

MBA Letter: FAS 166, 167 Should Not Apply to Ginnie Mae MBS

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The [Mortgage Bankers Association](#) sent a letter to the **Securities and Exchange Commission** yesterday asserting that recent rules issued by the **Financial Accounting Standards Board** should not apply to issuers or servicers of **Ginnie Mae** mortgage-backed securities.

The [letter](#) contends that because issuers/servicers are not the primary beneficiaries of Ginnie Mae MBS, they should not have to consolidate related MBS assets and liabilities mandated by FAS 166 and 167. Such an exemption would help MBA members avoid **\$800 billion** coming back on their books next month, when key components of FAS 166 and 167 take effect.

"This issue is time-sensitive, as many of our members are required to adopt FAS 167 on January 1, 2010," the letter said. "MBA notes that as of September 30, 2009, the amount of securities outstanding that are guaranteed by Ginnie Mae was over **\$800 billion**. This issue could have a significant impact on the balance sheets and capital requirements of banks and other issuers if the issuer/servicer were deemed to be the primary beneficiary of a variable interest entity."

This past June, FASB issued **Statement of Accounting Standards No. 166, Accounting for Transfers of Financial Assets**; and **Statement of Accounting Standards No. 167, Amendments to FASB Interpretation No. 46(R)**. The statements change the way financial institutions can account for securitizations and special-purpose entities; under those statements, most securitizations--including commercial mortgage-backed securities and residential mortgage-backed securities--no longer meet off-balance sheet standards for sales treatment beginning Jan. 1.

MBA noted issuance of Ginnie Mae MBS has several unique characteristics that require careful analysis under FAS 167.

"First, unlike substantially all of the securitization market, the issuance of a Ginnie Mae MBS is not completed through a trust vehicle," MBA said. "Second, Ginnie Mae is not the legal issuer. Rather, approved issuers (Issuers/Servicers) pool loans, assign rights to loans to Ginnie Mae through a pool custodian, and issue Ginnie Mae MBS. Third, the Ginnie Mae MBS is the only securitization vehicle specifically designed by a U.S. governmental organization. Finally, the interconnected involvement of multiple governmental organizations in designing and insuring the credit risk of the underlying mortgage loans creates a complex analysis of "power" under FAS 167."

Under such criteria, MBA concluded that Ginnie Mae issuance is created through an "entity" as defined by FAS 167, because it is substantively equivalent to any asset-backed securitization. Further, MBA concluded that these entities might not be within the scope of FAS 167, because the entities can be viewed as financing entities established by a governmental organization.

"Assuming a Ginnie Mae issuance is created through an entity, MBA concluded that the entity is a variable interest entity under FAS 167, because there is no equity investment at risk," MBA said. "The MBS issued would be reported as debt on the entity's balance sheet. Therefore, we considered the design and variable interests of the entity to determine which party, if any, should consolidate. After considering all of the facts and circumstances, MBA believes that although the Issuer/Servicer has certain elements of power, the collective U.S. governmental organizations have power characteristics that have the most significant impact on the entity's economic performance, including the underlying design of the entity and the creation/periodic amendments of the Ginnie Mae and Insurer guidelines that must be followed in issuing MBS and servicing the underlying loans."

MBA has been working with a task force of its members on various implementation issues relating to FAS 166 and FAS 167. Noting that the SEC prefers that a registrant and its outside auditor bring such issues to the SEC on a pre-clearance basis, MBA said that since its membership include nearly 400 approved Ginnie Mae issuers, "we believe it is more expeditious for MBA to raise these industry-wide issues with the SEC on behalf of all of its members."