

AS OF JULY 28, 2009

## Supplemental Documentation—Frequently Asked Questions Home Affordable Modification Program

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

### A. General

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

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

For questions regarding:	Contact:
<ul style="list-style-type: none"> <li>• <b>Non-GSE</b> Supplemental Directives, policy clarifications, and loan-level questions</li> <li>• All reporting for the U.S. Treasury Department using HAMP Data Collector or the HAMP Reporting System</li> </ul>	<p><b>HAMP Support Center:</b></p> <ul style="list-style-type: none"> <li>• <a href="mailto:support@hmpadmin.com">support@hmpadmin.com</a></li> <li>• 1-866-939-4469</li> <li>• 9:00 a.m. to 9:00 p.m. ET, Monday through Friday</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Fannie Mae</b> HAMP-related Servicing Guide Announcements, policy clarifications, or loan-level questions</li> <li>• Fannie Mae reporting via HomeSaver Solutions® Network (HSSN)</li> </ul>	<p><b>Fannie Mae Servicer Support Center:</b></p> <ul style="list-style-type: none"> <li>• <a href="mailto:servicing_solutions@fanniemae.com">servicing_solutions@fanniemae.com</a></li> <li>• 1-888-FANNIE-5 (326-6435)</li> <li>• 9:00 a.m. to 8:00 p.m. ET, Monday through Friday</li> </ul>
<ul style="list-style-type: none"> <li>• <b>Freddie Mac</b> HAMP-related Guide Bulletins, policy clarifications, and loan-level questions</li> <li>• Freddie Mac reporting</li> </ul>	<p><b>Freddie Mac Servicer Support:</b></p> <ul style="list-style-type: none"> <li>• 1-800-FREDDIE (373-3343)</li> <li>• 8:00 a.m. to 8:00 p.m. ET, Monday through Friday business days</li> </ul>

## B. Borrower Eligibility

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

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

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

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

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

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

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

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

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

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

No. A component of the monthly mortgage payment ratio calculation is condo or co-op association fees. Current information on the amount of the association fees is necessary to accurately complete the monthly mortgage payment ratio calculation. The servicer can contact the borrower via telephone or email to obtain this information, complete the necessary monthly mortgage payment ratio calculation and then issue an offer under the HAMP. Documents verifying the condo or co-op association fee information must be submitted by the borrower with other required documentation to determine eligibility before the servicer may sign the Trial Period Plan so that it may become legally effective.

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

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

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

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

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

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

## **C. De Minimis Test**

**Q10. Revised For loans that are not fully amortizing products, what payment amount is used for the *de minimis* test?**

In all cases, the monthly mortgage payment that was used to determine the borrower's eligibility (adjusted as applicable to include property taxes, hazard insurance, flood insurance, condominium

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

## D. Documents

### **Q11. Are there separate Servicer Participation Agreements (SPA) for Fannie Mae, Freddie Mac, and non-GSE loans?**

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

### **Q12. NEW What entity should sign the SPA – the servicing entity, a holding company (if applicable), or the servicer's parent? Is there any guidance available on how master servicers or subservicers would participate in the non-GSE program?**

The party that is contractually obligated to perform servicing for an investor or a master servicer is the party that will formally elect to participate in the non-GSE program by signing a SPA and performing other registration tasks through [www.HMPAdmin.com](http://www.HMPAdmin.com). If a subservicer is contractually obligated to perform servicing, the subservicer will sign the SPA. If a party to the SPA sub-contracts out any portion of its responsibilities as a servicer to another party, the party to the SPA will be liable for the acts and omissions of the sub-contracted party under the SPA.

### **Q13. NEW If a servicer that has signed an SPA transfers mortgage loans, or servicing rights relating to mortgage loans, subject to the SPA, is the transferee servicer required to assume the transferor servicer's obligations under the SPA with respect to those mortgage loans?**

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

### **Q14. Are there separate modification documents for GSE and non-GSE loans?**

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

**Q15. Are state-specific documents required on non-recording HAMP modifications? For example, are state-specific balloon riders required when applicable?**

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

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

**Q16. NEW If the borrower files for bankruptcy protection during the Trial Period, is the Trial Period Plan canceled automatically or is a servicer required to continue to work with the borrower?**

Borrowers who file bankruptcy during the trial period, but who make all of the required payments in a timely fashion and are otherwise in compliance with the Trial Period Plan remain eligible for a modification provided all of the representations in section 1 of the trial plan remain true. The servicer and its bankruptcy counsel must work with the borrower and the borrower's bankruptcy counsel to obtain any required court approvals of the modification. A borrower actively involved in a bankruptcy proceeding prior to being placed in the HAMP is eligible for the HAMP at the Servicer's discretion. If a servicer provides an offer under the HAMP to a borrower that is involved in an active bankruptcy case, the servicer must work with the borrower or borrower's counsel to obtain all necessary approvals from the bankruptcy court.

