

## **APPENDIX B**

### **Consumer Relief**

**Eligibility:** The Consumer Relief eligibility criteria shall reflect only the terms set forth below and the following principles and conditions: (1) Consumer Relief will be related to borrowers or properties located in New York State; (2) Consumer Relief will not be implemented through any policy that violates the Fair Housing Act or the Equal Credit Opportunity Act; (3) Consumer Relief will not be conditioned on a waiver or release by a borrower, **provided** that waivers and releases shall be permitted in the case of a contested claim where the borrower would not otherwise have received as favorable terms or consideration; and (4) Eligible modifications may be made under the Making Home Affordable Program (including the Home Affordable Modification Program (“HAMP”) and the Housing Finance Agency Hardest Hit Fund) and any proprietary or other modification program.

## Menu<sup>1</sup>

<u>Menu Item<sup>2</sup></u>	<u>Credit Towards Settlement</u>	<u>Minimum</u>
<b>1. <u>Modification – Forgiveness/Forbearance<sup>3</sup></u></b>		
A. First Lien – Principal Forgiveness	\$1.00 Forgiveness = \$1.00 Credit <sup>4</sup>	
	115% Early Incentive Credit <sup>5</sup> 115% Credit for incremental LTV reduction below 100%	
	\$1.00 Forgiveness on loans serviced by Morgan Stanley but owned by other investors = \$0.50 Credit	
	\$1.00 Investor incentive payments (when paid) consistent with those paid in HAMP (if applicable) = \$1.00 Credit	
	Credit limited to principal forgiveness that reduces LTVs to equal to or less than 100%	

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<sup>1</sup> Start date of crediting is 02/01/2015 (based on first payment date for completed modifications and other actions under this Menu). Consumer Relief to be completed no later than 09/30/2019. No Credit will be provided for a modification if payments are required unless the borrower makes the first three scheduled payments under the modification (including trial period payments). With respect to earned forgiveness principal reduction modifications, credit can be immediate, provided the borrower makes the required payments (to include any trial payments) and the earned forgiveness period is a maximum of 3 years. If a borrower receives more than one form of consumer relief, Credit shall be provided for each form of relief, provided that the forms of relief must be segregated for purposes of determining Credit.

<sup>2</sup> Credit will be provided for any consumer relief completed by any servicer or subservicer pursuant to this Appendix B and for loans sold to other servicers (including sales of servicing rights) where a modification is completed by the deadline set forth in footnote 1 for Morgan Stanley (“MS”) to complete its Consumer Relief obligations, and provided that the agreement providing for such sale of servicing allows for the tracking and reporting of such subsequent Consumer Relief. With respect to loans held in securitizations, Consumer Relief shall be credited in accordance with this Appendix B from 02/01/2015 for all eligible modifications described in this “Menu,” provided that all principal forgiveness modifications performed on loans in securitizations shall be eligible only where: (1) the modification is permitted under the operative documents for the securitization; or (2) MS has permission from the relevant investors and/or trustees to provide the principal reduction under the operative documents for the securitization or another agreement with trustees/investors.

<sup>3</sup> For Menu Items 1.A and 1.E, eligibility is limited to non-performing loans, loans in imminent default, high LTV loans, loans with rates substantially above Freddie Mac’s Primary Mortgage Market Survey (PMMS) and loans with troubled loan history. High LTV Loans are defined as loans at or above 100% LTV. Loans with troubled loan history are defined as loans where the borrower has missed two or more payments during the term of the loan. With respect to all other categories, eligibility is available to all borrowers unless otherwise limited under the Menu.

<sup>4</sup> First liens purchased after the start date of crediting will only be eligible for Credit under Menu Item 1 if Morgan Stanley reasonably believes the properties subject to the first liens are owner occupied when the consumer relief is provided.

<sup>5</sup> Early Incentive Credit applies to all consumer relief activity offered or completed within 1 year of the execution of this Settlement Agreement. Early Incentive Credit and other credits are cumulative (*e.g.*, \$1.00 of principal forgiveness in an amount below 100% LTV completed within 1 year of the execution of this Settlement Agreement would receive \$1.3225 Credit).

