

TITLE 10. CALIFORNIA DEPARTMENT OF REAL ESTATE

NOTICE IS HEREBY GIVEN

The Commissioner (Commissioner) of the Department of Real Estate (Department) proposes to adopt rules entitled, "California Foreclosure Prevention Act." The proposed regulatory action clarifies the application of Civil Code Sections 2923.52 and 2923.53 under the California Foreclosure Prevention Act. The proposed rules were adopted as emergency regulations on June 1, 2009, and readopted as emergency regulations on December 1, 2009. In this rulemaking action the Commissioner proposes to permanently adopt Article 16.5, Sections 2850.1, 2850.2, 2850.3, 2850.4, 2850.5, 2850.6, 2850.7, 2850.8, 2850.9, and Section 2850.10 to Chapter 6, Title 10 of the California Code of Regulations.

PUBLIC COMMENTS

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department addressed as follows:

Regular Mail

Department of Real Estate
Attn: Daniel E. Kehew, Office of Legislation and Policy
2201 Broadway
P.O. Box 187007
Sacramento, CA 95818-7007

Electronic Mail

DRERegulations@dre.ca.gov

Facsimile

(916) 227-9458

Comments may be submitted until 5:00 p.m., February 10, 2010. If the final day for the acceptance of comments is a Saturday, Sunday, or state holiday, the comment period will close at 5:00 p.m. on the next business day.

INFORMATIVE DIGEST/PLAIN ENGLISH OVERVIEW

In the fall of 2008, in response to the continuing foreclosure crisis in California, the Governor proposed to the Legislature a concept to reduce foreclosures by encouraging loan modifications in the marketplace. This plan was a follow-up to the Administration's previous actions to encourage loan modifications by servicers, including a November 2007 agreement with servicers intended to address resetting

interest rates, and the signing of SB 1137 (Perata, Chapter 69, Statutes of 2008) in the summer of 2008, to require residential mortgage servicers reach out to borrowers at least 30 days before a notice of default is filed in a foreclosure proceeding, to attempt to work out a solution.

The Governor's proposal involved encouraging residential mortgage loan servicers to streamline the process for modifying loans by changing the requirements for nonjudicial foreclosures for loans serviced by mortgage loan servicers that had not implemented a comprehensive loan modification program. The initial parameters for a comprehensive loan modification program were modeled after the program that the Federal Deposit Insurance Corporation (FDIC) implemented to modify loans in the IndyMac Federal Bank portfolio after the FDIC was appointed conservator of that institution.

Through the legislative process, the Legislature further developed the Governor's proposal into the California Foreclosure Prevention Act. In February of 2009, during the second extraordinary session the Legislature sent to the Governor two bills enacting the California Foreclosure Prevention Act: ABX2 7 (Lieu, Chapter 5, Statutes of 2009) and SBX2 7 (Corbett, Chapter 4, Statutes of 2009). On February 20, 2009, the Governor signed these bills.

Among other things, the California Foreclosure Prevention Act required the Commissioners of Real Estate, Corporations, and Financial Institutions to adopt emergency regulations to clarify the application of Civil Code Sections 2923.52 and 2923.53; two sections added to the Civil Code by the California Foreclosure Prevention Act. The Commissioners adopted the emergency regulations and on June 1, 2009, the regulations were filed with the Secretary of State and became effective. In accordance with the law's provisions, 14 days after the effective date of the regulations, the act became operative. These emergency regulations were readopted on December 1, 2009.

In this rulemaking action the Commissioner seeks to permanently adopt the emergency regulations clarifying the application of Civil Code Sections 2923.52 and 2923.53 of the California Foreclosure Prevention Act.

The Commissioner proposes to adopt Article 16.5 to Chapter 6 of Title 10 of the California Code of Regulations, entitled "California Foreclosure Prevention Act." In addition, the Commissioner proposes to adopt Subarticle 1 to that subchapter, entitled, "Requirements." Within Subarticle 1 the Commissioner proposes to adopt six sections.

Section 2850.1, entitled, "Scope of Regulations," defines the scope of the regulations. The section provides that the subchapter clarifies the application of Civil Code Sections 2923.52 and 2923.53, and sets forth the minimum requirements for a mortgage loan servicer to obtain an order of exemption from Civil Code Section 2923.52. Civil Code Section 2923.52 provides that a trustee may not proceed with a foreclosure sale until the lapse of 90 days in addition to the 3 months after a notice of default is filed on a borrower under Civil Code Section 2924. However, Civil Code Section 2923.52 provides that a mortgage loan servicer may obtain an order exempting it from the prohibition on proceeding with a foreclosure until after the lapse of 90 days, if

the mortgage loan servicer has implemented a comprehensive loan modification program.

The section further provides that the modification of loans in conformance with the Home Affordable Modification Program Guidelines issued by the U.S. Department of the Treasury on March 4, 2009, as amended, shall constitute the implementation of a comprehensive loan modification program and shall be deemed to meet all of the requirements in the article. The section also defines "residential mortgage loan" and "borrower."

Section 2850.2, entitled "Eligibility," sets forth the minimum eligibility requirements for a borrower and residential mortgage loan under a comprehensive loan modification program, in order for the program to obtain an order of exemption from the Commissioner. A mortgage loan servicer's comprehensive loan modification may be more inclusive than the minimum requirements set forth in this section, but may not be less inclusive, to obtain an order of exemption. Generally, modifications must be available for borrowers and loans meeting the following requirements:

1. The loan was made between January 1, 2003 and January 1, 2008,
2. The borrower lives in the property,
3. The loan is in default,
4. The loan is a first lien on property in California,
5. The borrower can document the ability to pay the modified loan,
6. The borrower has not surrendered the property, the borrower is not engaged in a bankruptcy proceeding, and the borrower has not contracted to delay the foreclosure process while intending to leave the property.

Section 2850.3, entitled, "Availability," requires the loan modification program to be made available to all persons and loans meeting the eligibility requirements who contact their servicer to notify the servicer of a financial hardship or to request a loan modification. In addition, the section requires a servicer to reach out to borrowers in financial hardship by including information on the comprehensive loan modification program in the contact with borrowers required at least 30 days before the service of a Notice of Default under Civil Code section 2923.5 (see SB 1137(Perata -2008), which requires that borrowers be contacted before the filing of the Notice of Default).

Sections 2850.4, 2850.5 and 2850.6 set forth the minimum requirements for a comprehensive loan modification program. Section 2850.5, entitled, "Loan Modification Features," provides that loans refinanced in accordance with the Hope for Homeowners Program or the Home Affordable Refinance Program meet the minimum requirements of a comprehensive loan modification program. While loan work outs under these federal programs constitute refinancings rather than modifications, the recognition of the federal programs in the rules was intended to clarify that servicers may continue participating in those programs even for borrowers meeting the minimum eligibility requirements for modifications under these rules.

The California Foreclosure Prevention Act provides that a servicer need only modify a loan where the anticipated recovery from a modification exceeds the anticipated recovery from a foreclosure, on a net present value basis. Consequently,

Section 2850.5 of the proposed rules provides clarification on determining the net present value. The rule provides that the net present value must be based on reasonable assumptions regarding discount rates, property values, costs of foreclosure, costs of modification, and the ability of the borrower to repay the loan. The proposed rule requires a servicer to have internal or external evidence to support the assumptions, and provides that the "Net Present Value Model Parameters" in the Home Affordable Modification Program Guidelines, meets the requirements of the section and does not require supporting evidence. The proposed rules further require servicers to explain deviations from the "Net Present Value Model Parameters" in the exemption application. The proposed rules require that a loan be modified where the net present value of modifying the loan exceeds the net present value of foreclosing on the loan, provided that the borrower can document income, and provided that after the loan is modified, the borrower can establish the ability to pay the modified loan.

The California Foreclosure Prevention Act provides that a comprehensive loan modification program must target a ratio of a borrower's housing-related debt to a borrower's gross income of 38% or less, on an aggregate basis. Consequently, Section 2850.5 of the proposed rules provides that a servicer's loan modifications are to target a 38% housing-related debt to gross income ratio, on an aggregate basis. The rules clarify that a servicer is not required to meet this ratio for every loan modified under the program. The rules further provide that a servicer must identify the reasons in its application the reasons its program does not achieve a 38% housing-related debt to gross income ratio, on an aggregate basis, if such is the case.

Section 2850.5 of the proposed rules provide that a comprehensive loan modification program must include at least two of the following features:

1. An interest rate reduction, as needed, for at least 5 years,
2. An extension of amortization period for the loan term to no more than 40 years from the original date of the loan,
3. Deferral of some portion of the principal until maturity,
4. A reduction in principal,
5. Compliance with a federally mandated loan modification program, or
6. Any other feature that Commissioner determines is appropriate, as described in the servicer's application.

The proposed rules clarify that a program must include at least two of the identified features, but a single loan modification need not include more than one feature. The rules further require that a servicer have criteria in place to define when borrower qualifies for the potential concessions or modifications.

The California Foreclosure Prevention Act provides that when determining a loan modification solution for a borrower, a servicer must seek to achieve long-term sustainability. Consequently, Section 2850.5 sets forth characteristics that are presumed to constitute long term sustainability, including:

1. The modification reduces a borrower's monthly payment for at least 5 years,
2. The modification results in a housing-related debt to income ratio of 38% or less,
3. After a modification, the borrower's back-end debt-to-income ratio is equal to or

- less than 55%,
4. The borrower is current under the terms of a modified loan at the end of a 3 month period, or
 5. The modification is in accordance with a federal program.

In addition to the foregoing, Section 2850.6 sets forth additional proposed requirements for a loan modification program. Subsection (a) sets forth conditions when a loan modification consists solely of a repayment plan. In particular, a servicer must be able to validate that the borrower has a housing-related debt to gross income ratio of 38% or less, and that the borrower can repay the loan. The subsection further defines a repayment plan as a plan or arrangement where amounts past due are added to the principal amount due on a loan and re-aged so that a loan is no longer delinquent, and no other loan concessions are provided to the borrower.

Subsection (b) requires all eligible loans to be considered for modification under the plan unless an applicable pooling and servicing agreement prohibits the modification. Subsection (c) requires a servicer to use reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties, including junior lien holders and investors. Subsection (d) requires a servicer to act on a loan modification request within a reasonable time period, and requires a servicer to have procedures in place to ensure that delays in the process not caused by a borrower do not adversely impact a borrower in the loan modification or foreclosure process. Subsection (d) further requires a servicer to acknowledge the receipt of a loan modification request.

Subsection (e) permits a servicer to deny a loan modification request when a borrower abandons or unduly delays the process. Prior to denying the modification request, the servicer must notify the borrower in writing of the time period to respond and the consequence of failing to respond in a reasonable time. Subsection (f) provides that a comprehensive loan modification program may include foreclosure alternatives for borrowers who do not qualify for a loan modification program. Subsection (g) provides that a servicer is not required to modify a loan more than once.