**Q17. NEW How should servicers address loan documents that did not include standard escrow provisions?**

Servicers must take two steps. First, servicers must insert the following language at the end of section 4.C. of the Trial Period Plan:

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

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

**Q18. NEW Are servicers permitted to insert conditional language in the Trial Period Plan and the Home Affordable Modification Agreement to avoid having to review each set of base loan documents to determine if they contain prepayment or assumption provisions or, in order to retain first lien position, require subordination agreements and/or title policy endorsements?**

Yes. Conditional statements addressing these matters can be inserted into the Trial Period Plan and the Home Affordable Modification Agreement. The acceptable language is as follows:

Language to be inserted into the Home Affordable Modification Agreement, Section 4, regarding a prepayment penalty:

"That, as of the Modification Effective Date, if any provision in the Note or in any addendum or amendment to the Note allowed for the assessment of a penalty for full or partial prepayment of the Note, such provision is null and void."

Language to be inserted into the Trial Period Plan, Section 2.G., regarding lien priority:

"If under the Lender's procedures, title endorsement(s) and/or subordination agreement(s) are required to ensure that the modified Loan Documents retain first lien position and are fully enforceable, I understand and agree that the Lender will not be obligated or bound to make any modification of the Loan Documents or to execute the Modification Agreement if the Lender has not received acceptable title endorsement(s) and/or subordination agreement(s) from other lien holders, as Lender determines necessary."

Language to be inserted into the Trial Period Plan, Section 3, regarding an assumption:

"The Modification Agreement will provide that, as of the Modification Effective Date, a buyer or transferee of the Property will not be permitted, under any circumstance, to assume the loan."

**Q19. NEW Must all prepayment penalties be waived in connection with a HAMP modification, or only prepayment penalties associated with borrower "pay for performance" principal balance reduction payments?**

Except as provided below in Q20, no prepayment penalties may be assessed in connection with modifications under HAMP. Therefore, if any provision in the note or in any addendum or amendment to the note allows for the assessment of a penalty for full or partial prepayment of the note, such provision must be waived. Upon confirmation of a prepayment provision in the base loan documents, servicers should modify Section 4 of the Home Affordable Modification Agreement by inserting either: (i) the conditional statement regarding prepayment penalties stated above in Q18; or, (ii) the following statement:

"That, as of the Modification Effective Date, any provision in the Note, as amended, for the assessment of a penalty for full or partial prepayment of the Note is null and void."

**Q20. NEW Is a participating servicer required to modify loans that are eligible for HAMP if the servicer is subject to a pooling and servicing agreement or similar servicing contract ("PSA") that requires payment of a material sum to investors if any applicable prepayment penalties are waived?**

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

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

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

**Q21. NEW If the standard modification waterfall requires principal forbearance, should the Home Affordable Modification Agreement be amended to reflect the principal forbearance amount?**

The Home Affordable Modification Agreement must be revised to reflect the principal forbearance amount. The exact modification language can be obtained from the document summaries for the Home Affordable Modification Agreement at Section C65.7 of the Freddie Mac Seller/Servicer Guide and at [https://www.hmpadmin.com/portal/docs/mod\\_docs/hampagreementsummary.pdf](https://www.hmpadmin.com/portal/docs/mod_docs/hampagreementsummary.pdf).

**Q22. NEW If the borrower had no obligation under the Loan Documents to remit escrow items or the lender waived the requirement to pay escrow items prior to entering into the Trial Period Plan (the terms of which revoked that waiver), must the borrower continue to remit escrow items with the monthly payment if the borrower fails the Trial Period?**

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

## **E. Escrow**

**Q23. Revised Can escrow payment estimates be used to determine payments during the Trial Period to avoid delays in processing?**

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

**Q24. How should servicers treat escrow shortages?**

In the event the initial escrow analysis identifies an escrow shortage – a deficiency in the escrow deposits needed to pay all future tax and insurance payments – the servicer must take steps to

eliminate the shortage. Any actions taken by the servicer to eliminate the escrow shortage must be in compliance with applicable laws, rules, and regulations, including, but not limited to, the Real Estate Settlement Procedures Act.

