CalHFA
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Homeownership Program Bulletin

May 28, 2009 **Program Bulletin #2009-14**

To: CalHFA Approved Lenders and Servicers

Foreclosure Avoidance and Loss Mitigation Program

High foreclosure rates have adversely affected California's families, neighborhoods and property values. Based on current forecasts, we anticipate further adverse consequences as high foreclosure rates continue. As referenced in Program Bulletin #2007-42, all Servicers are required to be proactive when working with borrowers to provide loss mitigation assistance, not only on loans serviced for CalHFA, but for all California borrowers.

CalHFA does not want to foreclose on a delinquent borrower if an opportunity can be found to save the loan. If the borrower's circumstances indicate an opportunity to bring the loan current, sell the property, refinance the loan or enter into a loan modification, the Servicer should pursue all applicable Loss Mitigation options. This bulletin serves as an update for CalHFA-approved Servicers on general CalHFA Loss Mitigation requirements and provides more specific instructions to assist in the resolution of a loan default.

Program Bulletin #2009-12 provides separate guidance on CalHFA's Loan Modification Program for CalHFA borrowers who have experienced a qualifying hardship.

Guidelines to be covered in this Program Bulletin are:

- Section 1: Overview
- Section 2: HomeOpeners®*, a Mortgage Protection Program
- Section 3: Counseling for Borrowers
- Section 4: Local Government Partners
- Section 5: Temporary Indulgence
- Section 6: Special Forbearance
- Section 7: Military Relief
- Section 8: Repayment Plan
- Section 9: Partial Claim
- Section 10: VA Funding, Assigning a Loan to VA
- Section 11: Short Payoffs, Short Sale (Compromise, Pre-foreclosure Sale)
- Section 12: Deed-In-Lieu of Foreclosure
- Section 13: Foreclosure
- Section 14: Senate Bill No. 1137

It is the Servicer's responsibility to ensure that this information is made available to specific staff within its organization and/or contracted vendors who handle the CalHFA loan portfolio.

The Servicer must evaluate loss mitigation options in compliance with applicable mortgage insurance/guarantee requirements (e.g. FHA, VA, RHS or CalHFA – MI). If available options do not meet mortgage insurance/guarantee requirements, the MI loan modification request should be denied by the Servicer after receiving concurrence by the CalHFA Loss Mitigation Department. Should a variance to the published guidelines be requested, the Servicer must seek clarification from CalHFA Loss Mitigation Unit when appropriate.

Section 1 – Overview

When CalHFA borrowers encounter unavoidable hardships rendering them unable to keep their mortgage payments current, CalHFA Servicers must explore all available alternatives to bring the loan current and allow the borrower to remain in their home.

Examples of unavoidable hardships include: involuntary unemployment, reduced income, divorce, death and permanent or short term disability.

Alternatives to foreclosure include: temporary indulgence, military relief, special forbearance, short or long term repayment plans, loan modification (see Program Bulletin 2009-12), VA refund or partial claim (FHA or conventional). If, after exploring alternatives to foreclosure, there is no reasonable possibility of the borrower retaining the property, a short sale, loan assumption or deed-in-lieu should be considered.

Section 2 – HomeOpeners, a Mortgage Protection Program

For most conventional insured loans with CalHFA mortgage insurance coverage that closed on or after April 1, 2005, borrowers who have suffered involuntary unemployment and have kept their mortgage insurance payment current, may be eligible for financial assistance to pay all or part of their mortgage payments for up to six (6) months while they seek employment. This involuntary unemployment insurance is provided by Lloyd's (not CalHFA) and the Servicer should refer the borrower to Genworth, Benefit Administrator, at 877.484.5677 for eligibility. CalHFA requires the Servicer to forward a HomeOpeners FAQs sheet to any borrower who may be eligible. Please refer to the following link:

http://www.calhfa.ca.gov/homeownership/insurance/homeopeners-faqs.pdf

Section 3 - Counseling for Borrowers

Early communication between the Servicer and borrower is crucial in arriving at a mutually agreeable resolution to loan default. Servicers should instruct borrowers to contact a HUD-certified consumer credit counseling agency before pursuing loss mitigation options shown in this bulletin. CalHFA recommends that the Servicer's delinquent loan program provide the borrower with additional resources to help them avoid foreclosure. Examples of these additional resources include:

