Federal Home Loan Bank of Atlanta
Federal Home Loan Bank of Boston
Federal Home Loan Bank of Chicago
Federal Home Loan Bank of Cincinnati
Federal Home Loan Bank of Dallas
Federal Home Loan Bank of Des Moines
Federal Home Loan Bank of Indianapolis
Federal Home Loan Bank of New York
Federal Home Loan Bank of Pittsburgh
Federal Home Loan Bank of Seattle
Federal Home Loan Bank of Topeka

December 23, 2010

VIA EMAIL: regs.comments@federalreserve.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Regulation Z; Truth in Lending [Docket No. R-1390]

Dear Ms. Johnson:

This letter addresses the Board of Governors of the Federal Reserve System's ("Federal Reserve") request for comments on the proposed rule regarding "Truth in Lending" published in the Federal Register on September 24, 2010. This comment letter covers the proposed amendments to Subpart C, 226.20 of Regulation Z and related amendments (hereinafter referred to as the Proposed Rule"). The Federal Home Loan Banks listed above (collectively, the "FHLBs") welcome the opportunity to comment on the Proposed Rule.

The Proposed Rule creates new standards for determining whether particular closed-end consumer mortgage loan modification transactions should be "new transactions" under 12 C.F.R. §226.20. The FHLBs have reviewed the Proposed Rule in light of: (i) the Mortgage Partnership Finance® ("MPF®") Program offered by some of the FHLBs to their community bank, thrift, credit union and insurance company members (each participating financial institution called a "PFI"), and (ii) the Mortgage Purchase Program (MPP) offered by some of the FHLBs to PFI's. The purpose of this letter is to inform the Federal Reserve of the potential impact that the proposed amended provisions would have on forbearance, loan modification and workout options offered to borrowers (consumers) who are customers of PFI's under the MPF Program and under the MPP, respectively.

Mission of the Federal Home Loan Banks

The FHLBs are government sponsored enterprises providing housing finance to more than 7,900 member commercial banks, savings institutions, credit unions and insurance companies throughout the nation. The mission of the FHLBs is to safely and soundly support mortgage finance through a variety of programs and services, primarily credit programs to their financial institution membership, so that the members can provide economical residential mortgage financing in all phases of widely varying financial and economic cycles. With combined assets of more than $900 billion, the FHLBs' credit products include floating and fixed-rate loans, the MPF Program, Bank-designed MPP's and related products to finance home mortgage portfolios. The FHLBs, which are chartered by Congress and privately owned by member financial institutions, also provide funding for affordable housing and community development activities.

Description of MPF Program

The MPF Program is authorized under the Federal Housing Finance Agency's ("Finance Agency") Acquired Member Assets ("AMA") Regulation (12 CFR Part 955) as falling within the advances (lending) authority of the FHLBs. In the preamble to the AMA Regulation, AMA are described as follows:

> [W]hole loans … that a Bank may acquire from or through its members … in a transaction that is in purpose and economic substance functionally equivalent to the business of making advances in that: (1) It allows the member … to use its eligible assets to access liquidity for further mission-related lending; and (2) all, or a material portion of, the credit risk attached to the assets is being borne by the member ... (Page 43974 of Federal Register Vol. 65, No. 137, July 17, 2000.) [1]

In 1997, the Federal Home Loan Bank of Chicago ("FHLBC") introduced the MPF Program to provide PFIs of the FHLBs a secondary mortgage market alternative for their one-to-four family residential mortgage loans ("MPF Loans"). The MPF Program supports the FHLBs' housing finance mission by aligning the various risks associated with mortgage finance in an optimal way. As a secondary mortgage market structure under which the FHLBs purchase and fund eligible MPF Loans from or through PFIs, the MPF Program allows PFIs to most economically manage their mortgage finance programs. For conventional portfolio MPF Loans products, the MPF Program is supported by credit enhancements. PFIs assume or retain a portion of the credit risk on the MPF Loans by providing credit enhancement either through a direct liability to pay

[1] The 5th Circuit Court of Appeals described the MPF Program as "a method of empowering member institutions to channel funds into residential housing finance in a manner that is technically more sophisticated than, yet functionally similar to, that which occurs when [an FHLB] makes an advance [to a member]." Texas Savings & Community Bankers Association, et al., v. Federal Housing Finance Board, 201 F.3d 551 (5th Circuit, 2000).

credit losses up to a specified amount or through a contractual obligation to provide supplemental mortgage guaranty insurance ("SMI"). Conventional MPF Loans with LTVs greater than 80 percent are credit-enhanced by a requirement for certain amounts of private mortgage insurance ("PMI") from an acceptable mortgage guaranty insurance ("MI") company. MPF Loans are conforming conventional and government fixed-rate mortgage loans secured by one-to-four family residential properties with maturities ranging from five years to 30 years or participations in such mortgage loans.

As MPF Provider, FHLBC establishes the eligibility rules for MPF Loans and publishes and maintains the MPF Origination Guide and MPF Servicing Guide. The MPF Guides detail the requirements PFIs must follow in originating or selling and servicing MPF Loans. The PFI or its servicing affiliate generally retains the right and responsibility for servicing MPF Loans it delivers.

The MPF Servicing Guide[2] directs MPF servicers to consider and implement a host of forbearance and loan modification options if a borrower becomes delinquent. If an MPF Loan becomes delinquent, the PFI is required to contact the borrower to determine the cause of the delinquency and whether the borrower will be able to cure the default. The MPF Servicing Guide sets forth for delinquent loans borrower-centric servicing objectives (107.2.1), general and special forbearance plans (107.2.2), pre-foreclosure property sale procedures (107.2.3) and borrower assistance plans (107.2.4). If these measures do not result in satisfactory resolution of a borrower's delinquency, the servicer is to consider offering the borrower a temporary loan payment modification plan. The MPF Servicing Guide, at 107.6, sets forth loan modification procedures, including borrower contact, eligibility determination, implementation and required documentation.

