

Guidelines Regarding Civil Settlement Agreement April 4, 2012

On March 12, 2012, the United States Government (United States), many State Attorneys General, and various mortgage servicers entered into civil settlements agreements (Settlements) pursuant to which they settled certain claims related to previous mortgage servicing activity. On April 4, 2012, these were signed by the United States District Court of the District of Columbia. In addition to monetary penalties, the mortgage servicers each agreed to perform Consumer Redress Activities. In connection with the Settlements, the Department of the Treasury is hereby issuing guidelines regarding which Consumer Redress Activities may be considered “qualified loss mitigation plan[s]” for purposes of Section 201 of the Helping Families Save Their Homes Act of 2009 (HFSTHA).

As part of HFSTHA, Congress amended the Truth in Lending Act to provide that servicers who modify and refinance mortgage loans under “qualified loss mitigation plans” are deemed to have satisfied certain duties to investors and trustees. Treasury has determined that each residential loan modification, deed-in-lieu of foreclosure transaction, short sale, refinancing, or principal reduction transaction identified in the Settlements, including those specific to individual servicer settlements, is a “qualified loss mitigation plan” as defined in HFSTHA.

These guidelines, however, do not purport to assert that such qualified loss mitigation plans provide automatic protection under HFSTHA. In addition to entering into the qualified loss mitigation plans, mortgage servicers must satisfy the requirements of HFSTHA, including the following:

- The mortgage must have been originated before May 20, 2009;
- Default on the payment of such mortgage has occurred, is imminent, or is reasonably foreseeable;
- The mortgagor occupies the property securing the mortgage as his or her principal residence;
- The servicer reasonably determines, consistent with these guidelines, that the application of the qualified loss mitigation plan will likely provide an anticipated recovery on the outstanding principal mortgage debt that will exceed the anticipated recovery through foreclosure; and
- The qualified loss mitigation plan must be implemented before December 31, 2012 (unless such date is extended further).

These guidelines are issued under the Emergency Economic Stabilization Act of 2008 (EESA).