

# U.S. Structured Finance Newsletter

Volume 5, Issue 6, February 9, 2009



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## MODIFY OR RISK GETTING YOUR REMIC STATUS TERMINATED

On February 4, 2009, the Real Estate Mortgage Investment Conduit Improvement Act of 2009<sup>1</sup> (Act) was introduced in the Senate. This bill is intended to provide rules for the modification or disposition of certain assets by real estate mortgage investment conduits (REMIC) pursuant to division A of the Emergency Economic Stabilization Act of 2008. The proposal seeks to modify current REMIC qualification provisions to ensure that modifications or dispositions done under the Troubled Asset Relief Program (TARP) will not be treated as a prohibited transaction (as defined in section 860F(a)(2) of the Internal Revenue Code of 1986).

Under the proposed amendment, an entity's REMIC status shall cease if the instruments governing the conduct of servicers or trustees:

- (1) prohibit or restrict (including restrictions on the type, number, percentage or frequency of modifications or dispositions) servicers or trustees from modifying or disposing of qualified mortgages or foreclosure property;
- (2) commit to a person other than the servicer or trustee the authority to prevent the modification or disposition of any such qualified mortgage or foreclosure property;
- (3) require a servicer or trustee to purchase qualified mortgages which are in default or as to which default is reasonably foreseeable for the purposes of modifying such mortgages or as a consequence for doing a modification; or
- (4) fail to provide that any duty a servicer or trustee owes when modifying or disposing of qualified mortgages or foreclosure property shall be to the trust in the aggregate and not to any individual or class of investors.

The Act would be effective three months after the date of its enactment. The proposal allows the Secretary of the Treasury to waive the termination of the REMIC status provision if the Secretary determines the entity is unable to comply with the requirements in a timely manner or that such a waiver would further the purposes of this Act.

The proposed amendment also calls for the establishment of a Home Mortgage Loan Relief Program under TARP to help achieve broad-scale modifications or dispositions of troubled home mortgage loans and broad-scale dispositions of foreclosure property. The program states that servicers should consider the debt-to-income ratio, loan-to-value ratio or payment history of the mortgagors of such home mortgage loans and any other factors consistent with the intent to streamline modifications of troubled home mortgage loans into sustainable home mortgage loans. In an effort to help this program be effective, the Treasury would be allowed to (among other things) purchase and guarantee mortgage loans, purchase mortgage-backed securities or pay servicers for home mortgage loan modifications or other dispositions consistent with any rules established in this Act.

The termination of REMIC status for a security could have far-reaching implications, including subjecting the REMIC to tax. As a result, many in the industry believe this bill may not pass in its current form. However, in light of the continued pressure from the government to prevent foreclosures, many expect to see a modified version of the bill pass in the near future. DBRS will continue to monitor this proposal for passage as well as any impact it may have on Residential Mortgage Backed Securities (RMBS).

For questions or comments, please contact Kathleen Tillwitz at [ktillwitz@dbrs.com](mailto:ktillwitz@dbrs.com).

1. <http://thomas.loc.gov/cgi-bin/query/z?c111:S.+376>: