CHASE

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VIA FEDEX OVERNIGHT DELIVERY

Ms. Tracie K. Lindeman
Clerk of the Supreme Court
201 South Carson Street
Carson City, NV 89701

RE: *In the Matter of the Adoption of Rules for Foreclosure Mediation*, Docket No. ADKT 0435

Dear Ms. Lindeman:

Pursuant to the Court's Order dated May 16, 2012, JPMorgan Chase Bank, N.A. ("Chase"), submits the following written comments to the proposed amendments to the Foreclosure Mediation Program Rules.

Further, pursuant to the same Order, Chase provides notice of its election to participate in the hearing scheduled for July 9, 2012. A representative of Chase will attend the hearing to present further comments to the proposed rules.

I. GENERAL COMMENTS TO PROPOSED RULE AMENDMENTS

Chase greatly values its partnership with the State of Nevada and the Nevada Supreme Court in our mutual interests of keeping Nevadans in their homes. While we respect the efforts of the Advisory Committee on the Foreclosure Mediation Program to make recommended changes to the Court's mediation program, we also believe as a general matter that many of the proposed rule changes seem "legislative" in nature and, thus, more appropriate for the Nevada legislature to consider and develop in its 2013 session. Indeed, some of the recommended rules, such as those involving short sales, appear to be beyond the scope and intent of AB 149. The legislature—with its public hearings, analyses, and debate—is best equipped to consider and resolve such issues as well as discern the full range of public reactions, consequences, and possible alternatives to these proposed changes affecting the Foreclosure Mediation Program.

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II. SPECIFIC COMMENTS TO PROPOSED RULE AMENDMENTS

Proposed Rule 11.3. The homeowner shall use his or her best effort to submit the required documents in his or her possession to the mediator and beneficiary of the deed of trust within 15 days. The homeowner should also begin the process to obtain required documents not in his or her possession.

COMMENT: The incomplete and/or untimely submission of homeowner documents paralyzes the mediation process. Before it can evaluate any homeowner for relief, Chase must have timely receipt of all required documentation. Approximately 90% (or greater) of all first mediations revolve around acquiring documents from borrowers in order to consider a retention option. Because of the critical nature of this documentation to the mediation process, homeowners should be held to a mandatory standard for producing these documents, rather than the "best effort[s]" standard currently contemplated under the proposed rule. A mandatory standard for homeowner documents is particularly necessary in light of proposed rules 11.4, 11.5, and 11.6, which hold lenders to strict timelines for processing homeowner documents as well as harsh consequences for any irregularities during that process.

Proposed Rule 11.4. Upon receipt of the homeowner's initial submission of documents, the beneficiary of the deed of trust shall have 15 days to send a written request for additional or corrected documents to both the mediator and the homeowner. The request shall be sent via regular, or if agreed upon by the parties, electronic mail delivery. If the beneficiary of the deed of trust fails to request additional and/or corrected documents from the homeowner, it will be estopped from claiming that the review of any option was not possible. Refusal to proceed with the modification or other alternative to foreclosure, based on lack of documentation will be considered failure to participate in good faith.

COMMENT: As an initial matter, a clear definition of "receipt" is necessary to eliminate the ambiguity around when the time begins for lenders to respond. For example, if a homeowner's initial submission occurs over a period of several days or longer, the start date of the 15-day period is not clear. In that scenario, the start date should commence no earlier than upon the *completion* of the homeowner's initial submission of documents.

Moreover, the estoppel and "failure to participate in good faith" provisions are not only unduly harsh (considering the relatively minor "offense" of failing to request additional and/or corrected documentation within 15 days), but also impractical, counterproductive, and potentially frustrating to the homeowner. For example, if a homeowner initially seeks retention options, but then changes his or her mind to seek liquidation options, a lender could be unfairly estopped from claiming the unavailability of a liquidation option simply because it only sought documentation related to the homeowner's initial preference. In effect, this requirement would force lenders to seek documentation for both liquidation and retention options, even though a homeowner may be interested in only one or the other, simply to protect itself during the

mediation process. In addition, gathering this extraneous documentation would require unnecessary processing and would slow the mediation process and ultimately the relief to which a homeowner may be qualified. It may also frustrate and discourage a homeowner who, after expressing an interest in only retention options, is informed that he or she must also present documentation related to liquidation.

