

\*Revised effective 3/8/2021 based on increase in portal and doc upload fees.



## **BANKRUPTCY LOAN MODIFICATION PROGRAM** **FOR THE WESTERN DISTRICT OF TEXAS**

1. **PURPOSE.** This Loan Modification Program (also “LMP”) is adopted to provide a uniform procedure to allow Chapter 13 Debtors, Lenders, and other parties to negotiate a potential modification of an Eligible Loan. The goal of the Loan Modification Program is to facilitate communication between the parties; provide for the confidential exchange of information and documents; and to encourage the parties to finalize a feasible, consensual, and beneficial loan modification.
2. **EFFECTIVE DATE.** This Loan Modification Program shall apply to all active Chapter 13 Cases pending on or after the date these procedures are adopted by the Court.
3. **COURT DISCRETION.** All provisions set forth herein shall apply to every Loan Modification Matter (also “LMM”) unless otherwise ordered by the Court in any specific Case. Any request for a variance shall be made by a motion served on all LMM Parties and the Chapter 13 Trustee or on those parties as directed by the Court. Such parties shall have fourteen (14) days from the date of service to object and request a hearing. If an objection is not timely filed, the Court may enter an order approving the relief sought without conducting a hearing.
4. **DEFINITIONS AND GENERAL PROVISIONS.** In this Loan Modification Program, the following definitions and general provisions shall apply. Defined terms used in this LMP are capitalized. **Read this section carefully since these definitions and provisions apply throughout this Loan Modification Program:**

**Additional Parties** – Any non-Debtor entity whose participation in the LMM may be necessary or desirable, including any non-Debtor co-obligor or co-borrower on the Eligible Loan; any non-Debtor entity with an ownership interest in the Eligible Property; any creditor with a lien on the Eligible Property, other than the Lender; and any other third party.

**Auditor** – The person appointed by the Program Manager who may complete a review of the LMM, as described herein.

**Case** – A Chapter 13 bankruptcy case pending in the Court.

**Certification of Document Preparation** – The Certification obtained by the Debtor upon completion of the Document Preparation Software and payment of the Document Preparation Software Fee. The Certification of Document Preparation must be attached to the filed *Initial Notice of Loan Modification Matter*. The Certificate is generated by the Document Preparation Software.

**Conduit Program** – The process by which all mortgage arrears, the periodic post-petition mortgage payments, and any mortgage fees, expenses and charges owed to a mortgage lender are disbursed by the Trustee. This includes any Trial Period Payments and payments pursuant to a Loan Modification Agreement.

**Court** – The United States Bankruptcy Court in which the Case is pending.

**Debtor** – Any individual with a pending Case as of or after the Effective Date, including a *pro se* Debtor. The term includes joint debtors.

**Direct Pay** – Disbursements by the Debtor directly to the Lender on an Eligible Loan, as opposed to disbursements by the Trustee to the Lender.

**Document Preparation Software** – The secure online program, maintained and operated by the Portal Provider, which facilitates the preparation of the Initial LMM Package by (1) populating the Initial Documents and (2) by generating a customized checklist of the required additional forms and supporting documents required by the Lender.

**Document Preparation Software Fee** – A non-refundable fee to be paid by the Debtor to the Portal Provider. The fee is \$60.00 as of the Effective Date. This fee is in addition to the LMM Portal Submission Fee. A separate Document Preparation Software Fee shall be collected by the Portal Provider for each Eligible Loan submitted to the Loan Modification Program. If the Debtor is authorized to initiate more than one LMM on any Eligible Loan, a separate Document Preparation Software Fee shall be collected by the Portal Provider each time an LMM is initiated.

**Eligible Loan** – Any loan, extension of money or credit, or any repayment obligation which is secured by Eligible Property. This term includes, without limitation, subprime or non-traditional loans; loans in foreclosure prior to the filing of the Case; loans secured by a first or junior deed of trust or lien on Eligible Property; and/or a loan that has been pooled, securitized, or assigned to a creditor or trustee.

**Eligible Property** – Real property in which the Debtor has an ownership interest, including an ownership interest in the Debtor's principal residence and/or homestead property, secondary property, or commercial property.

**Final LMM Report** – The report to be filed with the Court by the Debtor or the Program Manager at the conclusion of the LMM.

**Initial Documents** – Collectively, this includes those documents generally required by a Lender to initiate the review of Debtor's LMM, which documents are included in the Document Preparation Software.

**Initial LMM Package** – All Initial Documents and, additionally, any other forms and supporting documents required by the Lender, as reported by the Lender to the Portal Provider, in order to commence the assessment of a Debtor’s LMM.

**Initial Notice of Loan Modification Matter** – The Mandatory Form filed by the Debtor which states that the Debtor has completed all required procedures to commence the LMM.

**Lender** – The owner, holder, servicer or assignee of the Loan as well as any Successor Lender. Use of this term in this LMP neither establishes nor modifies the legal relationship of the parties.

**Loan Modification Agreement** – The written agreement to be signed by all LMM Parties which sets out the basic terms agreed to by the LMM Parties, if an agreement is reached. The Loan Modification Agreement must be attached as an exhibit to the *Motion to Approve Loan Modification Agreement*.

**Loan Modification Matter or LMM** – A request for a modification of the repayment terms of an Eligible Loan from Lender or for any other Loss Mitigation solution. Debtor must commence a separate LMM for each Eligible Loan.

**Loan Modification Program or LMP** – The procedures, obligations, duties and deadlines set out herein.

**LMM Objection Period** – The fourteen (14) day period following the service of the *Initial Notice of Loan Modification Matter* during which any LMM Party or Party-in-Interest may file a written objection if such party objects to the proposed LMM.

