

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

FRANKLIN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 10-044

MARK HEALY and DIANE E. HEALY,)
 Plaintiffs)
)
vs.)
)
BANK OF AMERICA and BAC HOME LOANS)
SERVICING, L.P. f/k/a COUNTRYWIDE HOME)
LOANS SERVICING, L.P.,)
 Defendants)

**SUPPLEMENTAL MEMORANDUM OF THE PLAINTIFFS IN SUPPORT OF THEIR
MOTION FOR A TEMPORARY RESTRAINING ORDER/PRELIMINARY
INJUNCTION**

I. INTRODUCTION

The Defendants seek to foreclosure on the Plaintiffs' home at 91 West Mountain Road in Bernardston, Massachusetts. Because it appears they have failed to comply with certain directives issued by the United States Treasury Department relating to delinquent loans, foreclosures, and short sales, this Court should issue an Order preventing them from proceeding with a foreclosure sale which is scheduled for Tuesday, June 15, 2010.

Bank of America received funds under the Trouble Asset Relief Program ("TARP"), 12 U.S.C. §5211. According to the Treasury Department, one of the goals of TARP was to prevent avoidable foreclosures. Bank of America entered into a Servicer Participation Agreement with the Treasury Department which addressed its obligations under the Home Affordable Modification Program ("HAMP") which was created pursuant to Section 101 and 109 of the Emergency Economic Stabilization Act of 2008 as amended by Section 7002 of the American Recovery and Reinvestment

Act of 2009. As a loan servicer, Bank of America is required to follow certain procedures when dealing with delinquent mortgages, foreclosures and short sale requests. It appears it has failed to follow those procedures. Accordingly, it should not be permitted to proceed with the foreclosure sale which is scheduled for Tuesday, June 15, 2010.

II. FACTUAL ALLEGATIONS

On or about April 13, 2009, Bank of America and the United States Department of Treasury entered into a Servicer Participation Agreement for the Home Affordable Modification Program (“HAMP”) under the Emergency Economic Stabilization Act of 2008. (Servicer Agreement, attached hereto as Exhibit 1).

Pursuant to Supplemental Directive 10-02, which was issued by the Treasury Department on March 24, 2010, servicers, like Bank of America, are required to follow certain guidelines when dealing with delinquent home mortgages. (Treasury Department Supplemental Directive 10-02, attached hereto as Exhibit 2). Among other things, they must:

- (a) Create clear and comprehensive written policies for identification and solicitation of borrowers who are potentially eligible for HAMP based on information in the servicer’s possession; (Supplemental Directive, attached hereto as Exhibit 2 at 2)
- (b) Pre-screen all first lien mortgage loans where two or more payments are due and unpaid to determine if they meet the basic criteria for consideration under HAMP;¹ (Exhibit 2 at 2)
- (c) Proactively solicit for HAMP any borrowers whose loan passes this pre-screen, unless the servicer has documented that the investor is not willing to participate in HAMP pursuant to the “investor solicitation section of this Supplemental Directive”; (Exhibit 2 at 2)

¹ Eligibility requirements include that the subject property is a residential property of 1-4 units, is occupied by the borrower as his or her principal residence, has not been vacant or condemned, is subject to a mortgage issued on or before January 1, 2009, has an unpaid principal balance which does not exceed \$729,750, and was not previously modified under HAMP.

- (d) Provide a written solicitation to mortgagee which clearly describes HAMP;
- (e) Provide borrowers who express interest in HAMP with a written communication via regular or electronic mail that clearly describes the initial package required to be submitted by the borrower to request a HAMP modification; (Exhibit 2 at 3)
- (f) Acknowledge receipt of HAMP paperwork received from borrowers within ten (10) business days through a written communication to the borrower that includes a description of the servicer's evaluation process and timeline; (Exhibit 2 at 4).

Servicers like Bank of America are barred under Supplemental Directive 10-2 from referring any loan to foreclosure unless and until at least one of the following circumstances exists:

- (a) The borrower is evaluated for HAMP and determined to be ineligible for the program;
- (b) The borrower is offered a trial period plan, but fails to make a trial period payment by the last day of the month in which such payment is due;
- (c) The servicer has established right party contact, has sent at least two written requests asking the borrower to supply required information in accordance with this Supplemental Directive and has otherwise satisfied the Reasonable Effort solicitation standard, and the borrower failed to respond by the dates indicated in those requests; or
- (d) The servicer has satisfied the Reasonable Effort solicitation standard without establishing right party contact; or
- (e) The borrower or co-borrower states he or she is not interested in pursuing HAMP modification and such statement is reflected in their servicing system.

(Exhibit 2 at 5).

On March 26, 2010, the Treasury Department issued a revised Supplemental Directive 09-09 which became effective April 5, 2010. (Revised Supplemental Directive 09-09, attached hereto as Exhibit 3). Revised Supplemental Directive 09-09 provides guidance to servicers for adoption and implementation of the Home Affordable Foreclosure Alternatives program ("HAFA"). (Exhibit 3 at

1). “HAFA is part of HAMP and provides financial incentives to servicers and borrowers who utilize a short sale or deed-in-lieu to avoid foreclosure on an eligible loan under HAMP”. (Exhibit 3 at 1). HAFA requires participating servicers to develop written policies that describe the basis on which they will offer the HAFA program to borrowers. (Exhibit 3 at 3). Servicers may not solicit a borrower for HAFA until the borrower has been evaluated for a HAMP modification in accordance with the provisions of Supplemental Directive 09-01 and any supplemental HAMP guidance. (Exhibit 3 at 3). Borrowers that meet the eligibility criteria for HAMP but who are not offered a trial period, do not successfully complete a trial period, or default on a HAMP modification should first be considered for other loan modification or retention programs offered by the servicer prior to being evaluated for HAFA. (Exhibit 3 at 2). “When a borrower, who has not previously evaluated for HAMP modification requests a short sale or DIL, the servicer must determine the basic eligibility of the borrower as described in the HAFA consideration section of [Supplemental Directive 09-09].” (Exhibit 3 at 4). The considerations set forth in that section include: (1) whether the property is the borrower’s principal residence; (2) whether the mortgage loan originated on or before January 1, 2009; (3) whether the mortgage is delinquent or default is reasonably foreseeable; (4) whether the unpaid principal balance is equal to or less than \$729,750; and (5) whether the borrower’s total mortgage payments exceed 31% of his gross income. (Exhibit 3 at 3-4).

Every potentially eligible borrower must be considered for HAFA before the borrower’s loan is referred to foreclosure or the servicer allows a pending foreclosure sale to be conducted. Servicers must consider possible HAMP eligible borrowers for HAFA within thirty (30) calendar days of the date the borrower: (1) does not qualify for a trial period plan; (2) does not successfully complete a trial period plan; (3) is delinquent on a HAMP modification by missing at least two consecutive

payments; or (4) requests a short sale or DIL. (Exhibit 3 at 4). The date and outcome of the HAFA consideration must be documented in the servicer's file. (Exhibit 3 at 4).

The servicer's evaluation for HAFA eligibility requires the servicer to contact borrowers regarding the HAFA program and assess the current value of the property in accordance with certain guidelines. (Exhibit 3 at 5). When a HAFA short sale or DIL is not available, the servicer must communicate this decision to any borrower that requested consideration. The notice must explain why the short sale or DIL under HAFA cannot be offered and provide a toll-free telephone number that the customer may call to discuss the decision. (Exhibit 3 at 6).

With respect to the Healys, Bank of America appears to have failed to meet a number of these criteria. It never invited the borrowers to participate in HAMP and it never invited the borrowers to participate in the HAFA program as required by Treasury Department Supplemental Directive 09-09. (Affidavit of Mark Healy, attached hereto as Exhibit 4). If it did consider the borrowers for participation in the HAFA program, it did not advise them of the reasons they were not eligible as required by Treasury Department Supplemental Directive 09-09. (Exhibit 4). It never communicated its decision that the Healys were not HAFA eligible in writing to them as required by Supplemental Directive 09-09 (Exhibit 4), nor did it explain why the short sale which they requested could not be offered or provide them with a toll-free number to call to discuss the decision as it was required to do under Treasury Department Supplemental Directive 09-09. (Exhibit 4).

Under the circumstances, with serious questions regarding Bank of America's compliance with directives issued by the Treasury Department regarding foreclosures, and in particular, in light of the directive that no foreclosure proceed until it is determined that the Healys are either ineligible for HAMP or not interested in HAMP, this Court should bar the foreclosure from moving forward as

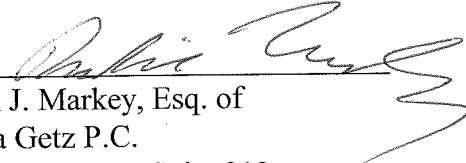
scheduled on Tuesday, June 15, 2010.

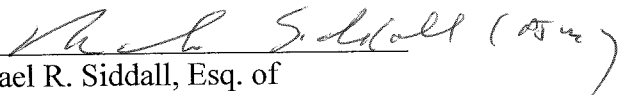
III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Plaintiffs respectfully request that this Court issue an Order barring the Defendants from proceeding with the foreclosure sale scheduled for June 15, 2010.

Respectfully submitted,

THE PLAINTIFFS,
MARK HEALY and DIANE E. HEALY

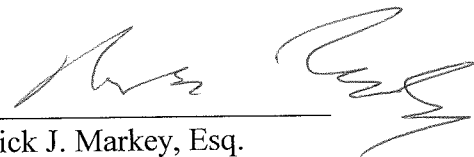
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CERTIFICATE OF SERVICE

I, Patrick J. Markey, Esq., hereby certify that on this 11th day of June, 2010, I served a copy of the above upon the parties in the action by email and by hand to counsel, Jennifer Schulz, Esq., Goodwin Procter, Exchange Place, 53 State Street, Boston, MA 02109

Subscribed under the penalties of perjury.



Patrick J. Markey, Esq.

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 Mac"), 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 Mac has been designated by the Treasury as a financial agent of the United States in connection with the implementation of the Program;

WHEREAS, Fannie Mac 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 Mac 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 Mac or Freddie Mac (the "GSE Loans"); accordingly, this Agreement does not apply to the GSE Loans;

WHEREAS, all other servicers, as well as Fannie Mac 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 Mac 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 \$2,071,000,000 (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 loan 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:

CitiMortgage, Inc.
1000 Technology Drive
O’Fallon, Missouri 63368
Attention: Office of the General Counsel
Telephone: [REDACTED]
Facsimile: [REDACTED]
email: [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.

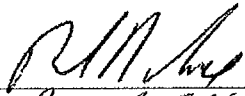
C. The Program Documentation and Exhibit A – Form of Financial Instrument, Exhibit B – Form of Annual Certification, Exhibit C – Form of Assignment and Assumption Agreement and Exhibit D – Form of Cover Sheet (in each case, in form and, upon completion, in substance), including all amendments and modifications 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: CitiMortgage, Inc.

FANNIE MAE, solely as Financial Agent of the United States

By: 
Name: Paul R. Felt
Title: SVP
Date: April 13, 2009

By: 
Name: Leslie Peeter
Title: Vice President
Date: April 13, 2009

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 Mac 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.

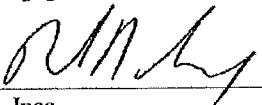
9. Limitation of Liability. IN NO EVENT SHALL FANNIE MAE, THE TREASURY, OR FREDDIEMAC, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE TO SERVICER WITH RESPECT TO THE PROGRAM OR THE AGREEMENT, OR FOR ANY

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.

CitiMortgage, Inc.:



Paul R. Ince
Chief Financial Officer

April 13, 2009
Date

EXHIBIT B

FORM OF ANNUAL CERTIFICATION

ANNUAL CERTIFICATION

This Annual Certification is delivered as provided in Section I.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]
[Title of Authorized Official]

Date

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]

ASSIGNEE: [INSERT FULL LEGAL NAME OF ASSIGNEE]

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

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

SCHEDULE 1

To

ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT D

FORM OF COVER SHEET

EXHIBIT 2

Supplemental Directive 10-02

March 24, 2010

Home Affordable Modification Program – Borrower Outreach and Communication

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. This Supplemental Directive represents an ongoing effort to improve program effectiveness by amending policies and procedures related to borrower outreach and communication, especially with respect to the initiation and continuation of foreclosure actions and extending HAMP benefits to borrowers who have filed for bankruptcy court protection. These changes become effective on June 1, 2010. The changes set forth herein do not abridge a servicer's ability to service delinquent loans in accordance with industry standards.

The significant changes described in this Supplemental Directive include:

- Clarification of the requirement to solicit proactively all borrowers whose first mortgage loans are potentially eligible for HAMP and who have two or more payments due and unpaid. Reasonable solicitation efforts are defined.
- Prohibition against referral to foreclosure until either: (i) a borrower has been evaluated and determined to be ineligible for HAMP; or (ii) reasonable solicitation efforts have failed.
- A requirement that a servicer, in certain specific circumstances, allow a 30-day borrower response period following issuance of a Non-Approval Notice before a foreclosure sale may be conducted.
- A requirement that a servicer provide a written certification to the foreclosure attorney or trustee stating that a borrower is not HAMP-eligible before a foreclosure sale may be conducted.
- A requirement that servicers must consider borrowers in active bankruptcy for HAMP if a request is received from the borrower, borrower's counsel or bankruptcy trustee.
- Clarification of the requirement that servicers use reasonable efforts to obtain approval from investors to participate in HAMP.

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 first lien 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.

Borrower Communication

Borrower Solicitation

Each servicer must have clear and comprehensive internal written policies for identification and solicitation of borrowers who are potentially eligible for HAMP based on information in the servicer's possession. These procedures should follow investor guidelines and comply with all contractual restrictions and with applicable laws, rules and regulations, including, but not limited to, the Fair Debt Collection Practices Act.

Servicers must pre-screen all first lien mortgage loans where two or more payments are due and unpaid to determine if they meet the basic criteria for consideration under HAMP (one-to-four unit residential property, occupied by the borrower as his or her principal residence, not vacant or condemned, originated on or before January 1, 2009, unpaid principal balance does not exceed \$729,750¹ and not previously modified under HAMP). Servicers must proactively solicit for HAMP any borrower whose loan passes this pre-screen, unless the servicer has documented that the investor is not willing to participate in HAMP pursuant to the "Investor Solicitation" section of this Supplemental Directive.

Solicitation must include written communication clearly describing HAMP. Use of the form of solicitation letter available on www.HMPadmin.com shall satisfy this requirement. The servicer's HAMP solicitation may also identify other options potentially available to help the borrower cure the delinquency and retain homeownership. A servicer is deemed to have made a "Reasonable Effort" to solicit a borrower if over a period of at least 30 calendar days: (1) the servicer makes a minimum of four telephone calls to the last known phone numbers of record, at different times of the day; and (2) the servicer sends two written notices to the last address of record by sending one letter via certified/express mail or via overnight delivery service (such as Federal Express or UPS) with return receipt/delivery confirmation and one letter via regular mail. Any contact with eligible borrowers, whether by telephone, mail or otherwise, must (1) advise borrowers that they may be eligible for HAMP; (2) clearly describe the Initial Package required to be submitted by the borrower pursuant to Supplemental Directive 10-01 and state what other information the servicer needs to complete the HAMP analysis; (3) provide a toll-free telephone number through which the borrower can reach a servicer representative; and (4) identify any unique requirements the servicer may have established for submission of an Initial Package received later than 30 business days prior to a scheduled foreclosure sale date. All contact attempts must be documented in the servicing file. If the servicer has documentation evidencing that it satisfied the Reasonable Effort standard for HAMP prior to the effective date of this Supplemental Directive, re-solicitation of the borrower is not required.

¹ Maximum loan limit for one unit dwelling. 2 units - \$934,200; 3 units - \$1,129,250; 4 units - \$1,404,400.

