

Draft Uniform Servicing Standards

Set forth below is an excerpt from the draft proposal the Servicers are developing to address the concerns raised by the Attorneys General, the Department of Justice, and other federal and state regulators. The excerpt below contains the Servicers' recommended approach on uniform servicing standards, which we hope will form the basis for a useful dialogue. We look forward to discussing this approach at our meeting this week. We are continuing to work on the other portions of the draft proposal and look forward to discussing those portions as well.

II. Uniform Servicing Standards

A. Standards for the Execution of Affidavits and Sworn Statements in Foreclosure and Bankruptcy Proceedings

- Servicer shall implement processes reasonably designed to ensure that factual assertions made in pleadings, declarations, affidavits, or other sworn statements filed by or on behalf of the Servicer are accurate and complete; and that affidavits and declarations are based on personal knowledge or a review of Servicer's books and records when the affidavit or declaration so states, or in accordance with the evidentiary requirements of applicable state law.
- Servicer shall implement processes reasonably designed to ensure that Servicer has properly documented an enforceable interest in the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the foreclosure action (as a result of agency or other similar status), including appropriate transfer and delivery of endorsed notes (which may be endorsed in blank) and assigned mortgages or deeds of trust at the formation of a residential mortgage-backed security, and lawful endorsement and assignment of the note and mortgage or deed of trust to reflect changes of ownership, all in accordance with applicable state law.
- Separate affidavits or sworn statements shall be used where one affiant does not have requisite personal knowledge of all required information.
- Servicer shall have standards for qualifications, training, and supervision of employees and agents who prepare or execute affidavits and sworn statements. Servicer shall require each

employee to receive training and abide by Servicer's policies and procedures in the performance of his or her duties.

- Servicer shall have processes to review and approve standardized affidavits and declarations to the extent practical for each jurisdiction in which Servicer files foreclosure actions to comply with applicable laws, rules and court procedures.
- Affidavits and sworn statements required by applicable law shall accurately identify the name of the affiant, the entity of which the affiant is an employee or officer, the affiant's title, and whether the affiant is executing the affidavit or sworn statement as attorney-in-fact.
- Affidavits and sworn statements, including their notarization, shall comply with applicable state law requirements.
- Affidavits and sworn statements shall not contain information that is false or unsubstantiated in any material respect.
- Affiants shall date their signatures on affidavits and sworn statements.
- Servicer shall periodically assess staffing to ensure that employees have reasonable time to prepare, verify, and execute affidavits and sworn statements.

B. Accuracy and Verification of Borrower Account Information

- Servicer shall maintain procedures reasonably designed to ensure accuracy and timely updating of borrower's account information, including posting of payments and imposition of fees. Servicer shall also maintain adequate documentation of borrower account information, which may be in either electronic or paper format.
- Servicer shall provide adequate information on monthly billing or other statements consistent with applicable federal law to show in clear and conspicuous language:
 - i. Total amount due;
 - ii. Allocation of payments;
 - iii. Unpaid principal;

- iv. Listing of fees and charges;
 - v. Current escrow balance; and
 - vi. Reasons for any payment changes, including an interest rate or escrow account adjustment, no later than 21 days before the new amount is due.
- Monthly statements as described above are not required with respect to any fixed rate residential mortgage loan as to which the borrower is provided a coupon book.
 - Servicer shall take appropriate action to promptly remediate inaccuracies in borrowers' account information of which it has knowledge, including correcting the account information and correcting inaccurate reports to consumer credit reporting agencies.

C. Quality Assurance Systems/Reviews

- Servicer shall conduct periodic reviews of a statistically valid sample of affidavits and other sworn documents prepared by employees and agents in connection with foreclosure and in bankruptcy proceedings that are reasonably designed to ensure that the documents are accurate and comply with any Banking Regulators' Agreement.
- The quality assurance reviews set forth above shall be conducted by Servicer employees who do not engage in preparation of such documents and who do not report to the same supervisors as those employees who prepare foreclosure or bankruptcy affidavits, sworn statements, or other foreclosure or bankruptcy documents.
- Servicer shall take appropriate remedial steps if deficiencies are identified, including appropriate remediation in individual cases.
- Servicer shall periodically review and assess the adequacy of internal controls and procedures, and implement appropriate procedures to address deficiencies.

