



## COMPACT TO HELP OHIOANS PRESERVE HOMEOWNERSHIP

**THIS COMPACT** is being entered into on this day, November 8, 2007 by and between the **State of Ohio**, through Governor Ted Strickland and Director of the Ohio Department of Commerce Kimberly A. Zurz, and the residential mortgage loan servicers operating within the State of Ohio signed below (collectively "**Servicers**"). The State and the Servicers (collectively the "**Parties**") enter into this Compact based upon the following exigent circumstances:

In the last three (3) years, Ohio has consistently had one of the highest rates of foreclosure and percentage of "seriously delinquent" loans .[1][1] The number and rate of home foreclosures in Ohio threatens the stability of families and communities.

Foreclosures, evictions, and sales of foreclosed properties are expensive and time-consuming processes for the Servicers and the noteholders to whom the Servicers report. Recent data suggest that foreclosure of a mortgage loan translates into a 40-50% loss of expected return to the holder of a mortgage note.[2][2]

The primary source of Ohio foreclosures and delinquencies today are subprime residential mortgage loans.[3][3] Approximately 33% of Ohio's subprime Adjustable Rate Mortgage ("ARM") loans were already in foreclosure or at risk of foreclosure by the end of 2006 and accounted for 63% of the foreclosure starts within Ohio in 2005.[4][4]

Delinquencies and foreclosures are expected to increase further in Ohio beginning the fall of 2007 as an estimated 150,000 to 200,000 subprime ARM loans valued at approximately \$14 billion are scheduled to reset at higher rates through 2008.[5][5] The Parties anticipate that many Ohioans will neither be able to afford the higher monthly mortgage payments resulting from these resets, nor be able to extinguish their debts by refinancing or selling their homes.

Without systematic and expeditious modification to existing subprime loans in Ohio, an unprecedented number of Ohioans will lose their homes to foreclosure within the next twelve months. An unprecedented number of foreclosures in Ohio would also mean unprecedented losses for the Servicers and the noteholders to whom the Servicers report.

The Parties mutually agree that it is in their individual and collective best interests to prevent or at least diminish the expected substantial increase of subprime mortgage foreclosures in Ohio where the mortgaged property is occupied by the borrower; and

The Parties mutually agree that it is also a matter of good public policy to keep willing and able Ohioans in their homes; and

The Parties have mutually resolved that the Servicers signing this Compact will prioritize loan workouts and homeownership preservation to the maximum degree possible within existing fiduciary, contractual and legal obligations and in accordance with prudent mortgage lending and servicing practices; and

The Parties have mutually resolved that, where the most effective and efficient means of preventing or at least diminishing the expected

substantial increase of subprime mortgage foreclosures in Ohio is to engage in a systematic and expeditious modification of these loans then such modifications should be available to be offered to residential owner-occupants.

In light of the Parties' mutual understanding of the foregoing circumstances, the Parties agree as follows:

**ARTICLE I:           PREPARE FOR LARGE-SCALE  
MODIFICATIONS**

1.1     Servicers pledge to prepare the requisite staffing and resources necessary and to engage foreclosure counsel as necessary to perform large-scale modifications of residential, owner-occupant subprime loans, including but not limited to the following measures:

1.1.1   By December 1, 2007, Servicers shall have informed all staff within their organizations and all foreclosure counsel with whom they work of the commitments made to Ohio borrowers in this Compact.

1.1.2   By December 1, 2007, every Servicer shall have created a single point of entry for affected borrowers accessible through a single toll-free number dedicated exclusively to connecting borrowers to live loss mitigation staff – not collection staff – so as to effect the modifications enumerated in Article III herein.

1.1.3   The live loss mitigation staff must have the skills and authority needed to make binding modifications to borrowers' loan agreements.

1.2 Where adequate workout options are not available due to contractual considerations, Servicers pledge to use their best efforts to secure amendments to such servicing agreements that will authorize Servicers to effect the large-scale workouts and modifications contemplated in this Compact. In the future, Servicers pledge to use their best efforts to maximize the workout and modification provisions included in their servicing agreements, in accordance with customary and usual standards of prudent mortgage servicing.

**ARTICLE II: IDENTIFY AND CONTACT AT-RISK AND DEFAULTING BORROWERS**

2.1 Servicers pledge to identify, evaluate, and contact Ohio borrowers who are at risk of default or have already defaulted on their residential, owner-occupant subprime mortgage loans as soon as possible.

