

## CHAPTER 16: CUSTODIAL ACCOUNTS

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### 16-1: OVERVIEW OF CHAPTER

This chapter addresses the kinds of accounts that an Issuer must use for depositing and maintaining the different kinds of funds it receives in connection with its administration of a pool or loan package of mortgages and, in connection with the Ginnie Mae I MBS Program, for making available to the depository, as security holder of all book-entry securities, the amount of monthly payments, and in connection with the Ginnie Mae II MBS Program, for making available to the CPTA funds required to pay security holders. The chapter also sets forth eligibility requirements for custodial institutions. In addition, it describes applicable reconciliation requirements and explains how an Issuer can transfer custodial accounts from one funds custodian to another. Additional requirements applicable to the administration of HMBS pools can be found in Chapter 35.

### 16-2: CUSTODIAL ACCOUNTS

All Issuers must segregate the cash flow from pooled mortgages by identifying principal and interest, taxes, insurance premiums and other escrows, late charges, assumption fees, and any other fees or miscellaneous collections. All sums received must be deposited and maintained in custodial accounts as required below. (See Article V of the respective Guaranty Agreements (Appendices III-15 through III-20 and III-23 through III-27). All accounts may contain funds for more than one pool or loan package.

An Issuer must also maintain a single, “central” P&I custodial account for all of the pools and loan packages that it forms under each Ginnie Mae MBS Program (or, at the Issuer’s option, a single such account for both such Programs) and authorize the depository (in the case of the Ginnie Mae I MBS Program) and the CPTA (in the case of the Ginnie Mae II MBS Program) to withdraw funds from it automatically each month by ACH transaction. Each central P&I custodial account in respect of pools formed under the Ginnie Mae I MBS Program must be maintained at a financial institution capable of being accessed by ACH by the depository and by the CPTA. Each central P&I custodial account in respect of pools or loan packages formed under the Ginnie Mae II MBS Program must be maintained at a financial institution capable of being accessed by ACH by the CPTA.

The Issuer must deposit into the central P&I custodial account(s) each month funds sufficient to (i) enable the depository, as security holder of all book-entry Ginnie Mae I MBS, to withdraw timely the required monthly principal and interest payment on such securities, and (ii) enable the CPTA to withdraw and make timely payment of required principal and interest to Ginnie Mae II MBS security holders and

## CHAPTER 16: CUSTODIAL ACCOUNTS

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required guaranty fees to Ginnie Mae. (See Section 16-4)

The custodial accounts must satisfy all of the requirements of the Master Agreement for Servicer's Principal and Interest Custodial Account, form HUD 11709 (Appendix III-2), Master Agreement for Servicer's Escrow Custodial Account, form HUD 11720 (Appendix III-3), and the applicable Guaranty Agreement, including the requirement that the accounts be insured by the FDIC or the NCUA.

For any custodial account that contains funds for more than one pool or loan package or Program, the Issuer must maintain separate accounting records for each pool, each loan package and each Program. The Issuer must be able to reconcile the accounts with the RFS Issuer Monthly Report of Pool and Loan Data (Appendix VI-19) or, for HMBS pools with the requirements set forth in Appendix VI-17. A detail must be available that lists the principal and interest cash book balances for each Ginnie Mae pool or loan package that uses the custodial bank account as of the Issuer's monthly reporting cut-off date. Each detail must show: the balance at the end of the previous reporting month, plus the daily deposits related to the pool or loan package, minus disbursements for the pool or loan package, which equals the ending balance. This is also known as the "cash flow" method.

### 16-3: P&I CUSTODIAL ACCOUNTS

- (A) All principal and interest collections for an individual pool or loan package must be deposited into a single, non-interest bearing P&I custodial account, which may be the central P&I custodial account (see Section 16-4). Each P&I custodial account must be the subject of a Master Agreement for Servicer's Principal and Interest Custodial Account, form HUD 11709 (Appendix III-2). (See Section 10-3(A)(2)).
- (B) Principal retained in a P&I custodial account in anticipation of full payment of a serial note may be invested as provided in Section 29-5(B).
- (C) P&I funds include, but are not limited to: monthly mortgage payments; prepayments; mortgage or title insurance and guaranty claim settlement proceeds; hazard insurance or any condemnation proceeds not used to repair the collateral (if such funds are to be used to repair the collateral, they first must be deposited in the escrow custodial account and may not be deposited in the Issuer's corporate accounts); proceeds from foreclosure or repossession sales, and any payments received in lieu of foreclosure or

## CHAPTER 16: CUSTODIAL ACCOUNTS

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repossession sales; proceeds from any sale, resale, or transfer of mortgages that is required under the applicable Guaranty Agreement or by this Guide to be passed through to the security holders; repayments of excess funds; advances; and other unscheduled recoveries of principal as set forth in Section 15-4(C).

