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January 24, 2015

Federal Reserve Bank of New York,
33 Liberty Street,
New York, New York 10045.

Attn: Ivan J. Hurwitz
Vice President, Bank Applications

Re: CIT Group Inc. Proposed Acquisition of IMB Holdco LLC –
Supplemental Submission

Ladies and Gentlemen:

This letter is in connection with the application, dated August 20, 2014, to the Board of Governors of the Federal Reserve System (“Board”) in connection with the proposed acquisition of IMB Holdco LLC by CIT Group Inc. and Carbon Merger Sub LLC (the “Applicants”) and certain related transactions.

On behalf of our clients, the Applicants, enclosed please find a letter sent to the Office of the Comptroller of the Currency by OneWest Bank, N.A., which responds to comments made regarding its reverse mortgage servicing operations, including by California Reinvestment Coalition in its January 5, 2015 letter to the Board and OCC, among others, which was received by the Applicants from the Board on January 22, 2015.

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If you have any questions with respect to any of the matters discussed in this letter or in the materials included herewith, please feel free to contact me at (212) 558-4998 (salleys@sullcrom.com).

Very truly yours,



Stephen M. Salley

(Enclosures)

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Schedule A

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Joseph Otting
President and Chief Executive
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January 23, 2015

Western District Office
Office of the Comptroller of the Currency
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Attention: David Finnegan, Senior Licensing Analyst/NBE

Re: Response to Community Comments Regarding Reverse Mortgage Servicing

Dear Ladies and Gentlemen:

Recently, there have been public comments critical of the reverse mortgage servicing operations of Financial Freedom, an operating division of OneWest Bank N.A. ("OneWest"). The comments are either inaccurate or incomplete and reflect a misunderstanding of the reverse mortgage product and the servicing requirements applicable to OneWest and other reverse mortgage servicers.

We at OneWest take our obligations to service all of our loans, including reverse mortgage loans to seniors, very seriously. To that end, we have diligently worked to enhance our servicing practices for all mortgages that we service and strive to provide quality customer service while adhering to our regulatory and contractual requirements. We recognize that servicing mortgages, particularly reverse mortgages, requires well-thought-out policies and procedures, efficient systems and documentation, and adequate numbers of talented, well-trained staff. Most of all, we know that it is crucial to demonstrate a sensitivity to the impact a foreclosure has on a borrower or his or her family. To that end, we have instituted a robust Single Point of Contact process to improve customer service. We also have a strong training program, a comprehensive quality assurance function, and other internal control processes designed to avoid inappropriate foreclosures and other servicing missteps. With these thoughts in mind, we appreciate this opportunity to respond to the issues raised, and look forward to addressing any questions you may have.

The vast majority of the reverse mortgage loans we service are owned by third-parties (98%) and are insured by The United States Department of Housing and Urban Development ("HUD") (95%), whose agency, the Federal Housing Administration ("FHA"), insures Home Equity Conversion Mortgages ("HECMs"). Therefore, we are bound by contract and/or HUD regulatory program requirements which, for reverse mortgage loans in particular, provide detailed requirements for mortgage servicers to follow, particularly when the mortgage loan is "due and payable." OneWest did not originate the vast majority of mortgages that we service and, in fact, ceased originating reverse mortgages in 2011.

I. Overview of the HUD Servicing Requirements:

We have set forth below an overview of what HUD requires when an FHA-insured reverse mortgage becomes due and payable:

- a. With certain exceptions summarized below, reverse mortgages generally allow seniors to remain in the home and avoid monthly mortgage payments until the earlier of the death or the move out date of the last living/occupying borrower (the “Maturity Event”). However, in certain circumstances, the loan may become “due and payable” (such that the debt must be satisfied) prior to the death or move-out of the borrower obligated under the terms of the mortgage. Per HUD requirements, set forth in 24 C.F.R. § 206.27(c)(2), these circumstances include:
 - i. Failure by the borrower to pay required “property charges” such as tax and insurance or Home Owners’ Association dues and subsequent failure to remediate those defaults.¹
 - ii. Allowing the property to fall into severe disrepair or not completing repairs to the property (such that in its current state without such repairs, the property does not meet minimum FHA property standards).
 - iii. A mortgagor’s conveyance of all of his or her title in the property and no other mortgagor retains title to the property.
- b. Upon the Maturity Event, the loan becomes due and payable. Such an event commences a series of related steps required under 24 C.F.R. § 206.125, which include:
 - i. Step One: Notices informing the mortgagor and related parties of their rights are prepared and mailed by the servicer within 30 days. The form and timing of these notices are specifically described in the applicable HUD regulations. Like most other single family mortgages, the loan can be paid in full at any time. However, in the event that the loan balance is higher than the current value (“underwater”), HUD has crafted rules to assist in the transition of the property. Where a property is “underwater,” the borrower, heirs, or other related or unrelated parties may satisfy the mortgage and purchase the property at 95% of the appraised value of the property. HUD’s regulations also provide for short sales and deeds in lieu of foreclosure. In these situations, the surviving family members and other heirs of the

¹ As described in more detail below, borrowers who are unable to meet their property charge obligations are provided significant opportunities to remediate these defaults through repayment alternatives.

borrower may obtain the property without full payment of the loan balance, *but only if they had not obtained title to the property before the Maturity Event.*

- ii. Step Two: The foreclosure process begins, if the mortgage is not otherwise satisfied. This process is subject to the following HUD-mandated timelines, subject to relief for factors beyond the servicer's control, such as delays associated with the probate or bankruptcy process, or foreclosure-related court delays. In each case, failure to comply with these timelines can result in severe penalties for the servicer, including potential removal from HUD's HECM program.
 1. Preliminarily, a "maturity appraisal" must be prepared for the property within 30 days of the Maturity Event.
 2. Foreclosure must begin within six (6) months of the Maturity Event, absent a waiver from HUD.
 3. HUD servicing guidelines allow for three (3) possible ninety (90) day extensions after a maturity event and before foreclosure to allow borrowers or their authorized representatives to repay the debt or sell the property provided probate is resolved and required documentation evidencing the intended sale of the property or funds required to satisfy the debt are submitted.
 4. The foreclosure must be completed within state-specific timelines which are published and periodically updated by HUD.

II. Response to Specific Categories of Recent Comments

We have received comments about how we service reverse mortgages which can be generally grouped into six categories. We have set forth those six categories, and our responses to those comments, below.

- a. **Comment:** *Consumers do not understand the terms of the reverse mortgage products, particularly several of the triggers for a default of a reverse mortgage.*

Response: OneWest understands that the reverse mortgage product is complex and that some consumers may have difficulty understanding all its features, particularly those that may not come into play until years after the loan is originated. OneWest did not create the reverse mortgage product or the loan documents which contain the various triggers for default (such as unremediated nonpayment of taxes and insurance, disrepair of the home, or conveyance of title). It should be kept in mind that in order to help consumers who obtained an FHA-insured loan understand the product's features, consumers were required to complete counseling with HUD certified independent counseling agencies that are not affiliated with the originator or the servicer. Indeed, HUD designed the

specific counseling regime for these reverse mortgage applicants. The purpose of this counseling was to inform the potential reverse mortgage borrower of the benefits and risks associated with the reverse mortgage product, and other alternatives available before the loan was originated. We sympathize with the plight of seniors who find the technical aspects of reverse mortgages to be confusing; however, OneWest is ultimately constrained in the actions that it has to take in order to comply with HUD servicing requirements because the underlying default triggers are established by the HUD-mandated loan documents and HUD-imposed program requirements. The only party that can address these structural concerns is HUD.

