

U.S. Structured Finance Newsletter

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ASF RESPONDS TO THE HOUSE FINANCIAL SERVICES REQUEST FOR MORTGAGE FORBEARANCE

On August 5, 2008, the House Financial Services Committee issued a statement strongly urging mortgage servicers to hold off on foreclosures for the next several months on homeowners who could potentially qualify for the new Federal Housing Administration (FHA) Hope for Homeowners refinance program. This program is designed to help at least 400,000 borrowers who have fallen behind in their payments due to a combination of unaffordable mortgages and falling home prices. The rescue provisions, which will refinance qualified individuals through the FHA program, are scheduled to be finalized and go into effect on October 1, 2008.

In response, the American Securitization Forum (ASF) issued the following warning to the House Financial Services Committee:

“Not all loans and borrowers theoretically eligible for this program will be viable candidates for refinancing, for a host of reasons that may be unrelated to the satisfaction of initial program eligibility criteria. Moreover, formal program eligibility criteria are still being developed, and at this stage, it is therefore not possible for servicers to determine with precision which borrowers and loans will be likely to qualify. In the meantime, in fulfillment of their contractual duties to investors, servicers remain obligated to undertake appropriate loss mitigation actions with respect to loans in their securitized portfolios. In some cases, servicers may conclude that investors’ best interests will be served by deferring a foreclosure action, where they believe the Hope for Homeowners program potentially offers a better loss mitigation alternative than other, non-foreclosure alternatives. However, there will also be situations where servicers conclude that this is not the case and that some other loss mitigation alternative – including foreclosure – should be pursued. In these cases, servicers should not be subjected to undue pressure to defer foreclosures or to the second-guessing of good-faith servicing judgments they make in fulfillment of their contractual duties to investors.”

DBRS recognizes that the Hope for Homeowners program will help many distressed borrowers avoid foreclosure; however, the ASF is correct in stating that servicers have a contractual obligation to investors to evaluate whether or not the program represents the best available option to maximize the net present value of a mortgage loan in comparison with other loss mitigation alternatives, including but not limited to foreclosure. Further, since the Hope for Homeowners program permits servicers to take principal writedowns in an effort to help borrowers qualify, servicers will need to be diligent in documenting their analysis with regard to the ultimate loss mitigation option chosen to protect themselves in the event of a lawsuit.

DBRS believes the appropriate use of the Hope for Homeowners program will continue to be debated over the next few months and may be more clearly defined when the provisions of the program are finalized. As a result, DBRS will continue to monitor this program and its impact on foreclosure trends as well as its ultimate impact on loss severities.

For questions or comments, please contact Kathleen Tillwitz at ktillwitz@dbrs.com.