In any event, MPF servicers must accomplish their activities, including the servicing of delinquent loans, in accordance with applicable laws. For example, MPF servicers are informed that loan modifications outside of those permitted by the Servicing Guides may be considered "refinancings" under Regulation Z. In fact, consistent with industry standards, an MPF servicer is not permitted to make any modification of any terms of a mortgage loan except as provided in the MPF Servicing Guide. The MPF Servicing Guide only permits limited reamortizations (105.7.5.3) and the borrower-facing activities set forth in Chapter 107 (discussed above).

Description of MPP

MPP, which was introduced in 2000, enables FHLBs to purchase directly from their members both their qualifying conforming fixed-rate conventional[3] one-to-four

[2] The Servicing Guide sections referred to in this paragraph are attached to this letter as Exhibit A.

[3] A "conforming" mortgage refers to the maximum amount permissible to be lent as a regular prime (i.e., non-jumbo, non-subprime) mortgage, as established each year by the Federal Housing Finance Agency. A "conventional" mortgage refers to non- government-guaranteed/insured mortgages.

family mortgages and residential mortgages insured by the FHA. Under the MPP, the FHLBs are permitted to purchase qualifying mortgage loans within any state or territory of the United States. The FHLB's participating in MPP do not use any trust or intermediary to purchase mortgage loans from members under this program. MPP directly supports the FHLBs' public policy mission of supporting housing finance.

Each bank participating in MPP (an "MPP FHLB" and collectively, "MPP FHLBs")[4] has approved members which, as PFIs, sell it mortgage loans. A PFI also may be a third-party servicer (subject to MPP FHLB approval) of loans sold to an MPP FHLB by other member PFIs. The PFIs may retain or sell servicing to third parties. The MPP FHLBs do not service the loans, nor do they own any servicing rights. The MPP FHLB must approve any servicer, including a member-servicer, and any transfers of servicing to third parties. The PFIs or servicers are responsible for servicing loans, in accordance with the applicable MPP guide. Like the MPF Program, MPP is governed by the AMA Regulation, and mortgage loans purchased from PFIs under the program also carry program-sufficient credit enhancements. These enhancements may include PMI (as applicable), lender risk account and SMI.

The current MPP FHLBs share the cost of MPP system development and the cost for maintaining the computer systems that support loan acquisition. Each MPP FHLB is responsible for operating its own program, including loan purchase guidelines. Each MPP FHLB is responsible for the development and maintenance of the program guide governing origination, underwriting and servicing of the loans sold to it through its MPP, and each MPP FHLB establishes its own origination, underwriting and servicing (including loss mitigation) criteria, including eligibility standards for loans that may be sold to it. Each MPP FHLB provides the systems and back office support for its program, including transaction processing. In some circumstances, an MPP FHLB may grant its PFI a waiver exempting it from complying with specified provisions.

At present, the MPP FHLBs do not provide systematic default-related loan forbearance or modification procedures for loans in default or risk of default. Rather, each MPP guide provides its own guidelines for dealing with delinquent borrowers. In general, borrowers are evaluated for loan modification options that are suitable in specific situations. The MPP FHLBs, as loan holders, have the right to approve particular loan modifications and loan modifications generally must comply with SMI and PMI policies. Though the MPP FHLB's do not promulgate programmatic loan modification guidelines, the MPP FHLBs with active MPP portfolios generally require loan servicers to pursue loss mitigation, homeownership preservation and loan modification options for delinquent loans consistent with industry standards, such as the options set forth in MPF Program Guides, and SMI and MI requirements. The MPP guides provide that the servicer must conduct itself in accordance with applicable law, including federal

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[4] Loan purchases through MPP are currently conducted under the program by the FHLBs of Cincinnati and Indianapolis. The FHLB of Atlanta suspended acquisitions of mortgage loans under the MPP in 2008. MPP also was offered by the FHLBank of Seattle until early 2006.

consumer disclosure laws. The MPP FHLBs do not expect loan servicers to effect refinancing transactions with respect to MPP loans they service, whether or not such transactions are within the current definition of "refinancing" under Section 226.20 of Regulation Z.

Discussion of Proposed Rule

The Federal Reserve proposes to amend Section 226.20(a) of Regulation Z, to require the loan holder to provide new Regulation Z disclosures to the consumer in the event of a modification of an existing consumer residential mortgage loan. Under the proposal, the modifications that would give rise to a "new transaction" under Regulation Z, triggering new disclosure requirements, are: (a) increasing the loan amount; (b) imposing a fee on the consumer in connection with the transaction, whether by agreement or otherwise; (c) changing the loan term; (d) changing the interest rate; (e) increasing the amount of the periodic payment; or (f) adding an adjustable rate feature or other designated feature; or (g) adding new real property or dwelling collateral. The proposal, at Section 226.20(a)(1)(ii), provides limited exceptions to the "new transaction" disclosure requirement, if the loan holder modifies the residential mortgage loan under the following circumstances: (a) as a result of a court proceeding; (b) in connection with the consumer's default or delinquency, unless there is an increase in the loan amount or the interest rate and provided that no fee is imposed on the consumer for the modification; (c) by decreasing the interest rate with no other modifications (except a decrease in the periodic payment amount and/or an extension of the loan term), provided that no fee is imposed in connection with the modification.

It appears that the Proposed Rule would make most common residential mortgage loan modification transactions "new transactions" under Regulation Z, while providing compliance and liability "carve outs" for a limited class of modifications offered to borrowers in default. Thus, the rule appears to increase the loan holder's (through the loan servicer) compliance and legal risk (including remedies under the Truth in Lending Act) for providing loan forbearance or modification options to borrowers in default, and would therefore discourage loan holder approval of modifications for delinquent borrowers or borrowers in danger of default.

The Proposed Rule differs from existing Regulation Z Section 226.20, which requires new Regulation Z disclosures in the event a loan modification transaction is a "refinancing." The existing rule provides examples of particular actions that do not constitute "new transactions." The existing rule's definition of "refinancing," along with this non-exclusive list of permissible transactions, have provided the basis upon which the FHLBs have designed loan modification options for borrowers facing default. As discussed above, the FHLBs offer and participate in flexible loan modification programs and transactions designed to assist borrowers in default or facing default. Under both the MPF Program and MPP, the emphasis is on providing a host of options for borrowers in default under their loan documents, but not including refinancing of the existing indebtedness. In this regard, the FHLBs have not observed that servicers under either the MPF Program or MPP are attempting to circumvent program or FHLB requirements, including borrower-favorable loss mitigation options, by offering disguised refinancing transactions. Thus, it would appear that the Federal Reserve's main concern behind amending Section 226.20, *i.e.*, evidence that certain creditors may be structuring around the definition of "refinancing" in existing Section 226.20 and avoiding both state law recordation tax impositions and new Regulation Z disclosures, is not manifested in the experience of the FHLBs.

