



March 9, 2011

Acquiring Institutions

The purpose of this letter is to convey the importance of performing loan modifications in which the process includes current and accurate internal record keeping, organization and communication to minimize the risk of borrower confusion during the loan modification and foreclosure processes. It is important for insured depository institutions that have acquired single-family residential loans subject to shared-loss agreements (“Assuming Institutions”) to implement loss mitigation policies and procedures which are significantly enhanced by adopting a single point of contact protocol.

All Assuming Institutions that manage a portfolio of single-family residential loans subject to the terms of the shared-loss agreements are required to implement a loan modification program that considers loan modification, and other loss mitigation alternatives, prior to foreclosure. In connection with its review of loan modifications to minimize foreclosures and allow borrowers to remain in their homes, the FDIC is analyzing the practices of Assuming Institutions. While all of the Assuming Institutions surveyed have certified that they currently comply with all state and federal foreclosure requirements, the FDIC is aware of a number of instances where there has been a lack of communication between foreclosure and loan modification staff, resulting in foreclosure proceedings moving to the final stages while borrowers are still under consideration for a loan modification. This lack of communication and coordination is not consistent with good business practices and is in violation of the spirit and terms of the shared-loss agreements.

The FDIC previously issued guidance to Assuming Institutions, regarding acceptable criteria for the modification of first lien loans collateralized by owner-occupied and non-owner-occupied properties that are past due or in imminent default, with the objectives of (a) minimizing loss to Assuming Institutions and the FDIC, and (b) maximizing the opportunity for qualified homeowners and tenants to remain in their homes with affordable mortgage payments. (*See Risk Sharing Asset Management Guidance RSAM-2010-006 – FDIC Loan Modification Guidance Single Family Residential (SFR) Loans issued October 25, 2010; and Risk Sharing Asset Management Guidance RSAM-2010-003 – FDIC Loan Modification Guidance Non-Owner Occupied (“NOO”) Single Family Residential (SFR) Loans issued September 7, 2010.*)



The FDIC expects Assuming Institutions and their servicers to provide borrowers with information that helps them understand the modification process and terms that are being offered, or in the case of modification denials, to provide borrowers with the denial reason and alternatives to foreclosure such as a short sale or deed-in-lieu. Clarity in the Assuming Institution's communications with borrowers should minimize confusion, foster good customer relations, improve legal compliance, and reduce other risks in connection with the loss mitigation activities.

The management standards set forth in Article III of the shared-loss agreements require Assuming Institutions and their servicers to have sufficient staff, resources, and facilities for proper implementation of the loan modification requirements of the shared-loss agreements. It is critical for the Assuming Institution to have a system in place to respond to borrower inquiries about the loan modification process, so that borrowers do not miss opportunities to avoid foreclosure.

The FDIC monitors compliance with the shared-loss agreements through the monthly reports and periodic compliance reviews of the Assuming Institutions. We have the right to, and will, deny claims for loss share payments or seek reimbursement for payments already made, where the Assuming Institution is unable to verify, with applicable documentation, that a qualifying borrower was considered for a loan modification or other loss mitigation alternatives, prior to final foreclosure proceedings, and that minimizing the loss to the FDIC was pursued. The FDIC will not excuse failure to comply with the loan modification requirements of the shared-loss agreements where the failure is attributable to not offering qualified modifications or a lack of communication within the organization.

SINGLE POINT OF CONTACT PROTOCOL

The foregoing situations can be avoided to the extent that Assuming Institutions establish an acceptable single point of contact protocol to foster communication with borrowers under consideration for loan modifications or other loss mitigation alternatives. The attributes of a successful single point of contact protocol include policies and procedures to:

- ensure that designated point of contact personnel are appropriately trained and apprised of, and provide borrowers with, current and accurate information regarding their loan modification or available loss mitigation alternatives;
- require that designated point of contact personnel have access to and review the most recent data on all lender/servicer actions (foreclosure and/or loan modification-oriented) that transpired with respect to a given loan, prior to communicating with the applicable borrower, and to utilize that data for purposes of formulating informative, consistent, and clear communication to the borrower; and



- prevent any final action from occurring absent a thorough review and certification, from duly authorized staff, regarding a borrower's qualification and status for any loss mitigation alternatives to such action.

While the single point of contact protocol is not specifically mentioned as a management standard in the shared-loss agreement, the agreement does require the Assuming Institution to follow prudent business and banking practices and procedures. In light of the conflicts and miscommunications that have occurred in the dual-track process for loan modifications and foreclosures that is commonplace today, the FDIC believes that having a single point of contact for borrowers is a prudent business and banking practice. The shared-loss agreement for use in 2011 specifically requires the establishment of such a protocol.

If you have not already done so, we encourage you to establish a single point of contact protocol as expeditiously as possible. You should share your plan for the implementation of the single point of contact with your Loss Share Specialist. Any questions regarding this letter should be directed to your Loss Share Specialist.

Pamela J. Farwig
Deputy Director
Division of Resolutions and Receiverships