

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

IN THE MATTER OF THE REHABILITATION OF)
TRIAD GUARANTY INSURANCE CORPORATION)

Case No.: 12 CH 43895

**PLAN OF REHABILITATION FOR
TRIAD GUARANTY INSURANCE CORPORATION**

Triad Guaranty Insurance Corporation (“Triad”) was placed in rehabilitation pursuant to the provisions of Article XIII of the Illinois Insurance Code, 215 ILS 5/187 *et seq.*, on December 11, 2012 by entry of an Order of Rehabilitation with a Finding of Insolvency by the Circuit Court of Cook County, Illinois. Andrew Boron, Director of Insurance of the State of Illinois, was affirmed as its statutory Rehabilitator, pursuant to the provisions Article XIII of the Illinois Insurance Code. As a result of its insolvency, Triad is not able to discharge all of its Policyholder obligations in full. This Plan of Rehabilitation is intended to ratably allocate Triad’s available assets and future revenue to pay Covered Claims of Triad’s Policyholders as they come due throughout the duration of this Plan of Rehabilitation.

PART I DEFINITIONS

1.01 Carrying Charges: Interest owed to Policyholders on Deferred Payment Obligations, pursuant to the Director’s Amended Corrective Order No. 01-2009.

1.02 Certificate of Insurance: Placement of insurance purchased by a Policyholder in accordance with its mortgage guaranty insurance policy on a mortgage loan issued by a Policyholder.

1.03 Covered Claim:

- (a) An uncontested determination by the Rehabilitator that a claim for loss is properly due and owing to a Policyholder in settlement of any request for benefits under a Certificate of Insurance issued in connection with a mortgage guaranty insurance policy; or
- (b) A contested determination by the Rehabilitator that a claim for loss is not properly due and owing, or due and owing for less than the amount requested, to a Policyholder in settlement of any request for benefits under a Certificate of Insurance issued in connection with a mortgage guaranty insurance policy, wherein the Supervising Court enters an order overruling the Rehabilitator's determination and allowing the claim for loss; or
- (c) An uncontested determination by the Rehabilitator that an Unearned Premium or a Return of Premium, as defined herein, is properly due and owing to a Policyholder under a Certificate of Insurance; or
- (d) A contested determination by the Rehabilitator that an Unearned Premium or Return of Premium, as defined herein, is not properly due and owing, or due and owing for less than the amount requested, to a Policyholder under a Certificate of Insurance wherein the Supervising Court enters an order

overruling the Rehabilitator's determination and allowing the claim for Unearned Premium or a Return of Premium; or

- (e) Unpaid claims for loss in the total amount of \$140,271,544 for Certificates of Insurance that were subject to Triad's former lawsuit against American Home Mortgage ("AHM") that was dismissed by the United States Bankruptcy Court, District of Delaware, seeking rescission of all AHM originated business.

1.04 **Deferred Payment Obligation:** The unpaid portion of a mortgage guaranty insurance loss settlement or a Return of Premium due and owing to a Policyholder against Triad, including but not limited to the 40% "Deferred Amount" as defined in the Director's Amended Corrective Order No. 01-2009, dated May 26, 2009, through the date of the entry of a final and non-appealable order approving this Plan of Rehabilitation.

1.05 **Department:** The Illinois Department of Insurance.

1.06 **Director:** Andrew Boron in his capacity as the Director of Insurance of the State of Illinois, and his predecessors or successors in office.

1.07 **Policyholder:** The insured beneficiary under a policy of mortgage guaranty insurance issued by Triad.

1.08 Preferential Payment: A payment on a Covered Claim in excess of amounts that the Rehabilitator can True-up through available assets and additional revenue earned or forecast to be earned by Triad.

1.09 Rehabilitator: Andrew Boron, Director of Insurance of the State of Illinois, and any successors in office, acting solely in their capacity as the statutory and court affirmed Rehabilitator of Triad.

