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MORTGAGE BANKERS ASSOCIATION

February 21, 2017

Mr. William M. Paul
Acting Chief Counsel and
Deputy Chief Counsel (Technical)
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Mr. Thomas C. West, Jr.
Acting Assistant Secretary of the Treasury
for Tax Policy
Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Requested Comments Addressing Information Reporting on Modified Mortgages

Dear Mr. Paul and Mr. West:

The American Bankers Association ("ABA")[1] and the Mortgage Bankers Association ("MBA")[2] submit the following in response to the IRS's request for comments on forthcoming guidance addressing information reporting on modified mortgages.[3]

BACKGROUND

In December 2015, the IRS and Treasury accepted the ABA's and the MBA's separate requests for guidance under section 6050H via the Industry Issue Resolution program. Specifically, the IRS agreed to provide guidance regarding the extent to which reportable interest is included in payments that are made on a mortgage where accrued but unpaid interest has been treated for non-tax purposes as increasing the unpaid principal balance of the mortgage (the "Interest Added to Principal Issue"). On October 28, 2016, the IRS announced its plan to address the issue through formal guidance, bringing an end to the Industry Issue Resolution project. As part of that announcement,

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[1] The American Bankers Association is the voice of the nation's $16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $12 trillion in deposits and extend more than $8 trillion in loans.
[2] The Mortgage Bankers Association is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage brokers, commercial banks, thrifts, REIT's Wall Street conduits, life insurance companies and others in the mortgage lending field.
[3] Guidance request available at https://www.irs.gov/businesses/corporations/termination-of-iir-issue-selected-12-29-2015.

the IRS encouraged interested stakeholders to submit relevant information and provide comments for the public record. The ABA and the MBA jointly submit these comments to encourage the government to address the lack of guidance in current law while taking into account the needs and limitations of the three relevant stakeholder groups: taxpayers, the federal government, and reporting entities.

COMMENTS

The ABA and the MBA applaud the decision to pursue the issuance of formal guidance addressing the Interest Added to Principal Issue. The issue is one of national importance, affecting mortgage lenders and servicers large and small, as well as millions of homeowners. It is also an issue of deep uncertainty under current law, with different lending institutions taking different approaches in different years given the absence of guidance addressing how reporting requirements are affected by a significant modification of a mortgage loan under Treasury Regulation section 1.1001-3. The transparency and reliability of the formal guidance process make it perfectly suited to an issue of such importance and complexity.

The ABA and MBA submissions requesting guidance under the IIR program (attached hereto as Exhibits A and B) explained the lack of guidance under existing authorities as applied to the Interest Added to Principal Issue. The issue at the heart of the lack of guidance is the fact that U.S. federal income tax law treats a mortgage that has undergone a significant modification as defined in Treasury Regulation section 1.1001-3 as a new mortgage issued as of the date of modification. Existing guidance does not address – and the contractual loan terms cannot clarify[4] – whether, when, or how payments on that new mortgage should be allocated to amounts of principal on that new mortgage that may be attributable to interest that was accrued but unpaid on the original mortgage at the time of modification. As a result, there is no guidance on whether, when, or how such amounts should be reported on Forms 1098. It appears that, under current guidance, many mortgage borrowers are entitled to deduct mortgage interest that was accrued but unpaid at the time the loan was modified once that interest is ultimately paid. Issues that are unaddressed under current law are, as a substantive tax matter, when such amounts are deductible, and, as a reporting matter, whether, when, and how such amounts are required to be reported on Forms 1098.

