

Supplemental Directive 10-18

December 28, 2010

Home Affordable Foreclosure Alternatives Program – Policy Update

In February 2009, the Obama Administration introduced the Making Home Affordable (MHA) Program 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 by participants in MHA across the mortgage industry and subsequently updated and expanded that guidance to include the Home Affordable Foreclosure Alternatives Program (HAFA) to provide borrowers with an alternative to foreclosure through a short sale or deed-in-lieu (DIL) of foreclosure when a loan modification is not available. In December 2010, Treasury issued version 3.0 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 or guaranteed by Fannie Mae and Freddie Mac (Non-GSE Mortgages).

This Supplemental Directive provides policy enhancements to HAFA and amends and supersedes the notated portions of the *Handbook*. This Supplemental Directive is effective February 1, 2011; however, servicers may begin to implement the changes outlined in this Supplemental Directive immediately. By February 1, 2011, servicers must make appropriate updates, consistent with investor guidelines, describing the basis on which the servicer will offer HAFA to borrowers (HAFA Policy) and ensure that all potentially eligible borrowers are evaluated and treated consistently.

Servicers that have executed a servicer participation agreement and related documents (SPA) must follow the guidance set forth in this Supplemental Directive. This guidance does not apply to first lien mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac, or insured or guaranteed by a federal agency, such as the Federal Housing Administration, Veterans Administration or the Department of Agriculture's Rural Housing Service.

This Supplemental Directive covers the following topics:

- Monthly Gross Income
- Vacant Property
- Release of Subordinate Liens
- Timing for Issuance of Short Sale Agreement
- Timing for Response to Alternative Request for Approval of Short Sale
- Real Estate Brokerage Commissions
- Alternative Deed-in-Lieu Programs
- Borrower Notices
- Retroactivity
- Reporting
- Compliance

Monthly Gross Income

With respect to HAFA eligibility, servicers are no longer required to verify a borrower's financial information or to determine if the borrower's total monthly mortgage payment (as defined in Section 6.1.2 of Chapter II of the *Handbook*) exceeds 31 percent of the borrower's monthly gross income as currently set forth in Section 2 of Chapter IV of the *Handbook*. Servicers must continue to verify the borrower's hardship by obtaining a signed Hardship Affidavit or Request for Modification and Affidavit (RMA). Notwithstanding the foregoing, each servicer may include a requirement in its HAFA Policy that borrowers provide updated financial information to evaluate the borrower.

Vacant Property

To be considered for HAFA, the property currently must be or recently must have been the borrower's principal residence. A property that has been vacant or rented to a non-borrower for not more than 12 months prior to the date of the Short Sale Agreement (SSA), Alternative Request for Approval of Short Sale (Alternative RASS) or DIL agreement (DIL Agreement) is eligible for HAFA, so long as the borrower provides documentation that the property was such borrower's principal residence prior to relocation and such borrower has not purchased a one- to four-unit property during the 12-month period prior to the date of the SSA, Alternative RASS or DIL Agreement. The borrower's reason for relocation does not need to be connected to re-employment or transfer of employment. Also, there is no longer a minimum distance requirement. Servicers are not required to verify the number of miles the borrower moved from the property.

Release of Subordinate Liens

Subordinate mortgage/lien holders will continue to be paid in order of priority as set forth in Section 6.2.4.2 of Chapter IV of the *Handbook*. However, servicers are no longer limited by the six percent cap with respect to payments to each subordinate mortgage/lien holder. The servicer, on behalf of the investor, shall determine the amount or percentage of the unpaid principal balance of the lien that will be paid to each subordinate mortgage/lien holder until the \$6,000 aggregate cap is reached. Each servicer must include in its HAFA Policy how subordinate mortgage/lien holders will be paid. Investors continue to be eligible for incentive reimbursement for up to one-third of the cost to extinguish subordinate liens as described in Section 12.3 of Chapter IV of the *Handbook*.

Timing for Issuance of Short Sale Agreement

The servicer must complete and send to the borrower an SSA no later than 30 calendar days from the date the borrower responds to the servicer's HAFA solicitation as set forth in Section 4 of Chapter IV of the *Handbook*. If an unsolicited borrower requests consideration under HAFA, the servicer must evaluate the borrower's eligibility and, if eligible, complete and send the borrower an SSA no later than 30 calendar days from the date of the borrower's request.