Successful efforts by a servicer to communicate with the borrower or co-borrower about resolution of the delinquency are termed “right party contact” for purposes of this Supplemental Directive. If right party contact is established and the borrower expresses an interest in HAMP, the servicer must send a written communication to the borrower via regular or electronic mail that clearly describes the Initial Package required to be submitted by the borrower to request a HAMP modification. The communication should:

- Describe the income evidence required to be evaluated for HAMP;
- Provide the Request for Modification and Affidavit (RMA) (or other proprietary financial information form substantially similar in content to the RMA and, if necessary, a Hardship Affidavit); and
- Include an Internal Revenue Service (IRS) Form 4506T-EZ (or IRS Form 4506-T, if necessary).

The communication should also include clear language stating that during the HAMP evaluation the home will not: (i) be referred to foreclosure; or (ii) be sold at a foreclosure sale if the foreclosure process has already been initiated. In the communication, the servicer must include a specific date by which the Initial Package must be returned, which must be no less than 15 calendar days from the date of the communication. Electronic mail for this purpose may only be sent to an email address provided by the borrower when right party contact was made. Such email address must be documented in the servicing file.

If right party contact is established prior to satisfaction of the Reasonable Effort standard, the servicer must continue to take steps to satisfy the Reasonable Effort standard until the Initial Package is submitted by the borrower.

If right party contact is established but the borrower does not submit an Initial Package, the servicer must resend the Initial Package communication. Again, the servicer must include a specific date by which the Initial Package must be returned, which must be no less than 15 calendar days from the date of the second communication. If the borrower does not respond by providing an Initial Package within the required time period set forth in the second communication, the servicer may determine the borrower to be ineligible for HAMP.

If right party contact is established but the borrower submits an incomplete Initial Package within the required time period, the servicer must comply with the Incomplete Information Notice requirements set forth in Supplemental Directive 10-01. If the borrower does not respond to either the 30-day Incomplete Information Notice or the 15-day Incomplete Information Notice by providing a complete Initial Package within the required time period, the servicer may determine the borrower to be ineligible for HAMP.

The servicer is not required to send an Initial Package if, as a result of discussions with the borrower, the servicer determines that the borrower does not meet the basic eligibility criteria for HAMP as described in Supplemental Directive 09-01, or the servicer determines that the borrower’s monthly mortgage obligation (including principal interest, taxes, insurance and

homeowner's association fee, if applicable) is substantially less than 31% of the borrower's gross monthly income. Such decision must be documented in the applicable servicing file.

Other Borrower Communication

As set forth in Supplemental Directives 09-07 and 10-01, servicers must acknowledge the Initial Package within 10 business days of receipt through a written communication to the borrower that includes a description of the servicer's evaluation process and timeline. Additionally, the communication must include clear language that states that during the HAMP evaluation the home will not: (i) be referred to foreclosure; or (ii) be sold at a foreclosure sale if the foreclosure process has already been initiated. If the Initial Package is received from the borrower via email, the servicer may email the acknowledgement to the same email address from which the Initial Package was received or other email address designated by the borrower in the Initial Package.

Servicer communications should provide the borrower with clear written information designed to help the borrower understand the modification process in accordance with Supplemental Directive 09-01. These communications must provide a toll-free telephone number where the borrower can reach a representative of the servicer capable of providing specific details about the HAMP modification process. The hours of operation for the toll-free telephone number should be listed.

Servicers must have adequate staffing, written procedures, resources and facilities for receipt, management, retention and retrieval of borrower documents to ensure that borrowers are not required to submit multiple copies of documents. Servicers must accept the RMA and other required verification documents submitted on behalf of borrowers by HUD-approved housing counseling agencies, non-profit consumer advocacy organizations, legal guardians, powers of attorney or legal counsel when the borrower has provided written authorization or provides written authorization contemporaneously with the submission of the RMA. The borrower is considered to have provided written authorization if a copy of the power of attorney, order of guardianship, or other legal papers authorizing the third party to act on behalf of the borrower are provided. Written authorization may be supplanted by the legal documents authorizing a third party to act more generally on behalf of the borrower in cases of disability or borrowers unavailable due to active duty military service.

Servicers must have written procedures and personnel in place to provide timely and appropriate responses to borrower inquiries and complaints in connection with HAMP within the timelines specified in this and previous Supplemental Directives. These procedures must include a process through which borrowers may escalate disagreements to a supervisory level, where a separate review of the borrower's eligibility or qualification can be performed.

Foreclosure Actions

The following guidance replaces in its entirety the guidance set forth on page 14 of Supplemental Directive 09-01 under the heading "Temporary Suspension of Foreclosure Proceedings".

Prohibition on Referral and Sale

A servicer may not refer any loan to foreclosure or conduct a scheduled foreclosure sale *unless* and *until* at least one of the following circumstances exists:

- The borrower is evaluated for HAMP and is determined to be ineligible for the program; or
- The borrower is offered a trial period plan, but fails to make a trial period payment by the last day of the month in which such payment is due; or
- The servicer has established right party contact, has sent at least two written requests asking the borrower to supply required information in accordance with this Supplemental Directive and has otherwise satisfied the Reasonable Effort solicitation standard, and the borrower failed to respond by the dates indicated in those requests; or
- The servicer has satisfied the Reasonable Effort solicitation standard without establishing right party contact; or
- The borrower or co-borrower states he or she is not interested in pursuing a HAMP modification and such statement is reflected by the servicer in their servicing system.

Borrower Response Period

Supplemental Directive 09-08 describes circumstances in which a written Non-Approval Notice must be provided to borrowers who have not been approved for HAMP. The servicer may not conduct a foreclosure sale within the 30 calendar days after the date of a Non-Approval Notice or any longer period required to review supplemental material provided by the borrower in response to a Non-Approval Notice unless the reason for non-approval is (1) ineligible mortgage, (2) ineligible property, (3) offer not accepted by borrower/request withdrawn or (4) the loan was previously modified under HAMP.

A model clause describing these rights is attached as Exhibit A. Use of the model clause is optional; however, it illustrates the level of specificity that is deemed to be in compliance with the language requirements of this Supplemental Directive.

Halt of Existing Foreclosure Actions During a Trial Period Based on Verified Income

With respect to a borrower who submits a request for HAMP consideration after a loan has been referred to foreclosure, the servicer shall, immediately upon the borrower's acceptance of a trial period plan based on verified income as described in Supplemental Directive 10-01 and for the duration of the trial period, take those actions within its authority that are necessary to halt further activity and events in the foreclosure process, whether judicial or non-judicial, including but not limited to refraining from scheduling a sale or causing a judgment to be entered.

The servicer shall not be in violation of this instruction to the extent that: (a) a court with jurisdiction over the foreclosure proceeding (if any), or the bankruptcy court in a bankruptcy case, or the public official charged with carrying out the activity or event, fails or refuses to halt some or all activities or events in the matter after the servicer has made reasonable efforts to

move the court or request the public official for a cessation of the activity or event; (b) the servicer must take some action to protect the interests of the owner, investor, guarantor or servicer of the loan in response to action taken by the borrower or other parties in the foreclosure process; or (c) there is not sufficient time following the borrower's acceptance of the trial period plan for the servicer to halt the activity or event, provided that in no event shall the servicer permit a sale to go forward. The servicer must document in the servicing file if any of the foregoing exceptions to the requirement to halt an existing foreclosure action are applicable.

Deadline for Suspension of Foreclosure Sales

When a borrower submits a request for HAMP consideration after a foreclosure sale date has been scheduled and the request is received no later than midnight of the seventh business day prior to the foreclosure sale date (the "Deadline"), the servicer must suspend the sale as necessary to evaluate the borrower for HAMP. Servicers are not required to suspend a foreclosure sale when: (1) a request for HAMP consideration is received after the Deadline; (2) a borrower received a HAMP modification and lost good standing; (3) a borrower received a HAMP offer and made the first payment under the trial period plan, but did not make a subsequent payment by the applicable deadline; or (4) a borrower was evaluated based upon an Initial Package and determined to be ineligible under HAMP requirements.

The servicer shall not be in violation of this instruction to the extent that a court with jurisdiction over the foreclosure proceeding (if any), or the bankruptcy court in a bankruptcy case, or the public official charged with carrying out the activity or event, fails or refuses to halt the sale after the servicer has made reasonable efforts to move the court or request the public official for a cessation of the sale. The servicer must document in the servicing file if the foregoing exception to the requirement to suspend an existing foreclosure sale is applicable.

A borrower will be deemed to have requested consideration for HAMP when a complete Initial Package (i.e., RMA, Form 4506T-EZ, required evidence of income) is received by the servicer or its foreclosure attorney/trustee prior to the Deadline. However, the servicer may establish additional requirements for requests received later than 30 calendar days prior to a scheduled foreclosure sale date, including, for example, a requirement that a complete Initial Package be delivered through certified/express delivery mail with return receipt/delivery confirmation to either the servicer or the foreclosure attorney/foreclosure trustee. These requirements must be posted on the servicer's website and communicated to the borrower in writing in accordance with the Borrower Solicitation requirements of this Supplemental Directive or through other written communication.

If the borrower contacts the servicer prior to the Deadline, the servicer must inform the borrower of the Deadline and any submission requirements.

Mitigating Foreclosure Impact

The servicer must take the following action to mitigate foreclosure impact:

- **Simultaneous Trial Period Plan and Foreclosure Explanation.** When a borrower is simultaneously in foreclosure and is either being evaluated for HAMP or is in a trial period plan, the servicer must provide the borrower with a written notification that

explains, in clear language, the concurrent modification and foreclosure processes and that states that even though certain foreclosure activities may continue, the home will not be sold at a foreclosure sale while the borrower is being considered for HAMP or while the borrower is making payments under a trial period plan. Model language for this notification is attached as Exhibit B. Use of the model language is optional; however, it illustrates the level of specificity that is deemed to be in compliance with the language requirements of this Supplemental Directive.

- **Foreclosure Attorney/Trustee Communication.** Servicers must develop and implement written policies and procedures to provide notification to their foreclosure attorney/trustee regarding a borrower's HAMP status, including whether the borrower is potentially eligible for HAMP (and is subject to the Borrower Solicitation requirements of this Supplemental Directive), and whether the borrower is being evaluated for, or is currently in, a HAMP trial period plan. Servicers must ensure that their foreclosure attorney/trustee adheres to all of the requirements of this Supplemental Directive with respect to referral to foreclosure, stay of foreclosure actions and suspension of foreclosure sales.
- **Certification Prior to Foreclosure Sale.** Servicers must develop and implement written procedures applicable to all loans that are potentially eligible for HAMP (and are subject to the Borrower Solicitation requirements of this Supplemental Directive) that require the servicer to provide to the foreclosure attorney/trustee a written certification that (i) one of the five circumstances under the "Prohibition on Referral and Sale" section of this Supplemental Directive exists, and (ii) all other available loss mitigation alternatives have been exhausted and a non-foreclosure outcome could not be reached. This certification must be provided no sooner than seven business days prior to the scheduled foreclosure sale date (the Deadline) or any extension thereof.

Borrowers in Bankruptcy

Borrowers in active Chapter 7 or Chapter 13 bankruptcy cases must be considered for HAMP if the borrower,² borrower's counsel or bankruptcy trustee submits a request to the servicer. With the borrower's permission, a bankruptcy trustee may contact the servicer to request a HAMP modification. Servicers are not required to solicit these borrowers proactively for HAMP. Borrowers who are in a trial period plan and subsequently file for bankruptcy may not be denied a HAMP modification on the basis of the bankruptcy filing. The servicer and its counsel must work with the borrower or borrower's counsel to obtain any court and/or trustee approvals required in accordance with local court rules and procedures. Servicers should extend the trial period plan as necessary to accommodate delays in obtaining court approvals or receiving a full remittance of the borrower's trial period payments when they are made to a trustee, but they are not required to extend the trial period beyond two months, resulting in a total five-month trial

² Where the borrower filed the bankruptcy pro se, (without an attorney), it is recommended that the servicer provide information relating to the availability of a HAMP modification to the borrower with a copy to the bankruptcy trustee. This communication should not imply that it is in any way an attempt to collect a debt. Servicers must consult their legal counsel for appropriate language.

period. In the event of a trial period extension, the borrower shall make a trial period payment for each month of the trial period, including any extension month.

When a borrower in an active Chapter 13 bankruptcy is in a trial period plan and the borrower has made post-petition payments on the first lien mortgage in the amount required by the trial period plan, a servicer must not object to confirmation of a borrower's Chapter 13 plan, move for relief from the automatic bankruptcy stay, or move for dismissal of the Chapter 13 case on the basis that the borrower paid only the amounts due under the trial period plan, as opposed to the non-modified mortgage payments.

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 for HAMP. The following language must be inserted in Section 1 of the Home Affordable Modification 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.”

Substitution of Income Documents

When a borrower is in an active Chapter 7 or Chapter 13 bankruptcy, the servicer may accept copies of the bankruptcy schedules and tax returns (if returns are required to be filed) in lieu of the RMA and Form 4506T-EZ, and may use this information to determine borrower eligibility (with the income documentation). Servicers should request the schedules and tax returns from the borrower, borrower's counsel or bankruptcy court. If the bankruptcy schedules are greater than 90 days old as of the date that such schedules are received by the servicer, the borrower must provide updated evidence of income to determine HAMP eligibility. Additionally, either directly or through counsel, borrowers must provide a completed and executed Hardship Affidavit (or RMA).

Waiver of Trial Period Plan

Pending development of systems capability, and at the discretion of the servicer, borrowers in an active Chapter 13 bankruptcy who are determined to be eligible for HAMP may be converted to a permanent modification without completing a trial period plan if:

- The borrower makes all post-petition payments on their first lien mortgage loan due prior to the effective date of the Home Affordable Modification Agreement, and at least three of those payments are equal to or greater than the proposed modified payment;
- The modification is approved by the bankruptcy court, if required; and
- The trial period plan waiver is permitted by the applicable investor guidelines.

When payments under a bankruptcy plan are used in lieu of a trial period in accordance with these guidelines, the servicer and borrower will be eligible to accrue “pay for success” and “pay for performance” incentives for the length of a standard HAMP trial period.

Changes to several data reporting attributes under HAMP will be required to enable servicers to report a bankruptcy plan in lieu of a HAMP trial period. Servicers should look for a full description and detail of the data attributes for bankruptcy reporting to be posted on www.HMPadmin.com. Servicers may not exercise this waiver authority until the data elements are posted and the system capability exists to support this policy change.

Continued HAMP Eligibility

Servicers are reminded of those situations when a borrower may seek reconsideration for a HAMP modification. As stated in Supplemental Directive 10-01, a borrower who has been evaluated for HAMP but does not meet the minimum eligibility criteria described in the “HAMP Eligibility” section of Supplemental Directive 09-01 or who meets the minimum eligibility criteria but is not qualified for HAMP by virtue of a negative NPV result, excessive forbearance or other financial reason, may request reconsideration for HAMP at any time prior to the Deadline if they experience a change in circumstance. In these cases, the servicer is obligated to consider the borrower’s request pursuant to its obligations under the Servicer Participation Agreement (SPA).

A servicer’s SPA obligation to offer the borrower a HAMP modification is considered satisfied, and the borrower is not eligible for a subsequent HAMP offer, if the borrower either (1) received a HAMP modification and lost good standing, or (2) the borrower received a HAMP offer and either failed to make one or more payments under trial period plan by the last day of the month in which it was due, or if applicable, failed to provide all required documents by the end of the trial period.

Servicing Transfers of Loans in Foreclosure

The servicer may transfer a loan free and clear of all HAMP-related obligations under the SPA if one of the five circumstances under the “Prohibition on Referral and Sale” section of this Supplemental Directive exists with respect to such loan, and any applicable response period has elapsed, unless a borrower with continued HAMP eligibility requests consideration prior to the effective date of the servicing transfer. Such loans are not required to be transferred pursuant to the form of Assignment and Assumption Agreement attached as Exhibit D to the Servicer Participation Agreement. Servicers should refer to the “Transfers of Servicing” section of Supplemental Directive 09-01 for guidance regarding servicing transfers of loans modified pursuant to HAMP.