- HUD's website: http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm
- www.995HOPE.org
- www.yourhome.ca.gov
- www.sucasa.ca.gov

Borrowers can also contact:

- HUD's toll free Housing Counseling and Referral Line at 800.569.4287
- The Homeownership Preservation Foundation hotline at 888.995.HOPE (4673)

Section 4 – Local Government Partners
With regard to loss mitigation efforts, Servicers should recognize that CalHFA often partners with other governmental entities, e.g., cities, counties, redevelopment agencies, etc., to accomplish its mission of providing homeownership opportunities to low and moderate income first-time homebuyers. These partnership arrangements result in loans for which the underlying security may be subject to covenants and/or recorded agreements for the purpose of maintaining the affordability of the unit into the future, including the entity's right to redeem or reinstate the defaulted loan. Refer to Sections 11 and 12 of this bulletin for specific guidance.

Section 5 - Temporary Indulgence
Temporary indulgence is the granting of a thirty (30) day grace period to enable a borrower to repay all past due installments at once. When no Trustee Sale date is set, the Servicer does not need to obtain CalHFA approval before granting temporary indulgence, nor does it need to notify CalHFA that it has done so.

Temporary indulgence should be used solely for the benefit of the borrower, not as a substitute for good servicing. The following are examples of some of the instances where this action may be appropriate: a sale, refinance, or assumption of the property is pending; an insurance settlement is being negotiated; a withdrawal from a retirement account or tax refund is in process; or, assistance through a social agency, family or friends is forthcoming. It also may be used during a period where payment of the arrearage is being negotiated, or when money orders which were used to make payment were lost and are being traced.

Section 6 - Special Forbearance Plan
A forbearance plan is a formal written agreement which allows a borrower to either suspend making monthly payments or make less than the scheduled monthly payments for a specified period of time. If agreed to by all parties—mortgage insurer, Servicer and CalHFA—foreclosure may be delayed in return for the borrower's promise to pay the arrearage or full unpaid principal balance by a specific date.

Section 7 - Military Relief
When the borrower is in the military service, he or she may be entitled to benefits under the Servicemembers Civil Relief Act or The California Military Families Financial Relief Act. The Servicer is required to be familiar and comply with all requirements of these Acts. Servicer is authorized to grant appropriate relief to eligible borrowers, but the terms of such relief and related information should be promptly reported to CalHFA.

At the termination of active military service, the borrower will be expected to resume payments as originally provided by the loan as soon as his or her circumstances will permit. Other loss mitigation options should then be considered if circumstances warrant.

Section 8 - Repayment Plan
A repayment plan allows the borrower to bring the loan current within a given time frame by making scheduled payments towards the delinquent amount in addition to the regular monthly payments. This type of workout is generally used when delinquency results from a temporary curtailment of income which has since been resolved.

Repayment plans should be considered and reviewed based on mortgage insurer guidelines. In all cases involving a repayment term exceeding eighteen (18) months, or if a trustee sale has been scheduled, the Servicer shall submit its recommendation to CalHFA for approval along with financial documentation. Should a borrower fail to adhere to the terms of the repayment plan, the Servicer should immediately proceed with default procedures. Extension of repayment plans requires CalHFA approval.

Section 9 - Partial Claim

The Servicer is required to follow mortgage insurer/guarantor guidelines in determining a borrower's eligibility for a partial claim. The Servicer should notify CalHFA when it has determined that the borrower is eligible to participate and the documentation is being prepared, and again when the documentation is complete and the partial claim has been submitted to the mortgage insurer. It is expected that this should be within sixty (60) days of determining eligibility. When the Servicer receives the claim payment from the mortgage insurer/guarantor, full reinstatement of the loan will be remitted to CalHFA.