**LMM Party or Parties** – This term includes (1) the Debtor and the Lender, (2) any Additional Party that has been ordered by the Court or has agreed to or requested to participate in the LMM or (3) any of them.

**LMM Portal Submission Fee** – A non-refundable fee to be paid by the Debtor to the Portal Provider. The fee is \$60.00 as of the Effective Date. This fee is in addition to the Document Preparation Software Fee. A separate LMM Portal Submission Fee shall be collected by the Portal Provider for each Eligible Loan submitted to the LMP. If the Debtor is authorized to initiate more than one LMM on any Eligible Loan, a separate Portal Submission Fee shall be collected by the Portal Provider each time an LMM is initiated.

**Loss Mitigation** – This term includes the full range of solutions that may prevent (1) the loss of Eligible Property through foreclosure and/or (2) an increase in costs to the Lender. This term includes, without limitation, a loan modification, loan refinance, forbearance, short sale, or surrender of the Eligible Property in full or partial satisfaction of the Eligible Loan.

**Mandatory Forms** – The forms adopted by the Court for use in the LMP. A list of Mandatory Forms is attached. If the title of a form is italicized in this LMP, it is a Mandatory Form.

**Original Term** – The initial duration of the LMM which is one hundred and fifty (150) days from the filing of the *Initial Notice of Loan Modification Matter* or the entry of a Court order authorizing the Debtor to proceed with the LMM, whichever date is later.

**Party-in-Interest or Parties-in-Interest** – Any party in a Case entitled to be served with a Chapter 13 Plan pursuant to the Rules and Procedures.

**Plan** - The document filed by the Debtor in compliance with the applicable provisions of the Bankruptcy Code and any applicable Rules and Procedures as well as any pre-confirmation amendment of same and any post-confirmation modification of the Plan.

**Portal** – The secure online service maintained and operated by the Portal Provider which allows documents, information, and communications to be submitted, retrieved and tracked by the LMM Parties and the Trustee. All LMM Parties must register to obtain access to the Portal (see paragraph 5E for information on Portal registration).

**Portal Provider** – An independent third-party approved by the Court to assist in the management of this LMP. As of the Effective Date, the Portal Provider is Default Mitigation Management, LLC (“DMM”). The Court may, in its sole discretion, select different or additional Portal Providers.

**Program Manager Fee** – The non-refundable payment to the Portal Provider for (1) compensation of the Program Manager, and (2) the compensation of the Auditor (if required). The fee is \$600.00 and shall be paid one-half by the Debtor and one-half by the Lender at the times specified in this LMP. A separate Portal Provider’s Fee shall be collected by the Portal Provider for each Eligible Loan submitted to the LMP. If the Debtor is authorized to initiate more than one LMM on any Eligible Loan, a separate Program Manager Fee shall be collected by the Portal Provider each time an LMM is initiated.

**Program Manager** – Collectively, any individual assigned to an LMM by the Portal Provider and the software used by the Portal Provider to monitor and administer the LMM.

**Reserved Funds** – The difference, if any, between the amount of the regular periodic payments on an Eligible Loan and the amount of any Trial Period Payments. When the Debtor is in a Conduit Program, the Reserved Funds may be retained by the Trustee and, if retained, will be disbursed as set out in this LMP.

**Resolution of the Loan Modification Matter** – The earlier of (1) the entry of an *Order Approving Loan Modification Agreement*, (2) the entry of an *Order Denying Loan Modification Agreement*, or (3) the filing with the Court of a Final LMM Report stating that the Loan Modification Matter was denied by the Lender.

**Rules and Procedures** – Collectively, the Federal Rules of Bankruptcy Procedure and any applicable Local Rules, General Orders, administrative orders, established procedures of the Court, or Trustee’s procedures.

**Submission Date** – The latest of (1) no more than seven days after the expiration of the LMM Objection Period, if no objection to the LMM is filed; (2) no more than seven days after the entry of any court order authorizing the LMM, if an objection to the LMM is filed; and (3) no more than seven days after the Lender’s registration on the Portal.

**Successor Lender** – Any entity to which the Lender transfers the Eligible Loan or the servicing of the Eligible Loan during the pendency of the LMM. Use of this term in this LMP neither establishes nor modifies the legal relationship of the parties.

**Trial Modification Offer** – The written offer received by the Debtor from the Lender containing the terms, conditions and requirements which must be satisfied for the Debtor to qualify for the modification of an Eligible Loan. The Trial Modification Offer may include a provision requiring Trial Period Payments.

**Trial Period Payments** – Payments required by the Lender prior to a final determination regarding permanent modification of the repayment obligation on an Eligible Loan.

**Trustee or Chapter 13 Trustee** – The bankruptcy trustee appointed in the Case.

**5. FILING, SUBMISSION, UPLOADING, THE MANDATORY USE OF FORMS AND OTHER PROVISIONS.**

A. Any reference to filing a document or to a document being filed refers to the filing of that document with the Court.

B. Any reference to a submission or upload of a document refers to posting that document on the Portal.

C. All Mandatory Forms must be used, without alternation, by all LMM Parties, the Portal Provider and the Program Manager. Use of a nonstandard form shall have no effect. Failure to complete a Mandatory Form properly may result in the LMM being terminated.

D. When service of a document is required, that service shall be made in compliance with the Rules and Procedures.

E. LMM Parties must register on the Portal as described in this LMP. Registration on the Portal is free and is a one-time event. The instructions for registration on the Portal may be found at [www.dmmportal.com](http://www.dmmportal.com).

**6. ELIGIBILITY.**

An LMM may be commenced regarding any Eligible Loan.

## **7. GENERAL PROVISIONS REGARDING THE PORTAL PROVIDER, PROGRAM MANAGER AND AUDITOR.**

A. The Portal Provider shall have extensive knowledge of (1) the forms and supporting documents required by a Lender to complete an Initial LMM Package, (2) the various programs for the modification of the terms of an Eligible Loan offered by the Lender, and (3) other available Loss Mitigation remedies.

