NEVADA
CREDIT UNION LEAGUE

ADKT 435

July 1, 2012

The Honorable Michael A. Cherry
Chief Justice, Nevada State Supreme Court
201 South Carson Street, Suite 250
Carson City, Nevada 89701-4702

Dear Chief Justice Michael A. Cherry:

The purpose of this letter is to provide comments regarding the proposed amendments to the Nevada Foreclosure Mediation program which are scheduled to be heard on July 9, 2012. As the trade association representing the credit unions in this state, the Nevada Credit Union League appreciates the opportunity to provide feedback to the State Supreme Court outlining the industry's comments. We also appreciate the opportunity to provide brief testimony at the public hearing.

Due to our unique cooperative structure, credit unions have a built-in incentive to modify loans. Along with our commitment to the not-for-profit status, credit unions are doing whatever it takes to keep responsible borrowers in their homes. In 2011, credit unions in Nevada modified 54.3% of their delinquent real estate loans. In quarter one of 2012, credit unions have already modified $7.9 million in delinquent real estate loans. In an effort to save money and time for all parties involved, credit unions make their best attempt to modify loans before they move to the mediation process.

Although our experience with the program is admittedly lower than many other financial institutions and servicers in the state, our industry has experienced some inequities in the way in which mediators treat lenders acting in good faith versus borrowers who are clearly utilizing the mediation process for dishonest motives. We are pleased to see that under the proposed amendments, mediators will be subject to the Model Standards of Conduct for Mediators; however, questions remain as to if this new standard is enough to provide that mediators truly have a neutral standpoint at the mediations. Credit unions have experienced situations in which they believe that mediators have been biased toward lenders that are acting in good faith in favor of borrowers that are clearly abusing the process.

The requirement for the lender to participate in the negotiations in good faith is an obvious practice for credit unions. We accept that responsibility. However, there is no reference to a requirement that the delinquent borrower participate in the process in good faith as well. We believe that in order for the negotiations to be successful and fair, that the borrower have some accountability and commitment to the process as well.

Nevada Credit Union League
9770 South Virginia Street, Reno, Nevada 89511-5941
Phone (800) 472 - 1702

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The following pages outline more detailed comments regarding the amendments. Although our industry's rate of foreclosure is far less than others, we hope that you will consider our comments knowing that as member-owned cooperatives, credit unions want to do what's best for the membership of our financial institutions. The Nevada Credit Union League looks forward to the public hearing and appreciates the State Supreme Court's willingness to make constructive changes to the mediation program. If you should have further questions, please do not hesitate to contact the Nevada Credit Union League at (916) 325-1374.

Sincerely,

Dennis Flannigan

Dennis Flannigan
Chairman, Nevada Credit Union League
President and CEO, Great Basin Federal Credit Union

Thoughts Relative to Proposed Foreclosure Mediation Rule Changes
June 2012

The sequential listing below contains the thoughts of the Nevada Credit Union League relative to the proposed changes to the rules for administering Nevada's Foreclosure Mediation Program. While we fully recognize that it is highly unlikely that all of these ideas will ultimately become incorporated into the final rules, we felt it important to communicate these ideas to the Nevada Supreme Court.

Anything marked as "no issue" means that we have no concerns with the rule changes being proposed by the Nevada Supreme Court.

1. Page 3 Presiding mediator rule 3-1: no issue
2. Page 4 Mediator qualifications rule 3 -4b: no issue
3. Page 4 Appointment of mediators rule 3-5c: The FMP mediator code of conduct is not described as to the expectation of conduct and the accountability of the mediator to the code of conduct. We want to ensure mediators are not biased towards one party or a particular resolution. Past experience has dictated that mediators present their position as a desire to help homeowners versus neutral mediation towards a resolution between two parties.
4. Page 4 Mediator conduct rule 4- 2: no issue
5. Page 4 Mediator conduct rule 4- 3: no issue
6. Page 5 Mediator conduct rule 4- 4: no issue
7. Page 5 Mediator conduct rule 4-5: no issue
8. Page 5 Mediator conduct rule 4- 6: no issue
9. Page 7 Notice of default and election to mediate rule 8- 1: The rule change indicates the trustee must provide the grantor with a list of documents that may be required for mediation. The word "may" does not elicit accountability for the requested documents and this leads the homeowner to believe the ability to provide the request documents as optional. However, in order for the lender to effectively evaluate a foreclosure alternative for retention or non retention, the borrower must provide enough documentation for an evaluation. Furthermore, the list of documents must be pre approved by the administrator and there lacks the level of expectation with the requirements for requested documents and/or how long it will take the FMP program to approve the list.
10. Page 7 Notice of default and election to mediate rule 8- 2a: no issue
11. Page 8 Notice of default and election to mediate rule 8-5: If a second mediation is required and the borrower is responsible for the full $400 mediation fee, it should be defined that the lender is not responsible for an additional mediation fee.
12. Page 9 Option for Inclusion rule 9-2: no issue
13. Page 9 Option for Inclusion rule 9-3: no issue
14. Page 10 Representation rule 10- 1a: Within the rules, the lender is expected to negotiate all other alternatives to foreclosure; however, there is no definition of the word all. This can