Investor Solicitation

Within 90 days of executing a Servicer Participation Agreement (SPA), the servicer must review all servicing agreements to determine investor participation in the program. Within 30 days of identifying an investor as a non-participant, the servicer will contact the investor in writing at least once, encouraging the investor to permit modifications under HAMP.

Within 60 calendar days following the effective date of this Supplemental Directive, participating servicers must, if they have not already done so, provide to Fannie Mae, as Treasury's Program Administrator: (1) the number of investors for whom it services loans; (2) a list of those investors who do not participate in HAMP; and (3) the number of loans serviced for each investor that does not participate in HAMP. Servicers that execute a SPA after the date of this Supplemental Directive must provide the investor participation list to Fannie Mae, as Treasury's program administrator, within 120 days of SPA execution.

Servicers are required to notify Fannie Mae, as Treasury's Program Administrator, of changes to the Investor Participation List within 30 calendar days of any change.

Documentation

Servicers are required to maintain appropriate documentary evidence of their HAMP-related activities, and to provide that documentary evidence upon request to Freddie Mac as the Compliance Agent for Treasury. As Compliance Agent, Freddie Mac will incorporate the additional requirements articulated in this Supplemental Directive into its compliance program. Servicers must maintain documentation in well-documented servicer system notes or in loan files for all HAMP activities addressed in this Supplemental Directive, including, but not limited to, the following:

- All HAMP related communications, whether verbal or written, with or to the borrower or trusted advisor (including but not limited to the dates of communications, names of contact person(s), and a summary of the conversation), including any email correspondence to or from the borrower.
- Pre-screening of loans for HAMP prior to referring any loan to foreclosure or conducting scheduled foreclosure sales.
- Postponement of scheduled foreclosure sales in applicable scenarios.
- Substitution of income documents for borrowers in active Chapter 7 or Chapter 13 bankruptcy.
- Waiver of the trial period plan for borrowers in active Chapter 13 bankruptcy.
- Policies and procedures required by this Supplemental Directive.
- Certification prior to foreclosure sale.
- Evidence of assessment of investor willingness to participate in HAMP and any specific outreach to investors on either a portfolio or loan-by-loan basis, including copies of any contracts with investors relied upon in denying HAMP modifications. This should include, where applicable, documentation relating to specific parameters or limitations on participation required by investors for steps in the waterfall.
- Evidence of receipt of the Initial Package from a borrower.

EXHIBIT A
BORROWER RESPONSE PERIOD

The model clause in this exhibit provides sample language that may be used to explain the borrower response period that exists after a borrower is issued a Non-Approval Notice unless the reason for non-approval is (1) ineligible mortgage, (2) ineligible property, (3) offer not accepted by borrower/request withdrawn or (4) the loan was previously modified under HAMP. Use of the model clause is optional; however, it illustrates a level of specificity that is deemed to be in compliance with language requirements of this Supplemental Directive.

You have 30 calendar days from the date of this notice to contact [name of servicer] to discuss the reason for non-approval for a HAMP modification or to discuss alternative loss mitigation options that may be available to you. Your loan may be referred to foreclosure during this time, or any pending foreclosure action may continue. However, **no foreclosure sale will be conducted and you will not lose your home** during this 30-day period [or any longer period required for us to review supplemental material you may provide in response to this Notice].

EXHIBIT B
MODEL SIMULTANEOUS TRIAL PLAN-FORECLOSURE PROCESS EXPLANATION

[Servicer Logo]

[Date]

[Name]

[Address 1]

[Address 2]

Dear [borrower and co-borrower name(s)]:

We are committed to helping you retain your home. That's why we are currently evaluating your mortgage for eligibility in the Home Affordable Modification Program ("HAMP") which would modify the terms of your loan and make your mortgage payments more affordable. Your loan has been previously referred to foreclosure and we will continue the foreclosure process while we evaluate your loan for HAMP. However, **no foreclosure sale will be conducted and you will not lose your home** during the HAMP evaluation.

HAMP Eligibility

- If you are eligible for HAMP, you will enter into a "trial period". You will receive a Trial Period Plan Notice which will contain a new trial payment amount (this will temporarily replace your current mortgage payment during the HAMP trial period). To accept the Trial Period Plan, you must make your first trial payment by the specified due date. Once you accept, we will halt the foreclosure process as long as you continue to make your required trial plan payments.
- If you do not qualify for HAMP, or if you fail to comply with the terms of the Trial Period Plan, you will be sent a Non-Approval Notice. In most cases, you will have 30 days to review the reason for non-approval and contact us to discuss any concerns you may have. During this 30-day review period, we may continue with the pending foreclosure action, but **no foreclosure sale will be conducted and you will not lose your home**.

Important—Do not ignore any foreclosure notices.

The HAMP evaluation and the process of foreclosure may proceed at the same time. You may receive foreclosure/eviction notices - delivered by mail or in person - or you may see steps being taken to proceed with a foreclosure sale of your home. While you will not lose your home during the HAMP evaluation, to protect your rights under applicable foreclosure law, you may need to respond to these foreclosure notices or take other actions. If you have any questions about the foreclosure process and the evaluation of your HAMP request, contact us at [XXX.XXX.XXXX]. If you do not understand the legal consequences of the foreclosure, you are also encouraged to contact a lawyer or housing counselor for assistance.

Questions

Call **XXX.XXX.XXXX** if you cannot afford to make your trial period payments, but want to remain in your home. Or if you have decided to leave your home, contact us—we have other options that may be able to help you avoid foreclosure. Additionally, if you have any questions about the foreclosure (or other legal notices that you receive), please call us for assistance. You can also call the Homeowner’s HOPE™ Hotline at 1-888-995-HOPE (4673) if you need further counseling. They offer free HUD-certified counseling services in English and Spanish, and can help answer any questions you have.

Sincerely,

[Servicer Contact Person Name]

[Servicer Contact Person Title]

[Servicer Name]

EXHIBIT 3

Supplemental Directive 09-09 Revised

March 26, 2010

*Home Affordable Foreclosure Alternatives – Short Sale and
Deed-in-Lieu of Foreclosure Update*

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, the 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, it is expected that servicers will encounter situations where they are unable to approve a HAMP modification request, a HAMP modification is offered and not accepted by the borrower, or the borrower falls out of a HAMP modification. In these instances, the borrower may benefit from an alternative that helps the borrower transition to more affordable housing and avoid the stigma of a foreclosure.

This Supplemental Directive replaces in its entirety Supplemental Directive 09-09 and is effective as of April 5, 2010. This Supplemental Directive provides guidance to servicers for adoption and implementation of the Home Affordable Foreclosure Alternatives Program (HAFA). HAFA is part of HAMP and provides financial incentives to servicers and borrowers who utilize a short sale or a deed-in-lieu to avoid a foreclosure on an eligible loan under HAMP. Both of these foreclosure alternatives reduce the need for potentially lengthy and expensive foreclosure proceedings. The options help preserve the condition and value of the property by minimizing the time a property is vacant and subject to vandalism and deterioration. In addition, these options generally provide a substantially better outcome than a foreclosure sale for borrowers, investors and communities.

This Supplemental Directive provides guidance to servicers for adoption and implementation of HAFA for first lien mortgage loans that are not owned or guaranteed by Fannie Mae or Freddie Mac (Non-GSE Mortgages). In order for a servicer to participate in HAFA for Non-GSE Mortgages, the servicer must execute a servicer participation agreement and related documents (SPA) with Fannie Mae in its capacity as financial agent for the United States (as designated by Treasury) to participate in HAMP on or before October 3, 2010. In certain circumstances, Supplemental Directive 09-01 requires participating servicers to consider borrowers for other foreclosure prevention options, including short sale and deed-in-lieu programs. As a result, servicers already participating in HAMP must follow the guidance set forth in this Supplemental Directive, which provides servicers with the option to determine the extent to which short sales

or deeds-in-lieu will be offered under this program. Servicers of mortgage loans that are owned or guaranteed by Fannie Mae or Freddie Mac should refer to the HAFA announcement issued by the applicable GSE. A loan must be HAMP eligible and meet the other requirements stated herein to be eligible for incentive compensation under HAFA.

A servicer may elect to implement this Supplemental Directive prior to April 5, 2010, provided that the servicer is able to collect and report all required information as described in the *Reporting Requirements* section of this Supplemental Directive. Borrowers may be accepted into HAFA if a Short Sale Agreement or DIL Agreement, as described in this Supplemental Directive, is fully-executed by the borrower and received by the servicer on or before December 31, 2012.

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

- Foreclosure Alternatives
- HAFA Consideration
- Evaluation
- Short Sale
- Deed-in-Lieu
- General Terms and Conditions
- Incentive Compensation
- Standard Form Documents
- Reporting Requirements
- Compliance

Foreclosure Alternatives

In a short sale, the servicer allows the borrower to list and sell the mortgaged property with the understanding that the net proceeds from the sale may be less than the total amount due on the mortgage. The short sale must be an arm's length transaction with the net sale proceeds (after deductions for reasonable and customary selling costs) being applied to a discounted ("short") mortgage payoff acceptable to the servicer. The servicer accepts the short payoff in full satisfaction of the total amount due on the first mortgage.

In a deed-in-lieu of foreclosure (DIL), the borrower voluntarily transfers ownership of the mortgaged property to the servicer in full satisfaction of the total amount due on the first mortgage. The servicer's willingness to approve and accept a DIL is contingent upon the borrower's ability to provide marketable title, free and clear of mortgages, liens and encumbrances. Generally, servicers require the borrower to make a good faith effort to sell the property through a short sale before agreeing to accept the DIL. However, under circumstances acceptable to the investor, the servicer may accept a DIL without the borrower first attempting to sell the property. With either the HAFA short sale or DIL, the servicer may not require a cash contribution or promissory note from the borrower and must forfeit the ability to pursue a deficiency judgment against the borrower.

Short sales and DILs are complex transactions involving coordination and cooperation among a number of parties including, but not limited to, servicers, appraisers, borrowers (sellers), buyers, real estate brokers and agents, title agencies, and often mortgage insurance companies and subordinate and other lien holders. The HAFA program simplifies and streamlines the use of short sales and DIL options by incorporating the following unique features:

- Complements HAMP by providing viable alternatives for borrowers who are HAMP-eligible.
- Utilizes borrower financial and hardship information collected in conjunction with HAMP, eliminating the need for additional eligibility analysis.
- Allows the borrower to receive pre-approved short sale terms prior to the property listing.
- Prohibits the servicer from requiring, as a condition of approving the short sale, a reduction in the real estate commission agreed upon in the listing agreement.
- Requires that borrowers be fully released from future liability for the debt.
- Uses standard processes, documents and timeframes.
- Provides financial incentives to borrowers, servicers and investors.

HAFA Consideration

Each participating servicer must develop a written policy, consistent with investor guidelines, that describes the basis on which the servicer will offer the HAFA program to borrowers. This policy may incorporate such factors as the severity of the loss involved, local market conditions, the timing of pending foreclosure actions and borrower motivation and cooperation.

Servicers may not solicit a borrower for HAFA until the borrower has been evaluated for a HAMP modification in accordance with the provisions of Supplemental Directive 09-01 and any supplemental HAMP guidance. Borrowers that meet the eligibility criteria for HAMP but who are not offered a Trial Period Plan, do not successfully complete a Trial Period Plan, or default on a HAMP modification should first be considered for other loan modification or retention programs offered by the servicer prior to being evaluated for HAFA.

In accordance with the provisions of Supplemental Directive 09-01, a loan meets the basic eligibility criteria if all of the following conditions are met:

- The property is the borrower's principal residence, except that the property can be vacant up to 90 days prior to the date of the Short Sale Agreement (SSA), Alternative Request for Approval of Short Sale (Alternative (RASS) or DIL Agreement if the borrower provides documentation that the borrower was required to relocate at least 100 miles from the property to accept new employment or was transferred by the current employer and there is no evidence indicating that the borrower has purchased a one- to four-unit property 90 days prior to the date of the SSA, Alternative RASS or DIL Agreement;
- The mortgage loan is a first lien mortgage originated on or before January 1, 2009;
- The mortgage is delinquent or default is reasonably foreseeable;

- The current unpaid principal balance is equal to or less than \$729,750¹; and
- The borrower's total monthly mortgage payment (as defined in Supplemental Directive 09-01) exceeds 31 percent of the borrower's gross income.

Pursuant to the servicer's policy, every potentially eligible borrower must be considered for HAFA before the borrower's loan is referred to foreclosure or the servicer allows a pending foreclosure sale to be conducted. Servicers must consider possible HAMP eligible borrowers for HAFA within 30 calendar days of the date the borrower:

- Does not qualify for a Trial Period Plan;
- Does not successfully complete a Trial Period Plan;
- Is delinquent on a HAMP modification by missing at least two consecutive payments; or
- Requests a short sale or DIL.

The date and outcome of the HAFA consideration must be documented in the servicer's file.

When a borrower, who was not previously evaluated for a HAMP modification, requests a short sale or DIL, the servicer must determine the basic eligibility of the borrower as described in the *HAFA Consideration* section of this Supplemental Directive. In addition, the servicer must obtain a completed Request for Modification and Affidavit (RMA)² and evidence of the borrower's income sufficient to determine that the borrower meets the 31 percent income eligibility requirement and has experienced a hardship. The servicer is not required to obtain an IRS Form 4506-T nor 4506-EZ, unless it is necessary to verify the borrower's income; to evaluate the mortgage loan using the NPV test; or, to apply the standard modification waterfall set out in Supplemental Directive 09-01. The servicer must notify the borrower verbally or in writing of the availability of a HAMP modification and allow the borrower 14 calendar days from the date of the notification to contact the servicer by verbal or written communication and request consideration for a HAMP modification. If the borrower does not wish to be considered for a modification, this does not trigger a non-approval notice under Supplemental Directive 09-08, *Borrower Notices*.

Borrowers in active Chapter 7 or Chapter 13 bankruptcy cases must be considered for HAFA if the borrower,³ borrower's counsel or bankruptcy trustee submits a request to the servicer. With the borrower's permission, a bankruptcy trustee may contact the servicer to request a short sale or DIL under HAFA. Servicers are not required to solicit these borrowers proactively for HAFA. The servicer and its counsel must work with the borrower or borrower's counsel to obtain any court and/or trustee approvals required in accordance with local court rules and

¹ This amount refers to 1 unit properties. Higher amounts apply to 2 to 4 unit dwellings. See Supplemental Directive 09-01.

² Servicers may elect to use a proprietary financial information form substantially similar to the RMA and a hardship affidavit in lieu of the RMA.

³ Where the borrower filed the bankruptcy pro se, (without an attorney), it is recommended that the servicer provide information relating to the availability of a HAMP modification and foreclosure alternatives to the borrower with a copy to the bankruptcy trustee. This communication should not imply that it is in any way an attempt to collect a debt. Servicers must consult their legal counsel for appropriate language.

procedures. Servicers should extend HAFA timeframes as necessary to accommodate delays in obtaining court approvals or receiving any periodic payment when they are made to a trustee.

Evaluation

If the servicer determines that a borrower is eligible for a HAFA offer based on its written policy and this Supplemental Directive, the servicer must follow the steps below to determine if a short sale or DIL offer will be extended to the borrower.

Borrower Solicitation and Response. If the servicer has not already discussed a short sale or DIL with the borrower, the servicer must proactively notify the borrower in writing of the availability of these options and allow the borrower 14 calendar days from the date of the notification to contact the servicer by verbal or written communication and request consideration under HAFA. If the borrower fails to contact the servicer within the timeframe or at any time indicates that he or she is not interested in these options, the servicer has no further obligation to extend a HAFA offer.