- b. **Comment:** *Consumers are not being informed of their rights at the time of loan maturity or a default trigger. The loan is accelerated as soon as 45 to 60 days after the death of the borrower, giving the heirs insufficient time to grieve.*

Response: OneWest properly informs consumers of their options at the time of a Maturity Event or when a default is triggered with the notice and within required timelines based on the underlying servicing agreements that govern our relationship with the owners of the loans as well as HUD requirements.² We are quite sensitive to the fact that borrowers whose loans we service are senior citizens and their heirs are in the midst of a mourning period. However, although notices are provided soon after a Maturity Event or default, heirs have a longer period than 45-60 days to resolve the reverse mortgage on their family member's home. In fact, the heirs' options to resolve the reverse mortgage loan last through the entire foreclosure process, which, depending on the state in which the property is located, typically ranges from several months to multiple years.

HUD guidelines are very specific with regard to the process of resolving an outstanding mortgage after the move-out or death of the last borrower, including when the foreclosure process must commence. In fact, HUD imposes severe financial penalties on servicers for failure to comply with HUD-specified timelines, including the timeline associated with initiating foreclosure. We are certainly sympathetic to those who are mourning loved ones and work respectfully with heirs to resolve the Maturity Event satisfactorily.

- c. **Comment:** *Heirs are not provided proper access to information without a court order. OneWest is not allowing the probate process to run its course to purchase or sell the property.*

Response: OneWest does not require a court order to speak to callers and/or heirs for the purpose of discussing general information about a reverse mortgage or the maturity process, required timeframes or deadlines. In compliance with privacy laws and regulations, OneWest *does* require evidence that the caller or

² See 24 C.F.R. § 206.125(d)(1), which states: "The mortgagee shall commence foreclosure of the mortgage within six months of giving notice to the mortgagor that the mortgage is due and payable, or six months from the date of the mortgagor's death if applicable, or within such additional time as may be approved by the Secretary."

heir is an authorized third party of the borrower before providing specific account details. This evidence may include an “authorized third party” designation on file with OneWest, a copy of the borrower’s will or letters testamentary granting the caller authority to act with respect to the loan or property, or trust documentation identifying the caller as the borrower’s successor, executor or heir. While OneWest does not require a court order to discuss account information and options, a court order (or similar court action) may be required as part of the probate process or for an individual to have the necessary authority to execute a deed to transfer or sell the mortgaged property, including to execute a deed-in-lieu of foreclosure or complete a short sale.

With regard to the probate process, under relevant HUD regulations, if the foreclosure process cannot be initiated in a state until probate is completed, then the timing requirements for initiating foreclosure are extended. However, if foreclosure can be initiated without completing probate, HUD’s regulations *require* the servicer to proceed or risk incurring significant penalties from HUD.

- d. **Comment:** *OneWest is denying consumers the right to repay the full loan balance regularly and is also denying consumers the right to repay 95% of the appraised value per the relevant HUD regulations.*

Response: OneWest does not deny borrowers or their heirs the right to repay the loan and we have absolutely no incentive to make such denials.

In accordance with HUD program requirements, OneWest assists heirs by offering them the ability repay the loan at 95% of the appraised value within the prescribed timeframes before foreclosure would be required, provided they meet HUD’s requirements. *See* 24 C.F.R. § 206.125(a)(2). Failure to adhere to such timelines can result in significant penalties for the servicer.

In particular, one HUD guideline sometimes frustrates heirs who wish to keep their parent’s home, but whose names are on title to the property. HUD requires that, in order for an heir to be eligible to purchase the property via a short sale (a discounted payoff of the mortgage based on 95% of the current appraised value), the heir must have obtained title to the property only *after* the passing of the borrower, and not before. HUD requires that the transaction be a true “sale” and interprets the word “sale” to include a *post-death* conveyance of the mortgaged property “by will or operation of law” to the mortgagor’s estate or heirs. Thus, if an heir is put on title *prior to* the death of the last remaining borrower, the heir is generally not eligible to purchase the property at the lesser of the loan balance or 95% of the current appraised value unless his or her ownership is transferred to a third-party, such as a trust.

- e. **Comment:** *OneWest is inappropriately evicting non-borrowing spouses. OneWest should halt all non-borrowing spouse evictions until HUD can resolve the broader issue.*

Response: Please see the information provided on the non-borrowing spouse issue in Section III below.