Section 10 - VA Refunding, Assigning the Loan to VA

VA has discretionary authority to buy a loan in default from a Servicer and take over the servicing. Refunding (assignment of the loan to VA) is an optional action on the part of VA and does not provide borrowers with a right to refund their loans. Refunding is considered for each loan before foreclosure is completed, but there is no formal application process for use by borrowers or Servicers.

The objective of refunding is to avoid foreclosure when it is determined by VA that the default can be cured through various relief measures and the Servicer is unable or unwilling to grant further relief.

When VA believes refunding might be in order, it will notify the Servicer and request certain information per the VA Handbook H26-94-1. When VA requests refunding and the assignment transfer has been completed by Servicer, the Servicer shall notify CalHFA as to the refunding date, etc. The Servicer shall guarantee payment in full to CalHFA within five (5) days of receipt of VA settlement check but in no event later than ninety (90) days after the refunding date.

Section 11 - Short Payoffs (Pre-foreclosure Sale)

CalHFA supports efforts by its Servicers to encourage pre-foreclosure or short sales in order to mitigate losses that could result from foreclosure actions. This bulletin provides the documentation and process required for approvals on conventional insured, government insured, uninsured and subordinate loans. In those instances where qualification for a short sale is uncertain, Servicers are encouraged to contact the CalHFA Servicing Administrator early in the process for clarification and direction. In cases where a short payoff/sale, compromise or short sale is requested, CalHFA requires a financial hardship to be fully explained and documented.

Servicers are encouraged to obtain contributions from borrowers per standard, acceptable loss mitigation procedures. These contributions ideally would be in the form of cash the borrower has on hand.

In all cases where CalHFA approval is required (as defined below) the following documents must be submitted to CalHFA's Servicing Administrator unless specifically waived. Please follow this stacking order when submitting an approval review package:

- Borrower hardship letter explaining the reason for the delinquency (see below for a list of acceptable hardships)
- Mortgage insurer approval (if applicable)
- Servicer loan payoff statement

- Estimated HUD-1
- Purchase agreement
- Listing agreement
- Appraisal [if over 90 days, an up-to-date BPO may be required]
- Borrower financial information
- Verification of employment [last two (2) months payroll stubs]
- Verification of deposit [last two (2) months bank statements]
- Credit report
- Two (2) years federal tax returns
- Preliminary title report
- Financial analysis (sample attached)
- Twelve (12) month collection notes/comments
- Twelve (12) month payment history

CalHFA requires a financial hardship to be fully explained and documented. Examples of financial hardships include, but are not limited to:

- Loss of employment and borrower is now unemployed;
- New employment has resulted in less monthly income;
- Employer reduced borrower's pay (Overtime eliminated, regular hours or base pay reduced);
- One of the borrower's or wage earner's incomes has been eliminated due to death, incarceration, divorce or separation;
- One of the borrowers' or wage earners' incomes has been eliminated or reduced as a result of suffering a permanent or short-term disability or serious illness;
- Self-employed borrower has suffered a decline in business earnings.

<u>Conventional Loans</u>:

The Servicer may negotiate and complete conventional short sales without seeking CalHFA approval if the sale proceeds and MI claim proceeds result in CalHFA being made whole. Servicer shall indemnify CalHFA against any loss of principal and interest, or other deduction in the event the proceeds from the sale and the mortgage insurer fail to provide one hundred percent (100%) claim payment.

Alternatively, should the Servicer determine that the short sale will result in a loss to CalHFA, the Servicer must obtain CalHFA's approval prior to accepting an offer. Servicer shall submit its recommendation with supporting documentation to CalHFA's Servicing Administrator:

CalHFA Servicing Administrator
1121 L Street, 7th Floor
Sacramento, CA 95814
916.327.5170
mpozdyn@calhfa.ca.gov

The Servicer should include a history of its efforts to cure the delinquency, along with an analysis indicating that the short sale would result in a net loss lower than the loss CalHFA would incur if the loan was to proceed to foreclosure sale.

