



**TESTIMONY OF
RALPH DALOISIO
CHAIRMAN
AMERICAN SECURITIZATION FORUM
INVESTOR COMMITTEE**

**BEFORE THE
SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE AND
GOVERNMENT SPONSORED ENTERPRISES**

UNITED STATES HOUSE OF REPRESENTATIVES

**HEARING ON
H.R. 5579, THE EMERGENCY MORTGAGE LOAN MODIFICATION ACT OF
2008**

APRIL 15, 2008

Chairman Kanjorski, Ranking Member Pryce, Congressman Castle and distinguished Members of the Subcommittee:

My name is Ralph Daloisio. I am a managing director with Natixis, a French banking institution with investment and other operations in the United States. My professional responsibilities include managing investment portfolios that comprise investments in mortgage-backed and asset backed securities, including subprime mortgage securities. I am pleased to be here today to share the views of the American Securitization Forum (ASF) on H.R. 5579, the Emergency Loan Modification Act of 2008, though I must caveat that these are not necessarily the views of Natixis. I serve as Chairman of ASF's Investor Committee and I am a member of the ASF Board of Directors.

Background

The American Securitization Forum (ASF) is a broad-based, not-for-profit professional forum that advocates the common interests of the securitization market and its participants. ASF has more than 375 member firms, including issuers, investors, financial intermediaries, trustees, rating agencies, financial guarantors, legal and accounting firms, mortgage insurers, and data analytics vendors, among others. ASF's mission and goals are to: (1) build consensus on best practices in the market; (2) advocate on behalf of our members; and (3) provide high quality educational events for industry participants and

Hearing on H.R. 5579, The Emergency Mortgage Loan Modification Act of 2008
April 15, 2008

Page 2

policymakers. ASF is an affiliate of the Securities Industry and Financial Markets Association (SIFMA)¹.

No securitization market constituency -- including lenders, servicers and investors -- benefits from subprime loan defaults and foreclosures. Foreclosure is usually the most costly means of resolving a loan default. As a result, it is typically the least-preferred alternative for addressing a defaulted loan whether or not the loan is held in a securitization trust. ASF therefore strongly supports the policy goal of avoiding foreclosures wherever reasonable alternatives exist.

Overview of Typical Securitization Document Modification Provisions

A basic principle underlying the servicing of non-performing subprime (or other) loans in securitization transactions is to maximize recoveries and minimize losses on those loans. This principle is embodied in the contractual servicing standards and other provisions that set forth the specific duties and responsibilities of servicers in securitizations. In turn, these contractual provisions, and the duties they impose on servicers and other securitization transaction participants, are relied upon by investors in mortgage-backed securities who depend primarily upon cash flows from pooled mortgage loans for the return on their investment.

Servicing of subprime residential mortgage loans included in a securitization is generally governed by either a pooling and servicing agreement (PSA) or by a servicing agreement (SA). Typical PSA and SA provisions require servicers bound by those contracts to follow accepted servicing practices and procedures as they would employ “in their good faith business judgment” and that are “normal and usual” in their general mortgage servicing activities.

Most subprime securitization transactions authorize the servicer to modify loans that are in default or for which default is imminent or reasonably foreseeable. Generally, permitted modifications include changing the interest rate on a prospective basis, capitalizing arrearages, extending the maturity date, and forgiving principal, among other actions. The “reasonably foreseeable” default standard derives from the restrictions imposed by the Real Estate Mortgage Investment Conduit (REMIC) sections of the Internal Revenue

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers locally and globally through offices in New York, Washington D.C., and London. Its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong. SIFMA's mission is to champion policies and practices that benefit investors and issuers, expand and perfect global capital markets, and foster the development of new products and services. Fundamental to achieving this mission is earning, inspiring and upholding the public's trust in the industry and the markets. (More information about SIFMA is available at <http://www.sifma.org>.)

Hearing on H.R. 5579, The Emergency Mortgage Loan Modification Act of 2008
April 15, 2008

Page 3

Code of 1986 on modifying loans included in a securitization for which a REMIC election is made. Market participants interpret the two standards of future default—"imminent" and "reasonably foreseeable"—to be substantially the same.