Within Subarticle 2, the Commissioner proposes to adopt 2 sections. Section 2850.7, entitled "Initial Application," sets forth instructions on the filing of the application. This section provides that an applicant shall be temporarily exempt from Civil Code Section 2923.52(a) upon the filing of a substantially complete application. Item 1 instructs applicants on where to file the application, and identifies how an applicant determines whether to file an application with the Department of Corporations, the Department of Financial Institutions, or the Department of Real Estate. Item 2 instructs applicants on when to file an application, and provides that an applicant will be temporarily exempt from Civil Code Section 2923.52(a) upon the appropriate department's receipt of the application.

Item 3 sets forth the manner for the Department to notify an applicant of the temporary order. Item 4 provides that the Department will notify the applicant of whether the applicant has a comprehensive loan modification program within 30 days of the receipt of an application, and notify the applicant of the issuance of a final order. Item 5 provides that upon the denial of an application, the Department will immediately

notify the servicer, and the temporary order will remain in effect for 30 days following the denial. Item 6 provides that the Department will accept changes to an application while the application is under consideration.

Section 2850.8, entitled "Changes to Program after Final Order," sets forth procedures for the modification of a program after the receipt of a final order. Subdivision (a) prohibits a servicer from modifying a program after a final order is issued unless the servicer informs the Commissioner of the change. Subsection (b) provides that a change to a federal program does not constitute a change to a comprehensive loan modification program and does not require notice to the Commissioner.

Subarticle 3 consists of Section 2850.9, which incorporates the application form. The application requests identifying information from an applicant, requests information on whether an applicant is participating in a loan modification program administered by a federal agency, and requires an applicant to submit several exhibits. Exhibit 1 requires an applicant to describe its loan modification program, and to direct the Department to where within the submitted documentation specified program requirements are met. Exhibit 2 requires an applicant to submit copy of the declaration to be included with the notice of sale, as required by Civil Code section 2923.54. Exhibit 3 requires an applicant to provide the notice to consumers required by Section 2850.3 of these rules. Exhibit 4 requires an applicant to submit 3 months of recent loss mitigation data.

Exhibit 5 requires an applicant to provide additional documentation for other items in the application, if applicable, including the differences between the net present value used by the applicant and the Department of the Treasury's Net Present Value Model Parameters, the reasons the servicer's program is unable to achieve an aggregate debt-to-income ratio of 38% or less, and a description of any additional features in the program to be considered by the Commissioner. The application provides that exhibits 1, 4 and 5 are confidential, and requires the application to be signed under penalty of perjury by a specified control person.

Subarticle 4 consists of Section 2850.10, entitled "Reports." This section provides that upon request of the Commissioner, a servicer shall report loan modification data to the Commissioner on a quarterly basis. The section further incorporates by reference a form for quarterly reporting, entitled Foreclosure Prevention Loan Modification Data, and dated November 25, 2009. The section provides that a servicer may request a hardship exemption from the Commissioner, and provides that the Commissioner may accept a report required by a federal loan modification program, in lieu of the report required in this section.

AUTHORITY

Sections 2923.52 and 2923.53, Civil Code.

REFERENCE

Sections 2923.52 and 2923.53, Civil Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation(s). A request for a copy of any modified regulation(s) should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulation(s) for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from the Sacramento offices of the Department. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. These documents are also available at the Department's website at www.dre.ca.gov. As required by the Administrative Procedure Act, the Department's Sacramento Legal Office maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Real Estate, 2201 Broadway, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or savings to any state agency: The Department has determined that the implementation of the California Foreclosure Prevention Act will have an estimated cost of \$120,000 to the Department. This cost represents the cost of implementing and administering the statutory California Foreclosure Prevention Act, including the adoption of regulations, development of procedures and information technology applications, acceptance of applications, review and approval of applications, data collection and reporting. While this cost is attributable to the implementation of the act, it is not necessarily attributable to this rulemaking action.
- Direct or indirect costs or savings in federal funding to the state: none.
- Cost to local agencies and school districts required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: none.
- Other nondiscretionary costs/savings imposed on local agencies: none.
- Costs to private persons or businesses directly affected: The Department has determined that the cost to directly affected businesses that seek to submit an

application for an order of exemption under the California Foreclosure Prevention Act may be up to \$5000 in one time costs for the application, and may be up to \$5000 a year if reporting is required.

BUSINESS REPORTING REQUIREMENT

The Commissioner finds that it is necessary for the health, safety, or welfare of the people of this state that this regulation that requires a report apply to businesses.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not impose a mandate on local agencies or school districts, or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.
- Does not significantly affect the creation or elimination of jobs within the State of California; the creation of new businesses or the elimination of existing businesses within the State of California; or the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The Department has determined that the cost to directly affected businesses that seek to submit an application for an order of exemption under the California Foreclosure Prevention Act may be up to \$5000 in one time costs for the application, and may be up to \$5000 a year if reporting is required.

EFFECT ON SMALL BUSINESS

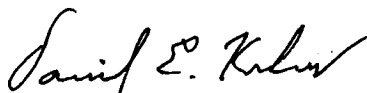
The proposed regulatory changes may affect small business.

CONTACT PERSON

Inquiries concerning this action may be directed to Daniel Kehew at (916) 227-0425, or via email at DRERegulations@dre.ca.gov. The backup contact person is Mary Clarke at (916) 227-0780.

Dated:

Sacramento, California



Daniel E. Kehew
Real Estate Counsel
Sacramento Legal Office

INITIAL STATEMENT OF REASONS
FOR THE ADOPTION OF RULES UNDER THE
CALIFORNIA FORECLOSURE PREVENTION ACT

As required by Section 11346.2 of the Government Code, the Commissioner (Commissioner) of the Department of Real Estate (Department) sets forth below the reasons for the proposed adoption of Article 16.5, Subarticle 1, Sections 2850.1, 2850.2, 2850.3, 2850.4, 2850.5, and 2850.6; Subarticle 2, Sections 2850.7 and 2850.8; Subarticle 3, Section 2850.9; and Subarticle 4, Section 2850.10 in Chapter 6 of Title 10 of the California Code of Regulations (10 C.C.R. Sections 2850.1, 2850.2, 2850.3, 2850.4, 2850.5, 2850.6, 2850.7, 2850.8, 2850.9, and 2850.10).

I. BACKGROUND

In the fall of 2008, in response to the continuing foreclosure crisis in California, the Governor proposed to the Legislature a concept to reduce foreclosures by encouraging loan modifications in the marketplace. This plan was a follow-up to the Administration's previous actions to encourage loan modifications by servicers, including a November 2007 agreement with servicers intended to address resetting interest rates, and the signing of SB 1137 (Perata, Chapter 69, Statutes of 2008) in the summer of 2008, to require residential mortgage servicers to reach out to borrowers at least 30 days before a notice of default is filed in a foreclosure proceeding, to attempt to work out a solution.

The Governor's proposal involved encouraging residential mortgage loan servicers to streamline the process for modifying loans by changing the requirements for nonjudicial foreclosures for loans serviced by mortgage loan servicers that had not implemented a comprehensive loan modification program. The initial loan modification program model was based on the program that the Federal Deposit Insurance Corporation ("FDIC") announced for distressed loans of IndyMac Federal Bank, FSB. Through the legislative process, the Governor's proposal developed further and became the California Foreclosure Prevention Act. In February of 2009, during the second extraordinary session the Legislature sent to the Governor two bills enacting the California Foreclosure Prevention Act: ABX2 7 (Lieu – 2009) and SBX2 7 (Corbett – 2009). On February 20, 2009, the Governor signed these bills.

II. ADOPTION OF RULES

Among other things, the California Foreclosure Prevention Act ("CFPA") requires the Commissioners of Corporations, Financial Institutions and Real Estate (collectively, "Commissioners") to adopt emergency regulations to clarify the application of Civil Code Sections 2923.52 and 2923.53; two sections within the California Foreclosure Prevention Act. The Commissioners adopted the emergency regulations and on June 1, 2009, the regulations were filed with the Secretary of State and became effective immediately. In accordance with the law's provisions, 14 days after the effective date of the regulations, the CFPA became operative. These emergency regulations were readopted by the Commissioner on December 1, 2009.

1. Invitation for Comments

The Departments of Corporations, Financial Institutions, and Real Estate (collectively, "Departments") sought to incorporate the comments of interested parties into the rulemaking process before the public notice period for the emergency regulations.¹ On April 21, 2009, the Departments released draft rules to interested parties and the public with a request for comments by May 6, 2009.

The initial draft regulations that the Departments requested comments on were similar to the rules ultimately adopted, and included sections on the scope of the regulations, participant eligibility, availability of programs, program requirements, loan modification features, additional requirements, the application, the application form, and data collection. The initial draft regulations, dated April 21, 2009, are hereby incorporated by reference. In response to this invitation the Departments received 17 comment letters from interested parties.

The Departments considered the comments and amended the rules in appropriate circumstances. While most comments were directed at the substantive requirements of the rules, some comments were more broadly directed at the policy behind the CFPA. Several commentors requested clarification on the interplay between the rules and the U.S. Department of Treasury's Home Affordable Modification Program.² One commentor expressed concern with the impact of the legislation (and thus the rules) on small businesses that face losses from the repeated refinancings of borrowers, and requested that borrowers who received significant amounts of cash from the loan, or who were in default at the inception of the loan, be excluded from eligibility for a modification.³ One commentor objected to the legislation (and thus the rules) based on the concern that the CFPA would lengthen the real estate crisis.⁴ The California Financial Services Association inquired about the applicability of the data collection survey on federally-chartered institutions subject only to federal visitorial powers.⁵

The Departments received comments from other impacted industry groups, including representatives of a homeowner association ("HOA") and the United Trustees Association.⁶ The commentor representing HOAs suggested that modifying loans without taking into consideration HOA debt continues to leave a borrower vulnerable to foreclosure, and suggested areas of the rules where HOA debt should be incorporated.⁷

¹ See Government Code Section 11346.45 (although note that Gov't Code Section 11346.1(a)(1) provides that an emergency regulation is not subject to the provision).

² See e-mail dated 5/6/09 from Joe Loots, Cenlar FSB; e-mail dated 5/7/09 from Alicia Clarke, Residential Credit Solutions; and e-mail dated 5/6/09 from Daryl Mcleod, SVP Loss Prevention, Nationstar Mortgage.

³ See e-mail dated 5/6/09 from Jeff T.F. Rose, President, Rose Financial.

⁴ See e-mail dated 5/6/09 from David Huey, CEO, River Forest Financial, LLC.

⁵ See letter dated 5/6/09 from David C. Knight, Executive Director, California Financial Services Association.

⁶ See e-mails dated 5/5/09 and 5/11/09 from Andrew Schlegel, CCAM, EVP Finance, Merit Property Management, regarding HOAs, and Phillip M. Adleson, Adleson, Hess & Kelly, on behalf of the United Trustees Association.

⁷ The definition of "housing-related debt" in Civil Code Section 2923.53(k)(2) includes homeowner

The United Trustees Association indentified the impact of the rules on trustees who may be brought into disputes between servicers and borrowers, identified ambiguities in the rules, and requested a number of clarifications in the rules.⁸ These suggestions were considered, and where appropriate changes were made.

