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MODEL EARLY RESOLUTION PROGRAM RULES

27 1. These rules apply to the foreclosure early resolution program under [Article 3 of the
28 Home Foreclosure Procedures Act.] “Agency” means the early resolution agency. The
29 agency is [name of court or agency]. All provisions referring to “creditor” include
30 “servicer” as defined in [the HFPA].

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32 2. The purpose of the foreclosure early resolution program is to assist a creditor and a
33 homeowner to reach a voluntary agreement that avoids foreclosure and achieves a
34 sustainable early resolution or mitigates damages in cases where foreclosure is
35 unavoidable.

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37 3. The early resolution notice required by §302 of the HFPA may be sent [at any time no
38 later than 30 days after the creditor sends the notice required by §201][no later than 30 days
39 after the creditor files a complaint in foreclosure.] The notice shall instruct the homeowner
40 to contact the agency to request early resolution at the telephone number [or electronic

41 mail address or online intake site] [s1]designated from time to time on the [agency web site][official
journal]. Homeowner shall be mailed a follow-up notice that contains the date of homeowner’s deadline
by which to contact the agency.

42 A homeowner that fails to contact the agency within 30 days may motion the court or appeal to the
agency asking to be referred to pre-foreclosure resolution. The court may also refer a homeowner at
any time to the program on the court’s own motion. [s2]

43 4. If a homeowner requests early resolution, the agency shall open a foreclosure early
44 resolution case. Within five days of the request the agency shall send notice to the

1homeowner and homeowner-and-creditor [by mail, by electronic mail] that the homeowner has
entered pre-foreclosure resolution and shall refer homeowner to a HUD-approved housing counseling
agency [s3], legal aid attorney, or agency representative. ~~o provide the agency with required~~

~~2 documents and information for the early resolution process. The document exchange~~

~~3 notice to the homeowner shall also include a list of available housing counseling agencies~~

~~4 that can assist the homeowner.~~

5 Homeowner shall have 30 days to work with housing counseling, legal aid or agency representative and to submit a loan modification application packet to the creditor and agency.

6 5. Upon receiving the modification application packet, creditor shall have 5 days to confirm in writing receipt of the packet. Creditor shall then have 30 days to review the packet and to request any revised or additional documentation.

After each party has had 30 days, the homeowner to prepare and submit the packet and the creditor to review it, the agency shall hold a document exchange status meeting, either in person or by telephone. The purpose of this status meeting is to ensure that both parties are prepared to move to a pre-foreclosure resolution meeting with the neutral. Any further documentation needed in order to complete the creditor review should be detailed at the document exchange status meeting. The next session shall be scheduled within 30 days. ~~The agency shall schedule a meeting within 60 days after the homeowner's request for~~

~~7 early resolution.~~ [s4]

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~~9 6. The document exchange notice to the homeowner shall instruct the homeowner to~~ Homeowner shall work with housing counseling or the agency to prepare and submit to the creditor's attorney and agency

~~10 all submit to the agency and the creditor necessary and relevant documents, which may include~~ ing

~~11~~ [s5]

12 a) Documents showing income qualification for a loan modification, including copies

13 of pay stubs, W-2 forms, social security or disability income, retirement income, child

14 support income, or other income that the homeowner believes is relevant to the

15 homeowner's ability to repay the mortgage,

16 b) Documents supporting any dispute regarding the existence or amount of any

17 mortgage loan default,

18 c) Documents relating to any prior loan modification or other prior agreement

19 regarding the mortgage loan and

20 d) Documents relating to any pending request to modify the loan or negotiate a

21 settlement of the delinquency.

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23 7. Homeowners who do not occupy the property being foreclosed are not eligible for early
24 resolution. The notice to the homeowner shall state that if the homeowner or obligor is
25 not occupying the property is not eligible for early resolution, and that the homeowner
26 must return a signed non-investor certification form provided by the agency, together with
27 any required fee, in order to participate in early resolution.

