September 17, 2013

Ms. Susan M. Cosper  
Director of Technical Application and Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7  
PO Box 5116  
Norwalk, CT 06856-5116

Re: Proposed Accounting Standards Update, Reorganization of Collateralized Mortgage Loans upon a Troubled Debt Restructuring (File Reference No. EITF-13E)

Dear Ms. Cosper:

We appreciate the opportunity to comment on the Proposed Accounting Standards Update, Reorganization of Collateralized Mortgage Loans upon a Troubled Debt Restructuring (the Proposed Update). Bank of America Corporation (BAC) provides a diverse range of banking and non-banking financial services and products domestically and internationally. As one of the world’s largest financial institutions, we hold approximately $900 million of loans on the balance sheet, including approximately $354 million of first and second lien residential mortgages and are, accordingly, very focused on the efforts of the Financial Accounting Standards Board (the FASB) to clarify when an in substance repossession or foreclosure occurs.

We appreciate the FASB’s effort to clarify the timing of reclassification of a loan to other real estate owned (OREO) and fully support the issuance of the Proposed Update with one suggested modification explained in our response to Question 3 below. Due to the elevated level of residential properties going through the process of foreclosure in recent years, it is important to ensure consistency in the interpretation and application of the applicable guidance. The clear definition as to when a creditor receives physical possession of residential real estate property will reduce the risk of differing interpretations and conclusions that are dependent on facts and circumstances. At the same time, the additional disclosures will provide information that users should find helpful in understanding the activity in OREO as well as the volume of loans that are in the foreclosure pipeline.

We have provided further detail in our responses to the questions presented in the Proposed Update in Appendix A.
We appreciate the opportunity to express our views in this letter. Should you have any questions, please feel free to contact Randall Shearer (980.388.8433) or me (980.387.4997).
Sincerely,

John M. James
Senior Vice President and Corporate Controller

cc: Neil A. Cotty, Chief Accounting Officer
    Randall J. Shearer, Accounting Policy Executive
Questions for Respondents

Scope

Question 1: Should the scope of the proposed amendments about the timing of reclassification of receivables to foreclosed residential real estate properties be extended to commercial real estate mortgage loans? If yes, please explain why, including a discussion on any special considerations related to reclassifying commercial real estate mortgage loans.

Response: As discussed in our response to Question 3, below, we believe that the guidance should be simplified to specify that a creditor is considered to have received physical possession of real estate property when the creditor obtains legal title, thus eliminating any reference to deeds in lieu of foreclosure or similar agreements. If this suggestion is adopted, we believe that the scope of the proposed amendments should be extended to commercial real estate loans.

If this suggestion is not adopted, we do not believe that the scope of the proposed amendments should be extended to commercial real estate loans because the risks and rewards of ownership do not transfer to the creditor until legal title is transferred. For example, a lender may make payments to protect the collateral before legal title transfers, which is done by funding a court appointed receiver who is “in possession” of the property. The effect of this mechanism is that the lender does not step into the rights and responsibilities of ownership, while rehabilitation and redevelopment activities beneficial to all take place. Commercial real estate lenders do not take physical possession until they hold title, thus there is a clear line delineating when a loan asset should be recharacterized as an OREO asset.

Question 2: Should the scope of the proposed amendments about the timing of reclassification of receivables to foreclosed assets also be extended to loans collateralized by nonfinancial assets other than real estate (for example, auto loans)? If yes, please explain why, including a discussion on any special considerations related to reclassifying loans that are collateralized by nonfinancial assets other than real estate.

Response: We do not believe that the scope of the proposed amendments about the timing of reclassification of receivables to foreclosed residential real estate properties should be extended to loans collateralized by nonfinancial assets other than real estate because there is no diversity in practice. The vehicle repossesson process timeline as well as inventory holding periods are very short compared to the foreclosure and disposal process for residential real estate properties. As there have not been any concerns with respect to in substance foreclosures of auto loans or loans collateralized by other nonfinancial assets, we do not believe they need to be included in the scope of the new guidance.