Expected Recovery through Foreclosure and Disposition. Though not a HAFA requirement, it is expected that servicers will, in accordance with investor guidelines, perform a financial analysis to determine if a short sale or DIL is in the best interest of the investor, guarantor and/or mortgage insurer. The results of any analysis must be retained in the servicing file. The HAMP base NPV model does not project investor cash flows from either a short sale or DIL and should be used only to determine borrower eligibility for a HAMP modification.

Use of Borrower Financial Information. Verified borrower financial information obtained in conjunction with HAMP may be relied upon to determine a borrower's eligibility for HAFA. If financial and hardship information is documented and verified, no additional financial or hardship assessment is required by HAFA. However, in accordance with investor guidelines, the servicer may request updated financial information to evaluate the borrower. If a borrower was evaluated for HAMP based on verbal financial data, the servicer may send the borrower a Short Sale Agreement (SSA) and must require the borrower to deliver the financial information required under HAMP when the borrower returns the executed SSA. The servicer must verify a borrower's financial information through documentation and obtain a signed Hardship Affidavit prior to approving a short sale or accepting a DIL under HAFA.

Property Valuation. The servicer must, independent of the borrower and any other parties to the transaction, assess the current value of the property in accordance with the investor's guidelines. The servicer may not require the borrower to pay in advance for the valuation, but may add the cost to the outstanding debt in accordance with the borrower's mortgage documents and applicable law in the event the short sale or DIL is not completed.

Review of Title. The servicer must review readily available information provided by the borrower, the borrower's credit report, the loan file or other sources to identify subordinate liens and other claims on title to determine if the borrower will be able to deliver clear, marketable title to a prospective purchaser or the investor. Although not required by HAFA, the servicer may order a title search or preliminary title report. The servicer may not charge the borrower in

advance for any cost incurred in the title review, but may add the cost to the outstanding debt in accordance with the borrower's mortgage documents and applicable law in the event the short sale or DIL is not completed.

Borrower Notice. When a HAFA short sale or DIL is not available, the servicer must communicate this decision in writing to any borrower that requested consideration. The notice must explain why a short sale or DIL under HAFA cannot be offered, provide a toll free telephone number that the customer may call to discuss the decision and otherwise comply with the notice requirements of Supplemental Directive 09-08, *Borrower Notices*.

Short Sale

The HAFA short sale process employs standard form documents and defined performance timeframes to facilitate clear communication between the parties to the listing and sale transaction. Servicers must adhere to the following guidelines in connection with the issuance of an SSA.

Minimum Acceptable Net Proceeds. Prior to approving a borrower to participate in a HAFA short sale, the servicer must determine the minimum acceptable net proceeds (minimum net) that the investor will accept from the transaction. Each servicer must develop a written policy, consistent with investor guidelines, that describes the basis on which the minimum net will be determined. However, the minimum net proceeds must be at least equal to or less than the list price minus the sum of allowable costs that may be deducted from gross sale proceeds (or the acceptable sale proceeds). This policy may incorporate such factors as local market conditions, customary transactional costs of such sales, and the amounts that may be required to release any subordinate liens on the property. A servicer's policy for determining the minimum net must be consistently applied for all loans serviced for that investor. The minimum net may be expressed as a fixed dollar amount, as a percentage of the current market value of the property, or as a percentage of the list price as approved by the servicer. Once determined, the servicer must document the minimum net in the servicing file for each property subject to HAFA. After signing an SSA, the servicer may not increase the minimum net requirement until the initial SSA termination date is reached (not less than 120 calendar days). Subsequent changes to the minimum net when the SSA is extended must be documented.

Allowable Transaction Costs. In determining the minimum net, the servicer must consider reasonable and customary real estate transaction costs for the community in which the property is located and determine which of these costs the servicer or investor is willing to pay from sale proceeds. The servicer must describe the costs that may be deducted from the gross sale proceeds in the SSA.

Short Sale Agreement. The HAFA SSA, which is attached as Exhibit A, outlines the roles and responsibilities of the servicer and borrower in the short sale listing process and provides key marketing terms, such as a list price or acceptable sale proceeds and the duration of the SSA. The HAFA Request for Approval of a Short Sale (RASS), which must accompany the SSA, is attached as Exhibit A1. The RASS is submitted to the servicer when an offer is received to provide the terms and conditions of the short sale and together with the sales contract, provides

settlement instructions to the settlement agent. Either proactively, or at the request of an eligible borrower, the servicer will prepare and send an SSA to the borrower after determining that the proposed sale is in the best interest of the investor. A borrower may not participate in a HAMP Trial Period Plan and agree to a HAFA SSA simultaneously. The servicer will also provide the borrower a RASS, pre-populated with contact information for the servicer, the property address and the loan number.

In the event that a borrower has an executed sales contract and requests the servicer to approve a short sale under HAFA before an SSA has been executed, the servicer must evaluate the borrower for HAFA as described in the Alternative Request for Approval of a Short Sale (Alternative RASS) section.

While servicers may amend the terms of the SSA in accordance with investor requirements, applicable laws or local real estate practice, at a minimum the SSA must include the following:

- A fixed termination date not less than 120 calendar days from the effective date of the SSA (“Effective Date”). The Effective Date must be stated in the SSA and is the date the SSA is mailed to the borrower. The term of the SSA may be extended at the discretion of the servicer up to a total term of 12 months if agreed to by the borrower, in accordance with the requirements of the investor.
- A requirement that the property be listed with a licensed real estate professional who is regularly doing business in the community where the property is located.
- Either a list price approved by the servicer or the acceptable sale proceeds, expressed as a net amount after subtracting allowable costs that the servicer will accept from the transaction.
- The amount of closing costs or other expenses the servicer will permit to be deducted from the gross sale proceeds expressed as a dollar amount, a percentage of the list price or a list by category of reasonable closing costs and other expenses that the servicer will permit to be deducted from the gross sale proceeds.
- The amount of the real estate commission that may be paid, not to exceed 6% of the contract sales price, and when applicable, notification that the servicer retained a contractor to assist the listing broker with the transaction along with the payment amount (expressed as a fixed dollar amount or percentage of the contract sales price) if paid from sale proceeds.
- A statement by the borrower authorizing the servicer to communicate the borrower’s personal financial information to other parties (including Treasury and its agents) as necessary to complete the transaction.
- Cancellation and contingency clauses that must be included in listing and sale agreements notifying prospective purchasers that the sale is subject to approval by the servicer and/or third parties.
- Notice that the sale must represent an arm’s length transaction and that the purchaser may not sell the property within 90 calendar days of closing, including certification language regarding the arm’s length transaction that must be included in the sales contract.
- An agreement that upon successful closing of a short sale acceptable to the servicer, the borrower will be released from all liability for repayment of the first mortgage debt.

- An agreement that upon successful closing of a short sale acceptable to the servicer the borrower will be entitled to a relocation incentive of \$3,000, which will be deducted from the gross sale proceeds at closing.
- Notice that the servicer will allow a portion of gross sale proceeds to be paid to subordinate lien holders in exchange for release and full satisfaction of their liens.
- Notice that a short sale may have income tax consequences and/or may have a derogatory impact on the borrower's credit score and a recommendation that the borrower seek professional advice regarding these matters.
- The amount of the monthly mortgage payment, if any, that the borrower will be required to pay during the term of the SSA, which amount must not exceed 31% of the borrower's gross monthly income.
- An agreement that so long as the borrower performs in accordance with the terms of the SSA, the servicer will not complete a foreclosure sale.
- Terms under which the SSA can be terminated.

Borrower Obligations. The borrower must sign and return the SSA within 14 calendar days from its Effective Date along with a copy of the real estate broker listing agreement and information regarding any subordinate liens. In returning and signing the SSA the borrower agrees to:

- Provide all information and sign documents required to verify program eligibility.
- Cooperate with the listing broker to actively market the property and respond to servicer inquiries.
- Maintain the interior and exterior of the property in a manner that facilitates marketability.
- Work to clear any liens or other impediments to title that would prevent conveyance.
- Make the monthly payment stipulated in the SSA, if applicable.

Monitoring Marketing Activity / Cause for Termination. During the term of the SSA, the servicer may terminate the SSA before its expiration due to any of the following events:

- The borrower's financial situation improves significantly, the borrower qualifies for a modification, or the borrower brings the account current or pays the mortgage in full.
- The borrower or the listing broker fails to act in good faith in listing, marketing and/or closing the sale, or otherwise fails to abide by the terms of the SSA.
- A significant change occurs to the property condition and/or value.
- There is evidence of fraud or misrepresentation.
- The borrower files for bankruptcy and the Bankruptcy Court declines to approve the SSA.
- Litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance.
- The borrower fails to make the monthly payment stipulated in the SSA, if applicable.

Request for Approval of Short Sale. Within three business days following receipt of an executed purchase offer, the borrower or the listing broker should deliver to the servicer a

completed RASS describing the terms of the sale transaction. With the RASS, the borrower must submit to the servicer:

- A copy of the executed sales contract and all addenda.
- Buyer's documentation of funds or buyer's pre-approval or commitment letter on letterhead from a lender.
- All information regarding the status of subordinate liens and/or negotiations with subordinate lien holders.

Approval or Disapproval of Sale. Within ten business days of receipt of the RASS and all required attachments, the servicer must indicate its approval or disapproval of the proposed sale by signing the appropriate section of the RASS and mailing it to the borrower.

The servicer must approve a RASS if the net sale proceeds available for payment to the servicer equal or exceed the minimum net determined by the servicer prior to the execution or extension of the SSA and all other sales terms and conditions in the SSA have been met. Additionally, the servicer may not require, as a condition of approving a short sale, a reduction in the real estate commission below the commission stated in the SSA.

The servicer may require that the sale closing take place within a reasonable period following acceptance of the RASS, but in no event may the servicer require that a transaction close in less than 45 calendar days from the date of the sales contract without the consent of the borrower.

Alternative Request for Approval of Short Sale. If the borrower has an executed sales contract and requests the servicer to approve a short sale under HAFA before an SSA has been executed, then the borrower must submit the request to the servicer in the form of the Alternative Request for Approval of Short Sale (Alternative RASS), attached as Exhibit B. Upon receipt of the Alternative RASS, the servicer must determine the basic eligibility of the borrower as described in the *HAFA Consideration* section of this Supplemental Directive. If the borrower appears to be eligible and was not previously considered for a Trial Period Plan, the servicer must notify the borrower verbally or in writing of the availability of a HAMP modification and allow the borrower 14 calendar days from the date of the notification to contact the servicer by verbal or written communication and request consideration for a HAMP modification.

If the borrower does not wish to be considered for a modification, this does not trigger a non-approval notice under Supplemental Directive 09-08, *Borrower Notices* and the servicer may consider the Alternative RASS in accordance with this Supplemental Directive without first having to enter into a SSA with the borrower. In such cases, the servicer should obtain a completed RMA⁴ and evidence of income prior to completing the short sale. The IRS Form 4506-T or 4506-EZ is not required, unless it is necessary to verify the borrower's income and the servicer is not required to evaluate the mortgage loan using the NPV test or to apply the standard modification waterfall set out in Supplemental Directive 09-01. If the servicer approves the short sale using the Alternative RASS, the loan will qualify for HAFA program incentives.

⁴ Servicers may elect to use a proprietary financial information form substantially similar to the RMA and a hardship affidavit in lieu of the RMA.

Deed-in-Lieu

In accordance with investor requirements, servicers have the discretion to accept a HAFA DIL, which requires a full release of the debt and waiver of all claims against the borrower. The borrower must agree to vacate the property by a date certain, leave the property in broom clean condition and deliver clear, marketable title.

Typically, servicers require that the borrower make a good faith effort to list and market the property before the servicer will agree to accept a DIL. Under circumstances acceptable to the investor, servicers may agree to accept a DIL without requiring a marketing period. In either circumstance, the transaction will be eligible for incentives as described in the *Incentive Compensation* section of this Supplemental Directive if the borrower meets the HAFA eligibility criteria.

SSA. The SSA contains optional DIL language that may be included or deleted by the servicer prior to execution of the SSA. If the DIL language is included, the investor is obligated to accept a DIL in accordance with the terms of the SSA if the term of the SSA expires without resulting in a sale of the property. If the servicer offers the DIL option separately from the SSA or without a marketing period, the servicer must provide the Deed-in-Lieu Agreement form (“DIL Agreement”), attached as Exhibit C.

DIL Terms. The following terms apply to a HAFA DIL:

- **Marketable Title.** The borrower must be able to convey clear, marketable title to the servicer or investor. The requirements for extinguishment of subordinate liens as described in the *Release of Subordinate Liens* section of this Supplemental Directive apply to DIL transactions.
- **Written Agreement.** The conditions for acceptance of a DIL must be in writing and signed by both the servicer and borrower. They may be set forth in the SSA if approved with the short sale, or in the DIL Agreement.
- **Vacancy Date.** The SSA or DIL Agreement must specify the date by which the borrower must vacate the property, which in no event shall be less than 30 calendar days from the date of the termination date of the SSA or the date of a separate DIL Agreement, unless the borrower voluntarily agrees to an earlier date.
- **Relocation Assistance.** Borrowers who participate in a HAFA DIL transaction are eligible for \$3,000 in relocation assistance as described in the *Incentive Compensation* section of this Supplemental Directive.

General Terms and Conditions

Suspension of Foreclosure Sales. At the servicer’s discretion, the servicer may initiate foreclosure or continue with an existing foreclosure proceeding during the HAFA process, but may not complete a foreclosure sale:

- While determining the borrower’s eligibility and qualification for HAFA.
- While awaiting the timely return of a fully executed SSA.

- During the term of a fully executed SSA.
- Pending transfer of property ownership based on an approved sales contract per the RASS or Alternative RASS.
- Pending transfer of property ownership via a DIL by the date specified in the SSA or DIL Agreement.

Payment Forbearance. The servicer will identify in the SSA, Alternative RASS or DIL Agreement the amount of the monthly mortgage payment, if any, that the borrower is required to make during the term of the applicable agreement and pending transfer of property ownership, as applicable. In no event may the amount of the borrower's monthly payment exceed the equivalent of 31 percent of the borrower's gross monthly income. Servicers must develop a written policy in accordance with investor requirements that identifies the circumstances under which they will require monthly payments and how that payment will be determined. Any requirement for the borrower to make monthly payments must be in accordance with applicable laws, rules and regulations.

Release of Subordinate Liens. It is the responsibility of the borrower to deliver clear marketable title to the purchaser or investor and to work with the listing broker, settlement agent and/or lien holders to clear title impediments. The servicer may, but is not required to, negotiate with subordinate lien holders on behalf of the borrower. The servicer, on behalf of the investor, will authorize the settlement agent to allow a portion of the gross sale proceeds as payment(s) to subordinate mortgage/lien holder(s) in exchange for a lien release and full release of borrower liability. Each lien holder, in order of priority, may be paid no more than six percent (6%) of the unpaid principal balance of their loan, until the \$6,000 aggregate cap is reached. Payments will be made at closing from the gross sale proceeds and must be reflected on the HUD-1 Settlement Statement. Investors are eligible for incentive reimbursement for up to one-third of the cost to extinguish subordinate liens as described in the *Incentive Compensation* section of this Supplemental Directive.

Prior to releasing any funds to subordinate mortgage/lien holder(s), the servicer through its agent must obtain written commitment from the subordinate lien holder that it will release the borrower from all claims and liability relating to the subordinate lien in exchange for receiving the agreed upon payoff amount. Although servicers have discretion to draft policies and procedures for ensuring that the commitment of subordinate lien holders is documented prior to closing and such documentation is retained in the servicing file, they would be in compliance with HAFA guidelines if they further required the closing attorney or agent to either confirm that they are in receipt of this commitment from subordinate lien holders on the HUD-1 Settlement Statement, or request that a copy of the written commitment provided by the subordinate lien holder be sent to the servicer with the HUD-1 Settlement Statement which is provided in advance of the closing.