Timing for Response to Alternative Request for Approval of Short Sale

No later than 30 calendar days from the date of receipt from the borrower of an executed sales contract, Alternative RASS, and a signed Hardship Affidavit or RMA, the servicer must communicate approval or disapproval of the sale or provide a counter offer on the Alternative RASS.

Real Estate Brokerage Commissions

With respect to SSA transactions, the real estate commission that may be paid shall be the amount indicated in the listing agreement between the borrower and the listing broker, provided that such commission shall not exceed six percent of the contract sales price. When the servicer has retained a contractor to assist the listing broker with the transaction, the servicer must include a statement in the SSA that any associated vendor fees will not be charged to the borrower or deducted from the real estate commission.

With respect to Alternative RASS transactions, when the servicer has retained a contractor to assist the listing broker with completion of the transaction, the servicer must include a statement in the Alternative RASS form that any associated vendor fees will not be charged to the borrower or deducted from the real estate commission.

The model RASS and Alternative RASS forms have been updated to reflect these changes and are available on www.HMPAdmin.com.

Alternative Deed-in-Lieu Programs

DIL Agreements between servicers and borrowers that provide an option for the borrower to continue to occupy the property on a rental basis (deed-for-lease) or provide an opportunity for the borrower to repurchase the property at some future time are also eligible for financial incentives under HAFA, so long as all other program requirements are met. At the discretion of the servicer in accordance with investor guidelines, the borrower relocation incentive may be paid either upon the successful closing of the DIL or at a future time when the borrower vacates or repurchases the property. Servicers offering programs of this type must include program descriptions and conditions in their HAFA Policy.

Conditional DIL agreements that allow a borrower to reinstate the original loan following some period of rental occupancy are not eligible for HAFA incentives unless and until the DIL is final and the borrower no longer has the option of reinstating or modifying the original first mortgage lien.

Borrower Notices

Under Chapter 4 of Section IV of the *Handbook*, when a borrower who was not previously evaluated for HAMP requests a short sale or DIL, and the servicer determines that the borrower meets the HAMP eligibility requirements and will be solicited for HAFA, the servicer must notify the borrower verbally or in writing of the availability of HAMP and allow the borrower 14

calendar days from the date of the notification to contact the servicer by verbal or written communication and request consideration for HAMP. This Supplemental Directive clarifies that this notification may be given simultaneously with the servicer's consideration of the borrower for HAFA.

Retroactivity

Servicers are not required to implement the terms of this Supplemental Directive as to any loan that has been reported via the HAMP Reporting Tool or for any loan as to which a borrower has been determined to be ineligible for HAFA. Notwithstanding the foregoing, servicers may re-evaluate borrowers previously determined to be ineligible for HAFA using the guidance in this Supplemental Directive. Each servicer's HAFA Policy must contain a written policy that describes the basis on which the servicer will re-evaluate such borrowers under HAFA.

Reporting

Under HAFA, servicers are required to provide periodic loan level data to the Program Administrator. Updated HAFA reporting and payment processes implementing the terms of this Supplemental Directive are currently under development by the Program Administrator. Subsequent guidance on such processes will be provided on www.HMPadmin.com. Servicers of loans with SSAs or DIL Agreements entered into under HAFA after the date of this Supplemental Directive will not be required to report updated HAFA data using the HAMP Reporting Tool until the reporting processes are in place, but in this interim period servicers must collect and store information on all such HAFA transactions so that the necessary data can be reported when the updated processes become available. The policy guidance set forth in this Supplemental Directive will not require the collection of any additional data beyond the data servicers were required to collect prior to the issuance of this Supplemental Directive. When the updated reporting processes become available, servicers will be provided instruction on how to report the "Front Ratio before Modification" (DD77 in the HAFA Data Dictionary) and potentially other existing fields affected by this Supplemental Directive. Finally, HAFA incentives for such loans will not be paid until the updated reporting and payment processes through the HAMP Reporting Tool are in place; borrowers, servicers and investors will be reimbursed for all incentives relating to such HAFA transactions closed prior to the updated reporting and payment processes becoming available.

Compliance

In addition to the requirements of Section 2.2.3 of Chapter I of the *Handbook*, servicers are required to retain all documents and information received during the process of determining borrower eligibility, including evidence of receipt of required documents such as the Hardship Affidavit or RMA, RASS or Alternative RASS, as well as the evidence used to determine if the property was vacant. Servicers are also required to retain all documents and information related to the terms of the SSA or approval of the Alternative RASS.