The Servicer must report the status change on its month-end delinquency report using the comments field. Servicer is required to remit all short sale proceeds to CalHFA within five (5) working days of receipt, together with copies of the final (HUD-1) settlement statement and Servicer demand for payoff via the email address listed above. Notice is to include CalHFA's loan number and further identify the transaction as a short sale.

Servicer is required to file the mortgage insurance claim in the Servicer's name within 30 days to ensure that the claim proceeds will be paid directly to the Servicer. Servicer shall simultaneously provide CalHFA with a copy of the claim filed. Mortgage Insurance claim funds must be remitted to CalHFA within 60 days from close of escrow.

Government Insured Loans:

For a loan which is insured by FHA or guaranteed by VA/USDA, Servicer shall make CalHFA whole, paying all principal and interest through the payoff date. No deduction for mortgage insurance premiums, or any other debits or charges may be excluded from the 100% remittance to CalHFA.

Due to CalHFA's "make whole" policy on government-insured loans, the Servicer will not be required to obtain CalHFA approval to proceed with a short sale even though it may result in a short payoff to the Servicer.

If the Servicer determines the borrower is eligible for a short sale under criteria established by the insurer, and the borrower elects to pursue this option, the Servicer is reminded it must report the status change on its month-end delinquency report using the comments field. Servicer is required to remit the short sale proceeds to CalHFA within five (5) working days of receipt, together with copies of the final (HUD-1) Settlement Statement and Servicer demand for payoff. Servicer shall then file mortgage insurance claim (FHA, VA, USDA) in Servicer's own name within thirty (30) days so as to cause claim proceeds to be paid directly to Servicer. The remaining "make whole" amount due CalHFA shall be paid by Servicer within ninety (90) days of close of sale escrow regardless of Servicer's receipt of mortgage insurance claim payment. Servicer shall indemnify CalHFA as to any expenses it incurs which are not reimbursed by the insurer.

CalHFA Subordinate Loans

CalHFA provides subordinate financing to assist our borrowers with down payment and/or closing costs. These junior liens are serviced by CalHFA's own Loan Servicing department and Servicer must obtain its approval regarding any CalHFA subordinate loans involved in the short sale transaction. Contact CalHFA's Loan Servicing Unit with a proposed short sale at 916.327.6435 or fax to 916.445.4374 or email at swagner@calhfa.ca.gov.

Non-CalHFA Subordinate Loans

For CalHFA loans that have non-CalHFA junior lien holders, the Servicer must obtain the lien holder's approval for a short sale. These lien holders are eligible for $1,000 per junior lien if the short sale causes a loss to CalHFA over and above the Sales and MI proceeds. If the short sale does not cause a loss over and above the Sales and MI proceeds and CalHFA is made whole with the Sales and MI proceeds only, then lien holders are eligible for $2,500 per junior lien.

Section 12 - Deed-in-Lieu of Foreclosure

The servicer must obtain CalHFA's written authorization to accept a voluntary deed-in-lieu of foreclosure.

The Servicer may consider a deed-in-lieu from a delinquent borrower who is experiencing financial hardship, assuming all other relief measures or loss mitigation alternatives have been explored and proven unworkable. However, the Servicer should always make every effort to collect some portion of the delinquent installments from the borrower to reduce the loss. The Servicer shall require the borrower to submit a letter requesting acceptance of a deed-in-lieu, to include documentation related to his or her financial hardship and to acknowledge that acceptance of the deed-in-lieu would be an accommodation to the borrower.