The California Credit Union League expressed support for the streamlined process to obtain an exemption for financial institutions that have adopted a comprehensive loan modification program in conformance with the federal Home Affordable Modification Program Guidelines. The league reiterated its support for a blanket waiver, rather than individual waivers, for modifications made as part of a comprehensive loan modification program, in conformance with the rules.⁹

First Federal Bank of California weighed in with comments on a number of key issues in the rules.¹⁰ Among other things, First Federal requested clarification that a lack of eligibility for a loan modification under, for example, the eligibility provisions of the rules, does not subsequently result in the borrower being eligible for 90 additional days in the foreclosure process. The Departments considered whether clarification was necessary, but determined that the statutory language of the CFPA was clear that a single order of exemption from a Commissioner exempted a servicer from the additional 90 days in the foreclosure process, regardless of whether any particular borrower is eligible for a modification under that servicer's program.¹¹

An additional issue raised by First Federal was whether the Departments' draft rules had accurately interpreted Civil Code Section 2923.53(a)(2), providing that a loan modification program targets a ratio of borrower's housing-related debt to the borrower's gross income of 38% or less, on an aggregate basis. The Departments' draft rules required a servicer to explain the reasons why a higher ratio was accepted on loans. First Federal and others raised concern that the Departments' approach was not consistent with the statute, since the statute did not require that every loan meet a 38% debt-to-income ratio, but instead provided that a comprehensive program should target a 38% debt-to-income ration on an aggregate basis.¹² In contrast, the standard

association fees.

⁸ In addition to Phillip M. Adleson, Adleson, Hess & Kelly, on behalf of the United Trustees Association, requesting the need for additional definitions, by e-mail dated 5/6/09, Matthew S. Reynolds, Kroloff, Belcher, Smart, Perry & Christopherson, attorneys for Rabo Agrifinance, Inc., also identified the need to further define terms.

⁹ Letter dated 5/6/09 from Bill Cheney, President/CEO, California and Nevada Credit Union Leagues. An exemption or waiver for credit unions had been advocated in other forums, such as the March 18, 2009 Senate Banking, Finance & Insurance hearing entitled, "Making State and Federal Mortgage Foreclosure Rescue Plans Work: Can At-Risk Homeowners Be Saved?"

¹⁰ Letter from David W. Anderson, EVP/Chief Credit Officer, First Federal Bank of California.

¹¹ Civil Code Section 2923.52 provides a servicer that has obtained an order from one of the Departments with an exemption from the additional 90-day requirement for all of the loans serviced by the servicer, provided that the servicer has an approved comprehensive loan modification program. Nevertheless, the minimum standards for a comprehensive loan modification program in the rules do not require a program to modify loans for loans or borrowers not meeting the eligibility requirements of the rules, for a servicer to have all of its loans exempted from the additional 90 days in the foreclosure process. By letter dated 5/6/09, the California Bankers Association also requested that this point be made clear in the rules.

¹² By letter dated 5/6/09, the California Bankers Association also expressed concern with the manner the rules were interpreting the provision.

waterfall process under the Home Affordable Modification Program requires servicers to target a 31% debt-to-income ratio on a per-loan basis. Accordingly, the Departments amended the rules to more closely follow the statute.

First Federal and other commentors raised a concern with including junior liens in the calculation of housing-related debt to gross income, noting that the calculation was inconsistent with industry practice and federal modification programs, and suggesting that this formula may result in fewer loans qualifying for a modification under the net present value comparison of foreclosure to loan modification.¹³ This provision was changed to more closely follow the federal program. First Federal also questioned whether the modification data requested in the loan application was necessary, suggesting that the purpose for requesting modification data with the application was unknown, and indicating that compliance was difficult and burdensome in a short time period.¹⁴ The Departments considered the comments but determined that for servicers who have the data available, the data permits the Departments to more fully evaluate the servicers' loan modification program.

A consortium of consumer and public interest groups collectively weighed in on the rules.¹⁵ They commented on several areas where the rules could better promote the accessibility of the loan modification programs to borrowers, such as placing the burden on servicers to consider loan modifications for all eligible borrowers, not permitting second liens to affect eligibility for a modification, permitting greater flexibility in underwriting criteria, expanding eligibility to borrowers in bankruptcy, including the telephone number for HUD approved housing counseling agencies on all correspondence, and expanding the net present value test to include principal reduction.¹⁶ The consortium further commented on the greater need for transparency and suggested that all applications be placed on the Internet, that all data be made

¹³ See also letter dated 5/5/09 from Private National Mortgage Acceptance Company, LLC ("PennyMac"), and letter dated 5/6/09, from the California Bankers Association. The California Bankers Association noted that this proposed rule marked a significant departure from the Home Affordable Modification Program Guidelines.

¹⁴ The California Mortgage Association also expressed concern with the availability of the data (letter dated 5/6/09 by Phillip M. Adleson, Adleson, Hess & Kelly, on behalf of the California Mortgage Association). The California Bankers Association expressed concern with the workload and potential preemption concerns.

¹⁵ Letter dated 5/6/09 from Affordable Housing Services, California Reinvestment Coalition, California Rural Legal Assistance, Consumer Action, Consumers Union, East LA Community Corporation, Fair Housing Council of San Diego, Fair Housing Counsel of the San Fernando Valley, Fair Housing Law Project, Fair Housing of Marin, Housing and Economic Rights Advocates, Housing Opportunities Collaborative, Korean Churches for community Development (KCCD Housing Counseling Agency), Law Foundation of Silicon Valley, Legal Aid Foundation of Los Angeles, Unity Council, and Visionary Home Builders. These organizations represent nonprofit housing counseling agencies and collaboratives, legal service offices, affordable housing developers, fair housing councils, and advocacy and policy groups.

¹⁶ By letter dated 5/5/09, PennyMac recommended the removal of a provision requiring a servicer to make a reasonable attempt to obtain the consent of a subordinate lien holder, suggesting that loans may be modified without this consent and the requirement added undue delay. By letter dated May 13, 2009, Select Portfolio Servicing, Inc. suggested that that in most instances consent of the second lien holder is not necessary. However, by letter dated 5/6/09, the California Bankers Association supported the provision in the draft rules, indicating that in some instances a second lienholder has rights that may prevent the first lienholder from modifying its loan.

publicly available, that data collection include information about race and ethnicity, and that data reporting link modification terms to redefault rates. Additionally, the consortium commented that establishing the sustainability of loans be narrowed, that servicers disclose the identify of investors and demonstrate efforts to secure investor approval of modifications, that servicer establish compliance with SB 1137 in the Notice of Sale, and that servicer meet HOPE NOW timelines. In addition to other comments, the consortium recommended that the rules clarify the circumstances for the revocation of an exemption. The Departments considered the comments, and where appropriate, amended the rules to incorporate suggestions. When considering heightened reporting requirements and making servicer information public, the Departments were cognizant of the goal of the CFPB to encourage servicers to commit to loan modification programs rather than acquiescing to a longer foreclosure process.

NID Housing Counseling Agency expressed concern that the draft regulations did not sufficiently capture the intent of the CFPB, and recommended that servicers be required to reach out to borrowers with high debt-to-income ratios, borrowers in imminent danger of default, and senior citizens who received loans since 2003.¹⁷ The agency further recommended that servicers have a specific, affirmative outreach strategy in place to reach underserved borrowers, ethnic/racial minorities, and the elderly in high foreclosure zip codes; that servicers report on race/ethnicity and zip code information; and that servicers report the rationale for declining loan modifications. Finally, NID Housing Counseling Agency explained the pitfalls of permitting a temporary exemption before a servicer has established a comprehensive loan modification program, recommending that servicers demonstrate borrower safeguards to ensure that all requests are reviewed and responded to within 30 days, servicers have a transparent rationale for decisions, and servicers have an appeals process and timeline. The Departments considered the comments, and where appropriate, amended the rules.

Private National Mortgage Acceptance Company, LLC ("PennyMac") recommended that the rules not permit the exclusion of borrowers who have contracted with third parties to advise the borrowers on extending the foreclosure process or avoiding their contractual obligations. PennyMac also recommended that the regulations not require a web address describing the loan modification program. PennyMac indicated that it does not disclose the contents or methodology for its proprietary loan modification programs for competitive reasons, and indicated that it uses its programs in the acquisition and disposition of assets. There Departments consider the comments and amended the rules, as appropriate.

The California Mortgage Association ("CMA") indicated that its members make or arrange loans held by multiple lenders or mortgage pools, and the servicing relationships are governed by loan servicing agreements or by pool management agreements requiring the consent of the investors or the consent of a majority of the investors regarding post-default decisions, including modifications.¹⁸ The CMA

¹⁷ Letter dated 5/5/09 from Jacqueline Carlisle, Executive Director, NID Housing Counseling Agency.

¹⁸ Letter dated 5/6/09 from Phillip M. Adleson, Adleson, Hess & Kelly, on behalf of the California Mortgage Association.

identified the lack of incentive for these servicers to obtain an exemption under the CFPA, given their inability to participate in the Home Affordable Modification Program, which provides financial incentives to institutional lenders to make loan modifications. The CMA further described the burdens and costs of the rules, and suggested the rules expressly permit servicers to charge borrowers for modifications.

The CMA suggested that the CFPA and rules should not permit investors who opt out of modifying loans to have the benefit of the exemption, and identified the need to clarify the meaning of several terms and phrases in the rules. The CMA further suggested that the requirement that the program target a debt-to-income ratio of 38% on an aggregate basis may provide a perverse incentive for servicers to exclude borrowers who would not be able to meet this criteria from the program. The CMA recommended that the types of modifications be expanded to include forgiveness or deferral of unpaid principal, late charges and other arrearages, and further recommended clarifications on the timing of modifications, the modification of a modified loan, and the application declaration. Additionally, the CMA recommended clarifying the Notice of Sale exhibit in the application, clarifying whether multiple exemptions were needed for multiple licenses, and defining several terms in the data collection form. The Departments considered the comments and amended the rules, where appropriate.

The California Bankers Association ("CBA") commented on the importance of the state law and rules not conflicting with comparable federal programs, and not requiring concurrent compliance. The CBA suggested the rules clarify that a servicer is not required to comply with both the Home Affordable Modification Program Guidelines and the rules, and recommended various amendments on this point. The CBA commented that a provision requiring servicers to have criteria to ensure that the granting of modifications is applied fairly to applicants was burdensome given the unique characteristics of borrowers and loans, and suggested that laws already exist to prevent the discriminatory treatment of consumers. The CBA suggested clarification regarding certain terms and phrases, and suggested that the rules clarify that banking institutions may seek exemptions through the Department of Financial Institutions. The CBA made a number of comments similar to those of other commentors. Finally, the CBA identified areas in the application requiring further clarification, questioned the need for a notarized application signed under penalty of perjury, and questioned the value of monthly reporting. CBA offered to work with the Departments to develop reporting procedures. The Departments considered the comments and amended the rules, where appropriate.