2.1.1 For subprime ARM loans, Servicers agree to provide Ohio borrowers on a recurring monthly basis, at least six months in advance of an approaching interest rate reset on a borrower's loan, both written and telephonic notice that:

- i. informs the borrower they have an ARM scheduled to reset;
- ii. states the borrower's current interest rate and corresponding monthly payment prior to reset;
- iii. states the borrower's anticipated future interest rate and corresponding monthly payment following reset;

- iv. specifically notifies the borrower of possible workout options set forth in Section 3.1.1 herein in the event there is no reasonable probability of repayment at the higher interest rate and monthly payment following reset;
- v. specifically notifies the borrower that possible workout options will include amounts for the mortgage payment only and not any escrowed amounts such as taxes and insurance; and
- vi. provides the borrower with the toll-free number described in Section 1.1.2 above.

2.1.2 For loans entered into with no or low documentation of a borrower's annual income, assets and liabilities, Servicers agree to make reasonable efforts to obtain appropriate documentation verifying the same and utilize that information in attempting loan modification or other workout in accordance with Section 4.1.2 below. None of the foregoing documentation costs shall be added to the principal on the loan or otherwise charged to the borrower.

2.1.3 In circumstances where the Servicer has exhausted its good faith efforts to modify a defaulting loan in accordance with this Compact and chooses to initiate foreclosure proceedings, Servicers agree to:

- i. assign an individual staff member that is not foreclosure counsel as a single point person for the affected borrower who shall maintain regular contact with the borrower or the borrower's attorney throughout all foreclosure proceedings, with the continual goal of reinstating the loan and avoiding foreclosure,

and

- ii. provide notification to the borrower, in addition to any required Right to Cure notice, by mail and by telephone, at least 10 days in advance of the Servicer's referral to foreclosure counsel, of the Servicer's intent to proceed with foreclosure, expressly providing the borrower with the contact information for the individual staff person assigned as that borrower's point person throughout foreclosure proceedings.

### **ARTICLE III: UTILIZE PREFERRED WORKOUT METHODS**

3.1 Servicers pledge to modify loan terms to the greatest extent possible so as to provide permanent, affordable relief to Ohio borrowers, doing so in accordance with their fiduciary, legal and contractual obligations and in accordance with prudent mortgage lending and servicing practices. Where necessary to keep or make a loan a performing asset, and in accordance with existing contractual obligations, Servicers pledge to waive late fees, pre-payment penalties, refinancing or modification fees, inspection fees, security fees, and attorney fees, and to include Servicers escrows for taxes and insurance if not already present. When possible, Servicers also pledge to avoid the submission of adverse credit information to any credit reporting agency where borrower's acceptance of any of the following modifications keeps or makes the subject loan a performing asset.

3.1.1 For subprime ARM loans in which payment shock from an initial or periodic interest rate reset is likely to cause delinquency or imminent default, Servicers agree

to offer streamlined loss mitigation options to such borrowers to maintain the borrower's ability to pay the debt, factoring in escrow payments if such borrower is not current on taxes or insurance. If the loan is modified to a fixed-rate loan, the resulting fixed rate can be equal to or lower than the introductory rate initially offered to the borrower but can only exceed that rate where Servicers can document borrower's ability to pay the higher rate factoring in the requisite escrow for taxes and insurance. Such documentation would require proof of applicable taxes and insurance premiums, a new appraisal on the property, current FICO and credit scores for the borrower, and a conservative debt-to-income (DTI) analysis. None of the foregoing documentation costs shall be added to the principal on the loan or otherwise charged to the borrower.

- 3.1.2 For subprime "no-documentation" or "low-documentation" and stated income loans, Servicers agree to modify the borrower's loan so as to make regular monthly payments economically feasible, including but not limited to converting the loan's interest rate into an affordable fixed rate.
- 3.1.3 For borrowers whose existing debt exceeds the current fair market value of the loan collateral by 10% or more and the borrower communicates a desire to stay in their home while documenting a reasonable ability to make payments on a reasonable fixed-rate mortgage, Servicers agree to offer workout packages based on the ability to pay that puts the borrower in the position they would have been had an accurate valuation been utilized in the origination of their loan, subject to legal and contractual ability to do so. If new federal legislation is passed to remove tax consequences arising

from the forgiveness of mortgage debt, Servicers agree to forgive any loan principal representing the excess appraised value of the borrower's home where legally and contractually permitted to do so.

