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March 6, 2008

The Honorable Eric Solomon  
Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
Washington, DC 20220

The Honorable Linda E. Stiff  
Acting Commissioner  
Internal Revenue Service  
Room 3000 IR  
1111 Constitution Avenue, N.W.  
Washington, DC 20224

Re: NYSBA Tax Section Report on Modifications to Commercial  
Mortgage Loans Held by a Real Estate Mortgage Investment  
Conduit (REMIC)

Dear Secretary Solomon and Commissioner Stiff:

I am pleased to enclose the New York State Bar Association Tax Section's Report No. 1151 (the "Report"), addressing the proposed regulations that were released by the Internal Revenue Service (the "Service") and the Treasury Department on November 9, 2007 (the "Proposed Regulations"). The Proposed Regulations would amend Treasury Regulation Section 1.860G-2 to expand the types of permissible modifications to mortgage loans held by a real estate mortgage investment conduit (a "REMIC").

More specifically, the Proposed Regulations permit a qualified mortgage to remain a qualified mortgage, even if it is significantly modified under Section 1001 of the Internal Revenue Code, if the modification: (i) changes (releases, substitutes, adds or otherwise alters) the collateral for, guarantees on, or other forms of credit enhancement contracts for a mortgage loan, or (ii) changes the nature of a mortgage loan from recourse to nonrecourse, but only if the

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mortgage loan continues to be principally secured by an interest in real property. In order for a mortgage loan to be principally secured by an interest in real property, the Proposed Regulations would require that, as of the modification date, the fair market value of the real property collateral securing the mortgage loan is at least 80% of the mortgage loan's adjusted issue price, as determined by an appraisal performed by an independent appraiser.

In December 2002, we submitted a report in which we recommended that a qualified mortgage held by a REMIC should not be disqualified by reason of a modification so long as the modification does not extend the weighted average maturity date of the mortgage or increase its outstanding principal balance, even if the modification does result in a deemed exchange under Section 1001.

We continue to believe that this standard ensures that a REMIC remains a passive liquidating vehicle that holds a pool of mortgage loans, and does not engage in an active ongoing business, while accommodating the business needs of commercial loan borrowers. We recognize, however, that the Service and the Treasury Department did not adopt our recommendation. Therefore, although we continue to recommend the approach we suggested in 2002, our comments follow the general framework adopted by the Proposed Regulations.

In short, we recommend that:

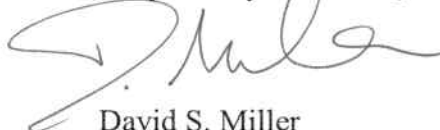
1. The value of collateral be retested only if the modification itself decreases the ratio of real property to the mortgage loan amount.
2. If the value of collateral is required to be retested, servicers should be permitted to rely on the collateral values that were initially used to determine the mortgage loan's eligibility as a REMIC asset at start-up unless the modification itself changes the value of any particular piece of collateral or the overall collateral.
3. If the value of the collateral is required to be retested as of the modification date, servicers should be permitted to use any reasonable method in valuing the collateral (and should not be required to obtain an appraisal).
4. Changes in the nature of obligations from nonrecourse to recourse should be treated the same as changes from recourse to nonrecourse.
5. Certain other commonly requested modifications should be permitted, such as (i) a change in the date on which a qualified mortgage may be prepaid or defeased in whole or in part, of the addition of a defeasance provision; (ii) changes to the obligor, including the addition or deletion of a co-obligor; (iii) the imposition or waiver of a prepayment penalty or other fee; and (iv) a change in payment schedule after a partial prepaying, as long as the weighted average maturity date and the ultimate maturity date are not extended.
6. A release of a lien on a portion of real property collateral pursuant to the terms of a mortgage loan that is not a significant modification of the mortgage loan under Section 1001 should not be treated a release that disqualifies the mortgage loan from being a qualified REMIC asset so long as the value of the remaining real property collateral is sufficient to permit the mortgage to remain a qualified mortgage, based on the value of the real property collateral as of

any of (i) the origination of the mortgage loan, (ii) the contribution of the mortgage loan to the REMIC, or (iii) the release of real property collateral.

7. The regulations should extend all proposed changes regarding loan modifications to grantor trusts.

We appreciate your consideration of our comments. Please let us know if you would like to discuss these matters further or if we can assist you in any other way.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Miller", written over a light blue horizontal line.

David S. Miller  
Chair

Enclosure

cc: The Honorable Donald F. Korb  
Chief Counsel  
Internal Revenue Service

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Deputy Assistant Secretary for Tax Policy  
Department of the Treasury

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