Subordinate mortgage/lien holder(s) may not require contributions from either the real estate agent or borrower as a condition for releasing its lien and releasing the borrower from personal liability. In addition, any payments to subordinate mortgage/lien holder(s) related to the short sale or DIL must be reflected on the HUD-1 Settlement Statement, as applicable.

Release of First Mortgage Lien. The servicer should follow local or state laws or regulations to time the release of its first mortgage lien after receipt of sale proceeds from a short sale or delivery of the deed and property in a DIL transaction. If local or state law does not require release within a specified time from the date the servicer receives payment and satisfies the mortgage, the servicer must release its first mortgage lien within 30 business days. Additionally, the investor must waive all rights to seek a deficiency judgment and may not require the borrower to sign a promissory note for the deficiency.

Borrower Fees. Servicers may not charge the borrower any administrative processing fees in connection with HAFA. The servicer must pay all out-of-pocket expenses, including but not limited to notary fees, recordation fees, release fees, title costs, property valuation fees, credit report fees, or other allowable and documented expenses, but the servicer may add these costs to the outstanding debt in accordance with borrower's mortgage documents and applicable laws in the event the short sale or DIL is not completed. Servicers may require borrowers to waive reimbursement of any remaining escrow, buy down funds or prepaid items, and assign any insurance proceeds to the investor, if applicable. Those funds will not be applied to reduce the total net proceeds from the sale.

Mortgage Insurer Approval. For loans that have mortgage insurance coverage, the servicer/investor must obtain mortgage insurer approval for HAFA foreclosure alternatives. A mortgage loan does not qualify for HAFA unless the mortgage insurer waives any right to collect additional sums (cash contribution or a promissory note) from the borrower.

Incentive Compensation

Treasury will provide reimbursements and incentives as set forth below. However, no incentives will be paid to the borrower, servicer or investor if the net proceeds from a sale exceed the total amount due on the first mortgage when title is transferred. The amount of any contribution paid by a mortgage insurer or other provider of credit enhancement shall not be considered in determining whether the mortgage was paid in full and whether servicers are eligible for such incentive compensation.

Borrowers, servicers and investors will be eligible for HAFA incentives upon successful completion of the short sale or DIL if an SSA, Alternative RASS or DIL Agreement, as applicable, was executed on or before December 31, 2012. Servicers will be reimbursed by Treasury upon reporting the completed HAFA transaction as described in the *Reporting Requirements* section of this Supplemental Directive. For a short sale or DIL, incentives will be paid as follows:

Borrower Relocation Assistance. Following the successful closing of a short sale or DIL, the borrower shall be entitled to an incentive payment of \$3,000 to assist with relocation expenses. In a short sale transaction, the servicer must instruct the settlement agent to pay the borrower from sale proceeds at the same time that all other payments, including the payoff to the servicer, are disbursed by the settlement agent. The amount paid to the borrower must appear on the HUD-1 Settlement Statement.

If the servicer conducts a formal closing for a DIL transaction and the borrower has vacated the property, the borrower relocation incentive of \$3,000 must be paid at closing and reflected on the HUD-1 Settlement Statement. If at the time of closing the borrower has not vacated the property, the servicer must mail a check to the borrower within five business days of the borrower's vacancy and delivery of keys to the servicer or the servicer's agent. Similarly, if the DIL transaction is not conducted as a formal closing, the servicer must mail a check to the borrower within five business days from the later of the borrower's execution of the deed or the borrower's vacancy and delivery of keys to the servicer or servicer's agent.

Servicers will be reimbursed for the full amount of this incentive payment after the HAFA transaction is reported as described in *Reporting Requirements* section of this Supplemental Directive.

Servicer Incentive. The servicer will be paid \$1,500 to cover administrative and processing costs for a short sale or DIL completed in accordance with the requirements of HAFA and the applicable documents. Investors may elect to pay additional incentive compensation to servicers which will not affect the HAFA servicer incentive.

Investor Reimbursement for Subordinate Lien Releases. The investor will be paid a maximum of \$2,000 for allowing a portion of the short-sale proceeds to be distributed to or paid to subordinate lien holders. This reimbursement will be earned on a one-for-three matching basis. For each three dollars an investor pays to secure release of a subordinate lien, the investor will be entitled to one dollar of reimbursement up to the maximum reimbursement of \$2,000. To receive an incentive, subordinate lien holders must agree to release their liens and waive all future claims against the borrower. The servicer is not responsible for any future actions or claims against the borrower by such subordinate lien holders or creditors.

Standard Form Documents

Servicers are required to use the HAFA documents attached to this Supplemental Directive or forms that are substantially similar in content to the forms provided, except that the servicer may amend the terms of the SSA or DIL Agreement in accordance with investor requirements, applicable laws or local real estate practice and may customize the forms with servicer specific logos. This Supplemental Directive increases incentives provided in Supplemental Directive 09-09, which may impact servicers' HAFA documents, therefore, servicers may manually note changes to their existing HAFA documents until their current supply of forms are exhausted, however, use of the revised HAFA documents or forms that are substantially similar in content is required by June 1, 2010.

Document Retention. Servicers must retain all documents and information received during the process of determining borrower eligibility and qualification for HAFA.

For a period of seven years from the date of the document collection, servicers must retain detailed records of borrower solicitations or borrower-initiated inquiries regarding HAFA, the outcome of the evaluation for foreclosure alternatives under HAFA and specific justification with supporting details if foreclosure alternatives were denied. Records must also be retained to

document the reasons for termination of the SSA or expiration of HAFA transactions without a completed short sale or acceptance of a DIL.

Signatures and Electronic Documents. All HAFA documentation must be signed by an authorized representative of the servicer and reflect the actual date of signature by the servicer's representative.

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 representatives must execute the HAFA 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 HAFA 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 or military deployment.

Any party to a document utilized in HAFA may, subject to applicable law and any investor requirements or restrictions, prepare, sign and send the document through electronic means provided: (a) appropriate technology is used to store an authentic record of the executed document and the technology otherwise ensures the security, confidentiality and privacy of the transaction, (b) the document is enforceable under applicable law, (c) the servicer obtains the borrower's consent to use electronic means to enter into the document, (d) the servicer ensures that the borrower is able to retain a copy of the document and provides a copy to the borrower that the borrower may download, store and print, and (e) the borrower, at any time, may elect to enter into the document through paper means or to receive a paper copy of the document.

Reporting Requirements

As a condition to receiving the incentive payments offered through HAFA, servicers are required to provide periodic HAFA loan level data to Fannie Mae, in its capacity as program administrator. The data submitted must be accurate, complete, timely, and agree with the servicer's records. Data will be reported by a servicer at key milestones in the transaction:

- **Notification** – when the SSA or DIL Agreement is signed and executed, or updated following an extension of the marketing terms;
- **Short Sale/DIL Loan Set Up** – at the transfer of property ownership (closing of a short sale or acceptance of DIL); and/or
- **Termination** – when the SSA or DIL Agreement expires or when the SSA or DIL Agreement is terminated by the servicer.

Each milestone is a separate data transmission and must be reported no later than the fourth business day of the month following the event. The required data elements are attached to this Supplemental Directive as Exhibit D. In addition, HAFA reporting requirements will be posted on the servicer web portal at www.hmpadmin.com. Note also that the reporting information required under Supplemental Directive 09-06 must be provided by the servicer for all HAFA transactions.

The HAFA reporting and payment processes are currently under development by Fannie Mae, in its capacity as program administrator. Subsequent guidance will be provided describing when the HAFA reporting and processes will be available. Servicers will not be required to report HAFA data until the reporting process is in place, but in this interim period servicers must collect and store information on all HAFA transactions so that the necessary data can be reported when the processes become available. In addition, HAFA incentives will not be paid until the payment process is available; borrowers, servicers and investors will be reimbursed for all incentives relating to HAFA transactions closed prior to the reporting and payment processes becoming available.

Credit Bureau Reporting. The servicer should continue to report a “full file” status to the major credit repositories for each loan under the HAFA program in accordance with the Fair Credit Reporting Act and the Consumer Data Industry Association’s (“CDIA’s”) Metro 2 Format credit bureau requirements. “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. The Payment Rating code should be the code that properly identifies whether the account is current or past due within the activity period being reported – prior to completion of the HAFA transaction. Because CDIA’s Metro 2 format does not provide an Account Status Code allowable value for a short sale, a short sale should be identified with the reporting of Special Comment Code “AU”. The information below is consistent with “CDIA Mortgage and Home Equity Reporting Guidelines in Response to Current Financial Conditions” (May 2009).

Reporting should be as follows:

Short Sales

- Account Status Code = 13 (paid or closed/zero balance)
- Payment Rating = 0, 1, 2, 3, 4, 5, or 6
- Special Comment Code = AU (account paid in full for less than the full balance)
- Current Balance = \$0
- Amount Past Due = \$0
- Date Closed = MMDDYYYY
- Date of Last Payment = MMDDYYYY

Deed-in-Lieu

- Account Status Code = 89 (deed-in-lieu of foreclosure on a defaulted loan)
- Payment Rating = 0, 1, 2, 3, 4, 5, or 6
- Current Balance = \$0
- Amount Past Due = \$0
- Date Closed = MMDDYYYY
- Date of Last Payment = MMDDYYYY

Compliance

Servicers must comply with the HAFA short sale and DIL requirements specified in this Supplemental Directive and any subsequent policy guidance. Servicers must have adequate

staffing and resources for responding to borrower requests for participation, for receiving and processing HAFA documents in accordance with program guidelines and for ensuring that inquiries and complaints about HAFA receive fair consideration, along with timely and appropriate response and resolution.

Treasury has selected Freddie Mac to serve as its compliance agent for HAFA. In its role as compliance agent, Freddie Mac will utilize Freddie Mac employees and contractors to conduct independent compliance assessments. The scope of the assessments will include, among other things, an evaluation of documented evidence to confirm adherence (e.g., accuracy and timeliness) to HAFA requirements with respect to the following:

- Assessment of the process for evaluating and approving borrowers for a HAFA short sale or DIL.
- Adherence to the standard policies and guidelines for completing HAFA short sales and DIL and consistent application of same.
- Determining fair market value, recommended list price, approved sale proceeds and approved minimum net proceeds, as applicable.
- Guidelines for allowable payoffs to junior lien holders.
- Use of standard documents and document retention.
- Completion of borrower, servicer and investor incentive payments.

The review will also confirm the existence and 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 include 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. Moreover, 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 HAFA 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 calendar 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 calendar 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.

HELP FOR AMERICA'S HOMEOWNERS.



[Name of Servicer]
[Address of Servicer]

[Loan #]
[Servicer FAX]
[Servicer Email]

[Date]

[Name of Borrower]
[Name of Co-Borrower]
[Address of Borrower]

[Borrower Phone]
[Borrower Email]

Dear [borrower and co-borrower name(s)]:

If you are looking for help selling your home and avoiding foreclosure, the federal government has introduced the **Home Affordable Foreclosure Alternatives (HAFA)** Program to help you. As your mortgage servicer, we are offering you the opportunity to participate in this program by utilizing HAFA's short sale option.

Home Affordable Foreclosure Alternatives Program – Short Sale

A "short sale" is specifically designed to help borrowers who are unable to afford their first mortgage and want to sell their home to avoid foreclosure, even if the sale price may not pay off the amount owed on their mortgage. A short sale requires a number of parties (you, the buyer, your real estate broker, and sometimes mortgage insurance companies and other lenders) to work together to make this option successful. However, it could be a good solution for your current situation.

How Does a Short Sale Work?

- **Pre-Sale**—We will start by approving a list price for your home or give you the acceptable sale proceeds (the minimum amount that we must receive after sales costs) from the sale of your home. We will also identify the sales costs (broker commissions and closing costs) that may be deducted from the final sales price. You then list your property (like any home sale) with a local real estate broker at the approved price.
- **Offer**—When you get an offer on your home, you will submit the required documentation and we will approve the sale if it is in line with what we agreed to.
- **Closing**—Once the sale closes, we will release you from all responsibilities for repaying your mortgage. Plus, you will receive \$3,000 to help pay some of your moving expenses. (The check will be paid to you by the settlement agent as part of the closing.) In the event there is any money left over from the sale after paying the entire amount you owe on the mortgage plus the approved sale costs, you will not be eligible to receive the \$3,000.

To Participate in the Short Sale Program

Please note, there is no guarantee that your home will sell under this program, and you are responsible for determining whether you want to sell your home for the price and terms described in this letter. The following pages detail your responsibilities, additional information on the short sale process and the Terms and Conditions. **Additionally, this letter constitutes an agreement between us and you ("Agreement") so please read it carefully and completely.**

If you agree to the terms of the Agreement and want to proceed with a short sale, you must complete, sign and return the Agreement back to us. If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

Sincerely,
[Servicer Name]

To Accept This Offer

- Please sign and return this Agreement. All owners of the property must sign this Agreement.
- Obtain your broker's signature to acknowledge this Agreement, because your broker plays an important role selling your property. The Short Sale Program sections (pages 2-4) contain important information that you and your broker will need to review and discuss.
- Include a copy of your signed listing agreement.
- Include information on other liens secured by your home (such as home equity loans, homeowner association liens, tax liens or judgments).
- *[Insert only if applicable:]* Complete and sign the Hardship Affidavit form.

We must have these documents by *[insert date 14 calendar days from this request]*. Please send us these documents at the following address: *[insert servicer address]*.

Short Sale Program—Your Responsibilities

You have until *[insert date 120 calendar days from the date of this letter]* to sell your house. After that date, this Agreement terminates, unless it is extended by us. During this time you have certain responsibilities. You must:

- ❶ Keep your house and your property in good condition and repair and cooperate with your broker to show it to potential buyers.
- ❷ *[Insert only if applicable:]* Make partial mortgage payments of \$_____ by the first day of each month beginning on _____ 1, 20__ until your house is sold and title is transferred. While you are selling your house, you still legally owe the full amount of your current monthly mortgage payment. However, as part of this Agreement, we will accept this reduced payment until the house is sold and closes or this Agreement expires. These payments do not constitute a modification of your mortgage.
- ❸ Be able to provide the buyer of your home with clear title. To start, determine if you have other loans, judgments or liens secured by your home, such as a home-equity line of credit or a second mortgage. If there are such liens, you will need to either pay these loans off in full or negotiate with the lien holders to release them before the closing date. Under this program, you must make sure other lien holders will agree not to pursue other legal action related to the pay off of their lien, such as a deficiency judgment. You can get help from your broker to negotiate with the other lien holders.
- ❹ We may allow up to 6% of the unpaid principal balance of each loan (not to exceed an aggregate of \$6,000 for all the loans in total) to be paid from the sale proceeds to help get a lien release. If you have these types of liens or loans on your home, please gather any paperwork you have (such as your last statement) and send it to us when you return this signed Agreement. Remember, clearing these other liens and delivering clear and marketable title is your responsibility.
- ❺ At several stages of the short sale process, such as after an offer is received, you will need to complete some paperwork. You are responsible for returning all documents within the time allowed in this Agreement.

If you fulfill these responsibilities, we will postpone any foreclosure sale during the period of this Agreement.

Short Sale Program—Additional Information

- You can't list the property with or sell it to anyone that you are related to or have a close personal or business relationship with. In legal language, it must be an "arm's length transaction." If you have a real estate license you can't earn a commission by listing your own property. You may not have any agreements to receive a portion of the commission or the sales price after closing. Any buyer of your property must agree to not sell the home within 90 calendar days of the date it is sold by you. You may not have any expectation that you will be able to buy or rent [servicer may delete "or rent" in accordance with investor guidelines] your house back after the closing. Any knowing violation of the arm's length transaction prohibition may be a violation of federal law.
- We will need to talk to your broker and others involved in the sale. By signing this Agreement, you are authorizing us to communicate and share personal financial information about your mortgage, credit history, subordinate liens, and plans for relocation with your broker and other third parties that could be involved in the transaction including employees of the United States Treasury and its financial agents, Fannie Mae and Freddie Mac.
- The difference between the remaining amount of principal you owe and the amount that we receive from the sale must be reported to the Internal Revenue Service (IRS) on Form 1099C, as debt forgiveness. In some cases, debt forgiveness could be taxed as income. The amount we pay you for moving expenses may also be reported as income. We suggest that you contact the IRS or your tax preparer to determine if you may have any tax liability.
- We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than the full payment. We have no control over, or responsibility for the impact of this report on your credit score. To learn more about the potential impact of a short sale on your credit you may want to go to <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.