Question 3: Do you agree that a creditor should be considered to have received physical possession of residential real estate property collateralizing a consumer mortgage loan upon (a) the creditor obtaining legal title to the residential real estate property or (b) completion of a deed in lieu of foreclosure or similar legal agreement under which the borrower conveys all interest in the residential

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real estate property to the creditor to satisfy that loan, even though legal title may not yet have passed? If not, please explain why.

Response: We generally agree with the proposed criteria for determining when physical possession of residential real estate property collateralizing a consumer mortgage loan has occurred. This definition is consistent with our interpretation of GAAP and our current practice, and will eliminate concerns about differences in interpretation of the term “physical possession” and judgmental analyses of rights that a creditor may or may not have prior to obtaining legal title or deed in lieu of foreclosure. However, we recommend that the second criterion related to completion of a deed in lieu of foreclosure is unnecessary and should be eliminated. A deed in lieu of foreclosure is not complete until the lender has received a signed deed from the borrower and has determined that title is clear, at which point the lender has only to physically record the title with the appropriate municipality. However, others may have a different interpretation as to what constitutes completion of a deed in lieu of foreclosure, thus increasing the risk of diversity in practice. In addition, we believe the period of time between which a deed in lieu is completed and legal title is recorded is not significant. Lastly, while this may occur rarely, the borrower still has the legal right to sell the property until legal title is transferred out of their name. Having one uniform trigger for transferring a loan to OREO will alleviate the need to maintain two separate operational processes.

Question 4: Do you agree that the recurring disclosures of (a) the recorded investment in consumer mortgage loans secured by residential real estate properties that are in the process of foreclosure according to local requirements of the applicable jurisdiction and (b) a roll-forward schedule reconciling the change from the beginning to the ending balance of foreclosed residential real estate properties provide decision-useful information and should be required to be provided in interim and annual financial statements? If not, please explain why and what disclosures, if any, you would propose.

Response: We agree with the proposed disclosures and believe that they will provide decision-useful information to readers of financial statements.

Question 5: If the scope of the proposed amendments is extended to commercial real estate mortgage loans and/or loans collateralized by nonfinancial assets other than real estate (for example, auto loans), should different disclosures be required for these loans? Please describe how and why you think the disclosures should be different.

Response: Regardless as to whether the scope of the proposed amendments is extended to commercial real estate mortgage loans, we do not object to a disclosure of a roll-forward of foreclosed properties. However, we do not agree with disclosing commercial loans secured by commercial real estate in the process of foreclosure since it is very common for such foreclosures to be deferred or reversed if, for example, a loan is modified or refinanced. Therefore, such a disclosure would not provide helpful information to users about the volume of commercial loans secured by commercial properties that are expected to be transferred to OREO.
Question 6: Do you agree that the proposed amendments should be applied to both collateralized residential mortgage loans and foreclosed residential real estate properties existing at the date of adoption by means of a cumulative-effect adjustment as of the beginning of the annual reporting period for which the guidance is effective? If not, please explain why.

Response: We agree with applying the proposed amendments to both collateralized residential mortgage loans and foreclosed residential real estate properties existing at the date of adoption by means of a cumulative-effect adjustment.

Question 7: If an entity is required to reclassify foreclosed residential real estate property to consumer mortgage loans upon transitioning to the proposed guidance, at what amount should those loans be recorded at the date of adoption? For example, (a) should the recorded investment in such consumer mortgage loans at the date of adoption be the initial recognition basis of the foreclosed residential real estate property and (b) should any difference between the carrying amount of the foreclosed residential real estate property at the date of adoption and its initial recognition basis be recorded as an allowance for loan losses for such consumer mortgage loans? Please explain the reasons for your view.

Response: While the transition provisions do not impact us as we currently follow the proposed guidance, we agree with both (a) and (b) above with respect to the reclassification of foreclosed residential real estate property to consumer mortgage loans.

Question 8: Do you agree that the proposed amendments should apply to both public entities and nonpublic entities? If not, please describe how and why you think they should be different.

Response: We agree that the proposed amendments should apply to both public and nonpublic entities. We would like to further add that we do not agree with the continued development of separate accounting standards for nonpublic companies as we believe that consistent application of GAAP is most appropriate.

Question 9: Do you agree that an entity should be permitted to early adopt the proposed amendments? If not, please explain why.

Response: We agree that an entity should be permitted to early adopt the proposed amendments.