D. Remediation of Potentially Improper Affidavits in Pending Foreclosure Proceedings

- Servicer shall not rely on an affidavit of indebtedness or similar affidavit filed in a pending pre-judgment judicial foreclosure

proceeding which was required to be based on the affiant's review and personal knowledge of its accuracy but was not, or that was not, when so required, properly notarized, in order to obtain a judgment of foreclosure. In cases in which such affidavits have been filed, Servicer shall, at Servicer's expense, take appropriate action, consistent with state law and court procedure, to substitute such affidavits with new affidavits.

- In post-judgment, pre-sale cases in judicial foreclosure proceedings in which an affidavit was filed which was required to be based on the affiant's review and personal knowledge of its accuracy but may not have been, or that may not have, when so required, been properly notarized, and such affidavit has not been re-filed, Servicer where required by local law or rule shall provide written notice of these issues to borrower at borrower's address of record prior to resuming a previously stayed foreclosure sale or eviction proceeding.

E. "Amount Due" Statements for Borrowers in Foreclosure

- Prior to the filing of a foreclosure pleading, issuance of a notice of trustee's sale (whether in an acceleration notice, default notice, or by separate notice), or motion for relief from stay in a bankruptcy proceeding, Servicer shall provide the borrower with an itemized account summary in accordance with TILA § 128(f) (15 U.S.C. § 1638(f) (as added by Dodd Frank)).

F. Independent Foreclosure Review

- Servicer shall establish a review process of the appropriateness of foreclosure referral and foreclosure sale to be conducted by personnel who report separately from the personnel in the Servicer's loss mitigation and foreclosure functions.
- This review shall include confirmation that eligible borrowers have been evaluated or afforded a fair opportunity to be evaluated for available home retention options based on information supplied by the borrower.
- This review shall be conducted both prior to the Servicer's referral of a mortgage loan to a foreclosure proceeding, and prior to a foreclosure sale.

- The review shall be reasonably designed to ensure that referrals to foreclosure proceeding and foreclosure sales comply with applicable state and federal law, including loss mitigation requirements and compliance with Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. App. § 501 *et seq.*

G. *Oversight of Third-Party Providers*

- Servicer shall adopt policies and processes to oversee and manage foreclosure firms, law firms and foreclosure trustees with whom Servicer has a direct contractual relationship (including subsidiaries and affiliates) that provide foreclosure or bankruptcy processing services (“Third-Party Providers”).
- Servicer shall use reasonable best efforts to amend agreements or engagement letters, or enter into new agreements or engagement letters, with Third-Party Providers to require them to comply with Servicer’s policies and procedures, the loan instruments, and applicable state and federal laws and rules.
- Servicer shall implement processes to perform appropriate due diligence on potential and current Third-Party Providers’ qualifications, expertise, capacity, reputation, complaints, information security, document custody practices, business continuity, and financial viability.
- Servicer shall implement processes reasonably designed to ensure that contracts provide for adequate oversight, including requiring Third-Party Provider adherence to Servicer foreclosure processing standards, measures to enforce Third-Party Provider contractual obligations, and processes reasonably designed to ensure timely action with respect to Third-Party Provider performance failures.
- Servicer shall implement processes to review customer complaints about Third-Party Provider services.
- Servicer shall conduct periodic reviews of Third-Party Providers. These reviews shall include:
 - i. A review of a sample of the foreclosure and bankruptcy documents prepared by the foreclosure firm, law firm, foreclosure trustee or other Third-Party Provider, to provide for material compliance with state law in connection with

the preparation of the documents, and the accuracy of the facts contained therein;