Select Portfolio Servicing, Inc. ("SPS") and other commentors commented on the use of the term "customary underwriting and analysis," and suggested that by the time a servicer is involved with the distressed mortgage loans, the time for "customary underwriting" has passed and will not be effective in deciding whether a modification is warranted.¹⁹ SPS suggested deferring to the Home Affordable Modification Program Guidelines, to address the significant issues servicers encounter in determining who is

¹⁹ Letter dated 5/13/2009 by Jeff Graham, Senior Vice President & Chief Compliance Officer, Select Portfolio Servicing, Inc.

eligible for relief under a modification. Along with other commentors, SPS expressed concern with obtaining the consent of second lien holders, and, along with other commentors, commented on the difficulty of creating parameters for the flow of the modification process to ensure neither servicers nor borrowers are harmed by the other party's delays.

Upon consideration of all of the comments, the rules were amended to incorporate many of the changes recommended by interested parties. However, not all of the recommendations were incorporated into the rules. In incorporating recommendations, the Departments attempted to balance the competing goals of encouraging as many servicers as possible to participate, while at the same time facilitating the delivery of meaningful loan modifications to borrowers facing hardships.

2. 5-Day Notice and Filing of Emergency Regulations

On May 14, 2009, the Departments released revised regulations on their websites, electronically and by mail to interested parties. The revised regulations are incorporated by reference. The Departments received additional comments from the California Bankers Association, the California Mortgage Association, and the United Trustees Association.²⁰ After reviewing and considering these comments, additional changes were made to the emergency regulations and on May 21, 2009, they were filed with the Office of Administrative Law. With minor changes, the Office of Administrative Law approved the regulations and filed them with the Secretary of State on June 1, 2009. The law became operative on June 15, 2009. The emergency regulations were readopted on December 1, 2009.

III. PROPOSED REGULATIONS

In this rulemaking action the Commissioner seeks to permanently adopt the emergency regulations filed with the Secretary of State on June 1, 2009, operative June 15, 2009, and readopted on December 1, 2009, clarifying the application of Civil Code Sections 2923.52 and 2923.53 of the California Foreclosure Prevention Act.

The Commissioner proposes to adopt Article 16.5 to Chapter 6 of Title 10 of the California Code of Regulations, entitled "California Foreclosure Prevention Act." In addition, the Commissioner proposes to adopt Subarticle 1 to that subchapter, entitled, "Requirements." Within Subarticle 1 the Commissioner proposes to adopt six sections.

1. Section 2850.1: Scope of Regulations

Section 2850.1, entitled, "Scope of Regulations," defines the scope of the regulations. The section provides that the subchapter clarifies the application of Civil Code Sections 2923.52 and 2923.53, and sets forth the minimum requirements for a mortgage loan servicer to obtain an order of exemption from Civil Code Section

²⁰ See letter dated 5/19/09 by Leland Chan, General Counsel, California Bankers Association, letter dated May 20, 2009, by Phillip M. Adleson, Adleson, Hess & Kelly, on behalf of the California Mortgage Association and the United Trustees Association.

2923.52. Civil Code Section 2923.52 provides that a trustee may not proceed with a foreclosure sale until the lapse of an additional 90 days after a notice of default is filed on a mortgage, in addition to the 3 months time required in existing law.²¹ However, Civil Code Section 2923.52 provides that a mortgage loan servicer may obtain an order exempting it from the 90-day time period, if the mortgage loan servicer has implemented a comprehensive loan modification program.

Section 2850.1 of the proposed rules further provides that the modification of loans in conformance with the Home Affordable Modification Program Guidelines issued by the U.S. Department of the Treasury on March 4, 2009, as amended, shall constitute the implementation of a comprehensive loan modification program and shall be deemed to meet all of the requirements in the article. This provision was added to the emergency regulations and is now proposed in the permanent rules to coordinate loan modification relief efforts with the federal government, to reduce regulatory burdens that may unnecessarily delay loan modification programs, and to encourage servicers to participate in the federal program.

The section also defines "residential mortgage loan" and "borrower." "Residential mortgage loan" is defined the same as the definition in the Secure and Fair Enforcement Mortgage Lending Act (Title V of P.L. 110-289, the Housing and Economic Recovery Act of 2008),²² and is limited to consumer loans secured by residential real estate. "Borrower" is defined as a person who was the original obligor on the note or who has formally assumed the loan with the consent of the mortgagee.²³ The definitions seek to include the persons and transactions that the legislation intended to help.

2. Section 2850.2: Eligibility

Section 2850.2, entitled "Eligibility," sets forth the minimum eligibility requirements for a borrower and residential mortgage loan under a comprehensive loan modification program, in order for the program to obtain an order of exemption from the Commissioner. A mortgage loan servicer's comprehensive loan modification may be more inclusive than the minimum requirements set forth in this section, but may not be less inclusive, to obtain an order of exemption. Generally, modifications must be available for borrowers and loans meeting the following requirements:

1. The loan was made between January 1, 2003 and January 1, 2008,
2. The borrower lives in the property,
3. The loan is in default,
4. The loan is a first lien on property in California,

²¹ See Civil Code Section 2924.

²² This definition was recommended by Matthew S. Reynolds, Kroloff, Belcher, Smart, Perry & Christopherson, attorneys for Rabo Agrifinance, Inc., by e-mail dated 5/6/09, in response to the Departments' invitation for comments. The commentor recommended the S.A.F.E. Mortgage Act definition of "residential mortgage loan" to ensure the CFPA's coverage was limited to non-commercial loans.

²³ This definition was suggested in a letter dated 5/6/09 from Phillip M. Adleson, Adleson, Hess & Kelly, on behalf of the California Mortgage Association.

5. The borrower can document the ability to pay the modified loan,
6. The borrower has not surrendered the property, the borrower is not engaged in a bankruptcy proceeding, and the borrower has not contracted to delay the foreclosure process while intending to leave the property.

The minimum eligibility requirements are intended to ensure that loan modification programs include, at a minimum, loans made during the height of lending activity, and to apply to borrowers residing in their homes. The proposed rules are intended to assist borrowers facing financial hardship, as demonstrated by the minimum requirement that loans in default be included in the modification program. This provision and all of the minimum eligibility standards are not intended to limit the scope of the program, but instead to define the floor of borrowers that must be included in a program for the program to constitute a comprehensive loan modification program.

3. Section 2850.3: Availability

Section 2850.3, entitled, "Availability," requires the loan modification program to be made available to all persons and loans meeting the eligibility requirements who notify their servicer of a financial hardship or to request a loan modification. In addition, the section requires a servicer to reach out to borrowers in financial hardship by including information on the comprehensive loan modification program when contacting borrowers as required at least 30 days before the service of a Notice of Default under Civil Code section 2923.5 (see SB 1137 (Perata, Chap. 69, Stats. 2008)). The affirmative obligation to reach out to borrowers in default and notify them of the program, as well as the requirement that the program be made available to all eligible borrowers who contact the servicer, are intended to ensure that the program is made available to those borrowers most in need of the program.

4. Section 2850.4: Program Requirements

Sections 2850.4, 2850.5 and 2850.6 set forth the minimum requirements for a comprehensive loan modification program. Section 2850.4 provides that a comprehensive loan modification program must meet the requirements of both Sections 2850.5 and 2850.6.

5. Section 2850.5: Loan Modification Features

Section 2850.5, entitled, "Loan Modification Features," provides that loans refinanced in accordance with the Hope for Homeowners Program or the Home Affordable Refinance Program are deemed to meet the minimum requirements of a comprehensive loan modification program. While loan work outs under these federal programs constitute refinancings rather than modifications, the recognition of the federal programs in the Rules is intended to clarify that servicers may continue participating in those programs even for borrowers meeting the minimum eligibility requirements for modifications under these Rules.

The California Foreclosure Prevention Act provides that a servicer need only modify a loan where the anticipated recovery from a modification exceeds the

anticipated recovery from a foreclosure, on a net present value basis. Consequently, Section 2850.5 of the proposed rules provides clarification on determining the net present value. The rule provides that the net present value must be based on reasonable assumptions regarding discount rates, property values, costs of foreclosure, costs of modification, and the ability of the borrower to repay the loan. The proposed rule requires a servicer to have internal or external evidence to support the assumptions, and provides that the "Net Present Value Model Parameters" in the Home Affordable Modification Program Guidelines, meets the requirements of the section and does not require supporting evidence. The purpose of these provisions is to ensure that the net present value test to determine a borrower's eligibility for a loan modification is fair and reasonable.

The proposed rules further require servicers to explain deviations from the "Net Present Value Model Parameters" in the exemption application. This provision is intended to facilitate the ability of the Departments to evaluate deviations from the federal standard. The proposed rules require that a loan be modified where the net present value of modifying the loan exceeds the net present value of foreclosing on the loan, provided that the borrower can document income, and provided that after the loan is modified, the borrower can establish the ability to pay the modified loan. This provision is intended to ensure that loans are modified for eligible borrowers.

The California Foreclosure Prevention Act provides that a comprehensive loan modification program must target a ratio of a borrower's housing-related debt to a borrower's gross income of 38% or less, on an aggregate basis. Consequently, Section 2850.5 of the proposed rules provides that a servicer's loan modifications are to target a 38% housing-related debt to gross income ratio, on an aggregate basis. The rules clarify that a servicer is not required to meet this ratio for every loan modified under the program. The rules further provide that a servicer must identify the reasons in its application the reasons its program does not achieve a 38% housing-related debt to gross income ratio, on an aggregate basis, if such is the case. This explanation is necessary to allow the Departments to evaluate the derivations from 38% housing-related debt to gross income ratio.

Section 2850.5 of the proposed rules provide that a comprehensive loan modification program must include at least two of the following features:

1. An interest rate reduction, as needed, for at least 5 years,
2. An extension of amortization period for the loan term to no more than 40 years from the original date of the loan,
3. Deferral of some portion of the principal until maturity,
4. A reduction in principal,
5. Compliance with a federally mandated loan modification program, or
6. Any other feature that Commissioner determines is appropriate, as described in the servicer's application.

The proposed rules clarify that a program must include at least two of the identified features, but a single loan modification need not include more than one feature. The rules further require that a servicer have criteria in place to define when

borrower qualifies for the potential concessions or modifications. The provisions are intended to clarify the minimum requirements of a program, and to ensure that a program has established criteria regarding potential concessions or modifications.

The California Foreclosure Prevention Act provides that when determining a loan modification solution for a borrower, a servicer must seek to achieve long-term sustainability. Consequently, Section 2850.5 sets forth characteristics that are presumed to constitute long-term sustainability, including:

1. The modification reduces a borrower's monthly payment for at least 5 years,
2. The modification results in a housing-related debt to income ratio of 38% or less,
3. After a modification, the borrower's back-end debt-to-income ratio is equal to or less than 55%,
4. The borrower is current under the terms of a modified loan at the end of a 3 month period, or
5. The modification is in accordance with a federal program.

These provisions are intended to provide guidance on achieving long-term sustainability by setting forth features or modification results that suggest a loan modification is sustainable.

