

**Statutory Accounting Principles (E) Working Group  
Maintenance Agenda Submission Form  
Form A**

**Issue: Treatment of Freddie Mac WI Certificates****Check (applicable entity):**

	P/C	Life	Health
Modification of existing SSAP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
New Issue or SSAP	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Interpretation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**Description of Issue:**

Freddie Mac “When Issued K-Deal” certificates (“WI”) are backed by an asset pool held in trust, but those assets do not initially include any mortgages or mortgage-backed assets. Rather these assets include cash from the sale of the WI certificates and a commitment by Freddie Mac to deliver one or more structured pass through certificates (SPCs) in exchange for the WI trust’s cash within approximately 90 days of settlement. The date on which this delivery occurs is referred to as the “Subsequent Transfer Date”.

Prior to the Subsequent Transfer Date, the WI trusts pay fixed coupons to certificate holders which are funded from a Freddie Mac guarantee on the WI certificates. After the Subsequent Transfer Date the WI trust will hold the promised SPCs which are backed by mortgages and guaranteed by Freddie Mac. Additionally, after this date the WI trust becomes a pass-through of the underlying trust. The WI certificates have an optional exchange right where they can be exchanged for the underlying SPCs, but if not exchanged, the WI certificates after the Subsequent Transfer Date will still be backed by the SPCs.

The issue is the statutory accounting treatment of WI certificates prior to the Subsequent Transfer Date.

**Existing Authoritative Literature:**

*SSAP No. 43R—Loan-Backed and Structured Securities*, paragraphs 2-4:

2. Loan-backed securities are defined as securitized assets not included in structured securities, as defined below, for which the payment of interest and/or principal is directly proportional to the payments received by the issuer from the underlying assets, including but not limited to pass-through securities, lease-backed securities, and equipment trust certificates.
3. Structured securities are defined as loan-backed securities which have been divided into two or more classes for which the payment of interest and/or principal of any class of securities has been allocated in a manner which is not proportional to payments received by the issuer from the underlying assets.
4. Loan-backed securities are issued by special-purpose corporations or trusts (issuer) established by a sponsoring organization. The assets securing the loan-backed obligation are acquired by the issuer and pledged to an independent trustee until the issuer’s obligation has been fully satisfied. The investor only has direct recourse to the issuer’s assets, but may have secondary recourse to third parties through insurance or guarantee for repayment of the obligation. As a result, the sponsor and its other affiliates may have no financial obligation under the instrument, although one of those entities may retain the responsibility for servicing the underlying assets. Some sponsors do guarantee the performance of the underlying assets.

*SSAP No. 86—Derivatives*. Key excerpts from SSAP No. 86 are as follows:

The definition of a derivative instrument and forwards from SSAP No. 86, paragraph 4 and 5d:

4. “Derivative instrument” means an agreement, option, instrument or a series or combination thereof:

- a. To make or take delivery of, or assume or relinquish, a specified amount of one or more underlying interests, or to make a cash settlement in lieu thereof; or
- b. That has a price, performance, value or cash flow based primarily upon the actual or expected price, level, performance, value or cash flow of one or more underlying interests.

5.d. “Forwards” are agreements (other than futures) between two parties that commit one party to purchase and the other to sell the instrument or commodity underlying the contract at a specified future date. Forward contracts fix the price, quantity, quality, and date of the purchase and sale. Some forward contracts involve the initial payment of cash and may be settled in cash instead of by physical delivery of the underlying instrument.

Guidance on TBAs from the Annual Statement Instructions:

““To Be Announced” securities (commonly referred to as TBAs) are to be reported in Schedule D unless the structure of the security more closely resembles a derivative, as defined within *SSAP No. 86—Derivatives*, in which case the security should be reported on Schedule DB. The exact placement of TBAs in the investment schedules depends upon how a company uses TBA.

Excerpt from Annual Statement Instructions, Schedule D, Part 3 and 4 on Disposals / Acquisitions:

This schedule should include a detailed listing of all securities that were purchased/acquired during the current reporting year that are still owned as of the end of the current reporting year (amounts purchased and sold during the current reporting year are reported in detail on Schedule D, Part 5 and only in subtotal in Schedule D, Part 3). This should include all transactions that adjust the cost basis of the securities. **Thus, it should not be used for allocations of TBAs to specific pools subsequent to initial recording in Schedule D, Part 3 or other situations such as CUSIP number changes.**

**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):**

Reporting entity has filed a RTAS with the NAIC SVO.

**Information or issues (included in *Description of Issue*) not previously contemplated by the Working Group:**

The inaugural offering was the WI-K132 transaction (CUSIP: 3137H2NM2) which settled on September 28<sup>th</sup>, 2021 with the promised K-deal certificates being the K-132’s AM class. The K-132 class AM certificates (CUSIP: 3137H3EW8) were settled and delivered to the WI-K132 trust on October 14<sup>th</sup>, 2021. The purpose of this request is to evaluate the structure of the WI offering more broadly but the WI-K132 transaction may serve as a helpful example for evaluation. To that end the offering documents for both the WI-K132 and the related K-132’s certificate offerings are linked below. The webpage housing the base offering documents for the WI and K-Deal programs are also linked for ease of reference along with informational materials further detailing the WI program.