## F. Principal Forbearance

**Q25. If a Borrower with principal forbearance makes a substantial principal curtailment that is greater than or equal to the interest-bearing unpaid principal balance (UPB), should the curtailment be applied to the interest bearing principal or the principal forbearance portion?**

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

**Q26. NEW Does the earlier FDIC guidance on accounting treatment of principal forbearance apply under HAMP?**

Yes. For loans within securitizations, principal forbearance should be passed through as a write-off of principal to the securitization trust, unless directed otherwise by the applicable pooling and servicing agreement or trust agreement, with any future collections at the time of pay-off submitted to the trust as a principal recovery.

## G. HUD Counseling

**Q27. Who pays for the HUD counseling?**

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

**Q28. If a borrower has recently completed HUD-approved debt counseling, do they still need to work with a counselor?**

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

## H. Income Verification

**Q29. Why must the borrower submit an IRS Form 4506-T?**

Each borrower must submit a signed IRS Form 4506-T to the servicer and, when available, a signed copy of his or her most recent tax return. If the borrower is unable to fulfill the tax return requirement, the servicer must submit the Form 4506-T to the IRS for processing. If the borrower provides the required tax return, the servicer must retain the signed Form 4506-T in the borrower's

file and may be required to submit it to the IRS if requested to do so by Freddie Mac, the program compliance agent. In addition, a servicer should continue to follow its standard practices for fraud control, which may include submitting the IRS Form 4506-T in specified circumstances. Any conflicts that arise should be addressed in accordance with guidance provided by Freddie Mac.

**Q30. NEW** If a borrower submits unsigned tax returns, but provides evidence the returns were electronically filed, does evidence of the electronic filing satisfy the requirement for "signed tax returns"? If a borrower submits unsigned tax returns, must a servicer file the Form 4506-T or may they return the tax returns to the homeowner for signature?

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

**Q31. NEW** Is the borrower eligible for the HAMP if he or she is not a current tax filer?

Yes. A borrower is required only to submit his or her most recent tax return. If the most recent tax return is not available, the servicer must process the borrower's signed Form 4506-T to confirm that the borrower did not file a tax return.

**Q32. NEW** Is the borrower eligible for the HAMP if he or she is not required to file a tax return?

Yes. Such a borrower must document why he or she does not need to file a tax return. The servicer must review and approve this rationale.

**Q33. NEW** If the borrower can provide two pay stubs that show current earnings used for qualifying purposes under the HAMP, can the servicer use only that information and not require YTD earnings?

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

**Q34. NEW** Could you please clarify the intent behind "third party documents" related to self-employed income?

Many self-employed borrowers use third party sources for documenting their financials. Examples of third party documents include: financial statements certified by an accountant, business bank statements or business tax returns prepared by an accountant. A borrower may provide this information to help document his or her income.

**Q35. Can income of a household member not on the original note be used in the income calculations to qualify for the modification? If so, would it require that the person be added to the Note for the modification?**

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

**Q36. NEW If income from other non-borrower household members is considered under the HAMP, should a servicer also consider expenses for the other household members?**

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

**Q37. What action should the servicer take if the tax returns do not align with the paystubs provided?**

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

**Q38. NEW For a loan in foreclosure, may a servicer require the homeowner to make the initial payment in certified funds? May a servicer require certified funds on subsequent payments?**

Servicers should continue to follow their current practices, subject to applicable law and the mortgage documents, as it relates to requiring borrowers to make payments using certified funds. Servicers may not impose any stricter standard for payments due under HAMP than are applied in the Servicer's other loss mitigation programs.

## **I. Net Present Value (NPV) Model**

**Q39. What is the NPV model and what is it used for?**

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

**Q40. Revised Is there a different NPV model for non-GSE and GSE loans?**

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

**Q41. Revised Will every servicer be required to use the same discount rate in calculating NPV?**

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

**Q42. Revised Can the HAMP modification be pursued if the NPV result is negative?**

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

For mortgages serviced on behalf of a third party owner or investor (including any securitization trustee) for which the modification result is deemed negative, however, the servicer may not perform the modification without express permission from such owner or investor (or securitization trust).

**Q43. Revised Will servicers be able to build the NPV model into their platform/system? Can they customize the NPV Calculator?**

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

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

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

**Q44. Revised How soon after release of a new version of the Making Home Affordable NPV model or after signing a Servicer Participation Agreement must a servicer begin to use the new base NPV model?**

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

**Q45. Will mortgage insurance (MI) be considered in the NPV model?**

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

## **J. Reporting Requirements**

**Q46. When will reporting requirements, including the key data points, be available for servicers? What type of reporting format/medium will be required?**

Servicers must begin providing loan level data to Fannie Mae, the program administrator, when a HAMP loan enters a Trial Period. Details on the required loan level data for these reporting requirements are provided in the "HAMP Data Dictionary" available at [www.HMPAdmin.com](http://www.HMPAdmin.com).

