

CMBS Loan Modifications

This chart outlines the circumstances under which modifications may be made to CMBS loans included in REMICs or grantor trusts without causing the related REMIC or grantor trust to fail to qualify as such, both before and after default on a loan is “reasonably foreseeable” or has occurred. This chart applies only for loans that were acquired when default was not reasonably foreseeable; different rules may apply to loans that were distressed when acquired. Although REMIC and grantor trust rules provide flexibility to modify loans (where default is reasonably foreseeable), there may be less flexibility in modifying or amending the terms of certificates (e.g., changes in waterfalls, waivers of current interest); these amendments would require further analysis on a case-by-case basis.

Type of Modification	REMIC		Grantor Trust	
	Before default is reasonably foreseeable	After default is reasonably foreseeable or has occurred	Before default is reasonably foreseeable	After default is reasonably foreseeable or has occurred
Change in yield	Permitted if less than (i) 25 basis points or (ii) 5% of the original annual yield of unmodified loan	Any change in yield permitted	Permitted if less than (i) 25 basis points or (ii) 5% of the original annual yield of unmodified loan	Any change in yield permitted
Deferral of scheduled payments, extensions	Permitted if less than (i) 5 years and (ii) 50% of the original term of the loan	Permitted	Permitted if less than (i) 5 years and (ii) 50% of the original term of the loan	Permitted
Change in lien priority	Permitted if it does not result in a change in payment expectations	Permitted	Permitted if it does not result in a change in payment expectations	Permitted
Discounted payoff	Not Permitted	Permitted	Not Permitted	Permitted
Prepayment premium waiver	Permitted if pro rata	Permitted	Permitted if pro rata	Permitted
Waiver of due-on-sale clause or due-on-encumbrance clause	Permitted	Permitted	Permitted	Permitted
Changes in financial covenants (e.g., insurance, reporting, leasing provisions)	Permitted	Permitted	Permitted	Permitted
Assumptions	Permitted	Permitted	Permitted if nonrecourse	Permitted
Change from recourse to nonrecourse or vice versa	Permitted	Permitted	Permitted if no change in collateral or payment expectations	Permitted
Forbearance	N/A	Permitted for up to two years after borrower’s initial failure to perform	N/A	Permitted for up to two years after borrower’s initial failure to perform
Releases of real property	Permitted if loan meets 125% LTV test after release or undergoes a qualified paydown	Permitted if loan meets 125% LTV test after release or undergoes a qualified paydown	Permitted if (i) pursuant to terms of the loan, or (ii) not a substantial amount (generally 10%)	Permitted
Changes requiring additional collateral	Permitted	Permitted	Permitted if not a substantial amount (generally 10%)	Permitted
Change in amount or use of reserves	Permitted	Permitted	Permitted if not a substantial amount (generally 10%)	Permitted
Changes to guarantee	Permitted	Permitted	Permitted if not a substantial amount (generally 10%)	Permitted
Modifications that change the tenor of an instrument from debt to equity (e.g., equity kickers, non-enforceable B Notes)	Requires further discussion			

NOTE: Any modification permitted under the REMIC or grantor trust rules and the related Servicing Agreement that is a “significant modification” under Section 1001, will separately result in a taxable event to borrowers, REMIC residual holders and grantor trust investors.