**Frequently Asked Questions: GNMA Compliance Audit Considerations Regarding Bank of New York Mellon No Longer Being Considered an Approved Ginnie Mae Document Custodian**

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To serve AICPA members and promote audit quality, the AICPA Depository Institutions Expert Panel is providing the following frequently asked questions (FAQs) to assist Ginnie Mae Issuers and practitioners performing compliance audits of such Issuers. This document provides nonauthoritative guidance on compliance and auditing matters as developed by AICPA staff. Official AICPA positions are determined through certain specific committee procedures, due process, and extensive deliberation. The views expressed in this document are intended to provide member services, but not for the purposes of providing accounting services or practicing public accounting. The AICPA makes no warranties or representations concerning the accuracy of information issued.

**IMPORTANT NOTE**: ON FEBRUARY 1, 2021, GNMA EXTENDED THE DEADLINE FOR COMPLETING THE TRANSFER FROM MARCH 1, 2021, TO AUGUST 1, 2021. [ACCESS THE GNMA COMMUNICATION](https://www.ginniemae.gov/issuers/program_guidelines/NotesNews/NotesandNews_02_01_2021.pdf). THE ORIGINAL VERSION OF THIS FAQ (DATED JANUARY 27, 2021), HAS BEEN UPDATED TO REFLECT THIS CHANGE BY REVISING THE MARCH 1ST DATE TO AUGUST 1ST.

IN FEBRUARY, GNMA PROVIDED AN EXEMPTION TO CERTAIN CUSTODIAN COMPLIANCE TESTING REQUIREMENTS FOR BNYM. THE ORIGINAL VERSION OF THIS FAQ (DATED JANUARY 27, 2021), HAS BEEN UPDATED TO REFLECT THIS CHANGE BY REVISING FAQ #3 AND ADDING FAQ #3A.

**Introduction**

Ginnie Mae (GNMA) Issuers received a written communication from [GNMA dated March 2020](https://www.aicpa.org/content/dam/aicpa/interestareas/frc/industryinsights/downloadabledocuments/gnma-notification.pdf) announcing that as of March 6, 2020, Bank of New York Mellon (BNYM) is no longer an approved GNMA Document Custodian.

The GNMA communication describes the responsibilities and options available to the Issuer to ensure its own continued compliance with the Mortgage-Backed Securities (MBS) requirements outlined in Section E in Chapter 11 of the [GNMA MBS Guide](https://www.ginniemae.gov/issuers/program_guidelines/Pages/MBSGuideLib.aspx), and other applicable provisions of the GNMA Guaranty Agreement and the MBS Guide (including the Document Custody Manual, Appendix V-01):

1. Cease delivering to BNYM all pool, loan package, loan document and data corresponding to new issuances of GNMA securities for the purpose of initial certification by October 1, 2020.
2. Perform a Transfer of Custodial Responsibility from BNYM to a GNMA approved document custodian by August 1, 2021. Such Transfer of Custodial Responsibility must encompass all pools and loan packages held by BNYM for which the Issuer is the Issuer of record as of the effective date of the Transfer.

The GNMA communication will likely have an impact on 2020 compliance audits performed under Chapter 6, “Ginnie Mae Issuers of Mortgage-Backed Securities Audit Guidance,” of the [U.S. Housing and Urban Development (HUD) *Consolidated Audit Guide*](https://www.hudoig.gov/reports-publications/audit-guides/consolidated-audit-guides) (HUD Audit Guide). The following series of nonauthoritative questions and answers are intended to assist Issuers and practitioners performing compliance audits during a period when Issuers may have changed document custodians at the request of GNMA.

**Frequently Asked Questions**

1. Does the auditor have to report noncompliance related to BNYM no longer being an approved document custodian?

A: No. It would seem reasonable to conclude that GNMA is aware that Issuers that received the letter may have used BNYM as the document custodian for the period of transition. Further, the GNMA communication provides options available to the Issuer to ensure “continued compliance” going forward. However, Issuers may wish to consider communicating to GNMA the receipt of the GNMA letter and acknowledging that the Issuer has not considered the continued use of BNYM as its document custodian during the transition period as noncompliance based on the GNMA letter. Such communication may be included by the Issuer in Part 3 of the Schedule of the Status of Prior Audit Findings, Questioned Costs and Recommendations as this is where the Issuer would list any deficiencies listed in letters or reports issued by HUD management (see Chapter 2, “Reporting Requirements and Sample Reports” of the [HUD Audit Guide](https://www.hudoig.gov/reports-publications/audit-guides/consolidated-audit-guides) for more information on this Schedule). Lastly, although not required, the practitioner could also add an “Other Matter” to the report on compliance or include mention of it in the management letter to clarify why noncompliance is not reported.

1. Does the GNMA communication establish additional compliance requirements for the Issuer related to a change in custodial responsibility?

Yes. The GNMA communication appears to establish additional compliance requirements that need to be met during the transition period by the Issuer. Those additional requirements are outlined in the introduction to this document.

1. Do Issuers and practitioners need to assess and test compliance for all other aspects of compliance under the MBS Program and Chapter 6 of the HUD Audit Guide for the period during 2020 in which BNYM continued to operate as the document custodian?

A: On January 27, 2021, this FAQ provided the following answer (which is now superseded by the guidance immediately following within this FAQ #3):

“Yes. Since compliance is required for the fiscal year ended December 31, 2020, both the Issuer and the practitioner need to perform procedures to assess and test compliance with the relevant compliance requirements for the period BNYM continues to operate as the document custodian. The practitioner should follow the guidance in Chapter 6 of the HUD Audit Guide to perform such tests of compliance (i.e., no different than in prior periods). Failure to do so due to an inability of BNYM to provide access to certain records and information related to the Issuer’s GNMA portfolios may result in a need for the practitioner to modify the report on compliance for a scope limitation.”