**Q47. NEW What date should be reported by the servicer for the Interest Rate Lock Date for Modification in the trial period set up file and in the loan set up file?**

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

**Q48. NEW If the servicer does not have the property condition from an appraisal or BPO, what should the servicer enter in the "property condition" field in IR2?**

The servicer should enter "3" (Fair) when they don't have a property condition from an appraisal or a BPO, provided the property meets HAMP eligibility requirements. Servicers must enter "5" if the

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

## K. Trial Period

### **Q49. Must foreclosure be suspended during the Trial Period?**

Except in “foreclosure restart states” as described in Q51 below, any foreclosure sale must be suspended and no new foreclosure action may be initiated during the Trial Period, including any period of time between the borrower’s execution of the Trial Period Plan and the Trial Period Plan effective date. Foreclosure actions may not be initiated or restarted until the borrower has failed the Trial Period Plan and the borrower has been considered and found ineligible for other available foreclosure prevention options.

### **Q50. Revised What is success or failure under a Trial Period Plan?**

The Trial Period Plan is considered to be successful if the borrower has made all of the Trial Period Plan payments no later than the 30<sup>th</sup> day from the due date of the last Trial Period Plan payment and has complied with all other representations made under Section 1 of the Trial Period Plan. If the servicer has not received all Trial Period Plan payments by this deadline or determines the borrower made a misrepresentation under Section 1 of the Trial Period Plan, the borrower has failed the Trial Period and is not eligible for a permanent loan modification under the HAMP. The servicer must consider the borrower for other foreclosure prevention alternatives, including pre-foreclosure sales and deeds in lieu of foreclosure, as appropriate.

### **Q51. Revised What rules apply to loans that were in active foreclosure in foreclosure restart states prior to initiation of the Trial Period Plan? Will borrowers be considered to have failed the Trial Period Plan if they are not current at the time the foreclosure sale is scheduled? How could such borrowers be current if foreclosure was already in process?**

Due to unique foreclosure law requirements in Georgia, Hawaii, Missouri, and Virginia, borrowers in these states who were in active foreclosure prior to executing a Trial Period Plan will be considered to have failed the Trial Period Plan and servicers may proceed with the foreclosure if either (a) the servicer determines that the borrower made a misrepresentation under Section 1 of the Trial Period Plan or (b) the borrower has not made all required Trial Period payments through the end of the month preceding the month in which the foreclosure sale is scheduled to occur.

**Q52. When a borrower is placed in a Trial Period Plan, does the loan information need to be changed on the servicer's system and the investor's system to reflect the Trial Period terms?**

No, scheduled loan terms in servicing systems should not be modified during the Trial Period. However, servicers must follow the requirements for reporting to the credit reporting agencies during the Trial Period as set forth in Supplemental Directive 09-01 and discussed below in Q53.

**Q53. Revised How should borrower payments be reported to credit reporting agencies during the Trial Period?**

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

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

**Q54. NEW If the borrower fails during the Trial Period, can he or she be provided with another offer under the HAMP?**

No. The borrower cannot be provided with a second offer under the HAMP if he or she enters into an effective, fully executed, Trial Period Plan and fails to complete the Trial Period successfully. At that point, the servicer must consider alternative loss mitigation strategies for the borrower.

**Q55. NEW If the borrower makes the first Trial Period payment before the servicer prepares the Trial Period Plan, and the borrower never returns a signed Trial Period Plan, can he or she be provided with another offer under the HAMP?**

Yes. The borrower can be provided with a second offer under the HAMP because he or she never entered into an effective, fully executed, Trial Period Plan. In this case the Trial Period Plan was not signed by either party. However, when preparing a new Trial Period Plan based on written documentation, the servicer must ensure that the documentation relied on to determine eligibility has not expired under the guidelines' aging requirements (e.g., income documentation must not be more than 90 days old). A servicer preparing a new Trial Period Plan based on stated information should reconfirm that information with the borrower before sending the new Trial Period Plan.

**Q56. NEW If the servicer prepared a Trial Period Plan based on the borrower's stated income information and, upon receipt of the income documentation, discovers that the original Trial Period Plan was out of tolerance, can the borrower be provided with another offer under the HAMP?**

Yes. If all eligibility criteria are met based on the income and other documentation received, then the borrower can be provided with a revised offer under the HAMP because he or she never entered into an effective, fully executed, Trial Period Plan. In this case the Trial Period Plan was not signed by the servicer.

**Q57. NEW Can the borrower accelerate his or her modification effective date by making his or her Trial Period payments earlier than scheduled?**

No. Although the borrower may make scheduled payments earlier than expected, under the HAMP, the length of the Trial Period must reflect the term set forth in the applicable Trial Period Plan, and such payments may not result in acceleration of the modification effective date. There is no variation to this rule.

