

# Minimum Standards for Prioritization and Handling Borrower Files Subject to Imminent Foreclosure Sale

## Operating standards for scheduled foreclosure sales

April 19, 2013

The minimum standards set forth in this guidance reflect sound business practice that should be part of a mortgage servicer's ongoing collections, loss mitigation and foreclosure processing functions. Accordingly, the OCC requires that all national banks and federal savings associations (collectively, "banks") that service residential mortgage loans incorporate the guidance into their ongoing business processes. Failure to comply with this guidance may result in unsafe and unsound banking practices, non-compliance with foreclosure related consent orders, as applicable, and/or require rescission of completed foreclosures.

### Purpose

This guidance establishes **minimum** standards for the handling and prioritization of borrower files that are subject to imminent (within 60 days) scheduled foreclosure sales. **The purpose of this guidance is to ensure that borrowers will not lose their homes without their files receiving pre-foreclosure sale reviews conducted under the standards listed in this guidance, which also help ensure loan modifications were considered as appropriate.**

Bank servicers of residential mortgages should use these review and validation standards to determine whether a scheduled foreclosure sale should be postponed, suspended or cancelled due to critical foreclosure defects in the borrower's file. These minimum review criteria are intended to ensure a level of consistency across servicers, not to supplant review and validation procedures that go beyond these minimums. Servicers that currently apply more than these minimum standards as part of their own pre-foreclosure sale review and validation procedures are expected to continue to do so.

These standards are not intended to incorporate the final rules amending Regulation X and Regulation Z issued by the CFPB on January 17, 2013, and effective on January 10, 2014, which govern mortgage servicers' loss mitigation and foreclosure processing functions. The OCC 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.

### Overview

Bank servicers of residential mortgages should monitor all borrower files in the foreclosure process at least weekly to determine if foreclosure sales are scheduled within the next 60 days. The

servicer should implement procedures to perform and document a timely pre-foreclosure sale review according to the criteria set out in this guidance and appropriately postpone, suspend or cancel the scheduled foreclosure sale when warranted.

The servicer will promptly determine whether the borrower is currently in an active loss mitigation program or is being actively considered for or has requested consideration under the Making Home Affordable Modification Program (HAMP) or other modification or loss mitigation program as further defined in **standard number 9 below**, and whether further foreclosure proceedings and/or the scheduled foreclosure sale should be postponed, suspended or cancelled as required by program standards as applicable.

The following standards are a non-exhaustive list of criteria for which an exception would warrant postponement, suspension or cancellation of a foreclosure sale until the Minimum Pre-Foreclosure Sale Review Standards are satisfied. As noted above, individual servicers may apply additional standards/criteria to postpone, suspend or cancel a foreclosure sale.

Any negative response to the minimum standards detailed in this guidance will be considered a critical defect (except for standard number 7 where a positive response is a defect) and cause to postpone, suspend or cancel a scheduled foreclosure sale.

Independent control functions (such as audit, compliance, and risk management) should confirm and document servicer adherence to their own servicing standards/criteria and the standards described in this document through a program of monitoring, sampling and testing of scheduled and completed foreclosure sales.

**Minimum Pre-Foreclosure Sale Review Standards**

Date of the scheduled foreclosure sale: \_\_\_\_\_

Once the date of foreclosure is established, the servicer needs to confirm the following information before foreclosing:

1. Is the loan's default status accurate?
2. Does the servicer have and can demonstrate the appropriate legal authority to foreclose (documented assignments, note endorsements, and other necessary legal documentation, as applicable)?
3. Have required foreclosure notices or other required communications to the borrower or others, as applicable, been provided in a timely manner?
4. Has the servicer taken all steps necessary to confirm whether the borrower, co-borrower, and all obligors on the mortgage, trust

deed, or other security in the nature of a mortgage are entitled to protections under the Servicemembers Civil Relief Act (SCRA), including running queries through the Department of Defense database? If the borrower, co-borrower, or other obligor is subject to SCRA protections, has the servicer complied with all applicable legal requirements to foreclose?

5. Determine whether the borrower is in an active bankruptcy. If so, does the servicer have documented legal authority to foreclose?
6. Determine whether the loan is currently under loss mitigation or other retention review or such review has been requested by the borrower as part of the foreclosure process. If so, did the servicer notify the borrower that all conditions necessary to effect the loss mitigation or retention action have not been met, what is needed to meet those conditions, and the date necessary to cure the deficiencies to avoid further foreclosure action? If a borrower submitted a complete loan modification application after the foreclosure referral, did the servicer comply with any applicable dual track restrictions?
7. Is the borrower currently in an active trial loss mitigation plan?
8. Determine whether the servicer accepted any payment from the borrower in the preceding 60 days (that is, were borrower payments, including interest, principal, fees, escrow payments, applied to the borrower's account or retained in a suspense account). If so, did the servicer clearly communicate to the borrower that he or she is neither in nor being considered for a loss mitigation program, and that the bank's acceptance of the payment in no way affected the status of the foreclosure that is proceeding?
9. As applicable, was the borrower solicited for and offered a loss mitigation option, such as, those required by HAMP, government sponsored enterprise, the Federal Housing Administration, the U.S. Veterans Administration, state-level government programs under U.S. Department of Treasury, other third party investor, or the servicer's loss mitigation and modification programs? To the extent applicable, has the servicer complied with its loss mitigation obligations detailed in the National Mortgage Settlement? Have any borrower complaints, appeals, or escalations been considered and addressed?
10. Was the fully executed loan modification application submitted by the borrower, as defined by the applicable modification program, reviewed by the servicer as required, including any timeline or notice requirements?

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|  | <ol style="list-style-type: none"><li>11. Was the modification decision correct and validated as required by the applicable modification program (to include, as applicable, compliance with program requirements and accuracy of calculations and application of the NPV test) along with appropriate resolution and communication of any borrower complaint, appeal, or escalation?</li><li>12. Was the borrower or the borrower's representative (housing counselor or attorney) notified of the loan modification decision and rationale as required by program or policy guidelines?</li><li>13. If required by a GSE or other investor, has the servicer certified to the attorney conducting the foreclosure that all delinquency management requirements have been met, including that there is neither an approved payment plan arrangement nor a foreclosure alternative offer pending or accepted?</li></ol> |
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