



December 8, 2006

By Electronic Delivery and Regular Mail

CC:PA:LPD:PR (REG-125071-06)
Attn: Faith Colson
Internal Revenue Service
PO Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Final Regulations on Reporting Requirements for Widely Held Fixed Investment Trusts and Request for Relief

Dear Ms. Colson:

The Mortgage Bankers Association¹ respectfully requests that the Treasury Department and the Internal Revenue Service (IRS) act quickly to exempt trustees of Ginnie Mae² guaranteed securities from reporting under final regulations for reporting of *Widely Held Fixed Investment Trusts* (WHFIT) issued early this year. The regulations amend and expand the reporting responsibilities of trustees to include reporting of detailed items of income, expense, credit, and other information to trust interest holders (TIHs). As explained herein, MBA believes mortgage banking companies that act as trustees of Ginnie Mae securities would be unable to comply with the regulation as of the effective date of January 1, 2007.

I. Clarification of terminology and roles of Ginnie Mae MBS participants

Under guidelines that have been in place for more than thirty years, mortgage banking companies that participate as “issuers/servicers” in certain Ginnie Mae securitization programs³ are the servicers of the mortgage loans underlying the Ginnie Mae mortgage-backed securities (MBS) and are required to perform trustee functions, including tax reporting, on behalf of the

¹ The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 500,000 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 3,000 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, thrifts, Wall Street conduits, life insurance companies and others in the mortgage lending field. For additional information, visit MBA's Web Site: www.mortgagebankers.org.

² Government National Mortgage Association.

³ Qualifying mortgage banking companies may participate in one or more programs offered by Ginnie Mae. Of significance here, issuers/servicers operating under the “Ginnie Mae I” and “Ginnie Mae II” programs act as trustees for pools underlying the securities (see Revenue Rulings 70-544 and 70-545). In the case of the Ginnie Mae II program, Ginnie Mae provides an agent, currently the Bank of New York, to handle tax reporting functions. The utilization of the Bank of New York for Ginnie Mae II MBS tax reporting is mandatory for all issuers of Ginnie Mae II MBS. The facilities of the Bank of New York are not made available for the Ginnie Mae I MBS issuers.

holders of the related Ginnie Mae MBS. The trustee function of the issuer under these Ginnie Mae programs is indivisible from its right and responsibility to service the underlying mortgage loans. Mortgage servicing is transferred frequently and, therefore, many companies that are “on record” with Ginnie Mae as the current “issuers/servicers” for certain Ginnie Mae MBS are not the original issuers of the securities.

This program structure contrasts with the mortgage securitization programs offered by the secondary market agencies Fannie Mae⁴ and Freddie Mac⁵ which act as both the issuers and the trustees for their own guaranteed MBS, with a mortgage banking company acting as the servicer for the loans in a pool.

This unique feature of the Ginnie Mae program raises the prospect of application of the reporting regulation to a wide range of mortgage banking companies, including many companies which have very limited capabilities and resources to provide the required information. As the attached list reveals, many of the currently approved issuers/servicers are small, privately-owned companies for which the proposed reporting would present a significant burden. Moreover, for the reasons set forth below, even large Ginnie Mae issuers/services with significant resources would have great difficulty complying with the regulation.

II. Obstacles to Compliance by Ginnie Mae Issuers/Servicers

Mortgage banking companies that are approved Ginnie Mae issuers/services would have great difficulty providing the required information because:

- Information required under the new regulations was not anticipated or required when existing securities were issued. For example, issue prices and original prepayment speed assumptions on securities that have been outstanding for many years (some more than twenty years) may be difficult to obtain. To reconstruct this information on previously closed deals may not be possible and certainly is not reasonably attainable;
- Over the years, the servicing of Ginnie Mae securities may have changed hands one or more times. In those cases, there have been no efforts to convey to new issuers/servicers some of the information needed to perform the calculations required under the WHFIT rules;
- Even if the required information were available, Ginnie Mae issuers/servicers report that they do not have the systems capabilities to capture and report some of the required information. For example, Ginnie Mae and the Federal Reserve Board historically have mandated the reporting by trustees of net interest income. Consequently, Ginnie Mae issuers’ reporting systems are not programmed to capture gross income and expenses for reporting purposes at this time. The required changes to issuers’ systems would be extremely costly and would involve several months of effort;
- Many Ginnie Mae issuers/servicers are small companies with limited reporting capabilities. The regulations did not address the regulatory impact and MBA believes that they will have a significant economic impact on a substantial number of small

⁴ Federal National Mortgage Association.

⁵ Federal Home Loan Mortgage Corporation.

entities and thus should be delayed until this impact is studied and, preferably, eliminated.

Compliance with the new reporting requirements will necessitate substantial revisions to document language and new parties, never before subject to a reporting obligation, will be held accountable for providing reportable information. For existing deals, some of the reportable information may not be obtainable since in some cases no party is currently obligated to provide such information.

Perhaps the greatest uncertainty will be the impact of this tax reporting obligation on the overall Ginnie Mae program. Because Ginnie Mae securities are unique government sponsored mortgage funding vehicles designed to promote the health and vitality of the housing market, the imposition of these reporting rules could substantially drive up the costs of the Ginnie Mae program to issuers/servicers. This, in turn, may accelerate the recent decline of the program to the disadvantage of the many low income borrowers that it is intended to serve.

III. Conclusion

For these reasons, MBA respectfully recommends that the Treasury Department and the IRS act very quickly to exempt Ginnie Mae securities from the regulation. If all Ginnie Mae securities cannot be exempted, MBA recommends that at a minimum the Treasury Department and the IRS grandfather securities existing as of January 1, 2007, and provide a transition to compliance for other Ginnie Mae securities. In this regard, MBA would recommend a delay in the application of the rules to Ginnie Mae securities⁶ to allow companies to gather the required information, to make the necessary systems enhancements, and to provide the market the opportunity to consider the details of any new program structure necessary to support the reporting requirements.

MBA appreciates the opportunity to share these comments with you. MBA would appreciate the opportunity to meet with Treasury Department and IRS officials to address questions about our concerns. For further information about MBA's comments and recommendations, please contact Alison Utermohlen, Senior Director of Government Affairs, at (202) 557-2864 or autermohlen@mortgagebankers.org.

Most sincerely,



Jonathan L. Kempner
President & Chief Executive Officer

Attachment

⁶ For example, in order to allow Ginnie Mae securities to come within the safe harbor during the transition period, the following requirements could be made temporarily inapplicable to Ginnie Mae securities: Section 1.671-5(g)(1)(ii)(E)(1), regarding limiting the assets of the WHMT to mortgages with uniform characteristics; Section 1.671-5(g)(1)(iv), regarding reporting OID; Section 1.671-5(g)(1)(v), regarding reporting market discount information; Section 1.671-5(g)(1)(vi), regarding reporting bond premium; and Section 1.671-5(g)(1)(ii)(B) relating to stripped securities.