- ii. A review of the fees and costs assessed by the Third-Party Provider to provide that only lawful fees and costs are charged to borrowers;
 - iii. A review of the Third-Party Provider's processes to provide for material compliance with the Servicer's policies and procedures; and
 - iv. A review of the security of original loan documents maintained by the Third-Party Provider.
- Servicer shall take appropriate remedial steps if problems are identified through this review or otherwise, including terminating its relationship with the Third-Party Provider.
 - Servicer shall require a certification process for law firms (and recertification of existing law firm providers) that provide residential mortgage foreclosure and bankruptcy services for the Servicer, on a periodic basis, as qualified to serve as Third-Party Providers to the Servicer including that attorneys are licensed to practice in the relevant jurisdiction and have the experience and competence necessary to perform the services requested.

H. *Mortgage Electronic Registration Systems (MERS)* [Reserved for discussion]

I. *General Loss Mitigation Requirements*

- Servicer shall provide accurate information to borrowers relating to its loss mitigation programs.
- Servicer shall not adopt compensation arrangements for its employees that encourage foreclosure over loss mitigation alternatives.
- Servicer shall instruct its employees not to advise or recommend to borrowers that borrowers default in order to qualify for loss mitigation relief.

- Servicer shall not discourage borrowers from working or communicating with legitimate non-profit housing counseling services.
- Servicer shall communicate at the written request of the borrower with the borrower's authorized representatives, including housing counselors and representatives from State Attorneys General and financial regulatory agencies acting upon a complaint filed by the borrower.

J. Single Point of Contact

- Servicer will provide a single point of contact ("SPOC"), which may be more than one person, to any first lien, owner occupied, borrower suffering a hardship throughout the loss mitigation processes (including modification), short sale or forbearance processes (collectively, the "SPOC Process").
- Servicer shall identify the SPOC and provide one or more direct means of communication with the SPOC on appropriate loss mitigation-related correspondence with borrower.
- Servicer shall train SPOCs on issues surrounding the SPOC Process.
- The SPOC shall provide the following services to borrower:
 - i. Provide basic information about the status of borrower's account, including pending loan modifications and other loss mitigation;
 - ii. Communicate Servicer's decision regarding loan modifications and other loss mitigation to borrower in writing;
 - iii. Inform borrower of available home preservation options; and
 - iv. Inform borrower of liquidation options.
- Servicer shall adopt procedures reasonably designed to ensure that relevant records relating to borrower's account are promptly accessible by the borrower's SPOC.

- Servicer shall implement a process reasonably designed to ensure that a SPOC can refer and transfer a borrower to an appropriate supervisor upon request of the borrower.
- SPOC shall remain assigned to borrower's account and available to borrower until such time as Servicer determines in good faith that all loss mitigation options have been exhausted.
- Servicer shall designate one or more specific management-level employee(s) to be the primary contact for the Attorneys General and state financial regulators for communication regarding complaints and inquiries from individual borrowers who are in default and/or have applied for loan modifications.

K. Borrower Portal

- Servicer shall develop or contract with a third-party vendor to develop an online portal where borrowers can check the status of their loan modification. Servicer shall adopt procedures reasonably designed to ensure that information about the status of borrower's modification is up to date.
- Servicers are encouraged to design portals that support one or more of the following functions:
 - i. Enable borrowers to submit documents electronically;
 - ii. Provide an electronic receipt for any documents submitted;
 - iii. Provide information and eligibility factors for proprietary loan modification and other loss mitigation programs;
 - iv. Permit Servicer to communicate with borrowers to satisfy any written communications required to be provided by Servicer, if borrowers submit documents electronically; and
 - v. Not require payment of fees by the borrower for access or usage.