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29 8. The document exchange notice to the creditor shall instruct the creditor to submit within five
30 [KA6]days, to the

31 agency and the homeowner the creditor's current loan modification packet, as well as necessary and
relevant documents including

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33 a) Any 45-day notice and 5-day notices required by CFPB rule 12 CFR §1024.39(b)
34 and §1024.41(b)(2)(i)(B) previously sent to the homeowner in connection with the
35 current default,

36 b) Any prior offers of loss mitigation, forbearance, modification or other agreements
37 made with the homeowner in connection with the current default,

38 c) a list of documents required by the creditor to evaluate the homeowner's request
39 for loss mitigation,

40 d) The homeowner's payment history from the date of default,

41 e) Itemization of all amounts due on the loan, including all fees,

42 f) copies of the promissory note, signed by the mortgagor, including any

43 endorsements, allonges, amendments, or riders that show the mortgage debt,

44 g) any lost note affidavit the creditor will rely on to foreclose the mortgage.

45 h) any pooling and servicing agreement[s]

46 i) contact information for a single point of contact with the servicer and with creditor's attorney

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45 9. The agency or neutral may request additional documents from either party as

46 appropriate. Either originals or copies of documents may be exchanged for the early

1 resolution. The neutral and the agency will not resolve disputes regarding authenticity of

2 documents.

3 10. The homeowner shall have 30 days to submit all documents within the loan modification
4 application provided by the creditor. ~~and creditor shall provide the documents requested by the agency~~
5 ~~no~~

6 ~~later than 10 days after the sending of the document exchange notice.~~

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8 11. The creditor shall communicate to the agency and the homeowner the identity of the

9 individual who will represent the creditor at the early resolution session at the time it

10 provides the required documents.

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12 12. Within fourteen days after receiving the homeowner's request, the agency shall send

13 [mail, electronic] notice to the creditor and homeowner that shall include:

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15 ~~(1) The name and contact information of the assigned neutral,~~

16 ~~(2) The date, time, and location of the early resolution session,~~^[s8]

17 ~~(3) Information about the conduct of the early resolution sessions, and~~^[s9]

18 ~~(4) Consequences and penalties for noncompliance with program rules.~~^[s10]

19 Agency shall schedule a pre-foreclosure resolution meeting and send to the creditor and homeowner

20 (1) The name and contact information of the assigned neutral and

21 (2) The date, time, and location of the early resolution session

22 at least 14 days before the date of the meeting.

23 13. Before accepting appointment as neutral, the neutral shall (a) make an inquiry that is

19 reasonable under the circumstances to determine whether there are any known facts that a
20 reasonable individual would consider likely to affect the impartiality of the neutral,
21 including a financial or personal interest in the outcome of the early resolution and an
22 existing or past relationship with a party to the early resolution or foreseeable participant
23 in the early resolution, and (b) disclose such known fact to the parties as soon as is practical
24 before the first early resolution meeting. If, after accepting an early resolution, a neutral
25 learns any fact that a reasonable individual would consider likely to affect the impartiality
26 of the neutral, including a financial or personal interest in the outcome of the early
27 resolution and an existing or past relationship with a party to the early resolution or
28 foreseeable participant in the early resolution, the neutral shall disclose it as soon as is
29 practical.

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31 14. The neutral's role is to assist the parties with information exchange, communication
32 and negotiation to insure that every reasonable effort has been made to reach a voluntary
33 agreement to resolve the alleged mortgage default in some manner other than a foreclosure
34 sale.

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36 [15. The neutral may charge each party a fee of [\$200]].

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38 16. At least [10] days prior to the early resolution session, the creditor must notify the
39 neutral and homeowner of any decision to offer or not offer any loss mitigation options to
40 the homeowner. [s11] The creditor shall provide the neutral with documentation supporting its
41 decision not to offer a loss mitigation alternative to the homeowner. The creditor shall also
42 provide the neutral with inputs and the results of the net present value calculations relied
43 upon in reaching its decision. The neutral may request the creditor to provide additional

44 documentation to support its decision.

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46 17. The homeowner is entitled to have an attorney, housing counselor or other person of
1 the homeowner's choosing accompany the homeowner to and participate in the early
2 resolution meeting.

