Statutory Accounting Principles (E) Working Group

**Maintenance Agenda Submission Form**

**Form A**

## **Issue:** SSAP No. 37 – Participation Agreement in a Mortgage Loan

**Check (applicable entity):**

P/C Life Health

Modification of existing SSAP

New Issue or SSAP

Interpretation

Description of Issue: This agenda item has been drafted to clarify statutory accounting guidance for a participation agreement in a mortgage loan. The guidance permitting a “participation agreement” was adopted in 2017 and intended to allow ownership in a single mortgage loan agreement with a sole borrower when the insurer is not named on the original mortgage loan agreement. With a participation agreement, the insurer would acquire the mortgage loan via an assignment or participation agreement between the selling lender and any co-lenders.

This guidance for acquiring mortgages through a “participation agreement” was adopted at the same time as the revisions to identify “participants” in mortgage loans. (A participant in a mortgage is defined when there is more than one lender identified on the loan documents as providing funds to a sole borrower.) Although the guidance for a “participant” in a mortgage loan is explicit that the guidance pertains to mortgages issued to a “sole borrower,” and there is explicit guidance in SAP No. 37 that identifies that investments that reflect involvement in a “mortgage loan fund” are not considered mortgage loans, it appears that the “participation agreement” language is being used as a reference to incorporate ownership interests in pool / funds of mortgages as SSAP No. 37 (Schedule B) mortgage loans.

This agenda item incorporates minimal revisions to the “participant agreement” language to expressly indicate that the participation agreement must pertain to a sole borrower in a single mortgage loan agreement. Consistent with existing guidance in SSAP No. 37, investments that reflect ownership in a mortgage loan fund is not in scope of SSAP No. 37. Investments in a “pool of mortgages” shall be reported on Schedule BA.

Existing Authoritative Literature:

***SSAP No. 37–Mortgage Loans***

2. A mortgage loan is **defined as a debt obligation that is not a security**, which is secured by a mortgage on real estate. In addition to mortgage loans directly originated, a mortgage loan also includes mortgages acquired through assignment, syndication or participation[[1]](#footnote-1). **Investments that reflect “participating mortgages,” “mortgage loan fund,” or the “securitization of assets” are not considered mortgage loans within scope of this SSAP**.

1. A security is a share, participation, or other interest in property or in an entity of the issuer or an obligation of the issuer that has all of the following characteristics:

i. It is either represented by an instrument issued in bearer or registered form, or if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer.

ii. It is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment.

iii. It either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

Activity to Date (issues previously addressed by the Working Group, Emerging Accounting Issues (E) Working Group, SEC, FASB, other State Departments of Insurance or other NAIC groups): Agenda item 2016-39 expanded the scope of SSAP No. 37, with the intent to clarify that mortgage loans would include co-lending agreements when the insurer is directly named on the loan documentation (as a “participant”) and when they are not named on the loan documents, but acquire the interest through a sale (in a “participation agreement”). Although the guidance in SSAP No. 37 is explicit that investments that reflect “mortgage loan funds” are not intended to be in scope, it seems that some are referencing the guidance for a “participation agreement” to captured interests in mortgage loan funds / pools of mortgages.

**Information or issues (included in *Description of Issue*) not previously contemplated by the Working Group:** None

**Convergence with International Financial Reporting Standards (IFRS):** Not applicable.

Staff Recommendation:

NAIC staff recommends that the Working Group move this item to the active listing, categorized as nonsubstantive, and expose minimal revisions to *SSAP No. 37—Mortgage Loans* to further clarify that a mortgage loan acquired through “participation agreement” is limited to a single mortgage loan agreement with a sole borrower.

***SSAP No. 37–Mortgage Loans***

2. A mortgage loan is defined as a debt obligation that is not a security, which is secured by a mortgage on real estate. In addition to mortgage loans directly originated, a mortgage loan also includes mortgages acquired through assignment, syndication or participation[[2]](#footnote-2). Investments that reflect “participating mortgages,” “mortgage loan fund,” or the “securitization of assets” are not considered mortgage loans within scope of this SSAP.

1. A security is a share, participation, or other interest in property or in an entity of the issuer or an obligation of the issuer that has all of the following characteristics:

i. It is either represented by an instrument issued in bearer or registered form, or if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer.

ii. It is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment.

iii. It either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

Staff Review Completed by:

Julie Gann, NAIC Staff – June 2018

Status:

On August 4, 2018, the Statutory Accounting Principles (E) Working Group moved this item to the active listing, categorized as nonsubstantive, and exposed proposed revisions to *SSAP No. 37—Mortgage Loans*, as detailed above, to clarify that a mortgage loan acquired through a mortgage loan participation agreement is limited to a single mortgage loan agreement with a sole borrower.