6. Section 2850.6. Other Requirements for Comprehensive Loan Modification Programs

In addition to the foregoing, Section 2850.6 sets forth additional proposed requirements for a loan modification program. Subsection (a) sets forth conditions when a loan modification consists solely of a repayment plan. In particular, a servicer must be able to validate that the borrower has a housing-related debt to gross income ratio of 38% or less, and that the borrower can repay the loan. The subsection further defines a repayment plan as a plan or arrangement where amounts past due are added to the principal amount due on a loan and re-aged so that a loan is no longer delinquent, and no other loan concessions are provided to the borrower. This subsection is intended to ensure that a servicer's loan modification program does not consist solely of amortizing past due amounts into a borrower's outstanding loan balance, but instead provides loan concessions that offer borrowers facing financial hardships with assistance intended to help the borrowers stay in their homes.

Subsection (b) requires all eligible borrowers to be considered for modification under the plan unless an applicable pooling and servicing agreement prohibits the modification. This provision is intended to acknowledge that servicers may be unable to offer loan modifications to some borrowers, where pooling and servicing agreements prevent the modifications. Subsection (c) requires a servicer to use reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties, including junior lien holders and investors. This provision is intended to require servicers to make a reasonable attempt to reach out to investors and junior lien holders, where necessary, prior to rejecting a loan modification request.

Subsection (d) requires a servicer to act on a loan modification request within a

reasonable time period, and requires a servicer to have procedures in place to ensure that delays in the process not caused by a borrower do not adversely impact a borrower in the loan modification or foreclosure process. Subsection (d) further requires a servicer to acknowledge the receipt of a loan modification request. These provisions are intended to protect a borrower from foreclosure while the borrower has a request for a loan modification pending with a servicer.

Subsection (e) permits a servicer to deny a loan modification request when a borrower abandons or unduly delays the process. Prior to denying the modification request, the servicer must notify the borrower in writing of the time period to respond and the consequence of failing to respond in a reasonable time. These provisions are intended to ensure that a borrower cannot delay the loan modification process from failing to respond to the servicer, while ensuring that the borrower has notice before the servicer declines a modification request as a result of delay. Subsection (f) provides that a comprehensive loan modification program may include foreclosure alternatives for borrowers who do not qualify for a loan modification program. This provision recognizes that not all situations will qualify for a loan modification. Subsection (g) provides that a servicer is not required to modify a loan more than once. This provision is intended to resolve the question of how many times a servicer is required to modify a loan.

7. Section 2850.7. Initial Application

Within Subarticle 2, the Commissioner proposes to adopt two sections. Section 2850.7, entitled "Initial Application," sets forth instructions on the filing of the application. This section provides that an applicant shall be temporarily exempt from Civil Code Section 2923.52(a) upon the filing of a substantially complete application. This provision is necessary to ensure that the exemption applications meet a minimum standard to qualify for the temporary exemption. The following items provide instructional information to servicers to facilitate the application process. Item 1 instructs applicants on where to file the application, and identifies how an applicant determines whether to file an application with the Department of Corporations, the Department of Financial Institutions, or the Department of Real Estate. Item 2 instructs applicants on when to file an application, and provides that an applicant will be temporarily exempt from Civil Code Section 2923.52(a) upon the appropriate department's receipt of the application.

Item 3 sets forth the manner for the Department to notify an applicant of the temporary order. Item 4 provides that the Department will notify the applicant of whether the applicant has a comprehensive loan modification program within 30 days of the receipt of an application, and notify the applicant of the issuance of a final order. Item 5 provides that upon the denial of an application, the Department will immediately notify the servicer, and the temporary order will remain in effect for 30 days following the denial. Item 6 provides that the Department will accept changes to an application while the application is under consideration.

8. Section 2850.8. Changes to Program After Final Order

Section 2850.8, entitled "Changes to Program After Final Order," sets forth procedures for the modification of a program after the receipt of a final order. Subdivision (a) prohibits a servicer from modifying a program after a final order is issued unless the servicer informs the Commissioner of the change. This provision is necessary to ensure that a servicer's loan modification program does not materially deviate from the program submitted to the Department, while at the same time allowing flexibility as experience develops regarding the efficacy of program provisions. Subsection (b) provides that a change to a federal program does not constitute a change to a comprehensive loan modification program and does not require notice to the Commissioner. This provision is intended to recognize the potential for changes to the federal programs, as federal law continues to develop in this area, and to relieve servicers of any regulatory burden under the CFPA that may result from such changes.

9. Section 2850.9. Application Form

Subarticle 3 consists of Section 2850.9, which incorporates the application form. The application requests identifying information from an applicant, requests information on whether an applicant is participating in a loan modification program administered by a federal agency, and requires an applicant to submit several exhibits. The information is necessary for the Departments to evaluate whether an applicant has a loan modification program that meets the requirements of the law and regulations. Exhibit 1 requires an applicant to describe its loan modification program, and to direct the Department to where within the submitted documentation the specified program requirements are located. Exhibit 2 requires an applicant to submit copy of the declaration to be included with the notice of sale, as required by Civil Code section 2923.54. Exhibit 3 requires an applicant to provide the notice to consumers required by Section 2850.3 of these rules. Exhibit 4 requires an applicant to submit 3 months of recent loss mitigation data.

Exhibit 5 requires an applicant to provide additional documentation for other items in the application, if applicable, including the differences between the net present value used by the applicant and the Department of the Treasury's Net Present Value Model Parameters, the reasons the servicer's program is unable to achieve an aggregate debt-to-income ratio of 38% or less, and a description of any additional features in the program to be considered by the Commissioner. The application provides that exhibits 1, 4 and 5 are confidential, and requires the application to be signed under penalty of perjury by a specified control person. The confidential treatment of exhibits is intended to recognize that some servicers consider their loan modification programs to be trade secrets, and to encourage servicers to apply for the exemption and commit to comprehensive loan modification programs.

10. Section 2850.10. Reports

Subarticle 4 consists of Section 2850.10, entitled "Reports." This section provides that upon request of the Commissioner, a servicer shall report loan modification data to the Commissioner on a quarterly basis. The section further incorporates a form for quarterly reporting. The section provides that a servicer may

request a hardship exemption from the Commissioner, and provides that the Commissioner may accept a report required by a federal loan modification program, in lieu of the report required in this section. This section is intended to provide a means for the Departments to measure the efficacy of the CFPA, while simultaneously not unduly burdening smaller servicers whose modification data is statistically insignificant. In accordance with Government Code Section 11346.3(c), the Commissioner hereby finds that a report on loan modifications achieved under the CFPA is necessary for the welfare of the people of the state.

ECONOMIC IMPACT (GOVERNMENT CODE SECTION 11346.2(b)(4))

The initial determination that the proposed regulatory action will not have a significant adverse economic impact on business is based on the content of the comment letters received from the public in response to the Department's invitation for comments on April 21, 2009.

TECHNICAL STUDIES RELIED UPON

The Department did not rely upon any technical, theoretical, or empirical study, report, or other similar document in proposing this regulatory action.

ALTERNATIVES CONSIDERED

The Department is not aware of any reasonable alternatives to this proposed rulemaking action for carrying out the purposes for which this action is proposed. The Department has determined that no alternatives would lessen the impact of this rulemaking action on small business.

STATE OF CALIFORNIA
DEPARTMENT OF REAL ESTATE

TEXT OF PROPOSED CHANGES UNDER THE
CALIFORNIA FORECLOSURE PREVENTION ACT
PURSUANT TO NOTICE
DATED: December 17, 2009

1. Article 16.5 is added to Chapter 6, Title 10 of the California Code of Regulations to read:

ARTICLE 16.5. CALIFORNIA FORECLOSURE PREVENTION ACT

SUBARTICLE 1. REQUIREMENTS

2. Section 2850.1 is adopted to read:

§ 2850.1. Scope of Regulations.

(a) This article clarifies the application of Civil Code Sections 2923.52 and 2923.53, and sets forth the minimum requirements for a comprehensive loan modification program under Civil Code Section 2923.53, in order for a mortgage loan servicer to obtain an order of exemption from Civil Code Section 2923.52.

(b) The modification of loans in conformance with the Home Affordable Modification Program Guidelines issued by the U.S. Department of the Treasury on March 4, 2009, as amended (the "Guidelines"), shall constitute the implementation of a comprehensive loan modification program that meets the requirements of subdivision (a) of Civil Code Section 2923.53, and shall be deemed to meet all of the requirements in this subarticle (including Sections 2850.2, 2850.3, 2850.4, 2850.5, and 2850.6 of these rules). All other comprehensive loan modification programs shall comply with the minimum standards in this subarticle to obtain an order from the Commissioner for exemption from Civil Code Section 2923.52.

(c) For purposes of this article, "residential mortgage loan" shall mean any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or

residential real estate upon which is constructed a dwelling (as so defined).

(d) For purposes of this article, "borrower" shall mean a person who was the original obligor on the note or other secured obligation primarily for personal, family or household use and who is the trustor or mortgagor under the security device. "Borrower" includes a person who has formally assumed the secured obligations with the written consent of the beneficiary or mortgagee.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

3. Section 2850.2 is adopted to read:

§ 2850.2. Eligibility.

(a) For an applicant to obtain an order of exemption from Civil Code Section 2923.52, the comprehensive loan modification program shall, at a minimum, be available for borrowers and residential mortgage loans meeting the following requirements:

1) The residential mortgage loan to be modified was recorded during the period of January 1, 2003 to January 1, 2008.

2) The borrower occupies the property as his or her principal residence, and occupied the property as his or her principal residence at the time the loan became delinquent.

3) The loan is in default, and a notice of default has been filed with the county recorder under Civil Code Section 2924 for the mortgaged property.

4) The residential mortgage loan is the first lien on the property, and either the property is not subject to a subordinate lien, the subordinate lien holder has agreed to subordinate to the modified first lien, or an agreement from the subordinate lien holder is not necessary for the first lien to remain in first position upon the modification of the loan.

5) The mortgaged property is located in California.

6) The borrower can document assets, income or likelihood of future earnings to establish the ability to repay the modified loan, using customary underwriting criteria and analysis or current industry standards.

7) The borrower has not surrendered the property.

8) The borrower has not contracted with an organization, person or entity whose primary business is advising people who have decided to leave their homes regarding how to extend the foreclosure process and avoid their contractual obligations to mortgagees or beneficiaries.

9) The borrower does not currently have a bankruptcy action pending under Chapter 7, 11, 12, or 13 of Title 11 of the United States Code.

(b) Nothing in this section prohibits a mortgage loan servicer from including more residential mortgage loans and more borrowers in a comprehensive loan modification program than the minimum set forth in this section, including the borrowers described in paragraphs 8 and 9 of subsection (a) of this rule. For example, the Commissioner will consider a program that includes borrowers whose loans have not yet become delinquent, but such delinquency is reasonably imminent. For purposes of this article, "delinquent" means that the borrower has defaulted on an obligation in the note, deed of trust, mortgage or related loan documents for 30 or more days. "Delinquent" does not include defaults based upon failure to pay at maturity except where maturity has been accelerated and is subject to reinstatement pursuant to Civil Code Section 2924c.

(c) A mortgage loan servicer that has obtained an order from the Commissioner exempting it from Civil Code Section 2923.52(a) is not required to provide a borrower identified in subsection (a) of this rule with an additional 90 days in the foreclosure process.

