



American Securitization Forum

Operational Guidelines for Reimbursement of Counseling Expenses in Residential Mortgage-Backed Securitizations

May 20, 2008

A. Background and Purpose

These guidelines are designed to assist mortgage loan servicers and counseling organizations in implementing procedures for reimbursing expenses associated with the provision of borrower counseling services. These guidelines follow the American Securitization Forum's ("ASF")¹ "*Statement on Reimbursement of Counseling Expenses in Residential Mortgage-Backed Securitizations*" ("October Statement"), which is attached as Exhibit A. Pursuant to that guidance, borrower counseling expenses may be viewed as servicing advances, where consistent with the terms of applicable securitization operative documents, and therefore eligible for reimbursement from securitization trust cashflows in the following circumstances:

1. For loans that are in default or where default is reasonably foreseeable; and
2. Where the servicer concludes, in its reasonable judgment, that the related counseling service has had or is likely to have the effect of mitigating losses and maximizing recoveries on the particular loan.

Consistent with the October Statement, these guidelines set forth a set of operational procedures by which servicers may conclude that appropriate counseling expenses may be reimbursable from securitization trust cashflows. Servicers may use their own operational procedures rather than those set forth by these guidelines if those procedures are also consistent with the applicable securitization operative documents.

These guidelines are specifically designed to address reimbursement of counseling expenses from securitization trust cashflows and are not intended to establish industry standards or interpretations for any other purpose.

These guidelines will sunset on July 31, 2010, prior to which the ASF will undertake a comprehensive evaluation of these guidelines.

¹ The American Securitization Forum is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 365 firms, including investors, servicers, issuers, financial intermediaries, rating agencies, financial guarantors, trustees, legal and accounting firms, and other professional organizations involved in securitization transactions. The ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives. For more information about ASF, its members and activities, please go to www.americansecuritization.com.

B. General Principles

1. This guidance is intended principally for securitized residential mortgage loans, but may also be applicable in the context of non-securitized residential mortgage loans, in each case as may be qualified by the governing documents. In either circumstance, any relevant contractual provisions governing the reimbursement of borrower counseling expenses and other servicing advances shall control over any provision contained in these guidelines.
2. Prior to counseling services being rendered, servicers must execute written agreements with counseling organizations for the services of those organizations to be eligible for reimbursement.
3. Servicers should contract with quality and trusted counseling organizations that they believe, in their reasonable judgment, will act in good faith to: 1) help borrowers connect with their servicers; 2) collect information and data relevant to loss mitigation evaluations; 3) recommend appropriate loss mitigation alternatives to servicers; and/or 4) assist borrowers in restructuring the full range of their debt obligations to help them better meet their mortgage obligations. In the aggregate for each counseling organization, the servicer must conclude that counseling expenses reimbursed through securitization trust proceeds are in the best economic interests of securitization trust investors in the aggregate.
4. If a servicer manages loans for the benefit of itself or those of an affiliate reimburses counseling expenses from securitization trust proceeds, that servicer should contract with counseling organizations and institute reimbursement procedures similar to those that such servicer is employing for loans held in its own account.
5. Servicers are recommended to reimburse up to \$150 out of securitization trust proceeds for any individual counseling session. Servicers may consider reimbursing larger amounts in compelling circumstances such as when a counseling service results in a loss mitigation outcome that directly produces a net present value benefit to securitization trust investors in the aggregate.
6. Servicers may consider applicable counseling expenses as servicing advances and reimbursable from securitization trust proceeds on or after the date such expenses have been remitted by the servicer to the counseling organization.
7. Prior to effectuating any loss mitigation outcome based on information and data received from a counseling organization, a servicer must have policies and procedures in place to ensure that relevant information and data received from the counseling organization is materially accurate.
8. Although a counseling organization may make a loss mitigation recommendation to a servicer, that servicer still has the contractual obligation to consider, on a loan-by-loan basis, the range of available loss mitigation alternatives for that borrower. If a servicer selects a different loss mitigation alternative than that recommended by a counseling organization, the counseling expense may still be viewed as reimbursable, irrespective of the results of the loss mitigation effort.