EXHIBIT A
MHA HANDBOOK MAPPING

I. CONFORMING CHANGES TO EXISTING HANDBOOK SECTIONS

The following guidance amends and supersedes the notated portions of the *Handbook* effective February 1, 2011. Changed or new text is indicated in italics. Text that has been lined out has been deleted.

A. Section 2.2.3 of Chapter I is replaced in its entirety with the text:

- Written policies and procedures relating to HAFA, including:
 - Determining eligibility for the program including determining fair market value, recommended list price, approved sale proceeds and approved minimum net proceeds, as applicable;
 - Establishing guidelines for allowable payoffs to junior lien holders; ~~and~~
 - Determining when a monthly mortgage payment will be required during a short sale;
 - *Determining, if applicable, when a borrower will be considered for a deed-for-lease or an opportunity to repurchase the property at some future time; and*
 - *Determining if and when a borrower that was determined to be ineligible for HAFA prior to February 1, 2011 will be re-evaluated.*
- All records of borrower solicitations or borrower-initiated inquiries regarding HAFA.
- The date and outcome of the consideration and evaluation for foreclosure alternatives under HAFA and specific justification with supporting details if foreclosure alternatives were denied including all records related to the termination of the SSA or expiration of the HAFA transactions without a completed short sale or acceptance of a DIL.
- All documents and information related to the extinguishment and release of subordinate liens in accordance with applicable laws.
- *All documents and information received during the process of determining borrower eligibility, including evidence of receipt of required documents such as the Hardship Affidavit or RMA, and RASS or Alternative RASS as well as the evidence used to determine if the property was vacant.*
- *All documents and information related to the terms of the SSA or approval of the Alternative RASS.*

B. Section 2 of Chapter IV is amended to include the following changes in the chart related to HAFA eligibility:

Not vacant or condemned	The property securing the mortgage loan is not condemned. The property securing the mortgage loan is not vacant, except that the property can be vacant up to 90 days <i>12 months</i> prior to the date of the Short Sale Agreement (SSA), Alternative Request for Approval of Short Sale (Alternative RASS) or DIL Agreement if the borrower provides documentation that the borrower was required to relocate at least 100 miles from the property to accept new employment or was transferred by the current employer that it was their principal residence prior to relocation and there is no evidence indicating that the borrower has purchased a one- to four-unit property 90 days during the 12-month period prior to the date of the SSA, Alternative RASS or DIL Agreement.
Minimum monthly mortgage payment ratio	The borrower's monthly mortgage payment (including principal, interest, taxes, insurance, and when applicable, association fees) prior to the short sale or DIL is greater than 31 percent of the borrower's verified monthly gross income.
Financial Hardship	A borrower has documented a financial hardship, <i>evidenced by a signed Hardship Affidavit or RMA, wherein the borrower has represented that he or she does not have sufficient liquid assets to make the monthly mortgage payments.</i>

C. Section 3 of Chapter IV is amended to include the following text as the new second paragraph related to the HAFA Policy:

Each participating servicer must develop a written policy, consistent with investor guidelines, that describes the basis on which the servicer will offer HAFA to borrowers (HAFA Policy). A servicer's HAFA Policy must: (i) identify the circumstances under which the servicer will require monthly mortgage payments and how that payment will be determined, in accordance with applicable laws, rules and regulations; (ii) describe the basis on which the minimum acceptable net proceeds will be determined; (iii) *describe how subordinate lien holders will be paid, whether by percentage of the UPB of their loan or some other determination;* (iv) *describe if and when the servicer will require income documentation;* (v) *if servicer has a program with an option for deed-for-lease or an opportunity for the borrower to repurchase the property at some future time, describe such program and conditions;* (vi) *describe if and when a borrower that was determined to be ineligible for HAFA prior to February 1, 2011 will be re-evaluated;* and (vii) may incorporate such factors as:

- The severity of the loss involved;
- Local market conditions,
- The timing of pending foreclosure actions;

- Borrower motivation and cooperation;
- Customary transactional costs of short sales and DILs; and
- The amounts that may be required to release any subordinate liens on the property.