<u>Menu Item<sup>2</sup></u>	<u>Credit Towards Settlement</u>	<u>Minimum</u>
B. Principal Forgiveness of Forbearance	<p>\$1.00 Forgiveness = \$1.00 Credit</p> <p>115% Early incentive Credit</p> <p>115% Credit for incremental LTV reduction below 100%</p> <p>\$1.00 Forgiveness on loans serviced by MS but owned by other investors = \$0.50 Credit</p> <p>\$1.00 Investor incentive payments (when paid) consistent with those paid in HAMP for principal reduction of first liens (if applicable) = \$1.00 Credit</p> <p>Credit limited to principal reduction that reduces LTVs to equal to or less than 100%</p>	
C. First Lien – Forbearance (Payment Forgiveness)	<p>\$Forgiveness = Pre Mod Rate x Forborne UPB x Avg Life<sup>6</sup></p> <p>115% Early Incentive Credit</p> <p>\$1.00 Forgiveness on loans serviced by MS but owned by other investors = \$0.50 Credit</p> <p>\$1.00 Investor incentive payments (when paid) consistent with those paid in HAMP (if applicable) = \$1.00 Credit</p> <p>Credit limited to principal reduction that reduces LTVs to equal to or less than 100%</p>	
D. Second Lien – Principal Forgiveness (including extinguishments)	<p>\$1.00 Forgiveness = \$1.00 Credit<sup>7</sup></p> <p>115% Early Incentive Credit</p> <p>\$1.00 Forgiveness on loans serviced by MS but owned by other investors = \$0.50 Credit</p> <p>\$1.00 Investor incentive payments (when paid) consistent with those paid in HAMP (if applicable) = \$1.00 Credit</p>	
E. Balance Forgiveness-First Lien <sup>8</sup>	<p>\$1.00 Forgiveness = \$1.00 Credit</p> <p>115% Early incentive Credit</p>	

<sup>6</sup> Based on an average life of 12 years.

<sup>7</sup> Second liens purchased after the start date of crediting will not be eligible for Credit under Menu Item 1.

<u>Menu Item<sup>2</sup></u>	<u>Credit Towards Settlement</u>	<u>Minimum</u>
	115% Credit for incremental LTV reduction below 100%	
	\$1.00 Forgiveness on loans serviced by MS but owned by other investors = \$0.50 Credit	
	\$1.00 Investor incentive payments (when paid) consistent with those paid in HAMP (if applicable) = \$1.00 Credit	
	Credit limited to balance forgiveness that reduces LTVs to equal to or less than 100%	
F. Balance Forgiveness-Second Liens (including extinguishments)	\$1.00 Forgiveness = \$1.00 Credit	
	115% Early incentive Credit	
	\$1.00 Forgiveness on loans serviced by MS but owned by other investors = \$0.50 Credit	
	\$1.00 Investor incentive payments (when paid) consistent with those paid in HAMP (if applicable) = \$1.00 Credit	
G. Assistance for Borrowers to Refinance Outside Morgan Stanley	\$1.00 Forgiveness/Extinguishments otherwise eligible under Menu Items 1 or 2A = \$1.00 Credit	
	\$1.00 Closing Costs Paid on behalf of Borrowers to a third-party originator = \$1.00 Credit	
	\$1.00 Other Costs Paid on behalf of Borrowers such as to lienholders other than MS to facilitate refinancing = \$1.00 Credit	
	\$1.00 of cost of HUD approved counseling MS is not otherwise obligated to provide = \$1.00 Credit	
	115% Early incentive Credit	
		<b>Menu Item 1A-G Credit Minimum = \$70 million.</b>
H. Financing to Units of Local Government or other Eligible Entities for the Acquisition and	\$1.00 of financing to support non- profit acquisition of non-performing loans for purposes of principal reduction and other qualified consumer relief strategies = \$2.00	

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<sup>8</sup> Balance Forgiveness including short sales and deed in lieu.

<u>Menu Item<sup>2</sup></u>	<u>Credit Towards Settlement</u>	<u>Minimum</u>
Remediation of Non-Performing Loans	Credit <sup>9</sup> 115% Early incentive Credit	

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<sup>9</sup> In order to be eligible to receive Credit, financing in the form of a secured loan must be provided at an interest rate of less than 1% and for a term of at least four years or the disposition of the collateral securing the loan, whichever is sooner. If financing is provided in the form of a grant, each \$1.00 grant will equal \$2.50 of Credit. When financing is provided in the form of a grant, Early Incentive Credit and Final Credit will be earned when the units of local government or other eligible entity receive the grant.