L. Loan Modifications

1. No-cost process for requesting loan modification

- Servicer shall not charge borrower an application fee in connection with a request for a loan modification.
 - Servicer shall provide borrower a pre-paid overnight envelope or pre-paid address label for return of a loan modification application.
2. Acknowledgement of request for loan modification; borrower's opportunity to supplement information
- Servicer shall develop procedures reasonably designed to acknowledge in writing receipt of an initial loan modification request submitted by borrower no later than 10 days after receipt.
 - Servicer shall develop procedures reasonably designed to notify borrower of any known deficiency in borrower's initial submission of information, no later than 30 days after receipt, including any missing information or documentation required for the loan modification to be considered complete.
 - Servicer will afford borrower 15 days from the date of Servicer's notification of any missing information or documentation to supplement borrower's submission of information prior to making a determination on whether or not to grant an initial loan modification.
3. Dual-track
- Servicer shall not refer borrower's account to foreclosure if borrower has submitted complete information and all required and completed documentation and forms for a loan modification that includes, at a minimum, current documentation of borrower's income (the "Completed Loan Modification Information") and Servicer has not completed an evaluation to determine if the borrower qualifies for a loan modification.
 - Subject to any Applicable Requirements, Servicer shall not proceed with a foreclosure sale under any of the following circumstances:

- a. The borrower has supplied the Completed Loan Modification Information at least 10 days prior to a scheduled foreclosure sale and a determination has not been made. (If Servicer receives Completed Loan Modification Information after the borrower has been referred to foreclosure, but fewer than ten (10) days before a scheduled foreclosure sale and it appears that borrower may qualify for a modification or workout, then Servicer shall use its best efforts to postpone the foreclosure sale until after Servicer has fully evaluated borrower's Completed Loan Modification Information, consistent with any Banking Regulators' Agreement);
 - b. The account is in underwriting for a modification decision;
 - c. The borrower is in compliance with the terms of a trial loan modification;
 - d. The borrower has been approved for a modification and accepts the offer within a reasonable time; or
 - e. A short sale or deed-in-lieu of foreclosure has been approved by all parties (first lien investor, junior lien holder, MI), and proof of funds or financing has been provided to Servicer.
4. Servicer shall develop procedures reasonably designed to make a determination as to whether to grant a borrower's request for a loan modification within 30 days of receiving Completed Loan Modification Information.
 5. Where Servicer grants a loan modification, Servicer shall provide borrower with copy of the fully executed loan modification agreement or, if the modification is not in writing, a written summary of its terms.
 6. Borrowers enrolled in a trial period plan under current HAMP guidelines and who have made three timely trial period payments shall be converted by Servicer to a permanent modification upon execution of the final modification documents and consistent with applicable program guidelines, absent evidence of fraud.

7. Denied loan modifications

a. Automatic review

- Servicer's modification denials of an initial request for modification shall be subject to second level of review. Such review shall be performed by a different employee than made the initial determination.
- Servicer shall send a denial letter to borrower only after the automatic second-level review has been completed.

b. Appeal process. Servicer shall implement processes reasonably designed so that:

- The denial letter will inform the borrower that he or she has 10 days from the date of the denial letter to provide information as to why Servicer's determination of eligibility for a loan modification was in error.
- Servicer will review the information submitted by borrower and use its best efforts to communicate the disposition of borrower's appeal to borrower no later than 30 days after receipt of the information.
- Servicer will neither refer a borrower to foreclosure nor, if foreclosure proceedings are in progress, proceed to a foreclosure sale until the later of (1) the expiration of the 10-day appeal period; and (2) 10 days after Servicer sends borrower a final letter denying his or her appeal.
- If Servicer denies borrower's appeal, Servicer's final denial letter will include a description of other available loss mitigation, including short sales and deeds in lieu of foreclosure. The final denial letter will also advise the borrower either (1) that the account may be referred to foreclosure in 10 days, or (2) that the foreclosure proceeding will continue, but no sale will occur for at least ten (10) days.