D. Section 4 of Chapter IV is amended to include the following text in the second paragraph related to communication and borrower notices:

When a borrower who was not previously evaluated for HAMP requests a short sale or DIL, and the servicer determines that the borrower meets the HAMP eligibility requirements and will be solicited for HAFA, the servicer must notify the borrower verbally or in writing of the availability of HAMP and allow the borrower 14 calendar days from the date of the notification to contact the servicer by verbal or written communication and request consideration for HAMP. *This notification may be given simultaneously with the servicer's consideration of the borrower for HAFA.* If the borrower does not wish to be considered for HAMP, the servicer is not required to send the borrower a Non-Approval Notice under Section 2.3.2 of Chapter II.

E. Section 6.1.1 of Chapter IV is replaced in its entirety with the text below.

If a borrower's ~~financial and~~ hardship information is documented and verified as part of the HAMP evaluation *and the servicer is in possession of a signed Hardship Affidavit or RMA*, no additional financial or hardship assessment is required under HAFA. However, in accordance with ~~investor guidelines~~ *a servicer's HAFA Policy*, the servicer may request updated financial information to evaluate the borrower.

~~If a borrower was evaluated for HAMP based on verbal financial data, the servicer may send the borrower an SSA and must require the borrower to deliver the financial information required under HAMP when the borrower returns the executed SSA. The servicer must verify a borrower's financial information through documentation and obtain a signed RMA or Hardship Affidavit that documents the borrower's hardship.~~

When a borrower who was not previously evaluated for HAMP requests a short sale or DIL, the servicer must determine the basic eligibility of the borrower as set forth in Section 2. In addition, the servicer must obtain a completed *Hardship Affidavit or RMA* ~~and evidence of the borrower's income sufficient to determine that the borrower meets the 31 percent income eligibility requirement and must~~ *to* verify that the borrower has experienced a hardship. The servicer is not required to:

- Obtain an IRS Form 4506-T, 4506T-EZ nor evidence of income, unless it is necessary to verify the borrower's income required by the servicer's HAFA Policy;
- Evaluate the mortgage loan using the NPV test; or
- Apply the standard or alternative modification waterfall set forth in Section 6.3 and Section 6.4 of Chapter II, respectively.

F. Section 6.2.4.2 of Chapter IV is replaced in its entirety with the text below.

It is the responsibility of the borrower to deliver clear marketable title to the purchaser or investor and to work with the listing broker, settlement agent and/or lien holders to clear title impediments. The servicer may, but is not required to, negotiate with subordinate lien holders on behalf of the borrower. The servicer, on behalf of the investor, will authorize the settlement agent to allow a portion of the gross sale proceeds as payment(s) to subordinate mortgage/lien holder(s) in exchange for a lien release and full release of borrower liability. ~~Each lien holder, in order of priority, may be paid no more than six percent of the UPB of their loan, until the \$6,000 aggregate cap is reached.~~ *Subordinate mortgage/lien holders will be paid in order of priority and may be paid no more than an aggregate cap of \$6,000.* Payments will be made at closing from the gross sale proceeds and must be reflected on the HUD-1 Settlement Statement.

G. Section 7.4 of Chapter IV is amended to include the following text as the new first paragraph related to servicer's obligation to prepare the SSA and the new fifth bullet related to the use of vendors.

Either proactively, or at the request of an eligible borrower, the servicer will prepare and send an SSA to the borrower after determining that the proposed sale is in the best interest of the investor. *The servicer must complete and send the SSA to the borrower no later than 30 calendar days from the date the borrower responds to the servicer's Hafa solicitation described in Section 4. Alternatively, if an unsolicited borrower requests consideration under Hafa, the servicer must evaluate the borrower's eligibility for Hafa and, if eligible, must complete and send the SSA to the borrower no later than 30 calendar days from the date of the borrower's request for consideration under Hafa.* A borrower may not participate in a TPP and agree to an SSA simultaneously. The servicer will also provide the borrower a RASS, pre-populated with contact information for the servicer, the property address and the loan number.

- The amount of the real estate commission that may be paid, not to exceed six percent of the contract sales price, and when applicable, notification that the servicer retained a contractor *or vendor* to assist the listing broker with the transaction *and a statement that any associated vendor fees will not be charged to the borrower or deducted from the real estate commission* along with the payment amount (expressed as a fixed dollar amount or percentage of the contract sales price) if paid from sale proceeds.