lead to mediator interpretation of expected lender resolutions and lead to inconsistency in the application of the rules. It should be defined as to the expected alternatives to foreclosure to ensure the lender has the ability to participate in good faith.

15. Page 10 Representation rule 10 -1b: no issue
16. Page 11 Required mediation documents rule 11: The requisite for the borrower to provide financial documents to the lender ten days prior was removed. If the borrower genuinely desires a resolution to foreclosure than the lender must have a firm understanding the borrowers financial picture in order to offer a reasonable foreclosure alternative. The removal of this requirement undermines the ability to offer a solution in the mediation hearing.
17. Page 11 Required mediation documents rule 11-1: There is great ambiguity in the expected timeline for exchange of information based upon the description of "as soon as practicable." A definitive time line for exchange of information that supports the ability to conduct and conclude the mediation hearing per rule three should be outlined.
18. Page 11 Required mediation documents rule 11-2: no issue
19. Page 11 Required mediation documents rule 11-3: The rule suggesting that the borrower "shall use his or her best efforts to submit the requirement document in his or her possession to the mediator and beneficiary of the deed of trust" does not hold the borrower accountable to participation in the mediation hearing. If the borrower does not provide the lender with the requirement documents to conduct a full financial and collateral evaluation than it thwarts the ability to provide a meaningful solution at the mediation hearing. The lender and borrower should have the same level of accountability for participation in the mediation hearing. If the borrower fails to provide the required documentation than the lender is not in a position to provide the required alternatives per rule 10. Bottom line, the borrower must have an expectation of accountability similar to the lender.
20. Page 11 Required mediation documents rule 11-4: The feedback on this suggested rule is similar to the previous comments in that the borrower must have accountability to provide lender with the requested documents that allow the lender to conduct an evaluation for foreclosure alternatives. If the borrower fails to provide the requested documents, the lender must still review for a modification or other alternatives. This forces the lender to offer a solution that may or may not be appropriate for the borrower.
21. Page 12 Required mediation documents rule 11-5: The number of days remains undefined, is this business days or calendar days? This can lead to mediator interpretation of expected lender action and leads to inconsistency in the application of the rules.
22. Page 12 Required mediation documents rule 11 -6: The feedback on this suggested rule is similar to the previous comments in that the borrower must have accountability to provide the lender with the requested documents. The rule does not allow the lender to ask for additional documentation or clarification if the review elicits additional underwriting questions during the evaluation for foreclosure alternatives. Again, this thwarts the ability of the lender to offer a meaningful resolution.
23. Page 12 Required mediation documents rule 11-7 a-d: no issue
24. Page 13 Required mediation documents rule 11-7e: An appraisal or BPO is required, but it remains undefined if the valuation is to be provided as an exterior or interior review. Because this remains undefined, it can lead to mediator interpretation of expected lender action and inconsistency in the application of the rules. Furthermore, if an interior

evaluation is expected, it remains undefined if the borrower must cooperate with the scheduling of an interior evaluation.