1.10 Return of Premium: Premium due to be returned on a Certificate of Insurance issued under a mortgage guaranty insurance policy as a result of the rescission or cancellation of a Certificate of Insurance.

1.11 Supervising Court: Circuit Court of Cook County, Illinois, County Department, Chancery Division.

1.12 True-up: A procedure established and employed by the Rehabilitator to ratably allocate the sum total of all distributions made to Policyholders under this Plan of Rehabilitation for the payment of Covered Claims and Deferred Payment Obligations.

1.13 Unearned Premium: That portion of the premium on a Certificate of Insurance that has not been earned by Triad.

PART II PLAN OF REHABILITATION

Unless otherwise noted, each section of this Plan of Rehabilitation shall be applicable throughout the duration of this Plan of Rehabilitation, subject to the further order of the Supervising Court.

2.01 Corrective Orders

All Corrective Orders previously entered by the Director are terminated as of the entry of the order approving this Plan of Rehabilitation.

2.02 Future Reporting of Deferred Payment Obligations and Pending Loss Reserves.

- a. Quarterly financial statements shall be prepared by the Rehabilitator reporting the amount of any unpaid Deferred Payment Obligations as a liability of Triad included in reported losses.
- b. Quarterly financial statements shall be prepared by the Rehabilitator reporting the full reserving of any pending claims for loss as a liability of Triad included in reported losses.
- c. *[Notwithstanding any provisions contained in Triad's mortgage guaranty insurance policies, no interest or Carrying Charges will accrue or be recorded on Deferred Payment Obligations or Covered Claims subsequent to the entry of the December 11, 2012 Order of Rehabilitation.]* Until such time that either: (a) Triad has paid the principal amount of all loss claims in full; or (b) the Rehabilitator has reported to the Court that sufficient assets exist in the estate such that the principal amount of all pending and future loss claims may be paid

in full, the Court has deferred any argument and ruling on Ocwen Loan Servicing, LLC's timely filed objection as to whether: (i) interest accrues subsequent to the entry of the rehabilitation order on either or both of DPO issued pre-rehabilitation and DPO issued subsequent to the entry of the rehabilitation order; and (ii) if the court finds that interest accrues subsequent to the entry of the rehabilitation order, at what priority level of the distribution schedule is such interest payable?

2.03 Injunctive Provisions

The injunctive provisions contained in the Supervising Court's December 11, 2012 Order of Rehabilitation shall continue in full force and effect, unless otherwise provided under this Plan of Rehabilitation and subject to the further order of the Supervising Court.

2.04 Expenses of Administration

The Rehabilitator's costs and expenses of administration of the rehabilitation shall be paid from the assets of Triad, and shall be reported by the Rehabilitator in quarterly financial statements, quarterly *Statements of Changes in Cash and Invested Assets* prepared in accordance with 215 ILCS 5/202(d), and in an annual financial statements and reports to the Supervising Court.

2.05 Claim Payment Plan

- a. Within ninety (90) days of the order approving this Plan of Rehabilitation becoming final, and all rights of appeal becoming final and exhausted, the Rehabilitator shall commence paying Covered Claims at the rate of seventy five percent (75%) of the amount due.

- b. Within ninety (90) days of the order approving this Plan of Rehabilitation becoming final, and all rights of appeal becoming final and exhausted, the Rehabilitator shall pay thirty seven and ½ percent (37.5%) of Triad's outstanding Deferred Payment Obligations. The purpose of this payment is to ratably equalize the claim payment rate for claims previously paid by Triad at the rate of sixty percent (60%) of the amount due with the Covered Claim payment rate under this Plan of Rehabilitation of seventy five percent (75%) of the amount due and owing as illustrated in Exhibit A hereto.
- c. *[Claims for unpaid Carrying Charges shall be prioritized as general creditor obligations of Triad in accordance with the Illinois priorities of distribution statute, 215 ILCS 5/205(1)(g). No payment of Carrying Charges shall be made under this Plan of Rehabilitation, unless and until all policyholder priority level claims, 215 5/205(1)(d), including Triad's obligations on Covered Claims and Deferred Payment Obligations are paid by cash in full.]* Until such time that either: (a) Triad has paid the principal amount of all loss claims in full; or (b) the Rehabilitator has reported to the Court that sufficient assets exist in the estate such that the principal amount of all pending and future loss claims may be paid in full, the Court has deferred any argument and ruling on Ocwen Loan Servicing, LLC's timely filed objection as to what priority level of the distribution schedule pre-rehabilitation interest on DPO is payable?
- d. Triad shall have no obligation to pay claims for loss, Return of Premium, Unearned Premium, settlements, or judgments if:

- (i) procured by fraud or misrepresentation;
 - (ii) procured by collusion involving the Policyholder and/or his representatives and a third person;
 - (iii) based on judgments taken after the entry of the December 11, 2012 Order of Rehabilitation, or in violation of the Supervising Court's anti-suit injunction contained the December 11, 2012 Order of Rehabilitation; and/or
 - (iv) subject to a decision or action by Triad for the rescission or denial of a claim under a Certificate of Insurance, not otherwise adjudicated by the Supervising Court in accordance with Section 4.05 of this Plan of Rehabilitation.
- e. The unpaid portion of a Covered Claim or Deferred Payment Obligation under this Plan of Rehabilitation (i.e., the remaining twenty five percent (25%) due on Covered Claims or Deferred Payment Obligations, after application of the seventy five percent (75%) claim payment rate) shall be paid by recording a Deferred Payment Obligation on the books and records of Triad.
- f. Paid Covered Claims and Deferred Payment Obligations shall remain entitled to receive an equal ratable cash payment from Triad in the event that the Covered Claim payment rate of seventy five percent (75%) under

this Plan of Rehabilitation is subsequently increased by the Supervising Court.

- g. Cash payments on Covered Claims and the recording of a Deferred Payment Obligation under this Plan of Rehabilitation shall together constitute payment in full by Triad.
- h. The Rehabilitator is authorized to delay, suspend, reduce, or cease payments called for under this Plan of Rehabilitation without further notice or order of the Supervising Court in the event that he makes a written determination that Triad's financial condition warrants modification, either to the timing or amount of the Covered Claim payment rate provided for under this Plan of Rehabilitation. In the event that the Rehabilitator makes such a determination, and the delay, suspension, reduction or cessation of payments continues for more than ninety (90) days, the Rehabilitator shall report to and move the Supervising Court for the appropriate amendment or modification to the Plan of Rehabilitation with notice to Policyholders as the Supervising Court directs.

2.06 General Creditor Claims.

No payment of general creditor claims, including but not limited to claims for indemnification under underwriting agreements, and municipal, state or federal regulatory fees, fines, interest or penalties shall be made under this Plan of Rehabilitation, unless and until all higher policyholder priority level claims, 215 5/205(1)(d), including

Triad's obligations on Covered Claims and Deferred Payment Obligations are paid by cash in full.

2.07 Conditions to Acceptance of Payments Under Plan of Rehabilitation.

By accepting payment as provided for under this Plan of Rehabilitation, a Policyholder irrevocably agrees that in the event future circumstances result in the entry of an order by the Supervising Court, which reduces the rate at which Covered Claims are paid and requires True-up of any Preferential Payment, the Policyholder shall accept a reduction in the amounts paid on its future Covered Claims until such time that the ratable amount paid under this Plan of Rehabilitation on all of its Covered Claims is equal to the rate then being paid on Covered Claims.

2.08 Status of Certificates of Insurance.

Certificates of Insurance issued by Triad will remain in force, unless they expire or are cancelled by the Policyholder or Triad in accordance with their terms and conditions in the applicable mortgage guaranty insurance policy, or Triad determines that grounds to rescind a Certificate of Insurance exist. Triad shall not issue any new Certificates of Insurance.

2.09 Collection of Premiums

Triad shall continue to collect premiums in accordance with the terms of its mortgage guaranty insurance policies and Certificates of Insurance for so long as they remain in-force.