## **L. Valuation**

**Q58. Why is an automated valuation model (AVM) generated property valuation necessary and when does such a valuation become stale?**

The AVM generated property valuation is an input to the NPV calculator. The valuation cannot be older than 90 days at the time of eligibility testing.

**Q59. Revised What is considered a reliable confidence score for an AVM?**

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

**Q60. If a broker price opinion (BPO) is utilized, will an exterior inspection be sufficient or is an interior/exterior inspection with photos required?**

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

## **M. Verification**

**Q61. If one of the borrowers on the loan is non-responsive (will not supply income documentation and will not sign a Home Affordable Modification Agreement), can the HAMP modification proceed with the remaining borrower who is residing in the household, as long as the HAMP modification does not have to be recorded?**

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

## **N. Standard Modification Waterfall Questions**

**Q62. NEW Please clarify the servicer's obligation as it relates to the HOPE for Homeowners (H4H) requirement.**

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

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

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

[http://portal.hud.gov/portal/page?\\_pageid=73.7605762&\\_dad=portal&\\_schema=PORTAL](http://portal.hud.gov/portal/page?_pageid=73.7605762&_dad=portal&_schema=PORTAL)

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

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

**Q63. Revised If a pooling and servicing agreement or securitization trust agreement (“PSA”) does not allow for a modification step in the waterfall and the servicer skips it, is the loan no longer eligible for HAMP incentives?**

If the PSA prohibits the servicer from taking a modification step, the servicer should make reasonable efforts to seek a waiver from the applicable trust. If a waiver is not granted, the servicer may, with respect to non-GSE loans, seek an exception to the Standard Modification Waterfall from Fannie Mae in its capacity as financial agent of the United States.

**Q64. May a servicer extend the term before reducing the interest rate if the servicer believes the outcome is better for the borrower?**

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

**Q65. Revised Can servicers agree to a rate below 2 percent or fix the reduced rate for the life of the loan?**

Yes. Non-GSE Servicers are not precluded under the HAMP from agreeing to a modification where the interest rate is less than 2 percent or does not step up after five years. However, borrower, servicer and investor incentive/reimbursement payments for these modifications will be paid based

on modification terms that reflect the target monthly mortgage payment ratio and standard modification terms.

**Q66. Where can the servicer obtain the Freddie Mac Primary Mortgage Market Survey rate?**

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

**Q67. Is there a limit to the balloon payment on the end? Is there a maximum amount?**

The NPV test will drive the maximum amount a servicer may forbear under the HAMP. If the NPV is negative and the servicer chooses to modify the loan, the principal forbearance may not reduce the interest-bearing principal to less than 100 percent of the mark-to-market LTV ratio.

**Q68. NEW If subordination of a junior lien holder is required and that junior lien holder imposes a fee or cost reimbursement requirement, can the servicer pay the item and capitalize the amount?**

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

**Q69. NEW If a loan was modified in the past and has a principal/interest forbearance tied to the previous modification, can that previous forbearance amount be capitalized? How should that balance be handled?**

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

**Q70. NEW If the NPV test is "negative" and the servicer cannot reduce the borrower's payment to achieve the 31 percent target monthly mortgage payment ratio, can the servicer still modify the loan under the HAMP (for example, to a 35 percent monthly mortgage payment ratio) and receive the HAMP incentives?**

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

## **O. Incentives and Payments**

**Q71. Revised What does it mean to be in good standing?**

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

**Q72. If there is a 30-60 day delinquency during the year, will the incentive payments still accrue?**

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

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

**Q73. How does a borrower lose good standing?**

If a borrower misses three payments following execution of a HAMP (three monthly payments are due and unpaid on the last day of the third month), the loan is no longer considered to be in “good standing”. A loan that is not in good standing permanently loses eligibility to receive further incentives and reimbursements under the program. Undisbursed payments to borrowers, servicers and investors, even if accrued, will not be made. Once lost, good standing cannot be restored and eligibility for incentives and interest reimbursements cannot be reclaimed, even if the borrower fully cures the delinquency.

**Q74. Is a borrower that has failed a HAMP modification eligible for another HAMP modification?**

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

**Q75. NEW In what form will the incentive payments be paid -- physical checks or wires? Will they be by individual loan or consolidated? If consolidated, will Fannie Mae provide loan-level accounting for the incentives? Are there any differences in payment method between Fannie Mae, Freddie Mac and non-GSE? Finally, for investor payments, can you clarify when the investor incentive will be sent to the servicer? For securitization Trusts, is Treasury going to issue any guidance on how those funds are to be passed through to security holders?**

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

**Q76. NEW** If a borrower receives a modification under the HAMP and pays the loan off early, would the borrower subsequently receive his or her accrued incentive for the months in which he or she performed (e.g., the borrower pays off the mortgage before the anniversary date of the modification, but had accrued several months of incentive)? Would a servicer receive any incentive payment?