Impact of Proposed Rule

The FHLBs respectfully submit that the Proposed Rule could add significant new compliance burdens, legal risks and program redesign requirements on otherwise lawful and prudent loss mitigation and loan modification transactions under the MPF Program and under MPP. The FHLBs believe that the Proposed Rule could adversely impact current borrower-centric loan forbearance and modification options under the MPF Program and loan modifications that are carried out by the MPP FHLB's under MPP. Moreover, the Proposed Rule and accompanying proposed Federal Reserve Board Commentary, while intended to provide reasonably clear guidance on the triggering of "new transaction" disclosure requirements, could create uncertainty that ultimately could discourage the FHLBs, PFI's and loan servicers from offering default-related loss mitigation options in the first place.

It appears to the FHLBs that the Proposed Rule would establish, in effect, a presumption that nearly every common loan modification transaction is a "new transaction." Then, it would be up to the loan holder or servicer (acting pursuant to the loan holder's guidelines and approvals) dealing with a borrower in delinquency to determine whether the proposed loan modification transaction fits within one of the exceptions to the general rule. Here again, the Proposed Rule appears to be designed to prevent "structuring," whereby the loan holder may modify a non-defaulted mortgage loan in order to avoid payment of recordation taxes and new Regulation Z disclosures. Certainly the Federal Reserve has found that a borrower under these circumstances would benefit from a new set of Regulation Z disclosures, but this is less compelling if the borrower is in default or delinquency or facing default or delinquency.[5] To the extent the Proposed Rule would establish default-related modifications as limited exceptions to the general rule, then in practice a bias could arise in favor of treating such loan modifications as "new transactions" unless such transactions were proven to be within the narrowly-tailored exceptions.

[5] The FHLBs acknowledge that some loan holders currently may direct servicers to supply delinquent borrowers receiving loan modifications with new Regulation Z disclosures. We believe, however, that this is done as an accommodation to such borrowers and would not necessarily take place if legal liability attached to such non-mandatory disclosures.

To be specific, it appears from the Proposed Rule that compliance-oriented loan servicers (including PFI's) would need to follow a specific, multi-faceted legal analysis in order to steer clear of "new transaction" disclosure requirements and violations of Regulation Z. First, the servicer would need to demonstrate that the loan is in default or delinquency. Then, the servicer would have to show that the proposed modification specifically does not (i) involve an increase in loan amount or interest rate, (ii) introduce any other loan terms than those specified in the Proposed Rule, (iii) create a new lien of any kind on any real property, and (iv) involve the imposition of any fee. There are numerous circumstances (as discussed in more detail below) under which one or more of these loan-level determinations, even if accomplished under loan holder guidelines, could be found lacking.

Moreover, the flexibility inherent in current FHLB borrower-facing delinquency practices and procedures could be adversely affected by the Proposed Rule. For example, a delinquent borrower might approach the MPF Program or MPP loan servicer with loan modification terms that would fit the borrower's particular needs or a loan servicer may wish to propose alternative modification proposals to the FHLBs. Under the Proposed Rule, the loan servicer ordinarily would not be able to consider such terms if not within the limited "safe harbor" provided by Proposed Rule §226.20(a)(1)(ii). Because of potential legal liability under TILA, in close cases neither the loan servicer nor the affected FHLB would be inclined to be flexible, even if there is demonstrated borrower benefit overall. In addition, exceptions in the Proposed Rule for delinquent or defaulted transactions may be unclear and could result in undue delay, if not outright rejection, of borrower-favorable modification transactions. Examples include:

- It is not clear in the Proposed Rule whether an "increase in loan amount" might result if past-due payments are added to the loan balance, even if a lower interest rate results in lower payments and deferred payments are not due until the end of the loan term.
- Likewise, it is not clear how protective advances would be treated under the Proposed Rule; for example, some of the attendant expenses could be considered "fees".
- There might be occasions in which imposition of modest borrower-paid fees, such as credit checks, would be appropriate. Also, it appears that any modification offered after foreclosure is commenced could not include recovery of any lawful and legitimate default-related expenses.
- In some instances, loan modification agreements are required to be recorded. The right of rescission under Regulation Z may arise whenever a lien on real property collateral is involved in a transaction. Under these circumstances, the Proposed Rule could give rise to overly-technical legal disputes concerning collateral security and borrower rights of rescission under other provisions of Regulation Z.

In addition, the safe harbor for decreasing the borrower's interest rate works to avoid "new transaction" disclosures only if no other loan terms (other than decrease in interest rate and/or extension of term to maturity) are changed; the adding of past due amounts to the loan balance, to be paid at maturity, could be considered the introduction of a balloon payment term.

Requested Action

In light of the above concerns, the FHLBs respectfully urge the Federal Reserve to reconsider the need for the Proposed Rule[6] and to consider appropriate revisions to it. Our comments are provided in the alternative, to provide the Federal Reserve with options for considering our concerns.

a. Limited Exclusion

It is reasonable for the Federal Reserve to exclude from the Proposed Rule loan modifications and other workout options offered by the FHLBs under the MPF Program and pursuant to MPP. The following language would be added after Section 226.20(a)(ii)(C) (as proposed) as an additional excluded class of default-related loan modification:

> or (D) any modification, forbearance or workout pursuant to a loss mitigation program or guideline adopted or offered by a Federal Home Loan Bank.

b. Expressly Exclude Loss Mitigation from "New Transactions"

To address the potentially troublesome structure of the Proposed Rule, under which most loan modification transactions would be "new transactions" with carve-outs for certain default-related modification terms, default-related transactions simply could be excluded from the description of "new transactions." This would result in true safe harbor treatment for forbearances, modifications and other workout options offered to delinquent borrowers. In this regard, the Federal Reserve should consider removing Section 226.20(a)(1)(ii)(B) (as proposed) and replacing it with the following, to be inserted as new Section 226.20(a)(1)(ii) (with appropriate renumbering of subsection (ii) as proposed to subsection (iii) and subsection (iii) as proposed to subsection (iv)):

> (ii) *Exclusions*. In connection with the consumer's default or delinquency or the consumer's imminent default or delinquency, the following shall not be treated as a new transaction:

[6] The FHLBs are not authorities on types of refinancing transactions that are designed, as the Federal Reserve states in connection with the Proposed Rule, to avoid payment of transaction taxes and which result in no "new transaction" disclosures under Regulation Z. It may be that the Federal Reserve could consider a "structuring" amendment to Section 226.20, to address its specific concerns, as an alternative to an overall rewrite of the existing rule.