2.10 Marshaling of Assets

Where economically feasible the Rehabilitator will continue to marshal assets that may be due to Triad and make those assets available for the payment of administrative expenses and Covered Claims.

PART III CLAIM PROCEDURES

3.01 In accordance with the provisions set forth in the applicable mortgage guaranty insurance policies, Policyholders shall present claims under Certificates of Insurance to the Rehabilitator in accordance with the following procedures:

- a. NOTICE OF DEFAULT. The Policyholder must notify Triad's Loss Management Department at the earliest of the following events: 1) within 10 days after a loan has become 4 months in default under the terms and conditions of the mortgage guaranty insurance policy; 2) Upon initiation of foreclosure proceedings; 3) The filing of a bankruptcy action; or 4) Any action taken by the Policyholder to obtain Borrower's Title to the property. Defaults may be reported to Triad through its TAXIsm Web page at www.triadguaranty.com/TaxiAccess.aspx, electronic submissions, tape, cartridge and manual reportings via regular mail. To inquire about electronic submissions, call 800-451-4872, ext. 7226.
- b. MONTHLY REPORTING. Once a delinquency is reported to Triad the Policyholder is required to report the status of the delinquent account and the servicing efforts undertaken to remedy the default on a consistent monthly basis. The monthly reporting to Triad is required until the

delinquency has been reported current; the loan has been reported as paid in full; or a claim for loss has been filed. For manual reporting a form will generate at the close of business on the last day of the month for updating and turnaround by the Policyholder. Loan cures, foreclosures, bankruptcies, and other pertinent events regarding the delinquency must be included in the monthly status report.

- c. LOAN WORKOUTS. The Policyholder is responsible for making every reasonable effort to work with Triad to mitigate losses or prevent a foreclosure. This is inclusive of repayment plans, loan modifications, loan assumptions, short sales, deeds-in-lieu, effectuating an early disposition of the property, and exercising assignment of rents if applicable.

Non-delegated loan workouts require prior written approval by Triad. A listing of industry-wide pre-approved Triad delegated workout programs may be found on the website at www.triadguaranty.com/servicers.aspx. Additional lender and Government Sponsored Entity (“GSE”)(i.e., the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation) specific delegations have been and will continue to be granted. To request Triad’s approval on a non-delegated loan workout, requests by email shall be presented to the workout team at HOPE@tgic.com or phone at 800-628-4744, ext. 7226 to discuss the specific loan and what is needed for approval.

- d. BANKRUPTCY. Notification of a bankruptcy, filing and release, to Triad is a requirement of the mortgage guaranty insurance policy. Notification

may be given on the initial notice of default or the monthly status reporting. The date of the filing, the chapter filed, and the date relief is received or any significant changes to the bankruptcy status should be reported. If a borrower is not making mortgage payments the Policyholder must take every necessary action to have the property released from the bankruptcy to commence or continue foreclosure proceedings. Failure to diligently pursue a release may result in a reduction of the claim for loss.

- e. FORECLOSURE. Triad may direct initiation of Appropriate Proceedings at any time after default is noticed, subject to controlling law or regulations. If Triad gives no directive the Policyholder must begin foreclosure proceedings no later than the 6th month of default. Any extension needed to this timeframe requires written approval by Triad prior to the expiration of the 6-month time frame.

Once initiated, the foreclosure must proceed expeditiously. Triad utilizes due diligence time frames during the processing of the claim. Foreclosure time frames are measured from the referral of the foreclosure to the actual foreclosure sale date. The progression and status of the foreclosure proceedings is a requirement and should be furnished to Triad as reasonably and expeditiously as possible. Foreclosure time frames may be found in Triad's Claims and Default Servicing Guide listed on the website www.triadguaranty.com/servicers.aspx.