[Insert optional Deed-in-Lieu language if applicable:

If by the termination date of this Agreement, you have complied with all your responsibilities but are unable to sell your home, we will allow you to convey ownership of your home and all real property secured by your mortgage loan (your "Property"). While this action, called a deed-in-lieu of foreclosure, will not allow you to keep your Property, it will prevent you from going through a foreclosure sale and it will release you from all responsibility to repay the mortgage debt. Additionally, you will still be eligible to receive \$3,000 to help with your moving expenses.

You and all other occupants must vacate your Property and provide clear and marketable title with a general warranty deed or local equivalent by *[insert date at least 30 days after the date of this Agreement]*. You must leave the house in broom clean condition, free of interior and exterior trash, debris or damage, and all personal belongings must be removed from the Property. The yard must be clean and neat and you must deliver all the keys and controls, such as garage door openers, to us. You may be required to sign standard pre-closing documents as well as attend a closing of the conveyance of your Property where all borrowers on the mortgage must be present.

You must also be able to deliver marketable title free of any other liens. We will allow up to six percent (6%) of the unpaid principal balance of each subordinate lien, in order of priority, not to exceed \$6,000 in aggregate for all subordinate liens, to be deducted from the sale proceeds to pay subordinate lien holders to release their liens. We require each subordinate lien holder to release you from personal liability for the loans in order for the sale to qualify for this program, but we do not take any responsibility for ensuring that the lien holders do not seek to enforce personal liability against you. Therefore, we recommend that you take steps to satisfy yourself that the subordinate lien holders release you from personal liability.

By signing this letter, you are agreeing not only to a short sale but also to a deed-in-lieu of foreclosure if a short sale is not successful. If you have any questions about the deed-in-lieu of foreclosure, please call us before signing and returning this letter.]

Short Sale Program—Receiving/Accepting an Offer

When you receive an offer on your home, within the next 3 business days, you will send us a Request to Approve a Short Sale (RASS) form, a copy of which is attached to this Agreement as Exhibit A1. You will also need to send along a copy of the signed purchase offer and evidence that the buyer has funds to purchase the home, such as a letter that the buyer is approved for a mortgage loan. Within 10 business days of our receipt of these documents, we will approve the sale if it is within the terms and conditions of this Agreement and any other liens are released.

When the sale closes in accordance with this Agreement, we will accept the net sale proceeds (all the funds that remain after the approved sales costs have been paid) in full satisfaction of your mortgage with us and will release you from all future liability.

We hope you decide to take advantage of this short sale option. If you or your broker have any questions about this Agreement please call us at [insert servicer phone number].

If you would like to speak with a counselor about this program, call the Homeowner's HOPE™ Hotline 1-888-995-HOPE (4673). The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

Short Sale Agreement Terms and Conditions

1. **List Price or Acceptable Sale Proceeds.** *[Choose one and delete unnecessary text.]* [You agree to list the property in “as is” condition for [dollar amount].] OR [We will accept a sales contract where the proceeds from the sale, less the expenses stated in paragraph 5. *Allowable Costs*, nets [dollar amount].] We are not responsible for the accuracy of the list price and have no responsibility to you in the event the property is not sold. We may require you to adjust the list price or other offer terms.
2. **Listing Agreement.** The listing agreement must include the following clauses:
 - a. **Cancellation Clause.** “Seller may cancel this Agreement prior to the ending date of the listing period without advance notice to the broker, and without payment of a commission or any other consideration, if the property is conveyed to the mortgage insurer or the mortgage holder.”
 - b. **Listing Agreement Contingency Clause.** “Sale of the property is contingent on written agreement to all sale terms by the mortgage holder and the mortgage insurer (if applicable).”
3. **Property Maintenance and Expenses.** You are responsible for all property maintenance and expenses during the listing period including utilities, assessments, association dues and costs for interior and exterior upkeep required to show the property to its best advantage. Additionally, until ownership is transferred, you must report any and all property damage to us and file a hazard insurance claim for covered damage. Unless insurance proceeds are used to pay for repairs or personal property losses as provided in the mortgage documents, we may require that they be applied to reduce the mortgage debt.
4. *[Insert only if applicable:]* **Partial Mortgage Payments.** Beginning on _____ 1, 20____, you will be required to make partial mortgage payments of \$_____ by the first day of each month during the term of the Agreement and pending transfer of property ownership. You are legally obligated to make the full amount of your current monthly mortgage payments. However, we will accept this reduced partial payment until the house is sold or this Agreement expires. The partial mortgage payments do not constitute a modification of your mortgage.
5. **Allowable Costs that May be Deducted from Gross Sale Proceeds**
 - a. **Closing Costs.** The closing costs paid by you or on your behalf as seller must be reasonable and customary for the market. *[Choose one and delete unnecessary text.]* [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed \$_____.] OR [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed ____% of the list price.] OR [Closing costs which may be deducted from the gross sale proceeds are limited to title search and escrow expenses usually paid by the seller; reasonable settlement escrow/attorney’s fees; transfer taxes and recording fees usually paid by the seller; termite inspection and treatment as required by law or custom; pro-rated real property taxes; and, real estate commissions of ____ percent of the contract sales price [add other closing costs that may be included].]
 - b. **Subordinate Liens.** We will allow up to six percent (6%) of the unpaid principal balance of each subordinate lien in order of priority, not to exceed a total of \$6,000, to be deducted from the gross sale proceeds to pay subordinate lien holders to release their liens. We require each subordinate lien holder to release you from personal liability for the loans in order for the sale to qualify for this program, but we do not take any responsibility for ensuring that the lien holders do not seek to enforce personal liability against you. Therefore, we recommend that you take steps to satisfy yourself that the subordinate lien holders release you from personal liability.
 - c. **Real Estate Commissions.** We will allow to be paid from sale proceeds, real estate commissions of _____ percent of the contract sales price, to be paid to the listing and selling brokers involved in the transaction. Neither you nor the buyer may receive a commission. Any commission that would otherwise be paid to you or the buyer must be reduced from the commission due on sale. *[Optional text:]* Please note: We have retained a vendor to assist your listing broker with the sale. The vendor and your listing broker will work together on your behalf to facilitate the sale process. *[Choose one and delete unnecessary text.]* [The vendor will be paid from sale proceeds [\$ _____] OR [an amount equal to ____% of the sales price].] OR [The vendor will be paid by us outside of the sales transaction.]
 - d. **Borrower Relocation Assistance.** If the closing of the short sale occurs in accordance with this Agreement, you will be entitled to an incentive payment of \$3,000 to assist with relocation expenses. We will instruct the settlement agent to pay you from the sale proceeds at the same time that all other payments, including the payoff of our first

mortgage, are disbursed by the settlement agent. Only one payment per household is provided for the relocation assistance, regardless of the number of borrowers.

6. **Sales Contracts.** Within three business days of a bona-fide purchase offer, you must submit a Request for Approval of a Short Sale, which is attached as Exhibit A1, along with a copy of a fully executed Sales Contract, all addenda and Buyer’s documentation of funds or Buyer’s pre-approval or commitment letter on letterhead from a lender.
7. **Parties to the Sale.** The Sales Contract must contain the following clauses: “Seller and Buyer each represent that the sale is an “arm’s length” transaction and the Seller and Buyer are unrelated to each other by family, marriage or commercial enterprise.” “The Buyer agrees not to sell the property within 90 days of closing of this sale.”
8. **Closing.** The closing must occur within ____ calendar days of the Sales Contract execution date.
9. **Foreclosure Sale Suspension.** We may initiate or continue the foreclosure process as permitted by the mortgage documents; however, we will suspend any foreclosure sale date until the expiration date of this Agreement or the date of closing of an approved short sale, whichever is later, provided you continue to abide by the terms and conditions of this Agreement.
10. **Satisfaction and Release of Liability.** If all of the terms and conditions of this Agreement are met, upon sale and settlement of the property, servicer will prepare and send for recording a lien release in full satisfaction of the mortgage, foregoing all rights to personal liability or deficiency judgment.
11. *[Insert only if applicable.]* **Mortgage Insurer or Guarantor Approval.** The terms and conditions of the sale are subject to the written approval of the mortgage insurer or guarantor.
12. **Termination of this Agreement.** Unless otherwise agreed by the parties, this Agreement will terminate on *[insert date]*. We may also terminate this Agreement at any time if:
 - a. Your financial situation improves significantly, you qualify for loan modification, you bring the account current or you pay off the mortgage in full.
 - b. You or your broker fails to act in good faith in marketing and /or closing on the sale of the property, or otherwise fails to abide by the terms of this Agreement.
 - c. A significant change occurs to the property condition or value.
 - d. There is evidence of fraud or misrepresentation.
 - e. You file for bankruptcy and the Bankruptcy Court declines to approve the Agreement.
 - f. Litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance.
 - g. *[Insert only if applicable:]* You do not make the payments required under this Agreement.
13. **Settlement of a Debt.** The proposed transaction represents our attempt to reach a settlement of the delinquent mortgage. You are choosing to enter into this Agreement even though there is no guarantee that the transaction will be successful. In the event this transaction is unsuccessful, we may exercise our remedies under the mortgage, including foreclosure.

Signature of Servicer Representative

Title

Printed Name of Servicer Representative

Date

Short Sale Agreement

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU SIGN, BECAUSE IT AFFECTS YOUR LEGAL RIGHTS.

Borrower Acknowledgement of Risks, Conditions and Contingencies. In signing and returning this Short Sale Agreement, I/we agree to all the stated terms and conditions.

Borrower Signature Date Co-Borrower Signature Date

Printed Name Printed Name

Acknowledgement by Listing Broker

The undersigned listing broker ("Broker") is not a party of the Short Sale Agreement ("Agreement") above, but acknowledges that the Broker:

- 1. Has been retained by the borrower for the sale of the property.
2. Has reviewed the terms and conditions of the Agreement above.
3. Agrees that in the event of a conflict between the terms of the listing agreement and the terms agreed to by the borrower in the Agreement above, the listing agreement will be deemed amended to conform to the terms of the Agreement.
4. Acknowledges that pursuant to the Agreement, the Servicer will not review a sales contract unless a Request for Approval of Short Sale, attached as Exhibit A1, is completed.

Listing Broker Name Address: Date: Listing Broker Signature License #: Office Phone: Cell Phone: E-mail Address:

If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number].

If you would like to speak with a counselor about this program, call the Homeowner's HOPE™ Hotline 1-888-995-HOPE (4673). The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

NOTICE TO BORROWER
Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: " Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."
If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or www.sig tarp.gov. Mail can be sent Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.



HELP FOR AMERICA'S HOMEOWNERS.



[Name of Servicer]
[Address of Servicer]

[Name of Borrower]
[Name of Co-Borrower]
[Address of Borrower]

[Loan #]
[Servicer FAX]
[Servicer Email]

[Borrower Phone]
[Borrower Email]

[Date]

RE: Request for Approval of Short Sale Pursuant to Agreement Dated [Date of SSA]

This is a Request for Approval of the Short Sale Pursuant to Agreement Dated [Date of SSA] between the above referenced Servicer ("Servicer") and the borrower and co-borrower ("Borrower" or "you"). Under penalty of perjury you certify that:

- 1) the sale of the property is an "arm's length" transaction, between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise;
- 2) there are no agreements or understandings between you and the Buyer that you will remain in the property as a tenant or later obtain title or ownership of the property;
- 3) neither you nor the Buyer will receive any funds or commissions from the sale of the property; and
- 4) there are no agreements or offers relating to the sale or subsequent sale of the property that have not been disclosed to the Servicer.

Please complete, sign and return the Terms of Sale on the following page.

Program Terms And Conditions



Terms of Sale [All blanks to be completed by Borrower]:

1. Contract Sales Price	\$	6. Closing Date:
2. Less Total Allowable Closing Costs	\$	7. Approved Buyer(s):
a. Commissions	\$	8. Settlement Agent:
b. Settlement Escrow/Attorney Fees	\$	
c. Seller's Title and Escrow Fees	\$	
d. Subordinate Lien Payoff	\$	
e. Transfer taxes/stamps/recording fees	\$	
f. Real Property Taxes	\$	
g. Termite Inspection/Repair	\$	
h. Borrower Relocation Assistance	\$ 3,000	
i. Other (attach explanation)	\$	
3. Net Proceeds to Servicer	\$	9. Settlement Agent's Address:
4. Earnest Money Deposit	\$	10. Settlement Agent's Office Phone:
5. Down Payment	\$	11. Settlement Agent's Office Fax:

As required by the Short Sale Agreement, copies of the following documents are attached:

- Sales contract and all addenda
- Buyer's documentation of funds or Buyer's pre-approval or commitment letter on letterhead from lender

The Borrower represents that the information provided in this Request is true and accurate and authorizes the Servicer to disclose to the U.S. Department of the Treasury or other government agency, Fannie Mae and/or Freddie Mac any information provided in connection with the Making Home Affordable program.

Borrower Signature	Date	Co-Borrower Signature	Date
Printed Name		Printed Name	

If you would like to speak with a counselor about this program, call the Homeowners HOPE™ Hotline 1-888-995-HOPE (4673). The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

NOTICE TO BORROWER

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: "Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or www.sig tarp.gov. Mail can be sent Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.



Servicer Use Only



To be Completed by Your Servicer

Approval of Short Sale - The Servicer consents to this Request for Approval of Short Sale and agrees to accept all net proceeds from the settlement as full and final satisfaction of the first mortgage indebtedness on the referenced property. This agreement is subject to the following:

- A. **Terms** – The sale and closing comply with all terms and conditions of the Short Sale Agreement between the Servicer and the Borrower as well as all terms and representations provided herein by the Borrower.
- B. **Changes** – Any change to the terms and representations contained in this Request for Approval of Short Sale or the attached sales contract between you and the buyer must be approved by the Servicer in writing. The Servicer is under no obligation to approve such changes.
- C. **Subordinate Liens** – Prior to releasing any funds to holders of subordinate liens/mortgages, the closing agent must obtain a written commitment from the subordinate lien holder that it will release Borrower from all claims and liability relating to the subordinate lien in exchange for receiving the agreed upon payoff amount.
- D. **HUD-1** – A HUD-1 Settlement Statement, which will be signed by you and the buyer at closing, must be provided to the Servicer not later than one business day before the date indicated in Line 4, *Closing Date*.
- E. **Bankruptcy** – If you are currently in bankruptcy or you file bankruptcy prior to closing, you must obtain any required consent or approval of the Bankruptcy Court.
- F. **Tax Consequences** – A short payoff of the mortgage may have tax consequences. You are advised to contact a tax professional to determine the extent of tax liability, if any.
- G. **Credit Bureau Reporting** – We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than the full payment. We have no control over or responsibility for the impact of this report on your credit score. To learn more about the potential impact of a short sale on your credit you may want to go to <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.
- H. **Payment Instructions** – Payoff funds and a final HUD-1 Settlement Statement must be received by the Servicer within 48 hours of closing in accordance with the attached wiring instructions. [*include instructions*]
- I. **Closing Instructions** – [*include proprietary closing instructions, if any*]

If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

Signature of Servicer Representative

Title

Printed Name of Servicer Representative

Date

Servicer Use Only



To be Completed by Your Servicer

Disapproval of Short Sale - The Servicer disapproves this Request for Approval of Short Sale, for the following reasons (check all applicable reasons):

<input type="checkbox"/>	You did not comply with all terms and conditions of the Short Sale Agreement between Servicer and Borrower dated ____/____/____ as it relates to section/s: _____
<input type="checkbox"/>	The Request for Approval of Short Sale was not complete and/or fully executed. <ul style="list-style-type: none"><input type="checkbox"/> Failure to provide executed sales contract or addenda<input type="checkbox"/> Failure to provide buyer's documentation of funds to close or buyer's pre-approval or commitment letter on letterhead from lender
<input type="checkbox"/>	The net proceeds available to pay off the first mortgage loan are insufficient, due to: <ul style="list-style-type: none"><input type="checkbox"/> Contract sales price is below list price stated in Short Sale Agreement<input type="checkbox"/> Net proceeds amount is less than acceptable net proceeds stated in Short Sale Agreement<input type="checkbox"/> Excessive financial concessions<input type="checkbox"/> Excessive commissions<input type="checkbox"/> Excessive closing costs<input type="checkbox"/> Excessive payments to subordinate liens/mortgages OR release of subordinate liens did not occur
<input type="checkbox"/>	The mortgage insurer did not approve the short sale.
<input type="checkbox"/>	Other:

If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

_____ Signature of Servicer Representative	_____ Title
_____ Printed Name of Servicer Representative	_____ Date

HELP FOR AMERICA'S HOMEOWNERS.