B. The Portal Provider shall be approved by the Court and must provide a Portal for the use of the LMM Parties, the Program Manager, the Auditor (if any), and the Trustee.

C. The Portal Provider must provide access to the Document Preparation Software and the Portal and is responsible for maintaining both in good working order. The Portal and the Document Preparation Software can be accessed at [www.dmmportal.com](http://www.dmmportal.com).

D. The Portal Provider shall be responsible for making the Document Preparation Software available on the Portal. The Document Preparation Software should (1) ensure that the submission by the Debtor to the Lender is as complete and accurate as possible, (2) expedite the Lender's review of the submissions, and (3) protect all confidential information.

E. The Portal Provider and the Program Manager shall be familiar with the rules and procedures of the LMP and be able to advise the LMM Parties about their responsibilities and the basic procedures for participation in an LMM, including, without limitation, directing users to the relevant provisions of the LMP and to required forms and documents.

F. The Portal Provider, upon request, shall provide free training on the use of the Document Preparation Software and the Portal to any LMM Party or Trustee personnel.

G. The Program Manager shall monitor all communications on the Portal between the LMM Parties and shall ensure that each LMM Party is performing its/their obligations and duties as required herein, including, without limitation: (1) confirming that the Debtor has uploaded a complete Initial LMM Package; (2) facilitating the exchange of information and documents among the LMM Parties; (3) ensuring that the Loss Mitigation review proceeds according to the terms and within the required deadlines of the LMP; (4) tracking and monitoring deadlines for each LMM Party; (5) preparing for, scheduling, and conducting any conferences; and (6) reporting any unresolved non-compliance of an LMM Party to the Court by filing a *Notice of Non-Compliance* which shall include the details of the non-compliance.

H. All requests by the Portal Provider, the Program Manager, or the Auditor for information or the submission of documents shall be made through the Portal.

I. The Program Manager shall assist with any out-of-Court resolution of all allegations by an LMM Party that any other party has failed to comply with any of the provisions of this LMP.

J. The Portal Provider may retain outside parties, at no additional cost to the LMM Parties, to assist it in its duties, provided such parties have the necessary skill, experience, and knowledge base in Loss Mitigation as determined by the Portal Provider.

K. The Portal Provider, Program Manager, and Auditor are subject to the jurisdiction of the Court and will promptly answer all inquiries from the Court, the Trustee, and LMM Parties regarding the status of the LMM.

## **8. GENERAL PROVISIONS REGARDING LMM PARTIES.**

The following is applicable to all LMM Parties, in addition to the specific duties and responsibilities for each type of LMM Party as set out in this LMP:

A. All LMM Parties shall act in good faith throughout the entirety of the LMM, including, without limitation, promptly responding to all inquiries made through the Portal and providing all requested documentation and information promptly and timely.

B. All LMM Parties shall be bound by the provisions of this LMP.

C. All LMM Parties shall comply with the deadlines set out herein, subject to any permitted extension of those deadlines by the agreement of the LMM Parties or by Court order.

D. During the LMM, all material communications and requests for documents and information by and between the LMM Parties shall be conducted exclusively through the Portal, provided however, that any litigated matters between the LMM Parties shall be considered as separate matters and not subject to this requirement. By way of example, communications regarding an adversary proceeding, a contested matter, or a discovery dispute are not subject to this requirement.

E. On behalf of each LMM Party, a person (1) with complete knowledge of the Eligible Loan; (2) who is reasonably capable of answering questions posed by the Court, any other LMM Party or the Trustee; and (3) with full authority to enter a binding settlement agreement, shall participate in the LMM, including, without limitation, all conferences, and shall attend any LMM related hearings, unless such attendance is excused. Any LMM Party may appear at hearings through counsel unless the Court orders otherwise in a specific LMM.

F. The pendency of an LMM does not relieve any LMM Party from full compliance with any (1) orders of the Court or (2) applicable provisions of or deadlines established by the United States Bankruptcy Code or the Rules and Procedures.

G. Any LMM Party who requires (1) a foreign language interpreter or (2) an interpreter because of a hearing impairment in order to participate in any part of the LMM shall provide such interpreter at that LMM Party's sole expense.

H. If the Case is dismissed, converted, or venue of the Case is transferred to a Court without an LMP prior to the completion of the LMM, the LMM will immediately terminate. LMM Parties will be relieved of all LMP requirements.

I. If the Case is otherwise eligible to be closed, the Case shall remain open during the pendency of the LMM.

J. All communications and information exchanged on the Portal during the LMM are privileged and confidential. They are inadmissible in any subsequent proceeding to the extent provided by any applicable Rules and Procedures or the Federal Rules of Evidence.

K. During the pendency of the LMM, nothing herein precludes the LMM Parties from negotiating Loss Mitigation solutions other than a modification of the repayment terms of the Eligible Loan, provided such negotiations are conducted through the Portal.

L. If any LMM Party fails to comply with any of the provisions of this LMP, the other LMM Parties must attempt to resolve the issues through communication on the Portal, requesting assistance from the Program Manager, if needed. If a resolution cannot be reached, any LMM Party may file a *Motion to Terminate Loan Modification Matter*, detailing the basis for the relief sought.

M. The Trustee may establish procedures which are not inconsistent with the provisions of this LMP for the administration of Cases involved in the LMP. Such procedures must be in writing and include an effective date. Such procedures shall be posted on the Trustee's website. All LMM Parties must comply with the Trustee's procedures. The Trustee, in his/her sole discretion, may revise the Trustee's procedures. Revised Trustee procedures, if any, shall be posted on the Trustee's website and must include the effective date of the revisions.

