



Robert J. Holz
Senior Legal Advisor
Select Portfolio Servicing, Inc.

3815 South West Temple
Salt Lake City, Utah 84115

Phone: 801-293-2512
Fax: 801- 293-3907
Email: bob.holz@spservicing.com

www.spservicing.com

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Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551

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

Dear Ms. Johnson:

Thank you for the opportunity to comment on the proposal of the Federal Reserve Board (the "Board") to amend Regulation Z 226.20(a), extending Truth in Lending disclosures to loan modifications. Select Portfolio Servicing, Inc. ("SPS") is a national mortgage loan servicer and is extremely proactive in modifying accounts. Since January of 2009, SPS has modified approximately 50,000 accounts, including over 18,000 modifications under the U.S. Treasury Department's Home Affordable Modification Program ("HAMP"). One of the most important factors in achieving this result has been the decision to equip all customer contact employees with the training and authority to discuss loan modification with customers early in the process. SPS believes in broadly offering customers affordable payment options in order to maintain home ownership.

SPS supports the Board's goal of increasing consumers' understanding of financial transactions through improved financial disclosure. However, SPS is concerned that the proposed rule will have unintended consequences that will reduce the availability of modifications to consumers as a viable form of loss mitigation, slow the overall modification process, and potentially result in otherwise avoidable foreclosures. These potential consequences are outlined below:

- **REMIC** – The vast majority of mortgage loans in the United States are owned by investment vehicles that have elected REMIC status for tax purposes. Treating certain loan modifications as "new transactions" may jeopardize the tax status of these investment vehicles. Unless and until the tax ramifications are clearly spelled out in a manner that maintains the existing tax treatment, servicers would be prohibited from taking any action that may jeopardize the tax status of the investment vehicle. This would prevent certain loan modification options that are currently available to consumers and would result in otherwise avoidable foreclosure actions.
- **Imminent Default** – Consumers often contact their loan servicer to seek help prior to default. This allows the servicer to advise the consumer of modification options much earlier in the process and helps consumers resolve their financial difficulties with minimal impact on their credit rating. As you are aware, HAMP provides a modification option to customers that are facing imminent default. Similarly, REMIC rules do not prohibit loan modification in the event of foreseeable default. The proposal

to classify the modification of a loan at risk of imminent default as a “new transaction” will likely limit or remove this option and may require consumers to allow their loans to go into default before they avail themselves of loan modification. This would cause otherwise avoidable damage to consumers’ credit ratings, which would in turn result in other problems such as increased interest rates, decreased ability to obtain credit or refinance, etc.

- **Reduced Availability of Modification Specialists** – Treating a loan modification as a “new transaction” is likely to prompt state regulators to impose additional restrictions on state licensed servicers. These requirements may result in a reduction in the number of individuals able to assist consumers with loan modification. SPS’s successful track record of loan modification is a result of all SPS customer contact representatives being able to discuss loan modification options. In order to offer modifications quickly, particularly given the current economic climate, all of a servicer’s customer contact representatives should be able to address loan modification with homeowners.
- **Servicing Agreement Restrictions** – Mortgage loan servicing agreements require servicers to act in the best interest of their investor clients. Treating certain loan modifications as “new transactions” (*e.g.*, those moving past due amounts to “balloon” payments due at maturity of the loan) would create the potential for rescission under the Truth in Lending Act. It is not clear how this would apply to a modified loan (*e.g.*, Does the entire loan become rescindable? Just the modification? If the latter, how would rescission be calculated?) It is unlikely that mortgage investors would allow for loan modification until these questions are answered and unless the answers do not increase the risk to the investor. Until this issue is resolved, a servicer would be prohibited from taking any action that may put its investor client at risk. This would cause delays in loan modification and would likely result in unnecessary foreclosure actions.

Ninety percent of SPS’s customers who received a HAMP modification remained in good standing one year later. Many of these modifications included elements that would have caused them to be treated as “new transactions” under the terms of the proposed rule, and thus subject to the potential restrictions outlined above. SPS believes loan modification is a vital tool in helping consumers preserve home ownership, especially during this time of financial uncertainty. In our experience, investors’ portfolio performance generally improves by keeping borrowers in their homes, making payments on terms they are able to afford. SPS believes that it is generally in consumers’ and investors’ interests to encourage more loan modifications. We are concerned that the proposed rule, as drafted, may have the unintended consequence of limiting loan modification options, for the reasons set forth above.

Thank you for this opportunity to comment on the proposed rule.

Sincerely,



Robert J. Holz
Senior Legal Advisor
Select Portfolio Servicing, Inc.