To address this lack of guidance, the ABA and the MBA recommend that the guidance the IRS and Treasury ultimately provide, at a minimum, should:

First, provide that, on a mortgage that has undergone a significant modification under Treasury Regulation section 1.1001-3 in which pre-modification accrued-but-unpaid interest was added to the principal of the modified mortgage, payments are

[4] We note that the "new loan" treatment required under Treasury Regulation section 1.1001-3 is specifically intended to override for tax purposes the fact that the loan documents refer to the transaction as a modification rather than a new loan. The significant modification regulations are a way of acknowledging that significant changes to loan terms should be treated as a realization event, even if the loan documents themselves treat the original loan as continuing.

attributable first to interest that has accrued under the terms of the modified mortgage (which is treated as a new mortgage for tax purposes), second to interest on the pre-modification mortgage that was added to principal at modification, and finally to principal that is not attributable to pre-modification interest. In other words, current interest first, then interest added to principal, and finally to remaining principal.

Second, provide that, for information reporting purposes, reporting entities must allocate payments received on a modified mortgage to interest as described in the previous paragraph.

Third, be prospective – that is, effective for mortgages modified after issuance of final regulations. Additionally, any effective date should take into account the significant systems changes and time to implement such changes that this new guidance will require of financial institutions, whose current systems take varying approaches to the issue in the face of a lack of guidance.

Fourth, to the extent a borrower on a mortgage that was modified prior to the effective date did not deduct post-modification payments of pre-modification interest that he or she would otherwise be entitled to deduct under the requested guidance, permit the borrower to deduct such amount in their next filed return via a simplified change in method of accounting process. Guidance describing that simplified change in method of accounting could include instructions on how to use information in the borrower's possession to calculate the additional amount deductible on their next filed return. Specifically, the guidance could instruct borrowers to take (1) the lesser of (a) the amount of principal paid down since modification and (b) the amount of pre-modification interest added to principal upon modification, and subtract from that amount (2) any amounts of pre-modification interest added to principal upon modification that the borrower has deducted since modification. This formula should allow the borrower to calculate the amount of pre-modification interest added to principal at modification that the borrower is entitled to deduct under the new rules.

Fifth, to assist borrowers with the calculations described in the previous bullet and to provide a reminder to borrowers whose mortgages were modified prior to the effective date that they may be entitled to deduct amounts they have not previously deducted for pre-modification interest that was added to principal at modification, consider modifying Form 1098 to provide a check-box, similar to Box 2 on Form 1098-E, that reads as follows:

☐ "Check this box if the mortgage was modified prior to [EFFECTIVE DATE] and the amount reported in box 1 does not include, and on past Forms 1098 has not included, receipt of interest that was added to principal when the mortgage was modified"

The instructions to Form 1098 could then include an instruction to reporting entities as follows: "Check box [•] only if you have actual knowledge that the mortgage was modified prior to [EFFECTIVE DATE] and the amount reported in box 1 does not include, and on past Forms 1098 has not included, receipt of mortgage interest that was previously added to principal when the mortgage was modified." The instructions could also include an instruction to borrowers explaining, "If box [•] is checked, you may be entitled to an additional mortgage interest deduction. If box [•] is not checked, and (1) you modified your mortgage before [EFFECTIVE DATE], (2) unpaid interest was included in principal when the mortgage was modified, and (3) to the extent you have not previously deducted that unpaid interest in the period since the mortgage was modified, you may also be entitled to an additional mortgage interest deduction. See [3115 GUIDANCE] for more information."

As a final note, the ABA and the MBA believe the guidance issued between 2002 and 2004 under sections 221 and 6050S addressing interest added to principal on student loans provides an excellent model for the IRS and Treasury to follow in providing guidance to address the Interest Added to Principal Issue. That guidance recognized that a lack of guidance in the substantive rules played a role in creating a lack of guidance in the information reporting rules, and therefore both sets of rules were addressed at the same time. The ABA and the MBA believe a similar approach is essential here.

Contact Information

If you have questions or need additional information please contact us at:

John Kinsella - American Bankers Association, 202-663-5317 or jkinsella@aba.com
Pete Mills - Mortgage Bankers Association, 202-557-2878 or pmills@mba.org

Thank you for your assistance. We look forward to working with you.