H. Section 8 of Chapter IV is replaced in its entirety with the text below.

If the borrower has an executed sales contract and requests the servicer to approve a short sale under Hafa before an SSA has been executed, then the borrower must submit the request to the servicer in the form of the Alternative RASS *accompanied by a signed Hardship Affidavit or RMA*. Upon receipt of the Alternative RASS *and signed Hardship Affidavit or RMA*, the servicer must determine the borrower's eligibility as set forth in Section 6.1.1. If the borrower appears to be eligible and was not previously considered for HAMP, the servicer must notify the borrower of the availability of HAMP as set forth in Section 4.

Within 30 calendar days of receipt of an executed sales contract, Alternative RASS and signed Hardship Affidavit or RMA, the servicer must communicate approval or disapproval of the sale, or provide a counter offer on the Alternative RASS form. Servicers may not, as a condition of sale, require that the real estate commission stated in the sales contract be reduced to less than six percent of the contract sale price. If a servicer retains a contractor or vendor to assist the listing broker with completion of the transaction, the servicer must include a statement in the Alternative RASS form that any associated vendor fees will not be charged to the borrower or deducted from the real estate commission.

I. Section 9.2 of Chapter IV is amended to include the following text as the last two bullets:

- *The SSA or DIL Agreement may provide an option for the borrower to continue to occupy the property on a rental basis (deed-for-lease) or provide an opportunity for the borrower to repurchase the property at some future time. Such transactions are eligible for financial incentives under HAFA, so long as all other program requirements are met. At the discretion of the servicer in accordance with investor guidelines, the borrower relocation incentive may be paid either upon the successful closing of the DIL or at a future time when the borrower vacates or repurchases the property. Servicers offering programs of this type must include program descriptions and conditions in their HAFA Policy.*
- *Conditional DIL agreements that allow a borrower to reinstate the original loan following some period of rental occupancy are not eligible for HAFA incentives unless and until the DIL is successfully closed and the borrower no longer has the option of reinstating or modifying the original first mortgage lien.*

**EXHIBIT B
HAFA DOCUMENTS**

The Short Sale Agreement is amended to include the following text as the new 5. c. related to real estate commissions under the Short Sale Agreement Terms and Conditions:

c. **Real Estate Commissions.** We will allow to be paid from sale proceeds, real estate commissions of _____ percent (*not to exceed 6%*) of the contract sales price, to be paid to the listing and selling brokers involved in the transaction. Neither you nor the buyer may receive a commission. Any commission that would otherwise be paid to you or the buyer must be reduced from the commission due on sale. [Optional text:] Please note: We have retained a vendor to assist your listing broker with the sale. The vendor and your listing broker will work together on your behalf to facilitate the sale process. ~~{Choose one and delete unnecessary text.} [The vendor will be paid from sale proceeds [\$ _____] OR [an amount equal to _____% of the sales price].] OR [The vendor will be paid by us outside of the sales transaction.]~~ *Vendor fees or charges will not be charged to you and will not be deducted from the real estate commission. Additionally, any outsourcing firm or third party retained as an agent for us may not charge (either directly or indirectly) any outsourcing fee, short sale negotiation fee, or similar fee in connection with the short sale.*

The Alternative Request for Approval of Short Sale is amended to include the following text as the new 5. c. related to real estate commissions under the “Short Sale Program—Terms and Conditions of the Request are as follows”:

c. **Real Estate Commissions.** We will allow to be paid from sale proceeds, real estate commissions as stated in the listing agreement between you and your broker, not to exceed six percent (6%) of the contract sales price, to be paid to the listing and selling brokers involved in the transaction. Neither you nor the buyer may receive a commission. Any commission that would otherwise be paid to you or the buyer must be reduced from the commission due on sale. [Optional text:] Please note: We have retained a vendor to assist your listing broker with the sale. The vendor and your listing broker will work together on your behalf to facilitate the sale process. ~~{Choose one and delete unnecessary text.} [The vendor will be paid from sale proceeds [\$ _____] OR [an amount equal to _____% of the sales price].] OR [The vendor will be paid by us outside of the sales transaction.]~~ *Vendor fees or charges will not be charged to you and will not be deducted from the real estate commission. Additionally, any outsourcing firm or third party retained as an agent for us may not charge (either directly or indirectly) any outsourcing fee, short sale negotiation fee, or similar fee in connection with the short sale.*