

GMAC FINANCIAL SERVICES

October 15, 2009

Office of the Comptroller of the Currency
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Washington, DC 20219
Regs.comments@occ.treas.gov
Docket No. OCC-2009-0012

Jennifer J. Johnson
Board of Governors of the
Federal Reserve System
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Docket No. R-1368

Mr. Robert E. Feldman
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RIN # 3064-AD48

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
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Attention: OTS-2009-0015

Re: Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues - Notice of Proposed Rulemaking (September 15, 2009) (NPR)

Ladies and Gentlemen:

GMAC Financial Services (GMAC) is pleased to comment on the proposed changes to regulatory capital requirements for financial institutions set forth in the recent Notice of Rulemaking: Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Impact of Modifications to Generally Accepted Accounting Principles; Consolidation of Asset-Backed Commercial Paper Programs; and Other Related Issues.

GMAC is a leading, independent, diversified, bank holding company with US domestic and international operations and approximately \$181 billion of assets as of 06/30/2009. Our principal lines of business include automotive finance, mortgage operations, and insurance.

Background

In June 2009, the Financial Accounting Standards Board (FASB) issued Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140* (SFAS 166) and Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* (SFAS 167). SFAS 166/167 collectively removed the concept of qualifying special purpose entity (QSPE) and modified the criteria under which special purpose entities, such as securitization vehicles, are evaluated for consolidation by the vehicle's beneficial interest holders' consolidated financial statements. These changes will have the general economic result of increasing the balance sheets of many issuers and servicers throughout the financial services industry.

With respect to banking entities, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Fed), the Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (collectively "regulators") typically use generally accepted accounting principles (GAAP), to which SFAS 166/167 belong, as the starting point for determining the regulatory capital requirements for any given exposure. In general, the proposed rule indicates that the regulators feel that the changes that will come about due to the application of SFAS 166/167 will be more reflective of the regulators' views of an organizations risk exposure. Accordingly, the regulators are not proposing any type of regulatory capital relief for assets coming onto banks balance sheets as a result of the implementation of SFAS 166/167.

General Comments

GMAC has historically used securitizations as a significant source of funding as well as a means of risk transference. Under existing accounting rules, GMAC has securitizations which are already consolidated within its GAAP financial statements, as well as securitizations that do not qualify for consolidation. Under the current guidelines, off-balance sheet structured transactions provide companies not only with much needed liquidity, but also allow for capital relief which subsequently allows capital to be redeployed for future lending activities. As a result of the implementation of SFAS 166/167, GMAC will be required to consolidate various securitization trusts that are currently off-balance sheet onto its consolidated financial statements. These trusts will meet the requirements for consolidation under the new standards as a result of GMAC providing the default servicing, which would be viewed as power over the entity, as well as holding a financial interest in the entity, such as an interest only strip, overcollateralization interest or even a cash reserve, or other type of financial interest. Even though the economics of these transactions does not change, as a result of the changes in the accounting rules,, the balance sheet will contain the assets and liabilities of these structures. These trusts will be carried at either fair value or book value based on the transition elections that we select on January 1, 2010.

By aligning the treatment of GAAP implications of SFAS 166/167 with the regulatory capital rules, it is presumed that banks will no longer be afforded the benefit of recognizing any risk transference in the impacted securitization transactions. While GMAC understands it is the regulators' desire to ensure the appropriate amount of capital is held on all current and future exposure, we believe regulators should have a process in which banks may approach the primary regulator for a securitization to be exempt from or receive reduced levels of impact from the proposed rule's treatment, in circumstances where there is no further economic or financial loss. Specifically, GMAC has securitized pools in which GMAC no longer has risk of economic or financial statement loss. In these situations, the risk has been transferred and the accounting basis of any residual interests has been reduced to zero on the balance sheet. The proposed rule cites a concern of implicit support as a driver for the proposed treatment. GMAC believes the existing implicit recourse rules address these concerns appropriately and this concept should not be the driver for holistic additions to the risk weighted assets.