Contractual loan modification provisions in securitizations typically also require that the modifications be in the best interests of the security holders or not materially adverse to the interests of the security holders, and that the modifications not result in a violation of the REMIC status of the securitization trust. ASF and market participants generally interpret the standards "in the best interest of" or "not materially adverse to the interests of" investors or securityholders in a securitization to refer to investors in that securitization in the aggregate, without regard to the specific impact on any class of investors or any class of securities.

Consistent with typical contractual provisions governing servicing activities in securitizations and applicable law and regulation, ASF believes that a loan modification may be appropriate where the loan is either in default or where default is reasonably foreseeable, and if the latter, where there is a reasonable basis for the servicer to determine that the borrower is unlikely to be able to make scheduled payments on the loan in the foreseeable future. The servicer must also have a reasonable basis for concluding that the borrower will be able to make scheduled payments on the loan as modified, and for modifying the loan in a manner that is likely to be sustainable, but that does not reduce required payments beyond the magnitude required to return the loan to performing status, or beyond the anticipated period of borrower need.

ASF believes that loan modifications meeting the above criteria are generally preferable to foreclosure where the servicer concludes that the net present value of the payments on the loan as modified are likely to be greater than the anticipated net recovery that would result from foreclosure. Whichever action is determined by the servicer to maximize recovery should be deemed to be in the best interest of investors in the aggregate.

In addition to the authority to modify the loan terms, most subprime PSAs and SAs permit other loss mitigation techniques, including forbearance, repayment plans for arrearages and other deferments which do not reduce the total amount owed but may extend the term of payment. In addition, these arrangements typically permit loss mitigation through non-foreclosure alternatives to terminating a loan, such as short sales or deeds-in-lieu.

Although most PSAs and SAs in subprime securitizations either expressly permit or do not restrict loan modifications, some agreements do impose restrictions. For example, certain transactions limit the total number of permitted occurrences of modifications for any individual loan. Other transactions may limit the amount of modifications to a certain percentage of the initial size of the mortgage loan pool. Some agreements require prior

Hearing on H.R. 5579, The Emergency Mortgage Loan Modification Act of 2008
April 15, 2008

Page 4

consent (for example, from a rating agency or bond insurer) to allow the amount of modifications to exceed a specified percentage of the initial size of the mortgage pool. In a more limited number of cases, governing agreements may restrict the types of modifications that can be effected, or limit the amount by which the mortgage interest rate may be changed. However, it does not appear that any securitization requires investor consent to a modification that is otherwise authorized under the operative documents.

Based upon the economic and contractual principles outlined above, and consistent with applicable governing documents and regulatory and accounting standards, ASF has supported the use of loan modifications (along with other loss mitigation tools) by servicers in securitization transactions in appropriate circumstances. In general, “appropriate circumstances” would include situations where a servicer has concluded that a particular loan is in default or that default is reasonably foreseeable, and that the loan modification or other loss mitigation action contemplated by the servicer is likely to maximize recovery and minimize loss on that loan.

As part of its efforts to inform members of the industry and promulgate relevant guidance in light of the widespread challenges currently confronting the securitization market, ASF has published several recommended market standards and practices. One such set of recommendations relevant to the topic of this hearing is ASF’s June 2007 “*Statement of Principles, Recommendations and Guidelines for the Modification of Securitized Subprime Residential Mortgage Loans.*” This document (attached hereto as Exhibit A) is designed to provide guidance to servicers modifying subprime residential mortgage loans that are included in securitization transactions, and to provide a common framework for interpreting loan modification standards and contractual provisions, thereby promoting greater uniformity, clarity and certainty of application of these standards and provisions throughout the industry. Our testimony here incorporates by reference the more detailed analysis and discussion set forth in that Statement.

H.R. 5579, Emergency Mortgage Loan Modification Act of 2008

The Emergency Mortgage Loan Modification Act of 2008 establishes a standard of care for servicers when effecting mortgage loan modifications or workout plans, and a safe harbor for performing certain “qualified” loan modification or workout plans, “absent specific contractual provisions to the contrary.” While we appreciate and support the need for clarity and legal certainty for servicers in performing loss mitigation functions, we have several concerns with the legislation as introduced.