Proposed Rule 11.7. The beneficiary of the deed of trust must prepare and submit, at least 10 days prior to the mediation, the following documents to the mediator and the homeowner:

(a) The original mortgage note or a certified copy of the mortgage note together with each assignment or endorsement of said note, the original or a certified copy of the deed of trust and a certified copy of each assignment of the deed of trust.

(b) The original or certified copy, if one was utilized, of any document utilized to assign or endorse the mortgage note or the deed of trust.

* * *

(d) While photocopies of the original or certified copy will be allowed for document exchange prior to mediation, the original or certified copy must be presented at the mediation. All documents presented at mediation must satisfy the requirements provided in Rule 11.10 and Rule 11.11.

(e) Appraisal and/or Brokers Price Opinion (BPO) not more than 60 days old (prior to the date of mediation) that satisfies the requirements provided in Rule 11.12 and/or 11.13. The homeowner, if he or she so chooses, may bring his or her own Appraisal and/or BPO obtained at his or her own expense.

(f) Except where the beneficiary of the deed of trust is the originator of the loan and there have been no assignments, the beneficiary of the deed of trust shall disclose to the homeowner the amount which it paid for the assignment. The beneficiary of the deed of trust shall also disclose a good faith estimate of any potential deficiency judgment on the note pursuant to NRS 40.451 et seq.

COMMENT: With regard to copies of documents (sub-paragraphs (a), (b), and (d)), it should be sufficient for lenders at all phases of the mediation process to present ordinary (not certified) copies of mortgage notes or other documents and, if needed, an affidavit supporting the authenticity and accuracy of the document. This is sometimes necessary because the reality is that original documents cannot always be located, although the authenticity and accuracy of the offered copy is often, if not always, undisputed (and even indisputable).

Moreover, to the extent this proposed rule incorporates a certified document requirement, it should be amended to state explicitly that a lender's presentment of a certified copy will be

deemed to satisfy this rule. That would preclude mediators from rejecting properly presented certified copies of deeds of trust or other documents.

With regard to appraisals and/or BPOs (sub-paragraph (e)), it should be optional to rely on appraisals/BPOs that are more than 60 days old. That is because, at times, a homeowner may be approved for a foreclosure alternative under a BPO that is older than 60 days, but may be rejected if a new, more recent BPO is required.

With regard to the disclosure of purchase prices for notes (sub-paragraph (f)), Chase incorporates by reference the arguments against this proposed rule as stated in Attachment B on pages 26-27 of Exhibit A to the Court's Order dated May 16, 2012.

Proposed Rule 11.12. The beneficiary of the deed of trust or its representative shall produce an appraisal done no more than 60 days before the commencement date of the mediation with respect to the real property that is the subject of the notice of default and shall prepare an estimate of the "short sale" value of the residence that it may be willing to consider as a part of the negotiation if loan modification is not agreed upon, and shall submit any conditions that must be met in order for a short sale to be approved. The beneficiary of the deed of trust must also be able to negotiate the following: (i) the listing price, (ii) the date by which the property will be listed for sale, (iii) a period of time in which the property will be marketed, (iv) a specified period in which the beneficiary of the deed of trust has to determine whether to accept an offer to purchase the property, and (v) the maximum length of time escrow may last in order to complete the sale. All short sale agreements must state whether the deficiency is waived. All appraisals or BPOs must be performed by a third party, independent appraiser.

COMMENT: Chase incorporates by reference the arguments against this proposed rule as stated in Attachment B on pages 27-28 of Exhibit A to the Court's Order dated May 16, 2012.

