

GMAC FINANCIAL SERVICES

200 Renaissance Center, Mail Code 482-B08-D98
Detroit, Michigan 48265
(313) 665-4327

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MP&T Director – File Reference 1200-001
director@fasb.org
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

**Re: Proposed Statement of Financial Accounting Standards:
Qualifying Special-Purpose Entities and Isolation of Transferred Assets,
an amendment of FASB Statement No. 140
File Reference No. 1200-001**

Ladies and Gentlemen:

General Motors Acceptance Corporation (GMAC) would like to thank the Financial Accounting Standards Board (FASB) for this opportunity to comment on the Proposed Statement of Financial Accounting Standards: *Qualifying Special-Purpose Entities and Isolation of Transferred Assets*, an amendment of FASB Statement No. 140 (the Exposure Draft or Amendment). GMAC is a leading global financial services firm, with diversified operations in the financing, mortgage and insurance industries, with over \$200 billion in assets. Securitization provides a critical source of liquidity needed to fund GMAC's business.

In all lines of business, GMAC operates in a highly competitive environment, competing with financial services intermediaries in global markets. Such intermediaries often have access to lower-cost sources of funds. The ability to access the securitization market is vital for GMAC to compete effectively in this environment, enabling us to obtain diversified funding at lower costs, as compared to traditional unsecured funding sources. In addition, securitization has given many issuers, including GMAC, a mechanism to monetize assets, thereby serving as an important liquidity source through various business cycles and periods of volatility in the capital markets. With approximately \$114 billion in assets outstanding in sponsored Qualified Special Purpose Entities (QSPEs), the Amendment to SFAS 140 is of particular importance to GMAC.

GMAC's use of securitization vehicles has evolved and grown over the past twenty years, serving as a key factor in the Company's success. Over that time the Company has always endeavored to faithfully follow the continually evolving securitization accounting and disclosure guidance provided by standard setters. The accounting for securitizations must reflect the legal distinction of loans *secured by* financial assets from *sales of* financial assets and, therefore, is a complex area. As such, GMAC supports the FASB's efforts to clarify the accounting guidance for securitizations and QSPEs. While no clarification will avoid abuse by those that choose to disregard rules, we believe that a well-structured Interpretation of SFAS 140 will help deter those abuses. Financial assets, properly securitized and accounted for, serve as an important market mechanism, allowing for the efficient decomposition of financial assets into components, providing liquidity benefits to both lenders and borrowers.

In order for a securitization market to function efficiently, it must be supported by sound accounting principles. We believe that SFAS 140 provides a strong theoretical foundation for the proper accounting for securitization transactions. SFAS 140's theory of legal isolation and control requires that securitized financial instruments be accounted for based on the resulting components. The financial-components approach appropriately segregates the assets from the components of holders, who receive beneficial interests created by securitization transactions. Each holder only reports the resulting economic benefit of components they own.

The recent attention on the accounting for securitization transactions has focused on liabilities. The accounting scandals of Enron and others have caused regulators and users of financial statements to focus on "hidden" liabilities, which has created a pro-consolidation movement. While we consider it important to properly reflect a company's liabilities, it is equally important for a company to reflect on its balance sheet only those assets that it controls and from which it derives economic benefit. The goal of financial reporting is fair presentation and, unlike non-financial assets, the accounting of securitized financial instruments is not an "all or nothing" proposition. The financial-components approach appropriately recognizes this distinction. While there are difficulties in applying it in practice, the components approach still serves as the most appropriate model of accounting for securitized financial assets.

We believe that the FASB's proposed Amendment mixes a "risks and rewards" analysis with the components approach in a manner that contradicts some of the theoretical underpinnings of SFAS 140 and, if adopted in its current form, would create inconsistency and confusion in the securitization market. Furthermore, depending on the interpretation and resulting application of the Amendment, it could seriously constrain securitization issuers, with potentially significant implications to the liquidity in the capital markets. Accordingly, we offer the following comments on the Exposure Draft for your consideration:

- Clarification of Commitments to Deliver Additional Assets – The addition of paragraph 35(e) is an important addition to SFAS 140 as it prohibits a QSPE

from entering into an agreement with the transferor to deliver additional cash or other assets. In its current form (and if interpreted broadly) paragraph 35(e) would prohibit certain provisions that exist in many standard financial arrangements, and would therefore preclude QSPE status for virtually all securitization transactions.

Paragraph 35(e) prohibits "financial guarantees" which if interpreted in the context of FASB Interpretation No. 45, could include standard representations, warranties and remedies that exist in virtually every sale or transfer of assets. Representation and warranty statements are essential provisions that are intended to protect parties as to the truth and accuracy of information made at the time of a sale or transfer. They are not a way of guaranteeing liabilities by committing to provide additional assets, but instead are a mechanism to rescind a sale when a mistake of fact is subsequently discovered. We feel that the Amendment needs to clarify that "facts-based" representations and warranties are distinguishable from provisions to deliver additional cash or assets, and therefore should not preclude QSPE treatment.

- **Ability to Reissue Beneficial Interests** – The addition of paragraph 35(f) will restrict QSPEs from reissuing beneficial interests based upon the limitations under that section. The term "reissue" can take on several forms and may be subject to the interpretation of the issuer. As an example, GMAC acts as a remarketing agent for certain securitization transactions and it is not clear whether such a role would or would not be included under paragraph 35(f). Acting in the role of remarketing agent does not necessarily reflect a "reissuance" of securities; however, no definition of "reissue" is provided in paragraph 35(f). Paragraph 35(f) of the Amendment should clarify what constitutes the reissuance of beneficial interests.
- **Decision-Making Authority** – The original impetus for the Amendment to SFAS 140 was EITF 02-12, which tried to clarify the permitted activities of QSPEs that were managing the maturities of beneficial interests (primarily decisions to "roll over" commercial paper maturities in asset-backed commercial paper conduits). In paragraph 35(f)2, the Amendment attempts to resolve this issue by defining decision-making ability. The note to paragraph 35(f)2 associates the term "decision" with "discretion" and states that a party does not have decision-making ability if it has "no discretion".

As currently worded, "no discretion" seems to imply a much higher standard than the permitted activities concept of paragraph 35(b). Paragraph 35(b) requires that the activities be significantly limited, within the transaction documents, and with modifications requiring the approval of a majority of the beneficial interest holders. As a result, typical servicer activities are permitted under 35(b), as they are significantly limited and specified in the documents. Servicing activities however, quite often require discretion and, if applied against the standards set in paragraph 35(f)2, would not be permitted. Accordingly, we believe that paragraph 35(f)2 should be modified to align with paragraph 35(b), allowing

parties to make decisions about reissuing beneficial interests as long the requirements of paragraph 35(b) are met.

- **Retention of Beneficial Interests Other Than the Most Senior** – The addition of paragraph 35(f)2 appropriately prohibits transferors from managing beneficial interests (assuming that the term “decisions” is appropriately defined) and guaranteeing obligations of the SPE. However, it has added a third provision that also prohibits the retention of any beneficial interest other than the most senior in priority. Even assuming (as discussed above) that discretion is properly defined, the fact that a party can make decisions which affect interest that it owns and accounts for in its financial statements should not lead to consolidation of components that have been sold. For QSPE status to be disallowed because one can affect assets it owns would require a party to recognize assets it does not own, which is inconsistent with the current financial components approach of SFAS 140. Accordingly, we request that the limitation on retaining subordinate beneficial interests be eliminated from the Amendment.
- **Derivative Limitation** – The Amendment prohibits QSPEs from entering into passive derivative instruments with the transferor. Many securitization transactions involve plain vanilla derivatives, such as interest rate or currency swaps between the QSPE and the transferor. These derivatives are passive in nature, market-based, and are recorded by the transferor at fair value in accordance with SFAS 133, as amended. It is our understanding that the motivation for changing paragraph 35(c)2 was to prevent the use of “total return swaps” between transferors and QSPEs. Total return swaps effectively require the transferor to guarantee a set return to the beneficial interest holders. This is in contrast to plain vanilla interest rate or currency swaps, which contractually provide for the exchange of cash flows based on market-based interest or exchange rates. Consistent with the conceptual framework, we believe that the paragraph 35(c)2 prohibition on all derivatives is too broad, and instead propose that QSPEs not enter into derivative transactions that would effectively result in the transferor maintaining control over the assets or providing a guarantee on the liabilities.
- **Use of Two-Step Structures** – In an attempt to clarify the isolation criteria of SFAS 140, paragraph 83 has been amended to require that in order for the transferred assets to be considered a sale, the second step in a two-step transfer must be made to a QSPE. Securitization structures in practice use multiple entities and steps in creating and issuing beneficial interests. Regardless of the form of the structure, the important determination is that the assets meet the sales criteria of paragraph 9 in that they are legally isolated from and beyond the control of the transferor. As currently worded, the requirements outlined in paragraph 83 are very narrow and would limit the form and structure of securitization transactions to comply with these narrow provisions. To be consistent with the sales criteria of paragraph 9, we feel that any modification to paragraph 83 should require that the entity that creates the beneficial interests that are exchanged for consideration other than beneficial interests must be a

QSPE. By modifying the words to focus on the entity creating the beneficial interests, issuers can be free to structure sales transactions in accordance with paragraph 9 without the restrictions proposed in the current Exposure Draft.

- **Implementation Timing of Amendment** – The proposed Amendment would be effective for all transfers occurring on or after the beginning of the next quarter after the issuance date. Existing QSPEs that would not qualify under the Amendment would be grandfathered, as long as they do not issue new beneficial interests or acquire additional assets. This accelerated implementation is rationalized in the Exposure Draft on the basis of assumed insignificant incremental costs of implementing the Amendment. However, many of GMAC's QSPEs that would be affected by the Amendment (as currently drafted) reissue beneficial interests, and would therefore be required to comply with the Amendment of SFAS 140 one quarter after its issuance. If the proposed Amendment significantly changes the permitted activities of a transferor with QSPEs that hold transferred assets, substantial time and costs will be required in order to evaluate and possibly restructure transactions (which would require approval of various third party investors and counterparties) in order to comply with these changes.

We understand that in developing accounting standards in a timely manner the FASB is more responsive to the users of financial statements. However, as we and others have learned with the accelerated implementation of FASB Interpretation No. 46, the costs of these compressed time frames are borne by the issuers. Many of these same issuers have entered into and accounted for these transactions in good faith and should not be "penalized" by new accounting standards. Accordingly, we ask that the transition guidance be amended to allow both public and private entities to apply this statement prospectively to transfers occurring twelve months after the issuance of the final Amendment.

Overall, GMAC agrees that it is important for the FASB to provide clarification on SFAS 140 to ensure that the QSPE scope exception provided by FIN 46 is appropriately applied. However, we believe that the Exposure Draft does not clarify the conceptual framework built by SFAS 140, but instead tries to target specific issues and transactions through a "rules-based" approach that contradicts the financial components theory of SFAS 140. The hybrid result of the principles (i.e., "components and control" and "risks and reward") is that the Exposure draft in its current form is confusing and, if interpreted broadly, will inappropriately require the consolidation of assets in many existing QSPE deals where no effective control is retained by transferors over assets (components) that are deemed "sold" under SFAS 140. The result of having assets that do not belong on the balance sheet is just as misleading to users of financial statements as the "hiding" of off-balance sheet liabilities, possibly distorting the fair presentation of the financial statements.

GMAC appreciates this opportunity to comment; we are supportive of the FASB's efforts to provide definitive guidance on the accounting for securitizations and the

definition of QSPEs. We hope that you will consider our comments in finalizing the Amendment and are available to further discuss any of these matters.

Linda K. Zukauckas
Controller and Chief Accounting Officer
General Motors Acceptance Corporation

cc: Peter R. Bible
Chief Accounting Officer
General Motors Corporation