
MARKET UPDATES

More Detail on Countrywide Note Transfers

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A recent New Jersey bankruptcy court decision¹ led market participants to question whether Countrywide systemically failed to endorse mortgage notes and physically deliver them to the trustee in its securitizations, as the pooling and servicing agreements required. In a recent *Resi Landscape* article², we said that we didn't believe that Countrywide, as a standard practice, failed to endorse the mortgage notes and deliver them to the trustee. In this update we elaborate on the bases of our opinion by discussing our review of a number of initial trustee certifications and our interviews of various BofA/Countrywide employees responsible for keeping and transferring loan files. As a result, we have not taken any negative actions on Countrywide-issued RMBS at this point.

Initial Trust Receipts Showed that Countrywide Delivered Notes to the Trustee. We looked at the initial trustee certifications included in the closing sets for a sample of Countrywide deals covering prime, Alt-A, subprime, option-ARM, closed-end second lien, and HELOC asset types. The securitization closing sets typically contained an initial certification from The Bank of New York, as trustee. For the loans delivered on the closing date, the trustee certified that it received the original mortgage note endorsed in blank "Pay to the order of _____, without recourse" and an executed assignment of mortgage and that the documents "appeared regular on their face." Some certifications also allowed, in lieu of the original note, a lost note affidavit from Countrywide stating that the original mortgage note was lost or destroyed. Often the initial certification attached an exception report detailing the number of loans in the deal, the number of loans delivered, and any exceptions.

For deals whose initial certifications contained detailed exception reports, those reports indicated that for the majority of the mortgage loans in the deal, Countrywide endorsed the mortgage notes and delivered them to the trustee on the closing date. For example, for the CWABS 2006-8 deal, the deal that included the loan that was the subject of the NJ bankruptcy court case, the initial certification listed 8,896 mortgage notes delivered out of 9,233 loans in the deal. For the loans delivered, the certification listed approximately 180 loans with exceptions. Of these exceptions, most related to missing assignments of mortgage, a handful related to missing notes, and a handful related to missing endorsements, missing deeds of trust, and missing powers of attorney. Not all the deals included such detailed information. For some of the deals, the closing set included an initial certification but did not attach an exception report.

Countrywide wasn't required to deliver all the mortgage notes on the initial closing date. Countrywide-sponsored securitizations generally required Countrywide to deliver only 50% of the mortgage notes to the trustee at closing, and to deliver the remainder in stages some time shortly thereafter, generally within 30 days. The pooling and servicing agreements also required Countrywide to cure the exceptions listed on the initial trustee certifications.

¹ Kemp v. Countrywide Home Loans, Inc. (November 16, 2010).

² See Moody's *Resi Landscape*, "New Jersey Court Decision May Be Unique, but Still Bad for BofA and RMBS" (December 9, 2010).

The closing sets did not include the final trustee certifications, which we have not yet seen. The pooling and servicing agreements required the trustee to deliver final certifications to Countrywide some time after the closing date, covering all the loans in the deal, including those loans and required documents delivered after the initial closing date, and reflecting those exceptions still remaining after Countrywide had time to cure them.

Countrywide Managers said that Endorsing and Delivering the Notes to the Trustee was Standard Procedure. BofA/Countrywide employees we interviewed detailed the procedures for endorsing and transferring the mortgage notes to the trustee or its custodian that were in place for Countrywide securitizations. We spoke to managers who were responsible for secondary marketing and transaction management, custodial operations, final document procurement and correction, and loan delivery during the time that Countrywide was an active securitizer.

According to the procedures they outlined, the custodial team received loan documents after origination. They endorsed the mortgage notes in blank either on the note itself or on a separate piece of paper known as an allonge, and they attached the allonge to the file along with the note. The managers also confirmed that Countrywide delivered the physical mortgage notes to The Bank of New York, which is the trustee and custodian on nearly all of their securitizations except for those backed by HELOCs and a handful of privately offered securitizations. For the HELOC securitizations issued through Countrywide, Treasury Bank, an affiliate of Countrywide, held the notes in its capacity as named custodian on behalf of the securitization trust under the securitization documents. Based on our observations so far, we believe that the claim that Countrywide systemically failed to endorse mortgage notes and physically deliver them to the trustee is not accurate.

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Jumbo Foreclosure Rates on the Rise Again

The balance of loans in foreclosure among Wells Fargo-originated Jumbo RMBS pools jumped significantly between September and November of 2010. Over that period, the percentage of loans in foreclosure in Wells RMBS transactions rose 40%, to 3.43% in November from 2.46% in September. The foreclosure rate among other RMBS issuers also rose between September and November, although at a somewhat more modest pace of 13%.

Foreclosures among Wells transactions mirrored those of other issuers until July 2009, when Wells' foreclosures stabilized somewhat as others' continued to rise. Through September, Wells' foreclosure rate had declined in seven of the last eight months, dropping just below 2.5% while the rest of the industry's rate had risen above 4.0%. With the jump beginning in October, Wells' foreclosure rate is now slightly above its previous high, although it is still well below that of other issuers.

The general industry-wide pick-up in foreclosure rates follows a year-long period during which the balance of loans in foreclosure leveled off and even declined slightly. The flattening of the foreclosure rate coincided with increasing loan modification activity. The number of new loan modifications has declined fairly steadily over the past several months, however, and foreclosures have once again begun to rise. Foreclosures have also picked up in the subprime, Alt-A, and Option ARM sectors over the last two months, though to a less dramatic extent. The foreclosure rates in those sectors are still below their peak levels experienced in late 2009 or early 2010.