JEFF D. FRIEDMAN (173886)
HAGENS BERMAN SOBOL SHAPIRO LLP
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
jefff@hbsslaw.com
-and-
STEVE W. BERMAN (*Pro Hac Vice* pending)
ARI Y. BROWN (*Pro Hac Vice* pending)
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594
steve@hbsslaw.com
arib@hbsslaw.com

ORIGINAL
FILED
APR 30 2010
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CV 10 1884 JL

BRITTA BREWER; STACEY MADAMBA, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

BANK OF AMERICA, N.A. and BAC HOME LOANS SERVICING, LP,

Defendants.

No.

CLASS ACTION

COMPLAINT FOR DAMAGES, RESTITUTION, AND INJUNCTIVE RELIEF

JURY TRIAL DEMANDED

TABLE OF CONTENTS

		Page
I.	INTRODUCTION	1
II.	JURISDICTION	5
III.	PARTIES	5
IV.	FACTUAL BACKGROUND	6
	A. The Foreclosure Crisis	6
	B. Creation of the Home Affordable Modification Program	6
	C. Duties of a Participating Servicer Under HAMP	8
	D. Plaintiffs' Effort to Obtain a Loan Modification Under HAMP	12
	1. Britta Brewer	12
	2. Stacey Madamba	15
	E. Class Allegations	18
COUNT I: BREACH OF CONTRACT / BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING		21
COUNT II: PROMISSORY ESTOPPEL, IN THE ALTERNATIVE		22
COUNT III: VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200 ET SEQ.		23
V.	PRAYER FOR RELIEF	23
VI.	JURY TRIAL DEMANDED	24

I. INTRODUCTION

1. In October 2008, Bank of America accepted $15 billion in funds from the United States Government as part of the Troubled Asset Relief Program ("TARP"), 12 U.S.C. § 5211. In January 2009, in connection with its acquisition of Merrill Lynch, Bank of America accepted another $10 billion in TARP funds along with a partial guarantee against losses on $118 billion in mortgage-related assets. By accepting this payment, Bank of America agreed that it would participate in one or more programs that TARP authorized the Secretary of the Treasury to establish necessary to minimize foreclosures.

2. Consistent with the TARP mandate, the Treasury Department implemented the Home Affordable Modification Program ("HAMP") – a detailed program designed to stem the foreclosure crisis by providing affordable mortgage loan modifications and other alternatives to foreclosure to eligible borrowers. Companies that accepted money under the TARP are subject to mandatory inclusion in HAMP as are certain classes of loans, namely those held by Federal National Mortgage Association ("Fannie Mae") and Federal Home Loan Mortgage Corporation ("Freddie Mac").

3. Bank of America signed a contract with the U.S. Treasury on April 17, 2009 (attached as Exhibit 1 and included by reference) agreeing to comply with the HAMP requirements and to perform loan modification and other foreclosure prevention services described in the program guidelines. The guidelines issued by the Treasury Department set forth a detailed process whereby a participating servicer such as Bank of America, acting through its subsidiary BAC Home Loans Servicing, must:

- identify loans that are subject to modification under the HAMP program, both through its own review and in response to requests for modification from individual homeowners;
- collect financial and other personal information from the homeowners to evaluate whether the homeowner is eligible for a loan modification under HAMP;

- institute a modified loan with a reduced payment amount as per a mandated formula, that is effective for a three-month trial period for borrowers that are eligible for a modification; and
- provide a permanently modified loan to those homeowners who comply with the requirements during the trial period. Whether the homeowner qualifies for a modification or not, participating servicers are also required to provide written notices to every mortgage borrower that has been evaluated for a loan modification, whether or not the borrower has been found eligible.

4. HAMP and its associated directives also set prohibitions against certain conduct *including demanding upfront payments in order to be evaluated for a loan modification*, instituting or continuing foreclosures while a borrower is being evaluated for a loan modification, and restrictions on the way a servicer may report the borrower to credit reporting agencies.

5. Though Bank of America accepted $25 billion in TARP funds and entered into a contract obligating itself to comply with the HAMP directives and to extend loan modifications for the benefit of distressed homeowners, Bank of America has systematically failed to comply with the terms of the HAMP directives and has regularly and repeatedly violated several of its prohibitions.

6. Under HAMP, the federal government incentivizes participating servicers to make adjustments to existing mortgage obligations in order to make the monthly payments more affordable. Servicers receive $1,000.00 for each HAMP modification. However, this incentive is countered by a number of financial factors that make it more profitable for a mortgage servicer such as Bank of America to avoid modification and to continue to keep a mortgage in a state of default or distress and to push loans toward foreclosure. This is especially true in cases where the mortgage is owned by a third-party investor and is merely serviced by the servicer such as Bank of America. On information and belief, Bank of America does not own a significant majority of the loans on which it functions as a servicer.

7. Economic factors that discourage Bank of America from meeting its contractual obligations under HAMP by facilitating loan modifications include the following:[1]

- Bank of America may be required to repurchase loans from the investor in order to permanently modify the loan. This presents a substantial cost and loss of revenue that can be avoided by keeping the loan in a state of temporary modification or lingering default.
- The monthly service fee that Bank of America, as the servicer collects as to each loan it services in a pool of loans, is calculated as a fixed percentage of the unpaid principal balance of the loans in the pool. Consequently, modifying a loan to reduce the principal balance results in a lower monthly fee to the servicer.
- Fees that Bank of America charges borrowers that are in default constitute a significant source of revenue to the servicer. Aside from income Bank of America directly receives, late fees and "process management fees" are often added to the principal loan amount thereby increasing the unpaid balance in a pool of loans and increasing the amount of the servicer's monthly service fee.
- Entering into a permanent modification will often delay a servicer's ability to recover advances it is required to make to investors of the unpaid principal and interest payment of a non-performing loan. The servicer's right to recover expenses from an investor in a loan modification, rather than a foreclosure, is often less clear and less generous.
- Fixed overhead costs involved in successfully performing loan modifications involve up-front cost to the servicer for additional staffing, physical infrastructure, and expenses such as property valuation, credit reports and financing costs.

[1] *See* Thompson, Diane E., *Why Servicers Foreclose When They Should Modify and Other Puzzles of Servicer Behavior*, National Consumer Law Center (October 2009).

8. Rather than allocating adequate resources and working diligently to reduce the number of loans in danger of default by establishing permanent modifications, Bank of America has serially strung out, delayed, and otherwise hindered the modification processes that it contractually undertook to facilitate when it accepted billions of dollars from the United States. Bank of America's delay and obstruction tactics have taken various forms with the common result that homeowners with loans serviced by Bank of America, who are eligible for permanent loan modifications, and who have met the requirements for participation in the HAMP program, have not received permanent loan modifications to which they are entitled.

9. In addition to its obligations based on its contract with the Treasury Department, Bank of America has entered into written agreements with individual homeowners, including Plaintiffs, for temporary loan modifications that must be converted to permanent loan modifications. Plaintiffs and a similar class of borrowers have complied with the agreements by submitting the documentation asked of them and, when requested, by making payments. Despite Plaintiffs' efforts, Defendant has ignored its contractual obligation to modify their loans permanently.

10. Because Bank of America is not meeting its contractual obligations, at least hundreds of California homeowners are wrongfully being deprived of an opportunity to cure their delinquencies, pay their mortgage loans and save their homes. By failing to live up to its obligations under the terms of the agreement it entered into with the Department of the Treasury, and the terms of the contracts it formed with individual homeowners, Bank of America has left thousands of borrowers in a state of limbo – often worse off than they were before they sought a modification from Bank of America. Defendants' actions violate their contractual obligations, thwart the purpose of HAMP, and are illegal under California law.

11. Plaintiffs, Britta Brewer and Stacey Madamba bring this suit on behalf of themselves and a Class of similarly situated California residents ("Plaintiffs") to challenge the failure of Defendant Bank of America Bank, N.A. and its subsidiary BAC Home Loans Servicing, LP (collectively referred to as "Defendants" or "Bank of America") to honor the terms of their agreement with the United States Treasury for the intended benefit of homeowners, their failure to

honor agreements directly with individual homeowners to modify mortgages to a point that they are affordable and sustainable, and to recover costs and losses incurred as a result.

II. JURISDICTION

12. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332(d)(2) in that the matter is a class action wherein the amount in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and members of the Class are citizens of a State different from the Defendants.

13. This Court also has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1367 in that the Plaintiffs are intended, third-party beneficiaries to a contract between Bank of America and the U.S. Treasury that was entered into pursuant to and under the direction of TARP. 12 U.S.C. § 5201 *et seq*.

14. This Court has personal jurisdiction over the parties in this action by the fact that Defendants are corporations that are licensed to do business in the state of California or otherwise conduct business in the state of California.

15. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) inasmuch as the unlawful practices are alleged to have been committed in this District, Defendants regularly conduct business in this District, and one of the named Plaintiffs resides in this District.

III. PARTIES

16. Plaintiff Britta Brewer is an individual residing in Cardiff, California.

17. Plaintiff Stacey Madamba is an individual residing in San Francisco, California.

18. Defendant Bank of America, N.A. is a mortgage lender headquartered in Charlotte, NC. Defendant BAC Home Loans Servicing, LP is a subsidiary of Bank of America, N.A., and is located in Calabasas, CA. Defendants are collectively referred to as "Bank of America" and are currently doing business and maintaining office branches throughout the State of California.

IV. FACTUAL BACKGROUND

A. The Foreclosure Crisis

19. Over the last three years, the United States has been in a foreclosure crisis. A congressional oversight panel has recently noted that one in eight U.S. mortgages is currently in foreclosure or default.[2]

20. California has been consistently one of the hardest hit by the housing crisis. California ranks fourth highest on the state foreclosure list in the United States for all of 2009. The number of total California properties with foreclosure filings in 2009 was 632,573. This represents nearly a 21% increase over 2008 and a 153% increase from 2007.[3]

21. In the first quarter of 2009, California posted the nation's third highest foreclosure rate. California was one of five states in 2009 that accounted for nearly 60 percent of the nation's first quarter total. California had 230,915 foreclosure filings during the first quarter and accounted for nearly 29 percent of the nation's total. The state's foreclosure activity increased 35 percent from the previous quarter and 36 percent from Q1 2008.[4]

22. Economists predict that interest rate resets on the riskiest of lending products will not reach their zenith until sometime in 2011. *See* Eric Tymoigne, *Securitization, Deregulation, Economic Stability, and Financial Crisis*, Working Paper No. 573.2 at 9, Figure 30, available at http://papers.ssrn.com/so13/papers.cfm?abstract_id=1458413 (citing a Credit Suisse study showing monthly mortgage rate resets).

B. Creation of the Home Affordable Modification Program

23. Congress passed the Emergency Economic Stabilization Act of 2008 on October 3, 2008 and amended it with the American Recovery and Reinvestment Act of 2009 on February 17, 2009 (together, the "Act"). 12 U.S.C.A § 5201 *et seq.* (2009)

---

[2] Congressional Oversight Panel, Oct. 9, 2009 report at 3. Available at http://cop.senate.gov/reports/library/report100909-cop.cfin.

[3] http://www.realtytrac.com/contentmanagement/pressrelease.aspx?channelid=9&itemid=8333

[4] http://www.keepmyhouse.com/2009/04/16/latest-foreclosure-statistics-us-foreclosures-increase-by-9/

24. The purpose of the Act is to grant the Secretary of the Treasury the authority to restore liquidity and stability to the financial system, and ensure that such authority is used in a manner that "protects home values" and "preserves homeownership." *Id.*

25. The Act grants the Secretary of the Treasury the authority to establish the Troubled Asset Relief Program, or TARP. 12 U.S.C. § 5211. Under TARP, the Secretary may purchase or make commitments to purchase troubled assets from financial institutions. *Id.*

26. Congress allocated up to $700 billion to the United States Department of the Treasury for TARP. 12 U.S.C. § 5225.

27. In exercising its authority to administer TARP, the Act mandates that the Secretary "shall" take into consideration the "need to help families keep their homes and to stabilize communities." 12 U.S.C. § 5213(3).

28. The Act further mandates, with regard to any assets acquired by the Secretary that are backed by residential real estate, that the Secretary "shall implement a plan that seeks to maximize assistance for homeowners" and use the Secretary's authority over servicers to encourage them to take advantage of programs to "minimize foreclosures." 12 U.S.C. § 5219. The Act grants authority to the Secretary of the Treasury to use credit enhancement and loan guarantees to "facilitate loan modifications to prevent avoidable foreclosures." *Id.*

29. The Act imposes parallel mandates to implement plans to maximize assistance to homeowners and to minimize foreclosures. 12 U.S.C. § 5220.

30. On February 18, 2009, pursuant to their authority under the Act, the Treasury Secretary and the Director of the Federal Housing Finance Agency announced the Making Home Affordable program.

31. The Making Home Affordable program consists of two subprograms. The first sub-program relates to the creation of refinancing products for individuals with minimal or negative equity in their home, and is now known as the Home Affordable Refinance Program, or HARP.

32. The second subprogram relates to the creation and implementation of a uniform loan modification protocol, and is now known as the Home Affordable Modification Program, or HAMP. It is this subprogram that is at issue in this case.

33. HAMP is funded by the federal government, primarily with TARP funds. The Treasury Department has allocated at least $75 billion to HAMP, of which at least $50 billion is TARP money.

C. Duties of a Participating Servicer Under HAMP

34. Because Bank of America accepted $25 billion in federal funds and additional loan guarantees, it was required to participate in HAMP for the loans on which it functions as a loan "servicer." On April 17, 2009, Steve R. Bailey, of Bank of America, N.A., executed a Servicer Participation Agreement ("SPA") with the federal government. A copy of this SPA is attached as Ex. 1.

35. The SPA executed by Mr. Bailey incorporates all "guidelines," "procedures," and "supplemental documentation, instructions, bulletins, frequently asked questions, letters, directives, or other communications," referred to as "Supplemental Directives" issued by the Treasury, Fannie Mae or Freddie Mac in connection with the duties of Participating Servicers. These documents together are known as the "Program Documentation" (SPA I.A.), and are incorporated by reference herein. The SPA mandates that a Participating Servicer "shall perform" the activities described in the Program Documentation "for all mortgage loans it services." SPA I.A., 2.A.[5]

36. The first Supplemental Directive ("SD") was issued on April 6, 2009, and states that the national mortgage modification program was "aimed at helping 3 to 4 million at-risk homeowners – both those who are in default and those who are at imminent risk of default – by reducing monthly payments to sustainable levels." Ex. 2 at p. 1. This directive and the directives to follow were issued to provide guidance for adoption and implementation of HAMP "to provide a borrower with sustainable monthly payments." *Id.*

37. The Program Documentation requires Participating Servicers to evaluate *all loans* which are 60 or more days delinquent or appear to be in imminent default (as defined by the

[5] The Program Documentation also includes Supplemental Directive 09-01 ("SD 09-01," attached hereto as Exhibit 2), Home Affordable Modification Program; Base Net Present Value (NPV) Model Specifications ("NPV Overview," attached hereto as Exhibit 3) and Supplemental Documentation-Frequently Asked Questions ("HAMP FAQS," attached hereto as Exhibit 4) and Supplemental Directive 09-08 ("SD 09-08," attached hereto as Exhibit 5). These documents together describe the basic activities required under HAMP and are incorporated by reference in both of the TPP Agreements signed by Plaintiffs as well as herein.

Program Documentation), to determine which loans meet the HAMP eligibility criteria. *Id.* at p. 4. In addition, if a borrower contacts a Participating Servicer regarding a HAMP modification, the Participating Servicer must collect income and hardship information to determine if the borrower is eligible for a HAMP modification. *Id.* at pp. 3-4.

38. A HAMP Modification consists of two stages. First, a Participating Servicer is required to gather information and, if appropriate, offer the homeowner a Trial Period Plan ("TPP"). Second, upon successful completion of the TPP, the Servicer must offer the homeowner a permanent modification.[6]

39. A Mortgage is eligible for the HAMP if criteria enumerated in the Program Documentation are met. Aside from criteria that require that the loan be a first lien mortgage originated before 2009, that the property be occupied, and that it be the borrower's principal residence, the most salient conditions are that the loan is delinquent or default is reasonably foreseeable; that the borrower documents a financial hardship (as defined in the Program Documentation); and that the "borrower has a monthly mortgage payment ratio of greater than 31 percent" of the borrower's monthly income. *Id.* at p. 2.

40. The servicer must "provide a borrower with clear and understandable written information about the material terms, costs, and risks of the modified mortgage loan in a timely manner to enable borrowers to make informed decisions." *Id.* at p. 13.

41. Once the participating servicer has determined a mortgage borrower's eligibility in the HAMP, the servicer must apply the modification steps enumerated in the Program Documentation, in the stated order of succession until the borrower's monthly mortgage payment ratio is reduced to 31 percent of the borrower's monthly income. These steps include capitalizing accrued interest and escrow advances, reducing the interest rate, extending the term and re-amortizing the loan (if necessary), and providing a principal forbearance (if necessary). *See* Ex. 2 at pp. 8-10; *see also* Ex. 3 at p. 2.

---

[6] The eligibility criteria for HAMP, as well as the formula used to calculate monthly mortgage payments under the modification, are explained in detail in Exhibit 2. Generally speaking, the goal of a HAMP modification is for owner-occupants to receive a modification of a first-lien loan by which the monthly mortgage payment is reduced to 31% of their monthly income for the next five years.

42. After applying the enumerated modification steps to calculate the modified payment amount, a servicer must offer the borrower a TPP. The TPP consists of a three-month period in which the homeowner makes mortgage payments based on the modification formula stated in the Program Documentation. Bank of America uses a standard form agreement to offer TPPs to eligible homeowners. This agreement describes the homeowner's duties and obligations under the plan and promises a permanent HAMP modification for those homeowners that execute the agreement and fulfill the documentation and payment requirements.

43. If the homeowner executes the TPP Agreement, complies with all documentation requirements and makes all three TPP monthly payments, the second stage of the HAMP process is triggered, in which the homeowner must be offered a permanent modification. The payment amount and interest rate in the modified loan are fixed for five years and equal to the payment amount and interest rate in the TPP. Thereafter, the rate may escalate annually by up to one percent until it reaches an interest cap which is the lesser of: (i) the fully indexed and fully amortizing contract rate or (ii) the Freddie Mac Primary Mortgage market Survey rate for 30-year fixed rate mortgage loans on the date the modification is prepared. Once capped, the rate is fixed for the remainder of the term. *See* Ex. 2 at p. 9.

44. HAMP prohibits a participating servicer from taking several actions including the following:

- Proceeding with a foreclosure sale. Any foreclosure sale must be suspended and no new foreclosure action may be initiated during the trial period, and until the borrower has been considered and found ineligible for other available foreclosure prevention options. *See* Ex. 4 at Q63; *see also* Ex. 2 at p. 14.
- Requiring a borrower to make an initial contribution payment pending the processing of the trial period plan before the plan starts. Ex. 4 at Q. 83.
- Soliciting borrowers to opt out of consideration for HAMP during the temporary review period. Ex. 6 at Q1230-02.
- Reporting borrowers as delinquent to credit reporting bureaus without explanation. For borrowers who are current when they enter a trial period, the servicer should

report the borrower current but on modified payment if the borrower makes timely payments during the trial period. For borrowers who are delinquent when they enter the trial period, the servicer should report in such a manner that accurately reflects the borrower's current workout status. Ex. 2 at p. 22.

- Assessing prepayment penalties for full or partial prepayment as part of the modification. Ex. 4 at Q. 25.

45. The HAMP requires a participating servicer to send a Borrower Notice to every borrower that has been evaluated for HAMP but is not offered a Trial Period Plan, is not offered an official HAMP modification, or is at risk of losing eligibility for HAMP because they have failed to provide required financial documentation. Ex. 5 at p. 1.

46. The HAMP presumes that final modifications will be extended and finalized upon completion of a TPP or shortly thereafter. HAMP Supplemental Documentation dated December 22, 2009 addresses situations in which the borrower has completed the TPP but has not yet received a permanent modification.

> In situations where an eligible borrower successfully completed the trial period and should have been converted to a permanent modification, but for reasons beyond their control were not timely evaluated for a permanent modification, the servicer must promptly make a determination as to whether the borrower is eligible for a permanent HAMP modification. If the borrower is eligible, then the servicer must offer the borrower a permanent HAMP modification as soon as possible, but in no event later than sixty days after discovering the error.

Ex. 6 at Q1222-01.

47. By entering into the SPA, Bank of America covenanted that all services will be performed in compliance with all applicable Federal, state and local laws, specifically including state laws designed to prevent unfair, discriminatory or predatory lending practices. Ex. 1 at ¶ 5(b).

48. Under the SPA, Bank of America also covenanted that it would perform the services required under the Program Documentation and the Agreement in accordance with the practices, high professional standards of care, and degree of attention used in a well managed operation, and no less than which Bank of America exercises for itself under similar circumstances, and that Bank

of America would use qualified individuals with suitable training, education, experience and skills to perform the Services. *Id.* at ¶ 5(d).

49. Bank of America has routinely failed to meet its obligations under the Program Directive. Mortgage borrowers who request to be evaluated for a modification under HAMP routinely face unexplained delays and go weeks or months with no communication from Bank of America after providing the requested information. Borrowers who attempt to contact Bank of America by telephone face long periods of time on hold and are transferred between service representatives in a deliberate effort to cause the borrower to give up and to terminate the call. Bank of America regularly falsely informs borrowers that it did not receive requested information and demands that documents be re-sent.

50. Bank of America has routinely failed to live up to its end of the TPP Agreement and offer permanent modifications to homeowners. In January 2010, the U.S. Treasury reported that Bank of America had 1,066,025 HAMP-eligible loans in its portfolio. Trial periods have been started on only 237,766 of these loans. Of those, just 12,761 resulted in permanent modifications (only 5% of the started Trial modifications and just over 1% of the eligible pool) even though many more homeowners had made the payments and submitted the documentation required by the TPP Agreement. The Treasury Report is attached hereto as Exhibit 7.

51. By failing to live up to the TPP Agreement and convert TPPs into permanent modifications, Bank of America is leaving homeowners in limbo, wondering if their home can be saved and preventing homeowners from pursuing other avenues of resolution, including using the money they are putting toward TPP payments to fund bankruptcy plans, relocation costs, short sales or other means of curing their default.

D. Plaintiffs' Effort to Obtain a Loan Modification Under HAMP

1. Britta Brewer

52. Plaintiff Britta Brewer purchased her home in 2004 in which she lives with her husband and their three children as their primary residence. The mortgage loan and title to the property is solely in Ms. Brewer's name. Her mortgage was originated by Greenpoint mortgage and transferred to Bank of America via Countrywide Mortgage. The loan carried an adjustable

interest rate. In November 2008, the interest rate adjusted causing the payments required under the mortgage to jump from $2,825.74 due each month, to $4,164.36 for principal, interest, taxes and insurance.

53. Ms. Brewer and her husband own and operate a small insurance brokerage business. In the autumn of 2008, the Brewers' income dropped as a result of a slowdown in business. The drop in their personal income, the increase in the mortgage payments due each month, and unexpected business costs caused Ms. Brewer to fall behind on the mortgage payments.

54. In approximately February 2009, the Brewers hired and paid a "loan modification company" to assist them in negotiating for a loan modification with their lender and loan servicer. The Brewers provided all personal and financial information requested by the loan modification company and were told that the documents would be forwarded to their loan servicer for the purpose of obtaining a loan modification.

55. Between March and August 2009, the Brewers were consistently informed by the loan modification company that a modification was in process. In August 2009, Bank of America sent an email confirming that it had received a request for mortgage assistance regarding Ms. Brewer's loan. Bank of America followed this email with a letter similarly confirming that it had received the request for assistance.

56. In September 2009, the Brewers were approached by a realtor offering to buy their home as part of a short sale because their mortgage was in default. On September 15, 2009, Ms. Brewer called Bank of America's foreclosure department. A representative claimed that Bank of America had not received financial documents from the Brewers, though she did acknowledge that a previous representative had indeed informed the loan modification company, acting on behalf of the Brewers, that a modification process had been started. The Bank of America Representative proceeded to interview Ms. Brewer over the telephone for the purpose of restarting the loan modification process. She then instructed Ms. Brewer as to the documents required to support this process.

57. On September 16, 2009, following instructions from the Bank of America representative, Ms. Brewer faxed Bank of America documents required to obtain a loan

modification under the HAMP, including bank statements, profit and loss statements for their business, tax returns, and a signed hardship letter.

58. On October 1, 2009, a notice of foreclosure sale was posted on the Brewers' door. Ms. Brewer made several calls to Bank of America over the next week in which she was regularly put on hold for an hour or more. Ms. Brewer was told the request was in process and that she should continue to check back by phone.

59. On October 8, 2009, Ms. Brewer spoke with Danielle Stewart, a Bank of America representative who informed her that her temporary modification had been approved. Bank of America instructed her to send in another copy of a letter explaining the need for a loan modification, bank statements, tax returns, profit and loss statement for their business, and an IRS form 4506T. Bank of America also instructed Ms. Brewer to begin making modified loan payments of $1,977 per month for the next three months and, if she made timely payments, she would receive documents to permanently modify the mortgage loan under HAMP.

60. The following day, Ms. Brewer sent all of the documents Bank of America requested along with a check for $1,977. Bank of America accepted and cashed Ms. Brewer's payment. On October 16, 2009, Bank of America acknowledged receipt of the documents.

61. Ms. Brewer tendered timely payment of $1,977 to Bank of America in November and December 2009 and in January 2010. Bank of America accepted each payment and cashed each check.

62. In December 2009, after she had made her third payment, Ms. Brewer inquired of Bank of America as to why she had not received documents regarding her loan modification. Bank of America informed her that they were running behind and instructed her to continue making the modified payment.

63. In late January 2010, Bank of America sent Ms. Brewer a Notice of Intent to Accelerate the loan. The notice claimed the loan was in default and demanded immediate payment of over $46,000. Ms. Brewer called Bank of America again to inquire as to the status of her loan modification. Bank of America claimed that she was not eligible to receive a loan modification

and claimed to have no knowledge of a Temporary Payment Plan for Ms. Brewer. Bank of America further stated that there would be no permanent loan modification forthcoming.

64. Despite compliance with all of Bank of America's instructions, and all responsibilities under the terms of the HAMP program directives, Ms. Brewer has not been provided a Loan Modification Agreement under the HAMP Program guidelines to date.

65. Ms. Brewer and her husband have spent significant time and money in efforts to modify this loan with Bank of America including but not limited to, amounts paid to a mortgage modification service, postage and fax fees, and dozens of hours on the telephone.

66. Like hundreds or even thousands of California residents, Mr. and Ms. Brewer have been living in limbo, without any assurances that their home will not be foreclosed, despite compliance with HAMP requirements and continued monthly payments under the agreement dictated by Bank of America. They have invested their limited resources in modified payments based on the promise that doing so would result in a permanent loan modification.

2. Stacey Madamba

67. Plaintiff Stacey Madamba purchased her home in 2007 and obtained both a first and second mortgage from Bank of America. The first mortgage loan required principal and interest payments of $2,517.18 per month while the second mortgage required principal and interest payments of $756.77 per month.

68. Toward the end of 2008, Ms. Madamba experienced a drop in her household income. Nevertheless, she continued to make all of her mortgage payments in full and on time through October 2009. Throughout 2009, the payments required to fully service the mortgage loans were not affordable and Ms. Madamba was forced to use most of her personal savings in order to continue to meet the required monthly payments.

69. On October 18 and 19, 2009, Bank of America representatives attended a public event entitled the "NACA Dream Event" put on by the Neighborhood Assistance Corporation of America ("NACA"). Through this and other events, NACA works directly with mortgage servicers, including Bank of America, and purports to assist mortgage borrowers in their efforts to obtain loan modifications. Ms. Madamba took three days off of work to attend this event. During

the first day of the event, she was informed as to which documents she would need to submit in support of an application for a loan modification.

70. Ms. Madamba completed and submitted an application for a loan modification to a Bank of America representative present at the NACA event and scheduled an appointment to meet with a Bank of America representative the following day. On October 20, 2009, Ms. Madamba met, in person, with a Bank of America representative named Sean Pendergast. Mr. Pendergast confirmed that she had provided all required documentation which included a hardship letter, income statements, and tax and insurance information, and informed Ms. Madamba that she was approved for a loan modification program with Bank of America and that she would receive a letter stating the terms of the agreement to modify her loans which would begin on February 1, 2010.

71. Mr. Pendergast specifically instructed Ms. Madamba to stop making payments on her mortgage until February 2010 – the date the modified mortgage agreement would take effect. Indeed, he cancelled the automatic payment instructions that Ms. Madamba used to automatically pay her mortgage out of her Bank of America checking account.

72. On November 17, 2009, Ms. Madamba received two separate Terms and Conditions Agreements from Bank of America – respectively stating the terms and conditions under which the first loan and the second loan would be modified. Each agreement was accompanied by a cover letter, respectively dated November 12 and November 13, 2009. Both letters opened with the following:

> This letter constitutes our offer to modify the Mortgage identified above, subject to the terms and conditions agreement. When signed by you, this letter will also constitute your acceptance and agreement to these terms and conditions.

A copy of these letters and the accompanying agreements are attached as Exhibit 9.

73. The Terms and Conditions Agreement for the first loan states that the principal balance will be $360,047.14 with an interest rate of 3%, and requires monthly Principal and Interest payments of $1,591.23 beginning February 1, 2009 (sic).[7]

[7] Ms. Madamba confirmed that the February 1, 2009 start date was a typographical error that should have read February 1, 2010.

74. The Terms and Conditions Agreement for the second loan states that the principal balance will be $90,888.74, with an interest rate of 2%, and requires monthly Principal and Interest payments of $355.07 beginning February 1, 2010.

75. Ms. Madamba signed both Terms and Conditions Agreements on November 17, 2009 and returned them to Bank of America on the same date using the self-addressed stamped envelope Bank of America sent along with the two Agreements.

76. Just prior to receiving the Terms and Conditions in the mail, Ms. Madamba received a call from Mr. Pendergast who summarized the terms she would be receiving in the mail, but instructed her to add $119 to each payment for the first loan, which he claimed to be for payment of taxes. He again reminded her not to make any payments until February 2010.

77. On or about January 11, 2010, Ms. Madamba received a letter from Bank of America summarizing the terms of the modification to the second loan, which were consistent with the Terms and Conditions Agreement she had previously accepted and returned, but instructing that payment on this loan be received no later than January 21, 2010. Enclosed with that letter was a "Loan Modification Agreement" on terms consistent with the terms Ms. Madamba previously accepted regarding the second loan. On January 15, 2010, Ms. Madamba returned a signed and notarized copy of the Loan Modification Agreement and tendered a check in the amount of $355.07 to Bank of America, referencing the loan number and that it was for the February payment. Bank of America accepted this payment and cashed the check.

78. On January 25, 2010, Ms. Madamba tendered to Bank of America a check in the amount of $1,710.23 (payment of $1,591.23 stated in the Terms and Conditions Agreement for the first loan plus $119 as instructed by Mr. Pendergast). The check referenced the loan number and that it was the first payment of a loan modification. Bank of America accepted this payment and cashed the check.

79. Prior to the first of each month, Ms. Madamba has tendered checks to Bank of America in the amounts of $1,710.23 and $355.07, constituting the payments for March, April, and May 2010. Bank of America has accepted each payment and cashed each check.

80. On March 22, 2010, Ms. Madamba received a notice from Bank of America stating that her modification had been rejected.

81. On March 23, 2010, Ms. Madamba called Bank of America and, after being transferred several times and placed on hold for long stretches at a time, was told by different representatives that she had never been approved for a loan modification; that she had been approved for a modification, but that she had failed to live up to the terms; that her documentation had been lost; and that the modification that had been offered and that she accepted was not actually a binding agreement; and that she currently owed an additional $9,000.

82. Despite compliance with all of Bank of America's instructions, and all responsibilities under the terms of the HAMP program directives, Bank of America refuses to recognize or honor its agreement to modify Ms. Madamba's mortgage loans as required under the terms of the HAMP Program guidelines or under the terms of the Terms and Conditions Agreements that were offered and accepted.

83. Ms. Madamba has spent significant time and money in efforts to modify this loan with Bank of America including, but not limited to, amounts paid to a mortgage modification service, overnight postage fees, copying costs, several days of missed work, and dozens of hours on the telephone.

84. Like hundreds or even thousands of California residents, Ms. Madamba has been living in limbo, without any assurances that her home will not be foreclosed, despite compliance with HAMP requirements and continued monthly payments under the agreement dictated by Bank of America. She has invested her limited resources in modified payments based on the promise that doing so would result in a permanent loan modification.

E. Class Allegations

85. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

86. Plaintiffs bring this action under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a Class consisting of:

> All California homeowners whose loans have been serviced by one or both Defendants and who, since April 13, 2009, have requested or been otherwise eligible for a TPP under the terms of HAMP Program

Documentation and who have not received a permanent loan modification either because they have not been offered a TPP by Bank of America or because they did not receive a permanent loan modification after they complied with their obligations under HAMP as conveyed to them by Bank of America, as required by HAMP.

87. Excluded from the Class are governmental entities, Defendants, their affiliates and subsidiaries, Defendants' current or former employees, officers, directors, agents, representatives, their family members, the members of this Court and its staff.

88. Plaintiffs do not know the exact size or identities of the members of the proposed class, since such information is in the exclusive control of Defendants. Plaintiffs believe that the Class encompasses many hundreds and perhaps thousands of individuals whose identities can be readily ascertained from Defendants' books and records. Therefore, the proposed Class is so numerous that joinder of all members is impracticable.

89. Based on the size of the modifications at issue, Plaintiffs believe the amount in controversy exceeds $5 million.

90. All members of the Class have been subject to and affected by the same conduct. The claims are based on the terms of a single unifying contract between Bank of America and Fannie Mae, acting as agent for the United States Treasury, and on form contracts and uniform loan modification processing requirements. There are questions of law and fact that are common to the class, and predominate over any questions affecting only individual members of the Class. These questions include, but are not limited to the following:

a. The nature, scope and operation of Bank of America's obligations to homeowners under HAMP;

b. Whether Bank of America breached its duties under HAMP that were intended for the benefit of Class members;

c. Whether the manner in which Bank of America has executed the duties it undertook as part of the HAMP program violates its duty of good faith and fair dealing;

d. Whether Bank of America's receipt of an executed TPP Agreement, along with supporting documentation and three monthly payments, creates a

binding contract or otherwise legally obligates Bank of America to offer Class members a permanent HAMP modification;

e. Whether Bank of America's failure to provide permanent HAMP modifications in these circumstances amounts to a breach of contract and/or a breach of the covenant of good faith and fair dealing;

f. Whether Bank of America demanded and collected initial payments from eligible homeowners in violation of HAMP provisions;

g. Whether Bank of America's written representations to homeowners stating that they would receive permanent loan modifications upon successful completion of the trial period and then failing to deliver such permanent modification constitutes an unfair or deceptive practice under the California Unfair Competition Law ("UCL");

j. Whether the above practices caused Class members to suffer injury; and

k. The proper measure of damages and the appropriate injunctive relief.

91. The claims of the individual named Plaintiffs are typical of the claims of the Class and do not conflict with the interests of any other members of the Class in that both the Plaintiffs and the other members of the Class were subject to the same conduct, were subject to the terms of the same agreement and were met with the same absence of a permanent modification.

92. The individual named Plaintiffs will fairly and adequately represent the interests of the Class. They are committed to the vigorous prosecution of the Class's claims and have retained attorneys who are qualified to pursue this litigation and have experience in class actions – in particular, consumer protection actions.

93. A class action is superior to other methods for the fast and efficient adjudication of this controversy. A class action regarding the issues in this case does not create any problems of manageability.

94. This putative class action meets the requirements of Fed. R. Civ. P. 23(b)(2) and Fed. R. Civ. P. 23(b)(3).

95. Bank of America has acted or refused to act on grounds that apply generally to the Class so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

COUNT I

BREACH OF CONTRACT / BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

96. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

97. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class described above.

98. The SPA and the explicitly incorporated Program Documentation constitute a contract for which Plaintiffs and the Class are intended beneficiaries, and under which Bank of America has undertaken duties to act for the benefit of Plaintiffs and the Class.

99. By entering into the SPA and accepting valuable consideration including $25 billion in funds from the U.S. Treasury, Bank of America covenanted, on behalf of itself and its subsidiaries, to administer its contractual obligations with principles of good faith and fair dealing.

100. Bank of America has breached its contractual duties by failing to provide eligible borrowers with the opportunity to accept permanent loan modifications and by wrongfully collecting introductory payments.

101. In addition to duties to Plaintiffs based on their status as third-party beneficiaries of the SPA, Bank of America entered into individual contracts directly with Plaintiffs.

102. The Agreement sent by Bank of America to Plaintiffs constitutes a valid offer.

103. By executing the Agreement and returning it to Bank of America, along with the supporting documentation, Plaintiffs accepted Bank of America's offer.

104. Alternatively, Plaintiffs' return of the Agreement constitutes an offer. Acceptance of this offer occurred when Bank of America accepted Plaintiffs' TPP payments.

105. Plaintiffs' TPP payments to Bank of America constitute consideration. By making those payments, Plaintiffs gave up the ability to pursue other means of saving their home.

106. Plaintiffs and Bank of America thereby formed valid contracts.

107. To the extent that the contracts were subject to a condition subsequently providing Bank of America an opportunity to review the documentation submitted by Plaintiffs when they returned the signed TPP, this condition was waived by Bank of America and/or it is estopped to assert it as a defense to Plaintiffs' claims.

108. By failing to offer Plaintiffs permanent HAMP modifications, Bank of America breached those contracts.

109. Bank of America routinely and regularly breach its duties under both the SPA and their contract with individual Plaintiffs by failing to retain, employ, and supervise adequately trained staff; instituting and/or continuing with foreclosure proceedings against borrowers in a trial program; failing to provide written notices required by HAMP; and by deliberately acting to delay and otherwise frustrate loan modification processes; routinely demanding information already in its files; making inaccurate calculations and determinations of Plaintiffs' eligibility for HAMP; and failing to follow through on written and implied promises.

110. Plaintiffs remain ready, willing and able to perform under the contracts by continuing to make TPP payments and provide documentation.

111. Plaintiffs have suffered harm and are threatened with additional harm from Bank of America's breach. By making TPP payments both during and after the TPP, Plaintiffs forego other remedies that might be pursued to save their homes, such as restructuring their debt under the bankruptcy code, or pursuing other strategies to deal with their default, such as selling their home. On information and belief, some putative Class members have suffered additional harm in the form of foreclosure activity against their homes.

COUNT II

PROMISSORY ESTOPPEL, IN THE ALTERNATIVE

112. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

113. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class described above.

114. Bank of America, by way of its TPP Agreements, made a representation to Plaintiffs that if they returned the TPP Agreement executed and with supporting documentation, and made their TPP payments, they would receive a permanent HAMP modification.

115. Bank of America's TPP Agreement was intended to induce Plaintiffs to rely on it and make monthly TPP payments.

116. Plaintiffs did indeed rely on Bank of America's representation, by submitting TPP payments.

117. Given the language in the TPP Agreement, Plaintiffs' reliance was reasonable.

118. Plaintiffs' reliance was to their detriment. Plaintiffs have yet to receive permanent HAMP modifications and have lost the opportunity to fund other strategies to deal with their default and avoid foreclosure.

COUNT III

VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200 ET SEQ.

119. Plaintiffs repeat and re-allege every allegation above as if set forth herein in full.

120. Plaintiffs bring this claim on their own behalf and on behalf of each member of the Class described above.

121. The conduct of Bank of America as set forth herein constitutes unfair or deceptive acts or practices, including its practice of leading borrowers to believe that it will permanently modify their mortgage loans upon successful completion of a trial program.

122. Bank of America's conduct as set forth herein has been unfair in violation of section 17200 because the acts or practices violate established public policy, and because the harm they cause to consumers in California greatly outweighs any benefits associated with those practices.

123. Bank of America's conduct as set forth herein resulted in loss of money or property to Plaintiffs and Class members.

V. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully request the following relief:

A. Certify this case as a class action and appoint the named Plaintiffs to be Class representatives and their counsel to be Class counsel;

B. Enter a judgment declaring the acts and practices of Bank of America complained of herein to constitute a breach of contract and a breach of the covenant of good faith and fair dealing, as well as a declaration that they are required by the doctrine of promissory estoppel to offer permanent modifications to Class members;

C. Grant a permanent or final injunction enjoining Bank of America's agents and employees, affiliates and subsidiaries, from continuing to harm Plaintiffs and the members of the Class;

D. Order Bank of America to adopt and enforce a policy that requires appropriate training of their employees and agents regarding their duties under HAMP;

E. Order specific performance of Bank of America's contractual obligations together with other relief required by contract and law;

F. Award restitution as wells as actual and statutory damages to the Plaintiffs and the Class in amounts to be proven at trial;

G. Award Plaintiffs the costs of this action, including the fees and costs of experts, together with reasonable attorneys' fees; and

H. Grant Plaintiffs and the Class such other and further relief as this Court finds necessary and proper.

VI. JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all issues so triable.

DATED: April 30, 2010

HAGENS BERMAN SOBOL SHAPIRO LLP

By: _____
JEFF D. FRIEDMAN
715 Hearst Avenue, Suite 202
Berkeley, CA 94710
Telephone: (510) 725-3000
Facsimile: (510) 725-3001
jefff@hbsslaw.com

STEVE W. BERMAN
ARI Y. BROWN
HAGENS BERMAN SOBOL SHAPIRO LLP
1918 Eighth Avenue, Suite 3300
Seattle, Washington 98101
(206) 623-7292
steve@hbsslaw.com
ari@hbsslaw.com

Attorneys for Plaintiffs
Britta Brewer and Stacey Madamba

Exhibit 1

COMMITMENT TO PURCHASE FINANCIAL INSTRUMENT
and
SERVICER PARTICIPATION AGREEMENT
for the
HOME AFFORDABLE MODIFICATION PROGRAM
under the
EMERGENCY ECONOMIC STABILIZATION ACT OF 2008

This Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the "Commitment") is entered into as of the Effective Date, by and between Federal National Mortgage Association, a federally chartered corporation, as financial agent of the United States ("Fannie Mae"), and the undersigned party ("Servicer"). Capitalized terms used, but not defined contextually, shall have the meanings ascribed to them in Section 12 below.