The contractual standards to which the bill relates -- the duties of servicers with respect to modifying or otherwise mitigating losses on distressed mortgage loans -- are as discussed above typically established through general provisions in securitization contracts rather

Hearing on H.R. 5579, The Emergency Mortgage Loan Modification Act of 2008
April 15, 2008

Page 5

than specific ones. Though the provisions are often framed in general terms, they create legally enforceable expectations of conduct by the parties to whom the provisions pertain, including duties and responsibilities of servicers to investors when engaging in loss mitigation activities. To the extent the bill would supersede these general provisions, it would, in effect, overrule securitization contracts.

The underlying premise of the legislation appears to be that servicers of securitized mortgage loans are not sufficiently engaging in loan modification and workout activity due to fear of investor lawsuits and related legal exposure. However, it is worth noting that servicers today face potential legal exposure from overly conservative, as well as overly aggressive, loss mitigation activity, to the extent that a servicer may be accused of not fulfilling its obligations to maximize recoveries on mortgage loans. In addition, servicers are already reasonably well-protected from legal action by investors, since under typical servicing contracts they are liable only in the event of their negligence in performing their duties. Thus, we question the need to give servicers additional protection, as well as the premise that doing so will stimulate a significant expansion of the number and/or type of loan modifications taking place.

It is important to recognize that servicers are already engaged in expanded loan modification and loss mitigation efforts, consistent with their existing contractual obligations and in response to the challenges presented by current housing market turmoil. Servicers have been increasing their investments in loss mitigation personnel and have developed enhanced processes and procedures to expedite delivery of loan workout, modification and home retention alternatives wherever feasible. Data collected by industry participants involved in the HOPE NOW alliance supports these observations, and indicates that an increasing number and accelerating pace of workouts and modifications are taking place. For example, HOPE NOW recently reported that from July 2007 through February 2008, mortgage servicers have provided loan workouts that have enabled approximately 1.2 million homeowners to stay in their homes. In 2008, loan modifications represent 48% of all subprime loan workouts, which is more than double the rate in 2007.

The standard of care prescribed by the bill in Section 2(a) may be weaker and less protective of investor interests than that found in most servicing contracts today. This legislation states that a servicer is acting in the best interests of all investors “to the extent that the servicer reasonably believes the modification or workout plan or other mitigation actions will maximize the net present value to be realized on the loan over that which would be realized through foreclosure.” This language suggests that a servicer satisfies the standard if any particular modification strategy yields a higher expected recovery than foreclosure. Whereas this language requires only that a servicer compare the net present value of a defaulted loan assuming modification with its net present value assuming

Hearing on H.R. 5579, The Emergency Mortgage Loan Modification Act of 2008
April 15, 2008

Page 6

foreclosure, typical servicing contracts require this analysis to be performed across a wider range of modification and loss mitigation alternatives, with the servicer being bound to choose action based on the alternative that maximizes net present value among these other alternatives, not just one of them. To clarify this intent, we suggest striking the words “over that which would be realized through foreclosure” at the end of Section 2(a).

In addition, the bill would protect servicers complying with its standard of care who grant a “qualified loan modification or workout plan.” The definition “qualified loan modification or workout plan” in Section 2(d)(1) includes, among other things, only those that would remain in place for at least five years and those that do not provide for a repayment schedule that results in negative amortization. These limitations on the types of modifications that qualify for the safe harbor (and thus for legal protection) could create artificial incentives for servicers to pursue those types of modifications at the expense of others that might generate a greater recovery for securitization investors, contrary to servicers’ existing duties. For example, a servicer could reasonably conclude that a loan modification of only three years is necessary to return a loan to performing status, or may conclude that a capitalization of arrearages would be successful in establishing affordable payments going forward. It is therefore inappropriate to specify particular types of modifications as being eligible for the safe harbor, to the exclusion of others. Doing so could skew servicer decision making to pursue legal immunity at the expense of alternatives that might yield a greater total recovery for the securitization trust. Creating such incentives would be contrary to the contractual standard of care to which servicers are generally bound by their contracts, and would introduce the possibility of a legislative overruling of pre-existing contractual provisions.

