



LETTER OF COMMENT NO. 7



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Mr. Russell G. Golden
Director—Technical Application and Implementation Activities
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
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Re: File Reference No. FSP FAS 140-d, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions*

Dear Mr. Golden,

Countrywide Financial Corporation (“Countrywide”) is one of the leading residential mortgage loan originators and servicers in the nation. Its activities include the purchase and sale of mortgage and other asset backed securities. We appreciate the opportunity to provide comments to the Proposed FASB Staff Position (“FSP”) FAS 140-d, *Accounting for Transfers of Financial Assets and Repurchase Financing Transactions*.

Countrywide is supportive of the Board’s effort to clarify the circumstances under which a transfer of a financial asset and a repurchase financing of that asset with the transferee should be deemed separate transactions. However, we believe that certain criteria prescribed in paragraph 7 of the proposed FSP should be modified or removed because they are not good indicators of whether the two transactions are linked.

Implied Commitments

The Background Information and Basis for Conclusions of the proposed FSP indicates that in determining whether the transfer and the repurchase financing are linked, implied commitments must be considered because they may provide evidence of the counterparties’ intent to engage in a series of related transactions. We believe that implied commitments should not be considered when determining if the transactions are linked. In the transfer of certain types of mortgage-backed securities (MBS), especially subordinated tranches, it is common and often customary for the transferor to provide repurchase financing to the transferee. Even though the transferee could obtain financing from another source, it often is more convenient and efficient for the transferee to obtain that financing from the transferor.

We believe that the implied commitment to provide repurchase financing, which is customary, noncontractual and not legally enforceable, should not be considered when determining if the transactions are linked. This view is consistent with the response to Question 52 of the FASB Staff Implementation Guide on FASB Statement No. 140¹, related to analyzing noncontractual rights as a constraint under paragraph 9(b). We also are concerned with the difficulty in practice of demonstrating that there is not an implied commitment in situations where it might be customary for the transferor to provide financing even though the transferee has the ability to utilize alternative third party financing arrangements.

Marketability Criteria

For an initial transfer and repurchase financing to be considered separate transactions, the proposed FSP would require that the financial asset have a quoted market price in an active market (equivalent to a Level 1 measurement, as defined by SFAS 157, *Fair Value Measurements*) and the initial transfer and repurchase financing be executed at market rates. We do not believe that these requirements are appropriate. While we agree that such an arrangement involving unique or rarely traded financial assets might be an indication that the sale and the financing are linked, we do not believe that is the case for actively traded financial assets that qualify for a Level 2 fair value measurement. In other words, we see no distinction between financial assets valued at Level 1 versus Level 2 with regards to whether the transfer and the financing are dependent upon each other. There are many types of asset-backed securities that are actively traded but do not necessarily qualify for a Level 1 fair value measurement.

In the Background Information and Basis for Conclusions section of the proposed FSP, it was noted that the Board believed that the initial transferor of a financial asset that does not have a quoted market price effectively maintains control over the transferred financial asset because the initial transferee is economically compelled to execute the repurchase financing with the transferor who would provide a lower rate due to specific knowledge of the asset. Therefore, the Board believed the marketability of the asset should be considered when analyzing if the transactions should be linked. We believe that offering a lower rate does not provide the initial transferor effective control over the transferred asset.

SFAS 140 paragraph 9(c) establishes criteria for when the transferor has maintained effective control over the transferred assets. Paragraph 9(c)1 indicates that a transferor has maintained effective control if the transferor is entitled and obligated to repurchase the transferred assets. In the contemplated transactions, the initial transferee may be economically inclined to enter into a financing arrangement with the initial transferor due to more favorable financing, but would not be obligated to use that financing. Thus, the transferor does not maintain effective control. Consequently, we believe that the marketability criteria in paragraph 7 of this proposed FSP should be removed.

¹ FASB Staff Implementation Guidance - *A Guide to Implementation of Statement 140 on Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*

Timing of the Financing Arrangement

We do not believe that the lapse of time between the initial transfer and the repurchase agreement is relevant when determining whether the transaction is a repurchase financing within the scope of this FSP. Under paragraph 4 of the draft FSP, before entering into a financing arrangement, the transferor must determine if the collateral was initially transferred to that counterparty, regardless of how long ago that transfer may have occurred. We believe that the transferor should be required to conclude whether there has been any contractual financing agreement with the counterparty that would require evaluation of the transactions as linked as prescribed by paragraph 7 of the FSP, only at the time of the initial transfer of the financial asset or shortly thereafter. A reverse repurchase agreement that occurs well after the initial transfer is not an indication that the two transactions are linked. While an argument could be made that such a subsequent transaction results in the transferor regaining control over the transferred asset, we believe that such an interpretation is unrealistic, overly rule-based rather than principle-based, and punitive.

We appreciate the opportunity to provide comments on the proposed FSP. If you have any questions regarding this comment letter, please contact me at (818) 225-3536 or Larry Gee at (818) 223-5822.

Very truly yours,

Anne McCallion
Anne McCallion
Senior Managing Director,
Chief of Financial Operations and Planning