Recitals

WHEREAS, the U.S. Department of the Treasury (the "Treasury") has established a Home Affordable Modification Program (the "Program") pursuant to section 101 and 109 of the Emergency Economic Stabilization Act of 2008 (the "Act"), as section 109 of the Act has been amended by section 7002 of the American Recovery and Reinvestment Act of 2009;

WHEREAS, the Program includes loan modification and other foreclosure prevention services;

WHEREAS, Fannie Mae has been designated by the Treasury as a financial agent of the United States in connection with the implementation of the Program;

WHEREAS, Fannie Mae will, in its capacity as a financial agent of the United States, fulfill the roles of administrator, record keeper and paying agent for the Program, and in conjunction therewith must standardize certain mortgage modification and foreclosure prevention practices and procedures as they relate to the Program, consistent with the Act and in accordance with the directives of, and guidance provided by, the Treasury;

WHEREAS, Federal Home Loan Mortgage Corporation ("Freddie Mac") has been designated by the Treasury as a financial agent of the United States and will, in its capacity as a financial agent of the United States, fulfill a compliance role in connection with the Program; all references to Freddie Mac in the Agreement shall be in its capacity as compliance agent of the Program;

WHEREAS, all Fannie Mae and Freddie Mac approved servicers are being directed through their respective servicing guides and bulletins to implement the Program with respect to mortgage loans owned, securitized, or guaranteed by Fannie Mae or Freddie Mac (the "GSE Loans"); accordingly, this Agreement does not apply to the GSE Loans;

WHEREAS, all other servicers, as well as Fannie Mae and Freddie Mac approved servicers, that wish to participate in the Program with respect to loans that are not GSE Loans (collectively, "Participating Servicers") must agree to certain terms and conditions relating to the respective roles and responsibilities of Program participants and other financial agents of the government; and

WHEREAS, Servicer wishes to participate in the Program as a Participating Servicer on the terms and subject to the conditions set forth herein.

Accordingly, in consideration of the representations, warranties, and mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Fannie Mae and Servicer agree as follows.

Agreement

1. Services

A. Subject to Section 10.C., Servicer shall perform the loan modification and other foreclosure prevention services (collectively, the "Services") described in (i) the Financial Instrument attached hereto as Exhibit A (the "Financial Instrument"); (ii) the Program guidelines and procedures issued by the Treasury, including, without limitation, the net present value assessment requirements of the Program (the "Program Guidelines"); and (iii) any supplemental documentation, instructions, bulletins, letters, directives, or other communications, including, but not limited to, business continuity requirements, compliance requirements, performance requirements and related remedies, issued by the Treasury, Fannie Mae, or Freddie Mac in order to change, or further describe or clarify the scope of, the rights and duties of the Participating Servicers in connection with the Program (the "Supplemental Directives" and, together with the Program Guidelines, the "Program Documentation"). The Program Documentation will be available to all Participating Servicers at www.financialstability.gov. The Program Documentation, as the same may be modified or amended from time to time in accordance with Section 10 below, is hereby incorporated into the Commitment by this reference.

B. Servicer's representations and warranties, and acknowledgement of and agreement to fulfill or satisfy certain duties and obligations, with respect to its participation in the Program and under the Agreement are set forth in the Financial Instrument. Servicer's certification as to its continuing compliance with, and the truth and accuracy of, the representations and warranties set forth in the Financial Instrument will be provided annually in the form attached hereto as Exhibit B (the "Annual Certification"), beginning on June 1, 2010 and again on June 1 of each year thereafter during the Term (as defined below).

C. The recitals set forth above are hereby incorporated herein by this reference.

2. Authority and Agreement to Participate in Program

A. Servicer shall perform the Services for all mortgage loans its services, whether it services such mortgage loans for its own account or for the account of another party, including any holders of mortgage-backed securities (each such other party, an "Investor"). Servicer shall use reasonable efforts to remove all prohibitions or impediments to its authority, and use reasonable efforts to obtain all third party consents and waivers that are required, by contract or law, in order to effectuate any modification of a mortgage loan under the Program.

B. Notwithstanding subsection A., if (x) Servicer is unable to obtain all necessary consents and waivers for modifying a mortgage loan, or (y) the pooling and servicing agreement or other similar servicing contract governing Servicer's servicing of a mortgage loan prohibits Servicer from performing the Services for that mortgage loan, Servicer shall not be required to perform the Services with respect to that mortgage loan and shall not receive all or any portion of the Purchase Price (as defined below) otherwise payable with respect to such loan.

C. Notwithstanding anything to the contrary contained herein, the Agreement does not apply to GSE Loans. Servicers are directed to the servicing guides and bulletins issued by Fannie Mae and Freddie Mac, respectively, concerning the Program as applied to GSE Loans.

D. Servicer's performance of the Services and implementation of the Program shall be subject to review by Freddie Mac and its agents and designees as more fully set forth in the Agreement.

3. Set Up; Prerequisite to Payment

Servicer will provide to Fannie Mae: (a) the set up information required by the Program Documentation and any ancillary or administrative information requested by Fannie Mae in order to process Servicer's participation in the Program as a Participating Servicer on or before the Effective Date of the Commitment; and (b) the data elements for each mortgage eligible for the Program

as and when described in the Program Documentation and the Financial Instrument. Purchase Price payments will not be remitted pursuant to Section 4 with respect to any modified mortgage for which the required data elements have not been provided.

4. Agreement to Purchase Financial Instrument; Payment of Purchase Price

A. Fannie Mae, in its capacity as a financial agent of the United States, agrees to purchase, and Servicer agrees to sell to Fannie Mae, in such capacity, the Financial Instrument that is executed and delivered by Servicer to Fannie Mae in the form attached hereto as Exhibit A, in consideration for the payment by Fannie Mae, as agent, of the Purchase Price (defined below). The conditions precedent to the payment by Fannie Mae of the Purchase Price are: (a) the execution and delivery of the Commitment and the Financial Instrument by Servicer to Fannie Mae; (b) the execution and delivery by Fannie Mae of the Commitment to Servicer; (c) the delivery of copies of the fully executed Commitment and Financial Instrument to Treasury on the Effective Date; (d) the performance by Servicer of the Services described in the Agreement, in accordance with the terms and conditions thereof, to the reasonable satisfaction of Fannie Mae and Freddie Mac; and (e) the satisfaction by Servicer of such other obligations as are set forth in the Agreement.

B. Solely in its capacity as the financial agent of the United States, and subject to subsection C. below, Fannie Mae shall: (i) remit compensation payments to Servicer; (ii) remit incentive payments to Servicer for the account of Servicer and for the credit of borrowers under their respective mortgage loan obligations; and (iii) remit payments to Servicer for the account of Investors, in each case in accordance with the Program Documentation (all such payments, collectively, the "Purchase Price"); all payments remitted to Servicer for the credit of borrowers or for the account of Investors under the Program Documentation shall be applied by Servicer to the borrowers' respective mortgage loan obligations, or remitted by Servicer to Investors, as required by the Program Documentation. Fannie Mae shall have no liability to Servicer with respect to the payment of the Purchase Price, unless and until: (a) Servicer and all other interested parties have satisfied all pre-requisites set forth herein and in the Program Documentation relating to the Program payment structure, including, but not limited to, the delivery of all data elements required by Section 3 of this Commitment; and (b) the Treasury has provided funds to Fannie Mae for remittance to Servicer, together with written direction to remit the funds to Servicer in accordance with the Program Documentation.

C. The Purchase Price will be paid to Servicer by Fannie Mae as the financial agent of the United States as and when described herein and in the Program Documentation in consideration for the execution and delivery of the Financial Instrument by Servicer on or before the Effective Date of the Agreement, upon the satisfaction of the conditions precedent to payment described in subsections A. and B. above.

D. The value of the Agreement is limited to $798,900,000 (the "Program Participation Cap"). Accordingly, the aggregate Purchase Price payable to Servicer under the Agreement may not exceed the amount of the Program Participation Cap. For each loan modification that becomes effective, the aggregate remaining Purchase Price available to be paid to Servicer under the Agreement will be reduced by the maximum Purchase Price potentially payable with respect to that loan modification. In the event the Purchase Price actually paid with respect to that loan modification is less than the maximum Purchase Price potentially payable, the aggregate remaining Purchase Price available to be paid to Servicer under the Agreement will be increased by the difference between such amounts. Notwithstanding the foregoing, no agreements with borrowers intended to result in new loan modifications will be effected under the Agreement, and no payments will be made with respect to any new loan modifications from and after the date on which the aggregate Purchase Price paid or payable to Servicer under the Agreement equals the Program Participation Cap. Treasury may, from time to time in its sole discretion, adjust the amount of the Program Participation Cap. Servicer will be notified of all adjustments to the Program Participation Cap in writing by Fannie Mae.

E. Servicer shall maintain complete and accurate records of, and supporting documentation for, the borrower payment, including, but not limited to, PITIA (principal, interest, taxes, insurance (including homeowner's insurance and hazard and flood insurance) and homeowner's association and/or condo fees), and delinquency information and data provided to Fannie Mae regarding each agreement relating to a trial modification period and each loan modification agreement executed under the Program, which will be relied upon by Fannie Mae when calculating, as financial agent for the United States, the Purchase Price to be paid by the Treasury through Fannie Mae or any other financial agent. Servicer agrees to provide Fannie Mae and Freddie Mac with documentation and

other information with respect to any amounts paid by the Treasury as may be reasonably requested by such parties. In the event of a discrepancy or error in the amount of the Purchase Price paid hereunder, at Fannie Mae's election, (x) Servicer shall remit to Fannie Mae the amount of any overpayment within thirty (30) days of receiving a refund request from Fannie Mae, or (y) Fannie Mae may immediately offset the amount of the overpayment against other amounts due and payable to Servicer by Fannie Mae, as financial agent of the United States, upon written notice to Servicer. Servicer shall still be obligated to credit to the respective mortgage loan obligations of borrowers, and to the respective accounts of Investors, any portion of the Purchase Price to which they are entitled (if any) notwithstanding such offset unless otherwise directed by Fannie Mae.

F. At the election and upon the direction of the Treasury and with prior written notice to Servicer, Fannie Mae may deduct from any amount to be paid to Servicer any amount that Servicer, Investor, or borrower is obligated to reimburse or pay to the United States government, provided, however, that any amount withheld under this subsection F. will be withheld only from the amounts payable to, or for the account or credit of, the party which is liable for the obligation to the United States government.

G. In the event that the Agreement expires or is terminated pursuant to Section 5 or Section 6, and subject to Fannie Mae's rights under Section 6, Fannie Mae shall, solely in its capacity as the financial agent of the United States, continue to remit all amounts that are properly payable pursuant to subsection A. above to Servicer in accordance with the Program Documentation until paid in full, provided, however, that Purchase Price payments will be made only with respect to qualifying mortgage loan modifications that were submitted by Servicer and accepted by Fannie Mae for inclusion in the Program in accordance with the Program Documentation prior to the date of expiration or termination and that do not exceed the Program Participation Cap.

H. Notwithstanding anything to the contrary contained in subsection G. above, in the event that the Agreement is terminated pursuant to Section 6 B. in connection with an Event of Default by Servicer under Section 6 A., no compensation with respect to any loan will be paid to Servicer for the account of the Servicer subsequent to termination; subject to Fannie Mae's rights under Section 6, Fannie Mae's only continuing obligations as financial agent of the United States subsequent to termination will be to remit payments to Servicer (or, at Fannie Mae's discretion, an alternative provider) for the account of borrowers and Investors, as provided in the Agreement.

I. Notwithstanding anything to the contrary contained in subsection F. above, in the event that the Agreement is terminated pursuant to Section 6 C. in connection with an Event of Default by an Investor or a borrower under Section 6 A., no compensation with respect to any loan will be paid to Servicer for the credit or account of the defaulting party subsequent to termination; subject to Fannie Mae's rights under Section 6, Fannie Mae's only continuing obligations as financial agent of the United States subsequent to termination will be to remit payments to Servicer for the credit or account of non-defaulting parties as described in the Program Documentation.

J. Notwithstanding anything to the contrary contained herein, Fannie Mae, in its capacity as the financial agent of the United States, may reduce the amounts payable to Servicer under Section 4.B., or obtain repayment of prior payments made under Section 4.B., in connection with an Event of Default by Servicer or in connection with an evaluation of performance that includes any specific findings by Freddie Mac that Servicer's performance under any performance criteria established pursuant to the Program Documentation is materially insufficient; provided, however, Fannie Mae will seek to obtain repayment of prior payments made under Section 4.B. only with respect to loan modifications that are determined by Fannie Mae or Freddie Mac to have been impacted by, or that Fannie Mae or Freddie Mac believes may have been, or may be, impacted, by the Event of Default or findings giving rise to this remedy. These remedies are not exclusive; they are available in addition to, and not in lieu of, any other remedies available to Fannie Mae at law or in equity.

K. Notwithstanding anything to the contrary contained herein, Fannie Mae, in its capacity as the financial agent of the United States, may reduce the amounts payable to Servicer for the credit or account of an Investor or a borrower under Section 4.B., or obtain repayment of prior payments made for the credit or account of such parties under Section 4.B., in connection with an Event of Default by an Investor or a borrower. Servicer will reasonably cooperate with, and provide reasonable support and assistance to, Fannie Mae and Freddie Mac in connection with their respective roles and, in Fannie Mae's case, in connection with its efforts to obtain repayment of prior payments made to Investors and borrowers as provided in this subsection. These remedies are not

exclusive; they are available in addition to, and not in lieu of, any other remedies available to Fannie Mae at law or in equity.

5. Term

A. Qualifying mortgage loans may be submitted by Servicer and accepted by Fannie Mae as described in the Financial Instrument and the Program Documentation from and after the Effective Date until December 31, 2012 (the "Initial Term"), subject to Program extensions by the Treasury or earlier termination of the Agreement by Fannie Mae pursuant to the provisions hereof or suspension or termination of the Program by the Treasury, provided, however, no new qualifying mortgage loans may be submitted by Servicer or accepted by Fannie Mae from and after the date on which the Program Participation Cap is reached.

B. Servicer shall perform the Services described in the Program Documentation in accordance with the terms and conditions of the Agreement during the Initial Term and any extensions thereof (the Initial Term, together with all extensions thereof, if any, the "Term"), and during such additional period as may be necessary to: (i) comply with all data collection, retention and reporting requirements specified in the Program Documentation during and for the periods set forth therein; and (ii) complete all Services that were initiated by Servicer, including, but not limited to, mortgage modifications and the completion of all documentation relating thereto, during the Term. Servicer agrees that it will work diligently to complete all Services as soon as reasonably possible after the end of the Term or earlier termination.

C. The Agreement may be terminated by Fannie Mae or Servicer prior to the end of the Term pursuant to Section 6 below.

6. Defaults and Early Termination

A. The following constitute events of default under the Agreement (each, an "Event of Default" and, collectively, "Events of Default"):

(1) Servicer fails to perform or comply with any of its material obligations under the Agreement, including, but not limited to, circumstances in which Servicer fails to ensure that all eligibility criteria and other conditions precedent to modification specified in the Program Documentation are satisfied prior to effectuating modifications under the Program.

(2) Servicer: (a) ceases to do business as a going concern; (b) makes a general assignment for the benefit of, or enters into any arrangement with creditors in lieu thereof; (c) admits in writing its inability to pay its debts as they become due; (d) files a voluntary petition under any bankruptcy or insolvency law or files a voluntary petition under the reorganization or arrangement provisions of the laws of the United States or any other jurisdiction; (e) authorizes, applies for or consents to the appointment of a trustee or liquidator of all or substantially all of its assets; (f) has any substantial part of its property subjected to a levy, seizure, assignment or sale for or by any creditor or governmental agency; or (g) enters into an agreement or resolution to take any of the foregoing actions.

(3) Servicer, any employee or contractor of Servicer, or any employee or contractor of Servicers' contractors, or any Investor or borrower, commits a grossly negligent, willful or intentional, or reckless act (including, but not limited to, fraud) in connection with the Program or the Agreement.

(4) Any representation, warranty, or covenant made by Servicer in the Agreement or any Annual Certification is or becomes materially false, misleading, incorrect, or incomplete.

(5) An evaluation of performance that includes any specific findings by Freddie Mac, in its sole discretion, that Servicer's performance under any performance criteria established pursuant to the Program Documentation is materially insufficient, or any failure by Servicer to comply with any

directive issued by Fannie Mae or Freddie Mac with respect to documents or data requested, findings made, or remedies established, by Fannie Mae and/or Freddie Mac in conjunction with such performance criteria or other Program requirements.

B. Fannie Mae may take any, all, or none of the following actions upon an Event of Default by Servicer under the Agreement:

(1) Fannie Mae may: (i) withhold some or all of the Servicer's portion of the Purchase Price until, in Fannie Mae's determination, Servicer has cured the default; and (ii) choose to utilize alternative means of paying any portion of the Purchase Price for the credit or account of borrowers and Investors and delay paying such portion pending adoption of such alternative means.

(2) Fannie Mae may: (i) reduce the amounts payable to Servicer under Section 4.B; and/or (ii) require repayment of prior payments made to Servicer under Section 4.B, provided, however, Fannie Mae will seek to obtain repayment of prior payments made under Section 4.B. only with respect to loan modifications that are determined by Fannie Mae or Freddie Mac to have been impacted, or that Fannie Mae or Freddie Mac believes may have been, or may be, impacted, by the Event of Default giving rise to the remedy.

(3) Fannie Mae may require Servicer to submit to additional Program administrator oversight, including, but not limited to, additional compliance controls and quality control reviews.

(4) Fannie Mae may terminate the Agreement and cease its performance hereunder as to some or all of the mortgage loans subject to the Agreement.

(5) Fannie Mae may require Servicer to submit to information and reporting with respect to its financial condition and ability to continue to meet its obligations under the Agreement.

C. Fannie Mae may take any, all, or none of the following actions upon an Event of Default involving an Investor or a borrower in connection with the Program:

(1) Fannie Mae may withhold all or any portion of the Purchase Price payable to, or for the credit or account of, the defaulting party until, in Fannie Mae's determination, the default has been cured or otherwise remedied to Fannie Mae's satisfaction.

(2) Fannie Mae may: (i) reduce the amounts payable to Servicer for the credit, or account of, the defaulting party under Section 4.B; and/or (ii) require repayment of prior payments made to the defaulting party under Section 4.B. Servicer will reasonably cooperate with, and provide reasonable support and assistance to, Fannie Mae and Freddie Mac in connection with their respective roles and, in Fannie Mae's case, in connection with its efforts to obtain repayment of prior payments made to Investors and borrowers as provided in this subsection.

(3) Fannie Mae may require Servicer to submit to additional Program administrator oversight, including, but not limited to, additional compliance controls and quality control reviews.

(4) Fannie Mae may cease its performance hereunder as to some or all of the mortgage loans subject to the Agreement that relate to the defaulting Investor or borrower.

D. In addition to the termination rights set forth above, Fannie Mae may terminate the Agreement immediately upon written notice to Servicer:

(1) at the direction of the Treasury;

(2) in the event of a merger, acquisition, or other change of control of Servicer;

(3) in the event that a receiver, liquidator, trustee, or other custodian is appointed for the Servicer; or

(4) in the event that a material term of the Agreement is determined to be prohibited or unenforceable as referred to in Section 11.C.

E. The Agreement will terminate automatically:

(1) in the event that the Financial Agency Agreement, dated February 18, 2009, by and between Fannie Mae and the Treasury is terminated; or

(2) upon the expiration or termination of the Program.

F. The remedies available to Fannie Mae upon an Event of Default under this Section are cumulative and not exclusive; further, these remedies are in addition to, and not in lieu of, any other remedies available to Fannie Mae at law or in equity.

G. If the event of termination of the Agreement under any circumstances, Servicer and Fannie Mae agree to cooperate with one another on an ongoing basis to ensure an effective and orderly transition or resolution of the Services, including the provision of any information, reporting, records and data required by Fannie Mae and Freddie Mac.

H. If an Event of Default under Section 6.A.1., Section 6.A.4., or Section 6.A.5. occurs and Fannie Mae determines, in its sole discretion, that the Event of Default is curable and elects to exercise its right to terminate the Agreement, Fannie Mae will provide written notice of the Event of Default to Servicer and the Agreement will terminate automatically thirty (30) days after Servicer's receipt of such notice, if the Event of Default is not cured by Servicer to the reasonable satisfaction of Fannie Mae prior to the end of such thirty (30) day period. If Fannie Mae determines, in its sole discretion, that an Event of Default under Section 6.A.1., Section 6.A.4, or Section 6.A. 5. is not curable, or if an Event of Default under Section 6.A.2. or Section 6.A.3. occurs, and Fannie Mae elects to exercise its right to terminate the Agreement under Section 6.B.4., Fannie Mae will provide written notice of termination to the Servicer on or before the effective date of the termination.

7. Disputes

Fannie Mae and Servicer agree that it is in their mutual interest to resolve disputes by agreement. If a dispute arises under the Agreement, the parties will use all reasonable efforts to promptly resolve the dispute by mutual agreement. If a dispute cannot be resolved informally by mutual agreement at the lowest possible level, the dispute shall be referred up the respective chain of command of each party in an attempt to resolve the matter. This will be done in an expeditious manner. Servicer shall continue diligent performance of the Services pending resolution of any dispute. Fannie Mae and Servicer reserve the right to pursue other legal or equitable rights they may have concerning any dispute. However, the parties agree to take all reasonable steps to resolve disputes internally before commencing legal proceedings.

8. Transfer or Assignment

A. Servicer must provide written notice to Fannie Mae and Freddie Mac pursuant to Section 9 below of: (i) any transfers or assignments of mortgage loans subject to this Agreement; and (ii) any other transfers or assignments of Servicer's rights and obligations under this Agreement. Such notice must include payment instructions for payments to be made to the transferee or assignee of the mortgage loans subject to the notice (if applicable), and evidence of the assumption by such transferee or assignee of the mortgage loans or other rights and obligations that are transferred, in the form of Exhibit C (the "Assignment and

Assumption Agreement"). Servicer acknowledges that Fannie Mae will continue to remit payments to Servicer in accordance with Section 4.B. with respect to mortgage loans that have been assigned or transferred, and that Servicer will be liable for underpayments, overpayments and misdirected payments, unless and until such notice and an executed Assignment and Assumption Agreement are provided to Fannie Mae and Freddie Mac. Any purported transfer or assignment of mortgage loans or other rights or obligations under the Agreement in violation of this Section is void.

B. Servicer shall notify Fannie Mae as soon as legally possible of any proposed merger, acquisition, or other change of control of Servicer, and of any financial and operational circumstances which may impair Servicer's ability to perform its obligations under the Agreement.

9. Notices

All legal notices under the Agreement shall be in writing and referred to each party's point of contact identified below at the address listed below, or to such other point of contact at such other address as may be designated in writing by such party. All such notices under the Agreement shall be considered received: (a) when personally delivered; (b) when delivered by commercial overnight courier with verification receipt; (c) when sent by confirmed facsimile; or (d) three (3) days after having been sent, postage prepaid, via certified mail, return receipt requested. Notices shall not be made or delivered in electronic form, except as provided in Section 12 B. below, provided, however, that the party giving the notice may send an e-mail to the party receiving the notice advising that party that a notice has been sent by means permitted under this Section.

To Servicer:

[redacted]
[redacted]
Bank of America
2900 Madera Road
Mail Code: CA6-920-01-07
Simi Valley, CA 93065
email: [redacted]
Facsimile: [redacted]

With copy to:

[redacted]
[redacted]
Bank of America
Bank of America Plaza
101 S. Tryon Street
Mail Code: NC1-002-29-01
Charlotte, NC 28255-0001
email: [redacted]
Facsimile: [redacted]

To Fannie Mae:

Fannie Mae
3900 Wisconsin Avenue, NW
Washington, DC 20016
Attention: General Counsel
Facsimile: [redacted]
email: [redacted]

To Treasury:

Chief
Office of Homeownership Preservation
Office of Financial Stability
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220
Facsimile: (202) 622-9219

To Freddie Mac:

Freddie Mac
8100 Jones Branch Drive
McLean, VA 22102
Attention: Vice President, Making Home Affordable -- Compliance
Facsimile: (703) 903-2544
Email to: MHA_Compliance@freddiemac.com

10. Modifications

A. Subject to Sections 10.B. and 10.C., modifications to the Agreement shall be in writing and signed by Fannie Mae and Servicer.

B. Fannie Mae and the Treasury each reserve the right to unilaterally modify or supplement the terms and provisions of the Program Documentation that relate (as determined by Fannie Mae or the Treasury, in their reasonable discretion) to the compliance and performance requirements of the Program, and related remedies established by Freddie Mac, and/or to technical, administrative, or procedural matters or compliance and reporting requirements that may impact the administration of the Program.

C. Notwithstanding Sections 10.A. and 10.B., any modification to the Program Documentation that materially impact the borrower eligibility requirements, the amount of payments of the Purchase Price to be made to Participating Servicers, Investors and borrowers under the Program, or the rights, duties, or obligations of Participating Servicers, Investors or borrowers in connection with the Program (each, a "Program Modification" and, collectively, the "Program Modifications") shall be effective only on a prospective basis; Participating Servicers will be afforded the opportunity to opt-out of the Program when Program Modifications are published with respect to some or all of the mortgage loans sought to be modified under the Program on or after the effective date of the Program Modification, at Servicer's discretion. Opt-out procedures, including, but not limited to, the time and process for notification of election to opt-out and the window for such election, will be set forth in the Program Documentation describing the Program Modification, provided, however, that Servicer will be given at least thirty (30) days to elect to opt-out of a Program Modification. For the avoidance of doubt, during the period during which Servicer may elect to opt-out of a Program Modification

and after any such opt-out is elected by Servicer, Servicer will continue to perform the Services described in the Financial Instrument and the Program Documentation (as the Program Documentation existed immediately prior to the publication of the Program modification prompting the opt-out) with respect to qualifying mortgage loan modifications that were submitted by Servicer and accepted by Fannie Mae prior to the opt-out.

11. Miscellaneous

A. The Agreement shall be governed by and construed under Federal law and not the law of any state or locality, without reference to or application of the conflicts of law principles. Any and all disputes between the parties that cannot be settled by mutual agreement shall be resolved solely and exclusively in the United States Federal courts located within the District of Columbia. Both parties consent to the jurisdiction and venue of such courts and irrevocably waive any objections thereto.

B. The Agreement is not a Federal procurement contract and is therefore not subject to the provisions of the Federal Property and Administrative Services Act (41 U.S.C. §§ 251-260), the Federal Acquisition Regulations (48 CFR Chapter 1), or any other Federal procurement law.

C. Any provision of the Agreement that is determined to be prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of the Agreement, and no such prohibition or unenforceability in any jurisdiction shall invalidate such provision in any other jurisdiction.

D. Failure on the part of Fannie Mae to insist upon strict compliance with any of the terms hereof shall not be deemed a waiver, nor will any waiver hereunder at any time be deemed a waiver at any other time. No waiver will be valid unless in writing and signed by an authorized officer of Fannie Mae. No failure by Fannie Mae to exercise any right, remedy, or power hereunder will operate as a waiver thereof. The rights, remedies, and powers provided herein are cumulative and not exhaustive of any rights, remedies, and powers provided by law.

E. The Agreement shall inure to the benefit of and be binding upon the parties to the Agreement and their permitted successors-in-interest.

F. The Commitment and the Assignment and Assumption Agreement (if applicable) may be executed in two or more counterparts (and by different parties on separate counterparts), each of which shall be an original, but all of which together shall constitute one and the same instrument.

G. The Commitment, together with the Financial Instrument, the Annual Certifications, the Assignment and Assumption Agreement (if applicable) and the Program Documentation, constitutes the entire agreement of the parties with respect to the subject matter hereof. In the event of a conflict between any of the foregoing documents and the Program Documentation, the Program Documentation shall prevail. In the event of a conflict between the Program Guidelines and the Supplemental Directives, the Program Guidelines shall prevail.

H. Any provisions of the Agreement (including all documents incorporated by reference thereto) that contemplate their continuing effectiveness, including, but not limited to, Sections 4, 5 B., 6 F., 6 G., 9, 11 and 12 of the Commitment, and Sections 2, 3, 5, 7, 8, 9 and 10 of the Financial Instrument, and any other provisions (or portions thereof) in the Agreement that relate to, or may impact, the ability of Fannie Mae and Freddie Mac to fulfill their responsibilities as agents of the United States in connection with the Program, shall survive the expiration or termination of the Agreement.

12. Defined Terms; Incorporation by Reference

A. All references to the "Agreement" necessarily include, in all instances, the Commitment and all documents incorporated into the Commitment by reference, whether or not so noted contextually, and all amendments and modifications thereto. Specific references

throughout the Agreement to individual documents that are incorporated by reference into the Commitment are not inclusive of any other documents that are incorporated by reference, unless so noted contextually.

B. The term "Effective Date" means the date on which Fannie Mae transmits a copy of the fully executed Commitment and Financial Instrument to Treasury and Servicer with a completed cover sheet, in the form attached hereto as Exhibit D (the "Cover Sheet"). The Commitment and Financial Instrument and accompanying Cover Sheet will be faxed, emailed, or made available through other electronic means to Treasury and Servicer in accordance with Section 9.

C. The Program Documentation and Exhibit A – Form of Financial Instrument, Exhibit B – Form of Annual Certification, Exhibit C – Form of Assignment and Assumption Agreement and Exhibit D – Form of Cover Sheet (in each case, in form and, upon completion, in substance), including all amendments and modifications thereto, are incorporated into this Commitment by this reference and given the same force and effect as though fully set forth herein.

[SIGNATURE PAGE FOLLOWS; REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

In Witness Whereof, Servicer and Fannie Mae by their duly authorized officials hereby execute and deliver this Commitment to Purchase Financial Instrument and Servicer Participation Agreement as of the Effective Date.

SERVICER: Bank of America, N.A.

By: _____
Name: Steve R. Bailey
Title: Senior Vice President
Date: April 17, 2009

FANNIE MAE, solely as Financial Agent of the United States

By: _____
Name: Leslie Peeler
Title: Vice President
Date: 4/17/09

EXHIBITS

Exhibit A	Form of Financial Instrument
Exhibit B	Form of Annual Certification
Exhibit C	Form of Assignment and Assumption Agreement
Exhibit D	Form of Cover Sheet

EXHIBIT A

FORM OF FINANCIAL INSTRUMENT

FINANCIAL INSTRUMENT

This Financial Instrument is delivered as provided in Section 1 of the Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the "Commitment"), entered into as of the Effective Date, by and between Federal National Mortgage Association ("Fannie Mae"), a federally chartered corporation, acting as financial agent of the United States, and the undersigned party ("Servicer"). This Financial Instrument is effective as of the Effective Date. All of the capitalized terms that are used but not defined herein shall have the meanings ascribed to them in the Commitment.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Servicer agrees as follows:

1. Purchase Price Consideration; Services. This Financial Instrument is being purchased by Fannie Mae pursuant to Section 4 of the Commitment in consideration for the payment by Fannie Mae, in its capacity as a financial agent of the United States, of various payments detailed in the Program Documentation and referred to collectively in the Commitment as the "Purchase Price." The conditions precedent to the payment by Fannie Mae of the Purchase Price are: (a) the execution and delivery of this Financial Instrument and the Commitment by Servicer to Fannie Mae; (b) the execution and delivery by Fannie Mae of the Commitment to Servicer; (c) the delivery of copies of the fully executed Commitment and Financial Instrument to Treasury on the Effective Date; (d) the performance by Servicer of the Services described in the Agreement; and (e) the satisfaction by Servicer of such other obligations as are set forth in the Agreement. Servicer shall perform all Services in consideration for the Purchase Price in accordance with the terms and conditions of the Agreement, to the reasonable satisfaction of Fannie Mae and Freddie Mac.

2. Authority and Agreement to Participate in Program. Subject to the limitations set forth in Section 2 of the Agreement, Servicer shall use reasonable efforts to remove all prohibitions or impediments to its authority and to obtain all third party consents and waivers that are required, by contract or law, in order to effectuate any loan modification under the Program.

3. Audits, Reporting and Data Retention.

   (a) Freddie Mac, the Federal Housing Finance Agency and other parties designated by the Treasury or applicable law shall have the right during normal business hours to conduct unannounced, informal onsite visits and to conduct formal onsite and offsite physical, personnel and information technology testing, security reviews, and audits of Servicer and to examine all books, records and data related to the Services provided and Purchase Price received in connection with the Program on thirty (30) days' prior written notice.

   (b) Servicer will collect, record, retain and provide to Treasury, Fannie Mae and Freddie Mac all data, information and documentation relating to the Program and borrowers, loans and loan modifications implemented, or potentially eligible for modification, under the Program and any trials conducted in connection with the Program, as required by the Program Documentation. All such data, information and documentation must be provided to the Treasury, Fannie Mae and Freddie Mac as, when and in the manner specified in the Program Documentation. In addition, Servicer shall provide copies of executed contracts and tapes of loan pools related to the Program for review upon request.

   (c) Servicer shall promptly take corrective and remedial actions associated with reporting and reviews as directed by Fannie Mae or Freddie Mac and provide to Fannie Mae and Freddie Mac such evidence of the effective implementation of corrective and remedial actions as Fannie Mae and Freddie Mac shall reasonably require. Freddie Mac may conduct additional reviews based on its findings and the corrective actions taken by Servicer.

(d) In addition to any other obligation to retain financial and accounting records that may be imposed by Federal or state law, Servicer shall retain all information described in Section 3(b), and all data, books, reports, documents, audit logs and records, including electronic records, related to the performance of Services in connection with the Program. In addition, Servicer shall maintain a copy of all computer systems and application software necessary to review and analyze these electronic records. Unless otherwise directed by Fannie Mae or Freddie Mac, Servicer shall retain these records for at least 7 years from the date the data or record was created, or for such longer period as may be required pursuant to applicable law. Fannie Mae or Freddie Mac may also notify Servicer from time to time of any additional record retention requirements resulting from litigation and regulatory investigations in which the Treasury or any agents of the United States may have an interest, and Servicer agrees to comply with these litigation and regulatory investigations requirements.

4. Internal Control Program.

(a) Servicer shall develop, enforce and review on a quarterly basis for effectiveness an internal control program designed to: (i) ensure effective delivery of Services in connection with the Program and compliance with the Program Documentation; (ii) effectively monitor and detect loan modification fraud; and (iii) effectively monitor compliance with applicable consumer protection and fair lending laws. The internal control program must include documentation of the control objectives for Program activities, the associated control techniques, and mechanisms for testing and validating the controls.

(b) Servicer shall provide Freddie Mac with access to all internal control reviews and reports that relate to Services under the Program performed by Servicer and its independent auditing firm to enable Freddie Mac to fulfill its duties as a compliance agent of the United States; a copy of the reviews and reports will be provided to Fannie Mae for record keeping and other administrative purposes.

5. Representations, Warranties and Covenants. Servicer makes the following representations, warranties and covenants to Fannie Mae, Freddie Mac and the Treasury, the truth and accuracy of which are continuing obligations of Servicer. In the event that any of the representations, warranties, or covenants made herein cease to be true and correct, Servicer agrees to notify Fannie Mae and Freddie Mac immediately.

(a) Servicer is established under the laws of the United States or any state, territory, or possession of the United States or the District of Columbia, and has significant operations in the United States. Servicer has full corporate power and authority to enter into, execute, and deliver the Agreement and to perform its obligations hereunder and has all licenses necessary to carry on its business as now being conducted and as contemplated by the Agreement.

(b) Servicer is in compliance with, and covenants that all Services will be performed in compliance with, all applicable Federal, state and local laws, regulations, regulatory guidance, statutes, ordinances, codes and requirements, including, but not limited to, the Truth in Lending Act, 15 USC 1601 § et seq., the Home Ownership and Equity Protection Act, 15 USC § 1639, the Federal Trade Commission Act, 15 USC § 41 et seq., the Equal Credit Opportunity Act, 15 USC § 701 et seq., the Fair Credit Reporting Act, 15 USC § 1681 et seq., the Fair Housing Act and other Federal and state laws designed to prevent unfair, discriminatory or predatory lending practices and all applicable laws governing tenant rights. Subject to the following sentence, Servicer has obtained or made, or will obtain or make, all governmental approvals or registrations required under law and has obtained or will obtain all consents necessary to authorize the performance of its obligations under the Program and the Agreement. The performance of Services under the Agreement will not conflict with, or be prohibited in any way by, any other agreement or statutory restriction by which Servicer is bound,

provided, however, that Fannie Mae acknowledges and agrees that this representation and warranty is qualified solely by and to the extent of any contractual limitations established under applicable servicing contracts to which Servicer is subject. Servicer is not aware of any other legal or financial impediments to performing its obligations under the Program or the Agreement and shall promptly notify Fannie Mae of any financial and/or operational impediments which may impair its ability to perform its obligations under the Program or the Agreement. Servicer is not delinquent on any Federal tax obligation or any other debt owed to the United States or collected by the United States for the benefit of others, excluding any debt or obligation that is being contested in good faith.

(c) Servicer covenants that: (i) it will perform its obligations in accordance with the Agreement and will promptly provide such performance reporting as Fannie Mae may reasonably require; (ii) all mortgage modifications and all trial period modifications will be offered to borrowers, fully documented and serviced in accordance with the Program Documentation; and (iii) all data, collection information and other information reported by Servicer to Fannie Mae and Freddie Mac under the Agreement, including, but not limited to, information that is relied upon by Fannie Mae or Freddie Mac in calculating the Purchase Price or in performing any compliance review will be true, complete and accurate in all material respects, and consistent with all relevant servicing records, as and when provided.

(d) Servicer covenants that it will: (i) perform the Services required under the Program Documentation and the Agreement in accordance with the practices, high professional standards of care, and degree of attention used in a well-managed operation, and no less than that which the Servicer exercises for itself under similar circumstances; and (ii) use qualified individuals with suitable training, education, experience and skills to perform the Services. Servicer acknowledges that Program participation may require changes to, or the augmentation of, its systems, staffing and procedures, and covenants and agrees to take all actions necessary to ensure it has the capacity to implement the Program in accordance with the Agreement.

(e) Servicer covenants that it will comply with all regulations on conflicts of interest that are applicable to Servicer in connection with the conduct of its business and all conflicts of interest and non-disclosure obligations and restrictions and related mitigation procedures set forth in the Program Documentation (if any).

(f) Servicer acknowledges that the provision of false or misleading information to Fannie Mae or Freddie Mac in connection with the Program or pursuant to the Agreement may constitute a violation of: (a) Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or (b) the civil False Claims Act (31 U.S.C. §§ 3729-3733). Servicer covenants to disclose to Fannie Mae and Freddie Mac any credible evidence, in connection with the Services, that a management official, employee, or contractor of Servicer has committed, or may have committed, a violation of the referenced statutes.

(g) Servicer covenants to disclose to Fannie Mae and Freddie Mac any other facts or information that the Treasury, Fannie Mae or Freddie Mac should reasonably expect to know about Servicer and its contractors to help protect the reputational interests of the Treasury, Fannie Mae and Freddie Mac in managing and monitoring the Program.

(h) Servicer covenants that it will timely inform Fannie Mae and Freddie Mac of any anticipated Event of Default.

(i) Servicer acknowledges that Fannie Mae or Freddie Mac may be required to assist the Treasury with responses to the Privacy Act of 1974 (the "Privacy Act"), 5 USC § 552a, inquiries from borrowers and Freedom of Information Act, 5 USC § 552, inquiries from other parties, as well as formal inquiries from Congressional committees and members, the Government Accounting Office, Inspectors General and other government entities, as well as media and consumer advocacy group inquiries about the Program and its effectiveness. Servicer covenants that it will respond promptly and accurately to all search requests made by Fannie Mae or Freddie Mac, comply with any related procedures which Fannie Mae or Freddie Mac may establish, and provide related training to employees and contractors. In connection with Privacy Act inquiries, Servicer covenants that it will provide updated and corrected information as appropriate about borrowers' records to ensure that any system of record maintained by Fannie Mae on behalf of the Treasury is accurate and complete.

(j) Servicer acknowledges that Fannie Mae is required to develop and implement customer service call centers to respond to borrowers' and other parties' inquiries regarding the Program, which may require additional support from Servicer. Servicer covenants that it will provide such additional customer service call support as Fannie Mae reasonably determines is necessary to support the Program.

(k) Servicer acknowledges that Fannie Mae and/or Freddie Mac are required to develop and implement practices to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws. Servicer covenants that it will fully and promptly cooperate with Fannie Mae's inquiries about loan modification fraud and legal compliance and comply with any anti-fraud and legal compliance procedures which Fannie Mae and/or Freddie Mac may require. Servicer covenants that it will develop and implement an internal control program to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws, among other things, as provided in Section 4 of this Financial Instrument and acknowledges that the internal control program will be monitored, as provided in such Section.

(l) Servicer shall sign and deliver an Annual Certification to Fannie Mae and Freddie Mac beginning on June 1, 2010 and again on June 1 of each year thereafter during the Term, in the form attached as Exhibit B to the Agreement.

6. Use of Contractors. Servicer is responsible for the supervision and management of any contractor that assists in the performance of Services in connection with the Program. Servicer shall remove and replace any contractor that fails to perform. Servicer shall ensure that all of its contractors comply with the terms and provisions of the Agreement. Servicer shall be responsible for the acts or omissions of its contractors as if the acts or omissions were by the Servicer.

7. Data Rights.

(a) For purposes of this Section, the following definitions apply:

(i) "Data" means any recorded information, regardless of form or the media on which it may be recorded, regarding any of the Services provided in connection with the Program.

(ii) "Limited Rights" means non-exclusive rights to, without limitation, use, copy, maintain, modify, enhance, disclose, reproduce, prepare derivative works, and distribute, in any manner, for any purpose related to the administration, activities, review, or audit of, or public reporting regarding, the Program and to permit others to do so in connection therewith.

(iii) "NPI" means nonpublic personal information, as defined under the GLB.

(iv) "GLB" means the Gramm-Leach-Bliley Act, 15 U.S.C. 6801-6809.

(b) Subject to Section 7(c) below, Treasury, Fannie Mae and Freddie Mac shall have Limited Rights, with respect to all Data produced, developed, or obtained by Servicer or a contractor of Servicer in connection with the Program, provided, however, that NPI will not be transferred by Fannie Mae in violation of the GLB and, provided, further, that Servicer acknowledges and agrees that any use of NPI by, the distribution of NPI to, or the transfer of NPI among, Federal, state and local government organizations and agencies does not constitute a violation of the GLB for purposes of the Agreement. If requested, such Data shall be made available to the Treasury, Fannie Mae, or Freddie Mac upon request, or as and when directed by the Program Documentation, in industry standard useable format.