8. Borrowers in bankruptcy

- Subject to any Applicable Requirements, Servicer shall extend a trial loan modification period for at least two (2) months if necessary to accommodate delays in obtaining bankruptcy court approvals or receiving a full remittance of a borrower's trial period payments that have been made to a bankruptcy trustee. Servicer may also extend the trial loan modification based on good business judgment. In the event of a trial period extension, the borrower in bankruptcy 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, Servicer shall 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.

M. Short Sales

- Servicer shall develop procedures reasonably designed to send written confirmation, including electronic mail, of borrower's first request for a short sale to the borrower or his or her agent within 10 days of receiving the request.
- Servicer shall send borrower at borrower's address of record timely written notice of any missing required documents for consideration of short sale within 10 days of receiving borrower's request for a short sale.
- Servicer shall send borrower at borrower's address of record timely written notice of its decision with respect to borrower's request for a short sale within 10 days of that decision. In the event that Servicer denies the request, such notice will identify the reason or reasons why the request is being denied.
- Subject to any Applicable Requirements, Servicer shall agree to forgive deficiency balances associated with short sales subject to

the parameters outlined in the programs more fully described in Appendix B.

N. Fees

- Servicer shall compile a schedule of common, non-state specific, servicing and default fees or ranges of fees that may be charged to borrowers directly by Servicer. Servicer shall make this schedule available on its website and to the borrower or borrower's authorized representative upon request. The schedule shall identify each fee, provide a plain language explanation of the fee, and state the maximum amount of the fee or how the fee is calculated or determined.
- Servicer shall not impose fees on the borrower for property inspections solely for the determination of general property condition and occupancy of occupied properties more than once per calendar month. Notwithstanding the foregoing, Servicer shall be permitted to contract for more property inspections if such inspections are not charged to the borrower. Expenses associated with preservation and maintenance activities shall continue to be governed by the Applicable Requirements.
- Servicer shall not impose late fees when the borrower makes timely trial modification payments calculated by Servicer, even though these trial modification amounts are less than the full payment amount under the terms of the loan.

O. Force Placed Insurance

- Servicer shall not obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance.
- For purposes of this section, the term "force-placed insurance" means hazard insurance coverage obtained by Servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.
- Servicer shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

- Servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless:
 - i. Servicer has sent, by first-class mail, a written notice to the borrower containing:
 - a. A reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;
 - b. A statement that Servicer does not have evidence of insurance coverage of such property;
 - c. A clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and
 - d. A statement that Servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner.
 - ii. Servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (i) that contains all the information described in each clause of such subparagraph; and
 - iii. Servicer has not received from the borrower written confirmation of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (ii) was sent by Servicer.
- Servicer shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent.
- Within 15 days of the receipt by Servicer of confirmation of a borrower's existing insurance coverage, Servicer shall--

- i. Terminate the force-placed insurance; and
 - ii. Refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.
- No provision of this section shall be construed as prohibiting Servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973.
 - All charges, apart from charges subject to state regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the Servicer shall be bona fide.

P. SCRA Reforms

- Servicer shall comply with all applicable provisions of the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. App. § 501 *et seq.*, and any applicable state law offering protections to servicemembers, and shall conduct a review of a sample of foreclosure actions over the past two years to determine whether the foreclosures were in compliance with the SCRA. Servicer shall remediate all direct financial injury to borrowers caused by any such violations.
- Servicer shall designate special employees who have been trained on the protections in the SCRA to provide customer care for borrowers who are protected by the SCRA.
- Servicer shall develop procedures reasonably designed to determine whether the secured property is owned by a servicemember covered under SCRA before initiating foreclosure. For the purpose of this provision, searching for borrower on the Defense Manpower Data Center (DMDC) and reviewing information in Servicer's possession or control shall constitute "reasonably designed."
- Whenever Servicer obtains information indicating that the secured property is owned by a servicemember covered under SCRA, Servicer shall inform the borrower that the borrower may be

entitled to certain protections under the SCRA regarding the borrower's interest rate and foreclosure.