Further, depending on the transition option chosen by GMAC, the impact to the Allowance for Loan and Lease Losses (ALLL) may not reflect the appropriate exposure to these assets. As a result, the balance of ALLL would likely increase from existing levels. At a high level, the credit losses inherent in the loans do not in many cases, lie solely with the consolidating entity, but rather are shared with the bondholders of the deal. However, the accounting rules will require the entire allowance to be booked by the consolidating entity, thus creating an accounting mismatch between assets and liabilities of these transactions. For example, as loans deteriorate and are reserved for by the consolidating entity, the corresponding debt is not also

reduced. Rather the debt can not be reduced until legal obligation on repayment is released, which would not be until the deal winds down. The current rules limit the amount of ALLL includable in Tier 2 Capital based on an institution's relative risk weighted assets. GMAC believes the current limit should be altered to allow greater ALLL inclusion in Tier 2 Capital as it has the ability to absorb future losses. As we see the GAAP balance sheet adjusting to the new rules it affords the opportunity to revise the historical thinking which limited the amount of ALLL in Tier 2 Capital. We believe the current GAAP changes support the concept of raising this limit.

The NPR also requests comments on a phased-in approach for the new treatment. First, we feel that since the economics of the transactions are not changing with the implementation of SFAS 166/167, we do not believe grossing up the balance sheet and simply attributing capital to these arbitrary levels is the right answer. GMAC ultimately feels the regulators should take the time to come up with a risk based approach to capital treatment for these newly consolidated assets, but in the interim strongly supports a phased-in approach as this allows financial institutions the time needed to address any disconnect between current capital levels and the proposed rules. GMAC also requests the regulators consider a two quarter delay to the implementation of the final rule to allow for adequate time to plan and effectively react to the final rule. With NPR comments due October 15th, the timeline between any final rule and the proposed implementation date could create inefficient strategies as financial institutions may only have two months or less to raise additional capital or implement other appropriate capital strategies. It also allows the capital markets time to react to the multitude of bank's which will look to investors for assistance with any capital raising activity. Should financial institutions need to raise capital quickly in the fourth quarter, it could limit their ability to deploy needed capital to activities such as lending. We strongly urge the regulators to delay the implementation so as not to cause such a potential disruption in the financial system.

Responses to Specific Questions:

Question 1:

Which types of VIEs will banking organizations have to consolidate onto their balance sheets due to the 2009 GAAP modifications, which types are not expected to be subject to consolidation, and why? Which types are likely to be restructured to avoid consolidation?

GMAC's Response:

Generally speaking, banking organizations will be required to consolidate any type of private label securitization, CDO or other structure set up as a VIE, where it holds both the servicing component, which would give it the "power to direct the activities that most significantly impact the entity's financial performance"¹ and holds a financial interest in the entity that "could potentially be significant."²

Items that will not be subject to consolidation by banking organizations would include securitization transactions entered into with the FNMA and Freddie (collectively "GSE's"), as the GSE's have indicated that they would be viewing themselves as the primary beneficiary in these types of deals and would therefore be consolidating them.

Each banking organization's circumstances are different, therefore determining which types of VIEs would be restructured is difficult to ascertain, however, in many cases banking institutions that do not wish to consolidate the structures under the SFAS 166/167 may simply sell any financial interest that they have in the deal and/or relinquish their capacity as servicer over the deal structure.

¹ SFAS 167, par 14A.a

² SFAS 167, par 14A.b

Question 2:

Are there features and characteristics of securitization transactions or other transactions with VIEs, other SPEs, or other entities that are more or less likely to elicit banking organizations' provision of noncontractual (implicit) support under stressed or other circumstances due to reputational risk, business model, or other reasons?

GMAC's Response:

The answer to this question would be based on the individual circumstances of the structures, the overall economics, and relationships of each situation. Please see our general comments related to the existing implicit recourse rules.

Question 3:

What effect will the 2009 GAAP modifications have on banking organizations' financial positions, lending, and activities? How will the modifications impact lending typically financed by securitization and lending in general? How may the modifications affect the financial markets? What proportion of the impact is related to regulatory capital requirements?