(d) A comprehensive loan modification program may, but need not, provide for the modification of a loan for a borrower or residential mortgage loan that does not meet the eligibility requirements in subsection (a) of this rule.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

4. Section 2850.3 is adopted to read:

§ 2850.3. Availability.

(a) For an applicant to obtain an order of exemption from Civil Code Section 2923.52, the comprehensive loan modification program shall, at a minimum, be made available to any borrower meeting the eligibility requirements of Section 2850.2 of these rules who calls, writes, or otherwise communicates with the mortgage loan servicer to notify the servicer of a financial hardship or to explore modifications to an existing loan, and shall be made available to borrowers as part of the contact required under Civil Code Section 2923.5.

(b) Every servicer that contacts a borrower in writing under Civil Code Section 2923.5 shall notify the borrower of the availability of the servicer's comprehensive loan modification program.

(c) A servicer is not required to comply with this section if the loan is investor-owned and the pooling and servicing agreement or other contract prohibits the servicer from modifying the loan terms in the manner set forth in this ~~subchapter~~ article.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

5. Section 2850.4 is adopted to read:

§ 2850.4. Program Requirements.

For an applicant to obtain an order of exemption from Civil Code Section 2923.52, the comprehensive loan modification program shall meet the minimum requirements in Sections 2850.5 and 2850.6 of these rules.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

6. Section 2850.5 is adopted to read:

§ 2850.5. Loan Modification Features.

(a) Any residential mortgage loan refinanced under the HOPE for Homeowners Program of the HOPE for Homeowners Act of 2008 (Title IV of Division A of the Housing and Economic Recovery Act of 2008 (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008) as amended, and the rules adopted thereunder) is conclusively presumed to meet the minimum requirements for a loan modification under a comprehensive loan modification program.

(b) Any residential mortgage loan refinanced under the Home Affordable Refinance Program announced by the U.S. Department of the Treasury on February 18, 2009, is conclusively presumed to meet the minimum requirements for a loan modification under a comprehensive loan modification program.

(c) Anticipated Recovery (NPV) Test

(1) For purposes of determining the anticipated recovery from foreclosure and the anticipated recovery from a loan modification, the net present value of the anticipated recovery shall be based on reasonable assumptions regarding discount rates, property values, costs of foreclosure, costs of modification, and ability of borrowers to pay. A servicer shall have internal or external evidence to support the validity of the assumptions in the calculations. The use of the Net Present Value Model Parameters in the Home Affordable Modification Program Guidelines, including applicable discount rates, cure rates and redefault rates, issued by the Department of the Treasury on March 4, 2009, and any amendments thereto, shall meet the requirements of this section and shall not require additional evidence or support. If a servicer's anticipated recovery (NPV) model differs from the Treasury's Net Present Value Model Parameters, a servicer shall explain the differences in the application and set forth a justification for the differences.

(2) Where the net present value of the anticipated recovery from a loan modification meeting

the parameters of this section exceeds the net present value of the anticipated recovery from foreclosure, the servicer shall provide a loan modification to eligible borrowers unless:

(A) A borrower is unable to document his or her ability to repay the loan; or

(B) After reducing the interest rate, extending the amortization period, forbearing principal, or modifying the loan in another manner reasonably designed to facilitate repayment of the loan, the servicer is unable to achieve a loan modification for the borrower that results in a borrower's ability to repay the loan, under customary underwriting criteria and analysis or current industry standards.

(d) Debt to Income Ratio of 38% or Less

(1) For purposes of applying the anticipated recovery test, a servicer shall target a 38% housing-related debt to gross income ratio. However, a servicer is not required to meet this ratio for every loan modified under the program. A servicer's loan modifications shall, on an aggregate basis, target a 38% housing-related debt to gross income ratio. A servicer may use any reasonable statistical analysis of loan modifications to establish that its loan modification program targets a 38% housing-related debt to gross income ratio on an aggregate basis, and may, but is not required to, include loan modifications beyond those meeting the minimum eligibility requirements under this article.

(2) For loan modification programs that do not achieve a 38% or lower ratio, on an aggregate basis, a servicer shall be able to establish other borrower characteristics that support a borrower's ability to repay the loan. These characteristics may include, but are not limited to, assets, a high income, low consumer debt, or any other borrower characteristics that support a borrower's ability to repay the loan, using customary underwriting criteria or current industry standards. If a servicer's comprehensive loan modification program does not achieve a debt-to-income ratio of 38% or lower, on an aggregate basis, the servicer shall explain in the application the reason for the higher ratio.

(3) For purposes of calculating housing-related debt to gross income, housing-related debt

does not include junior liens.

(e) Other Features

(1) A comprehensive loan modification program shall include at least two of the following features:

(A) An interest rate reduction, as needed, for a fixed term of at least 5 years.

(B) An extension of amortization period for the loan term, to no more than 40 years from the original date of the loan.

(C) Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan.

(D) Reduction of principal.

(E) Compliance with a federally mandated loan modification program.

(F) Any other factor the Commissioner determines is appropriate, as identified and described in the servicer's application and approved by the Commissioner. Some factors may include, but are not limited to, back-end debt-to-income ratios, elimination of certain delinquency-related charges, modifications for borrowers who are not delinquent, but where such delinquency is reasonably imminent, and other forms of modification that result in a reduction of monthly payments for borrowers.

(2) While a comprehensive loan modification program must include at least two of the features set forth in paragraph (1), each individual loan modification need not include two features.

(3) A servicer shall have criteria in place that define when a borrower qualifies for the potential concessions or modifications.

(f) Long-term Sustainability:

A loan modification shall be presumed to constitute a long-term sustainable modification if it includes at least one of the following characteristics:

(1) The modification provides a reduction in monthly payment for the borrower for at least 5 years;

(2) The modification provides the borrower with a housing-related debt to gross income ratio of 38% or less;

(3) After the modification, the borrower's back-end debt-to-income ratio (as defined in the Home Affordable Modification Program Guidelines issued by the Department of the Treasury on March 4, 2009) is equal to or less than 55%;

(4) The borrower is current under the terms of the modified loan at the end of a 3-month trial period; or

(5) The modification is pursuant to the Home Affordable Modification Program Guidelines, HOPE for Homeowners Program, or another federal program intended to reduce the rate of foreclosures.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

7. Section 2850.6 is adopted to read:

§ 2850.6. Other Requirements for Comprehensive Loan Modification Programs.

(a) If a loan modification consists solely of a repayment plan, a servicer must be able to validate that the borrower has a housing-related debt to gross income ratio of 38% or less, and that under customary underwriting analysis and criteria or current industry standards the servicer has reasonable grounds to support the ability of the borrower to repay the loan. For purposes of this subsection, a repayment plan means a plan or arrangement where loan amounts past due, including principal, interest, late fees or other penalties, are added to the principal amount due on a loan and re-aged so that the loan is no longer delinquent, and no other loan concessions as described in Civil Code Section 2923.53(a) are provided to a borrower.

(b) A servicer shall consider all eligible loans under this article unless prohibited by the rules of the applicable pooling and servicing agreement or other investor servicing agreements.

(c) A servicer shall use reasonable efforts to remove any prohibitions and obtain waivers or approvals from all necessary parties, including but not limited to junior lien holders and investors.

(d) For any request to modify a loan made by a borrower and received by the mortgage loan servicer prior to the expiration of 3 months following the recording of a notice of default, a servicer shall act on the request within a reasonable time period, and shall have procedures and processes in place to ensure that delays in the process not caused by a borrower do not adversely impact a borrower in the modification or foreclosure process. For purposes of this subsection, a mortgage loan servicer that evaluates a loan modification request in accordance with the time periods recommended in the HOPE NOW Mortgage Servicing Guidelines dated June 9, 2008, and hereby incorporated by reference, shall be deemed to be acting on a loan modification request in a reasonable time. Every mortgage loan servicer shall have a process in place to provide a borrower an acknowledgement of the receipt of a loan modification request. Nothing herein is intended to prevent a mortgage loan servicer from accepting and processing a borrower loan modification request received after three months from the date the notice of default is recorded.

(e) If a borrower fails to participate in the modification process by providing documentation within a reasonable time or otherwise abandoning the borrower's loan modification request, a servicer may decline the request and pursue other remedies such as foreclosure sale. For purposes of this subsection, a borrower that provides documentation within 2 weeks of a request by a servicer shall be presumed to have provided documentation within a reasonable time. A servicer shall notify a borrower in writing of the time period to respond to a request for information and the potential consequence of failing to provide information in a reasonable time, prior to declining a loan modification request because of a borrower's undue delay.

(f) A comprehensive loan modification program may include other foreclosure alternatives for borrowers who do not qualify for a loan modification or who no longer wish to remain in the property, such as short sales or deeds-in-lieu of foreclosure.

(g) A servicer is not required to modify a loan more than once, regardless of whether the modification was entered into prior to the operative date of the California Foreclosure Prevention Act (Civil Code Section 2923.52 et seq.) or thereafter pursuant to a comprehensive loan modification program approved by the Commissioner, provided that the initial modification reduced the borrower's monthly payments.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

8. Section 2850.7 is adopted to read:

SUBARTICLE II. APPLICATION

§ 2850.7. INITIAL APPLICATION.

An applicant shall be temporarily exempt from subdivision (a) of Civil Code Section 2923.52 upon the filing of the exemption application set forth in this rule, provided that the application is accepted by the Commissioner as substantially complete.

1. Where to File

(a) Applicants licensed by the Department of Corporations under either the California Finance Lenders Law or the California Residential Mortgage Lending Act, and any other entities servicing residential mortgage loans that are not described in subparagraphs (b) and (c), shall file their application with the Department of Corporations at the following address:

Foreclosure Exemptions - Department of Corporations

320 West 4th Street, Suite 750

Los Angeles, CA 90013-2344

Applications not filed by mail may be delivered to any of the Department of Corporations' locations.

Alternatively, applications may be submitted to the Department of Corporations through any electronic means that may be made available by the department at its Internet website (www.corp.ca.gov).

(b) Commercial or industrial banks, savings associations, or credit unions organized in this state shall file their application with the Department of Financial Institutions at the following address (for purposes of this regulation, the phrase "organized in this state" means institutions headquartered in this state):

Foreclosure Exemptions - Department of Financial Institutions

1810 - 13th Street

Sacramento, California 95811-7118

Applications may be submitted by electronic mail to foreclosures@dfi.ca.gov.

(c) Applicants licensed by the Department of Real Estate under the Real Estate Law shall file their application with the Department of Real Estate at the following address:

Foreclosure Exemptions - Department of Real Estate

P.O. Box 187007

Sacramento, CA 95818-7007

Applications may be submitted by electronic mail to foreclosures@dre.ca.gov.

The inadvertent filing of an application with the incorrect department will not constitute grounds for denial of the application.

2. When to File

An applicant may file an application at any time. An applicant will be temporarily exempt from subdivision (a) of Civil Code Section 2923.52 upon the receipt of the exemption application by the

appropriate Department as noted above. An application received before the operative date of Civil Code Section 2923.52 shall be deemed received upon the operative date of that section, for purposes of the temporary order under subdivision (b)(2) of Civil Code Section 2923.53.