As a general matter, we have concerns with any legislation that would abrogate or interfere with previously established, private contractual obligations. PSAs typically require that the actions of the servicer, among other requirements, not be materially adverse to the interests of the certificate holders. Changing this standard would alter the commercial expectations of investors and could undermine the confidence of investors in the sanctity of agreements which are central to the process of securitization, which could consequently discourage investment in markets that need liquidity -- both now and over the longer term.

If the intent of the bill is to clarify servicing standards in a manner that is consistent with customary contractual provisions and thereby incentivize servicers to apply those standards to minimize losses and avoid foreclosures wherever possible, there is nothing fundamentally wrong with that from an investor or market perspective. The revisions we suggest would ensure that the legislation merely clarifies the servicing standards.

Hearing on H.R. 5579, The Emergency Mortgage Loan Modification Act of 2008
April 15, 2008

Page 7

If, however, the intent is to replace the legal duties and commercial expectations of transaction parties with a different set of duties and expectations supplied by Congress, ASF is concerned that the passage of this bill would represent a de facto modification of existing contracts. Since all parties to a contract, including investors, rely on the legal, valid, binding and enforceable provisions of the governing contracts, any legislation that would dilute, amend, or modify such contractual obligations or prejudice how the obligor fulfills its obligations is considered by the ASF, and by a consensus of the investor constituency within the ASF, to represent dangerous policy. Legislated intervention into otherwise valid legal contracts could potentially threaten the stability and predictable operation of the contractual legal framework supporting our capital markets system, and could have a chilling effect on the willingness of investors to participate in our markets.

Conclusion

Thank you for the opportunity to participate in today's hearing. We believe that the interests of secondary mortgage market participants continue to be aligned with borrowers, communities and policymakers to help prevent foreclosures. To that end, ASF stands ready to assist, and commends your leadership on these important matters.



Exhibit A



American Securitization Forum

Statement of Principles, Recommendations and Guidelines for the Modification of Securitized Subprime Residential Mortgage Loans

June 2007

I. Introduction

The American Securitization Forum (ASF)¹ is publishing this Statement as part of its overall efforts to inform its members and promulgate relevant securitization industry guidance in light of the widespread challenges currently confronting the subprime residential mortgage markets.

Current subprime residential mortgage market conditions include a number of attributes of concern that impact securitization transactions and the broader environment for subprime mortgage finance: an increase in delinquency, default and foreclosure rates; a decline in home price appreciation rates; a prevalence of loans with a reduced introductory rate that will soon adjust to a higher rate; and a reduced availability of subprime mortgage lending for refinancing purposes. In light of these concerns, the ASF is of the view that loan modifications, for subprime mortgage loans that are in default or for which default is reasonably foreseeable, are an important servicing tool that can both help borrowers avoid foreclosure and minimize losses to securitization investors.

Moreover, the ASF recognizes that it is an important goal to minimize foreclosure and preserve homeownership wherever possible. Higher than normal rates of foreclosure may harm borrowers and their communities, and may adversely affect housing values and therefore collateral values on both performing and non-performing loans. Accordingly, the ASF recommends the use of loan modifications under appropriate circumstances as described in this Statement.

The overall purpose of this Statement is to provide guidance for servicers modifying subprime residential mortgage loans that are included in a securitization. It is our hope that publication of these principles, recommendations and guidelines will help to establish a

¹ The American Securitization Forum is a broad-based professional forum of over 350 organizations that are active participants in the U.S. securitization market. Among other roles, ASF members act as insurers, investors, financial intermediaries and professional advisers working on securitization transactions. ASF's mission includes building consensus, pursuing advocacy and delivering education on behalf of the securitization markets and its participants. This statement was developed principally in consultation with ASF's Subprime Mortgage Finance Task Force and Loan Modifications Working Group, with input from other ASF members and committees. Additional information about the ASF, its members and activities may be found at ASF's internet website, located at www.americansecuritization.com. ASF is an independent, adjunct forum of the Securities Industry and Financial Markets Association.

common framework relating to the structure and interpretation of loan modification provisions in securitization transactions, thereby promoting greater uniformity, clarity and certainty of application of these provisions throughout the industry. As a consequence, ASF hopes that this guidance will facilitate wider and more effective use of loan modifications in appropriate circumstances.