N. The Court may set status conferences to monitor the progress of any LMM.

## **9. PROVISIONS REGARDING THE DEBTOR.**

A. All *pro-se* Debtors shall have the same duties and responsibilities as a Debtor represented by an attorney and shall comply with all provisions of the LMP.

B. Debtor shall comply with all requirements necessary to commence an LMM and timely file and serve the *Initial Notice of Loan Modification Matter*, as well as upload a copy to the Portal. The *Initial Notice of Loan Modification Matter* shall be served in compliance with the Rules and Procedures on any Party-in-Interest and any person filing a Notice of Appearance in the Case.

C. A separate LMM must be commenced for each Eligible Loan.



D. By no later than the Submission Date, the Debtor shall (1) submit the Initial LMM Package to the Portal together with a file-stamped copy of the *Initial Notice of Loan Modification Matter*; (2) pay the LMM Portal Submission Fee as well as the Debtor's share of the Program Manager Fee and (3) submit a copy of any order of the court authorizing the LMM, if any such order is entered.

E. If the Debtor contemplates initiating an LMM, the Debtor shall include language in any Plan filed by the Debtor stating that the Debtor intends to commence an LMM. Such provision shall be included in the section of the Plan reserved for non-standard language. The following mandatory language must be used:

The Debtor may enter the Loan Modification Program adopted by this Court which could result in a modification of a loan secured by real property in which the Debtor owns an interest or in other loss mitigation solutions, including, without limitation, loan refinance, forbearance, short sale, or surrender of the real property in full or partial satisfaction of the debt secured by the real property. Such loan modification or other loss mitigation solution may be approved by the Court without further notice to parties-in-interest and without modification of the Chapter 13 Plan if the loan modification or loss mitigation solution does not create a material adverse impact on the treatment of creditor's claims under this Plan, other than the Lender's; does not render the Plan unfeasible or insufficient; and does not increase or decrease the Plan payment to the Trustee.

F. Debtor shall remain current on all payments required to be paid pursuant to the Plan during the pendency of the LMM, including, without limitation, payments disbursed by Direct Pay.

G. A Debtor in a Conduit Program is required make all payments on an Eligible Loan through the Trustee including ongoing periodic post-petition mortgage payments; Trial Period Payments; all payments pursuant to any Loan Modification Agreement; all mortgage arrears; and all post-petition fees, expenses and charges pursuant to Rule 3002.1 of the Federal Rules of Bankruptcy Procedure.

H. If the Court has not adopted a Conduit Program, the Debtor shall disburse any periodic post-petition mortgage payments owed on the Eligible Loan by Direct Pay, including Trial Period Payments. Debtor may propose a Plan which defers the payment of any pre-petition or post-petition arrears for a reasonable period of time. Any payment required pursuant to a Notice of Fees, Expenses, and Charges filed pursuant to Rule 3002.1 of the Federal Bankruptcy Rules of Procedure will be paid in accordance with the existing procedures established by the Court, including disbursement by Direct Pay.

I. If the Court has adopted a Conduit Program, the Debtor shall make monthly Plan payments to the Trustee which are sufficient to pay any periodic post-petition mortgage payments owed on the Eligible Loan including Trial Period Payments. Debtor may propose a Plan which defers the payment of any pre-petition or post-petition arrears for a reasonable period

of time. Any payment required pursuant to a Notice of Fees, Expenses, and Charges filed pursuant to Rule 3002.1 of the Federal Bankruptcy Rules of Procedure will be paid in accordance with the existing procedures of the applicable Conduit Program. Any payments pursuant to a permanent loan modification shall be disbursed by the Trustee in accordance with the Loan Modification Agreement.

J. Debtor shall promptly answer any questions from and shall provide additional documentation and information to the Lender, the Portal Provider and/or the Program Manager through the Portal. All questions and requests for additional documentation and information must be reasonable.

K. Within seven (7) days of the earlier of (1) the conclusion of the Original Term, including any extension thereof, or (2) the date the Lender reports its final decision on the Portal regarding the LMM request, the Debtor shall prepare the Final LMM Report on the Portal and file and serve it on all LMM Parties and the Trustee. The Final LMM Report will be completed in accordance with the instructions provided on the Portal and shall state whether: (1) the Eligible Loan will be modified, (2) the loan modification request was denied, or (3) another Loss Mitigation solution was agreed upon. A printout of the current and complete Portal history shall be attached to the Final LMM Report. In the event the Debtor fails to prepare, file, and serve the Final LMM Report, the Program Manager may do so.

## **10. PROVISIONS REGARDING LENDER.**

A. If the Lender is not previously registered on the Portal and does not timely file a written objection to participating in the LMM, the Lender shall register on the Portal within fourteen (14) days of the filing of the *Initial Notice of Loan Modification Matter*. If the Lender files a written objection to participating in the LMM, the Lender is required to register on the Portal within seven (7) days of the entry of an order requiring the Lender to participate in the LMM. If Lender's counsel is not registered on the Portal, counsel is subject to the same requirements set out herein.

B. If the Lender does not file a written objection to participating in the LMM within the LMM Objection Period, the Lender shall provide the Portal Provider with Lender's most current Initial LMM Package as part of Lender's registration on the Portal. If the Lender is already registered on the Portal, Lender will provide any updates to Lender's Initial LMM Package within fourteen (14) days of the filing of the *Initial Notice of Loan Modification Matter*. If the Lender files a written objection to participating in the LMM, the Lender is required to provide the Portal Provider with Lender's most current Initial LMM Package within seven (7) days of the entry of any order requiring the Lender to participate in the LMM. Lender is responsible for providing any updates to its Initial LMM Package to the Portal Provider, if necessary.

