

**Mortgage Bankers Association
Commercial Real Estate Finance Council**

June 25, 2010

Mr. William J. Wilkins
Chief Council
Office of the Chief Council
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224-0002

Dear Mr. Wilkins:

On November 4, 2009, the Mortgage Bankers Association (MBA), the Commercial Real Estate Finance Council (formerly Commercial Mortgage Securities Association) and the Real Estate Roundtable submitted a letter (attached) urging the Internal Revenue Service to make technical corrections to its Final Real Estate Mortgage Investment Conduit (REMIC) Regulations to Collateral Releases (Final Regulations) in order to avoid unintended consequences. These Final Regulations were issued under Sections 860A and 860G of the Internal Revenue Code of 1986, as amended. Unfortunately, the delay in addressing technical corrections in the Final Regulations is having a material impact on some commercial properties that were financed using the REMIC structure.

The most pressing concern indicated in the November 4 letter was the requirement in the Final Regulations that a mortgage loan which has undergone a non-significant modification—and, in particular, a modification pursuant to a unilateral option of the borrower to release collateral—be retested to determine whether it continues to be “principally secured by an interest in real property.” The retesting requirement provided in the final regulations for such non-significant modifications has presented servicers with the insoluble dilemma of either breaching a borrower’s contractual right to the release or causing the mortgage loan to no longer be a REMIC-eligible “qualified mortgage loan”.

In addition, the Final Regulations also required retesting for collateral releases on defaulted loans. The commercial mortgage-backed securities (CMBS) industry is facing unprecedented delinquencies on commercial real estate loans. This significant impediment to the flexibility of a servicer to release collateral as part of a workout is already resulting in significant losses that otherwise might have been avoided.

In order to address this issue, our three organizations strongly supported an American Securitization Forum (ASF) proposal that would provide a limited exemption from this requirement for certain releases of collateral that at least would cover common transactions where the borrower has the unilateral option to obtain a release of collateral (or, in the case of condemnation or casualty, the release is beyond the control of both parties).

Since the Final Regulations were released in September 2009, there have been numerous instances in which servicers have had to await a determination of whether a post-release valuation would satisfy the “principally secured” test before honoring the borrower’s right to such a release. Unfortunately, the technical issue is negatively impacting the already fragile commercial real estate market. Consequently, we urge you to immediately issue guidance that will provide servicer discretion to authorize releases where the borrower has the unilateral option to obtain a release on collateral.

We appreciate the close attention that you have been paying to the troubled condition of the commercial real estate industry and the CMBS market and would greatly appreciate your prompt attention for addressing this exigent matter.

Very truly yours,

A handwritten signature in black ink that reads "John A. Courson". The signature is written in a cursive, slightly slanted style.

John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association

A handwritten signature in blue ink that reads "Dottie Cunningham". The signature is written in a cursive, flowing style.

Dottie Cunningham
Chief Executive Officer
Commercial Real Estate Finance Council

cc: Mr. Jeffrey Van Hove
Deputy Tax Legislative Counsel for Regulatory Affairs
United States Department of the Treasury