On November 15, 2018, the Statutory Accounting Principles (E) Working Group exposed new revisions to *SSAP No. 37—Mortgage Loans*, to clarify that mortgage loans acquired through a participation agreement are limited to single mortgage loan agreements and exclude “bundled” mortgage loans. These revisions intend to prevent inadvertent restrictions when there may be more than one lender / borrower, but clarify that structures that reflect more than one mortgage loan agreement are not in scope of SSAP No. 37.

November 15, 2018 Exposure:

***SSAP No. 37–Mortgage Loans***

2. A mortgage loan is defined as a debt obligation that is not a security, which is secured by a mortgage on real estate. In addition to mortgage loans directly originated, a mortgage loan also includes mortgages acquired through assignment, syndication or participation2. Investments that reflect “participating mortgages,” “mortgage loan fund,” “bundled mortgage loans3,” or the “securitization of assets” are not considered mortgage loans within scope of this SSAP.

1. A security is a share, participation, or other interest in property or in an entity of the issuer or an obligation of the issuer that has all of the following characteristics:

i. It is either represented by an instrument issued in bearer or registered form, or if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer.

ii. It is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment.

iii. It either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

2 Examples of agreements intended to be captured within this statement:

a. Reporting entity is a “co-lender” in a single mortgage loan agreement that identifies more than one lender (which includes the reporting entity) with the real estate collateral securing all lenders identified in the agreement. For these single mortgage loan agreements, each lender is incorporated directly into the loan documents. The key differentiating characteristic of a mortgage loan provided under a group “mortgage loan co-lending agreement” rather than a solely-owned mortgage loan is that no one lender of the lending group may unilaterally foreclose on the mortgage. With these agreements, the lenders must foreclose on the mortgage loan as a group.

b. Reporting entity has a “participation agreement” to invest in a single mortgage agreement (sole borrower) originally issued by another entity. Although the reporting entity is not named on the original mortgage loan agreement, the original issuer sells a portion of the mortgage loan to an incoming participant lender and the sale is documented by an assignment of a participation interest or participation agreement between the selling lender and the participant. With these agreements, the participant acquires an undivided participation interest in the single mortgage loan and will have rights related to repayment of the loan based on its pro-rata share of the single mortgage loan. The financial rights and obligations of the participants in shall be similar to those in a direct loan.

3  The scope of this SSAP is limited to single mortgage loan agreements. Although single mortgage loan agreements can potentially have more than one lender (e.g., co-lenders / participations) and more than one borrower (such as in a tenancy-in-common arrangement), the concept of a “single mortgage loan” does not include arrangements in which a reporting entity acquires more than one mortgage in a sole transaction. (For example, if a reporting entity was to acquire an interest in a “bundle” of mortgage loans with various unrelated borrowers and collateral, this agreement would be outside of the scope of this SSAP.)

On April 6, 2019, the Statutory Accounting Principles (E) Working Group exposed revisions to *SSAP No. 37—Mortgage Loans*, to incorporate both regulator and interested parties’ comments, as shown below. These revisions incorporate minor technical edits and footnote 3 guidance recommended by interested parties and incorporate additional language to footnote 2 to clarify requirements of participating mortgages. The provisions for participation agreements clarify that such agreements should provide the same rights and obligations as if the holder acquired the mortgage loan directly.

Spring 2019 National Meeting Exposure:

***SSAP No. 37–Mortgage Loans – Revisions from the prior exposure are shaded.***

2. A mortgage loan is defined as a debt obligation that is not a security, which is secured by a mortgage on real estate. In addition to mortgage loans directly originated, a mortgage loan also includes mortgage loans acquired or obtained through assignment, syndication or participation2. Investments that reflect “participating mortgages,” “mortgage loan fund,” “bundled mortgage loans3,” or the “securitization of assets” are not considered mortgage loans within scope of this SSAP.

1. A security is a share, participation, or other interest in property or in an entity of the issuer or an obligation of the issuer that has all of the following characteristics:

i. It is either represented by an instrument issued in bearer or registered form, or if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer.

ii. It is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment.

iii. It either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

2 Examples of agreements intended to be captured within this statement:

a. Reporting entity is a “co-lender” in a single mortgage loan agreement that identifies more than one lender (which includes the reporting entity) with the real estate collateral securing all lenders identified in the agreement. For these single mortgage loan agreements, each lender is incorporated directly into the loan documents. The key differentiating characteristic of a mortgage loan provided under a group “mortgage loan co-lending agreement” rather than a solely-owned mortgage loan is that no one lender of the lending group may unilaterally foreclose on the mortgage. With these agreements, the lenders must foreclose on the mortgage loan as a group.

b. Reporting entity has a “participation agreement” to invest in a single mortgage loan. The reporting entity is not an original lender named as a payee on the mortgage loan, but the original lender sells a portion of the mortgage loan to the reporting entity through an assignment of a participation interest under the participation agreement. Under a participation agreement, the reporting entity acquires an undivided interest in the single mortgage loan proceeds to be received by the original lender. Under a participation agreement, single mortgage loan proceeds include the periodic mortgage loan principal and interest payments received by the original lender, and all rights and proceeds received in the foreclosure of a mortgage, deed of trust, deed in lieu of foreclosure, or other similar proceeding by the original lender. The amount of the proceeds to be received by the reporting entity is based on the ratio of its participation interest to the then-outstanding single mortgage loan balance. To qualify as a mortgage loan under the scope of this statement, the reporting entity must have a signed participation agreement with the original lender named in the mortgage loan, the financial rights and obligations of the reporting entity under the participation agreement are the same as the original lender, the reporting entity’s participation interest in the single mortgage loan proceeds must be pari-passu with the original lender named on the mortgage loan agreement, and the participation agreement must be properly and promptly recorded.