Sincerely,

John Kinsella
Vice President, Tax Policy

Pete Mills
Senior Vice President
Residential Policy and Member Services

Attachments: Exhibit A
Exhibit B

cc: Gloria Sullivan; Director, Financial Institutions & Products,
Large Business & International Division, Internal Revenue Service

Helen Hubbard; Associate Chief Counsel, Financial Institutions and Products,
Internal Revenue Service

EXHIBIT A

American Bankers Association

Building Success. Together.

John Kinsella
Vice President – Tax Policy
Tax, Accounting & Financial Management
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October 16, 2015

VIA EMAIL

Internal Revenue Service
Office of Pre-filing and Technical Services
Large Business and International Division SE:LM:PFT
Mint Building 3rd Floor M3-420
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Washington, DC 20224

RE: Revenue Procedure 2003-36 - Application for Industry Issue Resolution Program – Information Reporting for Accrued but Unpaid Interest With Respect to Loan Modifications

Dear Sir or Madam:

The American Bankers Association (ABA)[1] hereby submits the following issue for Internal Revenue Service (IRS) guidance under the Industry Issue Resolution (IIR) program. The issue is important for both borrowers and lenders, and we look forward to working with the IRS proactively towards a successful resolution. The following information is submitted in accordance with Revenue Procedure 2003-36.

Issue Statement:

Pursuant to Section 6050H of the Internal Revenue Code (IRC), a lender or party servicing a loan who receives $600 or more of interest on a mortgage from a borrower is required to annually report the amount received to both the borrower and the IRS on *Form 1098, Mortgage Interest Statement*. The reporting issue for consideration arises where interest that is due to the lender, but not paid, becomes part of the principal of a modified mortgage.

Statement as to Whether the Issue is Appropriate for the IIR Program:

This issue is appropriate for consideration due to at least the following characteristics:

1. ***The proper tax treatment of a common factual situation is uncertain.*** There is ambiguity regarding whether, when, or how interest that accrues but goes unpaid prior to a modification and then becomes part of the principal of a modified loan should be

[1] The American Bankers Association is the voice of the nation's $16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $12 trillion in deposits and extend more than $8 trillion in loans.

reported. There is no guidance addressing that scenario under section 6050H of the IRC or the Regulations thereunder.

2. ***The issue is significant and affects a large number of taxpayers either within an industry or across industry lines.*** The economic downturn affected a significant number of mortgage borrowers (see estimates below). As a result, a significant number of modifications of mortgage loans occurred and continue to occur, most of which include the resolution of accrued but unpaid interest. The reporting issue has potential implications for both the borrowers and the lenders in the banking industry as well as third-party servicers.

3. ***The issue requires extensive factual development, and an understanding of industry practices and views concerning the issues would assist the IRS in determining the proper tax treatment.*** The information reporting regulations require separate reporting with respect to individual mortgage loans. By working with the industry in the IIR program, there is significant knowledge regarding current and recommended practices that can be leveraged.

Explanation of the Need for Guidance:

As noted above, Section 6050H of the IRC requires reporting of interest received by a lender or a party servicing a mortgage loan. The reporting is done annually on Form 1098. In normal circumstances, this reporting is routine and systems have been developed to capture and report this information.

Reporting become less routine when there is a modification or refinancing of a loan. There is a variety of circumstances where accrued but unpaid interest on the existing loan becomes part of the principal of the new loan. These transactions result in a variety of questions relating to reporting under Section 6050H.

For example, assume a borrower is having difficulty making payments on a $200,000 mortgage and there is $4,000 of accrued but unpaid interest on the loan. The lender and borrower agree to modify the loan with a lower interest rate and extended payment terms, including treating the $4,000 of accrued but unpaid interest as part of the principal of the new loan. In the absence of guidance directly on point under Section 6050H, there are differing views on if, when or how the $4,000 should be reported to borrowers and the IRS.