- f. **Comment:** *OneWest is inappropriately denying deeds-in-lieu of foreclosure and/or generating inappropriate fees on foreclosure actions.*

Response: We at OneWest are particularly proud of our efforts to pursue alternatives to help borrower's estates and heirs avoid foreclosure, and do what we can to ensure that surviving family members may retain their parents' homes. The objective measures of our efforts stand in contrast to the assertions made. In 2014, Financial Freedom completed significantly more deeds-in-lieu and short sales (more than 1,300) than foreclosures (508).

This record reflects vigorous efforts by OneWest to assist families in avoiding foreclosure or loss of their homes. While it is not always possible to achieve favorable outcomes, OneWest does seek to obtain those results. With regard to the imposition of fees, OneWest has established rigorous controls and oversight over the application of fees and our testing has validated that we are not, in fact, generating inappropriate fees on foreclosure actions.

At their core, the comments above are not complaints about OneWest's practices but are instead complaints about the underlying HUD regulations and related contractual requirements that dictate the servicing of these loans. We share the frustration of many seniors and other concerned citizens regarding these HUD requirements, but we cannot disregard them without risk of severe consequences.

III. Overview of Non-Borrowing Spouse Related Issues

A recently emerged issue related to reverse mortgages involves the foreclosure of homes occupied by non-mortgagors who survive their mortgagor spouses (a "Non-Borrowing Spouse"). For a fairly small portion of the reverse mortgage portfolio serviced by OneWest, the borrower's spouse was not included as a borrower on the loan at the time origination. Since HUD's Principal Limit Factor tables (which stipulate the maximum cash available to the borrower at the time of origination) are based on the age of the youngest borrower, some couples deliberately did not include the younger spouse on the loan in order to increase the initial disbursement amount and related line of credit available under the loan. Under the terms of a reverse mortgage and HUD's regulations, the lifetime deferral of loan repayment obligations only applies to the borrower of the reverse mortgage and is not extended to any other persons. Upon the death (or move-out) of the borrower, the loan becomes due and payable, meaning that a Non-Borrowing Spouse has to either pay the loan in full (or 95% of appraisal value if the loan amount is greater than the value of the home), or face foreclosure. This has long been a HUD requirement and is extensively addressed in the HUD mandated pre-origination counseling performed by a neutral third party independent of the loan originator.

Of note, on September 30, 2013, the United States District Court for the District of Columbia entered an order in a case filed against HUD, *Bennett v. Donovan*, 4 F. Supp. 3d 5

(D.D.C. 2013). The decision upended the way HUD has long required reverse mortgage servicers to proceed after the death of a mortgagor who is survived by a Non-Borrowing Spouse. The court held that a provision of the reverse mortgage statute, 12 U.S.C. § 1715z-20(j), allowed HUD to insure only reverse mortgages that came due after the death of both the homeowner-mortgagor and the spouse of that homeowner, regardless of whether that spouse is also a mortgagor. The court also held that 24 C.F.R. § 206.27, the reverse mortgage regulation that permitted the Department to insure reverse mortgages and stated the loan's balance would be due and payable in full if the mortgagor died and the property was not the principal residence of at least one surviving mortgagor, was invalid. The *Bennett* court ordered HUD to issue new criteria consistent with the court's ruling.