- (D) The Issuer may make withdrawals from a P&I custodial account only for the following purposes:
- (1) under each Ginnie Mae MBS Program, to transfer funds to a separate (or combined) central P&I custodial account (see Section 16-4) for disbursement;
  - (2) except for HMBS pools, to reimburse itself for its previous advances that were made in accordance with Sections 15-2(E) and 15-3(C), but only if (a) all excess funds used to make security holder payments have been fully restored; (b) the Issuer has maintained records showing the amount of each advance attributed to a particular mortgage; (c) the funds used to reimburse the Issuer come from the payment related to the particular mortgage on which the Issuer made the advance; (d) all amounts due and payable to security holders have been paid to them; and (e) the Issuer's records properly demonstrate all the foregoing;
  - (3) to utilize excess funds in accordance with Section 15-5(A) hereof;
  - (4) to remove from the account any amounts that were not required to be deposited therein under the applicable Guaranty Agreement or this Guide; or
  - (5) to pay itself the permitted servicing fee.
  - (6) for HMBS, to make payments in accordance with Section 5.03(b)(3) of the applicable Guaranty Agreement.
- (E) P&I funds must be maintained in a custodial account separate from escrow custodial accounts.

### **16-4: CENTRAL P&I CUSTODIAL ACCOUNTS**

Each Issuer must designate and maintain a P&I custodial account as its central P&I custodial account (which may be a separate account for each Program or a single account for both Programs) from which disbursements for investor payments and guaranty fees will be made. The Issuer may designate as its central P&I custodial account one of the

## CHAPTER 16: CUSTODIAL ACCOUNTS

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following:

- (1) a P&I custodial account that it also uses for the purposes described in Section 16-3 or
- (2) it may establish a separate P&I custodial account for the sole purpose of serving as the central P&I custodial account. The designated central P&I custodial account must be the subject of a Master Agreement for Servicer's Principal and Interest Custodial Account, form HUD 11709 (Appendix III-2), and must satisfy the requirements set forth in this Chapter 16.

### ***(A) Authorization of Withdrawals***

The Issuer must authorize the depository (in the case of Ginnie Mae I MBS) and the CPTA (in the case of both Programs) to withdraw funds from the central P&I custodial account automatically by debiting it through the use of an ACH transaction. (See Section 7-4(B)). The Issuer provides the required authorization by executing and delivering to Ginnie Mae an ACH Debit Authorization, form HUD 11709-A (Appendix I-6).

### ***(B) Permissible Withdrawals By Issuer***

If the Issuer's central P&I custodial account is separate from the P&I custodial account that it uses for the purposes described in Section 16-3, the Issuer may withdraw funds from the central P&I custodial account only to remove any amounts that were not required to be deposited therein under the applicable Guaranty Agreement or this Guide. In this case, the Issuer must redeposit funds withdrawn from the central P&I custodial account into a P&I custodial account used for the purposes described in Section 16-3.

### ***(C) ACH Test Audit***

Before the first regular monthly ACH debit the Issuer must arrange with the CPTA for an ACH test debit, which is a zero balance transaction performed to verify that the account is properly established. The test must be conducted prior to the first calendar day of the month in which the first regular monthly ACH debit will occur. The ACH test debit can be arranged by contacting the CPTA (see Addresses).

### ***(D) Account Changes***

The Issuer must provide the CPTA at least 60 days prior to a collection date, with written notice of any change in its central P&I custodial account, accompanied by a new ACH Debit Authorization, form HUD 11709-A (Appendix I-6).

## **16-5: ESCROW CUSTODIAL ACCOUNTS**

- (A) Escrow funds must be deposited into escrow custodial accounts that conform to this Section 16-5 if they are required under the terms of the mortgage.

Escrow custodial accounts include all funds collected to cover expenses to be paid under the mortgage,

## CHAPTER 16: CUSTODIAL ACCOUNTS

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including, but not limited to, taxes, special assessments, ground rents, other charges that are or may become first liens on the mortgaged property, hazard insurance premiums, and mortgage insurance premiums. All collections of funds of these types for an individual pool or loan package must be deposited into a single escrow custodial account.