In reviewing the technical guidance in this area, there does not appear to be guidance under section 6050H addressing whether, when or how to report accrued but unpaid interest that becomes part of the principal of a loan upon modification.[2] In the absence of guidance directly on point, lenders have adopted varying positions on the questions of whether, when or how to report such amounts. Some are reporting the amounts as payments are made on the new loan, others do not report previously unpaid interest that has been included in principal of the new loan and others may be reporting all the interest as paid at the time the loan is modified.

[2] Treasury regulations under sections 221 and 6050S addressing substantive and reporting treatment of student loans specifically reserve on the treatment of interest following a modification of the loan.

It is important to note that borrowers are ultimately responsible for determining the amount of interest that is deductible on their individual returns, and generally would have that information available in the loan documentation that is received as part of the lending transaction. The information reported on Form 1098 is not determinative of the deduction of the borrower. The fact that differences may arise between the borrower's determination of a deductible amount and the lender's reporting was anticipated by the IRS. In *Publication 936, Home Mortgage Interest Deduction*, there are instructions for borrowers to follow in circumstances when differences arise. That said, IRS reporting guidance should be clear so that reporting by lenders to borrowers is consistent across the industry.

As additional evidence of the uncertainty in this area, there have been a number of recent court cases in which plaintiffs (borrowers) have alleged that lenders have provided inaccurate or incomplete information reporting documents, resulting in alleged damage. Generally, the cases have either been dismissed or delayed on the grounds that existing rules do not address the issue and the IRS has primary jurisdiction over how to resolve the question.[3]

Estimated Number of Taxpayers Affected by the Issue:

It is difficult to estimate the number of taxpayers affected by the issue, but we believe the number is substantial. The issue has an impact on both lenders and borrowers. Figures reported by the Office of the Comptroller of the Currency suggest that more than 6 million mortgages were modified between January 2008 and June 2015, and over 100,000 more continue to be modified each quarter.[4]

Issue Resolution:

For the reasons set forth above, the ABA believes this issue is appropriate for acceptance into the IIR program. We look forward to working with you to evaluate the issues and develop effective and practical solutions. We suggest that reporting guidance in this area should be based on at least the following tenets:

1. Any reporting guidance should be applied on a prospective basis and applied only to loans that are modified after the effective date.
2. Since there are significant technology and systems challenges associated with any required changes in reporting, guidance should allow for an appropriate amount of time for changes to be made.
3. Consideration should be given to borrowers who may need to make changes in the interest deductions taken on previously filed returns with a view to avoid significant levels of amended tax returns.

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[3] See a variety of cases including *Smith v. Bank of America, N.A.*,No. CV 14-6668 DSF (PLA) (C.D. Cal. February 3, 2015), *Pemberton v. Nationstar Mortgage LLC*, 14-cv-1024-BAS (WVG) (S.D. Cal. February 4, 2015), *Strugala v. Flagstar Bank, FSB*, 5:13-cv-05927-Ejd (N.D. Cal. September 4, 2015).

[4] There figures are approximations based on quarterly *OCC Mortgage Metrics Reports* issued by the Office of the Controller of the Currency since 2009, calculated by grossing up the amount of mortgage loan modifications reported by OCC (and OTS) chartered national banks and savings banks by the portion of the first-lien residential mortgage market in these institutions' portfolios over time.

Contact Information:

If you have questions or need additional information, please contact me at 202-663-5317 or jkinsella@aba.com.

