FDIC

Federal Deposit Insurance Corporation
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**Financial Institution Letter**
**FIL-45-2009**
**August 6, 2009**

# SUPPORT FOR RESPONSIBLE LOSS MITIGATION ACTIVITIES
## Servicers' Obligations to Lienholders on Modifying Loans

**Summary**: The members of the Federal Financial Institutions Examination Council (FFIEC) continue to support responsible loss mitigation activities by federal- and state-regulated financial institutions that preserve homeownership. This support extends to programs designed to achieve sustainable mortgage obligations regardless of lien position. The FFIEC members recognize that entities that service first and subordinate liens on the same residential real estate property may be faced with potential conflicts of interest when making loan modification decisions. A servicer's decision to modify the first lien mortgage should not be influenced by the modification's potential impact on the subordinate lien loan and vice versa. Any ownership interest in the subordinate lien cannot be a consideration.

**Distribution:**
FDIC-Supervised Banks (Commercial and Savings)

**Suggested Routing:**
Chief Executive Officer
Chief Loan Officer
Chief Compliance Officer

**Related Topics:**
*Statement on Working with Mortgage Borrowers* (FIL 35-2007),
*Statement on Loss Mitigation Strategies for Servicers of Residential Mortgages* (FIL 76-2007),
*Supplemental Information for Loss Mitigation Strategies* (FIL 77-2007),
Interagency Guidance on Nontraditional Mortgage Product Risks (FIL-89-2006), and
*Statement on Subprime Mortgage Lending* (FIL-62-2007)

**Attachment:**
None

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**Note:**
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## Highlights:

- Servicers have an obligation to act in the best interests of the owners/investors of serviced residential mortgage loans and in accordance with the terms of the governing contract. Any decisions that are not anticipated to produce a greater recovery to investors given the alternatives may constitute a breach of that duty.

- Regardless of any potential effect on the subordinate lien loan, servicers should modify the first lien mortgage when doing so would produce a greater anticipated recovery to the first lien owners/investors than not modifying the loan. Failure to do so may be a breach of the servicer's obligation to those owners/investors.

- Similarly, regardless of any potential effect on the first lien mortgage, servicers should modify the subordinate lien loan when doing so would produce a greater anticipated recovery to the subordinate lien owners/investors than not modifying the loan. Failure to do so may be a breach of the servicer's obligation to those owners/investors.