[Name of Servicer]
[Address of Servicer]

[Name of Borrower]
[Name of Co-Borrower]
[Address of Borrower]

[Loan #]
[Servicer FAX]
[Servicer Email]

[Borrower Phone]
[Borrower Email]

[Date]

RE: Request for Approval of Short Sale

You have taken an important step toward selling your home and avoiding foreclosure by participating in the federal government's **Home Affordable Foreclosure Alternatives** (HAFA) Program. This letter is a Request for Approval of a Short Sale and contains important information.

Read the following pages carefully and complete, sign and return the Terms and Conditions.

If you have not previously contacted us regarding eligibility for a loan modification, you should consider this alternative. Under the Home Affordable Modification Program (HAMP), you may qualify for a modification with affordable and sustainable monthly payments that would allow you to keep your home. Please contact us by *[insert date 14 calendar days from date of this request]* if you wish to be considered for a loan modification.

If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

Sincerely,

[Servicer Name]

The borrower and co-borrower, if applicable (“Borrower” or “you”), of the above loan contacted the Servicer (“Servicer” or “we”) because your mortgage payments are no longer affordable and you would like to avoid foreclosure. After listing your house for sale, an offer was received. However, the sale may not be sufficient to pay off the loan. This is a Request for Approval of a Short Sale (“Request”) of the subject property, the net sale proceeds from which we agree to accept as the payoff of the mortgage loan even though the proceeds are expected to be less than the full amount due.

Short Sale Program—Terms and Conditions of the Request are as follows:

1. Allowable Costs that May be Deducted from Gross Sale Price

- a. **Closing Costs.** The closing costs paid by you or on your behalf as seller must be reasonable and customary for the market. [Choose one and delete unnecessary text.] [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed \$ _____.] OR [Acceptable closing costs, including the commission, which may be deducted from the gross sale proceeds may not exceed ____% of the list price.] OR [Closing costs which may be deducted from the gross sale proceeds are limited to title search and escrow expenses usually paid by the seller; reasonable settlement escrow/attorney’s fees; transfer taxes and recording fees usually paid by the seller; termite inspection and treatment as required by law or custom; pro-rated real property taxes; and, negotiated real estate commissions not to exceed six percent (6%) of the contract sales price [add other closing costs that may be included].]
- b. **Subordinate Liens.** We will allow up to six percent (6%) of the unpaid principal balance of each subordinate lien in order of priority, not to exceed a total of \$6,000, to be deducted from the gross sale proceeds to pay subordinate lien holders to release their liens. We require each subordinate lien holder to release you from personal liability for the loans in order for the sale to qualify for this program, but we do not take any responsibility for ensuring that the lien holders do not seek to enforce personal liability against you. Therefore, we recommend that you take steps to satisfy yourself that the subordinate lien holders release you from personal liability.
- c. **Real Estate Commissions.** We will allow to be paid from sale proceeds, real estate commissions as stated in the listing agreement between you and your broker, not to exceed six percent (6%) of the contract sales price, to be paid to the listing and selling brokers involved in the transaction. Neither you nor the buyer may receive a commission. Any commission that would otherwise be paid to you or the buyer must be reduced from the commission due on sale. [Optional text:] Please note: We have retained a vendor to assist your listing broker with the sale. The vendor and your listing broker will work together on your behalf to facilitate the sale process. [Choose one and delete unnecessary text.] [The vendor will be paid from sale proceeds [\$ ____]] OR [an amount equal to ____% of the sales price]. OR [The vendor will be paid by us outside of the sales transaction.]
- d. **Borrower Relocation Assistance.** If the closing of the short sale occurs in accordance with this Agreement, you will be entitled to an incentive payment of \$3,000 to assist with relocation expenses. We will instruct the settlement agent to pay you from the sale proceeds at the same time that all other payments, including the payoff of our first mortgage, are disbursed by the settlement agent. Only one payment per household is provided for the relocation assistance, regardless of the number of borrowers.

2. **Property Maintenance and Expenses.** You are responsible for all property maintenance and expenses of your home until you convey your Property to us, including utilities, assessments, association dues, and costs for interior and exterior maintenance. Additionally, you must report any and all property damage to us and file a hazard insurance claim for covered damage. Unless insurance proceeds are used to pay for repairs or personal property losses, we may require that they be applied to reduce the mortgage debt.

Program Terms And Conditions



3. *[Insert only if applicable:]* **Partial Mortgage Payments.** Beginning on _____ 1, 20____, you will be required to make partial mortgage payments of \$_____ by the first day of each month during the term of the Request and pending transfer of property ownership. You are legally obligated to make the full amount of your current monthly mortgage payments. However, we will accept this reduced partial payment until the house is sold or this Agreement expires. The partial mortgage payments do not constitute a modification of your mortgage.
4. **Parties to the Sale.** The Sales Contract must include the following clauses: "Seller and Buyer each represent that the sale is an "arm's length" transaction and the Seller and Buyer are unrelated to each other by family, marriage or commercial enterprise." "The Buyer agrees not to sell the property within 90 days of closing of this sale."
5. **Foreclosure Sale Suspension.** We may initiate or continue the foreclosure process as permitted by the mortgage documents; however, we will suspend any foreclosure sale date until the expiration date of this Request or the date of closing of an approved short sale, whichever is later, provided that you abide by its terms and conditions.
6. **Satisfaction and Release of Liability.** If all of the terms and conditions of this Request are met, upon sale and settlement of the property, we will prepare and send to the settlement agent for recording, a lien release in full satisfaction of the mortgage, foregoing all rights to pursue a deficiency judgment.
7. *[Insert only if applicable.]* **Mortgage Insurer or Guarantor Approval.** The terms and conditions of the purchase contract are subject to the written approval of the mortgage insurer or guarantor.
8. **Termination of This Request.** Unless otherwise agreed by the parties, this Request will terminate on *[insert date]* if the sale does not close. This Request may be terminated earlier if:
 - a. You fail to provide all the required documents listed above.
 - b. Your financial situation improves significantly, you qualify for a modification, you bring the account current or you pay off the mortgage in full.
 - c. You or your broker fails to act in good faith in closing on the sale of the property or otherwise fails to abide by the terms of this Request.
 - d. A significant change occurs to the property condition or value.
 - e. There is evidence of fraud or misrepresentation.
 - f. You file for bankruptcy and the Bankruptcy Court declines to approve the Request.
 - g. Litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance.
 - h. *[Insert only if applicable:]* You do not make the payments required under this Request.
9. **Settlement of a Debt.** The proposed transaction represents the Servicer's attempt to reach a settlement of the delinquent mortgage. You are choosing to enter into this transaction even though there is no guarantee that the transaction will be successful. In the event this transaction is unsuccessful, the Servicer may exercise all remedies under the mortgage, including foreclosure.

Under penalty of perjury, you certify that:

1. the sale of the property is an "arm's-length" transaction, between parties who are unrelated and unaffiliated by family, marriage, or commercial enterprise;
2. there are no agreements or understandings between you and the Buyer that you will remain in the property as a tenant or later obtain title or ownership of the property;
3. neither you nor the Buyer will receive any funds or commissions from the sale of the property; and
4. there are no agreements or offers relating to the sale or subsequent sale of the property that have not been disclosed to the Servicer.

Program Terms And Conditions



Terms of Sale [All blanks to be completed by Borrower]:

1. Contract Sales Price	\$	6. Closing Date:
2. Less Total Allowable Closing Costs	\$	7. Approved Buyer(s):
a. Commissions	\$	
b. Settlement Escrow/Attorney Fees	\$	8. Settlement Agent:
c. Seller's Title and Escrow Fees	\$	
d. Subordinate Lien Payoff	\$	9. Settlement Agent's Address:
e. Transfer taxes/stamps/recording fees	\$	
f. Real Property Taxes	\$	10. Settlement Agent's Office Phone:
g. Termite Inspection/Repair	\$	
h. Borrower Relocation Assistance	\$ 3,000	11. Settlement Agent's Office Fax:
i. Other (attach explanation)	\$	
3. Net Proceeds to Servicer	\$	
4. Earnest Money Deposit	\$	
5. Down Payment	\$	

As required by the Short Sale Program, copies of the following documents are attached:

- Signed Request;
- Copy of a signed listing agreement with a real estate broker, if applicable;
- Executed copy of the sales contract and all addenda;
- Buyer's documentation of funds or Buyer's pre-approval or commitment letter on letterhead from a lender;
- Information about other liens secured by your home such as home-equity loans;
- [Insert only if applicable:] Completed and signed Hardship Affidavit form; and
- Servicer must have these documents no later than [insert date 14 calendar days from date of this request] or we will not be able to respond to this request. Please send us these documents at the following address: [insert servicer address].

The Borrower represents that the information provided in this Request is true and accurate and authorizes the Servicer to disclose to the U.S. Department of the Treasury or other government agency, Fannie Mae and/or Freddie Mac any information provided in connection with the Making Home Affordable program.

Borrower Signature	Date	Co-Borrower Signature	Date
_____	_____	_____	_____
Printed Name		Printed Name	

If you would like to speak with a counselor about this program, call the Homeowner's HOPE™ Hotline 1-888-995-HOPE (4673). The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

NOTICE TO BORROWER

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: "Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

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To be Completed by Your Servicer

Approval of Short Sale - The Servicer consents to this Request for Approval of Short Sale and agrees to accept all net proceeds from the settlement as full and final satisfaction of the first mortgage indebtedness on the referenced property. This approval is subject to the following:

- A. **Terms** – The sale and closing comply with all terms and conditions of the Request as well as all terms and representations provided herein by the Borrower.
- B. **Changes** – Any change to the terms and representations contained in the Request or the attached sales contract between you and the buyer must be approved by the Servicer in writing. The Servicer is under no obligation to approve such changes.
- C. **Subordinate Liens** – Prior to releasing any funds to holders of subordinate liens/mortgages, the closing agent must obtain a written commitment from the subordinate lien holder that it will release Borrower from all claims and liability relating to the subordinate lien in exchange for receiving the agreed upon payoff amount.
- D. **HUD-1** – A HUD-1 Settlement Statement, which will be signed by you and the buyer at closing, must be provided to the Servicer not later than one business day before the date indicated in Line 4, *Closing Date*.
- E. **Bankruptcy** – If you are currently in bankruptcy or you file bankruptcy prior to closing, you must obtain any required consent or approval of the Bankruptcy Court.
- F. **Tax Consequences** – A short payoff of the mortgage may have tax consequences. You are advised to contact a tax professional to determine the extent of tax liability, if any.
- G. **Credit Bureau Reporting** – We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than the full payment. We have no control over or responsibility for the impact of this report on your credit score. To learn more about the potential impact of a short sale on your credit you may want to go to <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.
- H. **Payment Instructions** – Payoff funds and a final HUD-1 Settlement Statement must be received by the Servicer within 48 hours of closing in accordance with the attached wiring instructions. *[include instructions]*
- I. **Closing Instructions** – *[include proprietary closing instructions, if any]*

If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

Signature of Servicer Representative

Title

Printed Name of Servicer Representative

Date

Servicer Use Only



To be Completed by your Servicer

Disapproval of Short Sale - The Servicer disapproves this Request for Approval of Short Sale, for the following reasons (check all applicable reasons):

<input type="checkbox"/>	You did not comply with all terms and conditions of the Request for Approval of Short Sale as it relates to section/s: _____ _____
<input type="checkbox"/>	The Request for Approval of Short Sale was not complete and/or fully executed. <ul style="list-style-type: none"><input type="checkbox"/> Failure to provide executed sales contract or addenda<input type="checkbox"/> Failure to provide buyer's documentation of funds to close or buyer's pre-approval or commitment letter on letterhead from lender
<input type="checkbox"/>	The net proceeds available to pay off the first mortgage loan are insufficient, due to: <ul style="list-style-type: none"><input type="checkbox"/> Contract sales price is below list price stated in Short Sale Agreement<input type="checkbox"/> Net proceeds amount is less than acceptable net proceeds stated in Short Sale Agreement<input type="checkbox"/> Excessive financial concessions<input type="checkbox"/> Excessive commissions<input type="checkbox"/> Excessive closing costs<input type="checkbox"/> Excessive payments to subordinate liens/mortgages OR release of subordinate liens did not occur
<input type="checkbox"/>	The mortgage insurer, investor or guarantor of the loan did not approve the short sale.
<input type="checkbox"/>	Other:

If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

Signature of Servicer Representative

Title

Printed Name of Servicer Representative

Date

HELP FOR AMERICA'S HOMEOWNERS.

[Name of Servicer]
[Address of Servicer]

[Loan #]
[Servicer FAX]
[Servicer Email]

[Date]

[Name of Borrower]
[Name of Co-Borrower]
[Address of Borrower]

[Borrower Phone]
[Borrower Email]

Dear [borrower and co-borrower name(s)]:

As your mortgage servicer, we are offering you the opportunity to participate in the federal government's **Home Affordable Foreclosure Alternatives (HAFA)** Program by utilizing the Deed-in-Lieu of Foreclosure (DIL) option to avoid foreclosure.

Home Affordable Foreclosure Alternatives Program – Deed-in-Lieu of Foreclosure

A “deed-in-lieu of foreclosure” is specifically designed to help borrowers who are unable to afford their first mortgage and want to avoid foreclosure. With a DIL, you voluntarily transfer ownership of your home and all real property secured by your mortgage loan (Property) to us to satisfy the total amount due on the first mortgage.

[Include or delete as appropriate.] While you previously entered into a Short Sale Agreement (and you complied with all your responsibilities), your Property did not sell. The DIL option will not allow you to keep your Property, however, it will prevent you from going through a foreclosure sale and it will release you from all responsibility to repay the mortgage debt. Additionally, you will be eligible to receive an assistance payment of \$3,000 to help with your moving expenses.

How Does a DIL Work?

- **Title**—You and all other occupants must vacate your Property and provide clear and marketable title with a general warranty deed or local equivalent by *[insert date at least 30 days after the date of this Agreement]*.
 - You must also be able to deliver marketable title free of any other liens. We will contribute up to six percent (6%) of the unpaid principal balance of each subordinate lien, not to exceed a total of \$6,000, toward paying off any subordinate lien holders.
 - We require each subordinate lien holder to release you from personal liability for the loans in order for the sale to qualify for this program, but we do not take any responsibility for ensuring that the lien holders do not seek to enforce personal liability against you. Therefore, we recommend that you take steps to satisfy yourself that the subordinate lien holders release you from personal liability.
- **Property Condition**—You must leave the house in broom-clean condition, free of interior and exterior trash, debris or damage, and all personal belongings must be removed from the Property. The yard must be clean and neat and you must deliver all the keys and controls (e.g., garage door openers) to us.
- **Transfer/Closing**—You may be required to sign standard pre-closing documents as well as attend a closing of the transfer of your Property where all borrowers on the mortgage must be present.