C. Within seven (7) days after the Debtor submits the completed Initial LMM

Package on the Portal, Lender shall, on the Portal: (1) acknowledge receipt of Debtor's completed Initial LMM Package and (2) designate Lender's single point of contact and Lender's counsel, if any. The designated single point of contact must have all requisite authority, within the investor's guidelines, to settle any and all issues that arise during the LMM. Legal counsel may be granted such requisite authority by the Lender.

D. Within seven (7) days of the Lender's receipt of the Debtor's Initial LMM Package on the Portal, Lender shall pay one-half of the Program Manager's Fee directly to the Portal Provider. In the event that this fee is not paid through the Portal online payment system, the Lender shall pay an additional \$25.00 processing fee to the Program Manager.

E. Upon receipt of the completed Initial LMM Package, Lender shall promptly review the package to determine Debtor's eligibility for any Loss Mitigation solutions, including modification of the repayment terms of the Eligible Loan.

F. No more than thirty (30) days after the submission of the Initial LMM Package, if the Lender requires additional or corrected documentation or information to complete its review of the Initial LMM Package, Lender shall notify the appropriate LMM Party through the Portal of such requirements and shall promptly acknowledge the submission of the additional or corrected documentation or information. If no request for additional documents or information is timely made by the Lender, the submissions made in the LMM shall be deemed complete. Lender shall not request that any information be provided on a specific form – i.e., if the Debtor provided the Lender with information on a standard government form, Lender shall use reasonable diligence in reviewing the information provided by the Debtor.

G. Lender shall promptly review all documents and information submitted by any LMM Party through the Portal and shall promptly respond to any inquiries made by any LMM Party or the Program Manager.

H. Lender shall attend and participate in any conferences regarding the LMM, unless the Lender's attendance is excused by the Program Manager or Auditor.

I. Lender shall have no more than thirty (30) days after the submissions made in the LMM are deemed complete to state its decision on the Portal regarding the request to modify an Eligible Loan or any other Loss Mitigation solution. The Lender's decision includes (1) denial of the loan modification request, (2) approval of the loan modification request, (3) issuing a Trial Modification Offer which may include requiring the Debtor to remit Trial Period Payments and may also include the satisfaction of any other terms and conditions set out in the Trial Modification Offer, or (4) acceptance or offer of any other Loss Mitigation solution.

J. Lender shall promptly notify any Successor Lender of the pendency of the LMM and shall provide the Successor Lender with a copy of the *Initial Notice of Loan Modification Matter* and any orders entered by the Court which are relevant to the LMM. The Successor Lender is obligated to comply with all terms of any entered order and all terms of this LMP.

Without limiting the foregoing, the Successor Lender is required to accept all documents and information submitted by any LMM Party which was previously accepted by the Lender. In the event there is a change in ownership of the Eligible Loan, the parties shall comply with the Rules and Procedures regarding a transferred claim. In the event there is a change in the servicer for the Eligible Loan, Lender shall file a *Notice Substituting Servicer* and shall transfer the submissions on the Portal to the Successor Lender, provided, however, that nothing herein shall preclude the Debtor or Program Manager from transferring such submissions. If the Successor Lender is not registered on the Portal, the Successor Lender shall register within fourteen (14) days of the filing of the *Notice Substituting Servicer*.

## **11. COMMENCEMENT OF LMM AND OPPORTUNITY TO OBJECT.**

A. The Debtor may commence an LMM at any time after the filing of the Case. Only the Debtor may commence an LMM.

B. To commence the LMM, the Debtor shall complete all of the following steps:

1. Register on the Portal;
2. Complete the Document Preparation Software and pay the Document Preparation Software Fee;
3. Review the Initial LMM Package prepared on the Document Preparation Software and be prepared to execute all required forms and upload all required documents to the Portal upon the expiration of the LMM Objection Period;
4. File the *Initial Notice of Loan Modification Matter*, together with the Certification of Document Preparation;
5. If Bankruptcy Schedules I and J were filed by the Debtor more than six (6) months prior to the filing of the *Initial Notice of Loan Modification Matter*, the Debtor must either (1) sign and file amended Schedules I and J pursuant to the Official Bankruptcy Forms prior to filing the *Initial Notice of Loan Modification Matter* or (2) state in the *Initial Notice of Loan Modification Matter* that Bankruptcy Schedules I and J as filed correctly state the Debtor's current income and expenses.
6. Timely comply with all requirements of Section 9.D.

C. During the LMM Objection Period, any LMM Party or Party-in-Interest may file a written objection to the *Initial Notice of Loan Modification Matter* if such party objects to the LMM or to participating in the LMM. Any written objection shall clearly state the reasons for objecting to the LMM or to participating in the LMM. If a written objection is not filed, each non-objecting party shall be deemed to have waived its objection to the Debtor initiating an LMM and/or to participating in the LMM. No Court order commencing the LMM is required if

no objection is filed. If an objection is filed, the Court will determine, after notice and hearing, whether the Debtor may proceed with the LMM and enter an appropriate order. If the Court authorizes the Debtor to proceed with the LMM, the objecting party shall be deemed to be an LMM Party, if appropriate.

## **12. PROVISIONS REGARDING ADDITIONAL PARTIES.**

A. Any LMM Party may request and the Court may order that a specific Additional Party be required to participate in the LMM, to the extent that the Court has jurisdiction over the Additional Party. Any such request shall be made by filing a *Motion to Add an Additional Party to Loan Modification Matter*. If an objection is not timely filed, the Additional Party shall be deemed to have consented to participate in the LMM and the Court may enter an order requiring the participation of the Additional Party without conducting a hearing. Any Additional Party ordered by the Court to participate in the LMM shall be deemed to be an LMM Party.

B. An Additional Party may consent to participate in the LMM by signing and filing a *Consent to Participate in Loan Modification Matter by Additional Party*. Upon the filing of this consent, the Additional Party shall be deemed an LMM Party.

C. Any LMM Party may file a motion to request that the Court determine whether the LMM can proceed without the inclusion and participation of a specific Additional Party.

## **13. TRUSTEE**

The Trustee, in his/her sole discretion, may, but is not required to, participate in the LMM.

## **14. DURATION.**

A. The LMM Parties may extend the Original Term by agreement by filing a *Notice of Extension of Loan Modification Matter*. The LMM Parties may not extend the duration of the LMM for more than a total of ninety (90) days beyond the Original Term by agreement. A Court order is necessary for a longer extension of time and may be sought by filing a *Motion to Extend the Duration of Loan Modification Matter*.

B. If an agreement to extend the Original Term cannot be reached, any LMM Party may file a *Motion to Extend the Duration of Loan Modification Matter* detailing the basis for the extension which shall be served on all LMM Parties and the Trustee. The Portal history must be attached to this motion. The deadline for objecting to such motion is seven (7) days from the date of service of same. If an objection is not filed, each non-objecting party shall be deemed to have waived its objection to the extension of the Original Term. If an objection is timely filed, the Court may schedule a hearing to determine whether an extension of the Original Term should be granted or may rule without a hearing.

C. The Debtor or Program Manager shall report any extension of the Original Term on the Portal.

D. Notwithstanding the other provision of this LMP, if the LMM Parties agree to the payment of Trial Period Payments, as evidenced by the filing of *Notice of Trial Period Payments*, the duration of the LMM shall be extended, without Court order, to allow the Debtor to complete the Trial Period Payments plus an additional sixty (60) days to allow for the approval of any Loan Modification Agreement.

E. If any LMM Party wishes to terminate the LMM prior to the expiration of the Original Term or any extension thereof, that party shall file a *Motion to Terminate Loan Modification Matter* detailing the basis for such termination request. The motion must be served on all LMM Parties and the Trustee. The Portal history must be attached to this motion. The deadline for objecting to termination of the LMM is fourteen (14) days from the date of service of such motion. If an objection is not filed, each non-objecting party shall be deemed to have waived its objection and the Court may terminate the LMM without a further hearing. If an objection is timely filed, the Court may schedule a hearing to determine whether to terminate the LMM or may rule without a hearing.

## 15. CONFERENCES.

A. There is no requirement that a conference must be scheduled in an LMM. Conferences should be requested by the LMM Parties or scheduled by the Program Manager only if needed to accomplish the purpose of the LMP.

B. All conferences shall be telephonic. All LMM Parties shall participate in the conference unless excused by the other LMM Parties or the Program Manager. No telephonic conference shall be recorded. The only parties who may participate in the telephonic conference are (1) the Program Manager and (2) the LMM Parties and their attorneys.

C. A conference may be scheduled by the Program Manager upon the request of any LMM Party and as deemed necessary by the Program Manager, acting reasonably. After consultation with all LMM Parties and their attorneys (if any), the Program Manager shall fix a reasonable date and time for such conference and notify all LMM Parties and their attorneys (if any) thereof. The Program Manager shall include a call-in number for the conference as part of the notice.

D. Each LMM Party may request one (1) conference. The Program Manager, in his/her sole discretion, may schedule more than one conference.

E. The Program Manager shall report the scheduling of the conference on the Portal. The Program Manager shall participate in all conferences.

F. No LMM Party is required to participate in conferences for more than a total of

two (2) hours during the pendency of the LMM.

G. All LMM Parties participating in the conference must either personally be or must appoint a representative who is ready, willing and able to sign a binding settlement agreement during the conference and must have the ability to scan, send and receive documents by facsimile, email or other electronic means during the conference.

H. If an LMM Party that is required to appear at a conference fails to appear, the Program Manager may file a *Notice of Non-Compliance*.

## **16. TRIAL PERIOD PAYMENTS AND LOAN MODIFICATION APPROVAL PROCESS.**

A. If the Debtor receives a Trial Modification Offer which requires the Debtor to make Trial Period Payments, the Debtor shall file a *Notice of Trial Period Payments* which shall be served only on the LMM Parties and the Trustee. The Trial Modification Offer, in its entirety, must be attached to the *Notice* as Exhibit "A". The *Notice* shall be uploaded to the Portal by the Debtor. The *Notice* must be signed by the Debtor, by and through the Debtor's attorney, if any. All LMM Parties and the Trustee will have fourteen (14) days following the service of the *Notice* to file a written objection to the Trial Period Payments. Any written objection shall clearly state the basis for objecting to the Trial Period Payments. If no written objection is filed, any objection to the Trial Period Payments shall be deemed waived by the non-objecting party and the Trustee, if the Debtor is in a Conduit Program, or the Debtor, if the Debtor is not in a Conduit Program, is authorized to disburse the Trial Period Payments to the Lender and the Trustee is further authorized to retain Reserved Funds. If an objection to the *Notice* is filed, the Court will determine, after notice and hearing, whether the Trial Period Payments are approved. If so, the Court will enter an *Order Approving Trial Period Payments* and the Trustee, if the Debtor is in a Conduit Program, is authorized to disburse the Trial Period Payments and to retain Reserved Funds as set out in the *Order*. If the Debtor is not in a Conduit Program, the Debtor will remit the Trial Period Payments by Direct Pay. In a Conduit Program, the Trustee shall continue disbursing payments to the Lender in the amount of the Trial Period Payments and continue to retain Reserve Funds until the Resolution of the Loan Modification Matter. The Lender is not required to file a Notice of Payment Changes pursuant to Rule 3002.1 regarding the payment change.