Incentives, including accrued but unearned incentives, will not be paid to any party after the loan is paid in full.

**Q77. NEW** For GSE loans, do the respective announcements, bulletins, and Guide chapters published by either Fannie Mae or Freddie Mac constitute part of the "guidelines issued by the Secretary of the Treasury or his designee under the Emergency Economic Stabilization Act of 2008" for purposes of determining the scope and availability of the Servicer Safe Harbor for Mortgage Modifications as set forth in section 201 of the Helping Families Save Their Homes Act of 2009?

Yes. In order to enjoy the protections afforded by the Servicer Safe Harbor, servicers of loans owned, guaranteed, or securitized by Fannie Mae ("Fannie Mae Mortgages") must service Fannie Mae Mortgages in accordance with Fannie Mae Announcement 09-05R and any related announcement published by Fannie Mae governing the implementation of HAMP with respect to Fannie Mae Mortgages. In order to enjoy the protections afforded by the Servicer Safe Harbor, servicers of loans owned, guaranteed, or securitized by Freddie Mac ("Freddie Mac Mortgages") must service Freddie Mac Mortgages in accordance with the Freddie Mac Seller/Servicer Guide, Chapter C65 and any related Bulletins published by Freddie Mac governing the implementation of HAMP with respect to Freddie Mac Mortgages.

## **P. Government Monitoring Data**

**Q78. NEW** What information are servicers required to collect?

Servicers must request information regarding the race, sex, and ethnicity (Government Monitoring Data) of any borrower (including any co-borrower) who seeks a modification under HAMP.

**Q79. NEW** Why does the federal government need the Government Monitoring Data?

In the federal Fair Housing Act, Congress prohibited discrimination in the sale and financing of housing and charged HUD with administering the Fair Housing Act. HUD requests the data in order to ensure that HAMP modifications are conducted in compliance with the Fair Housing Act. Under the Fair Housing Act, neither note holders nor their servicers may discriminate against any person seeking a modification under HAMP on the basis of race, national origin, sex, or any other prohibited basis.

**Q80. NEW** When are servicers required to begin collecting and reporting Government Monitoring Data?

Servicers are required to ask for Government Monitoring Data from each borrower in connection with any modification completed under HAMP regardless of the effective date of the trial period plan. Servicers are required to ask for Government Monitoring Data from each borrower in connection with any trial period plan with an effective date on or after July 1, 2009 even if the trial does not result in a modification. If a trial period plan became effective prior to July 1, 2009 but

subsequently was terminated without modification, Government Monitoring Data need not be requested.

Servicers must begin reporting Government Monitoring Data to Fannie Mae beginning in October 2009, including Government Monitoring Data collected prior to October 2009.

**Q81. NEW At what point in the HAMP process is the requirement to request Government Monitoring Data triggered, and how should servicers request Government Monitoring Data from the borrower?**

Government Monitoring Data must be requested when servicers receive a modification request under HAMP from the borrower. A request will be considered to have been received once the borrower has furnished the servicer with a Hardship Affidavit (Rev. April 2009 or later). Servicers should request the Government Monitoring Data as follows:

- (a) If the borrower completes the Hardship Affidavit in a face-to-face setting by mail or over the Internet, the borrower will be able to read the disclosure contained just beneath the Information for Government Monitoring Purposes section heading, determine whether he or she wishes to furnish the Government Monitoring Data, and complete the remainder of the Information for Government Monitoring Purposes section accordingly. "Complete" means either furnish the requested Government Monitoring Data or check the box which states "I do not wish to furnish this information".
- (b) If the servicer is gathering the information necessary to complete the Government Monitoring Data from the borrower in a face-to-face interview or over the phone, the servicer should first read to the borrower the disclosure contained just beneath the Information for Government Monitoring Purposes section heading. This will inform the borrower that the federal government requests this monitoring information in order to monitor compliance with federal statutes that prohibit lenders from discriminating against borrowers based on the borrower characteristics collected in the Government Monitoring Data. It will also inform the borrower that if he or she chooses not to provide the Government Monitoring Data, then, where the Hardship Affidavit is taken in person, the servicer is required to note the data on the basis of visual observation or surname. After reading the disclosure to the borrower, the servicer should ask the borrower whether he or she desires to furnish the information. If the borrower elects to furnish the Government Monitoring Data, the servicer should read the race, ethnicity and sex categories and options from the Information for Government Monitoring Purposes section, ask the borrower which boxes he or she would like checked, and then check the boxes as directed by the borrower. If the borrower declines to furnish the information, see Q83 below.