GMAC's Response:

The 2009 GAAP modifications will have a negative impact on banks' lending activities. The amount of capital required to be held against assets has/will make it more expensive for banks to lend. Securitization was a low cost funding option, as well as a means of risk transfer. If banks are required to consolidate all of these assets on their balance sheets, without any recognition of the transfer of risk (i.e. relief from providing full capital) there is less incentive to access the capital markets. Banks that have historically accessed the capital markets, will feel the biggest impact of these changes on their capital position. As a result, this could create an environment, at least in the near term, where there is more reliance on the largest institutions for any expansion to current lending levels. Decisions will come down to cost, and would most likely lead to either no securitizations at all, or using securitization to fund only the most senior parts of a capital structure. This could cause the financial markets to have a supply and demand mismatch due to substantially reduced new issuances. We would expect spreads to continue to tighten as a result, and could bring back the specialty finance company model. Currently, these companies are not subject to the same capital requirements as banks and are a direct result of the capital markets. They would look to fill the demand void by offering securities at wider spreads and further down the credit curve, as we've seen several times in recent history.

GAAP modifications will have a significant impact on business operations given the new Amendment. The primary driver of the impacts to the operational and lending reductions will be the additional regulatory capital required to be held against these assets. There will be limitations on other business activities as companies determine the best use of their capital given the new requirements. Additionally, specific to GMAC and our requirements to maintain and meet certain Capital Ratios, this will significantly impact our business activities.

Finally, and most importantly, like most other things in business, as lenders costs to transact business rise, these costs will surely be passed on to the consumer, which will have the result of higher consumer interest rates and an overall more challenging credit environment at a time when our economy is just beginning to show signs of improvement, coming out of a severe credit crisis.

Question 4:

As is generally the case with respect to changes in accounting rules, the 2009 GAAP modifications would immediately affect banking organizations' capital requirements. The agencies specifically request comment on the impact of immediate application of the 2009

GAAP modifications on the regulatory capital requirements of banking organizations that were not included in the SCAP. In light of the potential impact at this point in the economic cycle of the 2009 GAAP modifications on regulatory capital requirements, the agencies solicit comment on whether there are significant costs and burdens (or benefits) associated with immediate application of the 2009 GAAP modifications to regulatory capital requirements. If there are significant costs and burdens, or other relevant considerations, should the agencies consider a phase-in of the capital requirements that would result from the 2009 GAAP modifications? Commenters should provide specific and detailed rationales and supporting evidence and data to support their positions. Additionally, if a phase-in of the impact of the GAAP modifications is appropriate, what type of phase-in should be considered? For example, would a phase-in over the course of a four-quarter period, as described below, for transactions entered into on or prior to December 31, 2009, reduce costs or burdens without reducing benefits?

GMAC's Response:

Please see our comments related to the phase in and/or delay of the increase in capital required by these changes.

Question 5:

The agencies request comment on all aspects of this proposed rule, including the proposal to remove the exclusion of consolidated ABCP program assets from risk-weighted assets under the risk-based capital rules, the proposed reservation of authority provisions, and the regulatory capital treatment that would result from the 2009 GAAP modifications absent changes to the agencies' regulatory capital requirements.

GMAC's Response:

GMAC does not have any material ABCP programs and will therefore refrain from reply to this question.

Question 6:

Does this proposal raise competitive equity concerns with respect to accounting and regulatory capital treatments in other jurisdictions or with respect to international accounting standards?

GMAC's Response:

From a pure accounting perspective, we believe that the current IFRS rules may require further consolidation of structures for which our only active involvement is servicing of the underlying assets. With respect to regulatory treatments, we are not experts in foreign market capital rules and requirements. However, in general terms, we believe that if the GAAP accounting rules require consolidation, then the regulatory capital rules should diverge from GAAP and focus on the risk inherent in the assets. In other words, the capital rules, should require a banking institution to provide capital for the amounts to which they are exposed.