While this Statement addresses certain legal, regulatory and accounting matters, it does not constitute and should not be viewed as providing legal or accounting advice.

This Statement is focused on modifications of first lien subprime residential mortgage loans. Many of the principles reflected in this Statement would also apply to modifications of other types of residential mortgage loans. This Statement does not address modifications of second lien residential mortgage loans.

II. Overview of Typical Securitization Document Modification Provisions

Servicing of subprime residential mortgage loans included in a securitization is generally governed by either a pooling and servicing agreement or servicing agreement. These agreements typically employ a general servicing practice standard. Typical provisions require the related servicer to follow accepted servicing practices and procedures as it would employ “in its good faith business judgment” and which are “normal and usual in its general mortgage servicing activities” and/or certain procedures that such servicer would employ for loans held for its own account.

Most subprime transactions authorize the servicer to modify loans that are either in default, or for which default is either imminent or reasonably foreseeable. Generally, permitted modifications include changing the interest rate on a prospective basis, forgiving principal, capitalizing arrearages, and extending the maturity date. The “reasonably foreseeable” default standard derives from and is permitted by the restrictions imposed by the REMIC sections of the Internal Revenue Code of 1986 (the “REMIC Code”) on modifying loans included in a securitization for which a REMIC election is made. Most market participants interpret the two standards of future default – imminent and reasonably foreseeable – to be substantially the same.

The modification provisions that govern loans that are in default or reasonably foreseeable default typically also require that the modifications be in the best interests of the securityholders or not materially adverse to the interests of the securityholders, and that the modifications not result in a violation of the REMIC status of the securitization trust.

In addition to the authority to modify the loan terms, most subprime pooling and servicing agreements and servicing agreements permit other loss mitigation techniques, including forbearance, repayment plans for arrearages and other deferments which do not reduce the total amount owing but extend the time for payment. In addition, these agreements typically

permit loss mitigation through non-foreclosure alternatives to terminating a loan, such as short sales and short payoffs.

Beyond the general provisions described above, numerous variations exist with respect to loan modification provisions. Some agreement provisions are very broad and do not have any limitations or specific types of modifications mentioned. Other provisions specify certain types of permitted modifications and/or impose certain limitations or qualifications on the ability to modify loans. For example, some agreement provisions limit the frequency with which any given loan may be modified. In some cases, there is a minimum interest rate below which a loan's rate cannot be modified. Other agreement provisions may limit the total number of loans that may be modified to a specified percentage (typically, 5% where this provision is used) of the initial pool aggregate balance. For agreements that have this provision: i) in most cases the 5% cap can be waived if consent of the NIM insurer (or other credit enhancer) is obtained, ii) in a few cases the 5% cap can be waived with the consent of the rating agencies, and iii) in all other cases, in order to waive the 5% cap, consent of the rating agencies and/or investors would be required. It appears that these types of restrictions appear only in a minority of transactions. It does not appear that any securitization requires investor consent to a loan modification that is otherwise authorized under the operative documents.

III. Loan Modification Principles

Based upon extensive consultation with its members and other securitization market participants, ASF believes that the following principles articulate widely-accepted industry views regarding the use of loan modifications in connection with securitized subprime residential mortgage loans:

1. For subprime mortgage loans that are in default or where default is reasonably foreseeable, loan modifications are an important loss mitigation tool that should be used in the circumstances described in this Statement. Modifications may include changing the interest rate on a prospective basis, forgiving principal, capitalizing arrearages and extending the maturity date. Other loss mitigation alternatives include forbearance, repayment plans for arrearages and other deferments which do not reduce the total amount owing, and also non-foreclosure alternatives to terminating a loan, such as short sales and short payoffs. Unlike other loss mitigation alternatives, loan modifications have the additional advantage that they can be used prior to default, where default is reasonably foreseeable.
2. Establishing early contact with borrowers is a critically important factor in the success of any loss mitigation initiative. Servicers should be permitted and encouraged to reach out affirmatively and proactively to borrowers for whom default is more likely, determine whether default is reasonably foreseeable, and

then explore modification possibilities. In particular, such outreach should be permitted and encouraged prior to an upcoming first adjustment date on a hybrid ARM loan.