Sincerely,

John P. Kinsella

John P. Kinsella
Vice President, Tax Policy

Cc: Rosemary Sereti, Industry Director, Financial Services
Deborah Inganamorte, Executive Assistant (Technical), Financial Services

EXHIBIT B

MBa

MORTGAGE BANKERS ASSOCIATION

September 15, 2015

Internal Revenue Service
Office of Pre-Filing and Technical Services
Large and Mid-Size Business Division SE:LM:PFT
Mint Building 3rd Floor M3-420
1111 Constitution Avenue NW
Washington, DC 20224
IIR@irs.gov

Subject: Revenue Procedure 2003-36 – IIR Program Submission

To Whom It May Concern:

The Mortgage Bankers Association[1] (MBA) hereby submits the following issue for IRS guidance under the Industry Issue Resolution (IIR) program:

> The reporting requirements under section 6050H of the Internal Revenue Code[2] in the year of and years following the significant modification[3] of a mortgage where the principal amount of the modified mortgage exceeds the principal amount of the pre-modification mortgage (as if accrued-but-unpaid interest on the pre-modification mortgage becomes part of the principal of the modified mortgage).

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets; to expand homeownership and extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,200 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web site: www.mba.org.

[2] All section references herein are to the Internal Revenue Code of 1986, as amended, or the Treasury Regulations promulgated thereunder.

[3] As that term is defined in Treas. Reg. § 1.1001-3(e). A significant modification of a debt instruments is treated as an exchange of the original instrument for a new instrument with the terms of the modified instrument. Treas. Reg. § 1.1001-3(b). Given the low bar for a modification of a debt instrument to be considered a significant modification and the circumstances in which home mortgages are modified – typically, cases where the borrower is unable to meet the obligations of the mortgage as originally structured – it is likely that nearly all residential mortgage modifications involving Capitalized Amounts (as defined herein) constitute significant modifications.

Background

Between 2008 and mid-2014, roughly 8 million mortgages were modified, and a significant number of additional mortgages are modified each year. The current mortgage interest reporting rules do not explain whether, when, or how to report amounts of accrued-but-unpaid interest on a pre-modification mortgage that effectively becomes part of the principal of the modified mortgage upon modification (Capitalized Amounts). As a result, institutions in the mortgage lending and servicing industry (Reporting Institutions) must determine whether, when, and how to report the Capitalized Amounts on Form 1098. It seems likely that many Reporting Institutions have treated modified mortgages as new loans for information reporting purposes – consistent with the substantive tax treatment of such instruments – and have treated the ultimate repayment of Capitalized Amounts by borrowers as payments of principal, as dictated by the terms of the modified instrument. It may also be true that some Reporting Institutions report repayments of Capitalized Amounts as interest in some fashion.

While substantive tax law may permit cash-method mortgage borrowers to deduct payments of Capitalized Amounts, borrowers are ultimately responsible for keeping track of and calculating the amounts they are permitted by law to deduct each year.[4] Nonetheless, guidance regarding whether, when and how to report Capitalized Amounts would provide clarity to and ensure consistency among Reporting Institutions, mortgage borrowers, and the IRS regarding what payments the amounts reported on Form 1098 reflect. Given current uncertainty and the number of potentially affected Reporting Institutions and borrowers, this issue is appropriate for the IIR Program.

We recommend that any guidance on this issue provide for the following: (i) a prospective effective date that gives Reporting Institutions adequate lead time to implement and systematize any new reporting requirements; (ii) prospective application only to loans modified after the effective date; (iii) clarity regarding the timing of reporting (if any) and amounts to be reported; and (iv) flexibility for mortgage borrowers who were permitted by law to deduct Capitalized Amounts in prior years but failed to do so.

Issue

Existing guidance does not address whether, when, or how Reporting Institutions must report Capitalized Amounts. Reporting Institutions thus face uncertainty on an issue that affects potentially large numbers of their customers. Moreover, while mortgage borrowers have, in their loan documents, the information necessary to calculate their permitted deduction and may seek to deduct payment of Capitalized Amounts regardless of whether the amounts are reported, many borrowers may deduct only interest reported to them on Form 1098. In late 2014, a class action lawsuit was filed on behalf of borrowers who did not claim deductions for these amounts, requesting, among other things, a court ruling that reporting is required. The court declined to address the reporting issue, holding

