



# RESCINDED

Office of Thrift Supervision

Department of the Treasury

Examination, Supervision, and Consumer Protection

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This rescission applies to the transmitting document only and not the attached interagency guidance. Refer to (OCC 2007-14) for the status of the attached interagency guidance.

April 17, 2007

**MEMORANDUM FOR:** Chief Executive Officers

**FROM:**

Grovetta N. Gardineer, Assistant Managing Director, Policy  
 Montrice G. Yakimov, Assistant Managing Director, Compliance  
 and Consumer Protection

**SUBJECT:**

Statement on Working with Mortgage Borrowers

The Office of Thrift Supervision (OTS) and the other federal banking agencies (Agencies) are issuing the attached Statement on Working with Mortgage Borrowers (Statement). The Statement encourages financial institutions to work constructively with homeowners that face significant payment increases and may be unable to make their mortgage payments when their adjustable rate mortgage loans reset.

OTS encourages savings associations and their subsidiaries to reach out to borrowers encountering financial hardship to pursue reasonable workout arrangements with them. Institutions should encourage borrowers to contact them or their servicer to discuss available options as soon as the borrowers experience difficulty making routine payments. Prudent workout arrangements, consistent with safe and sound lending practices, will serve the long-term interest of both the financial institution and the borrower.

The Homeownership Counseling Act requires institutions to inform delinquent borrowers about the availability of homeownership counseling. Savings associations may also offer a variety of workout arrangements to their borrowers, including modifying loan terms or moving borrowers from variable rate loans to fixed rate loans. In some cases, programs that transition low- or moderate-income homeowners from higher cost loans to lower cost loans may receive favorable consideration under the Community Reinvestment Act, provided all loans are made in a safe and sound manner. Institutions should consider working with consumer-based organizations to help financially stressed borrowers avoid predatory foreclosure rescue scams.

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## Statement on Working with Mortgage Borrowers

The federal financial institutions regulatory agencies<sup>1</sup> encourage financial institutions to work constructively with residential borrowers who are financially unable to make their contractual payment obligations on their home loans. Prudent workout arrangements that are consistent with safe and sound lending practices are generally in the long-term best interest of both the financial institution and the borrower.

Many residential borrowers may face significant payment increases when their adjustable rate mortgage (ARM) loans reset in the coming months. These borrowers may not have sufficient financial capacity to service a higher debt load, especially if they were qualified based on a low introductory payment. The agencies have long encouraged borrowers who are unable to meet their contractual obligations to contact their lender or servicer to discuss possible payment alternatives at the earliest indication of such problems.

The agencies encourage financial institutions to consider prudent workout arrangements that increase the potential for financially stressed residential borrowers to keep their homes. However, there may be instances when workout arrangements are not economically feasible or appropriate.

Financial institutions should follow prudent underwriting practices in determining whether to consider a workout arrangement. Such arrangements can vary widely based on the borrower's financial capacity. For example, an institution might consider modifying loan terms, including converting loans with variable rates into fixed-rate products to provide financially stressed borrowers with predictable payment requirements.

The agencies will continue to examine and supervise financial institutions according to existing standards. The agencies will not penalize financial institutions that pursue reasonable workout arrangements with borrowers who have encountered financial problems. Further, existing supervisory guidance and applicable accounting standards do not require institutions to immediately foreclose on the collateral underlying a loan when the borrower exhibits repayment difficulties. Institutions should identify and report credit risk, maintain an adequate allowance for loan losses, and recognize credit losses in a timely manner.

Financial institutions may receive favorable Community Reinvestment Act (CRA) consideration for programs that transition low and moderate income borrowers from higher cost loans to lower cost loans, provided the loans are made in a safe and sound manner.<sup>2</sup> Financial institutions, working alone or in conjunction with reputable organizations such as the Center for Foreclosure Solutions sponsored by NeighborWorks, can assist borrowers in avoiding foreclosure through credit counseling.<sup>3</sup> Such programs also help financially stressed borrowers avoid predatory foreclosure rescue scams.

Under the Homeownership Counseling Act, financial institutions should inform certain borrowers who are delinquent on their mortgage loans (home loans secured by a single family dwelling that is the borrower's principal residence) about the availability of homeownership counseling. The Department of Housing and Urban Development (HUD) maintains a list of approved counselors.<sup>4</sup>

If a service member defaults on a mortgage, the Servicemembers Civil Relief Act (SCRA) prohibits the sale, foreclosure, or seizure of service member property secured by the mortgage during the period of military service, or within 90 days thereafter. Institutions are required to notify service members of their rights under the SCRA.<sup>5</sup> While the SCRA requirements apply only to obligations that were originated prior to the service member's military service, the agencies encourage institutions to work with service members and their families who are unable to meet any of their contractual mortgage obligations.

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<sup>1</sup> The federal financial institutions regulatory agencies consist of the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision (collectively, the agencies).

<sup>2</sup> Consideration as a CRA flexible lending practice may be granted in instances where such action helps to meet the credit needs of low- and moderate-income individuals or geographies within the institution's assessment area, and is consistent with safe and sound lending practices. Also see Q&A § \_\_.22(a)- 1 (2001 Interagency Questions and Answers Regarding Community Reinvestment). Federal credit unions are not subject to CRA requirements.

<sup>3</sup> Consideration as a CRA community development service may be granted in instances where such activities help to meet the credit needs of low- and moderate-income individuals or geographies within the institution's assessment area. Also see Q&A § \_\_.12(j)- 3 (2001 Interagency Questions and Answers Regarding Community Reinvestment). Federal credit unions are not subject to CRA requirements.

<sup>4</sup> Information on HUD's counseling services is available at <http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm> or (800) 569-4287.

<sup>5</sup> HUD's service member notice is available at <http://www.hud.gov/offices/adm/hudclips/forms/files/92070.pdf>.