The Servicer may recommend that CalHFA accept a deed-in-lieu under the following circumstances:

- Legal impediments prevent the pursuit of routine foreclosure;
- Acceptance of the deed-in-lieu will enable CalHFA to acquire the property sooner than a foreclosure action;
- The mortgage insurer or guarantor has agreed in writing to acceptance of the deed-in-lieu;
- Borrower can convey clear marketable and insurable title (a title commitment and insurance policy will be required);
- Borrower receives no financial consideration to deed the property to CalHFA;
- Property has been listed for sale at fair market value for a minimum of three months without a reasonable sales offer;
- Property is in good condition (reasonable wear and tear excepted) and vacant, or the mortgage insurer or guarantor has agreed to accept an occupied property. If the property is rented, Borrower agrees to assign and transfer to CalHFA any rents collected;
- Property is not subject to liens (subordinate or otherwise) held by others, judgments, attachments, affordability covenants, resale restrictions, or any other restrictive agreements affecting marketability.

The following documents should be submitted to CalHFA's Servicing Administrator:

- Borrower letter explaining the reason for the delinquency
- Borrower financial information
- Credit report
- Two (2) years federal tax returns
- Twelve (12) month collection notes/comments
- Twelve (12) month payment history
- Verification of employment [last two (2) months payroll stubs]
- Verification of deposit [last two (2) months bank statements]
- Documentation verifying a decrease of income or increase of expenditures
- Preliminary title report
- Current appraisal
- Listing agreement
- Servicer loan payoff statement

- Mortgage insurer/guarantor approval

Servicers should be aware that CalHFA often partners with other governmental entities, i.e., cities, counties, redevelopment agencies, etc., to accomplish its mission of providing homeownership opportunities to low and moderate income first-time homebuyers. These partnership arrangements can and do result in loans for which the underlying security may be subject to deed restrictions, affordability covenants, agreements, or other means of maintaining the affordability of the unit into the future. Often the recorded agreements require specific notice be given to the entity who may then exercise their pre-designated purchase option, first right of refusal, reinstatement or redemption rights.

If a Servicer fails to provide the required notice, CalHFA may acquire the collateral property subject to sales price, income or other restrictions which could negatively impact the marketability of the unit, causing CalHFA to incur a financial loss. For that reason, Servicer will submit a commitment of title insurance along with all borrower exhibits and the Servicer's written recommendation for CalHFA's review and determination regarding deed-in-lieu offers. The Servicer will submit said documentation to: CalHFA's Servicing Administrator, California Housing Finance Agency, 1121 L Street 7th Floor, Sacramento, CA 95814, 916.324.8088, fax number 916.327.5170, mpozdyn@calhfa.ca.gov

Section 13 – Foreclosure

In the case of government-insured/guaranteed FHA, VA or USDA-GRH loans, CalHFA requires the Servicer to repurchase the CalHFA loan (make whole) and convey title to the applicable insurer or the Servicer itself. Servicer should therefore comply with the insurer's requirements so their claim position is not jeopardized.

In the case of conventional insured loans, the private mortgage insurance claim is filed by the Servicer, payable to CalHFA. Upon receipt of the recorded Deed-in-Lieu conveying title to CalHFA, CalHFA will market the property, and all instructions mentioned in Bulletin 2008-28 apply, i.e. Property Management, Hazard Insurance, Property Taxes, Mortgage Insurance Claim, and Servicer Foreclosure Expense Reimbursement for REO.

Section 14 - Senate Bill No. 1137

In addition to complying with mortgage insurer and CalHFA collection, loss mitigation, and foreclosure procedures, Servicers are responsible for complying with all federal and state statutes, laws, acts and regulations, including California Senate Bill No. 1137, enacted in mid- 2008.

For questions about this bulletin, please contact the following CalHFA Unit:

CalHFA Portfolio Management Unit
Phone: 916.327.5170
Fax: 916.324.9581
Email: PortfolioManagement@calhfa.ca.gov

And, you can always visit CalHFA's web site at: www.calhfa.ca.gov.

* "HomeOpeners" is a registered trademark of Genworth Mortgage Holdings, LLC.