



July 25, 2008

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

Re: Revenue Procedure 2008-28

Dear Sir/Madam:

On behalf of the Securities Industry and Financial Markets Association (“SIFMA”),<sup>1</sup> we are pleased to submit this letter in response to the request for comments set forth in Section 9 of Revenue Procedure 2008-28 (the “Revenue Procedure”), which was issued on May 16, 2008.

The Revenue Procedure describes conditions under which certain mortgage loans held in real estate mortgage investment conduits (REMICs) or grantor trusts may be modified prior to default or delinquency, without the Internal Revenue Service challenging the tax status of those securitization vehicles as a result of the modifications. We appreciate this prompt response to the obstacles to obtaining these modifications where mortgage loans are held by REMICs and grantor trusts. This very helpful guidance will permit many loan modifications that will enable homeowners to stay in their homes and avoid foreclosure. We respectfully request your consideration of the following clarifications and suggestions that should lead to many more such modifications and greatly improve the administrability of the rules.

#### Section 5.01

Section 5.01 limits the application of this Revenue Procedure to mortgage loans secured by residences that contain fewer than five dwelling units. We request that you consider clarifying that the Revenue Procedure is intended to apply to a mortgage secured by a single-unit dwelling within a multi-unit structure, as long as the single-unit dwelling is owner-occupied in accordance with section 5.02.

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<sup>1</sup> The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

## *Section 5.02*

Section 5.02 provides that the Revenue Procedure applies only to mortgage loans securing “owner-occupied” mortgaged property. We request clarification of the term “owner-occupied.” Both the American Securitization Forum’s “Statement of Principles, Recommendations and Guidelines for a Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans” (the “Framework”), dated December 6, 2007 and endorsed by the IRS in Revenue Procedure 2007-72, and the ASF’s “Statement of Principles, Recommendations and Guidelines for a Streamlined Foreclosure and Loss Avoidance Framework for Securitized Subprime Adjustable Rate Mortgage Loans” (the “Revised Framework”), dated July 8, 2008 and endorsed by the IRS in Revenue Procedure 2008-47, state the following: “Owner occupancy status will be determined solely based on the borrower’s representations at origination together with any information known to or readily available to the servicer. For example, the servicer may compare the current billing address with the property address.” Adding similar language to the Revenue Procedure would make it clear that servicers do not need a particular statement from the borrower but may establish owner occupancy status through extrinsic evidence.

## *Section 5.03*

Section 5.03 limits the applicability of the Revenue Procedure to loans securitized in pools in which no more than ten percent of the pool was delinquent by 30 days or more. In the case of a REMIC, the 30-day test is measured at either the startup day or the end of the 3-month period beginning on the startup day. In the case of a grantor trust, it is measured as of all dates on which assets were contributed to the trust. We request your consideration of the following three areas where further clarification may be warranted and/or consistency with outstanding regulations or industry standards would prevent confusion and add efficiency.

First, we believe further consideration should be given to increasing the limit to “20% delinquent by more than 30 days” to be more consistent with the SEC’s Regulation AB. Regulation AB, which governs registration and disclosure requirements for publicly offered mortgage-backed securities, permits the issuance of mortgage-backed securities under a Form S-3 shelf registration where up to twenty percent of the loans (by dollar amount as of the measurement date) are delinquent by more than 30 days. As a result, performing mortgage loans may have been securitized in pools containing up to twenty percent delinquent assets. Thus, the ten percent limit currently in the Revenue Procedure could substantially restrict the number of mortgage loans eligible for modification pursuant to the Revenue Procedure. We believe that Regulation AB sets a high standard for delinquency limits on the pooled mortgage loans offered under a shelf registration, and represents an industry best practice for performing pools.

Second, we suggest that “delinquent by more than 30 days” should be defined to be consistent with Item 1101(d) of Regulation AB. Specifically, it should be defined to mean “more than 30 or 31 days or a single payment cycle, as applicable, past due from the contractual due date, as determined in accordance with the most conservative of the following: (1) the

transaction agreements for the asset-backed securities; (2) the delinquency recognition policies of the sponsor, any affiliate of the sponsor that originated the pool asset or the servicer of the pool asset; or (3) the delinquency recognition policies applicable to such pool asset established by the primary safety and soundness regulator of any entity listed in (2) above or the program or regulatory entity that oversees the program under which the pool asset was originated.”

Third, we request that servicers have the option to measure the delinquency status of a pool at the so-called “cut-off date” for the related securitization. The cut-off date, which is generally the first day of the calendar month in which the securitization closes, is the standard measurement date for delinquency status in mortgage-backed securities transactions. This is the date as of which delinquency status generally is disclosed in offering materials, for example. Regulation AB permits the cut-off date to be used as the measurement date for purposes of the delinquency limits. Accordingly, this information is readily available to servicers. It is not clear that delinquency data would be readily available as of the startup day, at the end of the 3-month period or on the date of asset contribution. Developing delinquency data for these dates would be expensive and time-consuming, and would run counter to the goal of protecting homeowners whose loans are in existing transactions.

#### Section 8

Section 9 of the Revenue Procedure requests comments on whether the guidance should extend to loan modifications effected after 2010. Section 8 limits the applicability of the Revenue Procedure to loan modifications that are effected on or before December 31, 2010. We believe the Revenue Procedure would remain very useful beyond 2010, as there may be some real estate markets lagging in their recovery beyond 2010. There should not be a policy concern with removing the sunset date, as the requirements found in sections 5.04 and 5.05, along with the constraints imposed by the pooling and servicing agreements which govern servicer actions, will effectively ensure that loan modifications are limited to default and foreclosure avoidance.

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Thank you for your consideration of our views. Please do not hesitate to contact Patti McClanahan (at 202-962-7326 or [pmcclanahan@sifma.org](mailto:pmcclanahan@sifma.org)) if you have any questions or SIFMA can be helpful in any way with respect to this guidance project.

Sincerely,



Patricia McClanahan  
Managing Director



Sean Davy  
Managing Director  
MBS and Securitized Products Division