The following pages detail your responsibilities, additional information on the DIL process and the Terms and Conditions. **Additionally, this letter constitutes an agreement between us and you (“Agreement”).** If you agree to the terms of the Agreement and want to proceed with a DIL, you must complete, sign and return the Agreement back to us. If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

Sincerely,

[Servicer Name]

DIL Program—Terms and Conditions

Other terms and conditions to the Deed-in-Lieu Agreement (“Agreement”):

1. **Property Maintenance and Expenses.** You are responsible for all property maintenance and expenses of your Property until you convey it to us including utilities, assessments, association dues, and costs for interior and exterior maintenance. Additionally, you must report any and all property damage to us and file a hazard insurance claim for covered damage. Unless insurance proceeds are used to pay for repairs or personal property losses, we may require that they be applied to reduce the mortgage debt.
2. *[Insert only if applicable:]* **Partial Mortgage Payments.** You will be required to make partial mortgage payments of \$_____ by the first day of each month, beginning on _____ 1, 20____, until title to your house is transferred to us. You are legally obligated to make the full amount of your current monthly mortgage payments. However, we will accept the new partial payment until you have conveyed your Property. The partial mortgage payments do not constitute a modification of your mortgage.
3. **Borrower Relocation Assistance.** If you comply with all your responsibilities under the Agreement, you will be entitled to an incentive payment of \$3,000 to assist with relocation expenses. If there is a formal closing and you have vacated your Property, you will receive your incentive payment at closing. If at the time of closing you have not vacated your Property, we will mail you a check within 5 business days from when you vacate your Property and deliver the keys to us. Similarly, if a formal closing is not conducted, we will mail you a check within 5 business days from the later of when you execute the deed to us or when you vacate your Property and deliver the keys to us. Only one payment per household is provided for the relocation assistance, regardless of the number of borrowers.
4. **Foreclosure Sale Suspension.** We may initiate or continue the foreclosure process as permitted by the mortgage documents; however, we will suspend any foreclosure sale date until the conveyance of your Property has been completed, provided you continue to abide by the terms and conditions of this Agreement.
5. **Satisfaction and Release of Liability.** If all of the terms and conditions of this Agreement are met, upon conveyance of your Property to us by General Warranty deed or the equivalent in the state where your Property is located, we will prepare and record a lien release in full satisfaction of the mortgage, foregoing all rights to pursue a deficiency judgment.
6. *[Insert only if applicable]* **Mortgage Insurer or Guarantor Approval.** The terms and conditions of the Agreement are subject to the written approval of the mortgage insurer or guarantor.
7. **Termination of This Agreement.** We may terminate this Agreement at any time if:
 - a. Your financial situation improves significantly, you qualify for loan modification, you bring the account current or you pay off the mortgage in full.
 - b. You fail to act in good faith with the Agreement.
 - c. A significant change occurs to the property condition or value.
 - d. There is evidence of fraud or misrepresentation.
 - e. You file for bankruptcy and the Bankruptcy Court declines to approve the agreement.
 - f. Litigation is initiated or threatened that could affect title to the property or interfere with a valid conveyance.
 - g. *[Insert only if applicable:]* You do not make the payments required under this Agreement.
8. **Settlement of a Debt.** The proposed transaction represents our attempt to reach a settlement of the delinquent mortgage. You are choosing to enter into this Agreement even though there is no guarantee that the transaction will be successful. In the event this transaction is unsuccessful, we may exercise our remedies under the mortgage, including foreclosure.
9. **Possible Income Tax Considerations.** The difference between the remaining amount of principal you owe and the current market value of the property must be reported to the Internal Revenue Service (IRS) on Form 1099-C as debt forgiveness. In some cases, debt forgiveness could be taxed as income. The amount we pay you for moving expenses may also be reported as income. We suggest that you contact the IRS or your tax preparer to determine if you may have any tax liability.
10. **Credit Bureau Reporting.** We will follow standard industry practice and report to the major credit reporting agencies that your mortgage was settled for less than the full payment. We have no control over, or responsibility for the impact of this report on your credit score. To learn more about the

Program Agreement



potential impact of a deed-in-lieu on your credit, you may want to go to <http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre24.shtm>.

DIL Program—Agreement

By signing this Agreement, you are agreeing to a deed-in-lieu of foreclosure. If you have any questions about the deed-in-lieu of foreclosure, please call us before signing and returning this Agreement.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE YOU SIGN, BECAUSE IT AFFECTS YOUR LEGAL RIGHTS.

Borrower Acknowledgement of Risks, Conditions and Contingencies. In signing and returning this Deed-in-Lieu Agreement I/we agree to all the stated terms and conditions.

_____ Borrower Signature	_____ Date	_____ Co- Borrower Signature	_____ Date
_____ Printed Name		_____ Printed Name	

If you would like to speak with a counselor about this program, call the Homeowner's HOPE™ Hotline 1-888-995-HOPE (4673). The Homeowner's HOPE™ Hotline offers free HUD-certified counseling services and is available 24/7 in English and Spanish. Other languages are available by appointment.

If you have questions, please contact us directly between the hours of [insert hours] at [insert toll free number.]

_____ Signature of Servicer Representative	_____ Title
_____ Printed Name of Servicer Representative	_____ Date

NOTICE TO BORROWER

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: " Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or www.sig tarp.gov. Mail can be sent Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.



Exhibit D – HAFA Data Elements

Ref ID	Short Sale or Deed-In-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-In-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
KEY IDENTIFIERS									
1	M	M	M	M	HAMP Registration Number	The unique identifier for the servicer participating in the HAMP program.	Numeric(15)		
2	M	M	M	M	HAMP Servicer Number	A unique identifier assigned to each Servicer that is participating in the HAMP program.	Numeric(9)		
3	M	M	M	M	Servicer Loan Number	The unique identifier assigned to the loan by the lender that is servicing the loan for the first lien.	Text(30)		
4	C	C	C	C	GSE Servicer Number	The Fannie Mae or Freddie Mac unique Servicer identifier.	Text (30)	If GSE loan	
5	C	C	C	C	GSE Loan Number	A unique identifier assigned to each loan by a GSE (Fannie or Freddie).	Text (30)	If GSE loan	enumeration: 1 Fannie Mae 2 Freddie Mac 3 Private 4 Portfolio 5 GNMA 6 FHAVA 7 State or Local Housing Finance Agency
6	M	M	M	M	Investor Code	Owner of the mortgage.	Numeric(4,0)		* Indicates Investor Codes currently eligible for HAMP

Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
LOAN LEVEL DATA									
7	C		C	C	Borrower Last Name	The last name of the Borrower. This is also known as the family name or surname.	Text(100)	If loan is not in HAMP system	
8	C		C	C	Borrower First Name	First name of the Borrower of record	Text(100)	If loan is not in HAMP system	
9	C		C	C	Borrower Social Security Number	The social security number of the Borrower	Numeric(9)	If loan is not in HAMP system	
10	C		C	C	Co-Borrower Last Name	Last name of the Co-borrower of record	Text(100)	If co-borrower on loan and if loan is not in HAMP system	
11	C		C	C	Co-Borrower First Name	First name of the Co-borrower of record	Text(100)	If co-borrower on loan and if loan is not in HAMP system	
12	O		O	O	Co-Borrower Social Security Number	The social security number of the Co-borrower	Numeric(9)	If co-borrower on loan and if loan is not in HAMP system and if available	enumeration: HMP3 - Deed-in-Lieu HMP5 - Short Sale
13	M	M	M	M	Program Type/Campaign ID	A new program type that will identify campaign types. The unique identifier of a Loan Workout Campaign.	Text(14)		enumeration: 8 Short Sale or Deed-in-Lieu Notification 9 Short Sale Loan Set-up 10 Deed-in-Lieu Loan Set-up 11 Cancellation 12 Correction 13 Short Sale or Deed-in-Lieu Extension
14	M	M	M	M	Submission Status	Status of loan data being submitted.	Numeric(4,0)		

Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
15	C	C	C	C	Property Street Address	The street address of the subject property.	Text(200)	If loan is not in HAMP system	
16	C	C	C	C	Property City	The name of the city where the subject property is located.	Text(100)	If loan is not in HAMP system	
17	C	C	C	C	Property State	The 2-character postal abbreviation of the state, province, or region of the subject property.	Text(2)	If loan is not in HAMP system	enumeration: WY,WV,WI,WA,VT,VI,VA,UT,TX,TN,SD,SC, RI,PR,PA,OR,OK,OH,NY,NV,NM,NJ,NH,NE, ND,NC,MT,MS,MO,MN,MI,ME,MD,MA,LA,KY, KS,IN,IL,ID,IA,HI,GU,GA,FL,DE,DC,CT,CO, CA,AZ,AR,AL,AK
18	C	C	C	C	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)	If loan is not in HAMP system	
19	C	C	C	C	Date of Original Note	The date the mortgage note was signed.	Date(CCY-MM-DD)	If loan did not enter a HAMP trial.	
20	C	C	C	C	Front Ratio Before Modification	The front-end DTI (principal, interest, taxes, insurance and association dues (PIITA)) housing ratio as of the HAMP modification evaluation.	Numeric(4,2)	If loan did not enter a HAMP trial.	

Ref ID	M=Mandatory; C=Conditional; O=Optional			Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
	Short Sale or Deed-in-Lieu Notification Extension	Loan Set-Up Cancellation	Loan Set-Up Short Sale					
21	C		C	Property Usage Type Code	A code identifying the use by the borrower of the property.	Numeric(4,0)	If loan did not enter a HAMP trial.	enumeration: 1 Principal Residence 2 Second or Vacation Home 3 Investment Property
22	C		C	Loan Status Type Code	A code specifying whether the loan is in default, imminent default or current status as of the HAMP modification evaluation.	Numeric(4,0)	If loan did not enter a HAMP trial.	enumeration: 1 Default 2 Imminent Default 3 Current
23	M		M	Borrower Execution Date	This is the date that the borrower signed the Short Sale Agreement or Deed-in-Lieu Agreement.	Date(CCY-MM-DD)		
24	M		M	Agreement Issue Date	This is the date that the Short Sale Agreement or the Deed-in-Lieu Agreement was issued.	Date(CCY-MM-DD)		
25	M		M	Agreement Expiration Date	The expiration date of the Short Sale Agreement or Deed-in-Lieu Agreement.	Date(CCY-MM-DD)		
26	M		M	Short Sale or Deed-in-lieu Reason Code	A field identifying the reason for the borrower entering into a Short Sale or Deed-in-Lieu transaction.	Numeric(4,0)		enumeration: 1 Does not qualify for a Trial Period Plan 2 Does not successfully complete a Trial Period Plan 3 Is delinquent on a HAMP modification by missing at least two consecutive payments 4 Requests a Short Sale or Deed-in-Lieu

Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
27	C		C	C	Short Sale or Deed-in-Lieu Reason Date	For loans that do not qualify for a HAMP trial modification or the borrower declines a modification, this is the date that a trial modification was not offered to the borrower or was not accepted by the borrower. For a borrower who did not successfully complete a trial plan, this is the trial fall out date. At notification this is the original list price of the property. At extension or correction, it is the latest list price of the property as of the extension or correction. At loan set up, it is the ending list price of the property as of the Transaction Closing Date.	Date(CCYY-MM-DD)	If Short Sale or Deed-in-Lieu Reason code is 1, 2 or 4	
28	M		M		Property List Price	The Short Sale Agreement or Deed-in-Lieu Agreement will state the date by which the property must be vacated, which in no event will be less than 30 calendar days from expiration day of the Short Sale Agreement (or any extension thereof) or the date of a separate Deed-in-Lieu Agreement.	Currency(20, 2)		
29	M		M	M	Property Vacancy Date		Date(CCYY-MM-DD)		

		M=Mandatory; C=Conditional; O=Optional							
Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
30	M		M		Minimum Net Return to Investor Amount	The minimum net return is the minimum acceptable net proceeds that the investor will accept from the transaction. The minimum net return must be reported as a dollar amount.	Currency(20, 2)		
31			C	C	Mortgage Insurance Waiver Approval Indicator	For loans with mortgage insurance coverage, this attribute indicates whether the mortgage insurers provided delegations of authority to execute a Short Sale or Deed-in-Lieu in accordance with the foreclosure alternative guidelines and waives any right to collect additional sums from the borrower.	Boolean	If mortgage insurance is on the loan	True/False
32			M	M	Unpaid Principal Balance Amount	The unpaid principal balance of a loan as of the time of the Short Sale or Deed-in-Lieu transaction.	Currency(20, 2)		
33			M	M	Property Sale or Transaction Amount	The sale or transfer price of the property.	Currency(20, 2)		

Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values
34			M		Total Allowable Costs	The total allowable costs associated with selling the property that can be deducted from the gross sale price at closing. Allowable costs may include subordinate lien release amount, borrower relocation assistance, sales commission, closing costs for taxes, title, attorney fees and other miscellaneous expenses. The closing costs and real estate commissions should be reasonable and customary based on the community in which the property is located.	Currency(20, 2)		
35			M	M	Transaction Closing Date	The date on which the Short Sale or Deed in Lieu transaction is closed.	Date(CCY-MM-DD)		
36			C	C	Subordinate Lien Release Reimbursement Amount	The total amount of reimbursement paid by the servicer to subordinate lien holder(s) to secure release of subordinate lien. This amount may not exceed \$3,000.	Currency(20, 2)	If subordinate lien release reimbursement is applicable	

		M=Mandatory; C=Conditional; O=Optional									
Ref ID	Short Sale or Deed-in-Lieu Notification or Extension	Cancellation	Loan Set-Up Short Sale	Loan Set-Up Deed-in-Lieu	Logical Data Element	Description	Data Type	Conditional Comments	Allowable Values		
37		M			Short Sale or Deed-in-Lieu Cancellation Reason Code	A field indicating the reason why a Short Sale or Deed-in-Lieu transaction was cancelled.	Numeric(4,0)		enumeration: 1 Agreement Expiration 2 Agreement Termination 3 Notification Cancellation 4 Loan Set up Cancellation		

EXHIBIT 4

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT

FRANKLIN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 10-044

MARK HEALY and DIANE E. HEALY,)
 Plaintiffs)
)
vs.)
)
BANK OF AMERICA and BAC HOME LOANS)
SERVICING, L.P. f/k/a COUNTRYWIDE HOME)
LOANS SERVICING, L.P.,)
 Defendants)

AFFIDAVIT OF MARK HEALY

I, Mark Healy, being duly sworn, do hereby depose and state as follows:

1. I am over eighteen and appreciate the meaning of an oath.
2. I make the following statements based on my own personal knowledge.
3. I own and reside in a home at 91 West Mountain Road in Bernardston, Massachusetts.
4. Prior to notifying me of its intention to foreclosure on our home, neither Bank of America nor BAC Home Loans Servicing LLP f/k/a Countrywide Home Loans Servicing, L.P. ever invited me to participate in the Home Affordable Modification Program (“HAMP”) or to participate in the Home Affordable Foreclosure Alternatives program (“HAFA”).
5. If Bank of America and BAC Home Loans Servicing, L.P. ever considered my wife and/or me for participation in the HAFA program, they did not advise me of the reasons why we were ineligible.
6. Neither Bank of America nor BAC Home Loans Servicing, L.P. ever advised me personally in writing that we were not eligible to participate in the HAFA program.

7. They did advise our lawyer that they had not approved our request for a short sale.
8. However, they never explained why the short sale which we requested could not be offered or provided us with a toll-free number to call to discuss their apparent decision to prohibit us from participating in the HAFA program.

Signed under the pains and penalties of perjury, this 11th day of June, 2010.

Mark Healy