3. Temporary Order

Upon the latter of the date of receipt of an application or the operative date of Civil Code Section 2923.52, the Department will immediately notify a servicer electronically of the issuance of a Temporary Order exempting the servicer from the requirements of subdivision (a) of Civil Code Section 2923.52. The Department will identify the servicer as having a Temporary Order on the Department's website, and mail a Temporary Order to the servicer.

4. Final Order

Within 30 days of the latter of the date of receipt of an application or the operative date of Civil Code Section 2923.52, the Department will notify the servicer of whether the servicer has a comprehensive loan modification program that meets the requirements of Civil Code Section 2923.53. Upon a finding that the loan modification program meets the requirements of that section, the Commissioner shall issue a Final Order, and shall immediately notify the servicer of the final order.

5. Denial of Application

If the Commissioner denies the exemption application, the Department shall immediately notify the servicer. The Temporary Order shall remain in effect for 30 days after the date of denial. A servicer may submit a revised application before or after the denial of an application. A revised application will not alter or delay the expiration of the Temporary Order. Upon the expiration of the Temporary Order, a servicer shall comply with subdivision (a) of Civil Code Section 2923.52.

6. Changes to Application

The Department will accept changes to an application while the application is under

consideration. However, the Temporary Order may not be extended.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

9. Section 2850.8 is adopted to read:

§ 2850.8. Changes to Program after Final Order.

(a) A servicer may not alter its comprehensive loan modification program after the servicer receives a Final Order from the Commissioner, unless the servicer informs the Commissioner of the change to be made to the program. Any alterations to the program that cause the program to fall out of compliance with the approved program shall require a new application for exemption from the Commissioner. Nothing herein shall prevent a servicer from adding additional features to the modification program where such features are designed to increase the eligible volume of loans to be modified, reduce the amounts of monthly payments to borrowers, or reduce the probability of redefault, provided that the Commissioner receives timely notice of such alteration. Such timely notice shall not be greater than sixty (60) days after the changes to the modification program are proposed or initiated.

(b) A change made by the federal government, or an agent thereof, to a federal program, including but not limited to the Home Affordable Modification Program, the Home Affordable Refinance Program, or the Hope for Homeowners Program, shall not constitute a change to a comprehensive loan modification program and shall not require a new application nor require notice to the Commissioner.

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

10. Section 2850.9 is adopted to read:

SUBARTICLE III. APPLICATION FORM

§2850.9. The exemption application shall be in the following form:

STATE OF CALIFORNIA
DEPARTMENTS OF
CORPORATIONS, FINANCIAL INSTITUTIONS,
AND REAL ESTATE

APPLICATION FOR ORDER OF EXEMPTION FROM
CIVIL CODE SECTION 2923.52(a)
CALIFORNIA FORECLOSURE PREVENTION ACT

The purpose of this application is to apply for an order of exemption from Section 2923.52 of the California Foreclosure Prevention Act (California Civil Code Section 2923.52 et seq.). The approval of this application by the Commissioner shall provide the applicant with an exemption from the additional 90-day delay period before a servicer may file the Notice of Sale when foreclosing on real property, as provided in Civil Code Section 2923.52.

Upon filing this application, the applicant will be issued a temporary order of exemption, effective from the latter of the date of receipt of the application or the operative date of Civil Code Section 2923.52. The temporary order of exemption remains in effect until a final order of exemption is issued or for thirty (30) days after the application is denied.

When completing the application, please note the following:

- The name of the applicant must be the applicant's legal name.

- The applicant's regulatory license number must be provided.
- If the applicant holds a license with more than one regulatory agency under the same legal name for the same entity, list the license numbers for each regulatory agency from which an order of exemption is requested.
- The applicant must provide the name, title, address, email address, and telephone number of the contact person to whom questions regarding the filing of this application should be directed.
- The application must be signed by the applicant if a sole proprietor, by a general partner if a partnership, or by an authorized officer if a corporation or other entity.

The applicant's loan modification program must meet the following requirements:

- The program is designed to keep borrowers in their homes when the anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis.
- The program targets a ratio of the borrower's housing related debt to gross income of 38% or less, on an aggregate basis in the program.
- The program includes a combination of the following:
 1. An interest rate reduction, as needed, for at least five years.
 2. An extension of the amortization period for the loan term, to no more than forty years from the original date of the loan.
 3. A deferral of some portion of the unpaid principal balance until the maturity of the loan.
 4. A reduction of principal.
 5. Compliance with a federally mandated loan modification program.

6. Any other factor the Commissioner determines is appropriate, as identified and described in this application and approved by the Commissioner (see 10 CCR § 2850.5(e)(1)(F)).

- In determining a loan modification solution for the borrower, the program seeks to achieve long-term sustainability for the borrower.

The appropriate page and paragraph from the loan modification program must be referenced on the application to show the program's compliance with the above requirements and expectations.

NOTE: A servicer is not required to violate a contractual agreement for the investor-owned loans or provide a modification to a borrower who is not willing or able to pay under the modification.

In addition to other required documentation, an applicant must submit with this application the declaration that meets the disclosure requirements of Civil Code Section 2923.54 that the applicant will include, or instruct the trustee to include, in the Notice of Sale. The declarations submitted with the application must state whether the servicer has obtained an order of exemption from the Commissioner that is current and valid on the date the Notice of Sale is recorded, and whether the additional 90-day period is applicable.

The application shall be filed with the appropriate agencies as follows:

Department of Corporations

- Licensed residential mortgage lenders and servicers

- Licensed finance lenders and brokers servicing mortgage loans
- Any other entities servicing mortgage loans that are not required to file the application with the Department of Financial Institutions or the Department of Real Estate

Department of Financial Institutions

- Commercial and industrial banks
- Savings associations
- Credit unions

Organized in this state servicing mortgage loans (for purposes of this regulation, the phrase “organized in this state” means institutions headquartered in this state)

Department of Real Estate

- Licensed real estate brokers servicing mortgage loans

An application will not be rejected by a department based upon an applicant’s inadvertent failure to file with the designated department.

**APPLICATION FOR ORDER OF EXEMPTION UNDER
SECTION 2923.53 OF THE
CALIFORNIA FORECLOSURE PREVENTION ACT
(CIVIL CODE SECTION 2923.52 ET SEQ.)**

1. Legal name of applicant:

Fictitious business name (FBN):

2. License numbers:

DOC Primary License Number: _____

DFI Primary License Number: _____

DRE Primary License Number: _____

Other entity servicing mortgage loans

Name of Primary Regulator: _____

License/Identification Number, if applicable: _____

(Specify every license held by applicant that this application applies to.)

Check this box if an application has also been filed with another department.

3. Contact Person/Title: _____

4. Telephone Number: _____

5. Email Address: _____

(Confirmation of Temporary Order will be provided to this e-mail address.)

6. Mailing Address: _____

7. Date comprehensive loan modification program was implemented: _____

8. Link to applicant's website describing its loan modification program:

9. Are you a commercial or industrial bank, savings association or credit union that has adopted a comprehensive loan modification program in substantial conformance with the Home Affordable Modification Program Guidelines issued by the Department of Treasury on March 4, 2009?

Yes ___ No ___.

Indicate any differences from the Home Affordable Modification Program: _____

If your answer is "Yes," please skip the remaining questions, provide only Exhibit 2, and complete the declaration section of this application. If your answer is "No," please continue to complete the remainder of this application.

10. Are you currently participating in a federally sponsored loan modification program, or other federal loan modification program?

Yes _____ No _____

If yes, please indicate the program below:

_____ Home Affordable Modification Program

Home Affordable Refinance Program

_____ Hope for Homeowners

_____ Other. Please specify. _____

A. Have you entered into a contract or agreement with the federal agency responsible for the program?

Yes _____ No _____

If your answer is "yes," please provide a copy of the agreement(s). If you have entered into a Servicer Participation Agreement with a financial agent of the United States for the Home Affordable Modification Program, skip the remaining questions, provide only Exhibit 2, and complete the declaration section of this application.

B. Does the federal loan modification program(s) you are participating in cover all types of residential mortgage loans you service? (i.e. Fannie Mae, Freddie Mac, FHA, VA, etc.)

Yes _____ No _____

If no, please explain and include how modifications for the loans not covered by the federal program are performed.

The following exhibits must be submitted with this application:

Exhibit (1): A description of your Comprehensive Loan Modification Program(s). The program must, at a minimum, include the requirements of Civil Code Section 2923.53. Please respond to the following questions and reference below the page and/or paragraph numbers with your submitted program. If you have more than one comprehensive loan modification program, please identify the program name and provide the requested information for each program:

Program 1 Name/Identity: _____

Program 2 Name/Identity: _____

Program 3 Name/Identity: _____

- Does the program contain a provision that the anticipated recovery under the loan modification or workout plan exceeds the anticipated recovery through foreclosure on a net present value basis? (Net present value (NPV) has same meaning as used in the federal Affordable Home Modification Program.)

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page____ Paragraph____

- Does the program contain a provision that it targets a ratio of the borrower's housing related debt to gross income of 38% or less, on an aggregate basis in the program?

Program 1

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

Program 2

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

Program 3

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

- The program includes the consideration of a combination of the following features:

A. Does the program include an interest rate reduction, as needed, for at least five years?

Program 1

Yes____ No____

If yes, indicate the location of the provision. Page____ Paragraph____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

B. Does the program include an extension of the amortization period for the loan term, to no more than forty years from the original date of the loan?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

C. Does the program include a deferral of some portion of the unpaid principal balance until the maturity of the loan?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

D. Does the program include a reduction of principal?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

E. Does the program provide for loan modifications that comply with any federal loan modification program?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

F. Does the program include other factors that have resulted in an increased number of loan modifications? Please provide a description and an explanation of how the other factors have reduced foreclosures on Exhibit 5.

- In determining a loan modification solution for the borrower, does the servicer seek to reduce monthly payments for at least 5 years?

Program 1

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 2

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Program 3

Yes _____ No _____

If yes, indicate the location of the provision. Page _____ Paragraph _____

Exhibit (2): A NOTICE OF SALE form in compliance with Civil Code Section 2923.54, or a copy of the declaration, or forms of declarations, in compliance with Civil Code Section 2923.54 that the applicant will instruct its trustee to include in its Notice of Sale.

Exhibit (3). A copy of the notice that will be sent to borrowers informing them of the program.

Exhibit (4): Complete and submit the most recent 3 months of available data on the attached spreadsheet for mortgages secured by residential property located in California, which includes the following statistical information:

 Servicing portfolio volume, including number of units and unpaid principal balance

 Delinquency status of portfolio

 Loss mitigation data including total number of modifications made

 Loan modification features used

 Housing related debt ratios (if available)

 Subsequent defaults on loan modifications

 Reasons for denial of loan modifications

Exhibit (5): Explanations for items included in the application.