2. **Rate Reduction/Refinancing**<sup>10</sup>

A. Rate Reduction<sup>11</sup>

For rate reductions >200 bps and <400 bps:

$\$Credit = Rate\ Reduction \times Avg.\ Life^{12}$   
x  
\$UPB (post mod interest bearing UPB if applicable)

For rate reductions equal to or greater than 400 bps:

$\$Credit = Rate\ Reduction \times Avg.\ Life^{13}$   
x  
\$UPB (post mod interest bearing UPB if applicable) x 1.25

\$1.00 Other Costs Paid on behalf of Borrowers such as to lienholders other than MS to facilitate refinancing = \$1.00 Credit

\$1.00 Closing Costs Paid on behalf of Borrowers to a third-party originator = \$1.00 Credit

115% Early incentive Credit 115% Credit for LTV reduction below 100%

Eligibility for credit to include rate reductions facilitated by MS for borrowers refinancing through third parties

\$1.00 Principal Forgiveness or Balance Forgiveness to facilitate a refinancing = \$1.00 Credit

B. Cross-Servicer HARP

$\$Credit = Rate\ Reduction \times Avg.\ Life^{14} \times \$UPB$

115% Early incentive Credit

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<sup>10</sup> All rate reduction and refinancing under any Menu Item must be provided at no cost to the borrower, excluding any tax consequences which shall be the responsibility of the borrower.

<sup>11</sup> With respect to Menu Item 2.A, principal reduction and balance reduction is available to all borrowers regardless of loan performance status.

<sup>12</sup> Based on an average life of 12 years.

<sup>13</sup> Based on an average life of 12 years.

<sup>14</sup> Based on an average life of 5 years.

3. **Community Reinvestment and  
Neighborhood Stabilization**

A. Grants to Municipalities or Counties to capitalize or support certified Land Banks subject to state or local regulation      \$1.00 grant = \$2.00 Credit<sup>15</sup>      **Menu Item 3A Credit  
Minimum = \$30 Million**

B. Grants to Municipalities or their housing or finance agencies to support housing quality improvement and enforcement programs      \$1.00 grant = \$2.00 Credit<sup>15</sup>      **Menu Item 3B Credit  
Minimum= \$30 Million**

115% Early Incentive Credit for Menu  
Items 3.A-B

**Menu Item 1H + 3A + 3B  
Credit Minimum = \$125  
million**

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<sup>15</sup> If Morgan Stanley elects to do so, it may use one or more non-profits to evaluate potential projects and to generate and administer financing or grants to municipalities or counties pursuant to this menu item. Credits for Menu Items 3A and 3B are eligible for Early Incentive Credit on the date funds/grants are received by such non-profits. Final Credit for Menu Item 3A and 3B will be earned when a formal letter of commitment is provided by such non-profits to the recipients.

#### 4. Affordable Rental Housing

Financing and/or Grants to Municipalities or Counties (including housing or finance agencies) to fund Critical Need Housing Developments<sup>16</sup> and/or Support Services or programs for Such Developments

\$1.00 Loss<sup>17</sup>/grant = \$3.75 Credit

115% Early incentive Credit

**Menu Item 4 Credit Minimum  
= \$150 million**

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<sup>16</sup> “Critical Need Housing” is defined as new or existing multifamily affordable rental housing developments that have been selected by a municipality, county or the state, or any of their housing or finance agencies and are subject to a regulatory agreement comparable to LIHTC affordability restrictions that meet one of the following criteria: (i) developed through LIHTC or are equivalent to multifamily affordable rental housing developed through LIHTC; (ii) provide multifamily affordable rental housing for senior citizens; (iii) provide multifamily affordable rental housing located near public transit hubs; or (iv) provide multifamily affordable rental housing located near (or that otherwise provides access to) health care professionals. Morgan Stanley will have the ability to choose and underwrite the projects financed pursuant to this menu item. If Morgan Stanley elects to do so, it may use one or more non-profits to evaluate potential projects and to generate and administer financing or grants to municipalities or counties pursuant to this menu item. A cumulative 115% Credit will be provided for projects located in municipalities or counties where Morgan Stanley has not funded a Critical Need Housing project during the past four years (*see* footnote 5, above).

