MORTGAGE BANKERS ASSOCIATION

October 21, 2013

Ms. Susan M. Cosper
Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116
director@fasb.org

File Reference No. 2013-290, *Insurance Contracts*

Dear Ms. Cosper:

The Mortgage Bankers Association[1] (MBA) appreciates the opportunity to comment on the Financial Accounting Standards Board's (FASB) Exposure Draft (ED), *Insurance Contracts* (Proposed Update). Our members are engaged in mortgage banking activities, not the insurance business. However, certain facets of the Proposed Update would change existing accounting in the mortgage banking industry. The following comment letter focuses on those aspects of the ED,

Background

Existing U.S. GAAP for insurance contracts has evolved over the years and generally applies to insurance entities not to contracts issued by noninsurance entities that enter into transactions that contain similar economic characteristics to insurance contracts. Several years ago the FASB and IASB undertook a joint insurance accounting project that is part of the larger international accounting standards convergence project. The ED is the latest iteration of the U.S. version of the project.

[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.mortgagebankers.org.

Mortgage originators who sell whole loans or create mortgage-backed securities (MBS) provide third parties (i.e. the buyer or credit enhancer of an MBS) certain standard representations and warranties (reps and warranties) that the loans sold or securitized conform to certain specified guidelines. Originators account for their liability for such reps and warranties at sale or securitization under FASB Interpretation 45 (FIN 45), *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others.* Under FIN 45, the loan originator sets up a liability for the fair value of the reps and warranties as part of the gain/loss on sale transaction. The seller subsequently amortizes this liability. Subsequent accounting is guided by FASB 5: *Accounting for Contingencies* (FAS 5). The accepted practice is that on an ongoing basis, this liability is carried at the higher of amortized cost or the amount calculated under FAS 5.

Under the Proposed Update, day 1 accounting would remain the same. However, subsequent to day 1, such reps and warranties would not be carried at the higher of amortized cost or FAS 5. Rather, the liability would be measured at the present value of probability-weighted estimate of future cash inflows and outflows, under the Proposed Update.

General Comments

Reps and Warranties Should Not Be Accounted for as Insurance Contracts

MBA believes that the present accounting under FIN 45 and FAS 5 is working, and that reps and warranties should not be brought under the large "insurance umbrella." MBA notes that bringing reps and warranties under insurance accounting is being done for the sake of international accounting convergence. Since MBA is not aware of any difficulties or inconsistencies in practice or any user concerns with today's practice, we believe that a general indemnity resulting from the negotiation of contracts such as a sale contract should not be within the broad scope of insurance accounting and should continue to be accounted for under FAS 5 and FIN 45 as contingencies.

Further, to the extent that an originator credit-enhances, such as is the case with providing short-term early payment default protection, those transactions relate to credit risk and not insurance risk and should fall into the credit impairment accounting regime.

Insurance Accounting Will Raise the Cost to Do Business

Although there is concentration of mortgage loan origination in the top 10 originators, there are thousands of mortgage originators that are small independent mortgage companies or community banks. Often, these small lenders serve rural communities that would otherwise be underserved. Such entities have developed regimes to measure the rep and warranty liability under FIN 45 and FAS 5, but do not have the statistical or actuarial expertise to perform the more rigorous analysis under insurance accounting. Unfortunately, for many of these small businesses, the cost of the proposed insurance accounting regime would be prohibitive. MBA believes that the cost to implement the proposed insurance accounting will be high and the benefits low or non-existent. MBA recommends that existing accounting for seller reps and warranties is not broken and requests that FASB not change existing principles and practice.

Immaterial Differences Between Estimates Under the Two Accounting Regimes
MBA believes that the loss estimates under FIN 45 and FAS 5 and the actuarial estimates under insurance accounting should generally result in answers that are similar to each other. Thus, we recommend that reps and warranties continue to be accounted for under FIN 45 and FAS 5.

MBA appreciates the opportunity to share its observations with you. Any questions about the information provided herein should be directed to me, Vice President Financial Accounting and Public Policy and Staff Representative to MBA's Financial Management Committee, at (202) 557-2860 or jgross@MBA.org.

Sincerely,

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