(c) Servicer expressly consents to the publication of its name as a participant in the Program, and the use and publication of Servicer's Data, subject to applicable state and federal laws regarding confidentiality, in any form and on any media utilized by Treasury, Fannie Mae or Freddie Mac, including, but not limited to, on any website or webpage hosted by Treasury, Fannie Mae, or Freddie Mac, in connection with the Program, provided that no Data placed in the public domain will: (i) contain the name, social security number, or street address of any borrower or other information that would allow the borrower to be identified; or, (ii) if presented in a form that links the Servicer with the Data, include information other than program performance and participation related statistics such as the number of modifications, performance of modifications, characteristics of the modified loans, or program compensation or fees, with any information about any borrower limited to creditworthiness characteristics such as debt, income, and credit score. In any Data provided to an enforcement or supervisory agency with jurisdiction over the Servicer, these limitations on borrower information do not apply.

8. Publicity and Disclosure.

(a) Servicer shall not make use of any Treasury name, symbol, emblem, program name, or product name, in any advertising, signage, promotional material, press release, Web page, publication, or media interview, without the prior written consent of the Treasury.

(b) Servicer shall not publish, or cause to have published, or make public use of Fannie Mae's name, logos, trademarks, or any information about its relationship with Fannie Mae without the prior written permission of Fannie Mae, which permission may be withdrawn at any time in Fannie Mae's sole discretion.

(c) Servicer shall not publish, or cause to have published, or make public use of Freddie Mac's name (i.e., "Freddie Mac" or "Federal Home Loan Mortgage Corporation"), logos, trademarks, or any information about its relationship with Freddie Mac without the prior written permission of Freddie Mac, which permission may be withdrawn at any time in Freddie Mac's sole discretion.

9. Limitation of Liability. IN NO EVENT SHALL FANNIE MAE, THE TREASURY, OR FREDDIE MAC, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO SERVICER WITH RESPECT TO THE PROGRAM OR THE AGREEMENT, OR FOR ANY

ACT OR OMISSION OCCURRING IN CONNECTION WITH THE FOREGOING, FOR ANY DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO DIRECT DAMAGES, INDIRECT DAMAGES, LOST PROFITS, LOSS OF BUSINESS, OR OTHER INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY NATURE OR UNDER ANY LEGAL THEORY WHATSOEVER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER OR NOT THE DAMAGES WERE REASONABLY FORESEEABLE; PROVIDED, HOWEVER, THAT THIS PROVISION SHALL NOT LIMIT FANNIE MAE'S OBLIGATION TO REMIT PURCHASE PRICE PAYMENTS TO SERVICER IN ITS CAPACITY AS FINANCIAL AGENT OF THE UNITED STATES IN ACCORDANCE WITH THE AGREEMENT.

10. Indemnification. Servicer shall indemnify, hold harmless, and pay for the defense of Fannie Mae, the Treasury and Freddie Mac, and their respective officers, directors, employees, agents and affiliates against all claims, liabilities, costs, damages, judgments, suits, actions, losses and expenses, including reasonable attorneys' fees and costs of suit, arising out of or resulting from: (a) Servicer's breach of Section 5 (Representations, Warranties and Covenants) of this Financial Instrument; (b) Servicer's negligence, willful misconduct or failure to perform its obligations under the Agreement; or (c) any injuries to persons (including death) or damages to property caused by the negligent or willful acts or omissions of Servicer or its contractors. Servicer shall not settle any suit or claim regarding any of the foregoing without Fannie Mae's prior written consent if such settlement would be adverse to Fannie Mae's interest, or the interests of the Treasury or Freddie Mac. Servicer agrees to pay or reimburse all costs that may be incurred by Fannie Mae and Freddie Mac in enforcing this indemnity, including attorneys' fees.

IN WITNESS WHEREOF, Servicer hereby executes this Financial Instrument on the date set forth below.

Bank of America, N.A.

Steve R. Bailey
Senior Vice President, Mortgage Servicing Executive

APRIL 17, 2009
Date

EXHIBIT B

FORM OF ANNUAL CERTIFICATION

ANNUAL CERTIFICATION

This Annual Certification is delivered as provided in Section 1.B. of the Commitment to Purchase Financial Instrument and Servicer Participation Agreement (the "Commitment"), effective as of [INSERT], by and between Federal National Mortgage Association ("Fannie Mae"), a federally chartered corporation, acting as financial agent of the United States, and the undersigned party ("Servicer"). All terms used, but not defined herein, shall have the meanings ascribed to them in the Commitment.

Servicer hereby certifies, as of [INSERT DATE ON WHICH CERTIFICATION IS GIVEN], that:

1. Servicer is established under the laws of the United States or any state, territory, or possession of the United States or the District of Columbia, and has significant operations in the United States. Servicer had full corporate power and authority to enter into, execute, and deliver the Agreement and to perform its obligations hereunder and has all licenses necessary to carry on its business as now being conducted and as contemplated by the Agreement.

2. Servicer is in compliance with, and certifies that all Services have been performed in compliance with, all applicable Federal, state and local laws, regulations, regulatory guidance, statutes, ordinances, codes and requirements, including, but not limited to, the Truth in Lending Act, 15 USC 1601 § et seq., the Home Ownership and Equity Protection Act, 15 USC § 1639, the Federal Trade Commission Act, 15 USC § 41 et seq., the Equal Credit Opportunity Act, 15 USC § 701 et seq., the Fair Credit Reporting Act, 15 USC § 1681 et seq., the Fair Housing Act and other Federal and state laws designed to prevent unfair, discriminatory or predatory lending practices and all applicable laws governing tenant rights. Subject to the following sentence, Servicer has obtained or made all governmental approvals or registrations required under law and has obtained all consents necessary to authorize the performance of its obligations under the Program and the Agreement. The performance of Services under the Agreement has not conflicted with, or been prohibited in any way by, any other agreement or statutory restriction by which Servicer is bound, except to the extent of any contractual limitations under applicable servicing contracts to which Servicer is subject. Servicer is not aware of any other legal or financial impediments to performing its obligations under the Program or the Agreement and has promptly notified Fannie Mae of any financial and/or operational impediments which may impair its ability to perform its obligations under the Program or the Agreement. Servicer is not delinquent on any Federal tax obligation or any other debt owed to the United States or collected by the United States for the benefit of others, excluding any debts or obligations that are being contested in good faith.

3. (i) Servicer has performed its obligations in accordance with the Agreement and has promptly provided such performance reporting as Fannie Mae and Freddie Mac have reasonably required; (ii) all mortgage modifications and all trial period modifications have been offered by Servicer to borrowers, fully documented and serviced by Servicer in accordance with the Program Documentation; and (iii) all data, collection information and other information reported by Servicer to Fannie Mae and Freddie Mac under the Agreement, including, but not limited to, information that was relied upon by Fannie Mae and Freddie Mac in calculating the Purchase Price and in performing any compliance review, was true, complete and accurate in all material respects, and consistent with all relevant servicing records, as and when provided.

4. Servicer has: (i) performed the Services required under the Agreement in accordance with the practices, high professional standards of care, and degree of attention used in a well-managed operation, and no less than that which the Servicer exercises for itself under similar circumstances; and (ii) used qualified individuals with suitable training, education, experience and skills to perform the Services. Servicer acknowledges that Program participation required changes to, or the augmentation of, its systems, staffing and procedures; Servicer took all actions necessary to ensure that it had the capacity to implement the Program in accordance with the Agreement.

5. Servicer has complied with all regulations on conflicts of interest that are applicable to Servicer in connection with the conduct of its business and all conflicts of interest and non-disclosure obligations and restrictions and related mitigation procedures set forth in the Program Documentation (if any).

6. Servicer acknowledges that the provision of false or misleading information to Fannie Mae or Freddie Mac in connection with the Program or pursuant to the Agreement may constitute a violation of: (a) Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or (b) the civil False Claims Act (31 U.S.C. §§3729-3733). Servicer has disclosed to Fannie Mae and Freddie Mac any credible evidence, in connection with the Services, that a management official, employee, or contractor of Servicer has committed, or may have committed, a violation of the referenced statutes.

7. Servicer has disclosed to Fannie Mae and Freddie Mac any other facts or information that the Treasury, Fannie Mae or Freddie Mac should reasonably expect to know about Servicer and its contractors to help protect the reputational interests of the Treasury, Fannie Mae and Freddie Mac in managing and monitoring the Program.

8. Servicer acknowledges that Fannie Mae and Freddie Mac may be required to assist the Treasury with responses to the Privacy Act of 1974 (the "Privacy Act"), 5 USC § 552a, inquiries from borrowers and Freedom of Information Act, 5 USC § 552, inquiries from other parties, as well as formal inquiries from Congressional committees and members, the Government Accounting Office, Inspectors General and other government entities, as well as media and consumer advocacy group inquiries about the Program and its effectiveness. Servicer has responded promptly and accurately to all search requests made by Fannie Mae and Freddie Mac, complied with any related procedures which Fannie Mae and Freddie Mac have established, and provided related training to employees and contractors. In connection with Privacy Act inquiries, Servicer has provided updated and corrected information as appropriate about borrowers' records to ensure that any system of record maintained by Fannie Mae on behalf of the Treasury is accurate and complete.

9. Servicer acknowledges that Fannie Mae is required to develop and implement customer service call centers to respond to borrowers' and other parties' inquiries regarding the Program, which may require additional support from Servicer. Servicer has provided such additional customer service call support as Fannie Mae has reasonably requested to support the Program.

10. Servicer acknowledges that Fannie Mae and/or Freddie Mac are required to develop and implement practices to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws. Servicer has fully and promptly cooperated with Fannie Mae's inquiries about loan modification fraud and legal compliance and has complied with any anti-fraud and legal compliance procedures which Fannie Mae and/or Freddie Mac have required. Servicer has developed and implemented an internal control program to monitor and detect loan modification fraud and to monitor compliance with applicable consumer protection and fair lending laws, among other things, as provided in Section 4 of the Financial Instrument.

In the event that any of the certifications made herein are discovered not to be true and correct, Servicer agrees to notify Fannie Mae and Freddie Mac immediately.

[INSERT FULL LEGAL NAME OF SERVICER]:

_____ _____

[Name of Authorized Official] Date
[Title of Authorized Official]

EXHIBIT C

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (the "Assignment and Assumption Agreement") is entered into as of [INSERT DATE] by and between [INSERT FULL LEGAL NAME OF ASSIGNOR] ("Assignor") and [INSERT FULL LEGAL NAME OF ASSIGNEE] ("Assignee"). All terms used, but not defined, herein shall have the meanings ascribed to them in the Underlying Agreement (defined below).

WHEREAS, Assignor and Federal National Mortgage Association, a federally chartered corporation, as financial agent of the United States ("Fannie Mae"), are parties to a Commitment to Purchase Financial Instrument and Servicer Participation Agreement, a complete copy of which (including all exhibits, amendments and modifications thereto) is attached hereto and incorporated herein by this reference (the "Underlying Agreement");

WHEREAS, Assignor has agreed to assign to Assignee: (i) all of its rights and obligations under the Underlying Agreement with respect to the mortgage loans identified on the schedule attached hereto as Schedule 1 ("Schedule 1") and/or (ii) certain other rights and obligations under the Underlying Agreement that are identified on Schedule 1; and

WHEREAS, Assignee has agreed to assume the mortgage loans and other rights and obligations under the Underlying Agreement identified on Schedule 1.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all of Assignor's rights and obligations under the Underlying Agreement with respect to the mortgage loans identified on Schedule 1 and such other rights and obligations under the Underlying Agreement that are identified on Schedule 1.

2. Assumption. Assignee hereby accepts the foregoing assignment and assumes all of the rights and obligations of Assignor under the Underlying Agreement with respect to the mortgage loans identified on Schedule 1 and such other rights and obligations under the Underlying Agreement that are identified on Schedule 1.

3. Effective Date. The date on which the assignment and assumption of rights and obligations under the Underlying Agreement is effective is [INSERT EFFECTIVE DATE OF ASSIGNMENT/ASSUMPTION].

4. Successors. All future transfers and assignments of the mortgage loans, rights and obligations transferred and assigned hereby are subject to the transfer and assignment provisions of the Underlying Agreement. This Assignment and Assumption Agreement shall inure to the benefit of, and be binding upon, the permitted successors and assigns of the parties hereto.

5. Counterparts. This Assignment and Assumption Agreement may be executed in counterparts, each of which shall be an original, but all of which together constitute one and the same instrument.

IN WITNESS WHEREOF, Assignor and Assignee, by their duly authorized officials, hereby execute and deliver this Assignment and Assumption Agreement, together with Schedule 1, effective as of the date set forth in Section 3 above.

ASSIGNOR: [INSERT FULL LEGAL NAME OF ASSIGNOR]

By:_____
Name:_____
Title:_____
Date:_____

ASSIGNEE: [INSERT FULL LEGAL NAME OF ASSIGNEE]

By:_____
Name:_____
Title:_____
Date:_____

SCHEDULE 1

To

ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT D

FORM OF COVER SHEET

Cover Sheet for Transmission of

Commitment to Purchase Financial Instrument and Servicer Participation Agreement

To: [INSERT FULL LEGAL NAME OF SERVICER] ("Servicer"), [INSERT SERVICER CONTACT]

From: Federal National Mortgage Association, a federally chartered corporation, as financial agent of the United States ("Fannie Mae")

Copy To: The U.S. Department of the Treasury, [INSERT TREASURY CONTACT]

Date: [INSERT DATE OF TRANSMISSION]

Method of Transmission: [Facsimile to [INSERT FAX NUMBER OF SERVICER]] [[Email with PDF file attached to [INSERT SERVICER EMAIL ADDRESS][Specify other method of electronic delivery]]

NOTICE

This transmission constitutes notice to Servicer that the Commitment to Purchase Financial Instrument and Servicer Participation Agreement, by and between Fannie Mae and Servicer (the "Commitment") and the Financial Instrument attached thereto have been fully executed and are effective as of the date of this transmission. The date of this transmission shall be the "Effective Date" of the Commitment and the Financial Instrument.

Copies of the fully executed Commitment and Financial Instrument are attached to this transmission for your records.

Exhibit 2

MAKING HOME AFFORDABLE

Home Affordable Modification Program

Supplemental Directive 09-01 ***April 6, 2009***

Introduction of the Home Affordable Modification Program

Background

On February 18, 2009, President Obama announced the Homeowner Affordability and Stability Plan to help up to 7 to 9 million families restructure or refinance their mortgages to avoid foreclosure. As part of this plan, the Treasury Department (Treasury) announced a national modification program aimed at helping 3 to 4 million at-risk homeowners – both those who are in default and those who are at imminent risk of default – by reducing monthly payments to sustainable levels. On March 4, 2009, the Treasury issued uniform guidance for loan modifications across the mortgage industry. This Supplemental Directive provides additional guidance to servicers for adoption and implementation of the Home Affordable Modification program (HAMP) for mortgage loans that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages).

Under the HAMP, a servicer will use a uniform loan modification process to provide a borrower with sustainable monthly payments. The guidelines set forth in this document apply to all eligible mortgage loans secured by one- to four-unit owner-occupied single-family properties.

In order for a servicer to participate in the HAMP with respect to Non-GSE Mortgages, the servicer must execute a servicer participation agreement and related documents (Servicer Participation Agreement) with Fannie Mae in its capacity as financial agent for the United States (as designated by Treasury) on or before December 31, 2009. The Servicer Participation Agreement will govern servicer participation in the HAMP program for all Non-GSE Mortgages. Servicers of mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac should refer to the HAMP announcement issued by the applicable GSE.

The HAMP reflects usual and customary industry standards for mortgage loan modifications contained in typical servicing agreements, including pooling and servicing agreements (PSAs) governing private label securitizations. As detailed in the Servicer Participation Agreement, participating servicers are required to consider all eligible mortgage loans unless prohibited by the rules of the applicable PSA and/or other investor servicing agreements. Participating servicers are required to use reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties in order to carry out any modification under the HAMP.

To help servicers implement the HAMP, this Supplemental Directive covers the following topics:

- HAMP Eligibility
- Underwriting
- Modification Process
- Reporting Requirements
- Fees and Compensation
- Compliance

HAMP Eligibility

A Non-GSE Mortgage is eligible for the HAMP if the servicer verifies that all of the following criteria are met:

- The mortgage loan is a first lien mortgage loan originated on or before January 1, 2009.
- The mortgage loan has not been previously modified under the HAMP.
- The mortgage loan is delinquent or default is reasonably foreseeable; loans currently in foreclosure are eligible.
- The mortgage loan is secured by a one- to four-unit property, one unit of which is the borrower's principal residence. Cooperative share mortgages and mortgage loans secured by condominium units are eligible for the HAMP. Loans secured by manufactured housing units are eligible for the HAMP.
- The property securing the mortgage loan must not be vacant or condemned.
- The borrower documents a financial hardship and represents that (s)he does not have sufficient liquid assets to make the monthly mortgage payments by completing a Home Affordable Modification Program Hardship Affidavit and provides the required income documentation. The documentation supporting income may not be more than 90 days old (as of the date the servicer is determining HAMP eligibility).
- The borrower has a monthly mortgage payment ratio of greater than 31 percent.
- A borrower in active litigation regarding the mortgage loan is eligible for the HAMP.
- The servicer may not require a borrower to waive legal rights as a condition of the HAMP.
- A borrower actively involved in a bankruptcy proceeding is eligible for the HAMP at the servicer's discretion. Borrowers who have received a Chapter 7 bankruptcy discharge in a case involving the first lien mortgage who did not reaffirm the mortgage debt under applicable law are eligible, provided the Home Affordable Modification Trial Period Plan and Home Affordable Modification Agreement are revised as outlined in the *Acceptable Revisions to HAMP Documents* section of this Supplemental Directive.
- The borrower agrees to set up an escrow account for taxes and hazard and flood insurance prior to the beginning of the trial period if one does not currently exist.
- Borrowers may be accepted into the program if a fully executed Home Affordable Modification Trial Period Plan is in the servicer's possession on December 31, 2012.

- The current unpaid principal balance (UPB) of the mortgage loan prior to capitalization must be no greater than:
  - 1 Unit: $729,750
  - 2 Units: $934,200
  - 3 Units: $1,129,250
  - 4 Units: $1,403,400

Note: Mortgage loans insured, guaranteed or held by a federal government agency (e.g., FHA, HUD, VA and Rural Development) may be eligible for the HAMP, subject to guidance issued by the relevant agency. Further details regarding inclusion of these loans in the HAMP will be provided in a subsequent Supplemental Directive.

The HAMP documents are available through www.financialstability.gov. Documents include the Home Affordable Modification Trial Period Plan (hereinafter referred to as Trial Period Plan), the Home Affordable Modification Agreement (hereinafter referred to as the Agreement), the Home Affordable Modification Program Hardship Affidavit (hereinafter referred to as the Hardship Affidavit) and various cover letters.

Underwriting

Hardship Affidavit

Every borrower and co-borrower seeking a modification, whether in default or not, must sign a Hardship Affidavit that attests to and describes one or more of the following types of hardship:

1. A reduction in or loss of income that was supporting the mortgage.
2. A change in household financial circumstances.
3. A recent or upcoming increase in the monthly mortgage payment.
4. An increase in other expenses.
5. A lack of sufficient cash reserves to maintain payment on the mortgage and cover basic living expenses at the same time. Cash reserves include assets such as cash, savings, money market funds, marketable stocks or bonds (excluding retirement accounts and assets that serve as emergency fund – generally equal to three times the borrower's monthly debt payments).
6. Excessive monthly debt payments and overextension with creditors, e.g., the borrower was required to use credit cards, a home equity loan, or other credit to make the mortgage payment.
7. Other reasons for hardship detailed by the borrower.

Note: The borrower is not required to have the Hardship Affidavit notarized.

Reasonably Foreseeable (Imminent) Default

A borrower that is current or less than 60 days delinquent who contacts the servicer for a modification, appears potentially eligible for a modification, and claims a hardship must

be screened for imminent default. The servicer must make a determination as to whether a payment default is imminent based on the servicer's standards for imminent default and consistent with applicable contractual agreements and accounting standards. If the servicer determines that default is imminent, the servicer must apply the Net Present Value test.

In the process of making its imminent default determination, the servicer must evaluate the borrower's financial condition in light of the borrower's hardship as well as inquire as to the condition of and circumstances affecting the property securing the mortgage loan. The servicer must consider the borrower's financial condition, liquid assets, liabilities, combined monthly income from wages and all other identified sources of income, monthly obligations (including personal debts, revolving accounts, and installment loans), and a reasonable allowance for living expenses such as food, utilities, etc. The hardship and financial condition of the borrower shall be verified through documentation.

Documenting the Reason for and Timing of Imminent Default

A servicer must document in its servicing system the basis for its determination that a payment default is imminent and retain all documentation used to reach its conclusion. The servicer's documentation must also include information on the borrower's financial condition as well as the condition and circumstances of the property securing the mortgage loan.

Net Present Value (NPV) Test

All loans that meet the HAMP eligibility criteria and are either deemed to be in imminent default (as described above) or 60 or more days delinquent must be evaluated using a standardized NPV test that compares the NPV result for a modification to the NPV result for no modification. If the NPV result for the modification scenario is greater than the NPV result for no modification, the result is deemed "positive" and the servicer MUST offer the modification. If the NPV result for no modification is greater than NPV result for the modification scenario, the modification result is deemed "negative" and the servicer has the option of performing the modification in its discretion. For mortgages serviced on behalf of a third party investor for which the modification result is deemed "negative," however, the servicer may not perform the modification without express permission of the investor. If a modification is not pursued when the NPV result is "negative," the servicer must consider the borrower for other foreclosure prevention options, including alternative modification programs, deeds-in-lieu, and preforeclosure sale programs.

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.

Fannie Mae has developed a software application for servicers to submit loan files to the NPV calculator. The software application is available on the Home Affordable

Modification servicer web portal accessible through www.financialstability.gov. On this portal, servicers will have access to the NPV calculator tool as well as detailed guidelines for submitting proposed modification data.

Servicers having at least a $40 billion servicing book will have the option to create a version of the NPV calculator that uses a set of cure rates and redefault rates estimated based on the experience of their own portfolios, taking into consideration, if feasible, current LTV, current monthly mortgage payment, current credit score, delinquency status and other loan or borrower attributes. Detailed guidance on required inputs for custom NPV calculations is forthcoming.

For mortgages serviced on behalf of a third party investor, the servicer must use a discount rate at least as high as the rate used on the servicer's own portfolio, but in no event higher than the maximum rate permitted under the HAMP.

To obtain a property valuation input for the NPV calculator, servicers may use either an automated valuation model (AVM), provided that the AVM renders a reliable confidence score, or a broker's price opinion (BPO). A servicer may use an AVM provided by one of the GSEs. As an alternative, servicers may rely on their internal AVM provided that:

(i) the servicer is subject to supervision by a Federal regulatory agency;
(ii) the servicer's primary Federal regulatory agency has reviewed the model; and
(iii) the AVM renders a reliable confidence score.

If a GSE AVM or the servicer AVM is unable to render a value with a reliable confidence score, the servicer must obtain an assessment of the property value utilizing a BPO or a property valuation method acceptable to the servicer's Federal regulatory supervisor. Such assessment must be rendered in accordance with the Interagency Appraisal and Evaluation Guidelines (as if such guidelines apply to loan modifications). In all cases, the property valuation used cannot be more than 90 days old.

Verifying Borrower Income and Occupancy Status

Servicers may use recent verbal financial information obtained from the borrower and any co-borrower 90 days or less from the date the servicer is determining HAMP eligibility to assess the borrower's eligibility. The servicer may rely on this information to prepare and send to the borrower a solicitation for the HAMP and an offer of a Trial Period Plan. When the borrower returns the Trial Period Plan and related documents, the servicer must review them to verify the borrower's financial information and eligibility – except that documentation of income may not be more than 90 days old as of the determination of eligibility.

As an alternative, a servicer may require a borrower to submit the required documentation to verify the borrower's eligibility and income prior to preparing a Trial Period Plan. Upon receipt of the documentation and determination of the borrower's

eligibility, a servicer may prepare and send to the borrower a letter indicating that the borrower is eligible for the HAMP together with a Trial Period Plan.

The borrower will only qualify for the HAMP if the verified income documentation confirms that the monthly mortgage payment ratio prior to the modification is greater than 31 percent. The "monthly mortgage payment ratio" is the ratio of the borrower's current monthly mortgage payment to the borrower's monthly gross income (or the borrowers' combined monthly gross income in the case of co-borrowers). The "monthly mortgage payment" includes the monthly payment of principal, interest, property taxes, hazard insurance, flood insurance, condominium association fees and homeowner's association fees, as applicable (including any escrow payment shortage amounts subject to a repayment plan). When determining a borrower's monthly mortgage payment ratio, servicers must adjust the borrower's current mortgage payment to include, as applicable, property taxes, hazard insurance, flood insurance, condominium association fees and homeowner's association fees if these expenses are not already included in the borrower's payment. The monthly mortgage payment does not include mortgage insurance premium payments or payments due to holders of subordinate liens.

With respect to adjustable rate loans where there is a rate reset scheduled within 120 days after the date of the evaluation (a "Reset ARM"), the monthly mortgage payment used to determine eligibility will be the greater of (i) the borrower's current scheduled monthly mortgage payment or (ii) a fully amortizing monthly mortgage payment based on the note reset rate using the index value as of the date of the evaluation (the "Reset Interest Rate"). With respect to adjustable rate loans that reset more than 120 days after the date of the evaluation, the borrower's current scheduled monthly mortgage payment will be used to determine eligibility.

The borrower's "monthly gross income" is the borrower's income amount before any payroll deductions and includes wages and salaries, overtime pay, commissions, fees, tips, bonuses, housing allowances, other compensation for personal services, Social Security payments, including Social Security received by adults on behalf of minors or by minors intended for their own support, and monthly income from annuities, insurance policies, retirement funds, pensions, disability or death benefits, unemployment benefits, rental income and other income. If only net income is available, the servicer must multiply the net income amount by 1.25 to estimate the monthly gross income.

Servicers should include non-borrower household income in monthly gross income if it is voluntarily provided by the borrower and if there is documentary evidence that the income has been, and reasonably can continue to be, relied upon to support the mortgage payment. All non-borrower household income included in monthly gross income must be documented and verified by the servicer using the same standards for verifying a borrower's income.

The servicer may not require a borrower to make an up-front cash contribution (other than the first trial period payment) for the borrower to be considered for the HAMP.

The HAMP documents instruct the borrower (the term "borrower" includes any co-borrower) to provide the following financial information to the servicer:

If the borrower is employed:

- A signed copy of the most recently filed federal income tax return, including all schedules and forms, if available,
- A signed IRS Form 4506-T (Request for Transcript of Tax Return), and
- Copies of the two most recent paystubs indicating year-to-date earnings.
- For additional income such as bonuses, commissions, fees, housing allowances, tips and overtime, a servicer must obtain a letter from the employer or other reliable third-party documentation indicating that the income will in all probability continue.

If the borrower is self-employed:

- A signed copy of the most recent federal income tax return, including all schedules and forms, if available,
- A signed IRS Form 4506-T (Request for Transcript of Tax Return), and
- The most recent quarterly or year-to-date profit and loss statement for each self-employed borrower.
- Other reliable third-party documentation the borrower voluntarily provides.

Note: For both a salaried or a self-employed borrower, if the borrower does not provide a signed copy of the most recently filed federal income tax return, or if the Compliance Agent so requires, the servicer must submit the Form 4506-T to the IRS to request a transcript of the return.

If the borrower elects to use alimony or child support income to qualify, acceptable documentation includes:

- Photocopies of the divorce decree, separation agreement, or other type of legal written agreement or court decree that provides for the payment of alimony or child support and states the amount of the award and the period of time over which it will be received. Servicers must determine that the income will continue for at least three years.
- Documents supplying reasonably reliable evidence of full, regular and timely payments, such as deposit slips, bank statements or signed federal income tax returns.

If the borrower has other income such as social security, disability or death benefits, or a pension:

- Acceptable documentation includes letters, exhibits, a disability policy or benefits statement from the provider that states the amount, frequency, and duration of the benefit. The servicer must determine that the income will continue for at least three years.
- The servicer must obtain copies of signed federal income tax returns, IRS W-2 forms, or copies of the two most recent bank statements.

If the borrower receives public assistance or collects unemployment:

- Acceptable documentation includes letters, exhibits or a benefits statement from the provider that states the amount, frequency, and duration of the benefit. The servicer must determine that the income will continue for at least nine months.

If the borrower has rental income, acceptable documentation includes:

- Copies of all pages from the borrower's most recent two years of signed federal income tax returns and Schedule E – Supplemental Income and Loss. The monthly net rental income to be calculated for HAMP purposes equals 75 percent of the gross rent, with the remaining 25 percent considered vacancy loss and maintenance expense.

A servicer must confirm that the property securing the mortgage loan is the borrower's primary residence as evidenced by the most recent signed federal income tax return (or transcript of tax return obtained from the IRS), a credit report and one other form of documentation that would supply reasonable evidence that the property is the borrower's primary residence (such as utility bills in the borrower's name).

A servicer is not required to modify a mortgage loan if there is reasonable evidence indicating the borrower submitted false or misleading information or otherwise engaged in fraud in connection with the modification.

Standard Modification Waterfall

Servicers are required to consider a borrower for a refinance through the Hope for Homeowners program when feasible. Consideration for a Hope for Homeowners refinance should not delay eligible borrowers from receiving a modification offer and beginning the trial period. Servicers must use the modification options listed below to begin the HAMP modification and work to complete the Hope for Homeowners refinance during the trial period.

Servicers must apply the modification steps enumerated below in the stated order of succession until the borrower's monthly mortgage payment ratio is reduced as close as possible to 31 percent, without going below 31 percent (the "target monthly mortgage payment ratio"). If the applicable PSA or other investor servicing agreement prohibits the servicer from taking a modification step, the servicer may seek approval for an exception.

Servicers are not precluded under the HAMP from agreeing to a modification that reduces the borrower's monthly mortgage payment ratio below 31% as long as the modification otherwise complies with the HAMP requirements. Similarly and where otherwise permitted by the applicable PSA or other investor servicing contract, servicers are not precluded under the HAMP from agreeing to a modification where the interest rate does not step up after five years, or where additional principal forbearance is substituted for extending the term as needed to achieve the target monthly mortgage payment ratio of 31%, so long as the modification otherwise complies with HAMP

requirements. However, borrower, servicer and investor incentive payments for these modifications will be paid based on modification terms that reflect the target monthly mortgage payment ratio and standard modification terms.

Note: If a borrower has an adjustable-rate mortgage (ARM) or interest-only mortgage, the existing interest rate will convert to a fixed interest rate, fully amortizing loan.

Step 1: Capitalize 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 and servicing advances (costs and expenses incurred in performing its servicing obligation, such as those related to preservation and protection of the security property and the enforcement of the mortgage) paid to third parties in the ordinary course of business and not retained by the servicer, if allowed by state law. The servicer should capitalize only those third party delinquency fees that are reasonable and necessary. Fees permitted by Fannie Mae and Freddie Mac for GSE loans shall be considered evidence of fees that would be reasonable for non-GSE loans. Late fees may not be capitalized and must be waived if the borrower satisfies all conditions of the Trial Period Plan.

Step 2: Reduce the interest rate. If the loan is a fixed rate mortgage or an adjustable-rate mortgage, then the starting interest rate is the current interest rate. If the loan is a Reset ARM, the starting interest rate is the Reset Interest Rate.

Reduce the starting interest rate in increments of .125 percent to get as close as possible to the target monthly mortgage payment ratio. The interest rate floor in all cases is 2.0 percent.

- If the resulting rate is below the Interest Rate Cap, this reduced rate will be in effect for the first five years followed by annual increases of one percent per year (or such lesser amount as may be needed) until the interest rate reaches the Interest Rate Cap, at which time it will be fixed for the remaining loan term.
- If the resulting rate exceeds the Interest Rate Cap, then that rate is the permanent rate.

The "Interest Rate Cap" is the Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) Rate for 30-year fixed rate conforming loans, rounded to the nearest 0.125 percent, as of the date that the Agreement is prepared.

Step 3: If necessary, extend the term and reamortize the mortgage loan by up to 480 months from the modification effective date (i.e., the first day of the month following the end of the trial period) to achieve the target monthly mortgage payment ratio. If a term extension is not permitted under the applicable PSA or other investor servicing agreement, reamortize the mortgage loan based upon an amortization schedule of up to 480 months with a balloon payment due at maturity. Negative amortization after the effective date of the modification is prohibited.

Step 4: If necessary, the servicer must provide for principal forbearance to achieve the target monthly mortgage payment ratio. The principal forbearance amount is non-interest

bearing and non-amortizing. The amount of principal forbearance will result in a balloon payment fully due and payable upon the earliest of the borrower's transfer of the property, payoff of the interest bearing unpaid principal balance, or maturity of the mortgage loan. The modified interest bearing balance (i.e., the unpaid principal balance excluding the deferred principal balloon amount) must create a current mark-to-market LTV (current LTV based upon the new valuation) greater than or equal to 100 percent if the result of the NPV test is negative and the servicer elects to perform the modification.

There is no requirement to forgive principal under the HAMP. However, servicers may forgive principal to achieve the target monthly mortgage payment ratio on a standalone basis or before any step in the standard waterfall process set forth above. If principal is forgiven, subsequent steps in the standard waterfall may not be skipped. If principal is forgiven and the interest rate is not reduced, the existing rate will be fixed and treated as the modified rate for the purposes of the Interest Rate Cap.

Verifying Monthly Gross Expenses

A servicer must obtain a credit report for each borrower or a joint report for a married couple who are co-borrowers to validate installment debt and other liens. In addition, a servicer must consider information concerning monthly obligations obtained from the borrower either orally or in writing. The "monthly gross expenses" equal the sum of the following monthly charges:

- The monthly mortgage payment, taxes, property insurance, homeowner's or condominium association fee payments and assessments related to the property whether or not they are included in the mortgage payment.
- Any mortgage insurance premiums.
- Monthly payments on all closed-end subordinate mortgages.
- Payments on all installment debts with more than ten months of payments remaining, including debts that are in a period of either deferment or forbearance. When payments on an installment debt are not on the credit report or are listed as deferred, the servicer must obtain documentation to support the payment amount included in the monthly debt payment. If no monthly payment is reported on a student loan that is deferred or is in forbearance, the servicer must obtain documentation verifying the proposed monthly payment amount, or use a minimum of 1.5 percent of the balance.
- Monthly payment on revolving or open-end accounts, regardless of the balance. In the absence of a stated payment, the payment will be calculated by multiplying the outstanding balance by 3 percent.
- Monthly payment on a Home Equity Line of Credit (HELOC) must be included in the payment ratio using the minimum monthly payment reported on the credit report. If the HELOC has a balance but no monthly payment is reported, the servicer must obtain documentation verifying the payment amount, or use a minimum of one percent of the balance.
- Alimony, child support and separate maintenance payments with more than ten months of payments remaining, if supplied by the borrower.

- Car lease payments, regardless of the number of payments remaining.
- Aggregate negative net rental income from all investment properties owned, if supplied by the borrower.
- Monthly mortgage payment for second home (principal, interest, taxes and insurance and, when applicable, leasehold payments, homeowner association dues, condominium unit or cooperative unit maintenance fees (excluding unit utility charges)).

Total Monthly Debt Ratio

The borrower's total monthly debt ratio ("back-end ratio") is the ratio of the borrower's monthly gross expenses divided by the borrower's monthly gross income. Servicers will be required to send the Home Affordable Modification Program Counseling Letter to borrowers with a post-HAMP modification back-end ratio equal to or greater than 55 percent. The letter states the borrower must work with a HUD-approved housing counselor on a plan to reduce their total indebtedness below 55 percent. The letter also describes the availability and advantages of counseling and provides a list of local HUD-approved housing counseling agencies and directs the borrower to the appropriate HUD website where such information is located. The borrower must represent in writing in the HAMP documents that (s)he will obtain such counseling.

Face-to-face counseling is encouraged; however, telephone counseling is also permitted from HUD-approved housing counselors provided it covers the same topics as face-to-face sessions. Telephone counseling sessions provide flexibility to borrowers who are unable to attend face-to-face sessions or who do not have an eligible provider within their area.

A list of approved housing counseling agencies is available at http://www.hud.gov/offices/hsg/sfh/hcc/fc/ or by calling the toll-free housing counseling telephone referral service at 1-800-569-4287. A servicer must retain in its mortgage files evidence of the borrower notification. There is no charge to either borrowers or servicers for this counseling.

Mortgages with No Due-on-Sale Provision

If a mortgage that is not subject to a due-on-sale provision receives an HAMP, the borrower agrees that the HAMP will cancel the assumability feature of that mortgage.

Escrow Accounts

All of the borrower's monthly payments must include a monthly escrow amount unless prohibited by applicable law. The servicer must assume full responsibility for administering the borrower's escrow deposit account in accordance with the mortgage documents and all applicable laws and regulations. If the mortgage loan being considered for the HAMP is a non-escrowed mortgage loan, the servicer must establish an escrow deposit account prior to the beginning of the trial period. Servicers who do not

have this capacity must implement an escrow process within six months of signing the Servicer Participation Agreement. However, the servicer must ensure that the trial payments include escrow amounts and must place the escrow funds into a separate account identified for escrow deposits.

Servicers are encouraged to perform an escrow analysis prior to establishing the trial period payment. When performing an escrow analysis, servicers should take into consideration tax and insurance premiums that may come due during the trial period. When the borrower's escrow account does not have sufficient funds to cover an expense and the servicer advances the funds necessary to pay an expense to a third party, the amount of the servicer advance that is paid to a third party may be capitalized.

In the event the initial escrow analysis identifies a shortage – a deficiency in the escrow deposits needed to pay all future tax and insurance payments – the servicer must take steps to eliminate the shortage. Any actions taken by the servicer to eliminate the escrow shortage must be in compliance with applicable laws, rules and regulations, including, but not limited to, the Real Estate Settlement Procedures Act and the Truth in Lending Act.

Compliance with Applicable Laws

Each servicer (and any subservicer it uses) must be aware of, and in full compliance with, all federal, state, and local laws (including statutes, regulations, ordinances, administrative rules and orders that have the effect of law, and judicial rulings and opinions) – including, but not limited to, the following laws that apply to any of its practices related to the HAMP:

- Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive acts or practices.
- The Equal Credit Opportunity Act and the Fair Housing Act, which prohibit discrimination on a prohibited basis in connection with mortgage transactions. Loan modification programs are subject to the fair lending laws, and servicers and lenders should ensure that they do not treat a borrower less favorably than other borrowers on grounds such as race, religion, national origin, sex, marital or familial status, age, handicap, or receipt of public assistance income in connection with any loan modification. These laws also prohibit redlining.
- The Real Estate Settlement Procedures Act, which imposes certain disclosure requirements and restrictions relating to transfers of the servicing of certain loans and escrow accounts.
- The Fair Debt Collection Practices Act, which restricts certain abusive debt collection practices by collectors of debts, other than the creditor, owed or due to another.

Modification Process

Borrower Solicitation

Servicers should follow their existing practices, including complying with any express contractual restrictions, with respect to solicitation of borrowers for modifications.

A servicer may receive calls from current or delinquent borrowers directly inquiring about the availability of the HAMP. In that case, the servicer should work with the borrower to obtain the borrower's financial and hardship information and to determine if the HAMP is appropriate. If the servicer concludes a current borrower is in danger of imminent default, the servicer must consider an HAMP modification.

When discussing the HAMP, the servicer should provide the borrower with information designed to help them understand the modification terms that are being offered and the modification process. Such communication should help minimize potential borrower confusion, foster good customer relations, and improve legal compliance and reduce other risks in connection with the transaction. A servicer also must provide a borrower with clear and understandable written information about the material terms, costs, and risks of the modified mortgage loan in a timely manner to enable borrowers to make informed decisions. The servicer should inform the borrower during discussions that the successful completion of a modification under the HAMP will cancel any assumption feature, variable or step-rate feature, or enhanced payment options in the borrower's existing loan, at the time the loan is modified.

Servicers must have adequate staffing, resources, and facilities for receiving and processing the HAMP documents and any requested information that is submitted by borrowers. Servicers must also have procedures and systems in place to be able to respond to inquiries and complaints about the HAMP. Servicers should ensure that such inquiries and complaints are provided fair consideration, and timely and appropriate responses and resolution.

Document Retention

Servicers must retain all documents and information received during the process of determining borrower eligibility, including borrower income verification, total monthly mortgage payment and total monthly gross debt payment calculations, NPV calculations (assumptions, inputs and outputs), evidence of application of each step of the standard waterfall, escrow analysis, escrow advances, and escrow set-up. The servicers must retain all documents and information related to the monthly payments during and after the trial period, as well as incentive payment calculations and such other required documents.

Servicers must retain detailed records of borrower solicitations or borrower-initiated inquiries regarding the HAMP, the outcome of the evaluation for modification under the HAMP and specific justification with supporting details if the request for modification

under the HAMP was denied. Records must also be retained to document the reason(s) for a trial modification failure. If an HAMP modification is not pursued when the NPV result is "negative," the servicer must document its consideration of other foreclosure prevention options. If a borrower under an HAMP modification loses good standing, the servicer must retain documentation of its consideration of the borrower for other loss mitigation alternatives.

Servicers must retain required documents for a period of seven years from the date of the document collection.

Temporary Suspension of Foreclosure Proceedings

To ensure that a borrower currently at risk of foreclosure has the opportunity to apply for the HAMP, servicers should not proceed with a foreclosure sale until the borrower has been evaluated for the program and, if eligible, an offer to participate in the HAMP has been made. Servicers must use reasonable efforts to contact borrowers facing foreclosure to determine their eligibility for the HAMP, including in-person contacts at the servicer's discretion. Servicers must not conduct foreclosure sales on loans previously referred to foreclosure or refer new loans to foreclosure during the 30-day period that the borrower has to submit documents evidencing an intent to accept the Trial Period Plan offer. Except as noted herein, any foreclosure sale will be suspended for the duration of the Trial Period Plan, including any period of time between the borrower's execution of the Trial Period Plan and the Trial Period Plan effective date.

However, borrowers in Georgia, Hawaii, Missouri, and Virginia will be considered to have failed the trial period if they are not current under the terms of the Trial Period Plan as of the date that the foreclosure sale is scheduled. Accordingly, servicers of HAMP loans secured by properties in these states may proceed with the foreclosure sale if the borrower has not made the trial period payments required to be made through the end of the month preceding the month in which the foreclosure sale is scheduled to occur.

Mortgage Insurer Approval

If applicable, a servicer must obtain mortgage insurer approval for HAMP modifications. Servicers should consult their mortgage insurance providers for specific processes related to the reporting of modified terms, payment of premiums, payment of claims, and other operational matters in connection with mortgage loans modified under the HAMP.

Executing the HAMP Documents

Servicers must use a two-step process for HAMP modifications. Step one involves providing a Trial Period Plan outlining the terms of the trial period, and step two involves providing the borrower with an Agreement that outlines the terms of the final modification.

In step one, the servicer should instruct the borrower to return the signed Trial Period Plan, together with a signed Hardship Affidavit and income verification documents (if not previously obtained from the borrower), and the first trial period payment (when not using automated drafting arrangements), to the servicer within 30 calendar days after the Trial Period Plan is sent by the servicer. The servicer is encouraged to contact the borrower before the expiration of the 30-day period if the borrower has not yet responded to encourage submission of the material. The servicer may, in its discretion, consider the offer of a Trial Period Plan to have expired at the end of 60 days if the borrower has not submitted both an executed Trial Period Plan and complete documentation as required under the Trial Period Plan. If the borrower's submission is incomplete, the servicer should work with the borrower to complete the Trial Period Plan submission. Note: The borrower is not required to have the Hardship Affidavit notarized.

Upon receipt of the Trial Period Plan from the borrower, the servicer must confirm that the borrower meets the underwriting and eligibility criteria. Once the servicer makes this determination and has received good funds for the first month's trial payment, the servicer should sign and immediately return an executed copy of the Trial Period Plan to the borrower. Payments made by the borrower under the terms of the Trial Period Plan will count toward successful completion irrespective of the date of the executed copy of the Trial Period Plan.

If the servicer determines that the borrower does not meet the underwriting and eligibility standards of the HAMP after the borrower has submitted a signed Trial Period Plan to the servicer, the servicer should promptly communicate that determination to the borrower in writing and consider the borrower for another foreclosure prevention alternative.

In step two, servicers must calculate the terms of the modification using verified income, taking into consideration amounts to be capitalized during the trial period. Servicers are encouraged to wait to send the Agreement to the borrower for execution until after receipt of the second to the last payment under the trial period. Note: the borrower is not required to have the Agreement notarized.

Servicers are reminded that all HAMP documentation must be signed by an authorized representative of the servicer and reflect the actual date of signature by the servicer's representative.

Acceptable Revisions to HAMP Documents

Servicers are strongly encouraged to use the HAMP documents available through www.financialstability.gov. Should a servicer decide to revise the HAMP documents or draft its own HAMP documents, it must obtain prior written approval from Treasury or Fannie Mae with the exception of the following circumstances:

- The servicer must revise the HAMP documents as necessary to comply with Federal, State and local law. For example, in the event that the HAMP results in a

principal forbearance, servicers are obligated to modify the uniform instrument to comply with laws and regulations governing balloon disclosures.

- The servicer may include, as necessary, conditional language in HAMP offers and modification agreements indicating that the HAMP will not be implemented unless the servicer receives an acceptable title endorsement, or similar title insurance product, or subordination agreements from other existing lien holders, as necessary, to ensure that the modified mortgage loan retains its first lien position and is fully enforceable.
- If the borrower previously received a Chapter 7 bankruptcy discharge but did not reaffirm the mortgage debt under applicable law, the following language must be inserted in Section 1 of the Trial Period Plan and Section 1 of the Agreement: "I was discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement."
- The servicer may include language in the HAMP cover letter providing instructions for borrowers who elect to use an automated payment method to make the trial period payments.

Unless a borrower or co-borrower is deceased or a borrower and a co-borrower are divorced, all parties who signed the original loan documents or their duly authorized representative(s) must execute the HAMP documents. If a borrower and a co-borrower are divorced and the property has been transferred to one spouse in the divorce decree, the spouse who no longer has an interest in the property is not required to execute the HAMP documents. Servicers may evaluate requests on a case-by-case basis when the borrower is unable to sign due to circumstances such as mental incapacity, military deployment, etc. Furthermore, a borrower may elect to add a new co-borrower.

Use of Electronic Records

Electronic records for HAMP are acceptable as long as the electronic record complies with applicable law.

Assignment to MERS

If the original mortgage loan was registered with Mortgage Electronic Registration Systems, Inc. (MERS) and the originator elected to name MERS as the original mortgagee of record, solely as nominee for the lender named in the security instrument and the note, the servicer MUST make the following changes to the Agreement:

(a) Insert a new definition under the "Property Address" definition on page 1, which reads as follows:

"MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for lender and lender's successors and assigns. MERS is the mortgagee under the Mortgage. MERS is organized and existing

under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, (888) 679-MERS.

(b) Add as section 4.I.:

That MERS holds only legal title to the interests granted by the borrower in the mortgage, but, if necessary to comply with law or custom, MERS (as nominee for lender and lender's successors and assigns) has the right: to exercise any or all of those interests, including, but not limited to, the right to foreclose and sell the Property; and to take any action required of lender including, but not limited to, releasing and canceling the mortgage loan.

(c) MERS must be added to the signature lines at the end of the Agreement, as follows:

_____
Mortgage Electronic Registration
Systems, Inc. – Nominee for Lender

The servicer may execute the Agreement on behalf of MERS and, if applicable, submit it for recordation.

Trial Payment Period

Servicers may use recent verbal financial information to prepare and offer a Trial Period Plan. Servicers are not required to verify financial information prior to the effective date of the trial period. The servicer must service the mortgage loan during the trial period in the same manner as it would service a loan in forbearance.

The trial period is three months in duration (or longer if necessary to comply with applicable contractual obligations). The borrower must be current under the terms of the Trial Period Plan at the end of the trial period to receive a permanent loan modification. Current in this context is defined as the borrower having made all required trial period payments no later than 30 days from the date the final payment is due.

The effective date of the trial period will be set forth in the Trial Period Plan. In most cases, the effective date is the first day of the month following the servicer's mailing of the offer for the Trial Period Plan. The trial period extends for two (or more if necessary to comply with applicable contractual obligations) additional payments after the effective date.

Servicers are encouraged to require automated payment methods, such as automatic payment drafting. If automatic payment drafting is required, it must be used by all HAMP borrowers, unless a borrower opts out.

If the verified income evidenced by the borrower's documentation exceeds the initial income information used by the servicer to place the borrower in the trial period by more

than 25 percent, the borrower must be reevaluated based on the program eligibility and underwriting requirements. If this reevaluation determines that the borrower is still eligible, new documents must be prepared and the borrower must restart the trial period.

If the verified income evidenced by the borrower's documentation is less than the initial income information used by the servicer to place the borrower in the trial period, or if the verified income exceeds the initial income information by 25 percent or less, and the borrower is still eligible, then the trial period will not restart and the trial period payments will not change; provided, that verified income will be used to calculate the monthly mortgage payment under the Agreement. (If, based on verified income the result of the NPV test is "negative" for modification, the servicer is not obligated to perform the modification.) However, if the servicer determines the borrower is not eligible for the HAMP based on verified income, the servicer must notify the borrower of that determination and that any trial period payments made by the borrower will be applied to the mortgage loan in accordance with the borrower's current loan documents.

If a servicer has information that the borrower does not meet all of the eligibility criteria for the HAMP (e.g., because the borrower has moved out of the house) the servicer should explore other foreclosure prevention alternatives prior to resuming or initiating foreclosure.

Note that under the terms of the Agreement, trial payments should be applied when they equal a full contractual payment (determined as of the time the HAMP is offered).

If the borrower complies with the terms and conditions of the Trial Period Plan, the loan modification will become effective on the first day of the month following the trial period as specified in the Trial Period Plan. However, because the monthly payment under the Agreement will be based on verified income documentation, the monthly payment due under the Agreement may differ from the payment amount due under the Trial Period Plan.

Use of Suspense Accounts and Application of Payments

If permitted by the applicable loan documents, servicers may accept and hold as "unapplied funds" (held in a T&I custodial account) amounts received which do not constitute a full monthly, contractual principal, interest, tax and insurance (PITI) payment. However, when the total of the reduced payments held as "unapplied funds" is equal to a full PITI payment, the servicer is required to apply all full payments to the mortgage loan.

Any unapplied funds remaining at the end of the trial payment period that do not constitute a full monthly, contractual principal, interest, tax and insurance payment should be applied to reduce any amounts that would otherwise be capitalized onto the principal balance.

If a principal curtailment is received on a loan that has a principal forbearance, servicers are instructed to apply the principal curtailment to the interest bearing UPB. If, however, the principal curtailment amount is greater than or equal to the interest bearing UPB, then the curtailment should be applied to the principal forbearance portion. If the curtailment satisfies the principal forbearance portion, any remaining funds should then be applied to the interest bearing UPB.

Recording the Modification

For all mortgage loans that are modified pursuant to the HAMP, the servicer must follow investor guidance with respect to ensuring that the modified mortgage loan retains its first lien position and is fully enforceable.

Monthly Statements

For modifications that include principal forbearance, servicers are encouraged to include the amount of the gross UPB on the borrower's monthly payment statement. In addition, the borrower should receive information on a monthly basis regarding the accrual of "pay for performance" principal balance reduction payments.

Redefault and Loss of Good Standing

If, following a successful trial period, a borrower defaults on a loan modification executed under the HAMP (three monthly payments are due and unpaid on the last day of the third month), the loan is no longer considered to be in "good standing." Once lost, good standing cannot be restored even if the borrower subsequently cures the default. A loan that is not in good standing is not eligible to receive borrower, servicer or investor incentives and reimbursements and these payments will no longer accrue for that mortgage. Further, the mortgage is not eligible for another HAMP modification.

In the event a borrower defaults, the servicer must work with the borrower to cure the modified loan, or if that is not feasible, evaluate the borrower for any other available loss mitigation alternatives prior to commencing foreclosure proceedings. The servicer must retain documentation of its consideration of the borrower for other loss mitigation alternatives.

Reporting Requirements

Each servicer will be required to register with Fannie Mae to participate in the HAMP. Fannie Mae will provide an HAMP Registration form to facilitate registration.

Additionally, servicers will be required to provide periodic HAMP loan level data to Fannie Mae. The data must be accurate, complete, and in agreement with the servicer's records. Data should be reported by a servicer at the start of the modification trial period and during the modification trial period, for loan set up of the approved modification, and

monthly after the modification is set up on Fannie Mae's system. Servicers will be required to submit three separate data files as described below.

Note: The following data files can be delivered through a data collection tool on the servicer web portal available through www.financialstability.gov. Detailed guidelines for submitting data files are available at the servicer web portal. For those servicers who cannot use this process, an alternate process to submit data via a spreadsheet will be made available. More information on the alternative process for submitting data in a spreadsheet will be provided in the future.

Trial Period

Servicers will be required to provide loan level data in order to establish loans for processing during the HAMP trial period. See Exhibit A for trial period set up attributes.

In addition, servicers will be required to report activity during the HAMP trial period in order to substantiate the receipt of proceeds during the trial period and to record modification details. See Exhibit B for trial period reporting attributes.

Loan Setup

A one time loan set up is required to establish the approved modified HAMP loan on Fannie Mae's system. The file layout is the same that is used for establishing loans for processing during the trial period. See Exhibit A for loan set up attributes.

Servicers are required to provide the set up file the business day after the modification closes. The set up file should reflect the status of the loan after the final trial period payment is applied. The set up file will contain data for the current reporting period (e.g., prior month balances).

Monthly Loan Activity Reporting

The month after the loan set up file is provided, servicers must begin reporting activity on all HAMP loans on a monthly basis (e.g., loan set up file provided in July, the first loan activity report is due in August for July activity). See Exhibit C for monthly reporting attributes.

The HAMP loan activity report (LAR) is due by the 4th business day each month. Servicers will have until the 15th calendar day of each month to clear up any edits and have a final LAR reported to Fannie Mae. The Fannie Mae system will validate that the borrower payment has been made as expected and that the last paid installment (LPI) date is current before accruing the appropriate monthly compensation due.

If a loan becomes past due (the LPI date does not advance), the monthly compensation on that loan will not be accrued. If the loan is brought current, compensation will not be caught up (e.g., if a loan was two months past due, and then the borrower makes the

payments and brings the loan current, the annual compensation provided would be for ten months. The two months of compensation associated with the period of delinquency is not recoverable).

Additional Data Requirements

Additional data elements must be collected and reported as specified in Exhibit D. Some of these elements must be collected for all completed modifications regardless of the date of completion; guidance for collecting these elements will be forthcoming shortly. The requirement to collect these elements for trial modifications and for loans evaluated for a modification will be phased in as specified in Exhibit D.

Reporting to Mortgage Insurers

Servicers must maintain their mortgage insurance processes and comply with all reporting required by the mortgage insurer for loans modified under the HAMP. Servicers should consult with the mortgage insurer for specific processes related to the reporting of modified terms, payment of premiums, payment of claims, and other operational matters in connection with mortgage loans modified under the HAMP.

Servicers are required to report successful HAMP modifications and the terms of those modifications to the appropriate mortgage insurers, if applicable, within 30 days following the end of the trial period and in accordance with procedures that currently exist or may be agreed to between servicers and the mortgage insurers.

Servicers must include the mortgage insurance premium in the borrower's modified payment, and must ensure that any existing mortgage insurance is maintained. Among other things, the servicer must ensure that the mortgage insurance premium is paid. In addition, servicers must adapt their systems to ensure proper reporting of modified loan terms and avoid impairing coverage for any existing mortgage insurance. For example, in the event that the modification includes principal forbearance, servicers must continue to pay the correct mortgage insurance premiums based on the gross UPB, including any principal forbearance amount, must include the gross UPB in their delinquency reporting to the mortgage insurer, and must ensure any principal forbearance does not erroneously trigger automatic mortgage insurance cancellation or termination.

Transfers of Servicing

When a transfer of servicing includes mortgages modified under the HAMP, the transferor servicer must provide special notification to the transferee servicer. Specifically, the transferor servicer must advise the transferee servicer that loans modified under the HAMP are part of the portfolio being transferred and must confirm that the transferee servicer is aware of the special requirements for these loans, and agrees to assume the additional responsibilities associated with servicing them. A required form of assignment and assumption agreement must be used and is a part of the Servicer Participation Agreement.

Credit Bureau Reporting

The servicer should continue to report a "full-file" status report to the four major credit repositories for each loan under the HAMP in accordance with the Fair Credit Reporting Act and credit bureau requirements as provided by the Consumer Data Industry Association (the "CDIA") on the basis of the following: (i) for borrowers who are current when they enter the trial period, the servicer should report the borrower current but on a modified payment if the borrower makes timely payments by the 30th day of each trial period month at the modified amount during the trial period, as well as report the modification when completed, and (ii) for borrowers who are delinquent when they enter the trial period, the servicer should continue to report in such a manner that accurately reflects the borrower's delinquency and workout status following usual and customary reporting standards, as well as report the modification when completed. More detailed guidance on these reporting requirements will be published by the CDIA.

"Full-file" reporting means that the servicer must describe the exact status of each mortgage it is servicing as of the last business day of each month.

Fees and Compensation

Late Fees

All late charges, penalties, stop-payment fees, or similar fees must be waived upon successful completion of the trial period.

Administrative Costs

Servicers may not charge the borrower to cover the administrative processing costs incurred in connection with a HAMP. The servicer must pay any actual out-of-pocket expenses such as any required notary fees, recordation fees, title costs, property valuation fees, credit report fees, or other allowable and documented expenses. Servicers will not be reimbursed for the cost of the credit report(s).

Incentive Compensation

No incentives of any kind will be paid if (i) the servicer has not executed the Servicer Participation Agreement, or (ii) the borrower's monthly mortgage payment ratio starts below 31 percent prior to the implementation of the HAMP. The calculation and payment of all incentive compensation will be based strictly on the borrower's verified income. Each servicer must promptly apply or remit, as applicable, all borrower and investor compensation it receives with respect to any modified loan.

With respect to payment of any incentive that is predicated on a six percent reduction in the borrower's monthly mortgage payment, the reduction will be calculated by comparing the monthly mortgage payment used to determine eligibility (adjusted as applicable to

include property taxes, hazard insurance, flood insurance, condominium association fees and homeowner's association fees) and the borrower's payment under HAMP.

The amount of funds available to pay servicer, borrower and investor compensation in connection with each servicer's modifications will be capped pursuant to each servicer's Servicer Participation Agreement (Program Participation Cap). Treasury will establish each servicer's initial Program Participation Cap by estimating the number of HAMP modifications expected to be performed by each servicer during the term of the HAMP. The Program Participation Cap could be adjusted based on Treasury's full book analysis of the servicer's loans.

The funds remaining available for a servicer's modifications under that servicer's Program Participation Cap will be reduced by the maximum amount of compensation payments potentially payable with respect to each loan modification upon entering into a trial period. In the event the compensation actually paid with respect to a loan modification is less than the maximum amount of compensation payments potentially payable, the funds remaining available for a servicer's modifications under the HAMP will be increased by the difference between such amounts.

Treasury may, from time to time and in its sole discretion, revise a servicer's Program Participation Cap. Fannie Mae will provide written notification to a servicer of all changes made to the servicer's Program Participation Cap. Once a servicer's Program Participation Cap is reached, a servicer must not enter into any agreements with borrowers intended to result in new loan modifications, and no payments will be made with respect to any new loan modifications.

Servicer Incentive Compensation

A servicer will receive compensation of $1,000 for each completed modification under the HAMP. In addition, if a borrower was current under the original mortgage loan, a servicer will receive an additional compensation amount of $500. All such servicer incentive compensation shall be earned and payable once the borrower successfully completes the trial payment period, provided that the servicer has signed and delivered to Fannie Mae a Servicer Participation Agreement, any related documentation and any required servicer or loan set up data prior to the effective date of the loan modification.

If a particular borrower's monthly mortgage payment (principal, interest, taxes, all related property insurance and homeowner's or condominium association fees but excluding mortgage insurance) is reduced through the HAMP by six percent or more, a servicer will also receive an annual "pay for success" fee for a period of three years. The fee will be equal to the lesser of: (i) $1,000 ($83.33/month), or (ii) one-half of the reduction in the borrower's annualized monthly payment. The "pay for success" fee will be payable annually for each of the first three years after the anniversary of the month in which a Trial Period Plan was executed. If the loan ceases to be in good standing, the servicer will cease to be eligible for any further incentive payments after that time, even if the borrower subsequently cures his or her delinquency.

Borrower's Incentive Compensation

To provide an additional incentive for borrowers to keep their modified loan current, borrowers whose monthly mortgage payment (principal, interest, taxes, all related property insurance and homeowner's or condominium association fees but excluding mortgage insurance) is reduced through the HAMP by six percent or more and who make timely monthly payments will earn an annual "pay for performance" principal balance reduction payment equal to the lesser of: (i) $1,000 ($83.33/month), or (ii) one-half of the reduction in the borrower's annualized monthly payment for each month a timely payment is made. A borrower can earn the right to receive a "pay for performance" principal balance reduction payment for payments made during the first five years following execution of the Agreement provided the loan continues to be in good standing as of the date the payment is made. The "pay for performance" principal balance reduction payment will accrue monthly but will be applied annually for each of the five years in which this incentive payment accrues, prior to the first payment due date after the anniversary of the month in which the Trial Period Plan was executed. This payment will be paid to the mortgage servicer to be applied first towards reducing the interest bearing UPB on the mortgage loan and then to any principal forbearance amount (if applicable). Any applicable prepayment penalties on partial principal prepayments made by the government must be waived. Borrower incentive payments do not accrue during the Trial Period; however, on the first month of the modification, the borrower will accrue incentive payments equal to the number of months in the trial period.

If and when the loan ceases to be in good standing, the borrower will cease to be eligible for any further incentive payments after that time, even if the borrower subsequently cures his or her delinquency. The borrower will lose his or her right to any accrued incentive compensation when the loan ceases to be in good standing.

Investor Payment Reduction Cost Share and Up Front Incentives

If the target monthly mortgage payment ratio is achieved, investors in Non-GSE Mortgages are entitled to payment reduction cost share compensation. This compensation equals one-half of the dollar difference between the borrower's monthly payment under the modification at the target monthly mortgage payment ratio and the lesser of (i) what the borrower's monthly payment would be at a 38 percent monthly mortgage payment ratio; or (ii) the borrower's pre-modification monthly payment. Payment reduction cost share compensation shall accrue monthly as the borrower makes each payment so long as the loan is in good standing as defined in these guidelines. This compensation will be provided for up to five years or until the loan is paid off, whichever is earlier.

Additionally, investors will receive a one-time incentive of $1,500 for each Agreement executed with a borrower who was current prior to the start of the Trial Period Plan. The one-time incentive is conditional upon at least a six percent reduction in the borrower's monthly mortgage payment.

Neither the payment reduction share nor the up-front incentive shall be payable if the Trial Period Plan is not successfully completed.

Compliance

Servicers must comply with the HAMP requirements and must document the execution of loan evaluation, loan modification and accounting processes. Servicers must develop and execute a quality assurance program that includes either a statistically based (with a 95 percent confidence level) or a ten percent stratified sample of loans modified, drawn within 30-45 days of final modification and reported on within 30-45 days of review. In addition, a trending analysis must be performed on a rolling 12-month basis.

Treasury has selected Freddie Mac to serve as its compliance agent for the HAMP. In its role as compliance agent, Freddie Mac will utilize Freddie Mac employees and contractors to conduct independent compliance assessments. In addition, loan level data will be reviewed for eligibility and fraud.

The scope of the assessments will include, among other things, an evaluation of documented evidence to confirm adherence (e.g., accuracy and timeliness) to HAMP requirements with respect to the following:

- Evaluation of Borrower and Property Eligibility
- Compliance with Underwriting Guidelines
- Execution of NPV/Waterfall processes
- Completion of Borrower Incentive Payments
- Investor Subsidy Calculations
- Data Integrity

The review will also evaluate the effectiveness of the servicer's quality assurance program; such evaluation will include, without limitation, the timing and size of the sample selection, the scope of the quality assurance reviews, and the reporting and remediation process.

There will be two types of compliance assessments: on-site and remote. Both on-site and remote reviews will consist of the following activities (among others): notification, scheduling, self assessments, documentation submission, interviews, file reviews, and reporting.

For on-site reviews, Freddie Mac will strive to provide the servicer with (i) a 30-day advance notification of a pending review and (ii) subsequent confirmation of the dates of the review. However, Freddie Mac reserves the right to arrive at the servicer's site unannounced. Freddie Mac will request the servicer to make available documentation, including, without limitation, policies and procedures, management reports, loan files and a risk control self assessment ready for review. Additionally, Freddie Mac may request additional loan files during the review. Interviews will usually be conducted in-person.

During the review window, Freddie Mac will review loan files and other requested documentation to evaluate compliance with HAMP terms. Upon the completion of the review, Freddie Mac will conduct an exit interview with the servicer to discuss preliminary assessment results.

For remote reviews, Freddie Mac will request the servicer to send documentation, including, without limitation, policies and procedures, management reports, loan files and a risk control self assessment within 30 days of the request. In addition, time will be scheduled for phone interviews, including a results summary call after the compliance review is completed to discuss preliminary results.

The targeted time frame for publishing the servicer assessment report is 30 days after the completion of the review. Treasury will receive a copy of the report five business days prior to the release of the report to the servicer.

There will be an issue/resolution appeal process for servicer assessments. Servicers will be able to submit concerns or disputes to an independent quality assurance team within Freddie Mac.

A draft rating and implication methodology for the compliance assessments will be published in a subsequent Supplemental Directive and servicer feedback will be solicited prior to the finalization of the methodology.

Exhibit A: HAMP Trial Modification and Official Modification Loan Setup Data Elements

The following data elements are necessary for the HAMP Loan Setup for Trial Modification and Official Modification transactions.

Name	Definition	Data Type	Allowable Values	Loan Setup for Trial Period Mandatory / Conditional	Official Modification Mandatory / Conditional
GSE Servicer Number	The Fannie Mae or Freddie Mac unique Servicer identifier.	Text (30)		C	C
Servicer Loan Number	The unique (for the lender) identifier assigned to the loan by the lender that is servicing the loan.	Text (30)		M	M
HAMP Servicer Number	A unique identifier assigned to each Servicer that is participating in the HAMP program.	Text (30)		M	M
GSE Loan Number	A unique number assigned to each loan by a GSE (Fannie or Freddie)	Text (30)		C	C
Underlying Trust Identifier	This is the CUSIP associated with the security. A unique identification number assigned to a security by CUSIP (Committee on Uniform Security Identification Procedures) for trading.	Text (9)		C	C
Program Type/ Campaign ID	A new program type that will identify campaign types. The unique identifier of a Loan Workout Campaign.	Text (14)	HMP1 - HMP Delinquent, HMP2 - HMP Imminent Default HMP3 - Deed-in-lieu HMP4 - Deed-in-lieu with Jr. Lien HMP5 - Short Sale HMP6 - Short Sale With Jr. Lien	M	M
Investor Code	Owner of the mortgage.	Numeric (4,0)	1 - Fannie Mae 2 - Freddie Mac 3 - Private 4 - Portfolio 5 - GNMA 6 - FHLMC	M	M
Borrower First Name	First Name of the Borrower of record	Text (100)		M	M
Borrower Last Name	The last name of the Borrower. This is also known as the family name or surname.	Text (100)		M	M
Borrower Social Security Number	The Social Security Number of the borrower	Numeric (9)		M	M
Co-Borrower First Name	First Name of the co-borrower of record	Text (100)		C	C

Name	Definition	Data Type	Allowable Values	Loan Setup for Trial Period Mandatory / Conditional	Official Modification Mandatory / Conditional
Co-Borrower Last Name	Last Name of the co- borrower of record	Text (100)		C	C
Co-Borrower Social Security Number	The Social Security Number of the Co-Borrower	Numeric (9)		O	O
Borrower Execution Date	This is the date that the borrower signs the initial documentation for a modification.	Date (CCYY-MM-DD)		M	M
Submission Status	Status of loan data being submitted	Numeric (4,0)	1-Trial 2-Borrower Disqualified 3-Official 4-Foreclosure Mitigation 5-Cancel	M	M
Date of Original Note	The date on which the original loan funding was dispersed to the borrower(s).	Date (CCYY-MM-DD)		M	M
Unpaid Principal Balance before modification	The total principal amount outstanding as of the end of the month. The UPB should not reflect any accounting based write-downs and should only be reduced to zero when the loan has been liquidated – either paid-in-full, charged-off, REO sold or Service transferred (before modification)	Currency (20,2)		M	M
Loan Mortgage Type Code	The code that specifies the type of mortgage being applied for or that has been granted.	Numeric (4,0)	1 - FHA – Loans insured by the Federal Housing Administration 2 - VA – Loans insured by the Department of Veteran's Affairs, 3 - Conventional with PMI – Non-government insured mortgages insured by a private (non-government) insurer. 4 - Conventional w/o PMI – Mortgages with neither government nor private mortgage insurance.	M	M
Last Paid Installment Date before modification	The due date of the last paid installment of the loan.	Date (CCYY-MM-DD)		M	M
First Lien Indicator	Indicates if loan is first lien.	Boolean	True/False	M	M
Foreclosure Referral Date	The date that the mortgage was referred to an attorney for the purpose of initiating foreclosure proceedings. This date should reflect the referral date of currently active foreclosure process. Loans cured from foreclosure should not have a referral date.	Date (CCYY-MM-DD)		O	O

Name	Definition	Data Type	Allowable Values	Loan Setup for Trial Period Mandatory / Conditional	Official Modification Mandatory / Conditional
Projected Foreclosure Sale Date	Projected date for foreclosure sale of subject property.	Date (CCYY-MM-DD)		O	O
Hardship Reason Code	Identifies the reason for the borrower's hardship on their mortgage payment obligations.	Numeric (4,0)	1 - Death of borrower, 2 - Illness of principal borrower, 3 - Illness of borrower family member, 4 - Death of borrower family member, 5 - Martial difficulties, 6 - Curtailment of income, 7 - Excessive obligation, 8 - Abandonment of property, 9 - Distant employment transfer, 10 - Property problem, 11 - Inability to sell property, 12 - Inability to rent property, 13 - Military service, 14 - Other, 15 - Unemployment, 16 - Business failure,17 - Casualty Loss, 18 - Energy environment costs, 19 - Servicing problems, 20 - Payment adjustment, 21 - Payment dispute, 22 - Transfer of ownership pending, 23 - Fraud, 24 - Unable to contact borrower,25 - Incarceration	M	M
Monthly Gross Income	Total monthly income in dollars for all borrowers on the loan. This is the gross income for all borrowers.	Currency (20,2)		M	M
Monthly Debt Payments excluding PITIA	Total amount of monthly debt payments excluding Principal, Interest, Taxes, Insurance and Association Dues (PITIA)	Currency (20,2)		M	M
NPV Date	Net Present Value – calculation date	Date (CCYY-MM-DD)		M	M

Name	Definition	Data Type	Allowable Values	Loan Setup for Trial Period Mandatory / Conditional	Official Modification Mandatory / Conditional
NPV Model Result Amount Pre-Mod	Net Present Value amount generated from the model before modification	Currency (20,2)		M	M
NPV Model Result Amount Post-Mod	Net Present Value amount generated from the model after modification	Currency (20,2)		M	M
Amortization Term before modification	Represents the number of months on which installment payments are based. Example: Balloon loans have a seven year life (Loan Term = 84) but a 30 year amortization period (Amortization Term = 360). Installment payments are determined based on the 360 month term.	Numeric (4,0)		M	M
Interest Rate before modification	The interest rate in the month prior to loan modification. Please report as rounded to nearest 8th. (e.g. 4.125)	Numeric (6,4)		M	M
Principal and Interest Payment before modification	The scheduled principal and interest amount in the month prior to loan modification.	Currency (20,2)		M	M
Escrow Payment before modification	The escrow amount in the month prior to loan modification. The amount of money that is collected from [added on to] the regular monthly mortgage payment to cover periodic payments of property taxes, private mortgage insurance and hazard insurance by the servicer on behalf of the mortgagee. Depending on the mortgage terms, this amount may or may not be collected. Generally, if the down payment is less than 20%, then these amounts are collected by the servicer.	Currency (20,2)		C	C
Association Dues/ Fees before modification	Existing monthly payment for association dues/fees before modification	Currency (20,2)		C	C
Principal Payment Owed or Not Reported	If borrower has contributed any cash or amounts in suspense	Currency (20,2)		C	C
Other Contributions	If there are any amounts contributed by the borrower due to Hazard Claims	Currency (20,2)		C	C
Attorney Fees Not in Escrow	Estimated legal fee not in escrow for advances capitalization and liquidation expense calculation	Currency (20,2)		C	C
Escrow Shortage for Advances	Any Escrow advance amounts to be capitalized.	Currency (20,2)		C	C
Other Advances	Other advances for advances capitalization other than escrow. Example: Attorney fees, Servicing Fees, etc.	Currency (20,2)		C	C
Borrower Contributions	If the borrower is contributing any amounts, they must be reported here	Currency (20,2)		C	C
Modified Loan Term – Officer Signature Date	Servicer sign off at the officer level for the loan modification. This is the date the servicer's officer approved the loan modification. This column will be populated for modification cases that need reclassification. There is no conversion needed for existing cases	Date (CCYY-MM-DD)		C	C

Name	Definition	Data Type	Allowable Values	Loan Setup for Trial Period Mandatory / Conditional	Official Modification Mandatory / Conditional
Disbursement Forgiven	If there are any Forgiven disbursement for advances capitalization	Currency (20,2)		C	C
Monthly Housing Expense before modification	The dollar amount per month of the borrower's present housing expense .May be used for their primary or non-primary residence. This must be Principal, Interest, Taxes, Insurance and Association Dues (PITIA).	Currency (20,2)		M	M
Delinquent Interest	Delinquent interest for interest capitalization. It is the amount of delinquent interest from the delinquent loan's LPI date to the workout execution date.	Currency (20,2)		M	M
Interest Owed or Payment Not Reported	If there is Interest owed/received but not reported for interest capitalization, this field must be populated.	Currency (20,2)		C	C
Servicing Fee Percent after modification	Percentage of servicing Fee after loan modification (e.g. 0.25)	Numeric (4,2)		M	M
Product before Modification	The mortgage product of the loan before the modification.	Numeric (4,0)	1- ARM, 2 - Fixed Rate, 3 - Step Rate, 4 - One Step Variable, 5 - Two Step Variable, 6 - Three Step Variable, 7 - Four Step Variable, 8 - Five Step Variable,9 - Six Step Variable, 10 - Seven Step Variable,11 - Eight Step Variable, 12 - Nine Step Variable,13 - Ten Step Variable, 14 - Eleven Step Variable, 15 - Twelve Step Variable, 16 - Thirteen Step Variable, 17 - Fourteen	M	M
Maturity Date before Modification	The date on which the mortgage obligation is scheduled to be paid off, according to the mortgage note. Maturity Date is commonly called Balloon Date for balloon loans, for which scheduled amortization does not pay off the balance of the loan, so that there is a final, large "balloon" payment at the end.	Date (CCYY-MM-DD)		M	M

Name	Definition	Data Type	Allowable Values	Loan Setup for Trial Period Mandatory / Conditional	Official Modification Mandatory / Conditional
Remaining Term before Modification	The number of months until the loan will be paid off, assuming that scheduled payments are made. This will equal lesser of 1. The number of months until the actual balance of the loan will amortize to zero; or 2. the number of months difference between the Loan Extended Term and the number of payments made by the borrower, where number of payments made by the borrower is derived by: Actual Last Paid Installment Date - First Installment Due Date - 1 (in months).	Numeric (4,0)		M	M
Front Ratio before Modification	The refreshed Front-end DTI (Principal, Interest, Taxes, Insurance and Association Dues (PITIA)) housing ratio.	Numeric (4,2)		M	M
Back Ratio before Modification	Percentage of borrower's PITIA plus debts to income ratio. Borrower Total Debt To Income Ratio Percent. The monthly expenses divided by the total monthly income for the Borrower. (e.g. 30.25)	Numeric (4,2)		M	M
Principal and Interest Payment at 31% DTI	Principal and Interest payable for a 31% Debt to Income ratio	Currency (20,2)		M	M
Principal and Interest Payment at 38% DTI	Principal and Interest payable for a 38% Debt to Income ratio	Currency (20,2)		M	M
Property – Number of Units	Number of units in subject property (Valid values are 1, 2, 3 or 4)	Numeric (4,0)		M	M
Property – Street Address	The street address of the subject property	Text (100)		M	M
Property – City	The name of the city where the subject property is located	Text (100)		M	M
Property – State	The 2-character postal abbreviation of the state, province, or region of the subject property.	Text (2)		M	M
Property – Zip Code	The code designated by the postal service to direct the delivery of physical mail or which corresponds to a physical location. In the USA, this can take either a 5 digit form (ZIP Code) or a 9-digit form (ZIP + 4).	Text (9)		M	M
Property Valuation - Method	Type of value analysis.	Numeric (4,0)	1 - Full appraisal – Prepared by a certified appraiser; 2 - Limited appraisal – Prepared by a certified appraiser; 3 - Broker Price Opinion "BPO" – Prepared by a real estate broker or agent; 4 - Desktop Valuation – Prepared by bank employee; 5 - Automated Valuation Model	M	M

Name	Definition	Data Type	Allowable Values	Loan Setup for Trial Period Mandatory / Conditional	Official Modification Mandatory / Conditional
			"AVM" 6 - Automated Valuation Model " AVM" - Other		
Property Valuation - Date	Date of the property value analysis	Date (CCYY-MM-DD)		M	M
Property Valuation – As Is Value	Property as-is value determined by the property valuation	Currency (20,2)		M	M
Property Condition Code	A code denoting the condition of the subject property.	Numeric (4,0)	1 - Excellent 2 - Good, 3 - Fair 4 - Poor 5 - Condemned 6 - Inaccessible	M	M
Property Occupancy Status Code	A code identifying the occupancy by the borrower of the subject property.	Numeric (4,0)	1- Vacant 2 - Borrower Occupied 3 - Tenant Occupied 4 – Unknown 5 - Occupied by Unknown	M	M
Property Usage Type Code	A code identifying the intended use by the borrower of the property.	Numeric (4,0)	1 - Principal Residence 2 - Second or Vacation Home 3 - Investment Property	M	M
Modification Effective Date	The date on which the loan terms will be modified.	Date (CCYY-MM-DD)		M	M
Product After Modification	The mortgage product of the loan, after the modification (Fixed or Step).	Numeric (4,0)	1- ARM, 2 - Fixed Rate, 3 - Step Rate, 4 - One Step Variable, 5 - Two Step Variable, 6 - Three Step Variable, 7 - Four Step Variable, 8 - Five Step Variable,9 - Six Step Variable, 10 - Seven Step Variable,11 - Eight Step Variable, 12 - Nine Step Variable,13 - Ten Step Variable, 14 - Eleven Step Variable, 15 - Twelve Step Variable, 16 - Thirteen Step Variable, 17 - Fourteen	M	M

Name	Definition	Data Type	Allowable Values	Loan Setup for Trial Period Mandatory / Conditional	Official Modification Mandatory / Conditional
Amortization Term after Modification	The number of months used to calculate the periodic payments of both principal and interest that will be sufficient to retire a mortgage obligation.	Numeric (4,0)		M	M
Unpaid Principal Balance after modification	The unpaid principal balance of a loan after the loan modification. The unpaid principal balance after modification excludes any applicable forbearance amount and can also be referred to as Net UPB Amount.	Currency (20,2)		M	M
Last Paid Installment Date after modification	The due date of the last paid installment of the loan.	Date (CCYY-MM-DD)		M	M
Interest Rate after modification	The interest rate in the month after loan modification.	Numeric (6,4)		M	M
Interest Rate Lock Date for Modification	The date that the rate lock was applied - in reference to modification of loan terms	Date (CCYY-MM-DD)		M	M
First Payment Due Date after modification	First payment due date under the modified terms	Date (CCYY-MM-DD)		M	M
Principal and Interest Payment after modification	The P&I amount after modification	Currency (20,2)		M	M
Escrow Payment after modification	Existing monthly payment to escrow-after modification	Currency (20,2)		M	M
Monthly Housing Expense After Modification	The dollar amount per month of the borrowers housing expense after modification .May be used for their primary or non-primary residence. This must be Principal, Interest, Taxes, Insurance and Association Dues (PITIA).	Currency (20,2)		M	M
Maturity Date after modification	The maturity date of the loan after modification	Date (CCYY-MM-DD)		M	M
Principal Forbearance Amount	The total amount in dollars of the principal that was deferred through loss mitigation.	Currency (20,2)		C	C
Term after Modification	For loans where the term of the loan can be extended rather than increasing the principal and interest payment, this is the total term of the loan including any extension. For all non-extendable loans, the extended term defaults to the original term.	Numeric (4,0)		M	M
Front Ratio after modification	Percentage of borrower's PITIA to income ratio	Numeric (4,2)		M	M
Back Ratio after modification	Percentage of borrower's PITIA plus debts to income ratio	Numeric (4,2)		M	M
Principal Write-Down (Forgiveness)	Amount of principal written-down or forgiven	Currency (20,2)		C	C
Paydown or Payoff of Subordinate Liens	Have sub-ordinate liens been paid off or paid down?	Boolean	True/False	C	C
Paydown or Payoff of Subordinate	Amount of paydown or payoff of subordinate liens	Currency (20,2)		C	C

Name	Definition	Data Type	Allowable Values	Loan Setup for Trial Period Mandatory / Conditional	Official Modification Mandatory / Conditional
Liens Amount					
Max Interest Rate after modification	Interest rate cap for the loan.	Number (6,4)		M	M
Length of Trial Period	The length of the trial period	Numeric (3,0)		M	M
1st Trial Payment Due Date	The date the 1st payment is due during the trial period	Date (CCYY-MM-DD)		M	O
1st Trial Payment Posted Date	The date the first payment posted during the Trial period	Date (CCYY-MM-DD)		M	O
1st Trial Payment Received Amount	This is the actual amount of the Payment received from the Borrower to the Servicer for the 1st Trial payment.	Currency (20,2)		M	O
If the Product Type After Modification is Step Rate then at least one occurrence of the following group of fields must exist. The first occurrence must have a step effective date of 5 years for the first effective due date after modification.					
Step – Interest Rate Step Number	The sequence is used to uniquely identify and order Loan Interest Rate Adjustment schedule records specific to the loan's step rate schedule.	Numeric (4)		M	M
Step – Payment Effective Date	The date the payment will be effective.	Date (CCYY-MM-DD)		M	M
Step – Note Rate	The interest rate in the month after loan modification.	Numeric (6,4)		M	M
Step – New Interest Rate – Step Duration	After modification step duration. If this step is the last step and will be the rate and payment effective for the life of the loan, then duration is not required.	Numeric (4)		M	M
Step – Principal and Interest Payment	P&I Amount - The amount of the principal and/or interest payment due on the loan for each installment, beginning on the effective date.	Currency (20,2)		M	M

Exhibit B: HAMP Monthly Trial Data Collection Elements

The following data elements are necessary for recording borrower payments during the trial period.

Name	Definition	Data Type	Allowable Values	Mandatory/ Conditional
HAMP Servicer Number	A unique identifier assigned to each Servicer that is participating in the HAMP program.	Text (30)		M
Servicer Loan Number	The unique (for the lender) identifier assigned to the loan by the lender that is servicing the loan.	Text (30)		M
GSE Loan Number	A unique number assigned to each loan by a GSE (Fannie or Freddie)	Text (30)		C
GSE Servicer Number	The Fannie Mae or Freddie Mac unique Servicer identifier.	Text (30)		C
Trial Payment Number	The number of the trial payment being reported. The code that is used to define a single payment number that will be one of a series of payments that together will complete a loan trial payment period.	Numeric (4,0)		M
Trial Payment Received Amount	The actual dollar amount of the payment received from the borrower to the servicer for the trial payment.	Currency (20,2)		M
Trial Payment Posted Date	The date the payment was posted during the trial period.	Date (CCYY-MM-DD)		M

Exhibit C: Monthly Loan Activity Records

The following data elements are required for monthly loan activity records (LARs). Step rate attributes (interest rate, rate effective date, P&I payment) will only be reported on the LAR the month before the rate change is effective. The Action Code and Action Date are only reported when a loan is being removed (e.g., payoff, repurchase).