3 Note – The term 'housing counselor' is included only as an example and
4 without a definition because the term 'other person' would include any
5 representative the homeowner chooses

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7 18. If the homeowner fails without good cause to substantially and timely provide the
8 documents specified by the neutral or the agency, or to attend the early resolution meeting,
9 or if the agency determines that the homeowner requesting early resolution is not
10 occupying the property, the agency shall [enter an order][request the court to enter an order]
11 terminating the early resolution process and permitting foreclosure to proceed pursuant to
12 the HFPA §304.

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14 19. If the creditor fails without good cause to substantially and timely provide the
15 documents specified by the neutral or the agency, or to appear at the early resolution
16 meeting with authority to act on any available loss mitigation alternatives, the agency shall
17 [enter an order][request the court to enter an order] extending the early resolution period
18 and the stay of foreclosure pursuant to the HFPA §304.

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20 20. The parties are required to appear in person at the early resolution session and shall
21 have the authority to enter into a settlement to resolve the dispute. The creditor's
22 representative must have the ability to evaluate loss mitigation and to have the authority to

23 make a decision as required by the RESPA regulations of the Consumer Financial
24 Protection Bureau. However, upon written request provided to the neutral at least ~~30~~7 days
25 prior to the early resolution session, the neutral may waive the requirement of having the
26 parties physically present at the session and allow them to appear by telephone or
27 teleconference.

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29 21. The parties shall create a signed record of any agreements reached during early
30 resolution. The neutral shall ensure that any agreement reached by the parties at the early
31 resolution session or during early resolution is promptly confirmed in a record and signed
32 by all parties.

33 22. Within ten days from the conclusion of the early resolution session, the neutral shall
34 file a record with the agency, reporting whether the parties were present at the session,
35 complied with Section 303 of the Act and all program rules, and whether the parties reached
36 any agreement. The neutral shall also send the record to the parties.

37 23. Upon receipt of the neutral's report, the agency shall close the case.

38 24. Sanctions for violations of these rules, pursuant to Article 6 of the HFP, may be
39 imposed only by a court of competent jurisdiction upon motion of either party and after
40 notice and an opportunity to be heard.

41 25. All personal financial information as defined by [section of Act] disclosed by the
42 parties in the course of the early resolution is confidential and not subject to public
1 disclosure under [state freedom of information or sunshine laws] or any other state law.

2 26. The agency shall provide ongoing training for neutrals. This includes participation by
3 all neutrals in a mandatory training session on an annual basis.

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5 27. The agency shall prepare and submit to the legislature annually, twenty days prior to

6 the convening of each regular session, a report containing an evaluation of the operation
7 and effects of the program. The report shall include a summary of the cases handled by
8 the program, including the type and frequency of different outcomes, recommendations for
9 changes, modifications, or repeal of the program or parts thereof with accompanying
10 reasons and data.

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12 28. The agency or neutral may recommend or require in appropriate cases that the
13 homeowner tender monthly payments equal to at least 50% of the contractual mortgage
14 payment to the lender or to the agency as a condition of the early resolution.

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16 29. The lender or creditor may at any time request, pursuant to HFPa §302(a)(2), an order
17 permitting the foreclosure to proceed on the basis that the homeowner has materially failed
18 to comply with rules and requirements of early resolution. The agency shall act on the
19 request no later than 30 days after receiving the request.

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21 [30. Court early resolution programs in judicial foreclosures. The appearance of the
22 homeowner or obligor at an early resolution session will constitute an entry of appearance
23 in the foreclosure action.]

31. LANGUAGE ACCESS^[s12]

It is the policy of this Program to provide meaningful language access to limited English
proficient (LEP) program participants at all stages of participation. Written materials
originated by the Program shall be readily available in English and Spanish, and
other language translations shall be reasonably made available upon request.

Phone translation service shall be available for all phone and in-person communications,
and in person-translators shall be available for mediation sessions. Language Access

services shall be provided at no additional cost to the participants.