(a) Provide the differences between applicant's NPV model and the Department of the Treasury's Net Present Value Model Parameters, and justification for the differences. For example, the use of alternative discount rates, the use of short sale rather than foreclosure, and other differences.

(b) If the program is unable to achieve a debt-to-income ratio of 38% or less, on an aggregate basis, provide an explanation of why the program is unable to achieve this target.

(c) Provide a description of other modification features to be considered by the Commissioner, if any.

NOTE: Exhibits 1, 4 and 5 are considered Confidential in nature and therefore will not be made available for public inspection on an individual basis.

Wherefore, applicant hereby requests that the Commissioner grant an order of exemption from Civil Code Section 2923.52, as provided in Section 2923.53 of the California Foreclosure Prevention Act (Civil Code Section 2923.52 et seq.) pursuant to the criteria set forth in that act and the rules adopted thereunder.

I declare under penalty of perjury that I have read the forgoing application, including all exhibits attached thereto, or filed therewith, and know the contents thereof, and that the statements are true and correct. I further declare that the applicant has implemented the comprehensive loan modification program set forth in this application, and that I have authority to make these representations on behalf of the applicant.

Applicant

Signature of Declarant

Typed Name and Title of Declarant

Executed at: _____

(City, County, and State)

Date: _____

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

11. Section 2850.10 is adopted to read:

SUBARTICLE IV. DATA COLLECTION

§ Section 2850.10. Reports.

(a) A servicer that obtains a Final Order exempting the servicer from the provisions of subdivision (a) of Civil Code Section 2923.52 shall, upon request of the Commissioner, report loan modification data to the Commissioner on a quarterly basis, with the first report due no later than 90 days after a mortgage loan servicer obtains a final order from the Commissioner.

(b) The loan modification data shall be reported on the FORECLOSURE PREVENTION LOAN MODIFICATION DATA report form, dated ~~May 21~~ November 25, 2009, hereby incorporated by reference.

(c) A mortgage loan servicer may seek a waiver from all or part of the reporting requirement of this section by requesting a hardship exemption from the Commissioner. A hardship exemption may be granted if a mortgage loan servicer is able to establish one or more of the following:

1. The servicer's volume of loans that are eligible for a comprehensive loan modification program will not be of any reasonable statistical value to the evaluation of the effectiveness of the California Foreclosure Prevention Act.
2. The servicer's infrastructure prevents it from collecting the data requested by the Commissioner, or the necessary changes are cost prohibitive. In granting a hardship exemption under this paragraph, the Commissioner may require a servicer to collect and report on information in the format that the servicer maintains the information or such other format agreed upon between the servicer and the Commissioner.

(d) The Commissioner may accept a report required or requested under, or pursuant to, a federal loan modification program, in lieu of the report in subsection (b).

NOTE: Authority cited: Section 2923.53(d), Civil Code. Reference: Sections 2923.52 and 2923.53, Civil Code.

CONFIDENTIAL

Preparer's Email: [REDACTED]
 Servicer Name: [REDACTED]
 Servicer License Number: [REDACTED]
 CFPA Application Number: [REDACTED]
 Last Quarter Reported 9/30/2009

Quarter Ending 9/30/2009 Quarter Ending 12/31/2009 Quarter Ending 3/31/2010 Quarter Ending 6/30/2010 Quarter Ending 9/30/2010 Quarter Ending 12/31/2010

Residential Mortgage Loan Portfolio												
By Product	*UPB (\$MM)	Units	UPB (\$MM)	Units	UPB (\$MM)	Units	UPB (\$MM)	Units	UPB (\$MM)	Units	UPB (\$MM)	Units
FHA												
VA												
Conforming Conventional												
Prime (Non-conforming - Jumbo)												
Alt-A												
Subprime												
Home Equity (non-subprime)												
HELOC												
HLTV												
Manufactured Housing												
Other (define if used)												
Total	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0

By Loan Type	UPB (\$MM)	Units	UPB (\$MM)	Units	UPB (\$MM)	Units	UPB (\$MM)	Units	UPB (\$MM)	Units	UPB (\$MM)	Units
ARMs												
Fixed Rate												
HELOC												
Total	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0	\$0	0

Delinquency Status of Portfolio (Quarter End)	Total	Total	Total	Total	Total	Total
30 to < 60 Days Delinquent Accounts (# Units)						
60 to < 90 Days Delinquent Accounts (# Units)						
90 to < 120 Days Delinquent Accounts (# Units)						
120 + Days Delinquent Accounts (# Units)						
Loans in foreclosure @ quarter end (# Units)						
Loans referred to foreclosure this period (# Units)						

Loss Mitigation	Total	Total	Total	Total	Total	Total
1 Loss Mitigation - Accounts per FTE (Full Time Employee)						
2 Number of Workouts Initiated per Quarter (# Units)	0	0	0	0	0	0
6a) Prime Number of Workouts Initiated per Quarter (# Units)						
6b) Alt-A Number of Workouts Initiated per Quarter (# Units)						
6c) Subprime Number of Workouts Initiated per Quarter (# Units)						
3 Number of Workouts Closed per Quarter (# Units)	0	0	0	0	0	0
7a) Prime Number of Workouts Closed per Quarter (# Units)						
7b) Alt-A Number of Workouts Closed per Quarter (# Units)						
7c) Subprime Number of Workouts Closed per Quarter (# Units)						
Workouts Closed By Type - Total Workouts Should Equal Line 46 Above	Units	%	Units	%	Units	%
4 Account Paid Current						
5 Deed-in-lieu						
6 Short Sale						
7 Paid-in-Full						
8a HAMP Trial Loan Modification						

CONFIDENTIAL

Preparer's Email: [REDACTED]
 Servicer Name: [REDACTED]
 Servicer License Number: [REDACTED]
 CFPA Application Number: [REDACTED]

Last Quarter Reported 9/30/2009		Quarter Ending 9/30/2009		Quarter Ending 12/31/2009		Quarter Ending 3/31/2010		Quarter Ending 6/30/2010		Quarter Ending 9/30/2010		Quarter Ending 12/31/2010	
8c	HAMP Permanent Loan Modification												
8d	Non-HAMP Permanent Loan Modification												
9	Repayment Plan/Forebearance Plan												
10	Other Loss Mitigation (Note Sale, Third Party Sale, etc.)												
Total		0	0%	0	0%	0	0%	0	0%	0	0%	0	0%

11	Foreclosure Sale / REO (Real Estate Owned)												
----	--	--	--	--	--	--	--	--	--	--	--	--	--

Loan Modification Features		Total	Total	Total	Total	Total	Total
13	Interest Rate Reduction 5 Years or Greater						
14	Extension of Terms No More Than 40 Years						
15	Deferral of Principal Until Maturity						
16	Reduction of Principal						
17	Monthly Payment Less Than Payment Prior to Modification						
18	Other Features						

Housing Related Debt Ratios		38% or Less	Over 38%	38% or Less	Over 38%	38% or Less	Over 38%	38% or Less	Over 38%	38% or Less	Over 38%	38% or Less	Over 38%
19	Loans Prior to Modifications												
	Loans After Modifications												
	Workouts Not Resulting in Modifications												

Subsequent Defaults on Loan Modifications		Total	Total	Total	Total	Total	Total
During Trial Period							
Within 6 Months of Modifications							
Within 12 Months of Modification							
Within 18 Months of Modification							

Reasons for Declining Modifications		Total	Total	Total	Total	Total	Total
20	Total Modifications Declined	0	0	0	0	0	0
	Borrower or loan did not meet eligibility requirements						
	Unable to document hardship						
	Subordinate lien holder unwilling to subordinate to modified loan						
	Not Affordable (Unable to Pay)						
	Anticipated recovery from foreclosure exceeds that from modification						
	Pooling Servicing Agreement or other contract prevented modification						
	Other						

CONFIDENTIAL

Preparer's Email: [REDACTED]
Servicer Name: [REDACTED]
Servicer License Number: [REDACTED]
CFPA Application Number: [REDACTED]
Last Quarter Reported 9/30/2009

Quarter Ending 9/30/2009 Quarter Ending 12/31/2009 Quarter Ending 3/31/2010 Quarter Ending 6/30/2010 Quarter Ending 9/30/2010 Quarter Ending 12/31/2010

Additional Comments:

Definitions

*UPB (\$MM) - Unpaid principal balance in millions.

Units - Actual number of loans, not rounded.

1. Please state the average number of workout case files handled by a Loss Mitigation processor or counselor.
2. Sum of Accounts Paid Current, Deeds-in-lieu, Short Sales, Paid-in-Fulls, Modifications, Forbearance Plans, and other Loss Mitigation resolutions initiated per quarter.
3. Sum of Accounts Paid Current, Deeds-in-lieu, Short Sales, Paid-in-Fulls, Modifications, Forbearance Plans, and other Loss Mitigation resolutions completed per quarter.
4. Account brought contractually current.
5. Deed-in-lieu of Foreclosure is defined as the voluntary conveyance of the property from the borrower to the lender in return for the forgiveness of the debt, ultimately placing the lender/servicer in possession of the property.
6. Short Sale (Short Payoff) is defined as the situation in which the lender agrees to accept an amount that is less than the total indebtedness due in full satisfaction of the borrower's mortgage debt.
7. Paid in Full is defined as the outstanding indebtedness being completely satisfied and the mortgage subsequently discharged.
8. A loan Modification is defined as a written agreement between the borrower and the lender to alter one or more of the terms of the original agreement. A modification may consist of a reduction of the interest rate, capitalization of delinquent payments, extension of the duration of the note, conversion of the repayment terms from ARM to Fixed (or vice versa).
 - 8a. Trial loan modifications initiated under the Home Affordable Modification Program (HAMP).
 - 8b. Trial loan modifications initiated under a program not related to HAMP.
 - 8c. Permanent loan modifications initiated under HAMP.
 - 8d. Permanent loan modifications initiated under a program not related to HAMP.
9. Repayment Plan/Forebearance Plan. Forbearance is defined as a temporary reduction or suspension of the payments. Repayment Plan is defined as an agreement that gives you a fixed amount of time to repay the amount you are behind by combining a portion of what is past due with your regular monthly payment.
10. Other includes Note Sales and any alternative loss mitigation methodologies that a servicer may employ to minimize loss severity.
11. Loans that went to foreclosure sale and/or into REO inventory.
12. Include modifications in all categories that apply. For example, if a modification includes an "Extension of Terms" and a "Reduction of Principal", include it in both categories.
13. An interest rate reduction, as needed, for a fixed term of at least five years.
14. An extension of the amortization period for the loan term, to no more than 40 years from the original date of the loan.
15. Deferral of some portion of the principal amount of the unpaid principal balance until maturity of the loan.
16. Reduction of Principal
17. Loans where the monthly payment after the modification was less than the monthly payment prior to the modification.
18. Other features that have resulted in the reduction of foreclosures. Please include in the Additional Comments section a description of the feature used and explain how it has resulted in reduced foreclosures.
19. Loans prior to modification, loans after modification, and workouts not resulting in modifications must be segregated between those with a housing debt ratio of 38% or less and those over 38%.
20. The reasons are non-exclusive and more than one reason may be provided for each denial of a modification request.