

U.S. Structured Finance Newsletter

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STATE REGULATION DRIVING AUTO LOAN ABS AWAY?

The New York State Assembly has proposed a new bill called the Vehicle Lienholder Accountability Act which may limit auto loan ABS issuers from including receivables originated in New York state in auto loan securitizations. This act requires lienholders to provide notice to the owner of a vehicle when the lienholder assigns his or her security interest. It also requires the lienholder to execute a release of his or her security interest within 10 days of this assignment. The Assembly proposed a civil fine not to exceed \$1,000 for failure to comply with this law. Although this may not seem to be very burdensome on the face of it, this legislation may make it difficult, or at the very least expensive and administratively burdensome to securitize auto loan receivables originated in New York.

The justification for the legislation is that vehicle lienholders often assign their security interest without generating a lien release to the owner, and the new lienholder often fails to properly register the lien with the Department of Motor Vehicles in order to avoid the fees due. As a result, many vehicle owners do not know who has a security interest in their vehicle, and are unable to obtain a clean certificate of title when they have paid off their vehicle loan. As a result, the original lienholder should be required to release his or her security interest in the vehicle once the lien has been assigned.

The issue with the legislation for auto loan securitizations is that an auto loan may be transferred several times during the life of an auto loan. An originator may initially purchase an auto loan onto its balance sheet and then transfer it to a warehouse facility prior to funding the loan in a term securitization. After an originator has built sufficient loan volume to fund the loans in a term securitization, it will again transfer the loans but may include several transfers depending upon the structure of the securitization. In each case, there would be a requirement to release the lien of the original lienholder and also the vehicle certificate would need to be re-titled in order to reflect the new lienholder.

This is similar to decision made by a bankruptcy court in San Antonio Texas in 2008 that required a secured lender to have their name placed on the certificate of title in order to have a perfected security interest in the vehicle. Prior to this decision, parties to securitizations had relied on Texas' Certificate of Title Act and Chapter 9 of the Texas Business and Commerce Code which indicated that re-titling was not necessary in order for the perfected security interest to reside in assignees of lenders or future assignees. As a result of the bankruptcy court decision, parties in securitizations were unsure of whether they would be perfected without applying for new certificates of title following each transfer. The American Securitization Forum (ASF) along with other parties lobbied the Texas legislature to clarify the requirements in Texas in order to eliminate any ambiguity. In June 2009, the Governor of Texas signed new legislation which clarified the existing law and explicitly states that certificates of title do not need to be reissued reflecting the names of the lienholder in order to have a perfected security interest in the vehicles.

In the case of New York, the New York Uniform Commercial Code provides that no additional steps are required to perfect an assignee's security interest. However, this bill may call into question the validity of a lienholder's security interest if the assignor fails to provide notice or a release of the lien to the owner of the vehicle. It also imposes a potential civil fine of up to \$1,000 for failure to comply with this legislation.

The ASF is currently drafting a response to this proposed legislation which is currently with the Committee on Codes. DBRS will continue to monitor the progress of this legislation and will consider the implications of the final legislation on securitizations of auto loan receivables from New York.

For questions or comments, please contact Rosemary Kelley at rk Kelley@dbrs.com