B. In the event a Debtor makes all Trial Period Payments and satisfies any other terms and conditions required by the Lender which are set out in the Trial Modification Offer, Debtor shall be entitled to a permanent and binding modification of the repayment terms of the Eligible Loan. The full agreement between the parties shall be reduced to writing and executed by all necessary parties. The Debtor or the Lender shall file a *Motion to Approve Loan Modification Agreement* which shall be served on the LMM Parties and the Trustee. The *Motion* shall be uploaded to the Portal by the filing party. A copy of the completed and signed Loan Modification Agreement and any related documents must be attached to the *Motion*. All LMM Parties and the Trustee will have fourteen (14) days following the service of the *Motion* to file a

written objection. Any written objection shall clearly state the basis for objecting to the approval of the Loan Modification Agreement. If no written objection is filed, any objection to the approval of the Loan Modification Agreement shall be deemed waived by the non-objecting party. If no objection is filed, the Court may enter an *Order Approving Loan Modification Agreement*. If an objection is filed, the Court will determine, after notice and hearing, whether the Loan Modification Agreement should be approved. If so, the Court will enter an *Order Approving Loan Modification Agreement*.

C. Dismissal or conversion of the Case shall not be a permissible condition of the Trial Modification Offer, any agreement regarding Trial Period Payments, or any Loan Modification Agreement and may not be included in any of these as a term or condition.

D. The Court may require *pro-se* Debtors to personally appear prior to approving the Trial Period Payments or any Loan Modification Agreement.

E. The Trustee may be heard at any hearing regarding the approval of any Trial Period Payments or any *Motion to Approve Loan Modification Agreement*, but is not required to participate in such hearings.

F. If the Court enters an *Order Approving Loan Modification Agreement*, the Trustee, if the Debtor is in a Conduit Program, or the Debtor, if the Debtor is not in a Conduit Program, is authorized to make disbursements to the Lender as set out in the *Motion to Approve Loan Modification Agreement* without any further modification of the Plan. Any arrearage or any other obligations owed to the Lender, whether pre- or post- petition, shall be paid pursuant to the terms set out in the *Motion to Approve Loan Modification Agreement* and/or the Loan Modification Agreement. Unless otherwise required by the terms of any applicable Conduit Program, if the Plan is not modified, the Plan payment will not be adjusted and any funds paid to the Trustee which the Trustee does not disburse to the Lender may be disbursed by the Trustee to satisfy the claims of other creditors. Additionally, unless otherwise provided in the *Motion to Approve Loan Modification Agreement*, any Reserved Funds shall be disbursed by the Trustee first to the Debtor's attorney until the outstanding balance of any attorney's fees is paid in full and, thereafter, shall disburse any remaining Reserved Funds to satisfy the claims of other creditors. The Trustee shall make all disbursements in accordance with the provisions of the Plan and all applicable Rules and Procedures.

G. If the Lender or any other LMM Party is to receive payment of or reimbursement for any fee, cost or charge that arose from or during the LMM process, all such fees, costs and charges shall be disclosed in the *Motion to Approve Loan Modification Agreement*. If the Lender fails to disclose such fees, costs and charges as described herein, the Lender shall have waived its right to collect such fees, costs and charges.

H. If the *Motion to Approve Loan Modification Agreement* is granted by the Court, any proof of claim filed by the Lender shall be deemed amended by the terms set out in the *Motion to Approve Loan Modification Agreement* and the Lender will not be required to file an



amended proof of claim. Additionally, the Lender will not be required to file any Notice of Payment Change or any Notice of Fees, Expenses, and Charges pursuant to Rule 3002.1 of the Federal Rules of Bankruptcy Procedure regarding any payment obligation disclosed in the *Motion to Approve Loan Modification Agreement*. The Chapter 13 Trustee is authorized to make disbursements in accordance with the terms set out in the *Motion to Approve Loan Modification Agreement* and/or the *Order Approving Loan Modification Agreement*, including discontinuing disbursements on an arrearage claim provided for in the Plan, if that is consistent with the terms set out in the *Motion to Approve Loan Modification Agreement* and/or the *Order Approving Loan Modification Agreement*. All disbursements to the Lender will be made in accordance with the procedures established by the Court for the payment of such claims.

I. Unless otherwise ordered by the Court, and subject to Bankruptcy Rule 3002.1(f)-(h), if a Debtor in a Conduit Program is current on Plan payments or the payments due pursuant to any wage directive, the Trial Period Payments or any other payment that the Trustee is directed to disburse to the Lender pursuant to a *Notice of Trial Period Payments*, an *Order Approving Trial Period Payments*, and/or the *Order Approving Loan Modification Agreement* shall be deemed current, even if not yet disbursed by the Trustee to the Lender.

J. All LMM Parties shall execute and deliver any and all documents, in addition to the Loan Modification Agreement, which are reasonably necessary to effectuate the agreement between the parties only if such documents are described as required documents in the *Motion to Approve Loan Modification Agreement*. The pleading shall also be uploaded to the Portal.

K. The LMM Parties may also file a motion or other appropriate pleading to have the Court approve any other Loss Mitigation solution to the LMM. Any such pleading must be served on all LMM Parties and the Trustee and provide each party with no less than fourteen days to object to the relief sought.

## **17. DENIAL.**

A. In the event the Lender denies the request for a modification of the repayment terms of an Eligible Loan and the Debtor requests an audit of the LMM, the Program Manager will appoint an Auditor from its list of approved Auditors to review the LMM for the purpose of determining whether the Lender considered all possible loan modification programs available to the Debtor and considered all relevant information in making its decision on the requested loan modification. The Auditor will also discuss the reasons for the denial with the Debtor.

B. If a plan modification is required following the denial of a loan modification request, that plan modification shall be filed no later than thirty (30) days from the date the Lender posts the denial on the Portal. The Trustee may move to modify the Debtor's Plan at any time if, in the discretion of the Trustee, such modification is warranted.