25. Page 13 Required mediation documents rule11- 7f: no issue
26. Page 13 Required mediation documents rule 11-8a: no issue
27. Page 13 Required mediation documents rule 11- 8b: The lender is expected to conduct a net present value test to determine if it is more beneficial to modify a loan versus foreclose. What the analysis fails to take into consideration is the borrower financial performance. For example, has the borrower failed previous loan modifications or loss mitigation treatments despite the financial capacity to support the loss mitigation solution?
28. Page 13 Required mediation documents rule11- 8c: no issue
29. Page 13 Required mediation documents rule 11-8d: The suggested rule does not define the word "relevant" with respect to the pooling or service agreements. Because this remains undefined, it can lead to mediator interpretation of expected lender action and inconsistency in the application of the rules. Furthermore, elements of the pooling and/or servicing agreement are proprietary to the lender and not applicable to the loss mitigation solution offerings.
30. Page 13 Required mediation documents rule 11-8e: The word "refuses" is used to describe the action of the lender for the inability to offer a modification; however, it should be described as a request for the explanation of a borrower's financial capacity to support a loan modification. The rule implies that the lender does not have a willingness to offer a modification when it is based upon the borrower's financial ability to support a loan modification. The tone of the rule implies an inappropriate assumption of the lenders willingness to negotiate a foreclosure alternative.
31. Page 14 Required mediation documents rule 11-8f 1-4: This rule outlines requirements of the lender to provide a short sale timeline and conditions. In a short sale or deed in lieu scenario, multiple parties of interest can be involved. Each party has a vested interest in the transaction and must agree to the short sale approval. While, the lender of beneficiary of the 1st Deed of Trust may be present at the mediation hearing and agree to short sale offer this does not implicitly equate to the ability to successfully execute a short sale transaction. All parties of interest must agree to the terms in order for the seller to take title possession of the subject property. To elaborate on this point, the suggested rule does not outline the requirements of the borrower to satisfy or disclose any other liens on the property for nonpayment of obligations such as Homeowner Association dues, water lines, sewer liens, contractor liens, civil action liens or other mortgage liens that can thwart the ability to successfully execute a short sale transaction.
32. Page 14 Required mediation documents rule 11-10 c: no issue
33. Page 15 Required mediation documents rule 11-12: The rule does not address the borrower expectations for participation in the short sale such as: marketing efforts, maintenance of the property during the listing period, payment of HOA dues and other property obligations. Most importantly, there is a presumption that the borrower can execute a short sale transaction with the approval of only the 1st Deed of Trust implicitly. The borrower may have other parties of interest, which they are not required to disclose, that may not agree to the terms set forth by the lender.
34. Page 15 Required mediation documents rule 11-12a: If the borrower has other liens or obligations associated with the property and those parties of interest do not agree to the short sale terms established by the lender of the 1st Deed of Trust, a short sale transaction

will not be completed. The lender should have ability to obtain a foreclosure certificate in the event the short sale transaction cannot be completed based upon other parties of interest and/or borrower inaction to complete short sale conditions agreed upon in the mediation hearing.

35. Page 15 Required mediation documents rule 11-12b: no issue
36. Page 16 Location of mediation 12: no issue
37. Page 16 Calendaring rule 13 -2: no issue
38. Page 17 Continuances rule 14 -2: no issue
39. Page 17 Continuances rule 14 -3: no issue
40. Page 17 Continuances rule 14 -4: no issue
41. Page 18 Settlement/Resolution before mediation rule 15: no issue
42. Page 18 Temporary agreements rule 16 2a-b: no issue
43. Page 19 Interpreter services rule 18-1: no issue
44. Page 19 Interpreter services rule 18-2: no issue
45. Page 19 Confidentiality rule 19: no issue
46. Page 20 Issuance of certificates and Petition for Judicial Review rule 21-1: no issue
47. Page 20 Issuance of certificates and Petition for Judicial Review rule 21-2: This rule implies that only the lender is held to a standard of participation in "good faith." The reciprocal should also be true for the borrower. In the event that the borrower did not adhere to the program rules or agreed resolution, the rule should be equitable for both participants.
48. Page 20 Issuance of certificates and Petition for Judicial Review rule 21-3: no issue
49. Page 23 Failure to participate in good faith rule 24 1a-b: Overall this rule only holds one party accountable in mediation, the lender. It fails to hold the borrower to the same level of expectation and the tone of the rule implies that the lender does not desire to offer a foreclosure alternative. If the borrower is only held to the expectation of "doing their best" in providing financial information to the lender than the lender cannot be held to a higher standard in offering a solution. A solution requires the ability to the lender to evaluate the financial capacity of the borrower and the borrower to participate in the solution by providing requested financial and collateral information.
50. Page 23 Failure to participate in good faith rule 24-1c: The rule implies that the lender has the ability to underwrite for independent administered programs such as Hardest Hit Funds and the Attorney General Settlement Programs. Each of these programs is underwritten and administered by a party outside of lender authority. The lender does not have the ability to offer a legitimate review of the program options that may or may not be available to the borrower. The borrower must initiate review by the independent party that may provide assistance to them in the form of a foreclosure alternative.
51. Page 23 Failure to participate in good faith rule 24-11d: no issue
52. Page 24 Other programs rule 25: The lender does not have the ability to discuss with the mediator the qualifications for programs administered through other parties such as Hardest Hit Funds, Attorney General Settlement Programs and/or other programs in existence at the time of mediation. The lender does not have the ability or authority to underwrite foreclosure alternatives for said agencies.