3. Loan modifications should be considered and made on a loan-by-loan basis, taking into account the unique combination of circumstances for each loan and borrower, including the borrower's current ability to pay. The ASF is opposed to any across-the-board approach to loan modifications, and to any approach that would have all modifications structured in a particular manner. The ASF is also opposed to any proposals that would provide an across-the-board moratorium or delay period on foreclosures.
4. Generally, the ASF believes that loan modifications should only be made:
 - a. Consistently with applicable securitization operative documents (including amendments that can be made without investor or other consents);
 - b. In a manner that is in the best interests of the securitization investors in the aggregate;
 - c. In a manner that is in the best interests of the borrower;
 - d. In a manner that, insofar as possible, avoids materially adverse tax or accounting consequences to the servicer and, to the extent known, to the securitization sponsor or investors;
 - e. Where the loan is either in default or default is reasonably foreseeable, and if the latter, where there is a reasonable basis for the servicer determining that the borrower is unlikely to be able to make scheduled payments on the loan in the foreseeable future;
 - f. Where there is a reasonable basis for the servicer concluding that the borrower will be able to make the scheduled payments as modified; and
 - g. In a manner that is designed to provide sustainable and long-term solutions, but does not reduce the required payments beyond the magnitude required to return the loan to performing status, or beyond the anticipated period of borrower need.
5. The ASF believes that loan modifications meeting the criteria in Loan Modification Principles point 4 above are generally preferable to foreclosure where the servicer concludes that the net present value of the payments on the loan as modified is likely to be greater than the anticipated net recovery that would result from foreclosure.

6. In considering loss mitigation alternatives that reduce the interest rate prospectively, servicers should consider whether to make the rate reduction temporary (such as a relatively short term extension of the initial fixed period on a hybrid ARM), or permanent, based on the anticipated period of borrower need. For temporary rate reductions, servicers should re-evaluate the borrower's ability to pay, and the continued need for a rate reduction, at the end of the temporary period.
7. Any loan modification that reduces otherwise lawful, contractually required payments of principal or interest must be understood to be a financial concession by the securitization investors. There is no basis for requiring such concessions from investors unless the modification is determined to be in the best interests of the investors collectively. Loan modifications should seek to preserve the originally required contractual payments as far as possible.
8. Reasonable determinations made by servicers with respect to loan modifications, where made in good faith and in accordance with generally applicable servicing standards and the applicable securitization operative documents, should not expose the servicer to liability to investors and should not be subject to regulatory or enforcement actions.

IV. Loan Modification Interpretive Guidance

The ASF endorses the following interpretive positions on specific issues arising in connection with loan modifications:

1. The ASF believes, based on prevailing existing practice, that standard and customary servicing procedures for servicing subprime mortgage loans included in a securitization, as typically used as an overarching servicing standard in securitization operative documents, should be interpreted to allow the servicer to: a) permit loan modifications (including prospective interest rate reductions which may be either temporary or permanent, forgiveness of principal, capitalizing arrearages, or maturity extension not beyond the securitization maturity date) for loans that are in default or for which default is reasonably foreseeable, so long as the modification is in the best interests of investors in the aggregate, and b) engage in other loss mitigation alternatives including forbearance, repayment plans for arrearages and other deferments which do not reduce the total amount owing, and also non-foreclosure alternatives to terminating a loan, such as short sales and short payoffs. The ASF believes that existing securitization pooling and servicing agreements should be interpreted, to the maximum extent possible, to authorize the servicer to take the actions referenced above.