<sup>17</sup> For loans or investments, Loss is measured by the net settlement amount, and is equal to the difference between par value (*i.e.*, the amount paid by MS) and the fair value (*i.e.*, market value) on the origination date of the loan or investment made to facilitate the construction, rehabilitation or preservation of multifamily affordable rental housing, less administrative fees. Origination date is defined as the date of the closing of the loan or investment at par value and disbursement by MS to fund the Loss. Credit will only be given up to \$100,000 of Loss per affordable housing unit. Origination date is also the determinative date for determining whether the Loss is eligible for the Early Incentive Credit. If a Loss is eligible for the Early Incentive Credit, but some or all of the financing generated by the Loss has not yet been committed to a particular project or municipality or county, MS will not receive final credit for the Loss (including the Early Incentive Credit) until after a formal letter of commitment is issued to the project or municipality or county receiving the Financing. If MS’s Loss is substantially reversed due to circumstances such as cancellation of the project during the term of this Appendix B, MS’s credit shall be calculated on the actual Loss incurred. The Loss will be validated by the non-profit tax credit syndicator. For grants of assets to fund developments or support services, the value of the grant will be measured based on the fair value of the asset at the time of the grant. The financing provided under this section will be in a form (*e.g.*, as a grant or a forgivable loan) acceptable to the municipality or county receiving the financing.



## **Reporting Requirements, Liquidated Damages, Credit Minimums, and Tax Consequences**

MS shall endeavor to satisfy the Consumer Relief obligations set forth in this Appendix B by September 30, 2018, but shall have until September 30, 2019 to complete all Consumer Relief obligations set forth in this Appendix B. An independent Monitor acceptable to the parties and paid for by MS shall be appointed to publicly: 1) report progress towards completion of Consumer Relief, including reporting on overall progress on a quarterly basis commencing no later than 180 days after the date of this Agreement; 2) report on Credits earned as promptly as practicable following the date the Monitor has confirmed the methodology for validation of Credits under this Menu (including a description of the distribution of Credits at the census block level for Menu items 1 and 2); and 3) ultimately determine and certify MS's compliance with the terms of this Appendix B. If the Monitor determines that a shortfall in that obligation remains as of September 30, 2019, MS shall make a compensatory payment in cash to the State of New York, in accordance with written payment processing instructions from the New York Attorney General, in an amount equal to the shortfall (the "Liquidated Damages"). The payment of Liquidated Damages shall be the sole remedy for any failure to complete the Consumer Relief. The calculations regarding the Credit Minimums shall be performed by the Monitor and the Monitor shall determine at the end of the period whether there are Liquidated Damages and, if so, the amount due.

In the event that MS is unable to satisfy the Credit Minimums set forth in this Menu despite using its best efforts (as confirmed by the Monitor) for the applicable consumer relief program, MS may apply any Credits earned in excess of any of the Credit Minimums or any Credit earned in any Menu Item as to which neither a Credit Minimum nor a Credit Cap applies to offset any deficiency in respect of any of the other Menu Items to which a Credit Minimum applies.

The Monitor shall provide MS with flexibility on the evidencing requirements for loans not serviced by MS where the standard evidence is unavailable and MS is able to provide alternative evidence that enables the Monitor to satisfactorily carry out his duties under this Appendix B. For example, the Monitor may (but is not required to) determine that balance forgiveness may be evidenced by transaction screenshots, before and after statements and/or Internal Revenue Service ("IRS") Form 1099C statements.

For Menu Items 1 and 2, MS is required to report data to the Monitor at the census block level. For Menu Items 1 and 2, MS is required to provide the Monitor with a copy of the IRS Form 1099C issued to each individual for each item of relief provided.

Credit will not be given for any item of relief provided pursuant to this Menu where the Monitor determines that MS has failed to satisfactorily report data (including census block level data) for that relief as required in this Appendix B.

MS shall not be responsible for any tax consequences to borrowers of the Consumer Relief described in the Menu, but for Menu Items 1 and 2 MS is required to clearly disclose to borrowers the potential tax consequences of any relief offered or provided, and recommend that borrowers seek appropriate counsel as needed.