(A) A decrease in the interest rate with a corresponding modification to the payment schedule;
(B) An extension of the loan term or decrease in the periodic payment, unless the interest rate is increased or the loan amount is increased by extension of additional, new credit to the consumer;
(C) Adding past due amounts (including any protective advances) to the principal balance and requiring payment of such past due amounts as may be agreed by the consumer and the same creditor;
(D) Recordation of a loan modification agreement or similar instrument to preserve lien priority or comply with state law requirements;
(E) Extension of insurance coverage or requiring that insurance, taxes, assessments or homeowner dues be escrowed (whether or not such escrow results in an increase in the consumer's periodic payment); or
(F) Any forbearance, workout or modification resulting in relief to the consumer for six months or less as to any term, condition or legal obligation.

Of course, the proposed Federal Reserve Board Commentary on Section 226.20(a)(1)(ii) as proposed (*see* 75 Fed. Reg. 58762) should be adapted to provide clarity for the above specific exclusions. The Commentary should, for instance, provide examples of transactions excluded from the general "new transaction" rule.

<u>Conclusion</u>

We appreciate the Federal Reserve's strong commitment to consumer protection and understand that certain transactions can be structured to avoid Regulation Z disclosures. The FHLB's have not observed such transactions arising from default- or delinquency-related loan modification transactions contemplated by the MPF Program or MPP, respectively. We respectfully urge the Federal Reserve, in connection with the Proposed Rule, to consider carefully possible adverse impacts on MPF Program and MPP transactions designed to assist delinquent borrowers.

Thank you for the opportunity to comment on the Proposed Rule. Should your staff have any questions regarding this comment letter, please contact Sybil Malinowski at (312) 565-5738.

Sincerely,

The Federal Home Loan Banks listed below

Attachment:

Exhibit A: Copies of Sections from MPF Program Servicing Guide

[Signatures on following pages]

Federal Home Loan Bank of Boston

M. Susan Elliott
EVP/Chief Business Officer

Federal Home Loan Bank of Chicago

Eric S. Schambow
Senior Vice President

Federal Home Loan Bank of Des Moines

Michael L. Wilson
Executive Vice President and Chief
Business Officer

Federal Home Loan Bank of New York

Paul B. Héroux
SVP, Member Services

Federal Home Loan Bank of Pittsburgh

Craig Howie
Group Director, Member Services

Federal Home Loan Bank of Topeka

Dan Hess

Dan Hess
SVP, Director of Member Products

Federal Home Loan Bank of Atlanta

By: Kirk Malmberg

Kirk Malmberg
Executive Vice President, Chief Credit Officer

Federal Home Loan Bank of Cincinnati

Andrew S. Howell
Executive Vice President and COO

Federal Home Loan Bank of Indianapolis

Jonathan R. West

Jonathan West
Executive Vice President

Federal Home Loan Bank of Dallas

By: Sandra C. Damphousse

Its: General Counsel

Federal Home Loan Bank of Seattle

By:________________________
Its Senior Vice President and
Chief Risk Officer

EXHIBIT A TO COMMENT LETTER

Agency Guides/MPF -- Mortgage Partnership Finance/Servicing Guide/Chapter 105: Custodial Accounts, Advances And Loan Accounting (12/03/08)/105.7: Mortgage Loan Accounting (12/03/08)/105.7.5: Curtailments (12/03/08)/105.7.5.3: Reamortization and Note Modification (11/10/09)

105.7.5.3: Reamortization and Note Modification (11/10/09)

Reamortization and Note modification of a curtailed Mortgage may be completed only when all of the following conditions are met:

- The minimum Curtailment payment applied to the principal of a loan is the greater of $5,000 or 10% of the current Principal Balance on the Mortgage and the qualified Curtailment was applied to the loan within 60 calendar days prior to the Note modification date;
- The Note modification does not extend the term or change the Note Rate of the Mortgage;
- The reamortization and Note modification are in compliance with the applicable mortgage insurance company, Government Agency requirements; and
- The Note modification provides for full amortization of the Mortgage by the maturity date through regular, equal payments of principal and interest.

Notification of a reamortization and Note modification must be submitted via fax to MPF Loan Accounting within two (2) days of the Borrower's signing the FNMA Form 3179, or its equivalent, and must be executed fully by all parties to the original Note. (see Servicing Guide Chapter 111.2 for the fax number for MPF Loan Accounting). A copy of the signed modification should be sent to the MPF Provider with the original retained in the Mortgage File (see Servicing Guide Chapter 111.2 for the address of the MPF Provider).

Reamortization will commence in the month following the next scheduled payment due date following the receipt of the notification request.

Agency Guides/MPF -- Mortgage Partnership Finance/Servicing Guide/Chapter 107: Mortgage Loan Delinquency (09/04/09)/107.2: Plans for Curing Delinquencies (09/04/09)/107.2.1: Servicing Objectives (09/04/09)

107.2.1: Servicing Objectives (09/04/09)

The Servicer must be readily available to Borrowers to offer skilled financial counsel and advice, and should make personal contact with delinquent Borrowers as often as necessary to bring a delinquent Mortgage Loan current as soon as possible. The Servicer shall have reasonable discretion to extend appropriate relief to Borrowers who encounter hardship and who are cooperative and demonstrate proper regard for their obligations. Relief may be granted only to those Borrowers who the Servicer reasonably expects will bring the related Mortgage Loans current within twelve (12) months. Under special circumstances additional relief, which is not explicitly allowed in the Guides, may be granted only with the Master Servicer's approval.

