

Federal Reserve Bank of San Francisco
101 Market Street, San Francisco, California 94105

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To State Member Banks, Bank
Holding Companies, Financial Holding
Companies, Savings and Loan Holding Companies,
and Foreign Banking Offices
in the Twelfth Federal Reserve District

SR 13-9 / CA 13-6 Minimum Standards for Prioritization and Handling Borrower Files with Imminent Scheduled Foreclosure Sale

Applicability to Community Banking Organizations: This guidance applies to any financial institution supervised by the Federal Reserve, regardless of asset size, that engages in mortgage servicing activities.

Purpose

The Federal Reserve is issuing this letter to set forth guidance on sound business practices for residential mortgage servicing that Federal Reserve supervised financial institutions¹ are expected to address in their collections, loss mitigation, and foreclosure processing functions. The guidance confirms the minimum standards that all regulated institutions are expected to adopt in prioritizing and handling borrowers' files with imminent risk of foreclosure.

Background

The residential mortgage crisis revealed weaknesses in the servicing of residential mortgage loans². These weaknesses were pervasive throughout the mortgage servicing industry and were centered in the administration of delinquent loans, loss mitigation practices, and foreclosure processing. As a result, in February 2012, the Federal Reserve and Office of the Comptroller of the Currency (OCC) issued guidance to banking organizations subject to enforcement actions for deficient practices in mortgage loan servicing and foreclosure processing ("Consent Orders") establishing certain minimum standards for the handling and prioritization of files with an imminent foreclosure sale ("February 2012 Guidance"). The February 2012 Guidance was intended to ensure that borrowers would not lose their homes without first receiving either a review of their foreclosure in accordance with the standards, at a minimum, or a full independent review under the Consent Orders. At those servicers subject to the February 2012 Guidance, examiners are continuing to monitor these institutions for compliance with this guidance.

As of March 2013, the servicers already subject to the February 2012 Guidance account for more than 57 percent of the residential mortgage industry's total servicing volume. Consequently, the Federal Reserve and OCC have concluded that it is appropriate to broaden applicability of the guidance to encompass the remaining institutions subject to their respective jurisdictions that service residential mortgages, which collectively account for a significant portion of the residential mortgage industry's remaining servicing volume. The standards set forth in the attached guidance reflect the February 2012 Guidance, with updates and modifications to account for its broadened applicability, and are consistent with previously issued statements by the Federal Reserve concerning financial institutions' loss mitigation efforts³.

¹ Federal Reserve supervised financial institutions refers to state member banks, bank and savings and loan holding companies (including their non-bank subsidiaries), and U.S. branches and agencies of foreign banking organizations.

² See the April 2011 report on "Interagency Review of Foreclosure Policies and Practices"
http://www.federalreserve.gov/boarddocs/rptcongress/interagency_review_foreclosures_20110413.pdf

³ Refer to SR letter 07-16/CA letter 07-4, "Statement on Loss Mitigation Strategies for Servicers of Residential Mortgages."

Supervisory Expectations

The Federal Reserve expects financial institutions that service residential mortgages to act responsibly in their administration of delinquent mortgages and borrowers at imminent risk of foreclosure. Financial institutions must comply with safe and sound banking practices, federal, state, and local laws, third party investor requirements, and the Making Home Affordable Modification Program requirements, as well as other existing contractual and programmatic commitments, as applicable. Prudent business practices in servicing residential mortgage loans include ensuring that, prior to proceeding to a foreclosure sale:

- The loan is in default under applicable law and investor requirements;
- Any borrower complaints, appeals, or escalations have been considered and addressed;
- The borrower is not subject to specific legal protections such as those afforded under the Service members Civil Relief Act⁴ and bankruptcy law;
- The financial institution has the appropriate legal authority to foreclose;
- All appropriate notices have been provided to the borrower;
- Appropriate outreach and other loss mitigation efforts have been made;
- The loan is not currently in an active loss mitigation program;
- The borrower is not currently qualified or being considered for a loss mitigation action; and
- The financial institution is in compliance with all applicable federal, state, local, and other legal requirements.

The attached guidance confirms the minimum standards for the handling and prioritization of borrowers' files that are subject to an imminent (within 60 days) scheduled foreclosure sale. These minimum review criteria are intended to ensure a level of consistency across servicers, and should be used to determine whether a scheduled foreclosure sale should be postponed, suspended, or cancelled because of critical foreclosure defects in the borrower's file. The purpose of the guidance is to ensure that borrowers will not lose their homes without their files first receiving a pre-foreclosure sale review that, at a minimum, meets the standards listed in the attached guidance. The Federal Reserve expects that each institution subject to this guidance will promptly confirm that its existing processes comply with this guidance. If an institution has not already implemented these standards, it must implement them immediately.

These standards are not intended to incorporate the final rules amending Regulation X and Regulation Z issued by the Consumer Financial Protection Bureau (CFPB) on January 17, 2013, and effective on January 10, 2014, which govern mortgage servicers' loss mitigation and foreclosure processing functions⁵. The Federal Reserve expects that all servicers will undertake appropriate action in a timely manner to ensure their practices will be compliant with the new rules by the effective date.

⁴ For more information regarding the Service members Civil Relief Act, see CA letter 11-6, "Revised Examination Procedures for the Service members Civil Relief Act."

⁵ See 78 *Federal Register* 10696 (February 14, 2013) and 78 *Federal Register* 10902 (February 14, 2013).

Additional Information

All circulars and documents are available on the Internet through the Federal Reserve Bank of San Francisco's website, at <http://www.frbsf.org/banking/letters>.

For additional information, please contact:

Federal Reserve Bank of San Francisco
Banking Supervision and Regulation
(213) 364-1026

Attachment:

[Minimum Standards for Prioritization and Handling Borrower Files with Imminent Foreclosure](#)

Cross Reference:

[CA Letter 11-6](#), "Revised Examination Procedures for the Service members Civil Relief Act"
[SR Letter 07-16/CA Letter 07-4](#), "Statement on Loss Mitigation Strategies for Servicers of Residential Mortgages"