



December 22, 2020

Sent via email:

David J. Kautter
Assistant Secretary
Office of Tax Policy
U.S. Department of the Treasury
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Internal Revenue Service
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Krishna Vallabhaneni
Tax Legislative Counsel
United States Department of the Treasury
1500 Pennsylvania Avenue, NW, Room 3044
Washington, DC 20220

Dear Mr. Kautter, Mr. Vallabhaeni, and Mr. Desmond:

We write in furtherance of the Structured Finance Association (“SFA”)¹ letter dated April 3, 2020 as well as the subsequent Revenue Procedure 2020-26 (Rev. Proc. 2020-26), published on April 13, 2020. As you may recall, SFA requested that the Internal Revenue Service (the “IRS”) and the U.S. Department of the Treasury (“Treasury”) issue guidance that would relieve issuers and holders of outstanding debt instruments from severe tax consequences that could arise as a result of the widespread forbearance and loan payment accommodations occasioned by COVID-19. In the case of structured debt, these adverse tax consequences can include not only the recognition of income, but more importantly, the loss of the issuer’s special tax status and the collapse of the transaction. Specifically, SFA sought guidance from the IRS and Treasury related to the treatment and classification of such forbearance actions and loan term modifications, and the potential tax implications of such classifications. Our request was focused on the status of the financing structures that hold these impacted financial obligations, including but not limited to real estate mortgage investment conduits (“REMICs”) and fixed investment or grantor trusts.

¹ SFA is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFA provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFA represent all sectors of the securitization market including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. Further information can be found at www.structuredfinance.org.

We appreciate the quick resolution and timely response from Treasury contained in Rev. Proc. 2020-26, which has provided clarity and certainty to these questions during a tumultuous period. We now wish to bring to your attention a timing issue related to Rev. Proc. 2020-26, which appears to limit the scope of guidance by making it applicable only to mortgages for which there is a forbearance entered into between March 27, 2020 and December 31, 2020. The CARES Act, which was signed into law on March 27, 2020, provides that during the “covered period,” borrowers with Federally backed mortgage loans and multifamily borrowers with Federally backed multifamily mortgage loans experiencing a financial hardship due, directly or indirectly, to the COVID-19 emergency may request and obtain forbearance on their loans. Many holders and servicers of mortgage loans that are not Federally backed mortgage loans have voluntarily or through a State mandated loan forbearance program adapted similar rules on granting forbearances.

For Federally backed multifamily mortgage loans, the CARES Act defines the term “covered period” to be the period beginning on the date of its enactment (March 27, 2020) and ending on the earlier of the termination date of the COVID-19 emergency or December 31, 2020. For Federally backed mortgage loans, however, there is no corresponding statutory definition of “covered period” in section 4022 of the CARES Act.

Rev. Proc. 2020-26 provides safe harbors for REMIC qualification in situations where mortgage loans held by REMICs were granted forbearances directly or indirectly related to the COVID-19 emergency as well as safe harbors for REMICs that acquire mortgage loans in which forbearances were granted prior to contribution to the REMIC. The Revenue Procedure specifies that the safe harbor is only applicable for qualified forbearance programs (as described in the Revenue Procedure) entered into between March 27, 2020, and December 31, 2020 (the REMIC Covered Period).

On March 13, 2020, the COVID-19 emergency was declared a nationwide emergency under the Stafford Act. That declaration remains in effect currently. Given that the CARES Act specifically did not provide a “covered period” with respect to mortgage loans and given the continued requests for forbearances by borrowers, we respectfully ask that the REMIC Covered Period under Revenue Procedure 2020-26 relating to mortgage loans be extended to the termination date of the COVID-19 emergency under the Stafford Act. This extension would be consistent with the CARES Act and continue to stabilize this market.

As with the original SFA letter dated April 3, 2020, SFA members are concerned that if the above questions are not addressed for mortgages with a forbearance that takes place after December 31, 2020, the resulting uncertainty will have a significant impact on lenders’ and servicers’ ability to act immediately in support of borrowers requesting payment relief due to COVID-19 related hardships. In addition, negative tax consequences may result from loan modifications at the issuer level and may have significant adverse effects for REMICs and the investors in such REMICs and securitizations of assets that utilize a grantor trust structure.

Again, by these questions, we are not asking the IRS to take a stance different from the one previously announced in the Revenue Procedure. Rather, we are merely asking for an extension of the REMIC Covered Period with respect to mortgage loans to align the Revenue Procedure with the CARES Act and continue to provide borrowers relief in a time of an unprecedented crisis.

SFA appreciates your consideration of these requests and welcomes the opportunity to discuss these issues further. If you have any questions about this matter, please contact Kristi Leo, SFA President, at (917) 415-8999 or via email at kristi.leo@structuredfinance.org.

Very truly yours,

Kristi Leo, President
Structured Finance Association