While servicers must ask and encourage each borrower who completes a Hardship Affidavit to furnish the Government Monitoring Data, servicers may not require the borrower to furnish the Government Monitoring Data.

**Q82. NEW What response should a servicer provide when asked by a borrower why the Government Monitoring Data is requested?**

Servicers should ensure that their servicing staff and managers understand the importance of requesting that HAMP participants provide the Government Monitoring Data. The federal government requests this monitoring information in order to monitor compliance with federal

statutes that prohibit lenders from discriminating against borrowers on the basis of race, ethnicity and sex. In instances where borrowers decline to provide the information, servicing staff should be provided with training and job aids, e.g., desk references, scripts and, where feasible, system prompts, to supply this information as described below in Q84.

Additionally, servicers should ensure that their internal quality control plans include procedures for monitoring compliance with these requirements regarding the request for Government Monitoring Data.

**Q83. NEW What if the borrower declines to provide the Government Monitoring Data?**

If a borrower declines or fails to furnish all or part of the Government Monitoring Data, either the servicer or the borrower should note that fact on the Hardship Affidavit.

- (a) If the borrower completes the Hardship Affidavit in a face-to-face setting and chooses not to furnish the Government Monitoring Data, he or she should check the “I do not wish to furnish this information” box within the Information for Government Monitoring Purposes section of the Hardship Affidavit. If the borrower chooses not to check the box, the servicer should note this fact on the form. See Q84 below for further guidance on providing the Government Monitoring Data based on visual observation or surname.
- (b) If the borrower completes the Hardship Affidavit by mail, telephone or over the Internet, he or she should check or direct the servicer to check the “I do not wish to furnish this information” box within the Information for Government Monitoring Purposes section of the Hardship Affidavit. If the borrower chooses not to furnish the data or check the box, the servicer should indicate in the appropriate spaces within the Information for Government Monitoring Purposes section that the Hardship Affidavit was received by mail, telephone, or Internet and note the fact that the borrower chose not to furnish the Government Monitoring Data.
- (c) If the borrower furnishes the hardship information to the servicer as the servicer completes the Hardship Affidavit in either a face-to-face interview or over the phone, and the borrower elects not to furnish the Government Monitoring Data, the servicer should check the “I do not wish to furnish this information” box within the Information for Government Monitoring Purposes section of the Hardship Affidavit. If the servicer is completing the Hardship Affidavit over the phone, note that fact in the appropriate space within the Information for Government Monitoring Purposes section.

**Q84. NEW If the borrower declines to provide the Government Monitoring Data, must servicers provide it?**

If a borrower declines to provide the Government Monitoring Data, servicers must attempt to provide it if the Hardship Affidavit is completed in a face-to-face meeting with the borrower (either by the borrower or by the servicer based on information gathered from the borrower during the interview). In that situation, servicers should note the borrower’s race, ethnicity and sex, but only to the extent possible on the basis of visual observation or surname.

If the borrower declines to provide the Government Monitoring Data or fails to provide the information on a Hardship Affidavit taken by mail, telephone or over the Internet, the data need not be provided.

**Q85. NEW** If the borrower declines to provide Government Monitoring Data in connection with a request for modification but a servicer has race, ethnicity and sex data in its system that was obtained at the time of loan origination, should the servicer complete the Hardship Affidavit using the original race, ethnicity and sex data?

If the servicer has reasonable access to Government Monitoring Data supplied by the borrower at origination and the borrower and co-borrower remain the same, the servicer is required to provide that information.

**Q86. NEW** If servicers have race, ethnicity and sex data in their systems obtained at the time of loan origination, should the original data be replaced with the Government Monitoring Data from the Hardship Affidavit? Should servicers amend any HMDA reporting for the year in which the loan origination occurred?

This is a question that should be directed to the servicers' counsel or compliance expert.

**Q87. NEW** If a servicer has not asked for Government Monitoring Data in connection with a modification request it has already received, does the servicer need to contact the borrower to request the Government Monitoring Data now?

