the related incentives will be paid when the updated reporting and payment processes are in place. All other HAFA transactions can continue to be reported and incentives will be paid thereon based on the current HAFA incentive schedule. During the interim period, for submissions where the payoff to the subordinate mortgage holder is in excess of $6,000, the servicer should report a payoff of $6,000.