Prior to granting relief as herein provided, the Servicer must inspect the Mortgaged Property and ascertain that the condition of the Mortgaged Property and the reasons for the default and the attitude and circumstances of the Borrower justify the relief to be granted. The Servicer shall satisfy, and retain evidence of satisfaction of, all applicable requirements under each mortgage insurance policy with respect to the relief granted. Any relief requiring prior approval of the Master Servicer shall be adequately documented by the Servicer using the Workout Worksheet (Form SG354). The Servicer is responsible for collection from the Borrower of any recording or similar costs incidental to the granting of relief.

For any Mortgage Loan covered under primary or supplemental mortgage insurance, the Servicer is expected to contact the mortgage insurer directly for information regarding any forms of relief available. For Mortgage Loans not covered under a mortgage insurance policy, the Master Servicer will consider the forms of relief contained in this chapter of the Servicing Guide.

Agency Guides/MPF -- Mortgage Partnership Finance/Servicing Guide/Chapter 107: Mortgage Loan Delinquency (09/04/09)/107.2: Plans for Curing Delinquencies (09/04/09)/107.2.2: Forbearance Plan (09/04/09)/107.2.2: Forbearance Plan (09/04/09)

107.2.2: Forbearance Plan (09/04/09)

Where relief is appropriate, the Servicer should arrange a "Forbearance Plan" giving the Borrower a definite period, commencing immediately, during which the Borrower may reinstate the Mortgage Loan by making payments in excess of the regular monthly payments. Any forbearance plan must comply with all applicable mortgage insurance requirements. If the earliest unpaid payment on a Mortgage is more than sixty (60) days past due, the forbearance plan must be set forth in a written letter agreement executed by both Borrower and Servicer. The forbearance plan must provide that the total delinquent amount owed, including costs and expenses, will be repaid within the shortest period practicable, but in no event more than twelve (12) months after the due date of the earliest unpaid installment, unless the Master Servicer and where applicable the primary and/or supplemental mortgage insurer, consent to a longer period of time. The Servicer must ensure that the priority of the lien represented by the Mortgage Loan remains in effect and is not adversely affected, and that the applicable primary and/or supplemental mortgage insurance policy remains in full force and effect.

If the Mortgage Loan is not covered by mortgage insurance and the Servicer anticipates that the total arrearage will be cured within three months from the due date of the first unpaid installment, the Master Servicer's approval of the forbearance plan is not required. If the Delinquency will not be cured within three (3) months and the Mortgage Loan is not covered by mortgage insurance, the Servicer must obtain the Master Servicer's prior approval. After approval by the Master Servicer, the Servicer must set forth the terms of the forbearance plan in the form of a written letter agreement which must be executed by the Borrower and the Servicer. The Servicer must report the terms of any forbearance plan to the Master Servicer, but is not required to provide the Master Servicer with a copy of the plan.

Agency Guides/MPF -- Mortgage Partnership Finance/Servicing Guide/Chapter 107: Mortgage Loan Delinquency (09/04/09)/107.2: Plans for Curing Delinquencies (09/04/09)/107.2.2: Forbearance Plan (09/04/09)/107.2.2.1: Special Forbearance Plan (09/04/09)

107.2.2.1: Special Forbearance Plan (09/04/09)

A "Special Forbearance Plan" is an agreement between the Servicer and a cooperative Borrower to reduce , not suspend, monthly payments for a period not to exceed twelve (12) months. The Servicer must reasonably ascertain, based on the Borrower's specific circumstance and supporting financial documentation, that the granting of a Special Forbearance Plan will likely assist the Borrower to eventually improve their financial situation and bring all the Scheduled Principal and Interest payments current. At the end of the special forbearance period, the Borrower must cure the delinquency through full reinstatement or payoff of the Mortgage Loan in full. The reinstatement may be accomplished by converting the special forbearance plan to a forbearance plan described in Servicing Guide Chapter 107.2.2, not to exceed 12 months from the date the special forbearance period ends.

A special forbearance plan may be appropriate in cases where the Mortgaged Property has been rendered temporarily uninhabitable, the Borrower is deceased and the estate is in probate, the Borrower is experiencing a medical emergency or may have the property listed for sale. The Borrower's reason(s) for inability to make payments must be involuntary.

The following requirements must be met prior to granting a Special Forbearance Plan:

- The Servicer must request approval from any applicable primary and/or supplemental mortgage insurer. If the Special Forbearance Plan exceeds three (3) months, the Servicer must also request approval from the Master Servicer. Supporting documentation to be submitted include, but are not limited to:
  - Workout Worksheet (Form SG354)
  - Copy of the proposed Special Forbearance Plan
  - If the Special Forbearance Plan exceeds three (3) months, a broker's price opinion (BPO) to support that value has not declined from the original value described in Underwriting Guide Chapter 2.2.1.
  - Copy of the Borrower's hardship letter and any supporting documentation detailing the cause of the involuntary inability to pay.
- The Special Forbearance Plan must be in a written agreement signed by both the Servicer and Borrower before the plan begins; and
- If the Special Forbearance Plan exceeds three (3) months, the written agreement must include the following statement: "Failure to abide by the terms of the agreement will result in the termination of the Special Forbearance Plan and commencement of Foreclosure".

Agency Guides/MPF -- Mortgage Partnership Finance/Servicing Guide/Chapter 107: Mortgage Loan Delinquency (09/04/09)/107.2: Plans for Curing Delinquencies (09/04/09)/107.2.3: Preforeclosure Sale (09/04/09)

107.2.3: Preforeclosure Sale (09/04/09)

Occasionally, when none of the Servicer's efforts to cure a Delinquency are successful, the use of relief provisions may not be feasible, and a preforeclosure sale may be appropriate. A preforeclosure sale is a sale of Mortgaged Property prior to Foreclosure, where the sale may result in insufficient proceeds to pay the total indebtedness. A preforeclosure sale should be considered if the sale would reduce the loss that would otherwise be incurred from foreclosing on the Mortgaged Property.