The Policyholder is required to take the appropriate legal action to preserve deficiency rights on all Triad Policyholder loans where law

permits, the exception being if the laws of the state in which the property is located are such that preservation of deficiency rights will substantially increase the expense or terms of the foreclosure. In such a case, the Policyholder should contact Triad directly for further clarification.

Notice of foreclosure sales is to be provided to triad by way of monthly Electronic Interface reporting.

- f. **BIDDING INSTRUCTIONS.** Bidding at the foreclosure sale should fully protect the rights of Triad to obtain a deficiency judgment unless Triad waives that right as stated above. For all GSE owned loans Triad approves the Policyholder utilizing the GSE published guidelines for bidding. For further clarification on non-GSE owned loans see Triad's Claims and Default Servicing Guide on Triad's website.
- g. **CLAIM SUBMISSION.** For standard flow business, the claim for loss must be submitted to Triad no later than 60 days following the first event to occur: the foreclosure sale and/or expiration of redemption rights, the disposition of the property at the foreclosure sale to a third party, an approved third party sale prior to foreclosure or the transfer of the property through an approved deed-in-lieu of foreclosure as permitted by the terms of the policy. Modified pool claims shall be filed within 60 days of disposition of the collateral property. For dual coverage and primary/modified pool loans the claim for loss on the second layer of coverage shall be filed 60 days after primary coverage is settled. It is the lender's responsibility to acquire borrower's title to the mortgaged

property in order to file a claim for loss. Title free and clear of all liens and encumbrances is required when Triad elects to acquire the property as settlement of the claim. Failure to file a claim for loss within the applicable time period shall be deemed a waiver of any rights to benefits under that Certificate of Insurance.

Once title is obtained, the Policyholder should market the property at current fair market value unless an alternative marketing or leasing option is available. For more information about marketing or leasing options see Triad's website at www.triadguaranty.com/servicers.aspx or call a claims associate at 800-628-4744, ext. 7003. If a potential sale is procured prior to submission or settlement of the claim by Triad, the Policyholder must notify Triad of such sale and obtain prior approval from Triad before agreeing to the terms of the sale. Failure to obtain approval for the sale from Triad will result in a denial of benefits.

Claims may be submitted via the Internet through our TAXIsm system, electronically, by facsimile or regular mail. Triad will contact the Policyholder upon receipt of the claim if further documentation/information is needed.

3.01.5 Notwithstanding any of the foregoing provisions contained in Section 3.01, to the extent any of the following are in conflict, the following shall control (subject to controlling laws or regulations):

- a. The provisions of the applicable mortgage guaranty insurance policy form;

- b. Any and all applicable endorsements to the mortgage guaranty insurance policy form under which the claim arises;
- c. Triad's Default & Claims Servicing Guide¹;
- d. The Loss Mitigation Industry & Support Delegated Loss Mitigation Parameters²;
- e. The Non-Delegated Loss Mitigation Documentation requirements³;
- f. Industry Workout Reporting template Definitions and Instructions⁴; and
- g. Reporting template – Frequently Asked Questions.⁵

3.02 Any judicial adjudication of a claim presented by a Policyholder to Triad that is denied, in whole or in part, by the Rehabilitator shall be adjudicated pursuant to the procedures set forth in 215 ILCS 5/209(11) of the Illinois Insurance Code.

PART IV ADMINISTRATION

4.01 Pursuant to the provisions of 215 ILCS 5/202, the Rehabilitator is authorized to use Triad's assets to pay his costs and expenses of the administration, including but not limited to, the salaries and benefits of any special deputies, agents, clerks, assistants, attorneys and other personnel, rents or leases, state and federal income taxes, and premium taxes required by States in which Triad is or has been registered or licensed to conduct business. The Rehabilitator shall report all such disbursements to the Supervising Court in quarterly financial statements, quarterly

1. See, www.tgic.com/pdf/Claims_Manual_print.pdf.

2. See,

www.tgic.com/pdf/Delegated%20Loss%20Mitigation%20Authority%20Parameters.pdf.

3. See, www.tgic.com/pdf/Documentation%20Requirements%202010.pdf.

4. See,

www.tgic.com/pdf/MI%20Industry%20Workout%20Reporting%20Template%20Definitions%20and%20Instructions.xls.

5. See, www.tgic.com/pdf/MI%20Template%20FAQs.pdf.

Statements of Changes in Cash and Invested Assets prepared in accordance with 215 ILCS 5/202(d), and in annual financial statements and reports to the Supervising Court.

4.02 Throughout the pendency of this Plan of Rehabilitation, the Rehabilitator shall review Triad's financial condition, shall report to the Supervising Court and publish on the Rehabilitator's website (www.osdchi.com) quarterly financial statements, annual financial statements, and an annual report.

4.03 The Rehabilitator in his discretion may compromise or settle, doubtful, disputed or uncollectible debts or claims owing to or by Triad, and shall report the same to the Supervising Court. Any debt or claim having a separate value of \$500,000 or more, which the Rehabilitator deems should be compromised or settled in the best interests of Triad and its Policyholders and creditors, shall be submitted to the Supervising Court for its approval.

4.04 Upon the entry of the Supervising Court's December 11, 2012 Order of Rehabilitation, certain of Triad's Policyholders had pending appeals of Triad's decision to rescind its Certificate of Insurance ("Rescission Appeals"). The Rehabilitator is authorized to negotiate global settlements of the Triad's Rescission Appeals with its Policyholders, subject to the final approval of any such settlements by the Supervising Court.

4.05 Any claim or appeal by a Policyholder against Triad arising under a policy of mortgage guaranty insurance that is subject to a decision by Triad to rescind, deny, or curtail a claim under Triad's Certificate of Insurance remains subject to the Supervising Court's anti-suit injunction

contained in the December 11, 2012 Order of Rehabilitation, enjoining further prosecution, and shall be subject to the exclusive jurisdiction of the Supervising Court and the claim adjudication procedures set forth in 215 ILCS 5/209(11)-(13) of the Illinois Insurance Code.

4.06 Nothing in the provisions of this Plan of Rehabilitation shall be construed or interpreted as a limitation or qualification of any other rights or remedies that the Director, whether acting as Rehabilitator or otherwise, may have or exercise under the Illinois Insurance Code and any amendments thereto.

4.07 The Supervising Court shall have jurisdiction over this Plan of Rehabilitation throughout the pendency of these rehabilitation proceedings.

4.08 Any acts or omissions of the Rehabilitator in connection with this Plan of Rehabilitation, including but not limited to the payment of Covered Claim obligations owed to Policyholders, shall not be construed or considered to be a preference within the meaning of 215 ILCS 5/204 of the Illinois Insurance Code, notwithstanding the fact that any such act or omission may cause a Policyholder to receive a greater percentage of debt owed by Triad than any other Policyholder in the same priority class.


4.09 In the event that the Rehabilitator subsequently determines that this Plan of Rehabilitation Plan is no longer feasible or in the best interests of Triad's Policyholders, the Rehabilitator may petition the Supervising Court, with notice to Policyholders as the Supervising Court directs, to

Amend the Plan of Rehabilitation, or the Director may proceed to liquidate Triad pursuant to the applicable provisions of Article XIII of the Illinois Insurance Code.

4.10 The Order of the Supervising Court approving this Plan of Rehabilitation is an appealable order pursuant to Illinois Supreme Court Rule 304(b)(2).

Respectfully submitted,

ANDREW BORON, not individually but in his capacity as statutory and court-affirmed Rehabilitator of Triad Guaranty Insurance Corporation

By: 
One of his attorneys

ENTERED:

ENTERED
Judge Rodolfo Garcia

Judge Presiding

OCT 29 2013

Circuit Court – 1727

J. Kevin Baldwin
Daniel A. Guberman
Kevin W. Horan
Counsel to the Rehabilitator
222 Merchandise Mart Plaza
Suite 960
Chicago, Illinois 60654
Telephone: 312-836-9519
Attorney Code #16819