Name	Definition	Data Type	Allowable Values	Mandatory/ Conditional
HAMP Servicer Number	A unique identifier assigned to each Servicer that is participating in the HAMP program.	Text (30)		M
Servicer Loan Number	The unique (for the lender) identifier assigned to the loan by the lender that is servicing the loan.	Text (30)		M
Last Paid Installment Date After Modification	The due date of the last paid installment of the loan.	Date (CCYY-MM-DD)		M
Unpaid Principal Balance After Modification	The unpaid principal balance of a loan after the loan modification. The unpaid principal balance after modification excludes any applicable forbearance amount and can also be referred to as Net UPB Amount.	Currency(20,2)		M
Interest Payment	Interest portion of the P&I remitted	Currency(20,2)		M
Principal Payment	Principal portion of the P&I remitted	Currency(20,2)		M
Step – Payment Effective Date	The date the payment will be effective.	Date (CCYY-MM-DD)		C
Step – Note Rate	The interest rate in the month after loan modification.	Numeric (6,4)		C
Step – Principal and Interest Payment	P&I Amount - The amount of the principal and/or interest payment due on the loan for each installment, beginning on the effective date.	Currency(20,2)		C
Action Code	A code reported by the lender to update the loan that indicates the action that occurred during the reporting period	Numeric	60 (payoff) 65 (repurchase) 70 (liquidation held for sale) 71 (liquidation 3rd party sale/ condemnation/ assigned to FHA/VA) 72 (liquidated – pending conveyance) 76 (Deed in Lieu) 77 (Deed-in-Lieu with Jr. lien) 78 (Short Sale) 79 (Short Sale with Jr. Lien)	C
Action Code Date	The effective date of the action associated with the action code. The action date is required for certain action codes.	Date (CCYY-MM-DD)	N/A	C

Exhibit D
HAMP Additional Data Requirements

Data required to be collected as specified below must be reported on a loan by loan basis starting on October 1, 2009. This document does not describe all of the data that the servicer must retain; it addresses only the data that must be reported.

Must be reported starting October 1, 2009 for transactions occurring before October 1, 2009

- Race, ethnicity, sex of borrower and co-borrower (submission by borrower is voluntary)
- Middle name of borrower and co-borrower
- Date of birth of borrower and co-borrower
- Credit score of borrower and co-borrower
- NPV Model inputs, e.g., discount rate, flag for nonstandard model, non-standard re-default rate, non-standard cure rate
- Selected data on loan, borrower, and property characteristics as of origination, to the extent already required by OCC or OTS to be reported under "Mortgage Metrics"

The above fields must be collected as follows and reported starting October 1, 2009:

- all completed modifications;
- trial modifications commenced on or after July 1, 2009; and
- starting on October 1, 2009, loans evaluated for a modification (to be defined) that do not enter trial modifications.

Must be reported starting October 1, 2009 (detailed definitions to be provided by June 1, 2009)

- Reason loans evaluated for a modification were not modified, or that trial modification was not completed
- Status and disposition of eligible loans not modified, including trial mods not completed
- Status and disposition of loans that were modified but failed to remain in good standing because they became 90 or more days delinquent
- Second liens – flag for presence of a second lien; source of information (e.g., credit report); available terms (e.g., fixed vs. ARM; closed- vs. open-end); owner; and payoff. Continuous tracking of second lien status is not required.
- Purpose of loan (e.g., home purchase, refinance, cash-out refi)
- Information about foreclosure suspension
- Information about reliance on non-borrower household income
- Flag for borrower in bankruptcy at time of modification
- Flag for borrower in loss mitigation prior to modification
- Information about involvement of a third party representing the borrower
- Information about mortgage insurance

Exhibit 3

HOME AFFORDABLE MODIFICATION PROGRAM
BASE NET PRESENT VALUE (NPV) MODEL SPECIFICATIONS

UPDATED: JUNE 11, 2009

Overview

As a part of the Making Home Affordable Program, we are providing standardized guidance and a base net present value (NPV) model described herein that any servicer who participates in the Home Affordable Modification Program (HAMP) can use or, if eligible, customize into a proprietary NPV model. The base NPV model is illustrative of an NPV model that meets the specifications put forward under the Making Home Affordable Program. Servicers are not precluded from using the illustrative model for making program NPV determinations. It is our expectation that servicers may use the Base NPV Model Documentation to customize the model based on their individual portfolio experience – all within the standardized guidelines put forward for the model under the program. The base NPV model will provide consistency in NPV calculations for the Home Affordable Modification Program and help the industry move toward a more standard process for evaluating the NPV of mortgages for purposes of making modifications.

A participating servicer in the Home Affordable Modification Program must modify any loan that meets the program's eligibility criteria if the modification tests "positive" for NPV. When mortgage modifications have a positive NPV, it is in the best interests of lenders, servicers, investors, and borrowers to modify mortgages to reduce the risk of foreclosure. The Home Affordable Modification Program increases the potential number of mortgage modifications that will have a positive NPV, resulting in more servicers modifying mortgages, and keeping more Americans in their homes. The Home Affordable Modification Program specifies a precise method for determining NPV and provides a base NPV model that any servicer can use or customize into a proprietary NPV model that satisfies all of the program's methodological requirements.

Under the program, a defined set of parameters for the base NPV model can be customized for each servicer. Every servicer is given discretion, within specified limits, to choose a discount rate. In addition, larger servicers are given discretion to develop portfolio-specific default rates. These customization capabilities are built into the base NPV model to preserve the ability of servicers, lenders, and investors to tailor the base NPV model to reflect the unique characteristics of the loans that they service or own, and to incorporate knowledge gained from years of working with those particular groups of mortgages. For other servicers, the baseline parameters can provide a sufficient NPV tool to evaluate loans being considered for modification.

Net Present Value of Modification

In general, NPV refers to the value today of a cash-generating investment – such as a bond or mortgage loan. When an investor is faced with a choice between two alternative investments – specifically, between the timing and amounts of the cash flows for each investment – the investor obviously prefers the choice that has a higher present value.

In the context of a mortgage borrower who has become distressed, the investor – or a third party servicer, acting on behalf of the investor – faces a choice of whether to modify the mortgage or leave it as-is. Each choice

generates expected cash flows, and the present values of these two cash flows are likely to be different. If the loan is modified, there is a greater chance that the borrower will eventually be able to repay the loan in full. If not, there is a higher likelihood that the loan will go to foreclosure, and the investor will absorb the associated losses. If the NPV of the modified loan is higher than the NPV of the loan as-is, a modification is said to be "NPV positive."

The Making Home Affordable Program is structured to produce modifications that are more likely to test NPV positive, increasing the number of modifications that will be done and keeping more Americans in their homes. It does this, first, by lowering the probability that borrowers will default by making borrower payments more affordable and, second, by providing incentive payments that are added to cash flows received by lenders (or investors).

If a borrower meets the eligibility criteria for the Home Affordable Modification Program, a servicer will adjust the terms of the borrower's loan (modify the loan) to reduce the borrower's payment to the program's target front-end debt-to-income (DTI) ratio of 31 percent. At a 31 percent DTI, the borrower will have a monthly mortgage payment that is more affordable over the long term, so that the borrower will be more able to afford to stay in his or her home.

Servicers must reduce payments in the precise manner specified by the Making Home Affordable Program (the "Standard Waterfall"), starting with reducing the interest rate on the mortgage. Once the servicer knows which loan terms will change, the servicer is ready to run an NPV model calculation. If the expected value to the lender of the loan after a HAMP modification exceeds the expected value of the same loan to the lender if it is not modified, then the NPV test result is positive and the servicer must modify the loan.

Requiring servicers to modify all NPV-positive loans ensures that there is help for all distressed borrowers when an objective test demonstrates the modification will benefit both the borrower and the investor. The program does not require the servicer to modify the loan if the modification tests negative, though the servicer must consider other ways to prevent foreclosure.

The Base NPV Model

The program supplies a base NPV model that any servicer may use to satisfy the requirement to modify all eligible loans that test NPV positive for modification. Large servicers – those having a book of business exceeding $40 billion – have some discretion to customize the base NPV model with respect to two important inputs, the expected default rates for loans that are not modified and the re-default rates for loans that are modified, as discussed further below.

Both the base NPV model and a servicer's proprietary customized version will:

1. Compute the net present value of the mortgage assuming it is not modified.

    a. Determine the probability that the mortgage defaults.

    b. Project the future cash flows of the mortgage if it defaults and the present value of these cash flows.

    c. Project the future expected cash flows of the mortgage if it does not default and the present value of these cash flows.

d. Take the probability weighted average of the two present values.

2. In the same manner, compute the net present value of the mortgage assuming it is modified, incorporating the effects on cash flows and performance of the modification terms and subsidies provided by the Home Affordable Modification Program.

3. Compare the two present values to determine if the HAMP modification is NPV positive.

An NPV model used in the HAMP takes into account the principal factors that can influence these cash flows, including:

1. The value of the home relative to the size of the mortgage.
2. The likelihood that the loan will be foreclosed on.
3. Trends in home prices.
4. The cost of foreclosure, including:
    a. legal expenses,
    b. lost interest during the time required to complete the foreclosure action,
    c. property maintenance costs, and
    d. expenses involved in reselling the property.
5. The cost of conducting a modification, including:
    a. a lower monthly payment from the borrower,
    b. the likelihood a borrower will default even after the loan is modified,
    c. financial incentives provided by the government, and
    d. the likelihood that a loan will be paid off before its term expires (prepayment probability).

The base NPV model was designed by an expert working group including the Department of the Treasury, the Federal Deposit Insurance Corp., the Federal Housing Finance Agency, Fannie Mae, and Freddie Mac. It was designed specifically for the Home Affordable Modification Program. The base NPV model reflects aggregate data across many servicers, as well as the professional judgment of the working group.

Individual servicers have their own unique experience with the loans they service. The program permits servicers to customize the base NPV model to reflect that unique experience, within certain constraints and guidelines. As a result of customization, servicer NPV results and resulting modification decisions will likely vary even when borrowers' circumstances appear to be similar, but the results will be more accurate and provide a better gauge of appropriate modifications.

Key Parameters of the Base NPV Model and Customization of Inputs

Below is a summary of important parameters used in the Home Affordable Modification Program base NPV model, and the extent to which servicers may customize the parameters of the base NPV model.

Discount Rate: For a firm that owns a mortgage loan (the investor), the mortgage is a series of future cash payments expected from the borrower. But the promise of a payment in the future is worth less to an investor than cash today. How much less will depend on the discount rate – the higher the discount rate, the less a future payment is worth to an investor today. For example, a $1,000 payment in one year would be worth about $950 today using a 5 percent discount rate, and that same $1,000 payment in a year would be worth about $800 today using a 25 percent discount rate. In the base NPV model, all servicers are permitted limited discretion to adjust the discount rate by up to 250 basis points because different investors may place different values on future payments versus payments received today.

The discount rate the servicer uses may be as low as Freddie Mac's Primary Mortgage Market Survey (PMMS) weekly rate for 30-year fixed-rate conforming loans, and as high as the PMMS weekly rate plus 250 basis points. (To find the current PMMS go to http://www.freddiemac.com/pmms.) With respect to loans that are not owned or guaranteed by Fannie Mae or Freddie Mac, the servicer may apply a single discount rate or two discount rates, one for loans in its own portfolio and another for loans serviced for all other investors. However, in no case may a servicer use a higher discount rate for loans in its own portfolio than the rate used for loans it services for other investors. With respect to loans owned or guaranteed by Fannie Mae or Freddie Mac, the servicer must apply the rate specified in Fannie Mae and Freddie Mac guidance.

Whatever discount rate the servicer chooses to use must be applied to both cash flows – that is, to the cash flows if the loan is modified under the Home Affordable Modification Program, as well as the cash flows if the loan is not modified.

Default Rates: The base NPV model projects default rates in two scenarios. It projects the probability of default if the loan is not modified and the probability of default if the loan is modified. Default rates depend on a number of variables particular to the loan. In general, however, the default rate is assumed to vary based on the credit quality of the borrower, the borrower's debt burden, the loan-to-value (LTV) of the home at the time of modification, and whether the loan is modified earlier or later in the delinquency cycle.

In the base NPV model, the default rates are generated by a model based on the performance of GSE and non-GSE loans. As Home Affordable Modification Program performance data become available, the base NPV model will be updated to reflect actual program experience.

Large servicers – those with a book exceeding $40 billion – may customize the base NPV model to use modeled default rates that reflect their own portfolio experience. These customized default rate models must be empirically validated where possible, commercially reasonable, and will be subject to review and oversight by program monitors.

Default rates may vary significantly from one large servicer to another based on differences in their portfolios. Therefore, allowing servicers flexibility to use rates that reflect their own portfolio experience should result in more accurate evaluations of proposed modifications.

Home Prices: Future increases or decreases in home prices impact a borrower's willingness to stay in a house and potential financial loss in the event of foreclosure. A servicer must use the home price projection provided in the base NPV model. A servicer does not have discretion to substitute a different projection. The home price projection for the program has been made available by FHFA exclusively for this program, is based on data

from a broad cross section of mortgage transactions, and will be updated quarterly. The projection is not based on the FHFA House Price Index and does not represent an official forecast of FHFA or any other government agency.

REO Discount: Foreclosed or real estate owned (REO) properties generally sell for less than similar, non-distressed assets. This is referred to as the REO Discount and it recognizes the deterioration in perceived value that buyers often place on a home that has been foreclosed. The REO Discount is worse in some markets than in others. The REO Discount values used in the base NPV model are based on an analysis of sale prices of foreclosed homes sold by Fannie Mae and Freddie Mac. REO Discount values vary by state and home price. Servicers are not permitted to change the REO assumptions in the base NPV model.

Exhibit 4

AS OF JANUARY 8, 2010

Supplemental Documentation—Frequently Asked Questions Home Affordable Modification Program

These frequently asked questions clarify the Supplemental Directives issued in connection with the Home Affordable Modification Program (HAMP). The questions and answers below should be reviewed by each servicer that has entered into a Servicer Participation Agreement (SPA) to participate in HAMP. These frequently asked questions constitute supplemental documentation that is included in, and shall be deemed part of, the HAMP Program Documentation described in Section 1 of the SPA.

A. General

Q1. Who should I contact with HAMP-related questions?

There are three options for HAMP-related servicer support, depending on the topic and whether the question pertains to a non-GSE, Fannie Mae, or Freddie Mac loan:

For questions regarding:	Contact:
• **Non-GSE** Supplemental Directives, policy clarifications, and loan-level questions • All reporting for the U.S. Treasury Department using HAMP Data Collector or the HAMP Reporting System	**HAMP Support Center:** • support@hmpadmin.com • 1-866-939-4469 • 9:00 a.m. to 9:00 p.m. ET, Monday through Friday
• **Fannie Mae** HAMP-related Servicing Guide Announcements, policy clarifications, or loan-level questions • Fannie Mae reporting via HomeSaver Solutions® Network (HSSN)	**Fannie Mae Servicer Support Center:** • servicing_solutions@fanniemae.com • 1-888-FANNIE-5 (326-6435) • 9:00 a.m. to 8:00 p.m. ET, Monday through Friday
• **Freddie Mac** HAMP-related Guide Bulletins, policy clarifications, and loan-level questions • Freddie Mac reporting	**Freddie Mac Servicer Support:** • 1-800-FREDDIE (373-3343) • 8:00 a.m. to 8:00 p.m. ET, Monday through Friday business days

B. Borrower Eligibility

Q2. Does the reason for the default have to be resolved before a borrower is eligible for a Home Affordable Modification?

Servicers should encourage borrowers to resolve the cause of a mortgage default, when appropriate, including providing referrals to HUD-approved housing counselors. However, a servicer cannot require a borrower to resolve the reason for the default as a condition of a Home Affordable Modification if the borrower meets HAMP eligibility requirements.

Q3. How should borrowers who contact their servicer be handled with respect to HAMP if the servicer does not yet have the proper documents or is not yet equipped to evaluate the borrower's situation?

Participating servicers are required to validate the homeowner's eligibility for HAMP and capacity to pay. Participating servicers should begin the process of collecting the required documentation from the homeowner and the information necessary to establish an escrow account on non-escrowed loans. Based on the servicer's understanding of the homeowner's ability to pay, a servicer may place a homeowner on a forbearance plan pending its ability to execute a HAMP modification. Foreclosure actions (with the exception of those in Georgia, Hawaii, Missouri and Virginia), including initiation of new foreclosure actions, must be postponed for all borrowers that meet the minimum HAMP eligibility criteria.

Q4. Can a loan be modified to a monthly mortgage payment ratio below 31 percent?

Servicers must apply the specified modification steps until the borrower's monthly mortgage payment ratio is reduced as close as possible to 31 percent, without going under 31 percent. A servicer may modify below 31 percent, subject to applicable contractual agreements, but incentive payments will be made based only on modification terms that reflect a 31 percent monthly mortgage payment ratio.

Q5. Are home equity loans that are in first lien position eligible for modification under HAMP?

First lien home equity loans or lines of credit are eligible for modification under HAMP provided that the borrower and loan meet the basic HAMP eligibility criteria and (i) the servicer has the capability within its servicing system to clearly identify the loan as a first lien and (ii) the servicer has the ability to establish an escrow for the loan as required by Supplemental Directive 09-01. Servicers whose systems do not provide the required functionality are strongly encouraged to complete system upgrades that will allow modification of first lien home equity loans.

Any HAMP modification of a first lien home equity line of credit must result in a modified loan that is a fixed rate, fully amortizing loan that does not permit the borrower to draw any further amounts from the line of credit.

Q6. REVISED Can a servicer issue an offer under HAMP to a borrower whose mortgage is secured by a condominium or co-op unit if the servicer does not have current association fee information?

No. A servicer may not issue an offer under HAMP to a borrower whose mortgage is secured by a condominium or co-op unit if the servicer does not have the current association fee information. A component of the monthly mortgage payment ratio calculation is condo or co-op association fees. Current information on the amount of the association fees is necessary to accurately complete the monthly mortgage payment ratio calculation. The servicer can contact the borrower via telephone or email to obtain this information on a stated basis, complete the necessary monthly mortgage payment ratio calculation and then issue an offer under HAMP. Documents verifying the condo or co-op association fee information, such as a copy of the payment statement, a copy of a letter from the association or a copy of a collections letter indicating the fee amount, must be submitted by the borrower with other required documentation to determine HAMP eligibility.

Q7. If a borrower is delinquent and currently has a front end monthly mortgage payment ratio less than 31 percent, but capitalization of the delinquent amounts will cause the monthly mortgage payment ratio to exceed 31 percent, does the borrower qualify for HAMP?

No. The borrower will only qualify for HAMP if the verified income documentation confirms that the monthly mortgage payment ratio prior to the modification is greater than 31 percent and provided that the borrower is eligible for at least a $1/8^{th}$ percent drop in the interest rate without the modified monthly mortgage payment ratio going below 31 percent.

Q8. Must servicers suspend foreclosure or not initiate foreclosure for all borrowers who are potentially eligible for HAMP?

To ensure that a borrower currently in foreclosure or at risk of foreclosure has the opportunity to apply for a HAMP modification, servicers should not proceed with a foreclosure sale until the borrower has been evaluated for the program. Additionally, servicers are strongly encouraged not to initiate foreclosure until a borrower has been evaluated and determined to be ineligible for the program or the borrower fails to respond to a HAMP offer that has been made by the servicer.

Q9. Is there any guidance on the imminent default analysis for the non-GSE program?

No additional guidance is being provided at this time with respect to determining whether a non-GSE loan is in imminent default under HAMP. However, with respect to non-GSE loans, servicers may follow the imminent default guidance provided by either GSE as long as that guidance conforms to the servicer's applicable contractual agreements and accounting standards. Servicers are reminded that for GSE loans, Supplemental Directive 09-01 requires servicers to follow the guidelines published by the particular GSE with respect to its loans.

Q10. NEW Is a loan that secures a property owned by an *inter vivos* (living) revocable trust eligible for HAMP? What additional information or documentation, if any, should be obtained?

A loan secured by a property owned by an *inter vivos* revocable trust is eligible for HAMP as long as the borrower (i) is a trustee of the trust, (ii) is a primary beneficiary of the trust, and (iii) occupies the property as his or her primary residence. The borrower must sign all HAMP-related documents in both an individual capacity and as trustee of the *inter vivos* revocable trust. For document requirements, servicers should refer to the "Other Pertinent Information" section of the document summary for the Home Affordable Modification Agreement (Fannie Mae/Freddie Mac Uniform Instrument, Form 3157) (the "Home Affordable Modification Agreement"), which is available at www.HMPadmin.com.

Q11. NEW Are audited profit and loss (P&L) statements required when verifying income for HAMP?

Audited P&L statements are NOT required for HAMP.

Q12. NEW If a borrower makes the existing contractual monthly payment rather than the trial period payment during the trial period, should the servicer accept the higher payment from the borrower, depositing the difference in a suspense account?

All payments made by the borrower must be applied in accordance with the existing loan documents. However, if the borrower makes a payment that is greater than his or her trial period payment, the servicer must review investor guidelines to determine if the borrower remains eligible for HAMP and, if making the contractual payment could jeopardize eligibility, notify the borrower in writing that making payments in excess of the trial period payment may impact the borrower's eligibility for a HAMP modification.

Q13. NEW Can a borrower qualify for HAMP if the mortgage loan is currently in the redemption period after a foreclosure sale?

The answer to this question is dependent on the amount of time remaining in the redemption period and other legal requirements of the state in which the property is located. When permissible under state law, the servicer should, on a case-by-case basis, seek prior investor approval prior to evaluating a borrower for HAMP during a redemption period.

Q14. NEW If borrowers who are unrelated by marriage, civil union or similar domestic partnership under applicable law purchased their home together and one borrower has vacated the property, is the occupying co-borrower eligible to apply for HAMP?

Yes, the occupying co-borrower may pursue HAMP if a quitclaim deed evidencing that the non-occupying co-borrower has relinquished all rights to the property has been recorded. Servicers must refer to investor guidance to determine which parties are required to sign the HAMP documents.

Q15. NEW Supplemental Directive 09-07 requires a servicer to use a recent credit report to verify that the property securing the mortgage loan is the borrower's primary residence. Is it acceptable to confirm the borrower's primary residence with other forms of documentation besides the credit report?

In all cases, a servicer must obtain a credit report to verify that the property securing the mortgage is the borrower's primary residence. If the credit report does not support the borrower's certification that the property securing the mortgage loan is the borrower's principal residence, the servicer must use other documentation, such as a federal income tax return or utility bill, to reconcile the inconsistency. This additional due diligence on the part of the servicer must be documented in the loan file/servicing system for compliance review purposes.

C. De Minimis Test

Q16. For loans that are not fully amortizing products, what payment amount is used for the *de minimis* test?

In all cases, the monthly mortgage payment that was used to determine the borrower's eligibility (adjusted as applicable to include property taxes, hazard insurance, flood insurance, condominium association fees, and homeowners' association fees) should be compared to the borrower's monthly mortgage payment under HAMP (with the same adjustments). Therefore, except as noted in the next sentence, the monthly mortgage payment used to determine eligibility for loans that are not fully amortizing would not include full amortization of principal. However, if, at the time eligibility is being determined, the interest rate will reset within the next 120 days, non-GSE servicers are reminded that they should use "the greater of (i) the borrower's current scheduled monthly mortgage payment or (ii) a fully amortizing monthly mortgage payment based on the note reset rate using the index value as of the date of the evaluation" when determining both eligibility and the outcome of the *de minimis* test.

D. Documents

Q17. Are there separate Servicer Participation Agreements (SPA) for Fannie Mae, Freddie Mac, and non-GSE loans?

The SPA and related documentation must be executed by servicers for non-GSE loans in order to receive Treasury-funded incentives and compensation. Servicers are not required to execute an SPA for GSE loans, since both Fannie Mae and Freddie Mac have made the program mandatory as detailed in their respective Announcements and Bulletins.

Q18. What entity should sign the SPA – the servicing entity, a holding company (if applicable), or the servicer's parent? Is there any guidance available on how master servicers or subservicers would participate in the non-GSE program?

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

In addition, the parent company of a servicing entity that has the direct contractual obligation to the investor to perform the servicing functions may alternatively sign the SPA on behalf of itself (i.e., the parent) and the contractually obligated servicing entity, as well as any other servicing subsidiaries that the parent specifies.

Q19. If a servicer that has signed a SPA transfers mortgage loans, or servicing rights relating to mortgage loans, subject to the SPA, is the transferee servicer required to assume the transferor servicer's obligations under the SPA with respect to those mortgage loans?

No. The transferee servicer may, but is not required to, assume the transferor servicer's obligations under the SPA with respect to the applicable mortgage loans. Unless the obligations are assumed by the transferee servicer, the transferor servicer may not use a transfer to circumvent its existing obligations under the SPA (*i.e.*, remitting HAMP incentive payments earned on modified loans, modifying loans that successfully complete HAMP trial periods, evaluating borrowers that are 60 or more days delinquent for HAMP eligibility). In addition, if the transferee servicer has signed its own SPA, the mortgage loans involved in the transfer will become subject to the transferee servicer's SPA.

Q20. Are there separate modification documents for GSE and non-GSE loans?

A single set of model modification documents has been provided for all loans regardless of investor. However, the documents may need to be customized for certain situations that are unique to a particular investor's loan program.

Q21. Are state-specific documents required on HAMP modifications? For example, are state-specific balloon riders required when applicable?

The servicer must revise the HAMP documents as necessary to comply with federal, state, and local laws. For example, in the event that the HAMP modification results in principal forbearance, servicers are obligated to modify the uniform instrument to comply with laws and regulations governing balloon disclosures.

For all mortgage loans that are modified pursuant to HAMP, the servicer must follow investor guidance with respect to ensuring that the modified mortgage loan retains its first-lien position and is fully enforceable.

Q22. REVISED If the borrower files for bankruptcy protection during the trial period, is the trial period plan canceled automatically or is a servicer required to continue to work with the borrower?

Borrowers who file bankruptcy during the trial period remain eligible for a HAMP modification provided they make all of the required payments in a timely fashion, are otherwise in compliance with the trial period plan and the certifications set forth in the Hardship Affidavit or the MHA Request for Modification and Affidavit, as applicable, remain true and correct. The servicer and its bankruptcy counsel must work with the borrower and the borrower's bankruptcy counsel to obtain any required court approvals of the modification. A borrower actively involved in a bankruptcy proceeding prior to being placed in HAMP is eligible for HAMP at the servicer's discretion. If a servicer provides an offer under HAMP to a borrower that is involved in an active bankruptcy case,

the servicer must work with the borrower or borrower's counsel to obtain all necessary approvals from the bankruptcy court.

Q23. REVISED How should servicers address loan documents that did not include standard escrow provisions?

Servicers must replace Section 4.D. of the Home Affordable Modification Agreement with industry standard escrow account provisions that are comparable to the escrow account provisions found in the Fannie Mae/Freddie Mac uniform instruments.

In addition, if the servicer uses a Home Affordable Modification Trial Period Plan (Fannie Mae/Freddie Mac Uniform Instrument, Form 3156) (the "Trial Period Plan"), the servicer must insert the following language at the end of section 4.C. of the Trial Period Plan:

> "Unless the Lender determines that an Escrow Account may not be established in connection with the mortgage loan under applicable law, this Plan constitutes notice that the Lender's waiver as to payment of Escrow Items, if any, has been revoked, and I have been advised of the amount needed to fund my Escrow Account. If the Loan Documents do not currently have Escrow Account provisions comparable to those in the Fannie Mae/Freddie Mac Uniform Security Instruments, such Escrow Account provisions comparable to the Escrow Account provisions in the Fannie Mae/Freddie Mac Uniform Instrument for the state in which the property is located, shall be added in the Modification Agreement."

Q24. REVISED Are servicers permitted to insert conditional language in the Trial Period Plan and the Home Affordable Modification Agreement to avoid having to review each set of base loan documents to determine if they contain prepayment or assumption provisions or, in order to retain first lien position, require subordination agreements and/or title policy endorsements?

The Trial Period Plan and the Home Affordable Modification Agreement currently available on www.HMPadmin.com have been updated to include the necessary conditional language.

Q25. REVISED Must all prepayment penalties be waived in connection with a HAMP modification, or only prepayment penalties associated with borrower "pay for performance" principal balance reduction payments?

Except as provided below in Q26, no prepayment penalties may be assessed in connection with modifications under HAMP. Therefore, if any provision in the note or in any addendum or amendment to the note allows for the assessment of a penalty for full or partial prepayment of the note, such provision must be waived. Conditional language to implement this waiver is included in the Home Affordable Modification Agreement.

Q26. REVISED Is a participating servicer required to modify loans that are eligible for HAMP if the servicer is subject to a pooling and servicing agreement or similar servicing contract ("PSA") that requires payment of a material sum to investors if any applicable prepayment penalties are waived?

Yes, such loans must be modified if they are eligible for HAMP modifications, and servicers must use reasonable efforts to eliminate the PSA provision requiring payment by the servicer if the

prepayment penalty is waived. However, if the servicer is unable to eliminate the PSA provision, the servicer is not required to waive the prepayment penalty as part of the HAMP modification, provided that the prepayment penalty must be waived with respect to any borrower "pay for performance" principal balance reduction payments that are applied to the borrower's mortgage loan. In such a case, servicers should replace Section 4.I. of the Home Affordable Modification Agreement with the following language:

> "That, as of the Modification Effective Date, any provision in the Note, as amended, for the assessment of a penalty for full or partial prepayment of the Note must be waived with respect to any borrower "pay for performance" principal balance reduction payments that are applied to the Loan."

Q27. REVISED If the standard modification waterfall requires principal forbearance, should the Home Affordable Modification Agreement be amended to reflect the principal forbearance amount?

The Home Affordable Modification Agreement must be revised to reflect the principal forbearance amount. The exact modification language can be obtained from the document summary for the Home Affordable Modification Agreement, available at www.HMPadmin.com.

Q28. If the borrower had no obligation under the Loan Documents to remit escrow items or the lender waived the requirement to pay escrow items prior to entering into the trial period (the terms of which revoked that waiver), must the borrower continue to remit escrow items with the monthly payment if the borrower fails the trial period?

Once the escrow account is established, the borrower must continue to make monthly escrow payments. However, upon a borrower's failure of the trial period, a servicer may waive the requirement to make monthly escrow payments, subject to any limitations imposed by applicable law and any investor or other contractual requirements (e.g., servicer obligations to advance tax, insurance and other third party payments to protect the investor's first lien position).

E. Escrow

Q29. Can escrow payment estimates be used to determine payments during the trial period to avoid delays in processing?

Servicers may perform an escrow analysis based on estimates prior to extending a HAMP offer. However, if a servicer estimates the escrow payments for the HAMP offer, the servicer is not permitted to use national averages in the estimate calculations. Prior to determining the borrower's eligibility for HAMP based on documentation, servicers must complete an escrow analysis to determine the exact escrow payments.

Q30. How should servicers treat escrow shortages?

In the event the initial escrow analysis identifies an escrow shortage – a deficiency in the escrow deposits needed to pay all future tax and insurance payments – the servicer must take steps to eliminate the shortage. Any actions taken by the servicer to eliminate the escrow shortage must be in compliance with applicable laws, rules, and regulations, including, but not limited to, the Real Estate Settlement Procedures Act.

Q31. NEW If a borrower has successfully completed the trial period plan and the servicer is preparing the Home Affordable Modification Agreement, should the servicer have the borrower execute a note for any escrow advance? Should the servicer provide a Truth-in-Lending (TIL) statement for this loan?

The servicer should not have the borrower execute a note for any escrow advance. Instead, the servicer should capitalize any escrow advance that has been or will be paid to a third party before the modification agreement's effective date as outlined in Supplemental Directive 09-01. If capitalization is prohibited by applicable law, the servicer should have the borrower repay the advance in accordance with investor guidelines, the underlying security instrument and all applicable laws, rules and regulations including, but not limited to, RESPA and TILA.

F. Principal Forbearance

Q32. If a borrower with principal forbearance makes a substantial principal curtailment that is greater than or equal to the interest-bearing unpaid principal balance (UPB), should the curtailment be applied to the interest bearing principal or the principal forbearance portion?

The curtailment should be applied to the principal forbearance portion. This policy eliminates the possibility of a curtailment paying off (and satisfying) the interest-bearing portion of the UPB (the entire loan would become due and payable at that point), thereby forcing the borrower to pay off the principal forbearance portion of the loan balance. In those instances, to avoid that negative result, the curtailment must be applied to the principal forbearance amount. Any remaining funds would be applied to the interest-bearing UPB.

Q33. REVISED Does the earlier FDIC guidance on accounting treatment of principal forbearance apply under HAMP?

Yes. For loans within securitizations, servicers, securities administrators and other transaction parties should treat HAMP principal forbearance amounts as realized losses as of the applicable loan modification dates under any applicable securitization pooling or trust agreement. The only exception to that principle is that servicers and securities administrators are permitted not to treat HAMP principal forbearance amounts as realized losses if, and only if, (i) the applicable securitization pooling or trust agreement specifically addresses principal forbearance in the HAMP context (i.e., it includes the permanent forgiveness of interest and postponement of principal repayment for a long period, as described below) and (ii) such agreement explicitly and affirmatively directs that such forborne principal not be treated as a realized loss.

For the avoidance of doubt, "principal forbearance" in the context of HAMP is non-interest bearing and non-amortizing. Securitization pooling or trust agreements often use the term "principal forbearance" in a context which only requires delaying of the date on which certain payments of principal are due for short periods; interest typically continues to accrue and is required to be capitalized. For HAMP, not only must principal forbearance delay the date in which such forborne principal is due to maturity sale or payoff, but no interest may accrue on such forborne amounts.

G. HUD Counseling

Q34. Who pays for the HUD counseling?

There is no charge to either borrowers or servicers for HUD-approved counseling (borrowers whose back-end debt-to-income ratio is equal to or greater than 55% must represent in writing in the HAMP documents that they will obtain such counseling). Servicers may, at their discretion, use a portion of the servicer incentive compensation to compensate counselors for counseling services provided in conjunction with HAMP.

Q35. If a borrower has recently completed HUD-approved debt counseling, do they still need to work with a counselor?

Borrowers with back-end debt-to-income ratios of 55 percent or more must agree in writing to obtain HUD-approved counseling as a condition of receiving a HAMP modification, even if they recently completed counseling.

H. Income Verification

Q36. REVISED Why must the borrower submit an IRS Form 4506-T?

Servicers should refer to the guidance provided in Supplemental Directive 09-07 with respect to IRS Form 4506-T. Servicers should also note that on October 21, 2009, the IRS introduced Form 4506T-EZ. Form 4506T-EZ is a permissible substitute under HAMP for Form 4506-T for borrowers who filed a Form 1040 series on a calendar-year basis.

Q37. If a borrower submits unsigned tax returns, but provides evidence the returns were electronically filed, does evidence of the electronic filing satisfy the requirement for "signed tax returns"? If a borrower submits unsigned tax returns, must a servicer file the Form 4506-T or Form 4506T-EZ, as applicable, or may they return the tax returns to the homeowner for signature?

Evidence of an electronically filed tax return satisfies the signed tax return requirement. If the borrower submits an unsigned tax return without evidence of electronic filing, the servicer may either file the Form 4506-T or Form 4506T-EZ, as applicable, or return the tax return to the homeowner for signature. Upon execution, the borrower should return the "signed" return to the servicer.

Q38. REVISED Is the borrower eligible for HAMP if he or she is not a current tax filer?

Yes. Only the borrower's most recent tax return needs to be obtained. If the tax return for the most recent tax year is not available, the servicer must process the borrower's signed Form 4506-T to confirm that the borrower did not file a tax return for that year.

Q39. REVISED Is the borrower eligible for HAMP if he or she is not required to file a tax return?

Yes. Such a borrower must document why he or she does not need to file a tax return. The servicer must review and approve this rationale. A borrower is not eligible for HAMP if the borrower was required to file a tax return but failed to do so.

Q40. If the borrower can provide two pay stubs that show current earnings used for qualifying purposes under HAMP, can the servicer use only that information and not require YTD earnings?

No. Documentation of YTD earnings is a requirement of HAMP. Current earnings should be used to qualify the borrower. YTD earnings can be used to substantiate additional income such as bonuses and overtime.

Q41. REVISED Could you please clarify the intent behind "third party documents" related to self-employed income?

As provided in Supplemental Directive 09-07, third party documents are no longer required for self-employed borrowers.

Q42. Can income of a household member not on the original note be used in the income calculations to qualify for the modification? If so, would it require that the person be added to the Note for the modification?

A borrower has the option of disclosing a household member's income (where the household member is not included on the Note). Servicers should include non-borrower household income in monthly gross income if it is voluntarily provided by the borrower and if there is documentary evidence that the income has been, and reasonably can continue to be, relied upon to support the mortgage payment. All non-borrower household income included in monthly gross income must be documented and verified by the servicer using the same standards for verifying a borrower's income. The borrower may elect to add a new borrower to the note, but it is not a requirement in order to include the household member's income in the Home Affordable Modification evaluation.

Q43. If income from other non-borrower household members is considered under HAMP, should a servicer also consider expenses for the other household members?

A servicer should not consider expenses of non-borrower household members but may consider the percentage of his or her income that the non-borrower routinely contributes to the household.

Q44. What action should the servicer take if the tax returns do not align with the paystubs provided?

The servicer should ask the homeowner to explain material differences between tax returns and income documentation, and document such differences in the servicing system. If the verified documentation reasonably indicates that a borrower is committing fraud, the servicer should not extend the modification.

Q45. For a loan in foreclosure, may a servicer require the homeowner to make the initial trial period payment in certified funds? May a servicer require certified funds on subsequent trial period payments?

Servicers should continue to follow their current practices, subject to applicable law and the mortgage documents, as it relates to requiring borrowers to make payments using certified funds.

Servicers may not impose any stricter standard for payments due under HAMP than are applied in the servicer's other loss mitigation programs.

I. Net Present Value (NPV) Model

Q46. What is the NPV model and what is it used for?

The NPV model determines the NPV outcome (positive or negative) for a given modification. A positive NPV occurs where the discounted value of expected cash flows for the modified loan is higher than the discounted value of expected cash flows for the unmodified loan. The NPV model software tool resides on the servicer Web portal (www.HMPadmin.com), and is available to all participating servicers of both GSE and non-GSE mortgage loans eligible for a Home Affordable Modification.

Q47. Is there a different NPV model for non-GSE and GSE loans?

The same basic NPV model will be used by each servicer for both non-GSE and GSE loans. However, as discussed below, large servicers of non-GSE loans will be able to customize the model based on the unique performance of their own portfolios. Additionally, with respect to certain assumptions such as discount rate, servicers may use different values for non-GSE and GSE loans, subject to the respective GSE's guidelines.

Q48. Will every servicer be required to use the same discount rate in calculating NPV?

For GSE loans, servicers must follow the respective GSE guidance with respect to the discount rate. For non-GSE loans, servicers have the option of using the same discount rate for all loans or choosing one discount rate for loans they service for themselves and a different discount rate for loans serviced for all third party investors. The discount rate applied to loans serviced on behalf of third party investors must be at least as high as the discount rate applied to a servicer's held portfolio, but in no event higher than the maximum rate permitted under the HAMP. Program guidelines establish a base discount rate for non-GSE loans equal to the Freddie Mac Primary Mortgage Market Survey (PMMS) rate for 30-year fixed-rate conforming loans. Servicers of non-GSE loans may add a premium of up to 250 basis points to this rate.

Q49. REVISED Can the HAMP modification be pursued if the NPV result is negative?

For non-GSE loans, a servicer is not required to offer the HAMP modification on a loan where the NPV result is negative, but it may do so at its discretion in accordance with investor guidelines. If the NPV is negative and the servicer chooses to modify the loan, any principal forbearance amount may not reduce the interest-bearing principal to less than 100 percent of the mark-to-market loan-to-value (LTV) ratio. For GSE loans, servicers should refer to the applicable GSE guidelines as it relates to NPV results and HAMP eligibility.

Q50. Will servicers be able to build the NPV model into their platform/system? Can they customize the NPV Calculator?

Yes. Detailed business and technology requirements for servicers wishing to install the NPV Calculator on their own systems are forthcoming and will be posted on www.HMPadmin.com. The most recent Net Present Value Model Documentation can be obtained at www.HMPadmin.com.

Servicers having at least a $40 billion servicing book will have the option to create a version of the NPV model that uses a set of cure rates and redefault rates estimated based on the experience of their own portfolios. The default model must take into consideration, if feasible, current LTV, current monthly mortgage payment, current credit score, delinquency status, and other loan or borrower attributes. Customized versions of the NPV model must utilize the base NPV model values for variables such as home price projections and foreclosure and REO timelines and costs. These values are posted on www.HMPadmin.com, and will be periodically updated. Any servicer electing to either build the NPV model into their platform/system and/or create a customized version of the NPV model must first successfully pass an output test, as to ensure that the servicer NPV model outputs are consistent with the base Treasury model. Servicers may not begin using a recoded or customized model without first obtaining an acceptable output test.

GSE servicers must consult each GSE with respect to the loans it services on behalf of that GSE before building the NPV model into their own platform/system or customizing the NPV Calculator.

Q51. Will Freddie Mac, in its capacity as Compliance Agent for the Treasury, monitor implementation or customization of the NPV model?

Yes. Servicers electing either to implement the NPV model on their own systems or, where eligible, to create a customized version must first successfully pass an NPV output test to ensure that the servicer's NPV model outputs are consistent with those of the Base NPV Model v3.0.

Servicers who plan to begin using their own NPV Model v3.0 by September 1, 2009 are required to conduct and pass the NPV output test before that date. Servicers planning to implement or customize the NPV model *after* September 1, 2009 must pass an output test before they begin using that model.

The MHA Compliance Agent (Freddie Mac) will administer and evaluate the results of all servicer NPV output tests and provide the necessary clearance for servicers to begin using their own NPV models. The test will involve running a dataset of sample modifications against the servicer's NPV model. To pass the test, the servicer NPV model results for the entire dataset of sample modifications must be consistent with the corresponding base NPV model results, within a defined threshold of acceptable variance. Additional instructions regarding the NPV output test will be provided to servicers upon request. Please e-mail Dane D'Alessandro, Director, Program Management, MHA Compliance at: dane_d'alessandro@mhacompliance.com.

Subsequent to the test, servicers electing to use a customized version of the NPV model will be asked to provide documentation on methodology and key assumptions, as well as evidence that the servicer has instituted adequate controls and governance procedures with respect to the model.