C. In the event the Court denies the *Motion to Approve Loan Modification Agreement*, the Court shall enter an *Order Denying Approval of Loan Modification Agreement*.

D. Following the filing of a Final LMM Report which states that the Lender denied the requested loan modification or the entry of a Court order denying the *Motion to Approve Loan Modification Agreement*, the Trustee shall disburse any Reserved Funds to the Lender.

#### **18. PLAN MODIFICATION IF AN AGREEMENT REGARDING LOSS MITIGATION IS APPROVED.**

A. A plan modification is not required if the loan modification or Loss Mitigation solution does not create a material adverse impact on the treatment of any creditor's claims under the Plan, other than the Lender's; does not render the Plan unfeasible or insufficient; and does not increase or decrease the Plan payment to the Trustee.

B. If a plan modification is required, the Debtor shall file that plan modification which shall be served on any Party-in-Interest pursuant to the Rules and Procedures. The plan modification shall be filed and served within thirty (30) days of the entry of an *Order Approving Loan Modification Agreement* or and order approving another Loss Mitigation solution.

C. The Trustee may move to modify the Debtor's Plan at any time if, in the discretion of the Trustee, such modification is warranted.

#### **19. ATTORNEY FEES.**

A. No Look Standard Fee – The standard, “presumed reasonable and necessary” fee for counsel for the Debtor for representation of the Debtor in an LMM is \$2500.00 plus \$100.00 in costs, in addition to the fees and costs incurred in the representation of the Debtor in the Case. Such fees and costs shall be disclosed in the *Initial Notice of Loan Modification Matter*, which disclosure shall be deemed to fulfill the requirements of Rule 2016 of the Federal Rules of Bankruptcy Procedure. The following will be included in the standard “no-look” fee:

1. Determining the Debtor's eligibility to participate in the LMP;
2. Preparing the Initial LMM Package for the Debtor through the Document Preparation Software;
3. Filing amended Schedules I and J, if required;
4. Preparing, filing, and serving the *Initial Notice of Loan Modification Matter*;
5. Assisting the Debtor in completing any forms or providing any other information or counsel in connection with the LMM;
6. Submitting all required documents and information through the Portal;

7. Filing all required pleadings;
8. Preparation of proposed orders and settlement documents;
9. Communicating with other LMM Parties and the Portal Provider, Program Manager and/or Auditor, as required;
10. Participating in any LMM conferences and/or Court hearings;
11. Reviewing all documents regarding a modification of the repayment terms of the Eligible Loan or other Loss Mitigation solution.

B. The standard “no-look” fee does not include preparation of or representation of the Debtor regarding the modification of the Plan.

C. Debtor’s counsel may elect to file a fee application for reasonable compensation in connection with an LMM, including costs, rather than accept the standard “no-look” fee. If Debtor’s counsel files a fee application, it shall be served pursuant to the Rules and Procedures.

D. The Trustee and any other Party-in-Interest retain their rights to object to any request by Debtor’s counsel for the payment of any fees or the reimbursement of any costs.

E. Any attorney’s fees and costs payable to the Debtor’s counsel will be paid in accordance with the procedures established by the Court for the payment of compensation and the reimbursement of costs to Debtor’s counsel.

## **20. NO PROHIBITION.**

The pendency of an LMM shall not prohibit or preclude any LMM Party from taking whatever lawful action that party deems necessary to protect its interests during the pendency of the LMM, including moving for relief from the automatic stay, moving for the dismissal of the Case, objecting to confirmation of a Plan or any similar pleading, objecting to a proof of claim, or filing an adversary proceeding which names any LMM Party as a plaintiff or defendant.

## **21. REMEDIES.**

A. Any LMM Party may file a *Motion to Terminate Loan Modification Matter* which must detail the basis for the requested termination and must be served on all LMM Parties and the Trustee and uploaded to the Portal. All LMM Parties shall have fourteen (14) days following the service of the motion to file a written objection. Each non-objecting party shall be deemed to have waived its objection to the relief sought and the Court may enter an order awarding appropriate relief without a hearing. If a written objection is filed, the motion will be set on the

Court's docket for hearing. The filing party is responsible for filing and serving a notice of the hearing on all other LMM Parties and the Trustee.

B. The Court may order any remedy, including sanctions, dismissal of the LMM, or any other remedy that the Court deems appropriate to protect the interests and rights of the LMM Parties.

## **22. VENUE AND CHOICE OF LAW.**

All disputes in connection with the LMM shall be governed by the provisions of the United States Bankruptcy Code; the law of the state of Texas, irrespective of the conflict of law principles of that state; the Rules and Procedures; and this LMP. Any action or proceeding arising from a dispute concerning a LMM or this LMP shall be brought in the Court.

## LIST OF MANDATORY FORMS

- LMP Form 1 *Initial Notice of Loan Modification Matter*
- LMP Form 2 *Motion to Add an Additional Party to Loan Modification Matter*
- LMP Form 3 *Consent to Participate in Loan Modification Matter by Additional Party*
- LMP Form 4 *Notice of Extension of Loan Modification Matter*
- LMP Form 5 *Motion to Extend the Duration of Loan Modification Matter*
- LMP Form 6 *Motion to Terminate Loan Modification Matter*
- LMP Form 7 *Notice of Non-Compliance Regarding Loan Modification Matter*
- LMP Form 8 *Notice Substituting Servicer Regarding Loan Modification Matter*
- LMP Form 9 *Notice of Trial Period Payments Regarding Loan Modification Matter*
- LMP Form 10 *Order Approving Trial Period Payments*
- LMP Form 11 *Motion to Approve Loan Modification Agreement*
- LMP Form 12 *Order Approving Loan Modification Agreement*
- LMP Form 13 *Order Denying Approval of Loan Modification Agreement*