



July 14, 2008

Internal Revenue Service
CC: PA: LPD: RU (Rev. Proc. 2008-28)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Ladies and Gentlemen:

This letter is submitted on behalf of the American Securitization Forum (the "ASF")¹ in response to a request for comments in Revenue Procedure 2008-28, 2008-23 I.R.B. 1054 ("Rev. Proc. 2008-28"), Section 9. The ASF has been proactive in encouraging and facilitating mortgage loan servicer loss and foreclosure mitigation programs in response to the subprime mortgage loan crisis. The ASF's guidance has included the "Statement of Principles, Recommendations and Guidance for the Modification of Subprime Residential Mortgage Loans" (June 2007), the "ASF Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans" (December 2007), and the "Statement of Principles, Recommendation and Guidelines for a Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans" (July 2008). The ASF has worked closely with Treasury to articulate these programs in a manner consistent with Treasury's goals. Treasury has, in turn, been responsive in alleviating servicers' concerns as to the tax aspects of modification of mortgage loans included in REMIC and grantor trust securitizations. This has been reflected in Revenue Procedure 2007-72, 2007-52 I.R.B. 1257, amplified and superseded by Revenue Procedure 2008-47, to be published in I.R.B. 2008-31, comforting the qualification of REMICs and grantor trusts that use the streamlined framework in the ASF documents, as well as in Rev. Proc. 2008-28.

In this context, the ASF supports the additional guidance provided by Rev. Proc. 2008-28 concerning foreclosure prevention programs that provide for mortgage loan modifications to enable borrowers to avoid default and foreclosure under guidelines that help servicers identify mortgage loans at risk. The Revenue Procedure provides assurance that the Internal Revenue Service (the "Service") will not challenge a servicer's determination that mortgage loans meeting certain criteria are in "reasonably foreseeable default" for purposes of REMIC qualification and

¹ The American Securitization Forum is a broad-based professional forum of over 375 organizations that are active participants in the U.S. securitization market. Among other roles, ASF members act as investors, insurers, issuers, financial intermediaries and professional advisers working on securitization transactions. ASF's mission includes building consensus, pursuing advocacy and delivering education on behalf of the securitization markets and its participants. This statement was developed principally in consultation with ASF's Tax Committee with input from other ASF members and committees. Additional information about the ASF, its members and activities may be found on ASF's internet website at www.americansecuritization.com.

prohibited transaction rules and grantor trust qualification. Whether or not servicers would have been able to reach this conclusion under existing law, Rev. Proc. 2008-28 provides assurance that will facilitate implementation of these programs by removing a potential issue.

The ASF has the following specific comments with respect to Rev. Proc. 2008-28:²

1. Section 5.01. The ASF agrees with limiting the scope of the Revenue Procedure to mortgage loans secured by 1-4 family residences, but would like to see an express inclusion of mortgage loans secured by individual cooperative and condominium single-family residences.
2. Section 5.02. The ASF agrees with limiting the scope of the Revenue Procedure to mortgage loans secured by owner-occupied residences, but would like clarification that (i) both first and second lien mortgage loans are covered and (ii) the mortgage loan servicer may rely on information from the borrower at loan origination as to owner-occupied status, unless the servicer has information to the contrary in its possession.
3. Sections 5.03(1) and (2). The limitation of no more than 10% of the pool principal balance to mortgage loans the payments on which were overdue by 30 days or more may require clarification. On the one hand, the 10% limit is narrower than what Securities and Exchange Commission rules would allow for public offerings of asset-backed securities (including mortgage-backed securities). In the SEC's Regulation AB³ ("Reg AB"), up to 50% of the pool principal balance may be more than 30 days past due with respect to a contractually required payment in order to file a registration statement on SEC Form S-1, while no more than 20% may be more than 30 days past due in order to use a shelf registration on SEC Form S-3. We recommend that the Service expand its guidance to include at least such 20% limitation or, preferably, the 50% limitation. On the other hand, we note that the Revenue Procedure has no upper limit on the delinquency status of the 10% portion of the principal balance, while Reg AB does not allow the inclusion of "non-performing" loans in registered offerings. We do not believe that this constraint should form a necessary part of the Service's guidance, since REMICs and grantor trusts are used in both registered offerings and private placements. However, if the Service is inclined to include a similar non-performing limitation, it could look to the taxable mortgage pool regulations, which do not treat a residential mortgage loan as "seriously impaired" unless it is more than 89 days delinquent.⁴
4. Sections 5.03(1) and (2). The measurement date for the delinquency test is stated to be by reference to the startup day (or the end of the following 3-month period) in the case of a REMIC, or as of all dates assets are contributed to a grantor trust. Since disclosure is

² Section references are to the sections of Rev. Proc. 2008-28.

³ 70 Fed. Reg. 1506 (Jan. 7, 2005).

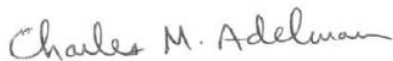
⁴ Treas. Reg. § 301.7701(i)-1(c)(5)(ii)(A).

made to investors some number of days prior to an actual closing date, securitized pools are constructed based on sponsor data as of a date (generally within one month) prior to the actual closing date, referred to as the “cut-off date.” This date is also used under Reg AB for measuring and disclosing pool delinquency information. Such information cannot be reliably updated simultaneously with the closing. Thus, we recommend that a statement be added to the Revenue Procedure that the startup day or contribution date be deemed to reflect information as of a cut-off date within one month of the actual closing date or contribution date, as the case may be.

5. Section 8. The effective date provisions of the Revenue Procedure limit the guidance to modifications that are effected on or before December 31, 2010. We suggest that no such ending date is needed, given the fact that the guidance provides general principles for concluding that default is reasonably foreseeable if its factual setting is met. Servicers employing loss or foreclosure mitigation programs should be able to rely on this guidance without limitation as to time.

If you require further information, please feel free to contact Tom Deutsch, ASF Deputy Executive Director, at 212.313.1135 or tdeutsch@americansecuritization.com or the undersigned at 212.504.6477 or charles.adelman@cwt.com.

Respectfully submitted,



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