**Footnote 2b is also shown clean:**

b. Reporting entity has a “participation agreement” to invest in a single mortgage loan. The reporting entity is not an original lender named as a payee on the mortgage loan, but the original lender sells a portion of the mortgage loan to the reporting entity through an assignment of a participation interest under the participation agreement. Under a participation agreement, the reporting entity acquires an undivided interest in the single mortgage loan proceeds to be received by the original lender. Under a participation agreement, single mortgage loan proceeds include the periodic mortgage loan principal and interest payments received by the original lender, and all rights and proceeds received in the foreclosure of a mortgage, deed of trust, deed in lieu of foreclosure, or other similar proceeding by the original lender. The amount of the proceeds to be received by the reporting entity is based on the ratio of its participation interest to the then-outstanding single mortgage loan balance. To qualify as a mortgage loan under the scope of this statement, the reporting entity must have a signed participation agreement with the original lender named in the mortgage loan, the financial rights and obligations of the reporting entity under the participation agreement are the same as the original lender, the reporting entity’s participation interest in the single mortgage loan proceeds must be pari-passu with the original lender named on the mortgage loan agreement, and the participation agreement must be properly and promptly recorded.

3 The scope of this SSAP is limited to single mortgage loan agreements. Although single mortgage loan agreements can potentially have more than one lender (e.g., co-lenders / participations) and more than one borrower (such as in a tenancy-in-common arrangement), the concept of a “single mortgage loan” does not include arrangements in which a reporting entity acquires more than one mortgage loan in a sole transaction. (For example, if a reporting entity was to acquire an interest in a “bundle” of mortgage loans with various unrelated borrowers and collateral, this agreement would be outside of the scope of this SSAP. However, a bundle of mortgage loans does not include a “bulk purchase” where the reporting entity’s interest in each mortgage loan is legally separate and divisible and the purchase just facilitates the acquisitions of multiple single mortgage loan agreements.)

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1. Examples of agreements intended to be captured within this statement:

   a. Reporting entity is a “participant” **in a single mortgage loan agreement** that identifies more than one lender (which includes the reporting entity) **providing funds to a sole borrower** with the real estate collateral securing all lenders identified in the agreement. For these agreements, each lender is incorporated directly into the loan documents. The key differentiating characteristic of a mortgage loan provided under a group “mortgage loan participation agreement” rather than a solely-owned mortgage loan is that no one lender of the lending group may unilaterally foreclose on the mortgage. With these agreements, the lenders must foreclose on the mortgage loan as a group.

   b. Reporting entity has a “participation agreement” to invest in mortgages issued by another entity. **Although the reporting entity is not named on the original mortgage loan agreement, the original issuer sells a portion of the mortgage loan to an incoming participant lender (co-lender) and the sale is documented by an assignment or participation agreement between the selling lender and the co-lender**. With these agreements, the co-lender acquires an undivided participation interest in the loan and will receive direct interest in the amount of their participation in the right to repayment of the loan and the collateral given to secure the loan. The financial rights and obligations of the lenders in these agreements shall be similar to those in a direct loan. [↑](#footnote-ref-1)
2. Examples of agreements intended to be captured within this statement:

   a. Reporting entity is a “participant” in a single mortgage loan agreement that identifies more than one lender (which includes the reporting entity) providing funds to a sole borrower with the real estate collateral securing all lenders identified in the agreement. For these agreements, each lender is incorporated directly into the loan documents. The key differentiating characteristic of a mortgage loan provided under a group “mortgage loan participation agreement” rather than a solely-owned mortgage loan is that no one lender of the lending group may unilaterally foreclose on the mortgage. With these agreements, the lenders must foreclose on the mortgage loan as a group.

   b. Reporting entity has a “participation agreement” to invest in a single mortgage agreement (sole borrower) originally issued by another entity. Although the reporting entity is not named on the original mortgage loan agreement, the original issuer sells a portion of the mortgage loan to an incoming participant lender (co-lender) and the sale is documented by an assignment or participation agreement between the selling lender and the co-lender. With these agreements, the co-lender acquires an undivided participation interest in the loan and will receive direct interest in the amount of their participation in the right to repayment of the loan and the collateral given to secure the loan. The financial rights and obligations of the lenders in these agreements shall be similar to those in a direct loan. [↑](#footnote-ref-2)