Further, the rule fails to consider that Chase's ability to provide terms and conditions of a short sale is driven by, among other things, the actual sale of the property and approval by a third-party investor. The rule appears to contemplate the pre-approvals of short sales, which are neither available nor feasible.

With regard to appraisals and/or BPOs, it should be optional to rely on appraisals/BPOs that are more than 60 days old. That is because, at times, a homeowner may be approved for a foreclosure alternative under a BPO that is older than 60 days, but may be rejected if a new, more recent BPO is required. (*See also* above comment to Proposed Rule 11.7(e).)

Finally, while Chase may be able to provide an "estimate of the 'short sale' value" as contemplated by this proposed rule, Chase should be allowed to revise that estimate in the event of a change in circumstances or intervening events.

Proposed Rule 24.1. Failure to participate in good faith includes but is not limited to:

(a) Refusal to proceed with the modification or other alternative to foreclosure based on homeowners failure to obtain documentation when the documents were not requested within the prescribed time frame.

(b) Refusal to proceed with the modification or other alternative to foreclosure based on incorrect documentation when corrected documentation was not requested within the prescribed time frame.

(c) Failure to review the specific loan subject to mediation for a modification, including but not limited to HAMP, Hardest Hit Fund Programs, Attorney General Settlement Programs, and any other program in existence at the time of the mediation when the homeowner meets the program requirements.

(d) More than a de minimus change, cancellation, or refusal to comply with the agreement reached at mediation.

COMMENT: With regard to sub-sections (a) and (b), the proposed rule does not take into account that "proper" or "correct" documentation is often driven by the homeowner. For example, if a homeowner initially elects retention alternatives to foreclosure and Chase, in reliance on that preference, collects documentation only related to that preference, Chase should not be deemed to lack good faith if the homeowner later elects liquidation options for which Chase has not requested documents. Chase also incorporates by reference its comments above to Proposed Rule 11.4.

With regard to sub-section (c), this proposed rule does not take into account that lenders must also comply with investor requirements. For example, not all investors participate in HAMP. This rule should be amended to state that, notwithstanding sub-sections (a)-(d), it is not a failure to participate in good faith if a lender's course of conduct is attributable to an investor requirement.

Finally, to ensure that borrowers similarly participate in the mediation process in good faith, this proposed rule should be amended to add borrower instances of failing to participate in good faith. For example, the failure of a borrower to provide all necessary documentation in a timely manner may be deemed a failure to participate in good faith.

Proposed Rule 25. Other Programs. After establishing the representative for the beneficiary of the deed of trust has the documents and the authority, the mediator shall discuss with parties whether borrower qualifies for HAMP, Hardest Hit Funds, Attorney General Settlement Programs, and any other program in existence at the time of the mediation when the homeowner meets the program requirements.

COMMENT: This proposed rule does not consider that lenders must also comply with investor requirements. For example, not all investors participate in HAMP. This rule should be amended to state that mediators shall take into account limitations imposed by investors and other competing legal obligations.

III. SPECIFIC COMMENTS TO OTHER RULES

Chase also comments on the following existing rule for the Court to consider while amending the Foreclosure Mediation Program Rules.

Rule 7.3. A Certificate from the Administrator or designee must be recorded prior to a trustee's sale being conducted on any owner-occupied housing. The Certificate may be requested by the trustee and, if requested, may be issued by the Administrator or designee on any residential property for which a request for mediation was not filed. However, there is no requirement that a Certificate be issued and recorded prior to a trustee's sale being conducted on any type of property other than owner-occupied housing. Any program issued certificate is considered confidential until recorded.

COMMENT: An exemption from the Certificate requirement should apply in situations where the borrower has not requested mediation. Such an exemption would ease the burden on the Administrator to issue Certificates in foreclosure actions where mediation is irrelevant (because it was never elected) as well as eliminate the corresponding delay in the foreclosure process. In lieu of an exemption, Chase should be able to self-certify that the borrower did not request mediation so that the process can continue without undue delay.

Respectfully submitted,

Garry R. Seligson