Supplemental Directive 10-07 *August 2, 2010*

Making Home Affordable – Interactions with HFA Hardest-Hit Fund Programs

Background

In February and March of 2010, President Obama announced $2.1 billion in funding from the Troubled Asset Relief Program (TARP) for innovative measures to help families in the states that have been hit the hardest by the housing crisis and economic downturn. The Housing Finance Agency Innovation Fund for the Hardest-Hit Housing Markets (HHF) currently includes funding for Arizona, California, Florida, Michigan, Nevada, North Carolina, Ohio, Oregon, Rhode Island and South Carolina. In these states, TARP funds will be utilized for innovative programs developed by state Housing Finance Agencies (HFAs) to prevent foreclosures and stabilize housing markets. HFAs will implement a range of programs that include assistance to unemployed borrowers, principal reduction, funding to extinguish second liens, and programs that facilitate short sales and deeds-in-lieu of foreclosure.

HHF programs may target similar borrowers and have goals in common with initiatives under the Making Home Affordable (MHA) Program, which includes the Home Affordable Modification Program (HAMP), Principal Reduction Alternative (PRA), Second Lien Modification Program (2MP), Home Affordable Foreclosure Alternatives (HAFA) Program and Home Affordable Unemployment Program (UP). Details about specific HHF programs can be found at http://www.financialstability.gov/roadtostability/hardesthitfund.html. HAMP participating servicers are obligated under their Servicer Participation Agreements (SPA) to screen all first lien mortgage loans where two or more payments are due and unpaid to determine if they meet the basic criteria for consideration under HAMP, but there may be times when HHF programs will complement assistance provided through MHA or enable borrowers that would not otherwise qualify to become eligible for an MHA program. While voluntary, the Department of the Treasury (Treasury) encourages servicers to work with the HFAs to implement their programs for borrowers in states with HHF programs. The purpose of this Supplemental Directive is to clarify the roles and responsibilities of MHA participating servicers in connection with the HHF programs, and to ensure that borrowers are properly evaluated for the appropriate programs.

When submitting proposals for funding, HFAs were encouraged to design programs that target borrowers who are not eligible for, or otherwise did not complete, a HAMP modification or other MHA program. Nevertheless, the HHF programs may interact with aspects of MHA as HFAs try to leverage the resources provided by the MHA programs to expand the pool of borrowers that are eligible for HAMP or other MHA options. In some cases, the assistance the HFAs provide under HHF can supplement and extend assistance provided through MHA. To maximize the effectiveness of their foreclosure mitigation efforts, servicers should use reasonable efforts to ensure that TARP funds are used efficiently and that HHF programs complement MHA programs.

The effective date of this guidance, except where noted below, is the date of publication. Any additional MHA programs introduced after publication of this Supplemental Directive will include guidance as needed on the interaction between HHF and that MHA program. This Supplemental Directive provides guidance to servicers of loans that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages) that are participating in both an MHA program and an HHF program.

General Guidance for Servicers on Interacting with Hardest-Hit Fund Programs

To ensure that HHF programs operate effectively and that applicants are matched to the appropriate program, HFAs may need access to information about an HHF-qualified borrower's HAMP status. When working with an HFA and in receipt of a Borrower Authorization (an example of which is attached as exhibit A), an MHA participating servicer must provide the HFA with applicable borrower-specific information including, but not limited to, (i) the status of the borrower's request to be considered for HAMP, HAFA or another MHA program (including, if applicable, the primary denial reason); (ii) the terms of an active trial period plan or permanent modification; (iii) a print out of the Net Present Value (NPV) result(s) from both standard and alternative waterfall evaluations (as applicable); and (iv) other relevant loan information. A servicer may not directly solicit the borrower for participation in an HHF program without express written consent from the HFA. Additionally, MHA participating servicers will be required to report to Fannie Mae, in its capacity as financial agent for the United States (as designated by Treasury) (Program Administrator), information relating to a mortgage loan that participates in an HHF program that is also receiving assistance from an MHA program.

Servicers may not deny or delay consideration of a borrower for any MHA program pending acceptance of that borrower into an HHF program and may not require borrowers first request HFA program assistance through an HFA or housing counselor as a condition of consideration for an MHA program. If a borrower is denied assistance under any MHA program, and the servicer is aware of an HHF program that may help the borrower qualify for an MHA program, the servicer may notify the borrower of this option (or alternative) if authorized by the HFA. In this specific circumstance, the servicer may suspend the denial decision and borrower non-approval notice required in accordance with the guidance in Supplemental Directive 10-01, for an additional 30 days to allow the HFA to decide about appropriate assistance for that borrower. In addition, if HHF assistance enables a HAMP trial period plan offer within these timeframes, verification of the borrower's income documentation will not be required if it was previously verified in connection with the MHA program where assistance was denied.

Home Affordable Unemployment Program (UP)

As detailed in the program guidance set forth in Supplemental Directive 10-04, UP requires HAMP participating servicers to offer eligible borrowers receiving unemployment benefits a minimum three-month forbearance period. In connection with UP, servicers may require a borrower to make a monthly mortgage payment not to exceed 31 percent of the borrower's gross monthly income. Many HHF programs also provide assistance to unemployed borrowers by paying all or some of the borrower's monthly mortgage payment for a period of time. HHF unemployment assistance may precede an UP forbearance, run concurrently with UP or may be used to extend it. Servicers are required to have a written policy detailing when a monthly mortgage payment under UP will be required and how it will be determined, and the policy cannot change based on the availability of a HHF program.

- If the servicer accepts unemployment assistance payments from an HHF program that, when combined with payments made by the borrower, are less than or equal to 31 percent of the borrower's gross monthly income, the HAMP participating servicer will have satisfied the UP forbearance requirement.

- If the servicer accepts unemployment assistance payments from an HHF program that, when combined with payments made by the borrower, exceed 31 percent of the borrower's gross monthly income, the HAMP participating servicer will not have satisfied the UP forbearance requirement. In this circumstance, following expiration of the HHF unemployment assistance program:

  - Qualified unemployed borrowers must be provided with at least three months of UP forbearance before being evaluated for HAMP; or

  - A borrower that has obtained employment that still has a financial hardship and otherwise meets HAMP eligibility criteria must be considered for HAMP prior to considering other loss mitigation alternatives.

Any assistance from an HHF unemployment program may not be considered as income for HAMP, and an unemployed borrower in a trial may not use HHF funds to make their trial period payments. Once a loan is permanently modified under HAMP, a borrower who becomes unemployed can use an HHF unemployment program to help them to continue to make their monthly mortgage payments.

Principal Reduction Alternative (PRA)

As detailed in the program guidance set forth in Supplemental Directive 10-05, under PRA, HAMP participating servicers must evaluate every HAMP-eligible borrower with a loan-to-value (LTV) ratio greater than 115 percent for possible principal reduction by completing both a standard waterfall and an alternative waterfall that includes principal reduction. If as a result of this evaluation the servicer elects to offer principal reduction as part of a HAMP modification, Treasury will pay principal reduction incentives to the investor. These incentives are in addition to any investor cost share or home price decline protection incentives the investor may be eligible to receive.

Several HHF programs are designed to assist borrowers whose homes are significantly underwater by providing principal reduction payments, which may or may not require a matching contribution from the first lien investor. Loans modified under HAMP that include HHF principal reduction are eligible for standard borrower, servicer and investor incentives as described in Supplemental Directives 09-01 and 09-04.

Investors are not eligible to receive PRA incentives for any principal reduction contributions made as part of an HHF principal reduction program. However, if the servicer agrees to provide a greater amount of principal reduction than is required under an HHF program, the investor may be eligible for PRA incentives if, after subtracting the total HHF principal reduction and any required investor match from the unpaid principal balance (UPB) (the UPB should include any amounts that would be capitalized in accordance with HAMP guidelines), the adjusted LTV ratio is greater than 115 percent. If the adjusted LTV ratio is equal to or less than 115 percent, the loan is not eligible for PRA investor incentives.

HHF programs can be used to pay escrow shortages and reduce arrearages. If these amounts have been capitalized, the payments are treated as principal reduction.

Incorporating HFA Payments to Create Positive NPV Result

Some HHF programs target assistance to borrowers who are not HAMP-eligible because the proposed modification is NPV negative. HFAs hope to make modifications NPV positive by providing assistance in the form of upfront principal reduction to enable the modification. Depending on the HHF program rules, the investor may be required to contribute to or match, on a dollar-for-dollar basis, this assistance. The HAMP NPV model does not evaluate the impact of principal reduction payments made by a third party on investor cash flows. In order to estimate the impact of HHF principal reduction payments, servicers who participate in these types of programs should follow a different analysis protocol than that required for PRA or for HAMP.

Generally, the NPV result will improve by an amount greater than the principal reduction contribution provided by the HHF. However, the precise contribution required to generate an NPV positive result depends on individual loan and borrower characteristics and is difficult to predict. Servicers working with HHF programs to find an amount of principal reduction that will produce an NPV positive result may be required to iteratively increase the HHF contribution amount. HHF programs and servicers may wish to jointly establish a threshold NPV positive amount beyond which further testing is not required. HHF programs should provide written testing instructions to participating servicers detailing preferred iteration amounts and allowed thresholds. Such instructions must reflect a minimum contribution amount of $1,000 and increases in increments of not less than $1,000, up to the maximum amount established by the applicable HHF program. The last NPV run should reflect the final terms of the modification.

(1) **Generate the modification terms**: Similar to the steps of the standard or alternative waterfall, servicers should first capitalize allowable costs into the pre-modification UPB. Then servicers should subtract the projected amount of principal reduction, including any required investor contributions, to determine an adjusted UPB that should be used to calculate any interest rate, term, and forbearance changes required to achieve the 31 percent target monthly mortgage payment ratio.

(2) **Run the NPV Test**: Servicers will use only the input fields for the standard waterfall in testing for HHF principal reduction. The servicer should enter the adjusted UPB, interest rate, term and forbearance generated in Step 1 into the NPV model. The servicer should enter all principal reduction associated with the modification – including PRA reduction, HHF reduction, and any investor match for HHF reduction – into the input field labeled "Principal Forgiveness Amount." After Base NPV Model version 4.0 is released in October and the PRA modification can be evaluated directly, the servicer should continue to use only the standard waterfall input fields.

(3) **Calculate NPV**: After the NPV evaluation, the servicer must add the amount of the HHF principal reduction payment to the NPV result to determine the cash flow to the investor. Any principal reduction contributions from the investor should not be added to the NPV result.

Second Lien Modification Program

As detailed in the program guidance set forth in Supplemental Directive 09-05 Revised, a 2MP participating servicer is required to modify or extinguish a second lien if the first lien is modified under HAMP. If a second lien has already been modified or is eligible for modification under 2MP, the servicer/investor is prohibited from accepting any fees, incentives or remuneration from an HFA for additional modification or extinguishment of the second lien. If the first lien is not in a trial period plan, has not been modified by HAMP or if the servicer does not participate in 2MP, the second lien may be modified or extinguished under an HHF program. If the corresponding first lien is subsequently modified under HAMP, and the second lien is otherwise eligible for 2MP, the participating servicer must modify the loan according to 2MP program guidance, however, servicers and investors are not eligible for any 2MP incentives in conjunction with a second lien that has previously been modified or extinguished pursuant to an HHF program.

Home Affordable Foreclosure Alternatives

As detailed in the program guidance set forth in Supplemental Directive 09-09 Revised, under HAFA, incentives are paid to borrowers, servicers and investors to facilitate a short sale or deed-in-lieu (DIL) of foreclosure. A borrower that is participating in HAFA may receive funds from an HHF program to assist with monthly payments required during the short sale marketing period or to provide additional borrower relocation assistance following a successful short sale or DIL. HHF program funds may not be used to provide compensation to extinguish subordinate liens in a HAFA transaction.

Additionally, Supplemental Directive 09-09 Revised requires each servicer to develop and implement a written policy, consistent with investor guidelines, describing the basis on which the servicer will offer HAFA and whether they will require monthly payments during the short sale/DIL process. Servicers may not establish different policies applicable to borrowers in a state where there is an HHF short sale assistance program.

Government Insured or Guaranteed Loans

As detailed in program guidance set forth in Supplemental Directive 10-03, under Treasury FHA-HAMP, Treasury provides pay-for-performance compensation for borrowers and pay-for-success compensation to servicers for FHA-insured first lien mortgages that are modified under FHA's HAMP program. HHF programs may be able to facilitate FHA modifications through the payment of arrearages, reduction of forborne amounts in a FHA modification or settlement of other debt (to bring a borrower below a 55% back-end debt-to-income ratio). HHF programs should work with servicers and the government insurer to determine the most efficient and effective use of resources.

Reporting

Servicers will be required to report to the Program Administrator certain information related to any loan in the MHA system of record (whether through HAMP, 2MP, HAFA or another program) that has received assistance from an HHF program. The specific data elements to be reported will be posted at www.HMPadmin.com. The MHA system of record will be modified to facilitate these new reporting requirements. Within 30 calendar days of the availability of this new functionality, servicers must begin reporting the required data into the system of record from that point forward. In the meantime, servicers must retain the required data elements for reporting when the system functionality is available. If information is not received or is inaccurate as determined by audits and other compliance activities, it may result in financial remedies, including the withholding or recapture of incentives. Any principal reduction that occurs through an HHF program should be reported as standard principal reduction in IR2 and be deducted from the UPB after modification (not incentivized forgiveness for PRA).

Compliance

Treasury or its designee will perform compliance specific to the HHF program. A servicer must agree to requests for information or inspection from Treasury, its designee, or Treasury's oversight entities related to any activity performed for the HHF program.

As compliance agent for HAMP, MHA-C will incorporate an evaluation of HHF program interaction, including records of participation in HHF programs and other information that may be requested from MHA-C to perform its compliance reviews. The servicer must maintain all relevant records of these transactions, including, but not limited to, printouts from related NPV runs done on behalf of an HHF program, borrower authorization forms, reports to the Program Administrator reflecting loans that received HHF assistance and documentation of the amount of any assistance received from an HHF program.

For HHF Program interaction with UP:

Servicer requirements include, but are not limited to:

- Obtaining and retaining documentation from the HFA regarding guidance/instructions specific to timing and amount of the payment
- Documenting the eligibility for UP (based on the timing and unemployment status of the borrower at the time of evaluation)
- Documenting HAMP evaluation after UP and HHF assistance ceases, if applicable (e.g. borrower continues to have a hardship).

For HHF Program interaction with HAMP:

Servicer requirements include, but are not limited to:

- Documentation of any HFA assistance the borrower receives to facilitate the modification
- Documentation of an extension of borrower notice requirements

For HHF Program interaction with PRA:

Servicer requirements include, but are not limited to:

- Documenting HFA assistance and appropriate adjustments to UPB as stated above
- Documenting NPV calculations using to determine eligibility for HAMP and PRA *prior to* as well as *after* the HHF program's principal reductions

For HHF Program interaction with 2MP:

Servicer requirements include, but are not limited to:

- Documenting that a 2MP match did not already occur or was ineligible before HFA assistance was extended
- Documenting the release of the second lien

For HHF Program interaction with HAFA:

Servicer requirements include, but are not limited to:

- Obtaining and retaining documentation from the HFA regarding guidance/instructions specific to the application, timing, and amount of the payments, if made to the servicer

Exhibit A:
MHA Third Party Authorization Form

Making Home Affordable Program
Third Party Authorization Form

Borrower Name | **Co-Borrower Name**

Lender/Mortgage Servicer Name | [*Account*][*Loan*] **Number**

I provide consent to my lender/mortgage servicer to release or otherwise provide to:

[*Agency*] and/or **[*State HFA*]**

[***Agency Contact Name and Phone Number***] **[*State HFA Contact Name and Phone Number*]**

(individually and collectively, the "Requestor") public and non-public personal financial information contained in my loan account which may include, but is not limited to, my name, address, telephone number, social security number, credit score, income, government monitoring information, loss mitigation application status and information about account balances and payment activity.

The lender/mortgage servicer will take reasonable steps to verify the identity of the Requestor authorized above, but will have no responsibility or liability to verify the true identity of the Requestor when he/she asks to discuss my account or seeks information about my account. Nor shall the lender/mortgage servicer have any responsibility or liability for what the Requestor may do with the information he/she obtains concerning my account.

Before signing this Authorization, beware of foreclosure rescue scams!

- It is expected that a HUD-approved housing counselor will work directly with your lender/mortgage servicer.
- Please visit http://makinghomeaffordable.gov/counselor.html to verify you are working with a HUD-approved housing counseling agency.
- Beware of anyone who asks you to pay a fee in exchange for a counseling service or modification of a delinquent loan.

This Authorization will not be valid unless signed by all borrowers and co-borrowers named on the mortgage and will remain valid until revoked in writing by any borrower or co-borrower. I agree to contact the servicer if I wish to revoke this Authorization.

I AGREE WITH THE TERMS OF THIS AUTHORIZATION

SIGN HERE

Borrower Name | **Date**

Co-Borrower Name | **Date**