If the proceeds from the pre-Foreclosure sale and the primary mortgage insurance settlement are greater than or equal to the total indebtedness, the Servicer may negotiate and complete the pre-Foreclosure sale without pre-approval. However, the Servicer must obtain the Master Servicer's approval if the pre-Foreclosure sale and the primary mortgage insurance settlement proceeds will be less than the total indebtedness. The Servicer must not withhold the proceeds from the disposition of an REO until the completion of a supplemental mortgage insurance claim (see Servicing Guide Chapter 105.7.6 for Prepayments in Full and Liquidations).

If the Mortgage Loan is covered by primary and/or supplemental mortgage insurance, the Servicer must obtain the mortgage insurers' prior approval.

As required in Servicing Guide Chapter 105.2.1, all proceeds from sale of the Mortgaged Property must be deposited into the related P&I Custodial Account within one (1) Business Day following receipt by the Servicer. Within two (2) Business Days the Servicer must submit to the Master Servicer copies of the buyer and seller's settlement statements, closing statements or escrow instructions, and an estimate of total advances made to date.

Agency Guides/MPF -- Mortgage Partnership Finance/Servicing Guide/Chapter 107: Mortgage Loan Delinquency (09/04/09)/107.2: Plans for Curing Delinquencies (09/04/09)/107.2.4: Borrower Assistance Program (BAP) (09/04/09)

107.2.4: Borrower Assistance Program (BAP) (09/04/09)

A Borrower Assistance Program (BAP) is intended to provide qualified, deserving Borrowers with financial assistance in making their Mortgage payments, and ultimately curing the Delinquency. A Borrower whose Mortgage Loan is not covered by mortgage insurance is not eligible for a BAP. If the Mortgage Loan is covered by primary mortgage insurance, the Servicer must contact the respective mortgage insurer for information regarding the availability and specific terms of any BAP the mortgage insurer may offer. A maximum of six (6) delinquent monthly payments may be advanced under a BAP. Any funds advanced over and above the amount of the six (6) delinquent monthly payments will be deducted from any future final claim. The Master Servicer must approve any BAP prior to its implementation.

If the Borrower fails to satisfy the terms of the BAP, the Servicer must notify the mortgage insurer of the Borrower's breach of the BAP and recommend a new relief agreement, Foreclosure or Deed-in-Lieu of Foreclosure as provided in Servicing Guide Chapter 107.4.

Agency Guides/MPF -- Mortgage Partnership Finance/Servicing Guide/Chapter 107: Mortgage Loan Delinquency (09/04/09)/107.6: Temporary Loan Payment Modification Plan for Loss Mitigation (09/04/09)/107.6: Temporary Loan Payment Modification Plan for Loss Mitigation (09/04/09)

107.6: Temporary Loan Payment Modification Plan for Loss Mitigation (09/04/09)

Under certain circumstances, where a Borrower is in default or faces imminent default, a temporary loan payment modification plan (the "Modification Plan") may be an appropriate loss mitigation option. Servicers should consider a Modification Plan only after all other loss mitigation options provided in Servicing Guide Chapter 107.2 have been exhausted or determined to be ineffective given the Borrower's circumstances.

This Modification Plan option will be available until December 31, 2011, unless further extended by a published PFI Notice.

Agency Guides/MPF -- Mortgage Partnership Finance/Servicing Guide/Chapter 107: Mortgage Loan Delinquency (09/04/09)/107.6: Temporary Loan Payment Modification Plan for Loss Mitigation (09/04/09)/107.6.1: Loans Eligible for a Modification Plan (09/04/09)

107.6.1: Loans Eligible for a Modification Plan (09/04/09)

The Servicer must verify the following conditions exist prior to processing any requests for a Modification Plan:

- The Mortgage is a Conventional Loan;
- The Mortgage is owned by an MPF Bank (was not delivered under the MPF Xtra™ product);
- The Mortgaged Property is a Primary Residence (second homes are ineligible);
- The Mortgaged Property has not been condemned;
- The Note date of the Mortgage Loan is prior to January 1, 2009;
- The Mortgage was not previously modified except for modifications allowed in accordance with Servicing Guide Chapter 105.7.5.3;
- The Borrower is the same Borrower that signed the Mortgage Note, unless transfer of the Mortgaged Property was exempt from the Due-On-Sale Clause in accordance with Servicing Guide Chapter

103.3.2;

- The Mortgage is in default or imminent danger of default and Borrower income has involuntarily declined and/or expenses have unexpectedly increased; and
- All other temporary loss mitigation options provided in Servicing Guide Chapter 107.2 must have been either exhausted or determined by the Servicer and Master Servicer to be ineffective given the Borrower's circumstances.

Agency Guides/MPF -- Mortgage Partnership Finance/Servicing Guide/Chapter 107: Mortgage Loan Delinquency (09/04/09)/107.6: Temporary Loan Payment Modification Plan for Loss Mitigation (09/04/09)/107.6.2: Loan Modification Processing (09/04/09)

107.6.2: Loan Modification Processing (09/04/09)

If the Mortgage is eligible for a Modification Plan as described in Servicing Guide Chapter 107.6.1, the Servicer must collect necessary documentation to determine Borrower eligibility. These documents include, but are not limited to:

- Workout Worksheet (Form SG354);
- Borrower Hardship Certificate (Form SG402) which describes the Borrower's reason(s) for the modification request;
- Income verification in accordance with the minimum income documentation requirements described in Underwriting Guide Chapter 4.6 (except for child support or alimony received, which is not required to be disclosed unless the Borrower wishes such income to be considered for the modification request);
- IRS Form 4506-T executed by the Borrower, which the Servicer must use to obtain the Borrower's tax return transcripts from the IRS;
- Asset documentation in accordance with Underwriting Guide Chapter 4.7.2 and any other documentation that may be necessary to fully document the Borrower's financial situation;
- A new credit report in accordance with Underwriting Guide Chapter 4.5.2.1; and
- Any other documentation necessary to process and evaluate the loan modification request, including but not limited to documentation for the causes of a Borrower's hardship, such as medical bills, divorce decree, etc.

In addition to the above acquired documentation, the Servicer is required to complete a property inspection to validate the occupancy status of the Mortgaged Property within 90 days of the modification request. All documentation, including the property inspection must be permanently retained in the Servicing File.