Further the International Accounting Standards Board (IASB) is in the process of revising its rules with regard to derecognition and consolidation (the IFRS equivalents of SFAS 166/167), which could add to or mitigate some of these issues. However, as stated, we believe the more important factor in competitiveness relates to the overall capital treatment of items where there has been some measure of risk transference.

Question 7:

Among the structures that likely will be consolidated under the 2009 GAAP modifications, for which types, if any, should the agencies consider assessing a different risk-based capital requirement than the capital treatment that will result from the implementation of the modifications? How are commenters' views influenced by proposals for reforming the securitization markets that require securitizers to retain a percentage of the credit risk on any

asset that is transferred, sold or conveyed through a securitization? Commenters should provide a detailed explanation and supporting empirical analysis of why the features and characteristics of these structure types merit an alternative treatment, how the risks of the structures should be measured, and what an appropriate alternative capital treatment would be. Responses should also discuss in detail with supporting evidence how such different capital treatment may or may not give rise to capital arbitrage opportunities.

GMAC's Response:

Please see our general comments related to risk transfer and how that should be considered in the capital rules.

Question 8:

Servicers of securitized residential mortgages who participate in the Treasury's Making Home Affordable Program (MHAP) receive certain incentive payments in connection with loans modified under the program. If a structure must be consolidated solely due to loan modifications under MHAP, should these assets be included in the leverage and risk-based capital requirements? Commenters should specify the rationale for an alternative treatment and what an appropriate alternative capital requirement would be.

GMAC's Response:

We do not believe that consolidation solely due to modifications under the MHAP program would require consolidation when applying the provisions of SFAS 167. These fees would be considered to be similar to other ancillary fees that a servicer would collect and are primarily intended to offset the additional costs and burdens of the modifications being provided by the servicer.

Question 9:

Which features and characteristics of transactions that may not be subject to consolidation after the 2009 GAAP modifications become effective should be subject to risk-based capital requirements as if consolidated in order to more appropriately reflect risk?

GMAC's Response:

We do not feel that any additional transactions that would not be subject to consolidation under SFAS 167 should require additional risk-based capital to be held.

Question 10:

Will securitized loans that remain on the balance sheet be subjected to the same ALLL provisioning process, including comparable loss rates, as similar loans that are not securitized? If the answer is no, please explain. If the answer is yes, how would banking organizations reflect the benefits of risk sharing if investors in securitized, on-balance sheet loans absorb realized credit losses? Commenters should provide quantification of such benefits, and any other effects of loss sharing, wherever possible. Additionally, are there policy alternatives to address any unique challenges the pending change in accounting standards present with regard to the ALLL provisioning process including, for example, the current constraint on the amount of provisions that are includible in tier 2 capital? Commenters should provide quantification of the effects of the current limits on the includibility of provisions in tier 2 capital and the extent to which the 2009 GAAP modifications and the changes in regulatory capital requirements proposed in this NPR affect those limits.

GMAC's Response:


In most cases, the securitized loans will be subject to the same ALLL provisioning processes as similar loans that are not securitized. Current provisioning requirements under Statement of Financial Accounting Standard No 5, *Accounting for Contingencies* (SFAS 5), do not allow for

consideration of credit losses being absorbed by investors rather than the entity that holds the loan. This fact could potentially cause banking entities to record reserves beyond any economics that they hold in certain deals as any extinguishment of debt would not occur until the entity is legally released from its debt obligation. The exception to this statement would be loans for which an entity would elect the fair value option either at transition or at the inception of new loans being entered into by the institution.

Conclusion

GMAC greatly appreciates the opportunity to share our thoughts and comments with the regulators on the proposed changes to the capital rules related to the implementation of SFAS 166/167. Any questions related to our comments should be directed to Mark Sitlinger at (215) 734-4887.

Sincerely,



Robert Hull
EVP, Chief Financial Officer
GMAC



Jeffrey Brown
Corporate Treasurer
GMAC

cc: Mr. David DeBrunner, VP, Controller and Chief Accounting Officer