Escrow funds may be deposited in interest-bearing accounts. Any interest earnings must be disposed of in accordance with the requirements of FHA, VA, RD, or PIH and with any other requirements of state or federal law and regulations.

Escrow account funds held on behalf of a given mortgagor must, except as provided in the following paragraph, be used by the Issuer only to pay charges due and payable by that mortgagor. The Issuer may not use escrow funds of one borrower to make payments on behalf of another borrower.

If the mortgagor does not make full and timely payment of amounts required to make payments of taxes and insurance premiums, the Issuer must advance its own funds to make the payments when due. The Issuer may make the advance by paying the taxing authority or insurance company directly. The Issuer may instead make the payments from the escrow custodial account, but in that case the Issuer must advance its own funds for individual escrow accounts on a loan-by-loan basis within one business day after making the disbursement that causes a negative escrow balance for the loan.

- (B) A separate escrow custodial account must be established for any FHA section 203(k) escrow funds. If section 203(k) escrow funds are deposited in an interest-bearing custodial account, interest earnings must be disposed of in accordance with the requirements of FHA as prescribed in HUD (FHA) Handbook 4240.4. Any mortgage proceeds designated for rehabilitation or improvement expenses, including contingency reserves, must be deposited in a separate servicer's escrow custodial account, using a separate Master Agreement for Servicer's Escrow Custodial Account, form HUD 11720 (Appendix III-3), and designated as such by checking the appropriate box on the form HUD 11720. These escrow funds are subject to the provisions of the form HUD 11720 and to the applicable provisions

## CHAPTER 16: CUSTODIAL ACCOUNTS

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of the governing Guaranty Agreement.

- (C) A separate escrow custodial account must be established for any construction funds provided pursuant to a § 184 construction loan. If § 184 funds are deposited in an interest-bearing custodial account, interest must be disposed of in accordance with the requirements prescribed by HUD for the § 184 loan program. Any escrows required pursuant to a § 184 loan must be deposited in a separate servicer's escrow custodial account, using a separate Master Agreement for Servicer's Escrow Custodial Account, form HUD 11720 (Appendix III-3). The Issuer must designate the purpose of the account by checking the box marked "Other" on the form HUD 11720. These escrow funds are subject to the provisions of the form HUD 11720 and to the applicable provisions of the governing Guaranty Agreement.
- (D) A separate escrow custodial account must be established for any buydown funds provided by the Issuer.
- (E) Separate custodial escrow accounts must be established for any other funds required to be held pursuant to requirements of FHA, VA, RD, or PIH.
- (F) Each escrow custodial account must be the subject of a separate Master Agreement for Servicer's Escrow Custodial Account, form HUD 11720 (Appendix III-3). (See Section 10-3(A)(3))

### **16-6: INSURANCE PROCEEDS**

All insurance proceeds (e.g., loss drafts) are to be included in either the P&I or an escrow custodial account. Loss drafts contained in the P&I custodial account have the same status as unapplied funds.

### **16-7: MISCELLANEOUS COLLECTIONS**

Late charges, assumption fees, and any other fees or miscellaneous collections not required to be deposited into the P&I custodial account or an escrow custodial account should be deposited directly into the Issuer's corporate account. If such funds are deposited in the escrow custodial accounts, they may be withdrawn only in accordance with the applicable Guaranty Agreement.

### **16-8: CUSTODIAL INSTITUTION RATINGS**

An Issuer must maintain P&I custodial accounts at insured depository institutions (funds custodians) that meet the rating requirements adopted by Ginnie Mae as stated in this Section 16-8. These requirements apply to any Issuer with aggregate principal and interest payments due from borrowers of \$100,000 or more in any one month, as measured by the

## CHAPTER 16: CUSTODIAL ACCOUNTS

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amount of the fixed installment control, which is reported in the RFS Issuer Monthly Report of Pool and Loan Data (Appendix VI-19).

In addition to meeting the other requirements set forth in this Section 16-8, the depository institution for a central P&I custodial account must be either a member of an ACH or a correspondent of a member.

An Issuer must be in compliance with these rating requirements in the month following the month in which an Issuer's aggregate fixed installment control first generates \$100,000 or more in principal and interest. Project loan escrow accounts, whether required by FHA, RD or Ginnie Mae, for any project equal to or exceeding \$100,000 are also subject to these requirements.