[4] *See* Rev. Rul. 70-647, 1970-2 CB 38.

instead that the IRS "possesses exclusive authority to enforce" section 6050H if a Reporting Institution does not comply with the reporting requirements at issue.[5]

Statement

When a borrower and lender agree to the significant modification of a loan, amounts of interest that have accrued on the original loan and are unpaid as of the time of modification often effectively become part of the principal of the modified mortgage (such amounts previously defined as Capitalized Amounts). While section 6050H and the regulations thereunder require "an interest recipient who receives at least $600 of interest on a qualified mortgage for a calendar year" to report the amount received to both the IRS and the borrower on Form 1098, current guidance does not address whether, when, or how to report Capitalized Amounts. In particular, guidance does not state whether such amounts constitute reportable interest, and if so, when such amounts should be treated as received for purposes of section 6050H and the regulations thereunder.

The lack of guidance regarding whether, when, and how Capitalized Amounts must be reported arises in the context of substantive law that treats the significant modification of a mortgage as an exchange of the original mortgage for a new mortgage with modified terms. Under Treasury Regulation section 1.6050H-2(a)(1), Reporting Institutions must issue separate Forms 1098 for "each qualified mortgage," suggesting that reporting obligations must be evaluated on a mortgage-by-mortgage basis. Current guidance does not require that Capitalized Amounts – which constitute principal on the modified mortgage for which the Form 1098 is being filed – be treated as interest and reported on a Form 1098 filed for a modified mortgage. Instead, current guidance appears to require that Capitalized Amounts not be reported on Forms 1098, because Capitalized Amounts are not interest on the mortgage to which the reporting obligation relates.[6] We also note that the student loan rules at Treasury Regulation sections 1.221-1, 1.221-2, and 1.6050S-3, finalized in 2004, explicitly do not provide guidance on the treatment of modified loans, expressly reserving on the issue.[7]

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[5] Memorandum and Order Granting Defendant's Motion to Dismiss at 5, *Smith v. Bank of Am., N.A.*, No. CV 14-6668 DSF (PLA) (C.D. Cal. Feb. 3, 2015), ECF No. 28. In two other cases addressing a similar issue – accrued-but-unpaid interest on payment option adjustable rate mortgages – a federal district court judge in the Southern District of California held that the IRS has "primary jurisdiction" to interpret section 6050H, and therefore required the plaintiffs in those cases to initiate proceedings to obtain the IRS's views on the issue. Order Granting in Part Defendant's Motion to Dismiss and Stay at 4, 7, *Pemberton v. Nationstar Mortg. LLC*, No. 14-cv-1024-BAS (WVG) (S.D. Cal. Feb. 4, 2015), ECF No. 17; Order (1) Granting in Part Defendant's Motion to Dismiss; and (2) Staying the Case, *Rovai v. Select Portfolio Servicing, Inc.*, No. 14-cv-1738-BAS (WVG) (C.D. Cal. May 11, 2015), ECF No. 16. The plaintiffs in *Pemberton* and *Rovai* filed a status update with the court on July 2, 2015, attaching a letter in which the IRS informed them that current law permits borrowers to deduct more mortgage interest than the amount shown on a Form 1098, including via an amended return.

[6] The substantive law also does not indicate whether Capitalized Amounts should be treated as "acquisition indebtedness," which is subject to a $1,000,000 cap, or "home equity indebtedness," which is subject to a $100,000 cap. *See* § 163(h)(3)(B) and (C). Guidance on the reporting treatment of Capitalized Amounts may provide the opportunity to clarify which cap, if any, the Capitalized Amounts are subject to.

[7] *See, e.g.*, Treas. Reg. § 1.221-1(e)(3)(v)(A); Treas. Reg. § 1.221-2(f)(3)(v)(B); TD 9125 (2004).

