

Subject: Working with Mortgage Borrowers
Date: April 18, 2007

To: Chief Executive Officers of All National Banks, Federal Branches
and Agencies, Department and Division Heads, and All Examining
Personnel

Description: Interagency Statement

As of January 6, 2012, this guidance applies to federal savings associations in addition to national banks.*

Purpose

In anticipation of the large number of adjustable rate mortgages (ARMs) scheduled to reset in the next 12 to 18 months, particularly subprime hybrid ARMs, the federal banking agencies encourage institutions to work with borrowers who may be unable to meet contractual payment obligations on loans secured by their primary residence.

Statement on Working with Mortgage Borrowers

The federal financial institutions regulatory agencies¹ encourage financial institutions to work constructively with residential borrowers who are financially unable to make their contractual payment obligations on their home loans. Prudent workout arrangements that are consistent with safe and sound lending practices are generally in the long-term best interest of both the financial institution and the borrower.

Many residential borrowers may face significant payment increases when their adjustable rate mortgage loans reset in the coming months. These borrowers may not have sufficient financial capacity to service a higher debt load, especially if they were qualified based on a low introductory payment. The agencies have long encouraged borrowers who are unable to meet their contractual obligations to contact their lender or servicer to discuss possible payment alternatives at the earliest indication of such problems.

The agencies encourage financial institutions to consider prudent workout arrangements that increase the potential for financially stressed residential borrowers to keep their homes. However, there may be instances when workout arrangements are not economically feasible or appropriate.

Financial institutions should follow prudent underwriting practices in determining whether to consider a workout arrangement. Such arrangements can vary widely based on the borrower's financial capacity. For example, an institution might consider modifying loan terms, including converting loans with variable rates into fixed-rate products to provide financially stressed borrowers with predictable payment requirements.

The agencies will continue to examine and supervise financial institutions according to existing standards. The agencies will not penalize financial institutions that pursue reasonable workout arrangements with borrowers who have encountered financial problems. Further, existing supervisory guidance and applicable accounting standards do not require institutions to immediately foreclose on the collateral underlying a loan when the borrower exhibits repayment difficulties. Institutions should identify and report credit risk, maintain an adequate allowance for loan losses, and recognize credit losses in a timely manner.

Financial institutions may receive favorable Community Reinvestment Act (CRA) consideration for programs that transition low and moderate income borrowers from higher cost loans to lower cost loans, provided the loans are made in a safe and sound manner.² Financial institutions, working alone or in conjunction with reputable organizations such as the Center for Foreclosure Solutions sponsored by NeighborWorks, can assist borrowers in avoiding foreclosure through credit counseling.³ Such programs also help financially stressed borrowers avoid predatory foreclosure rescue scams.

Under the Homeownership Counseling Act, financial institutions should inform certain borrowers who are delinquent on their mortgage loans (home loans secured by a single family dwelling that is the borrower's principal residence) about the availability of homeownership counseling. The Department of Housing and Urban Development (HUD) maintains a list of approved counselors.⁴

If a service member defaults on a mortgage, the Servicemembers Civil Relief Act (SCRA) prohibits the sale, foreclosure, or seizure of service member property secured by the mortgage during the period of military service, or within 90 days thereafter. Institutions are required to notify service members of their rights under the SCRA.⁵ While the SCRA requirements apply only to obligations that were originated prior to the service member's military service, the agencies encourage institutions to work with service members and their families who are unable to meet any of their contractual mortgage obligations.

ADDITIONAL INFORMATION

For additional information, please contact your supervisory office or the Retail Credit Risk Division at (202) 649-6670.

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*References in this guidance to national banks or banks generally should be read to include federal savings associations (FSA). If statutes,

regulations, or other OCC guidance is referenced herein, please consult those sources to determine applicability to FSAs. If you have questions about how to apply this guidance, please contact your OCC supervisory office.

¹ The federal financial institutions regulatory agencies consist of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, the agencies).

² Consideration as a CRA flexible lending practice may be granted in instances where such action helps to meet the credit needs of low- and moderate-income individuals or geographies within the institution's assessment area, and is consistent with safe and sound lending practices. Also see Q&A § __.22(a)- 1 (2001 Interagency Questions and Answers Regarding Community Reinvestment). Federal credit unions are not subject to CRA requirements.

³ Consideration as a CRA community development service may be granted in instances where such activities help to meet the credit needs of low- and moderate-income individuals or geographies within the institution's assessment area. Also see Q&A § __.12(j)- 3 (2001 Interagency Questions and Answers Regarding Community Reinvestment). Federal credit unions are not subject to CRA requirements.

⁴ Information on HUD's counseling services is available at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or (800) 569-4287.

⁵ HUD's service member notice is available at <http://www.hud.gov/offices/adm/hudclips/forms/files/92070.pdf>.