2. With respect to existing pooling and servicing or other operative agreements that expressly prohibit or restrict the servicer from taking the actions referenced above, the ASF believes that amendments to those agreements authorizing such actions should be approved by all parties required to consent to such amendments, as and when requested to do so.
3. The ASF believes that securitization operative documents should not impose numerical limitations on loan modifications, such as limits based on the percentage of the pool that may be modified.
4. The modification standards “default is imminent” and “default is reasonably foreseeable” should be interpreted to have the same meaning.
5. The modification standard “default is reasonably foreseeable” should be deemed to be met where there has been direct contact between the servicer and the borrower, where the servicer has evaluated the current ability to pay of the borrower, and has a reasonable basis for determining that the borrower is unlikely to be able to make scheduled payments on the loan in the foreseeable future. (This interpretation is intended to provide guidance only as to a set of circumstances where the standard would generally be viewed to be met, and not to reflect any view that the standard would not be met in other circumstances.)
6. In evaluating whether a proposed loan modification will maximize recoveries to the investors, the servicer should compare the anticipated recovery under the loan modification to the anticipated recovery through foreclosure on a net present value basis. Whichever action is determined by the servicer to maximize recovery should be deemed to be in the best interests of the investors.
7. The standards “in the best interests of” or “not materially adverse to the interests of” investors or securityholders in any securitization should be interpreted by reference to the investors in that securitization in the aggregate, without regard to the specific impact on any particular class of investors, and in a manner that is neutral as to the effect on the cash flow waterfall or any particular class of securities.

V. Loan Modification Recommendations

The ASF recommends the following further actions in respect of loan modifications:

- A. *Existing and future securitizations:*
 1. The ASF endorses and encourages the adoption of the position articulated in the Mortgage Bankers Association position paper titled “FAS 140

Implications of Restructurings of Certain Securitized Mortgage Loans”, dated May [24], 2007 (the “MBA Position Paper”).

2. Servicers should maintain policies, procedures and guidelines that are reasonably designed to identify and manage any actual or perceived conflicts of interest that may arise in connection with their loan modification activities and decision making. Such policies, procedures and guidelines should address, among other topics, situations in which a servicer (a) has an ownership interest in one or more classes of bonds supported by principal and/or interest collections on subprime mortgage loans that it services; (b) receives servicing fees or other compensation that is tied to various attributes of subprime mortgage loans that it services (e.g., outstanding principal balance, delinquency/default status); and (c) is not reimbursed for the costs of loan modifications from collections on subprime mortgage loans that it services.
3. Securitization operative documents should clearly state, for purposes of “delinquency triggers” or “cumulative loss triggers” which control whether excess cash flow may be released to the residual, the following: (a) whether and under what conditions a modified loan is to be considered “current”, and (b) whether and how any interest rate reduction or forgiveness of principal resulting from a loan modification should be treated as a realized loss.
4. As an urgent, high priority matter, the ASF should develop guidelines under which delinquency triggers and cumulative loss triggers in securitization operative documents, which control whether excess cash flow may be released to the residual, should be interpreted in a manner consistent with the parties’ intent and in a manner that appropriately reflects any loan modifications that have occurred. It is the sense of investors that (a) any partial forgiveness of principal should be treated as a loss for purposes of cumulative loss triggers, and (b) a modified loan performing in accordance with its modified terms should be treated as delinquent for purposes of delinquency triggers for some appropriate period of time.
5. Greater clarity, transparency and consistency should be established regarding how any interest rate reduction or forgiveness of principal resulting from a loan modification should be reflected for purposes of investor reporting, and for purposes of allocating payments for the cash flow waterfall.
6. Consistent with the foregoing recommendations, servicers should not make decisions to use or not use loan modifications for the purpose of

manipulating the application of delinquency triggers or cumulative loss triggers which control whether excess cash flow may be released to the residual.

7. The ASF will conduct a survey of typical document provisions and interpretations, on the question of whether and under what conditions a modified loan is to be considered current for purposes of investor reporting, and for purposes of delinquency triggers and cumulative loss triggers which control whether excess cash flow may be released to the residual. Additional guidelines should be developed and recommendations should be made and evaluated regarding amendments to securitization transactional documents, based on the results of this survey.

B. Future securitizations:

1. The ASF will develop standard, uniform model contractual provisions governing the servicer's ability to provide loan modifications for use in future securitizations. Such provisions should expressly authorize the actions referenced in Loan Modification Interpretive Guidance point 1 above.
2. Use of an increased or supplemental servicing fee should be considered for loans that have been modified to defray the additional costs of administering modifications.
3. The ASF will develop standard, uniform model contractual provisions, both as to timing and priority, to govern the servicer's ability to obtain reimbursement for P&I advances and servicing advances made in respect of loans where there has been a loan modification, or where other types of loss mitigation have been used.