Agency Guides/MPF -- Mortgage Partnership Finance/Servicing Guide/Chapter 107: Mortgage Loan Delinquency (09/04/09)/107.6: Temporary Loan Payment Modification Plan for Loss Mitigation (09/04/09)/107.6.3: Underwriting the Loan Modification Request (09/04/09)

107.6.3: Underwriting the Loan Modification Request (09/04/09)

The Servicer is required to analyze the modification request from a Borrower to determine whether a modification is necessary and whether it is financially feasible for the Borrower to cure or avoid the delinquency if a modification were granted. The goal of the modification is to provide a payment, which under the Borrower's current circumstances, is affordable and sustainable. Therefore, the Borrower's monthly housing expense ratio should not exceed 38% (see Underwriting Guide Chapter 4.4.1 for housing expense ratio calculation).

In situations where a modification does not meet the requirements under the Modification Plan of Servicing Guide Chapter 107.6, Servicers should typically deny the Borrower's modification request (See Servicing Guide Chapter 107.6.5 for information about adverse action on a modification request). However, if the Servicer feels special consideration is warranted, the Servicer may submit a proposed alternative to their MPF Bank, clearly indicating that the proposal is outside the requirements of the Modification Plan and indicate specific terms the Servicer proposes (refer to Servicing Guide Chapter 111.2 for a directory of the MPF Banks).

Where the Borrower's current housing expense ratio exceeds 38%, the loan is in default or facing imminent default and a loan modification appears feasible to cure or avoid the delinquency, Servicers will need to consider several modification terms in order to achieve a housing ratio no greater than 38%, cumulatively if necessary, in the following order:

1. If financially feasible, the Borrower makes a cash contribution toward reducing the delinquency. Any such contribution, must be applied first toward non-interest expenses (excluding late fees) and then towards reducing the delinquency;

2. a. Capitalization of the delinquent interest by adding the delinquent interest to the unpaid Principal Balance, not to exceed the original Principal Balance funded by the MPF Bank (any costs, fees or escrow items should not be capitalized);

   OR

   b. If capitalization of all delinquent interest is not possible because the original Principal Balance funded by the MPF Bank would be exceeded, all the delinquent interest should be written off. The Servicer must submit a Calculation of Realized Loss (Form SG332) to request reimbursement of any delinquent interest write offs, which will be allocated in accordance with the terms of the Master Commitment based on the requirements of the applicable MPF Mortgage Product. (any costs, fees or escrow items should not be capitalized or included in the Form SG 332);

3. If necessary, reduce for up to thirty-six (36) months the Principal and Interest payments based on an amortization schedule up to 40 years (480 months) from the original Note date. The Servicer will be required to determine the amortization period necessary to reduce the monthly Principal and Interest payments until the target 38% housing expense ratio is met, or consider further modification described in step #4. At the end of the thirty-six (36) month term, the original Principal and Interest payments stated in the Note are re-instated, unless another Modification Plan is approved. The full Principal Balance of the Mortgage, including any capitalized interest, will be due and payable on the original loan maturity date. Please note that the scheduled payments do not fully amortize the modified Mortgage and will result in a balloon payment being due at maturity;

4. If necessary, reduce for up to thirty-six (36) months the interest rate in 0.125% increments below the original Note Rate, to a floor rate of 3.00%, resulting in reduced Principal and Interest Payments, until the target 38% housing expense ratio is met. If the Borrower has any subordinate loans that are owned by the PFI or its affiliate, the interest rate of the subordinate loan must also be modified to an equivalent of the modified rate of the Mortgage until the target 38% housing expense ratio is met.

The Servicer must verify, via a title search:

- That the Mortgage remains in first lien position;
- Property taxes and assessments due have been paid. If any property taxes or assessments are due, these items must be paid in accordance with the procedures described in Servicing Guide Chapter

105.4.3 ; and

- The Borrower has not incurred any recent subordinate liens. If the Borrower recently obtained a subordinate mortgage, the Servicer must determine the purpose of the subordinate mortgage, the status of the mortgage proceeds and whether the proceeds may be used to cure or reduce the delinquency on the Mortgage.

Servicers must submit their recommendations for any Modification Plan to the Master Servicer for review and approval. The Master Servicer will approve, deny, or work with the Servicer to revise the modification request.

Mortgage Insurance: If the Mortgage is covered by either or both primary or supplemental mortgage insurance (MI), the Servicer is also required to notify the MI company of the loan modification in accordance with MI company requirements/obtain the approval of the MI company to the modification. The Servicer must ensure the MI is maintained and pay any MI premiums based on the unpaid Principal Balance.

Credit Counseling: The Servicer must provide credit counseling for the Borrower via an agency approved by the Department of Housing and Urban Development (HUD) to provide such counseling services in all cases where the Borrower's total expense ratio (as calculated according to Underwriting Guide Chapter 4.4.2) exceeds 50% after the loan modification,

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107.6.4: Implementation of the Modification Plan (11/10/09)

Prior to implementing any Modification Plan, the Servicer is required to complete the terms of the modification on the following:

- A Loan Workout Plan (Form SG 400), which implements an interim three (3) month trial period;
- A Temporary Loan Payment Modification Agreement (Form SG 401); and
- All required disclosures described in Servicing Guide Chapter 107.6.5.

The Servicer must then submit a file, which shall include the completed Forms SG 400, SG 401 and SG 354 along with all documents described in Servicing Guide Chapter 107.6.2 to the Master Servicer for review and approval **prior** to sending to the Borrower for signature. Once approved, the Servicer should provide the Borrowers with two originals each of the completed (but unsigned) Forms SG 400 and SG 401 and instruct the Borrowers to sign all the documents. The Servicer should sign the Form SG 400 and provide one duplicate original to the Borrowers.

The signed forms should not be recorded (though Form SG401 should be in recordable form) except in the following circumstances where Form SG401 should be recorded if:

- State or local law requires the modification to be recorded to be enforceable;
- The property is located in the state of New York or in Cuyahoga County, Ohio; or
- The amount capitalized is greater than $20,000. If the form is recorded for this purpose, the Servicer must obtain a title endorsement or similar title insurance product to insure first lien protection for the modified mortgage.

The Servicer must also obtain any subordination agreements when recordation is required if necessary to maintain first lien position. If the Servicer is unable to obtain any necessary subordination agreements or title policy endorsement, the Servicer must not implement the Modification Plan.

The Servicer **must** collect Escrow Funds. If the Borrower does not have an Escrow Account, the Borrower is required to establish an Escrow Account and begin making Escrow Payments in accordance with Servicing Guide Chapter 105.4.1, 105.4.3 and 105.4.5. Until such time the collection of Escrow Funds is prohibited by Applicable Law, the Servicer shall continue to collect Escrow Funds for the remaining life of the Loan (see Servicing Guide Chapter 107.6.5 regarding escrow statement requirements).

Borrowers will be given a trial period of three (3) months, during which their new modified payments must be made on time as described in the Loan Workout Plan (Form SG 400). During this trial period, the Servicer must hold the modified payments, in suspense status as unapplied funds in the T&I Custodial Account, until all three payments are made as agreed.

If the Borrower fails to remain current on their payments during the trial period, the Modification Plan will be terminated and the P&I payment, interest rate and amortization schedule shall revert to the original Note Rate and terms, which includes cancellation of the proposed capitalization or write-off of delinquent interest. The Servicer must report the termination and follow the Servicing requirements described in Servicing Guide Chapter 107.6.4.1.

If the Borrower meets all the requirements of the trial period as stipulated in the Loan Workout Plan (Form SG400), the Servicer can modify the loan for the next thirty-three (33) months by signing both duplicate originals of the Temporary Loan Payment Modification Agreement (Form SG401), sending one duplicate original and, if applicable, disclosures in accordance with Servicing Guide Chapter 107.6.5 to the Borrowers, and retaining the other duplicate original Form SG401 in the Servicing File. The three payments held in suspense during the trial period may then be applied in accordance with the Temporary Loan Payment Modification Agreement (Form SG401) terms, which if applicable, include the new unpaid Principal Balance, the revised loan amortization and lower interest rate. After thirty-six (36) months cumulative, the temporarily reduced Principal and Interest Payments under the Modification Plan expire. The Servicer must review the loan history and Borrower circumstances to determine if any further loss mitigation steps are warranted.

The Servicer is responsible for any costs they may incur for processing and implementing a Modification Plan. Additionally, all late charges due prior to the loan modification must be waived.

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107.6.4.1: Reporting the Modification Plan to the Master Servicer (09/04/09)

When the Modification Plan is implemented, the Servicer must notify the Master Servicer within one (1) Business Day following execution by all parties, of either the Loan Workout Plan (Form SG 400) or the Temporary Loan Payment Modification Agreement (Form SG401).

During the period that the Modification Plan is in effect, the Servicer must electronically report an Action Code of '12' in their Monthly Accounting Reports to the Master Servicer.

If the Modification Plan is terminated, the Servicer must notify the Master Servicer within one (1) Business Day of the termination and continue to service the Mortgage in accordance with the requirements of Servicing Guide Chapter 107 and all Applicable Standards. The Servicer must remove the Action Code of '12' and report an appropriate Action Code or null in their Monthly Accounting Reports to the Master Servicer.

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107.6.4.2: Credit Reporting (09/04/09)

Servicers must continue credit reporting in accordance with Servicing Guide Chapter 107.1.2. Due to the special circumstances of this Modification Plan, we are providing the following clarification to assist Servicers with accurate reporting:

- If the Borrower is current when the Loan Workout Plan (Form SG400) is executed, the Servicer should report the Borrower current but on a modified payment provided the Borrower makes timely payments for each trial month;
- If the Borrower is delinquent when the Loan Workout Plan (Form SG400) is executed, the Servicer should report in a manner to accurately report the delinquency and the workout status according to usual and customary reporting standards as well as report the modification when completed;
- If at any time the Borrower becomes delinquent under the Modification Plan, the Servicer should accurately report the delinquency and the termination of the workout or modification status as applicable.

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107.6.5: Disclosures, Notices and IRS reporting for Loan Modifications (09/04/09)

Because the MPF Program Modification Plan does not result in satisfaction or extinguishment and replacement of the original debt, no new TILA disclosure under Regulation Z would need to be provided to Borrowers under a loan modification permitted under Servicing Guide Chapter 107.6. However, federal law may require the Servicer to provide disclosures to the Borrower for any loan modifications that are outside the scope of those permitted under Servicing Guide Chapter 107.6.

Refer to Origination Guide Chapter 2.11.2 for required compliance for all other Origination Obligations or Servicing functions.

PFIs need to be aware that responses to Borrower requests for loan modifications will trigger federal consumer compliance requirements, such as:

- For Borrowers who are not delinquent or in default, an adverse action, counter-offer, and approval notice in accordance with the Equal Credit Opportunity Act (ECOA);
- If the decision not to modify the Mortgage is based wholly or partly on information contained in a consumer credit report, an adverse action notice in accordance with the Fair Credit Reporting Act (FCRA) for all Borrowers who do not qualify for a loan modification;
- A notice to the home loan applicant (credit score disclosure) in accordance with FCRA to all Borrowers where the Servicer acquires a consumer credit report for the Borrower;

If an escrow account is established after the original closing of the Mortgage, an escrow account statement in accordance with the Real Estate Settlement Procedures Act (RESPA) must be provided.

The Servicer may need to comply with the Fair Debt Collection Practices Act (FDCPA) if the following conditions exist:

- The Servicer does not service loans under its own name; or
- The Servicer acquired the Servicing after the Mortgage was originated and after the Borrower's delinquency or default;

No referral fees, as defined by RESPA, are allowed in connection with this Modification Plan. In addition, the Servicer must ascertain whether any additional disclosures are required under state and/or local law in the jurisdiction where the Mortgaged Property is located.

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107.6.5.1: Tax Reporting (09/04/09)

The Servicer will be responsible for completing certain forms or other information under the IRS "Code", described in Servicing Guide Chapter 103.3.3, and/or by state authorities for temporary loan modifications. If at any time, any debt, as defined by the "Code" or state authorities, is canceled, the Servicer shall forward to each Borrower and the IRS, such forms and information within the control of the Servicer as are required by the Applicable Standards.