NPV compliance testing will be conducted on an ongoing basis for the life of the HAMP program, and will be triggered both by changes to the base NPV model and by servicer-driven changes, such as migration to new systems, subsequent decisions to use servicer-specific default rates (where permitted) or to change those rates, and other related factors.

Servicers of Fannie Mae and Freddie Mac loans must follow the respective GSE's guidance regarding building the NPV model into their own platform/system or customizing the NPV model.

Q52. How soon after release of a new version of the Making Home Affordable NPV model or after signing a Servicer Participation Agreement must a servicer begin to use the new base NPV model?

Participating and new servicers will have a grace period to implement each new version of the Making Home Affordable (MHA) Net Present Value Base Model. The grace period for each new version will be set forth in the applicable NPV release documentation. In addition, the release documentation will provide guidance as to which NPV model version servicers should use during the grace period. After the grace period, servicers must use either the most recent version of the base MHA Net Present Value Model or a customized version that meets the requirements for customization outlined in the model documentation.

Q53. Will mortgage insurance (MI) be considered in the NPV model?

Yes. MI is considered in calculating the net present value of both the modified and unmodified loan. MI payments reduce investor losses in the event of a default for both of these scenarios. In addition, partial MI claims can be entered to increase the value of the modification to the investor.

Q54. I initially tested a borrower under an earlier NPV model (e.g., Version 1.5) and he passed. I received the borrower's income documentation after the next major model version was released (e.g., version 2.0). Should I retest the borrower based on verified income using the current version of the NPV model?

No. Servicers should test borrowers using the same major NPV model version each time the borrower is evaluated. All previous major versions of the NPV model are available on www.HMPadmin.com so that borrowers can be tested using the same major NPV model version for each evaluation.

Q55. Can servicers choose the NPV model version used to test a specific borrower?

No. New applicants to HAMP should be tested using the latest available NPV model version, and retests should use the same major model version as the initial test.

Q56. I tested a borrower using the NPV model and he passed. Since then, I have received the borrower's income documentation. When I retest the borrower based on verified income, which NPV inputs should I hold constant and which NPV inputs should I update?

The only NPV inputs that should be updated when the borrower is retested are those that were incorrect on the date of the initial NPV evaluation and since have been corrected based on the borrower's income documentation. Inputs that have changed in the interim but were correct on the date of the initial NPV evaluation should be held constant. Elements that change based on documentation are likely to be limited to borrower-reported information, such as income, homeowner association fees, and monthly tax payments. The terms of the modification – the interest rate reduction, term extension, and forbearance amount – also may change as the borrower-reported inputs are adjusted. In the portal version of the NPV model servicers should not change the "Data Collection Date" or the associated UPB and remaining term information. This information should be reported for the retest as it was in the initial NPV evaluation.

J. Reporting Requirements

Q57. When will reporting requirements, including the key data points, be available for servicers? What type of reporting format/medium will be required?

Servicers must begin providing loan level data to Fannie Mae, the program administrator, when a HAMP loan enters a trial period. Details on the required loan level data for these reporting requirements are provided in the "HAMP Data Dictionary" available at www.HMPadmin.com.

Q58. What date should be reported by the servicer for the Interest Rate Lock Date for Modification in the trial period set up file and in the loan set up file?

The Interest Rate Lock Date for Modification is the date that the Interest Rate Cap for a modified mortgage loan is determined. For trial set up reporting, the servicer should report the date that it selected the Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) Rate used to determine eligibility for HAMP when establishing the interest rate terms in the standard waterfall process for the trial period payment under the trial period plan. For loan set up reporting, the servicer should report the date that it selected the Freddie Mac Weekly PMMS Rate used to establish the interest rate terms in the standard waterfall process for the modification payment under the Modification Agreement. As specified in Supplemental Directive 09-01, the Freddie Mac Weekly PMMS Rate used for the modification payment should be the rate, rounded to the nearest 0.125 percent, in effect as of the date that the Modification Agreement is prepared.

Q59. If the servicer does not have the property condition from an appraisal or BPO, what should the servicer enter in the "property condition" field in IR2?

The servicer should enter "3" (Fair) when they don't have a property condition from an appraisal or a BPO, provided the property meets HAMP eligibility requirements. Servicers must enter "5" if the property is condemned. When servicers enter "3" because they don't have a property condition from an appraisal or a BPO: (i) the "property condition" field in IR2 may not be relied on by the servicer as a justification or presumption that the loan qualifies for HAMP and that any subsequent payout based on the information in IR2 does not constitute a waiver on the part of the investor and/or Treasury who reserves all rights to seek reimbursement of an improper payout or repurchase of the loan in the event the property does not meet HAMP eligibility requirements; and (ii) the "property condition" field in IR2 may not be relied on by the investor as grounds for repurchase of the loan due to a breach of a representation and warranty related to the property condition.

Q60. NEW What should a servicer do if its servicing system will not report to credit bureaus based on the due date of the trial period payment as stated in the Trial Period Plan cover letter, but instead reports based on the contractual due date? If the servicer cannot follow the process, can it delete the specific language in the cover letter regarding credit reporting?

As outlined in Supplemental Directive 09-01, if a borrower is current prior to entering the trial period, servicers are required to report to the credit bureaus that the borrower is current but on a modified payment if the borrower makes timely trial period payments by the 30th day of each trial period. If the servicer's servicing system will not allow them to report in this manner, servicers may edit the Trial Period Plan cover letter to accurately describe the servicer's practice related to credit bureau

reporting. Note: The new Trial Period Plan Notice does not contain detailed language related to credit bureau reporting practices.

Q61. NEW The IRS Form 1098 does not contain the UPB for the applicable loan. In the case of a loan with a principal forbearance, would it be an accurate assumption that a notation is not necessary on the 1098 to remind the borrower of the principal forbearance?

Yes.

Q62. NEW If the servicer utilizes an IRS-compliant Annual Borrower Statement that includes the UPB of the modified loan as a substitute 1098 and the loan has principal forbearance, is it necessary to state the principal forbearance amount on the statement?

Yes. Any borrower statement that includes the unpaid principal balance of the loan must include the principal forbearance amount, if applicable.

K. Trial Period

Q63. REVISED Must foreclosure be suspended during the trial period?

Except in "foreclosure restart states" as described in Q65 below, any foreclosure sale must be suspended and no new foreclosure action may be initiated during the trial period. Foreclosure actions may not be initiated or restarted until the borrower has failed the trial period and the borrower has been considered and found ineligible for other available foreclosure prevention options.

Q64. REVISED What is success or failure under a trial period plan?

The trial period plan is considered to be successful if the borrower has made all of the trial period plan payments no later than the last business day of the month in which the last trial period plan payment is due, the borrower has provided all required documentation, the borrower has complied with all other requirements of the trial period plan and the certifications set forth in the Hardship Affidavit or the MHA Request for Modification and Affidavit, as applicable, remain true and correct. If the servicer has not received all trial period plan payments or required documentation by this deadline or determines the borrower has not otherwise complied with the trial period plan, the borrower has failed the trial period and is not eligible for a permanent loan modification under HAMP. The servicer must consider the borrower for other foreclosure prevention alternatives, including pre-foreclosure sales and deeds in lieu of foreclosure, as appropriate.

Q65. What rules apply to loans that were in active foreclosure in foreclosure restart states prior to initiation of the trial period plan? Will borrowers be considered to have failed the trial period plan if they are not current at the time the foreclosure sale is scheduled? How could such borrowers be current if foreclosure was already in process?

Due to unique foreclosure law requirements in Georgia, Hawaii, Missouri, and Virginia, borrowers in these states who were in active foreclosure prior to executing a trial period plan will be considered to have failed the trial period plan and servicers may proceed with the foreclosure if either (a) the

servicer determines that the borrower made a misrepresentation under the trial period plan or (b) the borrower has not made all required trial period payments through the end of the month preceding the month in which the foreclosure sale is scheduled to occur.

Q66. When a borrower is placed in a trial period plan, does the loan information need to be changed on the servicer's system and the investor's system to reflect the trial period terms?

No, scheduled loan terms in servicing systems should not be modified during the trial period. However, servicers must follow the requirements for reporting to the credit reporting agencies during the trial period as set forth in Supplemental Directive 09-01 and discussed below in Q67.

Q67. How should borrower payments be reported to credit reporting agencies during the trial period?

Servicers should continue to report a "full file" status report to the four major credit reporting agencies while evaluating a borrower for program eligibility and during the trial period plan. If a borrower is current when they enter the trial period, the servicer should report the borrower current but on a modified payment if the borrower makes timely payments by the last business day of each trial period month at the modified amount during the trial period. If a borrower is delinquent when they enter the trial period, the servicer should continue to report in such a manner that accurately reflects the borrower's delinquency and workout status following usual and customary reporting standards.

In both cases the servicer should report the modification when it becomes final.

Q68. REVISED If the borrower fails during the trial period, can he or she be provided with another offer under HAMP?

Deleted. Refer to Q71.

Q69. REVISED If the borrower makes the first trial period payment before the servicer prepares the Trial Period Plan, and the borrower never returns a signed Trial Period Plan, can he or she be provided with another offer under HAMP?

Deleted. Refer to Q71.

Q70. REVISED If the servicer prepared a Trial Period Plan based on the borrower's stated income information and, upon receipt of the income documentation, discovers that the original Trial Period Plan was out of tolerance, can the borrower be provided with another offer under HAMP?

Deleted. Refer to Q71.

Q71. REVISED Is a borrower who has received a HAMP offer eligible for a subsequent HAMP offer? When is a servicer's SPA obligation to offer a borrower a HAMP modification considered satisfied?

A borrower who has a received a HAMP offer is ineligible for a subsequent HAMP offer, and the servicer's SPA obligation to offer the borrower a HAMP modification is considered satisfied, in the following circumstances:

- the borrower received a HAMP modification and lost good standing, or
- the borrower received a HAMP offer and made the first payment under trial period plan, but did not (i) make all required payments by the end of the trial period, or (ii) provide all required documents by the end of the trial period.

A borrower may seek reconsideration for a HAMP modification and the servicer is obligated to consider the borrower's request under the SPA, in the following circumstances:

- the borrower was found ineligible, either for a trial period plan or during the trial period plan, but circumstances such as income have changed sufficiently to impact the previous determination, or
- the borrower received a HAMP offer, but did not make the first trial period payment by the end of the month in which it was due.

Q72. REVISED Can the borrower accelerate his or her modification effective date by making his or her trial period payments earlier than scheduled?

No. Although the borrower may make scheduled payments earlier than expected, under HAMP, the payments may not result in acceleration of the modification effective date. There is no variation to this rule.

L. Valuation

Q73. REVISED Why is an appraisal, broker price opinion (BPO), or automated valuation model (AVM) generated property valuation necessary and when does such a valuation become stale?

The appraisal, BPO, or AVM-generated property valuation is an input to the NPV calculator. Pursuant to Supplemental Directive 09-07, the valuation must be less than 90 days old on the date the servicer first evaluates the borrower for HAMP eligibility using the NPV model. The information will remain valid for the duration of the trial period and does not need to be updated for any subsequent NPV evaluation.

Q74. What is considered a reliable confidence score for an AVM?

Servicers relying on their internal AVM should establish reasonable confidence scores. Confidence scores that are deemed reasonable by bank examiners are also considered reasonable for purposes of this program. For GSE AVMs, each GSE will communicate guidance on the permissibility to use internal AVMs and reasonable confidence scores.

Q75. If a broker price opinion (BPO) is utilized, will an exterior inspection be sufficient or is an interior/exterior inspection with photos required?

Where BPOs are utilized, exterior-only inspections are sufficient.

M. Verification

Q76. If one of the borrowers on the loan is non-responsive (will not supply income documentation and will not sign a Home Affordable Modification Agreement), can the HAMP modification proceed with the remaining borrower who is residing in the household, as long as the HAMP modification does not have to be recorded?

Unless a borrower or co-borrower is deceased or a borrower and a co-borrower are divorced, all parties who signed the original loan documents or their duly authorized representative(s) must execute the HAMP documents. If a borrower and a co-borrower are divorced and the property has been transferred to one spouse in the divorce decree, the spouse who no longer has an interest in the property is not required to execute the HAMP documents. Servicers may evaluate requests on a case-by-case basis when the borrower is unable to sign due to circumstances such as mental incapacity, military deployment, etc.

Q77. NEW Can HAMP be considered for a borrower that is temporarily displaced (e.g., incarceration, temporary foreign service assignment, military service, etc.) from his/her home if s/he is the only borrower on the original loan documents but an occupant, who is not on the loan, is still living in the property as a primary residence?

If the borrower was occupying the property as his or her principal residence immediately prior to his or her displacement, intends to occupy the property as his or her principal residence upon his or her return and the current occupant is not a tenant, the mortgage loan is eligible for consideration under HAMP. The servicer must confirm the borrower's occupancy representations as set forth in Supplemental Directive 09-07.

Q78. NEW Is extinguishment of a second lien required under HAMP?

No. Extinguishment of second lien instruments is not a requirement of HAMP. Servicers should refer to guidance on the Second Lien Modification Program provided in Supplemental Directive 09-05 or by the applicable GSE.

Q79. NEW Please clarify the definition of non-borrower household income. Who is a non-borrower?

A non-borrower is someone who is not on the original note (and may or may not be on the original security instrument), but whose income has been relied upon to support the mortgage payment. Non-borrower household income that may be considered for HAMP qualification must come from someone who resides in the residence. Examples include a non-borrower spouse, parent, child or a non-relative, but in each case, a person who shares in the occupancy of the home and provides some support for the household expenses.

Q80. NEW What information must a borrower provide to document unemployment benefit income (UI)? What resources exist to allow a servicer to verify this unemployment insurance benefit information?

Borrowers must document the amount, frequency and duration of the unemployment benefits. This information is typically obtained through official UI benefit documentation (the "Monetary Determination Letter"). Note that the Monetary Determination Letter does not include exceptional state benefit extensions and federally funded benefit extensions; therefore the total duration of the borrower's UI eligibility is not reflected in the "Maximum Benefit Amount" field of the Monetary Determination Letter.

To determine the total length of time an unemployed borrower may continue receiving payments – including federal and state-specific extensions – the servicer may use the Department of Labor UI benefit tool which is available at http://www.ows.doleta.gov/unemploy/ben_entitle.asp. If this tool is used, a screen shot of the output should be included with the loan file. Information about the length of benefit eligibility for workers qualifying for Trade Adjustment Assistance can also be found at the above Web site.

Q81. NEW Is a borrower who is unemployed with six months of unemployment benefits remaining and the ability to file for an extension extending benefits beyond the required nine months eligible for HAMP?

If the servicer makes a reasonable determination that the borrower is eligible to file for an extension for the unemployment benefits, and the extension would extend to or beyond nine months from the servicer's initial evaluation of the borrower for HAMP eligibility, such unemployment income is eligible to be included when qualifying the borrower for HAMP. The borrower must also meet all other HAMP eligibility criteria.

Q82. NEW How should the borrower's "pay for performance" incentive be treated for tax reporting purposes?

The IRS has ruled that the borrower's "pay for performance" principal balance reduction payment will be excluded from gross income for tax reporting purposes.

Q83. NEW Is it permissible for a servicer to require a delinquent borrower to make a "good faith" or contribution payment pending the processing of the trial period plan before the plan starts?

No, servicers may not require the borrower to make a "good faith" or contribution payment.

Q84. NEW May a servicer accept information provided on behalf of borrowers by trusted advisors such as HUD-approved housing counselors?

Yes. Servicers should accept borrower information delivered by an authorized trusted advisor on behalf of a borrower and may use that information to determine HAMP eligibility. In such cases, the servicer must comply with applicable privacy and other laws and, when necessary, obtain evidence of the borrower's consent to the servicer's sharing of the borrower's private financial information with the trusted advisor.

Servicers may pledge any portion of the upfront servicer incentive that is earned in conjunction with a completed HAMP modification to compensate trusted advisors acting on behalf of a borrower, provided that there is no fee charged to the borrower.

Q85. NEW If there are changes in a borrower's tax and insurance premium payments during the trial period (but after a verified approval), must the servicer re-evaluate the borrower for HAMP eligibility and obtain a new NPV result?

No, the servicer is not required to re-evaluate the borrower for HAMP eligibility or obtain a new NPV result after the eligibility determination based on verified income documentation. However, the servicer must provide written notice to the borrower – in addition to any escrow notification required by RESPA – which explains the impact of the new escrow payment on the trial period plan.

N. Standard Modification Waterfall Questions

Q86. Please clarify the servicer's obligation as it relates to the HOPE for Homeowners (H4H) requirement.

While the servicer is gathering information to determine if a borrower meets the minimum eligibility criteria for HAMP, it should also be assessing whether the borrower may be eligible to refinance through an FHA H4H loan. This assessment would involve asking the following set of questions:

- Will the loan amount exceed $550,440?
- Has the borrower made less than 6 full payments during the life of the first lien loan?
- Does the borrower have an ownership interest in other residential real estate (including 2nd homes/rental properties)?
- Was the mortgage to be refinanced originated after January 1, 2008?
- Does the property contain more than 1 unit?

If the answer to all of these questions is "NO", the borrower may be eligible for H4H. In this case, the servicer should counsel the borrower to seek a refinance with an H4H lender. If the servicer's origination division does not participate in the H4H program, a listing of participating lenders can be found at the following link:

http://portal.hud.gov/portal/page?_pageid=73,7605762&_dad=portal&_schema=PORTAL

If the servicer knows that the related owner or third party investor does not permit principal forgiveness, which is required under H4H, no servicer action is required with respect to that loan. However, the servicer may not refuse to consider a borrower for HAMP or refuse to initiate a trial period plan for an otherwise qualified borrower subject to that borrower applying for and being denied a loan under H4H.

Servicers should demonstrate compliance with this requirement by documenting the date of the referral. Servicers are not – under any circumstances – required to take a loan application from the borrower.

Q87. REVISED If a pooling and servicing agreement or other investor servicing agreement ("PSA") or applicable law restricts or prohibits a modification step in the standard modification waterfall and the servicer partially performs it or skips it, does the modification still qualify for HAMP?

Yes. Servicers should maintain evidence in the loan file documenting the nature of any deviation from taking any sequential modification step in the standard modification waterfall. The evidence should demonstrate that the applicable PSA or applicable law restricted or prohibited the servicer from fully performing or taking the modification step. If a servicer was restricted or prohibited from fully performing or taking the modification step, the documentation should show that it made reasonable efforts to seek a waiver from the applicable investor and whether the requested waiver was approved or denied.

The requirement set forth in Supplemental Directive 09-01 to seek prior approval from Fannie Mae, in its capacity as program administrator, for deviating from the standard modification waterfall has been eliminated.

Q88. May a servicer extend the term before reducing the interest rate if the servicer believes the outcome is better for the borrower?

Servicers must follow the waterfall steps sequentially as outlined by Supplemental Directive 09-01. The interest rate must be fully reduced to 2 percent prior to any term extension. However, servicers are not precluded under HAMP from agreeing to a modification where additional principal forbearance is substituted for extending the term as needed to achieve the target monthly mortgage payment ratio of 31 percent, as long as the modification otherwise complies with HAMP requirements. In this case, borrower, servicer and investor incentive / reimbursement payments will be paid on modification terms that reflect the target monthly mortgage payment ratio and standard modification terms.

Q89. Can servicers agree to a rate below 2 percent or fix the reduced rate for the life of the loan?

Yes. Subject to investor guidelines or applicable law, servicers are not precluded under HAMP from agreeing to a modification where the interest rate is reduced to less than 2 percent or does not step up after five years. However, borrower, servicer and investor incentive/reimbursement payments for these modifications will be paid based on modification terms that reflect the target monthly mortgage payment ratio and standard modification terms.

Q90. NEW If a PSA prohibits term extension (but not extension of the amortization schedule), may a servicer modify the loan under HAMP by reducing the interest rate and extending the amortization schedule as necessary to achieve the target monthly mortgage payment ratio and edit the Home Affordable Modification Agreement accordingly to reflect the extended amortization schedule?

Yes. As provided in Supplemental Directive 09-01, if a servicer is prohibited under a PSA from extending the term (but is not prohibited from extending the amortization schedule), the servicer may extend the amortization schedule up to 480 months to achieve the target monthly mortgage payment ratio. If, in this case, the amortization schedule would terminate after the loan's maturity date, then the borrower must pay the remaining balance on the maturity date in the form of a balloon payment. Servicers are reminded that they are required to amend the Home Affordable

Modification Agreement and Trial Period Plan as necessary to comply with applicable federal, state and local law, which would include any required disclosures of a balloon payment. In addition, in this circumstance, a servicer should amend the payment schedule in Section 3C of the Modification Agreement to reflect a final balloon payment due at maturity of the loan. Finally, the servicer must document the PSA prohibition on term extension as set forth in Q87 above.

Q91. Where can the servicer obtain the Freddie Mac Primary Mortgage Market Survey rate?

The Freddie Mac Primary Mortgage Market Survey rate (PMMS) is the conventional mortgage rate published in the Federal Reserve's H.15 bulletin. The weekly PMMS rate is available on the Freddie Mac home page at www.freddiemac.com.

Q92. REVISED Is there a limit to the balloon payment on the end? Is there a maximum amount?

Deleted. Refer to Q96.

Q93. If subordination of a junior lien holder is required and that junior lien holder imposes a fee or cost reimbursement requirement, can the servicer pay the item and capitalize the amount?

The servicer may not capitalize junior lien holder subordination fees. Servicers are not required, but may choose to pay those fees out of pocket and offset costs out of their incentive payments.

Q94. If a loan was modified in the past and has a principal/interest forbearance tied to the previous modification, can that previous forbearance amount be capitalized? How should that balance be handled?

Any prior forbearance amount may be capitalized to the extent that such forbearance is permitted under, and any required disclosures comply with, all applicable laws, rules and regulations.

Q95. If the servicer cannot reduce the borrower's payment to achieve the 31 percent target monthly mortgage payment ratio, can the servicer still modify the loan under HAMP (for example, to a 35 percent monthly mortgage payment ratio) and receive HAMP incentives?

If the servicer cannot reduce the borrower's monthly mortgage payment ratio to the target of 31 percent, the modification will not satisfy the HAMP requirements and no incentives will be payable in connection with the modification. However, the servicer should consider all other loss mitigation options that may be available based on investor guidelines and contractual agreements.

Q96. REVISED Are there limits to how much forbearance is required in the standard modification waterfall?

If the result of the NPV test is "positive", servicers are not required to forbear more than the greater of (i) 30 percent of the unpaid principal balance of the mortgage loan (after any capitalization under Step 1 of the standard modification waterfall) or (ii) an amount resulting in a modified interest-bearing balance that would create a current mark-to-market loan-to-value ratio equal to 100

percent. If the borrower's monthly mortgage payment cannot be reduced to the target monthly mortgage payment ratio of 31 percent unless the servicer forbears more than the amounts described above, the servicer may consider the borrower ineligible for a HAMP modification. However, servicers are permitted, at their discretion, to forbear principal in excess of the amounts described above in order to achieve the target monthly mortgage payment ratio of 31 percent.

If the result of the NPV test is "negative", the servicer may not forbear more than an amount resulting in a modified interest-bearing balance that would create a current mark-to-market loan-to-value ratio equal to 100 percent. If the borrower's monthly mortgage payment cannot be reduced to the target monthly mortgage payment ratio of 31 percent unless the servicer forbears more than the amount described above, the servicer must consider the borrower ineligible for a HAMP modification.

Q97. Is a borrower with a mortgage loan that has a current remaining term (prior to modification) that is greater than 480 months eligible for a HAMP modification?

Yes. The fact that the loan's current remaining term is greater than 480 months does not disqualify the borrower from HAMP eligibility. If the borrower is otherwise eligible under HAMP and reduction of the borrower's current interest rate to two percent would not be sufficient to reach the target monthly mortgage payment ratio of 31 percent, the servicer should skip the term extension step of the standard modification waterfall and proceed to the principal forbearance step of the waterfall to attempt to achieve the target monthly mortgage payment ratio of 31 percent. The servicer should enter the remaining term in the NPV input field labeled "Amortization Term after Modification" so that the number in this field and the "Remaining Term" NPV input field are identical.

O. Incentives and Payments

Q98. What does it mean to be in good standing?

A borrower is considered to be in good standing under the program if they are not delinquent by the equivalent of three full monthly payments at the end of the month in which the last of the three delinquent payments was due.

Q99. If there is a 30-60 day delinquency during the year, will the incentive payments still accrue?

Borrower "pay for success" principal balance reduction payments will accrue as long as the borrower is current and makes his or her monthly payment on time (the payment is made by the last day of the month in which the payment is due). For example, if the borrower is current and makes 10 out of 12 payments on time, he or she will be credited for 10/12 of the annual incentive payment as long as the loan is in good standing at the time the annual incentive is paid. A borrower whose loan is delinquent on a rolling 30- or 60-day basis will not accrue annual incentive payments.

Servicer "pay for success" fees will be paid annually as long as the loan is in good standing at the time the annual incentive is paid.

Q100. How does a borrower lose good standing?

If a borrower misses three payments following execution of a Home Affordable Modification Agreement (three monthly payments are due and unpaid on the last day of the third month), the

loan is no longer considered to be in "good standing". A loan that is not in good standing permanently loses eligibility to receive further incentives and reimbursements under the program. Undisbursed payments to borrowers, servicers and investors, even if accrued, will not be made. Once lost, good standing cannot be restored and eligibility for incentives and interest reimbursements cannot be reclaimed, even if the borrower fully cures the delinquency.

Q101. REVISED Is a borrower that has failed a HAMP modification eligible for another HAMP offer?

No. A borrower that fails a HAMP modification is not eligible for another HAMP offer. However, the servicer must work with the borrower to attempt to cure the delinquency. If a cure is not possible, the servicer must consider the borrower for any other home retention loss mitigation options that may be available. If those options are unsuccessful, the servicer must consider the borrower for a short sale or deed-in-lieu when applicable.

Q102. In what form will the incentive payments be paid -- physical checks or wires? Will they be by individual loan or consolidated? If consolidated, will Fannie Mae provide loan-level accounting for the incentives? Are there any differences in payment method between Fannie Mae, Freddie Mac and non-GSE? Finally, for investor payments, can you clarify when the investor incentive will be sent to the servicer? For securitization Trusts, is Treasury going to issue any guidance on how those funds are to be passed through to security holders?

Incentive payments for all modifications, whether held by Fannie Mae, Freddie Mac or non-GSE investors, will be paid via wire transfer in a consolidated fashion. Fannie Mae will provide loan-level accounting for the incentives. The investor monthly cost share reduction payment is paid monthly to servicers starting in the first month after the official modification. It is the servicers' obligation to remit the investor monthly cost share reduction payments to the appropriate investors/security holders. Treasury is not providing guidance on how those funds are to be passed through to security holders of securitization trusts. However, Freddie Mac, Treasury's Compliance Agent, will monitor to ensure that cost share reduction payments are remitted to security holders and that pay for success payments are applied to borrower accounts in accordance with the program's guidelines.

Q103. If a borrower receives a modification under HAMP and pays the loan off early, would the borrower subsequently receive his or her accrued incentive for the months in which he or she performed (e.g., the borrower pays off the mortgage before the anniversary date of the beginning of the trial period, but had accrued several months of incentive)? Would a servicer receive any incentive payment?

Incentives, including accrued but unearned incentives, will not be paid to any party after the loan is paid in full.

Q104. For GSE loans, do the respective announcements, bulletins, and Guide chapters published by either Fannie Mae or Freddie Mac constitute part of the "guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008" for purposes of determining the scope and availability of the Servicer Safe Harbor for Mortgage Modifications as set forth in section 201 of the Helping Families Save Their Homes Act of 2009?

Yes. In order to enjoy the protections afforded by the Servicer Safe Harbor, servicers of loans owned, guaranteed, or securitized by Fannie Mae ("Fannie Mae Mortgages") must service Fannie Mae Mortgages in accordance with Fannie Mae Announcement 09-05R and any related announcement published by Fannie Mae governing the implementation of HAMP with respect to Fannie Mae Mortgages. In order to enjoy the protections afforded by the Servicer Safe Harbor, servicers of loans owned, guaranteed, or securitized by Freddie Mac ("Freddie Mac Mortgages") must service Freddie Mac Mortgages in accordance with the Freddie Mac Seller/Servicer Guide, Chapter C65 and any related Bulletins published by Freddie Mac governing the implementation of HAMP with respect to Freddie Mac Mortgages.

Q105. NEW Is the investor payment reduction cost share compensation retroactive to the trial period start date, or does it accrue from modification effective date forward and pay annually on that anniversary date?

The investor payment reduction cost share compensation accrues monthly from the effective date of the official modification, not from the start of the trial period. The compensation is paid monthly beginning the month following month of the effective date of the official modification. Such compensation shall accrue monthly as the borrower makes each payment so long as the loan is in good standing as defined in Supplemental Directive 09-01. This compensation will be provided for up to five years or until the loan is paid off, whichever is earlier.

Q106. NEW If a borrower's "pay for performance" incentive is due to be paid when the borrower is delinquent, should the servicer apply the payment as a principal curtailment?

In the event the borrower is delinquent, but still in good standing, the borrower's incentive should continue to be applied as a curtailment to the interest-bearing UPB.

P. Government Monitoring Data

Q107. What information are servicers required to collect?

Servicers must request information regarding the race, sex, and ethnicity (Government Monitoring Data) of any borrower (including any co-borrower) who seeks a modification under HAMP.

Q108. Why does the federal government need the Government Monitoring Data?

In the federal Fair Housing Act, Congress prohibited discrimination in the sale and financing of housing and charged HUD with administering the Fair Housing Act. HUD requests the data in order to ensure that HAMP modifications are conducted in compliance with the Fair Housing Act. Under the Fair Housing Act, neither note holders nor their servicers may discriminate against any person

seeking a modification under HAMP on the basis of race, national origin, sex, or any other prohibited basis.

Q109. REVISED When are servicers required to begin collecting and reporting Government Monitoring Data?

Servicers should refer to the guidance provided in Supplemental Directive 09-06 with respect to the collection and reporting of Government Monitoring Data.

Q110. At what point in the HAMP process is the requirement to request Government Monitoring Data triggered, and how should servicers request Government Monitoring Data from the borrower?

Government Monitoring Data must be requested when servicers receive a modification request under HAMP from the borrower. A request will be considered to have been received once the borrower has furnished the servicer with either a Hardship Affidavit (Rev. April 2009 or later) or an MHA Request for Modification and Affidavit form ("RMA"). Servicers should request the Government Monitoring Data as follows:

(a) If the borrower completes the Hardship Affidavit or RMA in a face-to-face setting by mail or over the Internet, the borrower will be able to read the disclosure contained just beneath the Information for Government Monitoring Purposes section heading, determine whether he or she wishes to furnish the Government Monitoring Data, and complete the remainder of the Information for Government Monitoring Purposes section accordingly. "Complete" means either furnish the requested Government Monitoring Data or check the box which states "I do not wish to furnish this information".

(b) If the servicer is gathering the information necessary to complete the Government Monitoring Data from the borrower in a face-to-face interview or over the phone, the servicer should first read to the borrower the disclosure contained just beneath the Information for Government Monitoring Purposes section heading. This will inform the borrower that the federal government requests this monitoring information in order to monitor compliance with federal statutes that prohibit lenders from discriminating against borrowers based on the borrower characteristics collected in the Government Monitoring Data. It will also inform the borrower that if he or she chooses not to provide the Government Monitoring Data, then, where the Hardship Affidavit or RMA is taken in person, the servicer is required to note the data on the basis of visual observation or surname. After reading the disclosure to the borrower, the servicer should ask the borrower whether he or she desires to furnish the information. If the borrower elects to furnish the Government Monitoring Data, the servicer should read the race, ethnicity and sex categories and options from the Information for Government Monitoring Purposes section, ask the borrower which boxes he or she would like checked, and then check the boxes as directed by the borrower. If the borrower declines to furnish the information, see Q112 below.

While servicers must ask and encourage each borrower who completes a Hardship Affidavit or RMA to furnish the Government Monitoring Data, servicers may not require the borrower to furnish the Government Monitoring Data.

Q111. What response should a servicer provide when asked by a borrower why the Government Monitoring Data is requested?

Servicers should ensure that their servicing staff and managers understand the importance of requesting that HAMP participants provide the Government Monitoring Data. The federal government requests this monitoring information in order to monitor compliance with federal statutes that prohibit lenders from discriminating against borrowers on the basis of race, ethnicity and sex. In instances where borrowers decline to provide the information, servicing staff should be provided with training and job aids, e.g., desk references, scripts and, where feasible, system prompts, to supply this information as described below in Q113.

Additionally, servicers should ensure that their internal quality control plans include procedures for monitoring compliance with these requirements regarding the request for Government Monitoring Data.

Q112. What if the borrower declines to provide the Government Monitoring Data?

If a borrower declines or fails to furnish all or part of the Government Monitoring Data, either the servicer or the borrower should note that fact on the Hardship Affidavit or RMA.

(a) If the borrower completes the Hardship Affidavit or RMA in a face-to-face setting and chooses not to furnish the Government Monitoring Data, he or she should check the "I do not wish to furnish this information" box within the Information for Government Monitoring Purposes section of the Hardship Affidavit or RMA. If the borrower chooses not to check the box, the servicer should note this fact on the form. See Q113 below for further guidance on providing the Government Monitoring Data based on visual observation or surname.

(b) If the borrower completes the Hardship Affidavit or RMA by mail, telephone or over the Internet, he or she should check or direct the servicer to check the "I do not wish to furnish this information" box within the Information for Government Monitoring Purposes section of the Hardship Affidavit or RMA. If the borrower chooses not to furnish the data or check the box, the servicer should indicate in the appropriate spaces within the Information for Government Monitoring Purposes section that the Hardship Affidavit or RMA was received by mail, telephone, or Internet and note the fact that the borrower chose not to furnish the Government Monitoring Data.

(c) If the borrower furnishes the hardship information to the servicer as the servicer completes the Hardship Affidavit or RMA in either a face-to-face interview or over the phone, and the borrower elects not to furnish the Government Monitoring Data, the servicer should check the "I do not wish to furnish this information" box within the Information for Government Monitoring Purposes section of the Hardship Affidavit or RMA. If the servicer is completing the Hardship Affidavit or RMA over the phone, note that fact in the appropriate space within the Information for Government Monitoring Purposes section.

Q113. If the borrower declines to provide the Government Monitoring Data, must servicers provide it?

If a borrower declines to provide the Government Monitoring Data, servicers must attempt to provide it if the Hardship Affidavit or RMA is completed in a face-to-face meeting with the borrower

(either by the borrower or by the servicer based on information gathered from the borrower during the interview). In that situation, servicers should note the borrower's race, ethnicity and sex, but only to the extent possible on the basis of visual observation or surname.

If the borrower declines to provide the Government Monitoring Data or fails to provide the information on a Hardship Affidavit or RMA taken by mail, telephone or over the Internet, the data need not be provided.

Q114. If the borrower declines to provide Government Monitoring Data in connection with a request for modification but a servicer has race, ethnicity and sex data in its system that was obtained at the time of loan origination, should the servicer complete the Hardship Affidavit or RMA using the original race, ethnicity and sex data?

If the servicer has reasonable access to Government Monitoring Data supplied by the borrower at origination and the borrower and co-borrower remain the same, the servicer is required to provide that information.

Q115. If servicers have race, ethnicity and sex data in their systems obtained at the time of loan origination, should the original data be replaced with the Government Monitoring Data from the Hardship Affidavit or RMA? Should servicers amend any HMDA reporting for the year in which the loan origination occurred?

This is a question that should be directed to the servicers' counsel or compliance expert.

Q116. If a servicer has not asked for Government Monitoring Data in connection with a modification request it has already received, does the servicer need to contact the borrower to request the Government Monitoring Data now?

Yes. The servicer should contact the borrower and ask him or her to furnish the Government Monitoring Data prior to completing the modification if the monitoring information is required and the servicer failed to request it. There are several ways the servicer can make the request. They include:

(a) Mailing to the borrower either (i) a blank Hardship Affidavit or RMA containing the Information for Government Monitoring Purposes section, or (ii) an exact copy of the Information for Government Monitoring section of the Hardship Affidavit or RMA. The servicer should request that the borrower read and complete the Information for Government Monitoring Information Purposes section and mail the form back to the servicer. The servicer should inform the borrower that while he or she is encouraged to complete the form, he or she is not required to complete it. If the servicer mails the entire Hardship Affidavit or RMA, the servicer is encouraged to strike through all sections of the Hardship Affidavit or RMA (including the signature lines) except for the Information for Government Monitoring Purposes section in order to avoid confusion and rework on the part of the borrower. Either mailing should include a cover letter describing the intended use and importance of the Government Monitoring Data and encouraging the borrower to provide it. Servicers should also either provide a self addressed postage paid envelope for return of the form, or should provide a toll free number and/or internet address that the borrower may use to supply the data.

(b) Telephone the borrower and request the Government Monitoring Data by following the guidance furnished in Q110 above. As indicated in Q110, in requesting the Government Monitoring Data by phone, the servicer must use the exact text from the Information for Government Monitoring Purposes section of the Hardship Affidavit or RMA to request and record responses from the borrower and any co-borrower. The servicer should also develop a script for use by their servicing staff to encourage borrowers to voluntarily furnish the Government Monitoring Data request.

(c) Send by e-mail or make available to the borrower through a website, access to a digital online form or a .pdf copy of either (i) the Hardship Affidavit or RMA containing the Information for Government Monitoring Purposes section, or (ii) the Information for Government Monitoring Purposes section of the Hardship Affidavit or RMA only. The format and text of any electronic or digital version of the Information for Government Monitoring Purposes section must be identical to that found in the Hardship Affidavit or RMA. Be sure to request that the borrower read and complete the Information for Government Monitoring Purposes section and, as appropriate, either submit to the servicer electronically or print and mail the completed form back to the servicer.

The servicer's email or website should explain the intended use and importance of the Government Monitoring Data and encourage the borrower to provide it. It should also inform the borrower that while he or she is encouraged to complete the form, he or she is not required to complete it. If the servicer makes available the entire Hardship Affidavit or RMA, the servicer is encouraged to emphasize to the borrower that only the Information for Government Monitoring Purposes section should be completed. In the event the servicer makes an electronic version of the Hardship Affidavit, the RMA or the Information for Government Monitoring Purposes section available to the borrower, the servicer must comply with all applicable privacy, data security, disclosure and other laws and regulations.

Q117. If the prior version of the Hardship Affidavit (which did not contain the Information for Government Monitoring Purposes section) has been completed and signed by the borrower, does a servicer need to ask the borrower to complete the current version of the Hardship Affidavit (Rev. April 2009 or later) or the RMA, in whole or in part?

Yes. Prior to the completion of the modification, the servicer should ask the borrower to complete only the Information for Government Monitoring Purposes section of the current version of the Hardship Affidavit or the RMA. See Q116 above for three ways in which a servicer may make the request. However, please note that when asking the borrower to complete the form, the servicer should clearly instruct the borrower not to complete or sign the remaining portions of the current version of the Hardship Affidavit or the RMA.

Q118. Will Freddie Mac, in its capacity as Compliance Agent for the Treasury, monitor servicer compliance with collection of Government Monitoring Data?

Yes. Freddie Mac is currently developing its compliance and monitoring protocol which will include monitoring of servicers with respect to requests for and the collection and reporting of Government Monitoring Data.

Q119. Does a servicer have the legal authority to request Government Monitoring Data from borrowers?

The Federal Reserve Board regulations interpreting ECOA permit the collection of information on the race, ethnicity and sex of borrowers when the information is "required by a[n] . . . agreement . . . entered into with . . . an enforcement agency…to monitor or enforce compliance with [ECOA], this regulation, or other federal or state statutes or regulations." 12 C.F.R. 202.5(a)(2). HUD has requested the collection of the data pursuant to its obligation to enforce the Fair Housing Act (see a copy of the HUD letter here).

On behalf of HUD, Treasury has directed Fannie Mae, as a financial agent of the United States, to enter into agreements to require servicers that offer modifications under HAMP to request Government Monitoring Data from borrowers (see a copy of the Treasury letter here).

Fannie Mae has incorporated Supplemental Directive 09-02, which explains these data collection requirements, into the Servicer Participation Agreements by reference. As a result, Supplemental Directive 09-02: (a) constitutes an agreement entered into between Fannie Mae, on behalf of HUD, and servicers participating in HAMP; and (b) is an agreement entered into by participating servicers with an enforcement agency (i.e., HUD) to permit the enforcement agency to monitor or enforce compliance with federal law, within the meaning of 12 C.F.R. 202.5(a)(2).

If a servicer has any questions regarding its legal obligations, the servicer should consult its own counsel.

Exhibit 5

Supplemental Directive 09-08 *November 3, 2009*

Home Affordable Modification Program – Borrower Notices

Background

In Supplemental Directive 09-01, the Treasury Department (Treasury) announced the eligibility, underwriting and servicing requirements for the Home Affordable Modification Program (HAMP). Under HAMP, servicers apply a uniform loan modification process to provide eligible borrowers with sustainable monthly payments for their first lien mortgage loans. While HAMP program guidelines are intended to reach a broad range of at-risk borrowers, there will be loans that cannot be approved for a HAMP Trial Period Plan (Trial Period Plan) or official HAMP modification, and there will be borrowers who choose not to accept a Trial Period Plan or official HAMP modification offer. In such cases, borrowers must be informed in writing of the reasoning for servicer determinations regarding program eligibility.

This Supplemental Directive provides guidance to servicers of first lien mortgage loans that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages). Servicers of mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac should refer to the related HAMP guidelines issued by the applicable GSE.

Servicers participating in HAMP with respect to Non-GSE Mortgages are required to execute a Servicer Participation Agreement, through which they are contractually obligated to "perform the services required under the Program Documentation and the Agreement in accordance with the practices, high professional standards of care, and degree of attention used in a well managed [servicing] operation". That high standard of care is considered to include providing borrowers with timely and accurate written communication about the modification process, including but not limited to, notice that a borrower will not be offered a HAMP modification. This Supplemental Directive provides servicers with additional guidance related to the format, content and timing of notices that must be provided to borrowers requesting consideration for a HAMP modification (Borrower Notices). This Supplemental Directive is effective January 1, 2010; however, servicers are encouraged to implement this guidance as soon as possible.

Borrower Notices

A servicer must send a Borrower Notice to every borrower that has been evaluated for HAMP but is not offered a Trial Period Plan, is not offered an official HAMP modification, or is at risk of losing eligibility for HAMP because they have failed to provide required financial documentation. The written notices must comply with all laws, rules and regulations including but not limited to, the Equal Credit Opportunity Act, when applicable to the transaction.

