June 16, 2016

Ms. Susan M. Cosper  
Technical Director  
Financial Accounting Standards Board  
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Reference: Proposed Accounting Standards Update, Technical Corrections and Improvements

Dear Ms. Cosper:

The Mortgage Bankers Association\(^1\) (MBA) appreciates the opportunity to comment on Proposed Accounting Standards Update, Technical Corrections and Improvements (Proposed Update). The Proposed Update is a draft of FASB’s annual technical corrections for various topics within the Accounting Standards Codification (ASC). The Background section below is for the benefit of our members and other readers of our letter. That section is followed by our General Comment and Recommendation on the technical corrections.

Background

If a servicer services Ginnie Mae MBS, it must continue to pass through scheduled principal and interest to the pool investor whether the borrower pays his or her monthly payment on time or not. This requirement holds true until foreclosure sale. FHA, VA, and the USDA back the underlying loans in Ginnie Mae pools, and they each have separate policies on how much of the interest advanced by the servicer the servicer may ultimately recover, but the servicer does in fact get reimbursed at a lesser rate or amount than the amount the servicer passes through to the pool investor. Ginnie Mae

\(^1\) 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.
allows servicers to repurchase loans from a pool if the loan becomes 90 days or more delinquent since this allows a servicer with a low cost of funds to reduce its interest lost on seriously delinquent loans. Otherwise, the lost interest is deemed to be a cost of servicing Ginnie Mae MBS. In fact, Ginnie Mae allows a servicing fee of up to 44 bps for servicing compared with 25 bps for Fannie Mae and Freddie Mac, partly because of this partial loss of interest on foreclosures. Another reason servicers may desire to buy delinquent loans out of Ginnie Mae pools is to maintain key delinquency ratios low to remain a servicer in good standing with Ginnie Mae. Each servicer’s facts and circumstances are different.

The Financial Accounting Standards Board’s Statement of Accounting Standards No. 166, Accounting for Transfers of Financial Assets (FAS 166), an amendment of FAS 140 (now contained in codified standard ASC 860), provides the current authoritative guidance for transfers of financial assets. There are criteria in ASC 860 that preclude sale treatment. One such criterion is that the transferor may not have the unilateral right to repurchase an asset from the transferee. The ability to repurchase a loan from a Ginnie Mae pool if it becomes 90 days delinquent does not preclude initial sales treatment because that ability to repurchase is dependent on a third party doing something in the future – in this case a borrower must become 90 days or more delinquent. So, a transferor gets sale treatment when it originates loans and issues a Ginnie Mae MBS. However, if the transferor is still servicing the loan when the loan becomes 90 days delinquent, that servicer then has the unilateral ability to repurchase the loan. Many believe that the servicer must then reverse the balance sheet side of the original sales treatment and put an asset and a liability on its balance sheet equal to the then outstanding principal balance of the loan.

The applicable guidance is contained in ASC 860-20-25-11:

Whether the removal-of-accounts provision is exercised or not, the transferor shall recognize any financial assets subject to the removal-of-accounts provision if all of the following conditions are met:

a. A third party’s action (such as default or cancellation) or decision not to act (expiration) occurs.

b. The occurrence allows removal of assets to be initiated solely by the transferor.

c. The provision provides a more-than-trivial benefit to the transferor.

For example, once a contingency is met (such as when a given loan goes into default), the call option on that asset (loan) is no longer contingent.

However, item c. above conflicts with ASC 860-20-55-41:

Similarly, when a contingency related to a transferor's contingent right has been met, the transferor generally must account for the repurchase of a specific subset of the financial assets transferred to and held by the entity. At that point, the transfer fails the criterion in paragraph 860-10-40-5(c)(2) because the transferor has the unilateral right to purchase a specific transferred financial asset. The transferor must do so regardless of whether it intends to exercise its call option.
In its guidance to MBA in January 2015, FASB confirmed that the decision whether to put the defaulted loans and an associated liability back on the seller/servicer’s books involves two steps: 1. determination that a default has occurred allowing the seller/servicer to repurchase the defaulted loan and 2. determination that there is more-than-a-trivial benefit to the transferor.

In its Proposed Update FASB would amend ASC 860-20-55-41 and make it clear that determining whether to put the defaulted asset and associated liability on the books involves the above two-step test.

**MBA’s General Comment and Recommendation**

**MBA’s Proposed ASC Technical Corrections**

MBA is hearing that some accounting firms still believe that since the more-than-a-trivial benefit is such a low threshold, that defaulted assets in Ginnie Mae pools should be placed on the balance sheet automatically. MBA agrees that more-than-a-trivial benefit is a low threshold, but one that many servicers can get under given their unique facts and circumstances. MBA believes the FASB should provide some application guidance for more-than-a-trivial benefit in ASC 860-20-25-11 and 860-20-55-41.

ASC 860-10-40-28a provides some specific guidance related to ROAPs at sale or securitization. It states, “A call option or other right conveys more-than-a-trivial benefit (that is, fails the condition in paragraph 860-10-40-5(c)(2)(ii)) if the price to be paid is fixed, determinable, or otherwise potentially advantageous, unless because that price is so far out of the money or for other reasons it is probable when the option is written that the transferor will not exercise it.”

ASC 860-10-40-28c provides some additional clarity, “A call option on readily obtainable assets at fair value may not provide the transferor with more-than-a-trivial benefit.”

MBA highly recommends that FASB include such guidance in ASC 860-20-25-11 and 860-20-55-41. Or, FASB could cross-reference ASC 860-20-25-11 and 860-20-55-41 to ASC 860-10-40-28 a and c as clarifying guidance. If you choose to cross-reference, please make it clear that the analysis should be done at the time of the triggering event not when the option is written.
MBA thanks FASB for its assistance in dealing with the inconsistency in practice that has evolved with respect to the ROAP provisions related to servicing Ginnie Mae MBS. Any questions about the information provided herein should be directed to me at (202) 557-2860 or jgross@MBA.org.

Sincerely,

James P. Gross
Vice President of Financial Accounting & Public Policy