- 3.1.4 For loans consummated as described in Sections 3.1.1, .3.1.2, and 3.1.3 above, Servicers agree to use their best efforts in removing any negative reports on the borrower's credit report related to default of such loans and to assist borrowers in improving their credit scores in appropriate cases where loan modification has resulted in changing a delinquent loan to a performing loan.

#### **ARTICLE IV: IMPROVE INCENTIVE STRUCTURE**

- 4.1 Servicers pledge to create incentives for staff and foreclosure counsel to achieve workouts instead of foreclosing the borrower's loan to the extent possible within existing fiduciary, legal and contractual obligations.
  - 4.1.1 Servicers shall require loss mitigation staff and foreclosure counsel to document all interaction with borrowers and efforts made to workout mortgage loans.
  - 4.1.2 Servicers shall require loss mitigation staff to certify in writing that the borrower was notified of the modification options enumerated in Article IV below before directing the matter to foreclosure counsel and the filing of the foreclosure complaint.
  - 4.1.3 In directing loans to foreclosure, Servicers shall supply foreclosure counsel with the following:

- i. Notice of the Servicer's participation in this Compact and goal of achieving more workouts;
- ii. An explanation of the Servicer's loss mitigation procedures and how legal counsel can facilitate workouts through the Servicer's loss mitigation department; and
- iii. A complete copy of the borrower's loan file, including copies of the notices specified in Sections 2.1.2 and 3.1.1 of this Compact.

4.1.4 Servicers shall require foreclosure counsel to certify in writing that counsel has notified the borrower of the modification options enumerated in Article IV below and has otherwise attempted, in good faith, to workout the mortgage with the borrower prior to filing a praecipe for sale of the subject property. Such certification shall include a detailed statement of efforts made. A conclusory statement is insufficient.

## **ARTICLE V: REPORTING**

5.1 Servicers shall report their progress to the Ohio Department of Commerce, Division of Financial Institutions, Office of Consumer Affairs, 77 South High Street – 21<sup>st</sup> Floor, Columbus, Ohio 43215-6120, on a monthly basis, due the 1<sup>st</sup> day of each month, beginning December 1, 2007 and continuing through the term of this Compact. Progress reports shall be certified as to their accuracy and signed by an officer of the company. The reports shall include a documented statement of:

- i. their total number of subprime, owner-occupied residential mortgage loans in Ohio;
- ii. the type and percentage of the workout types utilized by the Servicers during the reporting period, plus the total number of foreclosure suits initiated;
- iii. the conditional default rate, defined as the annualized value of the unpaid principal balance of Servicer's newly defaulting subprime, owner-occupied residential mortgage loans in Ohio over the course of the past month as a percentage of the total unpaid balance of all subprime, owner-occupied residential mortgage loans in Ohio at the beginning of that month;
- iv. a breakdown of 30-day, 60-day, 90+day delinquency and foreclosure rates for the Servicer's subprime, owner-occupant residential mortgage loans in Ohio as of the ending date of each reporting period, calculated using the Mortgage Bankers Association method of delinquency reporting; and
- v. any other information that describes the Servicer's progress and commitment to this Compact.

5.2 Information obtained from progress reports may be retained, compiled, and made public by the Ohio Department of Commerce as the Department deems appropriate unless the parties agree in writing to the contrary in accordance with Ohio's Public Records Law.

## **ARTICLE VI: TERM**

6.1 This Compact is effective as of this day, November 8, 2007

and shall remain in effect until such time the 12-month moving average of foreclosure filings in Ohio (as reported by the Ohio Supreme Court) declines for four consecutive monthly measurement periods or December 31, 2010, whichever occurs first.

**IN WITNESS WHEREOF**, the parties hereto have caused this Compact to be executed by their duly authorized officers, as of the day and year first written above.

**ON BEHALF OF THE STATE OF OHIO:**

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Ted Strickland, Governor

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Kimberly A. Zurz,

Director of the Ohio Department of Commerce

**ON BEHALF OF RESIDENTIAL MORTGAGE LOAN  
SERVICERS:**