Evaluation for HAMP. Supplemental Directive 09-06 announced additional data reporting requirements that are triggered when a mortgage loan is evaluated for HAMP. It provided that a mortgage is evaluated for HAMP when one of the following events has occurred:

- A borrower has submitted a written request (either hardcopy or electronic submission) for consideration for a HAMP modification that includes, at a minimum, current borrower income and a reason for default or explanation of hardship, as applicable; or
- A borrower has verbally provided sufficient financial and other data to allow the servicer to complete a Net Present Value (NPV) analysis; or
- A borrower has been offered a Trial Period Plan.

When a borrower is evaluated for HAMP and the borrower is not offered a Trial Period Plan or official HAMP modification, servicers are required to provide data specified in *Schedule IV* of Supplemental Directive 09-06 (Schedule IV) to Fannie Mae as Treasury's program administrator. The data reporting requirements in Schedule IV are designed to document the disposition of borrowers evaluated for HAMP.

Whenever a servicer is required to provide data specified in Schedule IV, the servicer must also comply with the requirements in this Supplemental Directive and send the appropriate Borrower Notice. With the exception of the Notice of Incomplete Information, all Borrower Notices must be mailed no later than 10 business days following the date of the servicer's determination that a Trial Period Plan or official HAMP modification will not be offered. Borrower Notices may be sent electronically only if the borrower has previously agreed to exchange correspondence relating to the modification with the Servicer electronically.

Content of Borrower Notices. The content of the Borrower Notices will vary depending on the information intended to be conveyed or the determination made by the servicer. All Borrower Notices must be written in clear, non-technical language, with acronyms and industry terms such as "NPV" explained in a manner that is easily understandable. The explanation(s) should relate to one or more of the Not Approved/Not Accepted reason codes specified in Schedule IV. Model clauses for reasons that relate to the codes in Schedule IV are attached as Exhibit A. Use of the model clauses is optional; however, they illustrate a level of specificity that is deemed to be in compliance with the language requirements of this Supplemental Directive.

- *Non-Approval* – for borrowers not approved for a Trial Period Plan or official HAMP modification, this notice must provide the primary reason or reasons for the non-approval. The notice must also describe other foreclosure alternatives for which the borrower may be eligible, if any, including but not limited to other modification programs, short sale and/or deed in lieu or forbearance, and identify the steps the borrower must take in order to be considered for those options. If the servicer has already approved the borrower for another foreclosure alternative, information necessary to participate in or complete the alternative should be included. Whenever a non-government foreclosure prevention option is discussed, the notice should be clear that the borrower was considered for but is not eligible for HAMP.

When the borrower is not approved for a HAMP modification because the transaction is NPV negative, the notice must, in addition to an explanation of NPV, include a list of certain input fields that are considered in the NPV decision and a statement that the borrower may, within 30 calendar days of the date of the notice, request the date the NPV calculation was completed and the values used to populate the NPV input fields defined in Exhibit A. The purpose of providing this information is to allow the borrower the opportunity to correct values that may impact the analysis of the borrower's eligibility.

If the borrower, or the borrower's authorized representative, requests the specific NPV values orally or in writing within 30 calendar days from the date of the notice, the servicer must provide them to the borrower within 10 calendar days of the request. If the loan is scheduled for foreclosure sale when the borrower requests the NPV values, the servicer may not complete the foreclosure sale until 30 calendar days after the servicer delivers the NPV values to the borrower. This will allow the borrower time to make a request to correct any values that may have been inaccurate.

Upon written receipt from the borrower of evidence that one or more of the NPV values is inaccurate, the servicer must verify the evidence and if accurate must re-run the NPV calculation if the correction is material and is likely to change the NPV outcome. Other values not affected by the correction do not need to be changed from the first NPV calculation. If the borrower identifies inaccuracies in the NPV values, the servicer must suspend the foreclosure sale until the inaccuracies are reconciled. Servicers are not required to provide the numeric NPV results or NPV input values not enumerated in Exhibit A.

- *Payment Default During the Trial Period Plan* – this notice informs the borrower that the borrower failed to make all the trial period payments by the end of the Trial Period Plan and is in default. The notice must also describe other foreclosure alternatives for which the borrower may be eligible, if any, including but not limited to other modification programs, short sale and/or deed in lieu or forbearance and identify the steps the borrower must take in order to be considered for these options. If the servicer has already approved the borrower for another foreclosure alternative, information necessary to participate in or complete the alternative should be included. Whenever a non-government foreclosure prevention option is discussed, the notice should be clear that the borrower was considered for but is not eligible for HAMP.

- *Loan Paid Off or Reinstated* - this notice confirms that the subject loan was paid off or reinstated and must provide the payoff or reinstatement date. If the loan was reinstated this notice must include a statement that the borrower may contact the servicer to request reconsideration under HAMP if they experience a subsequent financial hardship.

- *Withdrawal of Request or Non-Acceptance of Offer* - this notice confirms that the borrower withdrew the request for consideration for either a Trial Period Plan or HAMP modification or did not accept a either a Trial Period Plan or a HAMP modification offer. Failure to make the first trial period payment in a timely manner is considered non-acceptance of the Trial Period Plan.

- *Incomplete Information* – this notice provides a list of the financial verification documents the servicer previously requested from the borrower but has not received. Servicers must develop and implement outreach procedures to obtain financial information from borrowers who do not provide verification documentation in a timely manner. As part of these procedures, the servicer must mail the borrower a notice listing all documents needed to complete the evaluation and a date by which the information must be received before the borrower becomes ineligible for HAMP. If the borrower fails to provide all required verification documents by the date provided, the servicer will declare the borrower ineligible for a modification and send the borrower a Non-Approval Notice.

  When used to determine if a borrower is qualified for a verified income Trial Period Plan, the servicer must send the notice to the borrower no earlier than 30 days after the date of the first written request for documentation and not less than 30 days before the servicer discontinues its evaluation for HAMP. When used in conjunction with a Trial Period Plan based on stated income, the servicer must send the notice not less than 30 calendar days prior to the expiration of a Trial Period Plan.

  As provided in Supplemental Directive 09-01, a servicer that offers a Trial Period Plan to a borrower based on stated income must obtain financial documentation in order to verify the borrower's eligibility for a HAMP modification. Supplemental Directive 09-01 provides that the servicer may, in its discretion, consider the offer of a Trial Period Plan to have expired at the end of 60 days if the borrower has not submitted the required documentation. The servicer must consider the Trial Period Plan to have expired if the borrower has not submitted the required documentation by the end of the trial period.

All Borrower Notices must also include the following:

- A toll-free number through which the borrower can reach a servicer representative capable of providing specific details about the contents of the Borrower Notice and reasons for a non-approval determination.
- The HOPE Hotline Number (888-995-HOPE), with an explanation that the borrower can seek assistance at no charge from HUD-approved housing counselors and can request assistance in understanding the Borrower Notice by asking for MHA HELP.
- Any information, disclosures or notices required by the borrower's mortgage documents and applicable federal, state and local law.

Compliance

Treasury has selected Freddie Mac to serve as its compliance agent for HAMP. Supplemental Directive 09-01 describes the overall roles and responsibilities of servicers and the compliance agent in performing servicer reviews and oversight, which are unchanged by this Supplemental Directive. As compliance agent, Freddie Mac will examine the expanded reporting codes provided to Treasury, the content and distribution of Borrower Notices sent to borrowers, and the responsiveness of the servicer's customer service hotline for borrowers seeking additional detail about the information contained in the Borrower Notice. Servicers are expected to retain in the

borrower file a copy of the Borrower Notice(s) sent to the borrower. The review will also confirm the existence and evaluate the effectiveness of the servicer's quality assurance program as it relates to the notification process and customer service hotline. Such evaluation will include, without limitation, the timing and size of the sample selection, the scope of the quality assurance reviews, and the reporting and remediation process.

Exhibit A

Model Clauses for Borrower Notices

The model clauses in this exhibit provide sample language that may be used to communicate the status of a borrower's request for a Home Affordable Modification. The model clauses relate to the Not Approved/Not Accepted reason codes in *Schedule IV* of Supplemental directive 09-06. Use of the model clauses is optional, however, they illustrate a level of specificity that is deemed to be in compliance with language requirements of the program.

Non Approval Notice

1. **Ineligible Mortgage**. We are unable to offer you a Home Affordable Modification because your loan did not meet one or more of the basic eligibility criteria of the Home Affordable Modification Program.
   - ☐ You did not obtain your loan on or before January 1, 2009.
   - ☐ Your loan with us is not a first lien mortgage.
   - ☐ The current unpaid principal balance on your loan is higher than the program limit. ($729,750 for a one unit property, $934,200 for a two unit property, $1,129,250 for a three unit property and $1,403,400 for a four unit property).

2. **Ineligible Borrower**. We are unable to offer you a Home Affordable Modification because your current monthly housing expense, which includes the monthly principal and interest payment on your first lien mortgage loan plus property taxes, hazard insurance and homeowner's dues (if any) is less than or equal to 31% of your gross monthly income (your income before taxes and other deductions) which, (*select one*) [you told us is $_____] OR [we verified as $_____]. Your housing expense must be greater than 31% of your gross monthly income to be eligible for a Home Affordable Modification. If you believe this verified income is incorrect, please contact us at the number provided below.

3. **Property Not Owner Occupied**. We are unable to offer you a Home Affordable Modification because you do not live in the property as your primary residence.

4. **Ineligible Property**. We are unable to offer a Home Affordable Modification because your property:
   - ☐ Is vacant
   - ☐ Has been condemned.
   - ☐ Has more than four dwelling units.

5. **Investor Guarantor Not Participating**. We are unable to offer you a Home Affordable Modification because:

   ☐ We service your loan on behalf of an investor or group of investors that has not given us the contractual authority to modify your loan under the Home Affordable Modification Program.

   ☐ Your loan is insured by a private mortgage insurance company that has not approved a modification under the Home Affordable Modification Program.

   ☐ Your loan is guaranteed and the guarantor has not approved a modification under the Home Affordable Modification Program.

6. **Bankruptcy Court Declined**. We are unable to offer you a Home Affordable Modification because you have filed for bankruptcy protection and the proposed modified loan terms were not approved by the Bankruptcy Court. You may wish to contact your bankruptcy counsel or trustee to discuss this decision.

7. **Negative NPV**. The Home Affordable Modification Program requires a calculation of the net present value (NPV) of a modification using a formula developed by the Department of the Treasury. The NPV calculation requires us to input certain financial information about your income and your loan including the factors listed below. When combined with other data in the Treasury model, these inputs estimate the cash flow the investor (owner) of your loan is likely to receive if the loan is modified and the investor's cash flow if the loan is not modified. Based on the NPV results the owner of your loan has not approved a modification.

   If we receive a request from you within 30 calendar days from the date of this letter, we will provide you with the date the NPV calculation was completed and the input values noted below. If, within 30 calendar days of receiving this information you provide us with evidence that any of these input values are inaccurate, and those inaccuracies are material, for example a significant difference in your gross monthly income or an inaccurate zip code, we will conduct a new NPV evaluation. While there is no guarantee that a new NPV evaluation will result in the owner of your loan approving a modification, we want to ensure that the NPV evaluation is based on accurate information.

   <u>Available NPV Inputs</u>

   a. Unpaid balance on the original loan as of [Data Collection Date]
   b. Interest rate before modification as of [Data Collection Date].
   c. Months delinquent as of [Data Collection Date]
   d. Next ARM reset date (if applicable)
   e. Next ARM reset rate (if applicable)
   f. Principal and interest payment before modification
   g. Monthly insurance payment
   h. Monthly real estate taxes
   i. Monthly HOA fees (if applicable)
   j. Monthly gross income
   k. Borrower's Total Monthly Obligations
   l. Borrower FICO

m. Co-borrower FICO (if applicable)
n. Zip Code
o. State

8. **Default Not Imminent**. We are unable to offer you a Home Affordable Modification because you are current on your mortgage loan and after reviewing the financial information you provided us we have determined that you are not at risk of default because:

☐ You have not documented a financial hardship that has reduced your income or increased your expenses, thereby impacting your ability to pay your mortgage as agreed.

☐ You have sufficient net income to pay your current mortgage payment.

☐ You have the ability to pay your current mortgage payment using cash reserves or other assets.

9. **Excessive Forbearance**. We are unable to offer you a Home Affordable Modification because we are unable to create an affordable payment equal to 31% of your reported monthly gross income without changing the terms of your loan beyond the requirements of the program.

10. **Previous HAMP Modification**. We are unable to offer you a Home Affordable Modification because your loan was previously modified under the Home Affordable Modification Program. The program does not allow more than one modification.

11. **Request Incomplete**. We are unable to offer you a Home Affordable Modification because you did not provide us with the documents we requested. A notice which listed the specific documents we needed and the time frame required to provide them was sent to you more than 30 days ago.

12. **Trial Plan Default**. We are unable to offer you a Home Affordable Modification because you did not make all of the required Trial Period Plan payments by the end of the trial period.

Loan Paid Off or Reinstated. We are not considering your request for a modification because:

☐ Your loan was paid in full on _____.

☐ Your loan was reinstated on _____ and you no longer appear to be in need of modification. If you feel that you are at risk of default please contact us to discuss your eligibility and qualification for a Home Affordable Modification.

Offer Not Accepted by Borrower / Request Withdrawn. We are not considering your request for a modification because:

☐ After being offered a Trial Period Plan or Home Affordable Modification you notified us on _____ that you did not wish to accept the offer.

☐ After initially asking to be considered for a Home Affordable Modification you withdrew that request on _____.

Incomplete Information Notice. We cannot continue to review your request for a Home Affordable Modification because:

- ☐ You are currently in a Trial Period Plan, however you have not provided all of the documentation we previously requested. If we do not receive the required documents by [insert expiration date of Trial Period Plan but no less than 30 days from the date of the letter] we will terminate your Trial Period Plan and may resume other means to collect any amounts due on your account. The documents we need are: [Insert list of required documents]
- ☐ You have requested consideration for a Trial Period Plan, however, you have not provided all of the documentation we previously requested. If we do not receive the required documents by [insert date no less than 30 days from the date of the letter] we will consider that you have withdrawn your request for a modification and may resume other means to collect any amounts due on your account. The documents we need are: [Insert list of required documents.]

Exhibit 6

Making Home Affordable Program

Servicer Performance Report Through January 2010

Report Highlights

Number of Permanent Modifications Nearly Doubles Over Previous Month

- In addition to the 116,000 permanent modifications, an additional 76,000 permanent modifications have been approved by servicers and are pending borrower acceptance.
- The median savings to borrowers in permanent modifications is more than $500 each month.

Over One Million Borrowers Have Had the Opportunity to Modify Mortgages

- Nearly 1.3 million homeowners have received offers for trial modifications.
- More than 940,000 borrowers are in active modifications; 116,000 of those are permanent modifications.
- These homeowners' lower monthly mortgage payments represent a cumulative savings of $2.2 billion.
- New streamlined documentation requirements will make it easier for borrowers to apply for a HAMP modification and receive permanent relief.

Permanent Modifications Are Helping Borrowers Who Have Experienced a Loss of Income

- The majority of permanent modifications – 57.4% – are helping people who are coping with unemployment or who have seen a reduction in hours or wages.

National Participation by Mortgage Lenders and Coverage of Outstanding Mortgage Debt Is Extensive

- 110 servicers have signed servicer participation agreements to modify loans under HAMP, and new servicers continue to join the program each week. In addition, approximately 2,300 lenders service loans owned or guaranteed by Fannie Mae or Freddie Mac; these GSE loans are automatically eligible for HAMP.
- Approximately 89% of eligible mortgage debt outstanding is covered by HAMP participating servicers.

Inside:

Administration Housing Initiatives	2
Economic Indicators	3
HAMP Program Snapshot	4
Waterfall of HAMP-Eligible Borrowers	5
Characteristics of Permanent Modifications	6
Servicer Activity	7
HAMP Activity by State	8
HAMP Activity by Metropolitan Area	9
Modifications by Investor Type	9
List of Non-GSE Participants	10

MAKING HOME AFFORDABLE

Making Home Affordable Program

Servicer Performance Report Through January 2010

Overview of Administration Housing Stability Initiatives

Initiatives to Support Access to Affordable Mortgage Credit and Housing

Lower Mortgage Rates and Access to Credit:

- Continued financial support to maintain affordable mortgage rates through the Government Sponsored Enterprises (GSEs)
- Interest rates down a full percentage point over the past year. Every 1% reduction in interest rate saves a new borrower a median of $1500 annually in mortgage payments.
- Access to sustainable mortgages through the Federal Housing Administration (FHA).

State and Local Housing Initiatives:

- Access for Housing Finance Agencies to provide mortgages to first-time homebuyers, refinance opportunities for at-risk borrowers, and affordable rental housing.

Tax Credits for Housing:

- Homebuyer credit to help homebuyers buy new homes.
- Low-Income Housing Tax Credit (LIHTC) programs to support affordable rental housing.

Initiatives to Prevent Avoidable Foreclosures and Stabilize Neighborhoods

Making Home Affordable – Modifications:

- Goal of offering 3-4 million homeowners lower mortgage payments through a modification through 2012.
- Over 1 million homeowners have started trial modifications and nearly 1.3 million offers for trial modifications have been extended to borrowers.
- Homeowners in permanent modifications are saving a median of over $500 per month on mortgage payments. In aggregate, homeowners have saved over $2.2 billion through trial and permanent modifications.

Making Home Affordable – Refinancing:

- Refinancing flexibility and low mortgage rates, which have allowed over 4 million borrowers to refinance, saving an estimated $150 per month on average and more than $6.8 billion in total over the first year.

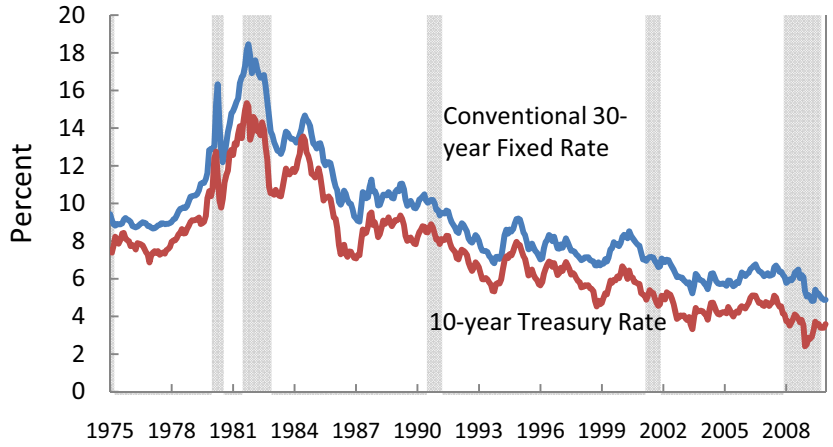
Neighborhood Stabilization and Community Development Programs:

- Support for the hardest hit communities to help stabilize neighborhoods.

Making Home Affordable Program

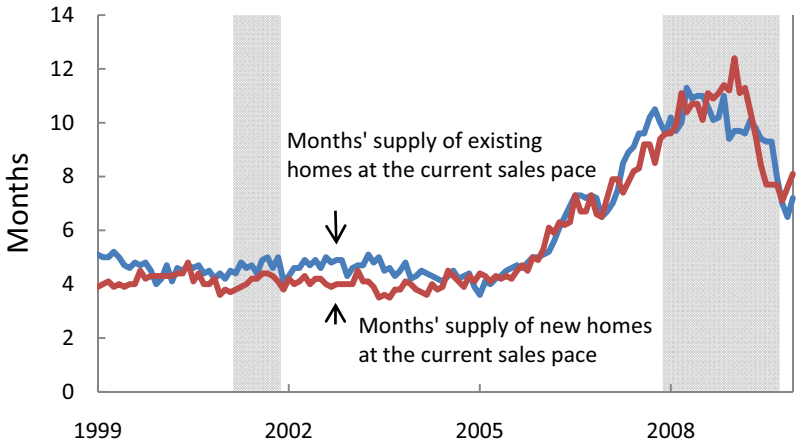
Servicer Performance Report Through January 2010

Mortgage Rates



Source: Federal Reserve.

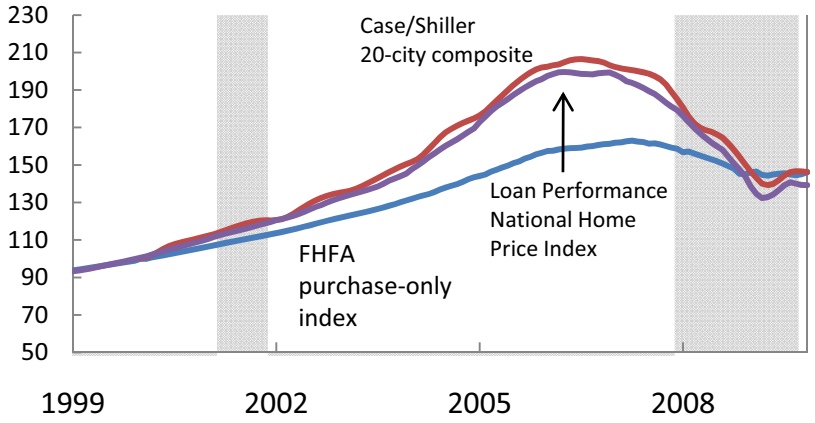
Housing Inventory



Source: National Association of Realtors.

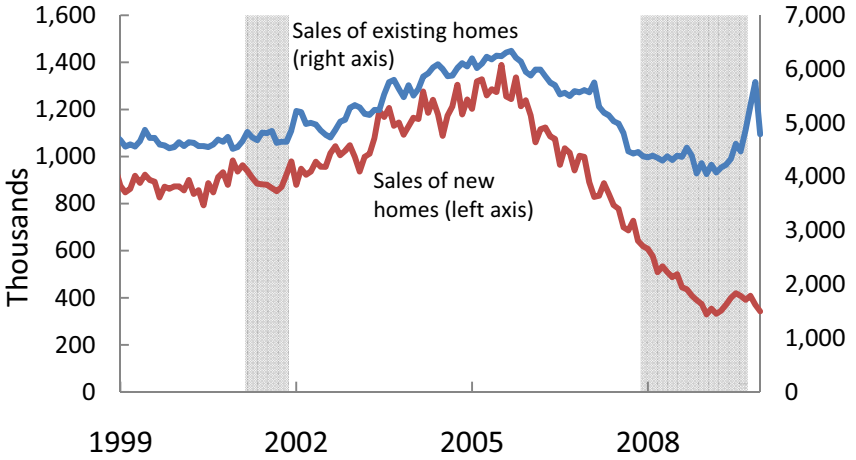
Home Prices

Index: Jan 2000 = 100



Sources: S&P/Case-Shiller Home Price Index; LP/Haver Analytics; FHFA.

New and Existing Home Sales



Source: National Association of Realtors, Census Bureau.

Note: Shaded areas indicate recessions.

MAKING HOME AFFORDABLE

Making Home Affordable Program

Servicer Performance Report Through January 2010

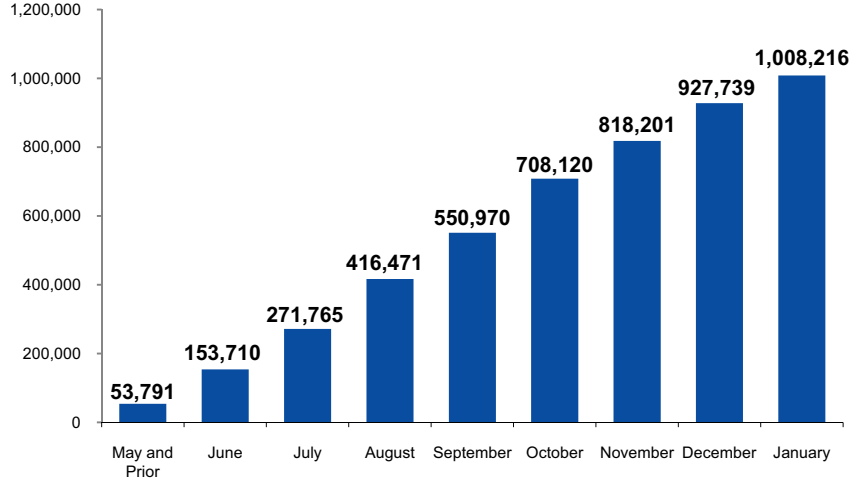
Home Affordable Modification Program (HAMP) Snapshot through January 2010[1]

Number of Trial Period Plan Offers Extended to Borrowers (Cumulative) [2]	1,269,937
All HAMP Trials Started Since Program Inception	1,008,216
All Active Modifications (Trial and Permanent)	946,735
Active Trial Modifications	830,438
Trial Modifications Canceled	60,476
All Permanent Modifications Started	117,302
Permanent Modifications Canceled	1,005
Active Permanent Modifications	116,297

[1] As reported by the HAMP system of record except where noted.
[2] Source: Survey data provided by servicers.

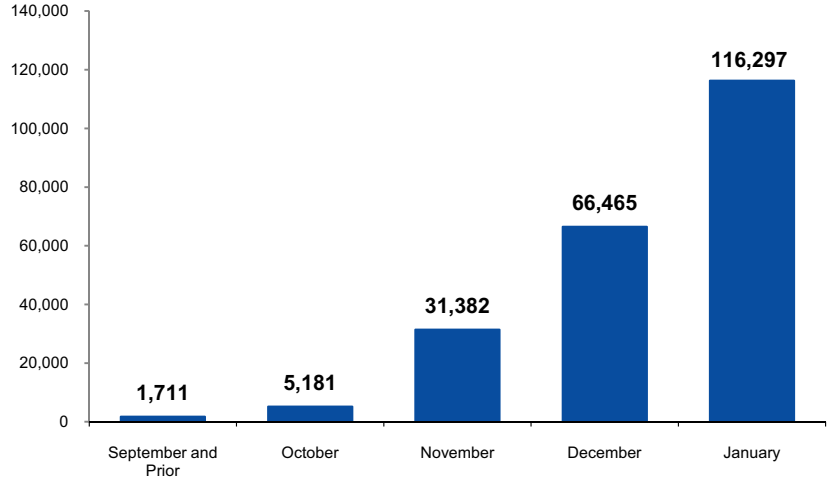
Additional information on HAMP can be found on MakingHomeAffordable.gov or by calling the Homeowner's HOPE Hotline at 1-888-995-HOPE (4673).

HAMP Trials Started (Cumulative, by Month)



Source: All trial modifications started by month first payment posted; based on numbers reported by servicers to the HAMP system of record.

Active Permanent Modifications



Source: HAMP system of record.

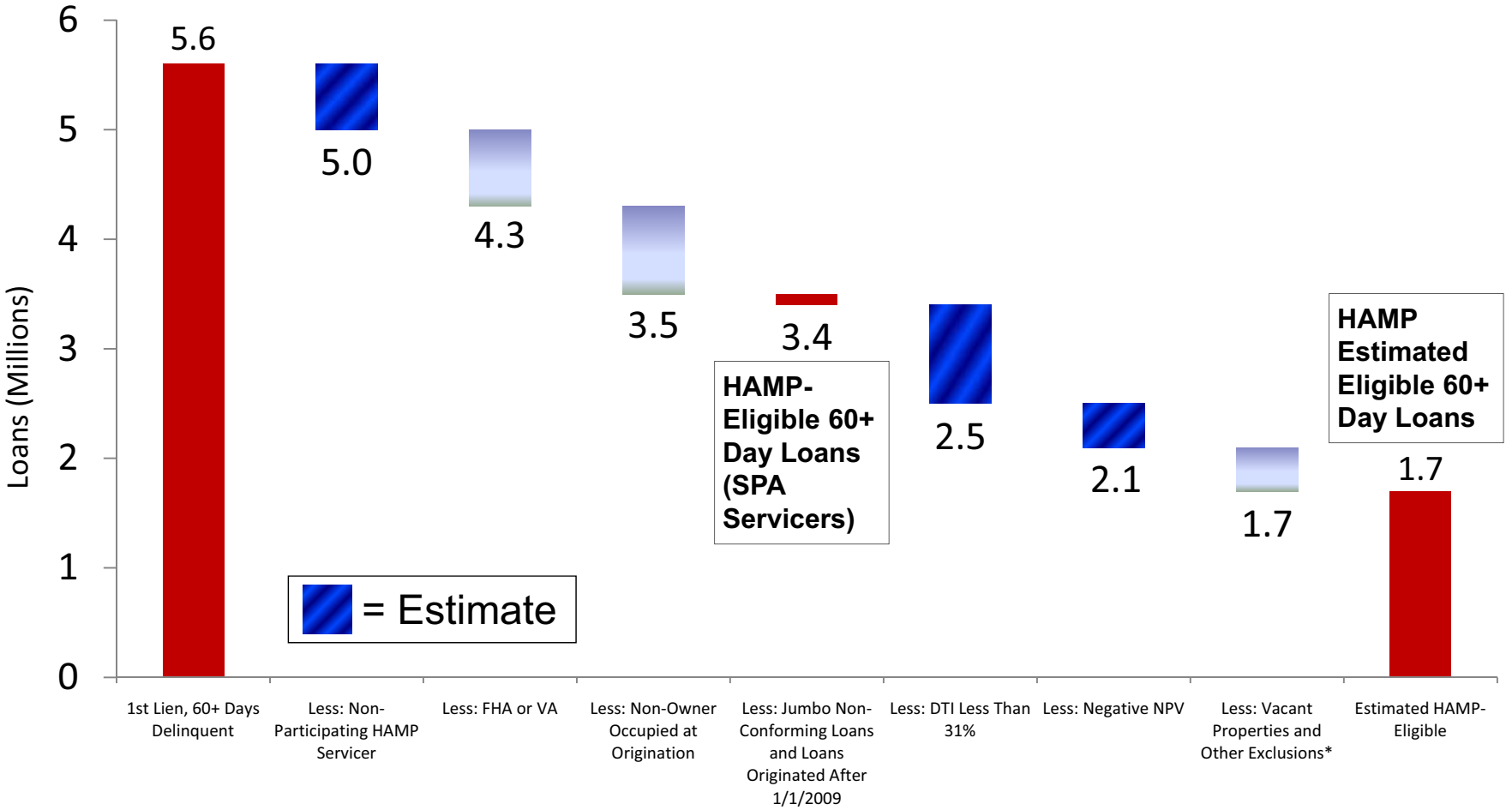
MAKING HOME AFFORDABLE

Making Home Affordable Program

Servicer Performance Report Through January 2010

Waterfall of HAMP-Eligible Borrowers

Not all 60-day delinquent loans are eligible for HAMP. Other characteristics may preclude borrower eligibility. Based on the estimates, of the 5.6 million borrowers who are currently 60 days delinquent , 1.7 million borrowers are eligible for HAMP. As this represents a point-in-time snapshot of the delinquency population and estimated HAMP eligibility, we expect that more borrowers will become eligible for HAMP from now through 2012.



•Other exclusions include: no longer owner-occupied; investor's pooling and servicing agreement precludes modification; and manufactured housing loans with titling/chattel issues that exclude them from HAMP.

Sources: Fannie Mae; monthly survey of participating servicers for December 31, 2009. Total 60+ figure from 3rd quarter MBA delinquency survey, Q3 2009. Excluded loans are as reported by servicers by survey who have signed a servicer participation agreement for HAMP.

MAKING HOME AFFORDABLE

Making Home Affordable Program

Servicer Performance Report Through January 2010

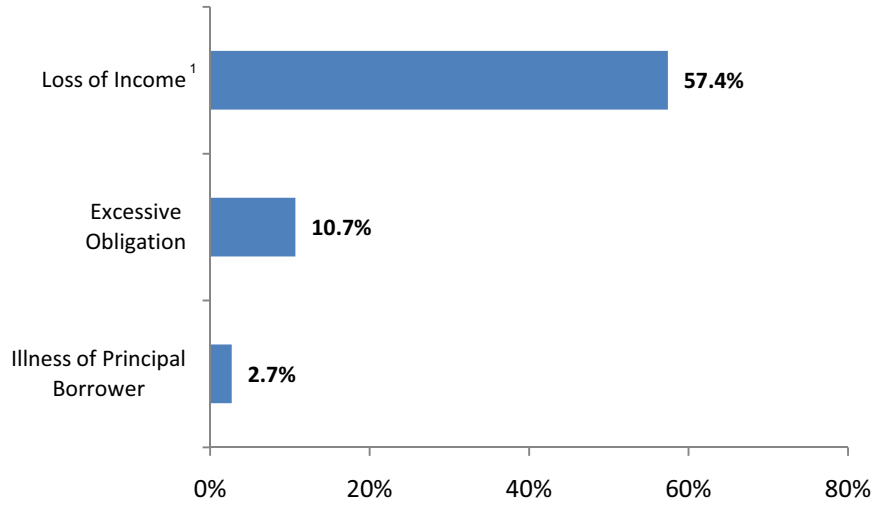
Modification Characteristics

- Borrowers in active trial and permanent modifications have saved more than $2.2 billion through HAMP modifications.
- Loss of income is the primary borrower hardship for borrowers in permanent modifications.

Permanent Modifications by Modification Steps:

Interest Rate Reduction	100%
Term Extension	41.7%
Principal Forbearance	27.4%

Predominant Hardship Reasons for Permanent Modifications



[1] Includes borrowers who are employed but have faced a reduction in hours and/or wages as well as those who have lost their jobs.
Note: Does not include 21.0% of permanent modifications reported as Other.

Select Median Characteristics of Permanent Modifications

Loan Characteristic	Before Modification	After Modification	Median Decrease
Front-End Debt-to-Income Ratio[1]	45.1%	31.0%	-14.2 pct pts
Back-End Debt-to-Income Ratio[2]	76.1%	59.7%	-14.7 pct pts
Median Monthly Payment	$1,431.30	$835.33	-$521.85

[1] Ratio of housing expenses (principal, interest, taxes, insurance and homeowners association and/or condo fees) to monthly gross income.
[2] Ratio of total monthly debt payments (including mortgage principal and interest, taxes, insurance, homeowners association and/or condo fees, plus payments on installment debts, junior liens, alimony, car lease payments and investment property payments) to monthly gross income. Borrowers who have a back-end debt-to-income ratio of greater than 55% are required to seek housing counseling under program guidelines.

Making Home Affordable Program

Servicer Performance Report Through January 2010

HAMP Modification Activity by Servicer

Servicer	Estimated Eligible 60+ Day Delinquency[1]	Trial Plan Offers Extended[2]	All HAMP Trials Started[3]	Active Trial Modifications[3]	Permanent Modifications[3]	Pending Permanent Modifications[4]	Active Trials + Permanents as Share of Eligible 60+ Day Delinquencies
American Home Mortgage Servicing Inc	127,521	15,137	12,142	11,764	333	2,171	9%
Aurora Loan Services, LLC	77,985	43,666	38,187	21,299	6,554	2,236	36%
Bank of America, NA[5]	1,066,025	329,745	237,766	221,395	12,761	13,701	22%
Bank United	5,287	1,211	944	816	128	629	18%
Bayview Loan Servicing, LLC	10,413	4,603	3,960	3,564	249	48	37%
Carrington Mortgage Services LLC	18,823	2,781	1,511	693	811	33	8%
CCO Mortgage	5,387	1,169	1,132	1,103	29	311	21%
CitiMortgage, Inc.	246,038	148,200	130,817	111,247	10,929	7,299	50%
Franklin Credit Management Corp.	9,527	76	8	8	0	NA	0%
GMAC Mortgage, Inc.	65,751	45,880	34,486	21,330	11,494	1,352	50%
Green Tree Servicing LLC	11,250	5,604	4,055	3,728	227	389	35%
HomEq Servicing	41,513	3,250	2,020	1,333	596	16	5%
J.P. Morgan Chase Bank, NA[6]	432,416	222,192	170,028	150,902	11,581	17,959	38%
Litton Loan Servicing LP	110,795	30,114	22,782	18,454	2,568	942	19%
Nationstar Mortgage LLC	49,556	24,399	17,427	12,953	2,271	696	31%
Ocwen Financial Corporation, Inc.	65,608	18,938	14,217	7,032	6,930	4,836	21%
OneWest Bank	112,200	48,548	30,509	24,741	3,087	5,848	25%
PNC Mortgage[7]	41,365	20,472	15,523	13,141	77	832	32%
Saxon Mortgage Services, Inc.	71,429	40,375	36,964	28,685	5,312	4,989	48%
Select Portfolio Servicing	62,041	50,149	31,630	17,915	6,761	1,402	40%
US Bank NA	29,393	10,626	7,799	6,673	1,126	2,366	27%
Wachovia Mortgage, FSB[8]	86,461	11,418	2,834	2,443	330	873	3%
Wells Fargo Bank, NA	357,483	188,749	144,904	119,476	17,652	7,554	38%
Other SPA servicers[9]	22,981	2,635	1,921	1,131	750	NA	8%
Other GSE Servicers[10]	277,253	NA	44,650	28,612	13,741	NA	15%
Total	**3,404,501**	**1,269,937**	**1,008,216**	**830,438**	**116,297**	**76,482**	**28%**

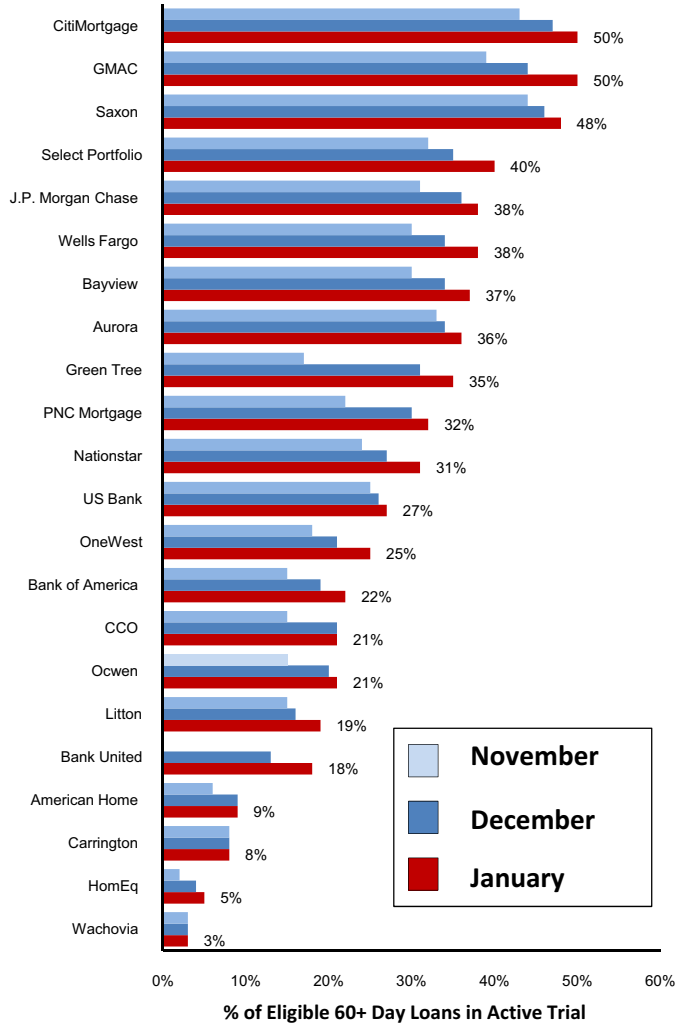
[1] Estimated eligible 60+ day delinquent mortgages as reported by servicers as of December 31, 2009 include conventional loans:
- in foreclosure and bankruptcy.
- with a current unpaid principal balance less than $729,750 on a one-unit property, $934,200 on a two-unit property, $1,129,250 on a three-unit property and $1,403,400 on a four-unit property.
- on a property that was owner-occupied at origination.
- originated prior to January 1, 2009.

Estimated eligible 60+ day delinquent loans excludes:
- FHA and VA loans.
- loans that are current or less than 60 days delinquent, which may be eligible for HAMP if a borrower is in imminent default.

For servicers enrolling after December 1 that did not participate in the 60+ day delinquency survey, the delinquency count is from the servicer registration form.

[2] As reported in the weekly servicer survey through January 28, 2010.
[3] Active trial and permanent modifications as reported into the HAMP system of record by servicers.
[4] As reported by servicers. Pending permanent modifications have been approved by the servicer but have not yet been accepted by the borrower. While pending, modifications are reflected in the count of active trials.
[5] Bank of America, NA includes Bank of America, NA, BAC Home Loans Servicing LP, Home Loan Services and Wilshire Credit Corporation.
[6] J.P. Morgan Chase Bank, NA includes EMC Mortgage Corporation.
[7] Formerly National City Bank.
[8] Wachovia Mortgage FSB includes Wachovia Bank NA.
[9] Other SPA servicers are entities with less than 5,000 estimated eligible 60+ day delinquencies that have signed participation agreements with Treasury and Fannie Mae. A full list of participating servicers is in the Appendix.
[10] Includes servicers of loans owned or guaranteed by Fannie Mae and Freddie Mac.

Active Modifications as a Share of Estimated Eligible 60+ Day Delinquencies



Note: Includes active trial and permanent modifications. Servicer combinations are the same as the table at left.
November trials as a share of 60+ day delinquencies on October 31, 2009.
December trials as a share of 60+ day delinquencies on November 30, 2009.
January trials as a share of 60+ day delinquencies on December 31, 2009.