Against this backdrop, it seems likely that Reporting Institutions have taken a variety of approaches on whether, when, and how to report these amounts. Thus, whether Capitalized Amounts, which may be deductible when paid,[8] appear on Forms 1098 sent to mortgage borrowers likely varies from institution to institution. The multiplicity of approaches reduces the utility of Form 1098 as a tool for the IRS to confirm the accuracy of borrowers' claimed deductions: If the amounts are generally deductible, the IRS would need to devote resources to verifying the legitimacy of claimed mortgage interest deductions for amounts not shown on Forms 1098.

The uncertainty created by the lack of guidance in this area impacts all Reporting Institutions that issue Forms 1098 on modified mortgages – including national banks, community banks, credit unions, and loan servicers. It also affects recipients of such forms, who number in the millions: A study by the Office of the Comptroller of the Currency examining data from a group of Reporting Institutions holding 46% of all first-lien residential mortgages in the United States found that, between January 1, 2008 and June 30, 2014, those Reporting Institutions implemented roughly 3.6 million mortgage modifications.[9] Extrapolating from these numbers to the entire mortgage industry, nearly 8 million mortgages may have been modified during that time period, and more have been modified since. Thus, the issue is one of industry-wide importance, affecting Reporting Institutions as well as their customers.

Request for Guidance

MBA is requesting this IIR to seek guidance clarifying whether, when and how Reporting Institutions should report Capitalized Amounts. Guidance on this issue would have three significant benefits: It would ease and unify interpretation of section 6050H for Reporting Institutions; it would simplify the process for borrowers claiming deductions for such amounts; and it would enhance the IRS's ability to monitor borrower compliance with substantive deductibility rules.

Ideally, such guidance would take into account several practical considerations. First, given the variety of approaches likely employed by Reporting Institutions in the absence of guidance, any newly issued guidance should give Reporting Institutions sufficient time to modify their systems, and should apply only to mortgage loans modified after that time has elapsed.[10] Second, guidance should balance the burden that tracking

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[8]IRS forms and publications allow mortgage borrowers to deduct amounts of home mortgage interest paid by the borrower but not reported on Form 1098 (*see, e.g.*, IRS, Schedule A (Form 1040) (2014) (providing space to deduct "Home mortgage interest not reported to you on Form 1098"); IRS, Publication 936, Home Mortgage Interest Deduction 9 (2014) ("If you paid more deductible interest to the financial institution than the amount shown on Form 1098, show the larger deductible amount on line 10")), and borrowers possess loan documentation necessary to determine the proper amount of such deductions.

[9] Office of the Comptroller of the Currency, OCC Mortgage Metrics Report: Third Quarter 2014 4 (2014).

[10] In issuing new information reporting regulations in the student loan context, for example, the Treasury Department acknowledged the burden on Reporting Institutions by requiring reporting on a prospective

these amounts places on Reporting Institutions with the burden it places on borrowers; for example, newly issued guidance could require that Reporting Institutions report the entire Capitalized Amount on Form 1098 in the year of modification, but then require the borrower to keep track of how much of that total Capitalized Amount they are permitted by law to deduct each year going forward, as payments are made on the modified mortgage, under rules to be provided in guidance by the government. Lastly, guidance should take into account the fact that there may be borrowers who have not deducted these amounts, notwithstanding that they may have been permitted by law to do so, and give those borrowers a way to claim those deductions going forward, perhaps by treating the attempt to claim deductions on an amended return as a change in method of accounting.

Any questions about the information provided herein should be directed to Jim Gross, Vice President Financial Accounting and Public Policy and Staff Representative to MBA's Financial Management Committee, at 202 557-2860 or at jgross@mba.org.

Sincerely,

David H. Stevens
President and Chief Executive Officer
Mortgage Bankers Association

basis only (*see* Treas. Reg. § 1.6050S-3(e)(1)(i)), and by giving Reporting Institutions time to update their systems to comply with the new regulations (*see* TD 9125 (2004)).