<b>Acceptable Rating Agencies and Minimally Acceptable Ratings</b>	
Thompson Bankwatch	C or better
Moody's	P-3 or better (short-term bank deposits)
Standard & Poor's	A-3 or better (short-term CDs)

If custodial accounts are maintained with a funds custodian rated by one or more of the agencies named above, Ginnie Mae requires the following:

- (A) If rated by all three agencies, the funds custodian must meet any two acceptable ratings.
- (B) If rated by two agencies, the funds custodian must meet both acceptable ratings.
- (C) If rated by only one agency, the funds custodian must meet that agency's acceptable rating.

If the funds custodian is not rated by any of the agencies listed above, Ginnie Mae will require that it meet minimally acceptable ratings from one of the following agencies:

## CHAPTER 16: CUSTODIAL ACCOUNTS

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Additional Rating Agencies and Minimally Acceptable Ratings	
LACE Financial Corporation	C or better
Cates Bank Rating Service	3.5 or better
IDC Financial Publishing	75 or better (Rank of Financial Ratio)
Highline Rating Services	47 or better

An Issuer must submit a certification with the monthly accounting reports due the 10<sup>th</sup> of March, June, September, and December that the funds custodian maintaining the P&I custodial account (and, in the case of a multifamily pool only, the escrow custodial accounts) for each pool or loan package reported meets the requirements specified in this Section 16-8. The certification must be transmitted using GinnieNET.

The Issuer must prepare and submit it in accordance with the instructions set forth in the GinnieNET Issuer Guide.

An Issuer must submit a separate certification for each of its funds custodians that must reference all of the Issuer's pools or loan packages for which the funds custodian holds funds pursuant to a Master Agreement for Servicer's Principal and Interest Custodial Account, form HUD 11709 (Appendix III-2) or, in the case of a multifamily pool, a Master Agreement for Servicer's Escrow Custodial Account, form HUD 11720 (Appendix III-3).

### 16-9: CLEARING OR DISBURSEMENT ACCOUNTS

Clearing and disbursement accounts must meet the account requirements specified in this Section 16-9.

(A) Collection clearing accounts:

Collection "clearing" accounts are permitted provided that all Ginnie Mae funds deposited in the clearing accounts are transferred either (a) daily, or (b) if Ginnie Mae funds are transferred through an ACH transaction, within 48 hours.

All proceeds received for loan payoffs, claim payments, sale proceeds, repurchases, additional principal payments, installment collections, insurance proceeds, and any other proceeds or recoveries relating to Ginnie Mae pool loans must be deposited



## CHAPTER 16: CUSTODIAL ACCOUNTS

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to the appropriate custodial account as stated above.

(B) P&I disbursement accounts:

P&I disbursement accounts are permitted provided that the account is used exclusively for funds relating to Ginnie Mae securities. Before a disbursement account is used, a Master Agreement for Servicer's Principal and Interest Custodial Account, form HUD 11709 (Appendix III-2) must be executed and submitted to the PPA (see Addresses).

**16-10: ACCOUNT OVERDRAFTS**

Overdrafts in bank accounts containing Ginnie Mae funds are not allowed under any circumstances. This restriction applies to all custodial, disbursement, and other accounts.

**16-11: RECONCILIATIONS OF CUSTODIAL ACCOUNTS**

Bank account reconciliations must be completed within 30 days of the Issuer's monthly reporting cut-off date for all accounts relating to Ginnie Mae pools or loan packages, including but not limited to P&I custodial and disbursement accounts, escrow custodial accounts, collection clearing accounts, and buydown and other special escrow custodial accounts containing Ginnie Mae pool or loan package funds.

If the Issuer's bank statement does not provide daily balances, the Issuer is required upon request by Ginnie Mae or its agent to prepare a schedule showing the balance of the bank account at the end of each day for the month requested.

All adjusting items on a reconciliation must be completely resolved during one of the next two reporting months.

**16-12: TRANSFER OF CUSTODIAL ACCOUNTS**

Upon written request to the PPA, P&I and escrow custodial accounts may be transferred from one funds custodian to another or may be consolidated into one P&I account or, in the case of multiple escrow accounts used for the same types of escrow funds, one escrow account, if the transfer receives Ginnie Mae's prior written approval and new Master Agreements (Appendices III-2 and III-3), as appropriate, are received and approved by the PPA prior to the transfer. (See Section 21-3)

If the funds custodian's name changes, updated Master Agreements (Appendices III-2 and III-3) must be submitted to the PPA.