MAKING HOME AFFORDABLE

Making Home Affordable Program

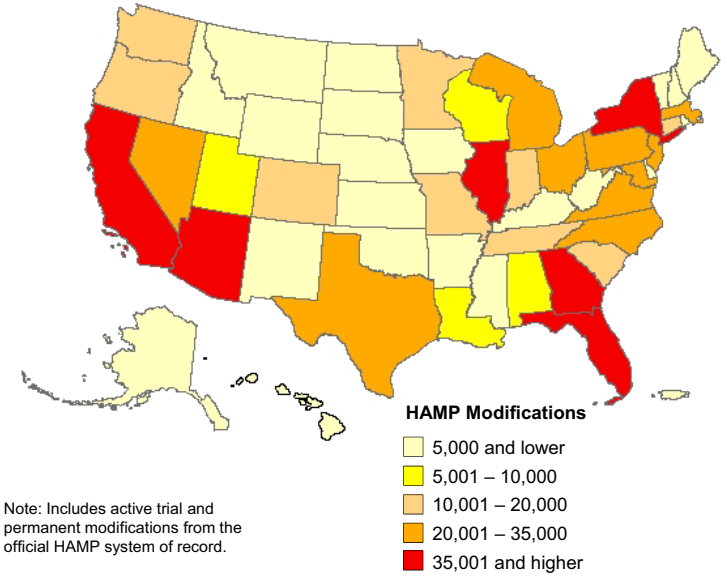
Servicer Performance Report Through January 2010

HAMP Activity by State

State	Active Trials	Permanent Modifications	Total
AK	483	56	539
AL	5,907	723	6,630
AR	2,355	337	2,692
AZ	40,438	7,000	47,438
CA	167,399	24,242	191,641
CO	11,708	1,797	13,505
CT	10,655	1,465	12,120
DC	1,538	191	1,729
DE	2,667	428	3,095
FL	101,971	14,598	116,569
GA	33,059	4,508	37,567
HI	2,891	436	3,327
IA	2,743	322	3,065
ID	3,335	508	3,843
IL	44,281	5,592	49,873
IN	9,255	1,216	10,471
KS	2,599	325	2,924
KY	3,647	453	4,100
LA	5,309	516	5,825
MA	18,647	2,788	21,435
MD	27,183	4,003	31,186
ME	2,201	337	2,538
MI	28,062	3,938	32,000
MN	15,359	2,584	17,943
MO	10,573	1,234	11,807
MS	3,413	474	3,887
MT	1,140	138	1,278
NC	17,531	2,510	20,041
ND	215	22	237
NE	1,367	186	1,553
NH	3,620	612	4,232
NJ	27,905	3,710	31,615
NM	3,012	390	3,402
NV	21,568	3,484	25,052
NY	38,706	3,777	42,483
OH	18,451	2,529	20,980
OK	2,713	298	3,011
OR	9,416	1,469	10,885
PA	19,494	2,416	21,910
RI	3,845	599	4,444
SC	9,178	1,209	10,387
SD	405	43	448
TN	9,452	1,338	10,790
TX	29,351	2,481	31,832
UT	7,029	1,105	8,134
VA	20,542	3,377	23,919
VT	598	93	691
WA	16,255	2,580	18,835
WI	8,344	1,243	9,587
WV	1,466	199	1,665
WY	440	73	513
Other*	717	345	1,062

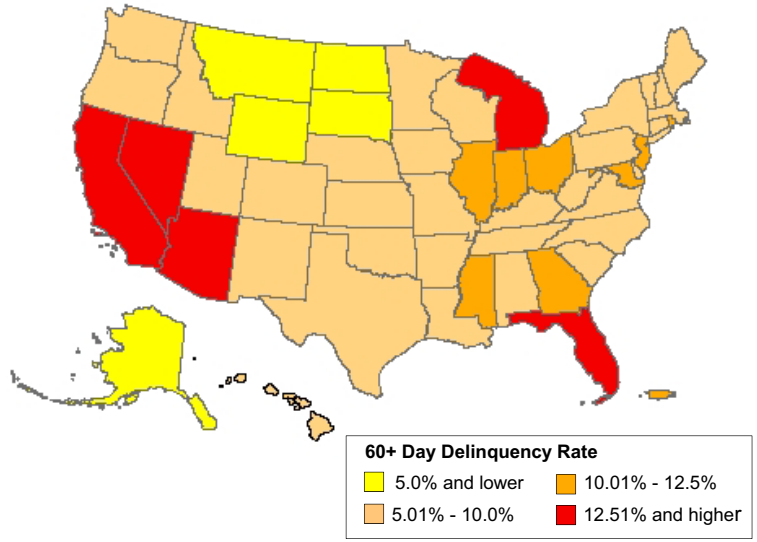
* Includes Guam, Puerto Rico and the U.S. Virgin Islands.

HAMP Activity by State



Note: Includes active trial and permanent modifications from the official HAMP system of record.

Mortgage Delinquency Rates by State



Source: Mortgage Bankers Association. Data is latest available and is as of 3rd Quarter 2009.

MAKING HOME AFFORDABLE

Making Home Affordable Program

Servicer Performance Report Through January 2010

15 Metropolitan Areas With Highest HAMP Activity

Metropolitan Statistical Area	Active Trials	Permanent Modifications	Total HAMP Activity	% of All HAMP Activity
New York-Northern New Jersey-Long Island, NY-NJ-PA	51,613	5,743	57,356	6.1%
Los Angeles-Long Beach-Santa Ana, CA	48,778	6,383	55,161	5.8%
Chicago-Naperville-Joliet, IL-IN-WI	42,683	5,381	48,064	5.1%
Miami-Fort Lauderdale-Pompano Beach, FL	39,356	5,143	44,499	4.7%
Riverside-San Bernardino-Ontario, CA	38,040	6,139	44,179	4.7%
Phoenix-Mesa-Scottsdale, AZ	33,157	5,834	38,991	4.1%
Washington-Arlington-Alexandria, DC-VA-MD-WV	28,520	4,330	32,850	3.5%
Atlanta-Sandy Springs-Marietta, GA	26,593	3,692	30,285	3.2%
Las Vegas-Paradise, NV	18,000	2,757	20,757	2.2%
Detroit-Warren-Livonia, MI	17,580	2,274	19,854	2.1%
Orlando-Kissimmee, FL	16,265	2,468	18,733	2.0%
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD	14,807	1,961	16,768	1.8%
Boston-Cambridge-Quincy, MA-NH	13,147	2,014	15,161	1.6%
Tampa-St. Petersburg-Clearwater, FL	12,752	1,943	14,695	1.6%
Minneapolis-St. Paul-Bloomington, MN-WI	12,517	2,123	14,640	1.5%

A complete list of HAMP activity for all MSAs is available at *http://www.financialstability.gov/docs/MSA%20Data%20Jan%202010.pdf*

HAMP Modifications by Investor Type (20 Largest Servicers)

Servicer	GSE	Private	Portfolio	Total
Bank of America, NA[1]	149,464	73,282	11,410	234,156
JP Morgan Chase NA[2]	74,390	65,579	22,514	162,483
Wells Fargo Bank, NA	100,361	31,497	5,270	137,128
CitiMortgage, Inc.	80,917	7,967	33,292	122,176
Saxon Mortgage Services Inc.	1,264	32,403	330	33,997
GMAC Mortgage, Inc.	18,085	14,739	0	32,824
Aurora Loan Services, LLC	16,087	11,437	329	27,853
OneWest Bank	15,580	10,514	1,734	27,828
Select Portfolio Servicing	567	21,219	2,890	24,676
Litton Loan Servicing LP	2,369	18,653	0	21,022
Nationstar Mortgage LLC	10,248	4,870	106	15,224
Ocwen Financial Corporation, Inc.	3,066	10,857	39	13,962
PNC Mortgage[3]	11,765	19	1,434	13,218
American Home Mortgage Servicing Inc	816	11,281	0	12,097
US Bank NA	6,107	9	1,683	7,799
Green Tree Servicing LLC	3,756	190	9	3,955
Bayview Loan Servicing, LLC	1	3,772	40	3,813
Wachovia Mortgage, FSB[4]	1,500	132	1,141	2,773
HomEq	0	1,898	31	1,929
Carrington Mortgage Services LLC	0	1,504	0	1,504
Remainder of HAMP Servicers	44,040	29	2,249	46,318
Total	**540,383**	**321,851**	**84,501**	**946,735**

[1] Bank of America, NA includes Bank of America, NA, BAC Home Loans Servicing LP, Home Loans Services and Wilshire Credit Corporation.
[2] J.P. Morgan Chase Bank, NA includes EMC Mortgage Corporation.
[3] Formerly National City Bank.
[4] Wachovia Mortgage FSB includes Wachovia Bank NA.

Note: Figures reflect active trials and permanent modifications.

Making Home Affordable Program

Servicer Performance Report Through January 2010

Appendix: Non-GSE Participants in HAMP

Allstate Mortgage Loans & Investments, Inc.
American Eagle Federal Credit Union
American Home Mortgage Servicing, Inc
AMS Servicing, LLC
Aurora Loan Services, LLC
Bank of America, N.A.[1]
Bank United
Bay Federal Credit Union
Bay Gulf Credit Union
Bayview Loan Servicing, LLC
Carrington Mortgage Services, LLC
CCO Mortgage
Central Florida Educators Federal Credit Union
Central Jersey Federal Credit Union
Chase Home Finance, LLC
CitiMortgage, Inc.
Citizens 1st National Bank
Citizens First Wholesale Mortgage Company
Community Bank & Trust Company
CUC Mortgage Corporation
Digital Federal Credit Union
DuPage Credit Union
Eaton National Bank & Trust Co
Farmers State Bank
Fidelity Homestead Savings Bank
First Bank
First Federal Savings and Loan
First Federal Savings and Loan Assn. of Lakewood
First Keystone Bank
First National Bank of Grant Park
Franklin Credit Management Corporation
Fresno County Federal Credit Union
Glass City Federal Credit Union
Glenview State Bank
GMAC Mortgage, Inc.
Golden Plains Credit Union
Grafton Suburban Credit Union
Great Lakes Credit Union
Greater Nevada Mortgage Services
Green Tree Servicing LLC
Harleysville National Bank & Trust Company
Hartford Savings Bank
Hillsdale County National Bank
Home Financing Center, Inc
HomEq Servicing
HomeStar Bank & Financial Services
Horicon Bank
Horizon Bank, NA
Iberiabank
IBM Southeast Employees' Federal Credit Union
IC Federal Credit Union
Idaho Housing and Finance Association
iServe Residential Lending LLC
J.P.Morgan Chase Bank, NA[2]
Lake City Bank
Lake National Bank
Litton Loan Servicing
Los Alamos National Bank
Marix Servicing, LLC
Members Mortgage Company, Inc
Metropolitan National Bank
Mission Federal Credit Union
MorEquity, Inc.
Mortgage Center, LLC
Mortgage Clearing Corporation
National City Bank
Nationstar Mortgage LLC
Oakland Municipal Credit Union
Ocwen Financial Corporation, Inc.
OneWest Bank
ORNL Federal Credit Union
Park View Federal Savings Bank
PennyMac Loan Services, LLC
PNC Bank, National Association
Purdue Employees Federal Credit Union
QLending, Inc.
Quantum Servicing Corporation
Residential Credit Solutions
RG Mortgage Corporation
Roebling Bank
RoundPoint Mortgage Servicing Corporation
Saxon Mortgage Services, Inc.
Schools Financial Credit Union
SEFCU
Select Portfolio Servicing
Servis One Inc., dba BSI Financial Services, Inc.
ShoreBank
Silver State Schools Credit Union
Sound Community Bank
Specialized Loan Servicing, LLC
Spirit of Alaska Federal Credit Union
Stanford Federal Credit Union
Sterling Savings Bank
Technology Credit Union
Tempe Schools Credit Union
The Bryn Mawr Trust Co.
The Golden 1 Credit Union
U.S. Bank National Association
United Bank of Georgia
United Bank Mortgage Corporation
Vantium Capital, Inc.
Verity Credit Union
Wachovia Mortgage, FSB[3]
Wells Fargo Bank, NA
Wescom Central Credit Union
Yadkin Valley Bank

[1] Bank of America, NA includes Bank of America, NA, BAC Home Loans Servicing LP, Home Loan Services and Wilshire Credit Corporation.
[2] J.P. Morgan Chase Bank, NA includes EMC Mortgage Corporation.
[3] Wachovia Mortgage FSB includes Wachovia Bank NA.

Exhibit 7

U.S. DEPARTMENT OF THE TREASURY
Washington
March 4, 2009

Making Home Affordable
Summary of Guidelines

Making Home Affordable ***will offer assistance to as many as 7 to 9 million homeowners***, making their mortgages more affordable and helping to prevent the destructive impact of foreclosures on families, communities and the national economy.

The Home Affordable Refinance program will be available to 4 to 5 million homeowners who have a solid payment history on an existing mortgage owned by Fannie Mae or Freddie Mac. Normally, these borrowers would be unable to refinance because their homes have lost value, pushing their current loan-to-value ratios above 80%. Under the Home Affordable Refinance program, many of them will now be eligible to refinance their loan to take advantage of today's lower mortgage rates or to refinance an adjustable-rate mortgage into a more stable mortgage, such as a 30-year fixed rate loan.

GSE lenders and servicers already have much of the borrower's information on file, so documentation requirements are not likely to be burdensome. In addition, in some cases an appraisal will not be necessary. This flexibility will make the refinance quicker and less costly for both borrowers and lenders. The Home Affordable Refinance program ends in June 2010.

The ***Home Affordable Modification*** program will help up to 3 to 4 million at-risk homeowners avoid foreclosure by reducing monthly mortgage payments. Working with the banking and credit union regulators, the FHA, the VA, the USDA and the Federal Housing Finance Agency, the Treasury Department today announced program guidelines that are expected to become standard industry practice in pursuing affordable and sustainable mortgage modifications. This program will work in tandem with an expanded and improved Hope for Homeowners program.

With the information now available, **servicers can begin immediately to modify eligible mortgages** under the Modification program so that **at-risk borrowers can better afford their payments.** The detailed guidelines (separate document) provide information on the following:

Eligibility and Verification

- Loans originated on or before January 1, 2009.
- First-lien loans on owner-occupied properties with unpaid principal balance up to $729,750. Higher limits allowed for owner-occupied properties with 2-4 units.
- All borrowers must fully document income, including signed IRS 4506-T, two most recent pay stubs, and most recent tax return, and must sign an affidavit of financial hardship.
- Property owner occupancy status will be verified through borrower credit report and other documentation; no investor-owned, vacant, or condemned properties.
- Incentives to lenders and servicers to modify at risk borrowers who have not yet missed payments when the servicer determines that the borrower is at imminent risk of default.
- Modifications can start from now until December 31, 2012; loans can be modified only once under the program.

Loan Modification Terms and Procedures

- Participating servicers are required to service all eligible loans under the rules of the program unless explicitly prohibited by contract; servicers are required to use reasonable efforts to obtain waivers of limits on participation.
- Participating loan servicers will be required to use a net present value (NPV) test on each loan that is at risk of imminent default or at least 60 days delinquent. The NPV test will compare the net present value of cash flows with modification and without modification. If the test is positive

– meaning that the net present value of expected cash flow is greater in the modification scenario – the servicer must modify absent fraud or a contract prohibition.

- Parameters of the NPV test are spelled out in the guidelines, including acceptable discount rates, property valuation methodologies, home price appreciation assumptions, foreclosure costs and timelines, and borrower cure and redefault rate assumptions.
- Servicers will follow a specified sequence of steps in order to reduce the monthly payment to no more than 31% of gross monthly income (DTI).
- The modification sequence requires first reducing the interest rate (subject to a rate floor of 2%), then if necessary extending the term or amortization of the loan up to a maximum of 40 years, and then if necessary forbearing principal. Principal forgiveness or a Hope for Homeowners refinancing are acceptable alternatives.
- The monthly payment includes principal, interest, taxes, insurance, flood insurance, homeowner's association and/or condominium fees. Monthly income includes wages, salary, overtime, fees, commissions, tips, social security, pensions, and all other income.
- Servicers must enter into the program agreements with Treasury's financial agent on or before December 31, 2009.

Payments to Servicers, Lenders, and Responsible Borrowers

- The program will share with the lender/investor the cost of reductions in monthly payments from 38% DTI to 31% DTI.
- Servicers that modify loans according to the guidelines will receive an up-front fee of $1,000 for each modification, plus "pay for success" fees on still-performing loans of $1,000 per year.
- Homeowners who make their payments on time are eligible for up to $1,000 of principal reduction payments each year for up to five years.
- The program will provide one-time bonus incentive payments of $1,500 to lender/investors and $500 to servicers for modifications made while a borrower is still current on mortgage payments.
- The program will include incentives for extinguishing second liens on loans modified under this program.
- No payments will be made under the program to the lender/investor, servicer, or borrower unless and until the servicer has first entered into the program agreements with Treasury's financial agent.
- Similar incentives will be paid for Hope for Homeowner refinances.

Transparency and Accountability

- Measures to prevent and detect fraud, such as documentation and audit requirements, will be central to the program.
- Servicers will be required to collect, maintain and transmit records for verification and compliance review, including borrower eligibility, underwriting, incentive payments, property verification, and other documentation.
- Freddie Mac will audit compliance.

###

Exhibit 8

Supplemental Documentation—Frequently Asked Questions Home Affordable Modification Program—2009-2010 Conversion Campaign

These frequently asked questions clarify the Supplemental Directives issued in connection with the Home Affordable Modification Program (HAMP). The questions and answers below should be reviewed by each servicer that has entered into a Servicer Participation Agreement (SPA) to participate in HAMP. These frequently asked questions constitute supplemental documentation that is included in, and shall be deemed part of, the HAMP Program Documentation described in Section 1 of the SPA.

January 8, 2010

Q0108-01 Is a borrower who has received a HAMP offer eligible for a subsequent HAMP offer? When is a servicer's SPA obligation to offer a borrower a HAMP modification considered satisfied?

A borrower who has a received a HAMP offer is ineligible for a subsequent HAMP offer, and the servicer's SPA obligation to offer the borrower a HAMP modification is considered satisfied, in the following circumstances:

- the borrower received a HAMP modification and lost good standing, or
- the borrower received a HAMP offer and made the first payment under trial period plan, but did not (i) make all required payments by the end of the trial period, or (ii) provide all required documents by the end of the trial period.

A borrower may seek reconsideration for a HAMP modification and the servicer is obligated to consider the borrower's request under the SPA, in the following circumstances:

- the borrower was found ineligible, either for a trial period plan or during the trial period plan, but circumstances such as income have changed sufficiently to impact the previous determination, or
- the borrower received a HAMP offer, but did not make the first trial period payment by the end of the month in which it was due.

(Note: This Conversion FAQ revises Supplemental Documentation FAQ #71, which has been simultaneously updated.)

January 6, 2010

REVISED

Q0106-01 **If a borrower did not make all required trial period payments by the end of the original trial period, but was nevertheless granted a Trial Period Extension under HAMP Waiver #20090803, as amended, may the borrower be offered a permanent HAMP modification if the borrower is otherwise eligible and makes all required trial period payments by the end of the Trial Period Extension?**

Yes. HAMP Waiver #20090803 required that a borrower make all original trial period payments by the end of the original trial period to qualify for a Trial Period Extension. Notwithstanding this requirement, a borrower who received a Trial Period Extension without making all of the original trial period payments by the end of the original trial period may be offered a permanent HAMP modification as long as: (i) the borrower makes all required trial period payments by the end of the Trial Period Extension; and (ii) the borrower is otherwise eligible under HAMP.

December 30, 2009

Q1230-01 **During the temporary review period required under Supplemental Directive 09-10, are the borrower notification requirements of Supplemental Directive 09-08 suspended for borrowers who have been evaluated and determined to be ineligible for HAMP for reasons other than property ineligibility?**

During the temporary review period required under Supplemental Directive 09-10, servicers must send a non-approval notice that complies with the requirements of Supplemental Directive 09-08 to a borrower who has submitted all required documents and trial payments and who has been determined to be ineligible because the property is (a) not the borrower's principal residence, (b) vacant or condemned, or (c) more than four dwelling units. In addition, servicers should cancel these trial modifications from the Treasury system of record.

During the temporary review period required under Supplemental Directive 09-10, borrowers who have submitted all required documents and trial payments and who have been determined to be ineligible for any reason other than property ineligibility must be sent a notice similar to the following:

> Based on our preliminary review, you may not be eligible for HAMP because [insert reason for non-approval as per Supplemental Directive 09-08]. However, at the direction of the Treasury Department, your mortgage loan has been placed in a review period until January 31, 2010. During this time you should continue to make your trial period payments. If you believe the information used in our preliminary review is incorrect or you have additional information that we may not have considered, please contact us immediately at [XXX-XXX-XXXX] but no later than [insert date that is 30 days from the date of this notice].

The notice should clearly state that the borrower will continue to be considered for HAMP through the later of January 31, 2010 or 30 days from the date of the notice provided to the borrower and will receive an additional written communication of the final eligibility decision. Borrowers who receive this notice should not be canceled in Treasury's system of record (IR2) and should not be considered for, or offered alternative modification options during the extended review period.

Q1230-02 **During the temporary review period required under Supplemental Directive 09-10, if a borrower in an active HAMP trial modification refuses to accept a HAMP offer or withdraws a request to be considered for HAMP, may the servicer send the borrower a notice under Supplemental Directive 09-08 and cancel the trial modification from the Treasury system of record?**

Yes. However, servicers should not solicit borrowers to opt out of consideration for HAMP during the temporary review period.

December 22, 2009

REVISED

Q1222-01 **How should servicers handle situations where an eligible borrower successfully completed the HAMP trial period but has not been converted by the servicer to a permanent modification in a timely fashion?**

In situations where an eligible borrower successfully completed the trial period (including providing the required documentation and making the required payments) and should have been converted to a permanent modification, but for reasons beyond their control were not timely evaluated for a permanent modification, the servicer must promptly make a determination as to whether the borrower is eligible for a permanent HAMP modification. If the borrower is eligible, then the servicer must offer the borrower a permanent HAMP modification as soon as possible, but in no event later than sixty days after discovering the error, including, but not limited to, discovery through notification from MHA Compliance, the servicer's own procedures, or notice provided by the borrower. In addition, servicers must make permanent HAMP modification offers to eligible borrowers that are identified as currently being in this situation by February 28, 2010. The permanent HAMP modification offered must put the borrower in the same position as he or she would have been had the servicer converted the borrower to a permanent modification in accordance with the program requirements. A borrower in this situation remains eligible for a permanent HAMP modification regardless of whether the borrower failed to make trial period payments following the successful completion of the trial period.

In order to achieve this result, the servicer should take the following steps:

- the modification should be made effective as of the date the modification would have become effective if the servicer had converted the borrower in a timely fashion (the "Modification Effective Date") and the applicable Interest Rate Cap shall be the first Freddie Mac Weekly Primary Mortgage Market Survey (PMMS) Rate for 30-year fixed rate conforming loans, rounded to the nearest 0.125 percent, issued in the month prior to the Modification Effective Date. For example, for a loan with a Modification Effective Date of July 1, 2009, the Interest Rate Cap should be 5.29% which is the PMMS Rate issued on June 4, 2009, the first PMMS rate issued in June 2009 (the PMMS archives are available at http://www.freddiemac.com/pmms/docs/30-yr_historics.xls);

- the initial unpaid principal balance of the modification should be the unpaid principal balance of the loan as of the Modification Effective Date, plus all accrued but unpaid amounts allowed to be capitalized under HAMP as of the Modification Effective Date;

- any payments made by the borrower after the Modification Effective Date until the time of conversion should be applied retroactively in accordance with the modified terms; however, any shortfalls between the actual payments made by the borrower after the Modification Effective Date (including any missed payments) and payments that are due under the modified terms until the time of conversion must be advanced by the servicer, capitalized and deferred as a non-interest bearing amount that is due and payable by the borrower at the time of payoff, maturity or transfer. The servicer may collect this amount subject to such restrictions as the investor may establish including, but not limited to, restrictions on collecting this amount in the event of a short payoff or other disposition of the loan;

- if, due to a shortfall in payments, amounts are deferred, the servicer must amend the Home Affordable Modification Agreement in accordance with the Document Summary for the modification agreement; and

- the servicer must take the necessary steps to correct any credit reporting for the borrower since the Modification Effective Date.

As part of its regular compliance activities, MHA Compliance will test for compliance with this guidance. In addition, MHA Compliance has been conducting, and intends to continue to conduct, focused file reviews on populations of aged trial modifications.

Servicers should note that this guidance does not apply to situations where a borrower has been granted a Trial Period Extension under HAMP Waiver #20090803 because the borrower made all required trial period payments during the original trial period but did not submit all necessary documentation. In that situation, the borrower must make an additional trial period payment for each extension month by the end of the Trial Period Extension to receive a permanent HAMP modification.

December 15, 2009

Q1215-01 What are some examples of appropriate methods of reconciling inconsistent income information in accordance with Supplemental Directive 09-07?

Some examples where servicers may use their business judgment in reconciling inconsistent income information include, but are not limited to, the following:

- use the current income documentation when there is a discrepancy between tax returns and current income documentation if the borrower has changed jobs or has had a substantial pay cut;

- use the information from the tax transcript obtained via form 4506-T when differences exist between the transcript and the tax return provided by the borrower;

- when Schedule E is not available to document rental income because property was not previously rented, accept a current lease agreement and bank statements or cancelled rent checks; and

- when two paystubs indicate different periodic income, use year-to-date earnings to determine the average periodic income.

Notwithstanding the foregoing examples, servicers should not modify a mortgage loan if there is reasonable evidence indicating the borrower submitted income information that is false or misleading or if the borrower otherwise engaged in fraud in connection with the modification.

December 11, 2009

Q1211-01 During December 2009, for borrowers currently in active trial periods that have made their first trial period payments, may a servicer consider a borrower's trial period plan offer to have expired if the borrower has not returned all required documentation within 60 days of the offer?

No. Notwithstanding the guidance provided in Supplemental Directive 09-01 regarding the servicer's ability, in its discretion, to consider the offer of a trial period plan to have expired at the end of 60 days if the borrower has not submitted all documentation required under HAMP, during December 2009 servicers may not exercise this right and must give borrowers the full length of the trial period, including any available trial period extension, to submit all required documentation prior to considering the trial period plan to have expired and cancelling the trial period from the Treasury system of record. In addition, to the extent that servicers have already cancelled trial period plans scheduled to end in December 2009 as a result of incomplete documentation where the borrower did not have the entire trial period to submit income documentation, Treasury strongly encourages servicers to reverse this action in order to give the borrower the full length of the trial period to satisfy the HAMP documentation requirements. The guidance provided Q71 of the November 12, 2009 version of the HAMP frequently asked questions does not apply to any such reversals.

Q1211-02 Once a borrower has made the first trial period payment, may a servicer cancel a borrower's trial period for non-payment prior to the end of the trial period?

No. As provided in Supplemental Directive 09-01, the borrower must make all required trial period payments by the last day of the final trial period month. To the extent that a servicer has cancelled a trial period plan for a borrower that has made the first trial period payment as a result of non-payment prior to the end of the trial period, the servicer must reverse this action in order to give the borrower the full length of the trial period to satisfy the HAMP trial period payment requirements.

Servicers are reminded that, as provided in Supplemental Directive 09-03, the servicer must receive the borrower's first trial period payment on or before the last day of the month in which the Trial Period Plan Effective Date occurs ("Trial Period Offer Deadline"). The servicer must consider the trial period plan offer to have expired if the servicer does not receive the borrower's first trial period payment by the Trial Period Offer Deadline.

Q1211-03 If a borrower voluntarily provides alimony, separation maintenance or child support income and, as a result of that income, the borrower is ineligible for a HAMP offer, may the servicer remove that income from consideration and re-evaluate the borrower for HAMP eligibility?

Yes. Pursuant to Supplemental Directive 09-01 and Supplemental Directive 09-07, the borrower is not required to provide alimony, separation maintenance or child support income to qualify for HAMP. If the borrower voluntarily provides such income, and that income renders the borrower ineligible for a HAMP offer, the servicer is allowed to remove that income from consideration and re-evaluate the borrower for HAMP eligibility.

December 10, 2009

Q1210-01 If the borrower has submitted all required documentation except a signed and completed IRS Form 4506-T or 4506T-EZ, may the servicer use the remaining income documentation to verify the borrower's income and waive the requirement for a signed and completed IRS Form 4506-T or 4506T-EZ?

No, the servicer must always collect a signed and completed IRS Form 4506-T or 4506T-EZ, as applicable. However, if the borrower has not submitted a signed and completed Form 4506-T or 4506T-EZ but has submitted the most recent tax return (including all applicable schedules), has made all required trial period payments and is otherwise eligible for a HAMP modification, the servicer should send the Home Affordable Modification Agreement and the Form 4506-T or 4506T-EZ, as applicable, to the borrower in the same package and instruct the borrower to execute and return both documents in order to receive a permanent HAMP modification. If the borrower has not submitted the most recent tax return (including all applicable schedules), the servicer must obtain the signed and completed Form 4506-T or 4506T-EZ from the borrower and determine the borrower's eligibility for a HAMP modification prior to sending the Home Affordable Modification Agreement to the borrower.

Q1210-02 How do servicers comply with the timing requirements for notices set forth in Supplemental Directive 09-07 and Supplemental Directive 09-08?

Currently, servicers are required to comply only with the response times set forth in Supplemental Directive 09-07. Effective January 1, 2010, servicers must comply with both the response times set forth in Supplemental Directive 09-07 and the response times set forth in Supplemental Directive 09-08. Accordingly:

- If a servicer determines that a borrower is not eligible for a trial period plan based solely upon review of a borrower's verbal information and/or a completed RMA, the servicer must either:

  (i) send a non-approval notice that satisfies the requirements of Supplemental Directive 09-08 to the borrower by the tenth business day after receipt of the verbal information or completed RMA, or

  (ii) send a notice to the borrower by the tenth business day after receipt of the verbal information or completed RMA acknowledging the borrower's request for consideration under HAMP, and send a non-approval notice that satisfies the requirements of Supplemental Directive 09-08 to the borrower by the tenth business day following the date of the servicer's decision that a trial period plan will not be offered.

- If a servicer determines that a borrower is not eligible for a trial period plan based upon review of a full verified documentation package (including the Form 4506-T or Form 4506T-EZ, completed RMA, and income documentation), the servicer must send a non-approval notice that satisfies the requirements of Supplemental Directive 09-08 to the borrower by the earlier of (a) the tenth business day following the date of the servicer's decision that a trial period plan will not be offered, or (b) the 30th day after the borrower's documentation package is complete.

December 9, 2009

Q1209-01 If the borrower has submitted all required documentation except a signed Hardship Affidavit, may the servicer use alternative methods to verify the borrower's hardship and waive the requirement for a signed Hardship Affidavit?

No. However, if the borrower has not submitted or signed the Hardship Affidavit but has made all required trial period payments and is otherwise eligible for a HAMP modification, the servicer should send the Home Affordable Modification Agreement and the Hardship Affidavit to the borrower in the same package and instruct the borrower to execute and return both documents in order to receive a permanent HAMP modification.

December 8, 2009

Q1208-01 Does HAMP distinguish between short-term and long-term hardship for eligibility purposes?

No. HAMP does not distinguish between short-term and long-term hardships for eligibility purposes. As stated in Supplemental Directive 09-01 and Supplemental Directive 09-07, the borrower must attest to and describe one or more allowable hardships and that he or she is having difficulty making the current mortgage payment by signing the Hardship Affidavit or the MHA Request for Modification and Affidavit form. In addition, servicers are reminded to follow investor guidelines for determining eligibility for borrowers in imminent default.

Q1208-02 If a servicer sends an unsolicited HAMP offer to a borrower, but the borrower never responds to the offer or makes any trial period payments, is the borrower eligible for subsequent HAMP offer?

Yes. If the servicer sends an unsolicited HAMP offer to a borrower, but the borrower never responds to the servicer or makes a trial period payment, the borrower is eligible for a subsequent HAMP offer. In this instance, the servicer's obligation under the Servicer Participation Agreement to offer a borrower a HAMP modification is not considered satisfied.

Q1208-03 Should an existing escrow shortage be included in calculating a borrower's monthly mortgage payment?

Yes. An existing escrow shortage currently being paid by the borrower should be included in the borrower's monthly mortgage payment. In addition, as provided in Supplemental Directive 09-01, if the servicer identifies any other escrow shortage as part of the servicer's escrow analysis, the servicer must take steps to eliminate the shortage in compliance with applicable laws, rules and regulations, including, but not limited to, RESPA and TILA.

Q1208-04 When should a servicer use a "cancel" versus a "decline" when reporting to the Treasury system of record?

There is not a "decline" field in the Treasury system of record. If a loan is being cancelled and it is already a permanent modification, then the servicer should perform an "official cancellation transaction" and then a "trial cancellation transaction."

Q1208-05 **If the servicer has multiple reasons for a borrower not receiving a HAMP offer or falling out of a HAMP trial period or permanent modification, how should the servicer report those reasons to the Treasury system of record as required by Supplemental Directive 09-06?**

When more than one reason code under Schedule IV of Supplemental Directive 09-06 is applicable, the servicer must report the prevalent reason for the non-approval, non-acceptance or fallout. Pursuant to Supplemental Directive 09-08, the non-approval notices must comply with all applicable laws and regulations, including Regulation B when applicable to the transaction.

December 7, 2009

Q1207-01 **May a servicer apply the interim month guidance set forth in Supplemental Directive 09-03 with respect to payments to situations in which the borrower's documentation needed to verify HAMP eligibility is received after the servicer's cutoff date?**

Yes. The interim month guidance set forth in Supplemental Directive 09-03 with respect to payments may also be applied to the receipt of documentation that is required to verify the borrower's eligibility for a HAMP modification. If the servicer receives the borrower's documentation after the servicer's cutoff date in the final trial period month but before the end of the final trial period month, the servicer may delay the modification effective date by one month in order to give the servicer time to finalize the modification, send the Home Affordable Modification Agreement to the borrower for signature, and receive the signed Home Affordable Modification Agreement from the borrower.

Q1207-02 **Does the servicer have to receive the signed Home Affordable Modification Agreement from the borrower prior to the effective date of the modification?**

No. The loan may be modified and the effective date of the modification does not need to be changed if the executed Home Affordable Modification Agreement is received from the borrower by the last day of the month in which the modification becomes effective. However, a servicer may not submit an official loan set up record to the HAMP Program Administrator to report the permanent modification until the servicer has obtained a fully executed Home Affordable Modification Agreement.

Q1207-03 **Are consecutive paystubs required to confirm a borrower's income?**

No. Although Supplemental Directive 09-01 and Supplemental Directive 09-07 require servicers to obtain a borrower's two most recent paystubs indicating year-to-date earnings, if the servicer can determine that the employment and year-to-date income is accurate by reviewing the paystubs provided, two non-consecutive paystubs are sufficient to meet HAMP requirements.

Exhibit 9

Bank of America

November 12, 2009

Bank of America
475 Crossroads Parkway
PO Box 9000
Chesterton, IN 46058 9000

Stacey Madamba

1563 Van Dyke Avenue
San Francisco CA 94124

First loan

Loan Number 6448446002-133

Dear Bank of America Customer:

This letter constitutes our offer to modify the Mortgage identified above, subject to the terms and conditions agreement. When signed by you, this letter will also constitute your acceptance and agreement to these terms and conditions.

Your mortgage is currently in default. Collection activities, which may include foreclosure, may continue. If you sign the attached acceptance and perform as required in this commitment, we will cease any collection activity when the mortgage is modified.

Indicate your acceptance of this offer for a Modified Mortgage under the terms and conditions outlined on pages 2 and 3 by signing the attached acceptance, which must be signed by each borrower and returned within seven days from the date of this letter. If we do not receive this signed acceptance letter, this offer will expire automatically without further notice.

Sincerely,

Loss Mitigation

New loan #
871665259

Loan Number 6448446002-133

Terms and Conditions Agreement

Section A. Terms of Modification

* The new principal balance will be $ 360,047.14.
* The interest rate(s), and the resulting principal and interest (P&I) payment(s), are set according to the following table. The last rate and payment amount listed will be in effect until the maturity of the Modified Mortgage.
* 3.00000% (P&I $ 1,591.23) effective with the 02/01/09 payment.
* The maturity date of the Modified Mortgage is November 1, 2036.
* All other terms and conditions of the mortgage will remain the same for the Modified Mortgage, including but not limited to provisions for late fees and the right of Bank of America. to pursue collection for default, including foreclosure.

Section B. Amounts to be Paid in Certified Funds

* A mortgagor contribution of $.00 is due within seven days from the date of this letter which includes any required escrow funds. These fees are estimates and may change. Should the title and attorney fees be less than the estimated figures, Bank of America will apply the overage accordingly. If they are more than stated, we will ask you to send us certified funds to cover the shortages.

Section C. Contingencies

* We may obtain a lender's title insurance policy or endorsement insuring the Modified Mortgage as a first lien. If you have any other encumbrances to the property, you may be required to obtain subordination agreements from other secured creditors.

* If your loan contains mortgage insurance, the modification is contingent upon approval from the mortgage insurer.

Terms and Conditions, Continued

* If any other issues-- including but not limited to deterioration in the condition of the property, lawsuits, liens, additional expenses, and defaulted amounts-- arise between the date of this commitment and the date on which the Modified Mortgage documents are to be signed, we may refuse to modify the Mortgage. We may then pursue collection actions, including foreclosure, if the current Mortgage is in default.

Acceptance of Offer for Modification

As borrowers on the Mortgage identified above, we accept the offer under the terms and conditions outlined in Sections A, B, and C, and we agree/acknowledge that:

* The commitment for a Modified Mortgage will not be considered a waiver of or defense to the right of Bank of America, N. A. to commence or continue any collection action, including foreclosure. Even when signed by Bank of America, N. A. and us, it will not prevent collection actions continuing if we fail to fulfill any of its terms and conditions.
* This commitment is contingent on those listed in Section C. Bank of America, N. A. shall determine whether the contingencies have been satisfied.
* We will pay by certified funds or Western Union (Code City - Louis State - KY) the total amount stated in Section B and any additional sums that may become due.

* If Bank of America, N. A. decided to add unpaid interest, taxes, insurance, and other expenses to the principal balance of the existing mortgage, the total, which would then be higher than the current balance, will be the new principal amount of the Modified Mortgage.
* We will sign all the documents necessary to complete the Modification and pay the amounts due on the date we receive the documents and the bill.
* We have failed to pay the Mortgage in accordance with its terms and are now in default. We have no defense or offsets against the right of Bank of America, N. A. to collect or foreclose.
* Please check the appropriate box:
We { } are { } are not currently occupying the property as our primary residence.
* All representations we made pursuant to our request for a Modified Mortgage are true and have been and will be relied upon by Bank of America, N. A. . Any breach of the representations will give us the right to terminate this commitment and pursue other rights and remedies.

RE: Loan Number 6448446002-133

Acceptance of Offer for Modification, Continued

We have had the opportunity to consult with legal and/or tax counsel prior to agreeing to the foregoing. We have willingly agreed to these terms and conditions whether or not we elected to retain such counsel.

S Madamba
Signature

11/17/09
Date

Signature

Date

Signature

Date

Signature
(133)

Date

Bank of America

November 13, 2009

Bank of America
475 Crosspoint Pkwy (DE5-019-01-01)
PO Box 5000
Getzville, NY 14068-5000

Stacey Madamba

1563 Van Dyke Avenue
San Francisco CA 94124

2nd Loan/Lien

Loan Number 6376187404-133

Dear Bank of America Customer:

This letter constitutes our offer to modify the Mortgage identified above, subject to the terms and conditions agreement. When signed by you, this letter will also constitute your acceptance and agreement to these terms and conditions.

Your mortgage is currently in default. Collection activities, which may include foreclosure, may continue. If you sign the attached acceptance and perform as required in this commitment, we will cease any collection activity when the mortgage is modified.

Indicate your acceptance of this offer for a Modified Mortgage under the terms and conditions outlined on pages 2 and 3 by signing the attached acceptance, which must be signed by each borrower and returned within seven days from the date of this letter. If we do not receive this signed acceptance letter, this offer will expire automatically without further notice.

Sincerely,

Loss Mitigation

New loan #
8715 13417

Loan Number 6376187404-133

Terms and Conditions Agreement

Section A. Terms of Modification

* The new principal balance will be $ 90,888.74.
* The interest rate(s), and the resulting principal and interest (P&I) payment(s), are set according to the following table. The last rate and payment amount listed will be in effect until the maturity of the Modified Mortgage.
* 2.00000% (P&I $ 355.07) effective with the 02/01/10 payment.
* The maturity date of the Modified Mortgage is November 1, 2037.
* All other terms and conditions of the mortgage will remain the same for the Modified Mortgage, including but not limited to provisions for late fees and the right of Bank of America to pursue collection for default, including foreclosure.

Section B. Amounts to be Paid in Certified Funds

* A mortgagor contribution of $.00 is due within seven days from the date of this letter which includes any required escrow funds. These fees are estimates and may change. Should the title and attorney fees be less than the estimated figures, Bank of America will apply the overage accordingly. If they are more than stated, we will ask you to send us certified funds to cover the shortages.

Section C. Contingencies

* We may obtain a lender's title insurance policy or endorsement insuring the Modified Mortgage as a first lien. If you have any other encumbrances to the property, you may be required to obtain subordination agreements from other secured creditors.

* If your loan contains mortgage insurance, the modification is contingent upon approval from the mortgage insurer.

Loan Number 6376187404-133

Terms and Conditions, Continued

* If any other issues-- including but not limited to deterioration in the condition of the property, lawsuits, liens, additional expenses, and defaulted amounts-- arise between the date of this commitment and the date on which the Modified Mortgage documents are to be signed, we may refuse to modify the Mortgage. We may then pursue collection actions, including foreclosure, if the current Mortgage is in default.

Acceptance of Offer for Modification

As borrowers on the Mortgage identified above, we accept the offer under the terms and conditions outlined in Sections A, B, and C, and we agree/acknowledge that:

* The commitment for a Modified Mortgage will not be considered a waiver of or defense to the right of Bank of America, N. A. to commence or continue any collection action, including foreclosure. Even when signed by Bank of America, N. A. and us, it will not prevent collection actions continuing if we fail to fulfill any of its terms and conditions.
* This commitment is contingent on those listed in Section C. Bank of America, N. A. shall determine whether the contingencies have been satisfied.
* We will pay by certified funds or Western Union (Code City - Louis State - KY) the total amount stated in Section B and any additional sums that may become due.

* If Bank of America, N. A. decided to add unpaid interest, taxes, insurance, and other expenses to the principal balance of the existing mortgage, the total, which would then be higher than the current balance, will be the new principal amount of the Modified Mortgage.
* We will sign all the documents necessary to complete the Modification and pay the amounts due on the date we receive the documents and the bill.
* We have failed to pay the Mortgage in accordance with its terms and are now in default. We have no defense or offsets against the right of Bank of America, N. A. to collect or foreclose.
* Please check the appropriate box:

We {X} are { } are not currently occupying the property as our primary residence.

* All representations we made pursuant to our request for a Modified Mortgage are true and have been and will be relied upon by Bank of America, N. A. . Any breach of the representations will give us the right to terminate this commitment and pursue other rights and remedies.

RE: Loan Number 6376187404-133

Acceptance of Offer for Modification, Continued

We have had the opportunity to consult with legal and/or tax counsel prior to agreeing to the foregoing. We have willingly agreed to these terms and conditions whether or not we elected to retain such counsel.

S Madam Co
Signature

11/17/09
Date

Signature

Date

Signature

Date

Signature
(133)

Date