WI-K132 Offering Circular Supplement: <http://capitalmarkets.freddiemac.com/mbs/data/wik132oc.pdf>

K132 Offering Circular Supplement: <http://capitalmarkets.freddiemac.com/mbs/data/k132oc.pdf>

WI/K-Deal Base Offering Documents: <http://capitalmarkets.freddiemac.com/mbs/legal/>

WI Program Page: <https://mf.freddiemac.com/investors/when-issued-k-deals.html>

WI Investor Presentation: [https://mf.freddiemac.com/docs/wi\\_investor\\_presentation.pdf](https://mf.freddiemac.com/docs/wi_investor_presentation.pdf)

WI Frequently Asked Questions: [https://mf.freddiemac.com/docs/wi\\_frequently\\_asked\\_questions.pdf](https://mf.freddiemac.com/docs/wi_frequently_asked_questions.pdf)

Video Overview of the WI Program: <https://www.youtube.com/watch?v=Lv7YaPvNspo&feature=youtu.be>

**Recommended Conclusion or Future Action on Issue:**

Sponsoring entity requests statutory accounting guidance to confirm that WI Trust SPCs shall be reported in scope of *SSAP No. 43R—Loan-Backed and Structured Securities* and not as a forward contract under *SSAP No. 86—Derivatives*.

**Recommending Party:**

State Farm Mutual Automobile Insurance Company  
 Mark Ludy, Staff Finance Analyst  
 Mark.E.Ludy.GC98@StateFarm.Com  
 March 8, 2022

**Staff Recommendation:**

NAIC staff recommends that the Working Group expose a tentative statutory accounting interpretation to clarify that investments in the Freddie Mac WI Program shall be captured in scope of *SSAP No. 43R—Loan-Backed and Structured Securities* from initial acquisition. Key elements for this recommendation include:

- The WI Program is fully guaranteed by Freddie Mac and ensures that the investor will receive pass-through certificates, backed by mortgage loans held in trust, that reflect the terms of the investment set at original acquisition. In the event that the K-Deal certificates cannot be acquired, Freddie Mac is guaranteed to provide payment to the investor that reflects the full principal and interest per the original terms of the agreement, which reflects the payments that would have been received overtime if K-Deal certificates had been acquired.
- The definition of a forward contract in *SSAP No. 86* reflects an agreement between two parties that commit one party to purchase and another party to sell the instrument underlying the contract at a specified future date. With the WI Trust Program, the investor does not have a future commitment to acquire securities, as the investor acquires the WI Trust certificate on day one of the transaction and the investor is not required to convert the WI Trust certificates at any time. This WI Trust certificate is not a derivative instrument, as at the time of acquisition, the certificate reflects a tradeable investment in a trust structure backed by cash and a Freddie Mac guarantee of cash flows in accordance with terms established at original acquisition. In addition to having no variation to the investor as a result of an underlying interest, there is no requirement on the investor to take delivery of a different investment. The ability to convert the WI Trust certificate to a K-Deal certificate is strictly an election to the investor and is not a requirement to receive the pass-through cash flows per the terms of the initial investment.
- The WI Program, and resulting obligation of Freddie Mac, ultimately reflects an investment where the investor receives pass-through cash flows generated from mortgage loans acquired and held in trust. This is within the scope of *SSAP No. 43R—Loan-Backed and Structured Securities*, paragraphs 2-4.
- The WI Program, and treatment as a *SSAP No. 43R* security, is consistent with the current guidance for TBA securities when an insurer intends to take possession of the resulting mortgage-backed security. A TBA security reflects the pre-purchase of mortgage-backed securities prior to the finalization of the security issuance. Pursuant to the annual statement instructions, TBA securities are to be reported on Schedule D-1: Long-Term Bonds unless the structure more closely resembles a derivative. This determination depends on how a company uses the TBA. (For example, if a company intended to assume the mortgage-backed security once issued, the TBA would be captured on Schedule D-1 at initial acquisition. If a reporting entity was to continually trade/roll TBA exposures, this would be more characteristics of a derivative and would be captured on Schedule DB as a derivative.)

**Staff Review Completed by: Julie Gann, NAIC Staff – March 14, 2022**

**Status:**

On April 4, 2022, the Statutory Accounting Principles (E) Working Group moved this agenda item to the active listing and exposed a tentative interpretation *INT 22-01: Freddie Mac When-Issued K-Deal (I Trust) Certificates* to clarify that investments in the Freddie Mac “When Issued K-Deal” (WI) Program are in scope of SSAP No. 43R. This item has a shortened comment deadline of May 6.

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