On June 25, 2014, in the wake of the order in the *Bennett* case and a similar order in the separate case of *Plunkett v. Donovan*, HUD issued FHA INFO #14-34, which granted reverse mortgage servicers an indefinite extension of time in which to take first legal action to commence foreclosure and to comply with the reasonable diligence timeframes set forth in 24 C.F.R. § 206.125. The indefinite extension though is predicated on the satisfaction of several factors, the most notable of which is that the loan amount has to effectively be "rebalanced" to the amount that would have been advanced had the surviving Non-Borrowing Spouse been an original borrower on the loan (this is known as the "Principal Limit Factor"). What this means in practice is if a surviving Non-Borrowing Spouse is younger than the original mortgagor, he or she would likely have to make a principal repayment on the loan – a payment that the surviving Non-Borrowing Spouse may not have the means to make. In addition, HUD's guidance did not address *if* this principal repayment option is allowable and further *how* reverse mortgage servicers should calculate a Non-Borrowing Spouse's Principal Limit Factor in order to qualify for an indefinite foreclosure extension, thereby creating the possibility that HUD could impose financial penalties on the servicers for the period of the indefinite foreclosure extension if HUD later determined that the servicers had improperly allowed and/or completed the "rebalancing" calculation. The situation is best described by attorneys for AARP, not attorneys for banks or their lobbyists, as follows: "... HUD is *insisting* that lenders foreclose against surviving spouses...."³ As with other reverse mortgage servicers, OneWest is awaiting HUD's clarification on this and other related issues so that we may properly handle the situation when the Non-Borrowing Spouse survives the borrower and seeks to remain in the home.

In the meantime, we continue to work with HUD, surviving Non-Borrowing Spouses and their family members on a case-by-case basis to seek relief for surviving spouses. We have communicated with HUD seeking as much delay as HUD will provide in these circumstances. However, as the AARP court filings make clear, an industry-wide solution in the form of new and comprehensive regulations from HUD is the only way to create a viable and systematic solution. We would fully support a moratorium on foreclosures of Non-Borrower Spouses if HUD were to issue such a directive.

IV. Overview of Tax and Insurance Delinquencies and Foreclosures

³ See Plaintiff's Renewed Motion for Class Certification filed in *Plunkett v. Castro*, --- F.Supp.2d ---- (2014), 2014 WL 4243384.

OneWest treats a loan as delinquent for taxes and/or insurance (“T&I default”) at the time that an advance for such items is made on the borrower’s behalf that exceeds the available funds on the loan. As soon as a T&I default occurs, a repayment letter is sent to all known borrowers explaining their obligations and the options available to them to cure the delinquency. OneWest makes frequent phone calls and sends reminder letters to encourage payments and to further explain all available options. If we are successful in making contact, we seek the borrower’s financial information to assess the borrower’s ability to pay. Borrowers are referred to credit counseling agencies to get help lowering their monthly expenses and borrowers in California, Florida and Michigan are referred to these states’ respective Hardest Hit Fund programs to attempt to obtain funds to cure the delinquency. If the borrowers are unable to demonstrate an ability to pay they are given the option to do a deed-in-lieu of foreclosure or a short sale which allows them to sell the property and pay off the reverse mortgage at 95% of the appraised value of the property.

With regard to the FHA-insured loans, which account for 95% of the reverse mortgage loans we service, once repayment plan efforts are exhausted, OneWest reviews accounts that continue in T&I default status periodically for a “Due and Payable” submission to HUD for direction in connection with the T&I default. While HUD has not issued definitive guidance to servicers regarding when servicers should pursue foreclosure based on such T&I defaults, HUD reviews each individual borrower’s situation, based on a Due and Payable submission by the servicer, *and HUD – not the servicer* – determines whether foreclosure should proceed. OneWest does not treat an account as eligible for a “Due and Payable” submission to HUD for T&I default until it has been greater than ninety (90) days since the last repayment plan payment was made. In the most direct and simple terms, in almost all cases, if OneWest is foreclosing on a reverse mortgage borrower for a T&I default, it is because it has been instructed by HUD to do so.

V. Conclusion

In closing, OneWest understands that a reverse mortgage is a complex product that can cause frustration at a difficult time in the lives of seniors and their family members. We do everything we can to mitigate the seeming harshness of the requirements of HUD’s HECM program and our underlying servicing agreements. However, we cannot disregard the legal requirements governing the servicing of these loans. OneWest is actively working with HUD to obtain clarification of its requirement to mitigate as much as possible the difficulties that arise when a loan needs to be repaid on the family home when the family has lost a loved one.

Yours truly,



Joseph M. Otting
President and CEO
OneWest Bank N.A.