9. Counseling expenses are eligible for reimbursement for both owner-occupied homes and non owner-occupied homes.
10. Any servicer reimbursing counseling expenses through securitization trust cashflows should not realize on the servicer's tax return any charitable tax deduction benefit for reimbursements from securitization trust cashflows.
11. In order for a counseling expense to be eligible for reimbursement, documented responses to questions such as those enumerated in Appendix A should be provided to the servicer by the applicable counseling organization.
12. Servicers reimbursing counseling expenses should continue to evaluate and analyze the effectiveness of these guidelines in maximizing the aggregate economic interests of securitization trust investors.

C. Loans Eligible for Reimbursement

Counseling services provided for the following loans are eligible for reimbursement unless specifically prohibited in this section:

1. All loans in delinquency
 - a. This includes loans that have re-defaulted while participating in a prior loss mitigation plan (including, but not limited to, modifications and repayment plans)
2. All loans that are current but where default is imminent or reasonably foreseeable
 - a. Imminent or reasonably foreseeable default can be determined when:
 - i. The borrower, in his or her judgment, may have difficulty making his or her mortgage payment in coming months; AND
 - ii. There is a pending rate reset within 6 months; OR
 - iii. The borrower has suffered or expects to suffer a material reduction in income; OR
 - iv. The borrower has experienced a significant increase in his or her debt burden or recurring obligations or expects to experience a non-discretionary increase in his or her debt burden or recurring obligations.
3. Loans currently in loss mitigation with extenuating circumstances
 - a. Extenuating circumstances can be determined when:
 - i. The borrower, in his or her judgment, may have difficulty making his or her mortgage payment in coming months under their current loss mitigation plan; AND
 - ii. The borrower is currently in a loss mitigation plan and there is a pending rate reset within 6 months; OR
 - iii. The borrower, since entering the loss mitigation plan, has suffered or expects to suffer a material reduction in income; OR

- iv. The borrower, since entering the loss mitigation plan, has experienced a significant increase in his or her debt burden or recurring obligations or expects to experience a non-discretionary increase in his or her debt burden or recurring obligations; OR
 - v. The borrower's current loss mitigation plan is expiring in the coming months and the borrower, in his or her judgment, may have difficulty making a higher mortgage payment.
4. Loans where the borrower is within 30 days of a foreclosure sale, where:
 - a. The counseling agency conducts an immediate warm-transfer to the servicer for foreclosure prevention; OR
 - b. If the counselor is unable to complete a warm-transfer using best efforts, the counselor successfully transmits data through the designated servicer portal with appropriate high priority designation.
5. All loans where the servicer documents the individual counseling expense had a net present value benefit. These situations include all current loans where default is imminent, all delinquent loans and/or loans in foreclosure (including loans in States with pending redemption status).

D. Loans Ineligible for Reimbursement

1. Loans where the borrower is in active bankruptcy at the time of the counseling session.
2. Loans where the loan number provided to the servicer by the counseling agency is inaccurate, duplicated or repeated in a prior billing cycle.
3. Loans where the borrower has already had a credit counseling session in the previous 12 months.
 - a. Exceptions to D.3. above can be made by servicers on a case by case basis for borrowers when extenuating circumstances have occurred since the previous counseling session. Extenuating circumstances can be determined when:
 - i. The borrower, in his or her judgment, may have difficulty making his or her mortgage payment in coming months; AND
 - ii. There is a subsequent pending rate reset within 6 months; OR
 - iii. The borrower has suffered or expects to suffer a subsequent material reduction in income; OR
 - iv. The borrower has experienced a subsequent significant increase in his or her debt burden or recurring obligations or expects to experience a subsequent non-discretionary increase in his or her debt burden or recurring obligations.

APPENDIX A

Borrower Evaluative Questions

1. What is your loan number and mortgage company name?
2. Are you delinquent on your mortgage loan? If so, how many payments?
3. Are you in bankruptcy? If so, are you in Chapter 7 or 13?
4. Do you have any other mortgage loan on your property? If so, who is the lender? Are you delinquent on other loans? If so, how many payments have you missed?
5. Are you within 30 days of foreclosure sale?
6. Do you anticipate you will not be able to afford your mortgage loan payment in the near future?
7. Have you worked with your mortgage company on developing a solution? If so, can you describe the type of solution offered?
8. What is the main reason why you can't pay your mortgage?
9. Have you recently worked with another counseling agency to attempt to find a solution to your mortgage loan problems?