Yes. The servicer should contact the borrower and ask him or her to furnish the Government Monitoring Data prior to completing the modification if the monitoring information is required and the servicer failed to request it. There are several ways the servicer can make the request. They include:

- (a) Mailing to the borrower either (i) a blank Hardship Affidavit containing the Information for Government Monitoring Purposes section, or (ii) an exact copy of the Information for Government Monitoring section of the Hardship Affidavit. The servicer should request that the borrower read and complete the Information for Government Monitoring Information Purposes section and mail the form back to the servicer. The servicer should inform the borrower that while he or she is encouraged to complete the form, he or she is not required to complete it. If the servicer mails the entire Hardship Affidavit, the servicer is encouraged to strike through all sections of the Hardship Affidavit (including the signature lines) except for the Information for Government Monitoring Purposes section in order to avoid confusion and rework on the part of the borrower. Either mailing should include a cover letter describing the intended use and importance of the Government Monitoring Data and encouraging the borrower to provide it. Servicers should also either provide a self addressed postage paid envelope for return of the form, or should provide a toll free number and/or internet address that the borrower may use to supply the data.
- (b) Telephone the borrower and request the Government Monitoring Data by following the guidance furnished in Q81 above. As indicated in Q81, in requesting the Government Monitoring Data by phone, the servicer must use the exact text from the Information for Government Monitoring Purposes section on page two of the revised Hardship Affidavit form to request and record responses from the borrower and any co-borrower. The servicer should also develop a script for use by their servicing staff to encourage borrowers to voluntarily furnish the Government Monitoring Data request.
- (c) Send by e-mail or make available to the borrower through a website, access to a digital online form or a .pdf copy of either (i) the Hardship Affidavit containing the Information

for Government Monitoring Purposes section, or (ii) the Information for Government Monitoring Purposes section of the Hardship Affidavit only. The format and text of any electronic or digital version of the Information for Government Monitoring Purposes section must be identical to that found in the Hardship Affidavit. Be sure to request that the borrower read and complete the Information for Government Monitoring Purposes section and, as appropriate, either submit to the servicer electronically or print and mail the completed form back to the servicer.

The servicer's email or website should explain the intended use and importance of the Government Monitoring Data and encourage the borrower to provide it. It should also inform the borrower that while he or she is encouraged to complete the form, he or she is not required to complete it. If the servicer makes available the entire Hardship Affidavit, the servicer is encouraged to emphasize to the borrower that only the Information for Government Monitoring Purposes section should be completed. In the event the servicer makes an electronic version of the Hardship Affidavit or the Information for Government Monitoring Purposes section available to the borrower, the servicer must comply with all applicable privacy, data security, disclosure and other laws and regulations.

**Q88. NEW If the prior version of the Hardship Affidavit (which did not contain the Information for Government Monitoring Purposes section) has been completed and signed by the borrower, does a servicer need to ask the borrower to complete the current version of the Hardship Affidavit (Rev. April 2009 or later), in whole or in part?**

Yes. Prior to the completion of the modification, the servicer should ask the borrower to complete only the Information for Government Monitoring Purposes section of the current version of the Hardship Affidavit. See Q87 above for three ways in which a servicer may make the request. However, please note that when asking the borrower to complete the form, the servicer should clearly instruct the borrower not to complete or sign the remaining portions of the current version of the Hardship Affidavit.

**Q89. NEW Will Freddie Mac, in its capacity as Compliance Agent for the Treasury, monitor servicer compliance with collection of Government Monitoring Data?**

Yes. Freddie Mac is currently developing its compliance and monitoring protocol which will include monitoring of servicers with respect to requests for and the collection and reporting of Government Monitoring Data.

**Q90. NEW Does a servicer have the legal authority to request Government Monitoring Data from borrowers?**

The Federal Reserve Board regulations interpreting ECOA permit the collection of information on the race, ethnicity and sex of borrowers when the information is "required by a[n] . . . agreement . . . entered into with . . . an enforcement agency...to monitor or enforce compliance with [ECOA], this regulation, or other federal or state statutes or regulations." 12 C.F.R. 202.5(a)(2). HUD has requested the collection of the data pursuant to its obligation to enforce the Fair Housing Act (see a copy of the HUD letter [here](#)).

On behalf of HUD, Treasury has directed Fannie Mae, as a financial agent of the United States, to enter into agreements to require servicers that offer modifications under the HAMP to request Government Monitoring Data from borrowers (see a copy of the Treasury letter [here](#)).

Fannie Mae has incorporated [Supplemental Directive 09-02](#), which explains these data collection requirements, into the Servicer Participation Agreements by reference. As a result, Supplemental Directive 09-02: (a) constitutes an agreement entered into between Fannie Mae, on behalf of HUD, and servicers participating in the HAMP; and (b) is an agreement entered into by participating servicers with an enforcement agency (i.e., HUD) to permit the enforcement agency to monitor or enforce compliance with federal law, within the meaning of 12 C.F.R. 202.5(a)(2).

If a servicer has any questions regarding its legal obligations, the servicer should consult its own counsel.