EXHIBIT A

October Statement



American Securitization Forum

Statement on Reimbursement of Counseling Expenses in Residential Mortgage-Backed Securitizations

October 10, 2007

The American Securitization Forum (ASF)² is publishing this Statement as part of its ongoing efforts to inform its members and promulgate guidance to the securitization industry in light of challenges confronting the residential mortgage markets.

Under current residential mortgage market conditions, the ASF recognizes that it is a particularly important goal to minimize foreclosure and preserve homeownership wherever possible. Higher than normal rates of foreclosure harm borrowers and their communities, and may adversely affect housing values and therefore collateral values on loans in securitizations. Accordingly, the ASF hereby reaffirms our June 2007 *Statement of Principles, Recommendations and Guidelines for the Modification of Securitized Subprime Residential Mortgage Loans* (June Statement), and that prudent and responsible loan modifications, among other loss mitigation techniques, are an important servicing tool that can both help borrowers keep their homes and minimize losses to investors in mortgage-backed securities.

Given the wide array of options typically available to the servicer in connection with a borrower default or reasonably foreseeable default, ranging from forbearance, modification, short sales, to foreclosure, effective communication with the borrower is an essential part of gathering the information needed to determine which option provides the best result for securitization investors. While servicers have the sole contractual responsibility for communication with borrowers and resolving delinquencies and defaults, counseling can help bridge gaps between servicers and borrowers by educating borrowers about their options and mediating potentially adversarial situations. The availability of professionally trained counseling services to borrowers can be an important tool to help prevent mortgage loan defaults and avoid difficult and costly foreclosures that ultimately hurt borrowers as well as investors in mortgage-backed securities.

Most operative documents that govern securitization transactions entitle servicers to reimbursement from trust cashflows for certain unanticipated costs, or “servicing advances,” related to their servicing of loans. These reimbursements typically include any customary, reasonable and necessary out of pocket expenses incurred by servicers in connection with the performance of their duties. Further, most securitization transactions permit servicing advances to be reimbursable from securitization trust cashflows if those advances are deemed unrecoverable from proceeds of the related loan.

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Despite the potential that counseling offers in facilitating forbearance arrangements, loan modifications, short sales or other loss mitigation outcomes, many servicers of residential mortgage-backed securitizations have generally not sought reimbursement of counseling expenses from trust cashflows.

Given increasing and evolving borrower and servicing needs in the current mortgage-backed securities market, the ASF is of the view that borrower counseling expenses should be viewed as servicing advances, and therefore reimbursable from securitization trust cashflows where consistent with the terms of the applicable securitization operative documents, in the following circumstances:

- for loans in default or where default is reasonably foreseeable; and
- where the servicer concludes, in its reasonable judgment, that the related counseling service has had or is likely to have the effect of mitigating losses or maximizing recoveries on the particular loan.

In order to encourage counseling that may help keep borrowers in their homes and facilitate outcomes in the best interests of investors in securities backed by such mortgage loans, the ASF hereby recommends that servicers and counseling organizations work together to implement reimbursement procedures consistent with the above view. In making this recommendation, ASF acknowledges and affirms the existing contractual responsibilities of servicers as set forth in securitization governing documents. Subject to the specific terms and provisions of those governing documents, ASF believes that the engagement of borrower counseling services and reimbursement of related expenses as outlined in this Statement can serve as an important complement to servicers' existing obligations to service loans, mitigate losses and maximize recoveries in securitization transactions.

The ASF will continue to work to develop more specific counseling reimbursement provisions for inclusion in future securitization operative documents. The ASF will also work with counseling agencies, servicers, investors and other securitization transaction parties to facilitate those parties developing and clarifying procedures for implementing counseling reimbursements from trust cashflows, as well as servicer and counselor reporting practices to investors in mortgage-backed securities.

The ASF hopes that this recommendation, in addition to our June Statement, will further facilitate wider and more effective use, in appropriate circumstances, of loan modifications and other loss mitigation tools.