**Updated (3/17/21) Answer:** No. In March 2021, multiple Issuers received a communication from GNMA which has been provided below. As such, on the basis of the GNMA exemptions included in the communication, the Issuers and practitioners do NOT need to assess and test compliance for all other aspects of compliance under the MBS Program and Chapter 6, Section 5, C.2 of the HUD Audit Guide for the period during 2020 in which BNYM continued to operate as the document custodian.

**GNMA Communication to Issuers**

“Document Custodian Reconciliation and Review

Ginnie Mae requires its Issuers ensure that Document Custodians meet the operational standards required by Ginnie Mae and abide by the requirements of the MBS Program (MBS Guide, Chapter 11, Part 8, § E). This includes performing pool reconciliations and onsite reviews of each Document Custodian in accordance with the MBS Guide and the HUD Audit Guide (Chapter 6, Section 5, C.2).

As of March 06, 2020, all affected Issuers were notified the Bank of New York Mellon Trust, Document Custodian ID number 0350 (BNYM), was no longer an approved Ginnie Mae Document Custodian participant within the Ginnie Mae program.

Issuers utilizing BNYM with a fiscal year-end date of December 31 - July 31 shall be excluded from the following annual audit submissions and testing regarding BNYM:

* Ginnie Mae will exempt Issuers’ Independent Public Auditors from performing any on-site (or remote) review procedures per the HUD Audit Guide for any Issuers with Ginnie Mae MBS collateral documents still in custody with BNYM at the present time; and
* Ginnie Mae will exempt BNYM from performing the annual reconciliation of pools in custody for affected Issuers.

These exemptions only apply for fiscal year annual reports with an ending date between December 31, 2020 and July 31, 2021.

These exemptions are also only applicable to BNYM. All existing Ginnie Mae guidance remains in effect and must be followed for all other Document Custodians. If an Issuer has agreements or collateral with more than one Document Custodian, existing guidance must be followed for additional Document Custodians.

If you have any questions regarding this announcement, please contact your Account Executive in the Office of Issuer and Portfolio Management directly or at (202) 708-1535.”

3A) **New (3/17/21) Question:** Does the auditor have to report noncompliance or a scope limitation in its report related to not assessing and testing compliance for all other aspects of compliance for BNYM as a document custodian?

A: No. Based on the broad communication received by the Issuer from GNMA described in FAQ #3 above, titled “Document Custodian Reconciliation and Review” the practitioner is not required to perform procedures related to compliance for the Review of Custodial Documents of BYNM. However, the practitioner may wish to consider communicating with GNMA the Issuer’s receipt of the GNMA communication and acknowledging that the practitioner has not considered the exemption from testing the compliance requirements while BNYM was acting as its document custodian as noncompliance or a scope limitation based on the GNMA communication. Such communication may be included in various ways, including:

1. The practitioner could add an “Other Matter” to the report on compliance as follows:

“…….” In March 2020, Ginnie Mae communicated to [ABC Company] that Bank of New York Mellon Trust (BNYM) was no longer a Ginnie Mae approved document custodian. As it relates to the compliance requirement, Review of Custodial Documents, Ginnie Mae has also communicated to [ABC Company] that Ginnie Mae will exempt [ABC Company’s] independent auditors from performing any onsite (or remote) procedures as outlined in the HUD Audit Guide (Chapter 6, Section 5, C.2) over the document custodian activities of BNYM for the year ended December 31, 2020. Therefore, we have not performed any such procedures for the year ended December 31, 2020. Further, we have not considered [ABC Company’s] use of BNYM as its document custodian for the year ended December 31, 2020 as noncompliance. However, we have performed procedures relating to [ABC Company’s] actions to cease delivering to BNYM all pool, loan package, loan documents and data corresponding to new issuances of Ginnie Mae securities for purpose of initial certification by October 1, 2020, and actions to initiate the transfer the custodial responsibility from BNYM to a Ginnie Mae approved document custodian by August 1, 2021.

1. The Issuer could add something similar to the “Other Matter” wording above in Part 3 of the Schedule of the Status of Prior Audit Findings, Questioned Costs and Recommendations as this is where the Issuer would list any deficiencies listed in letters or reports issued by HUD management (see Chapter 2, “Reporting Requirements and Sample Reports” of the [HUD Audit Guide](https://www.hudoig.gov/reports-publications/audit-guides/consolidated-audit-guides) for more information on this Schedule).
2. Does the Issuer need to design procedures to ensure compliance with the additional set of compliance requirements related to the transition of document custody activities from BNYM to a new custodian?

A: Yes. As noted earlier, the GNMA communication introduces an additional set of compliance requirements to address the transition of document custody activities from BNYM to a new document custodian. Thus, if the Issuer were to issue new GNMA securities on or after October 1, 2020, the Issuer would need to have a process and controls in place to ensure that such pool loan packages and related documents were delivered to an approved document custodian. In addition, depending on the effective date of the Transfer, there would need to be a process and controls in place to ensure the Transfer of Custodial Responsibility is completed by August 1, 2021.

1. How does the transition of document custody activities from BNYM to a new custodian affect the compliance audit?

A. The practitioner should design appropriate audit procedures to test compliance with the new additional compliance requirements. Further, to the extent the effective date of Transfer is not until after December 31, 2020, the practitioner should still obtain sufficient appropriate audit evidence to test compliance. This may include evidence to support that the Issuer has a plan in place to ensure a timely transfer in 2021, including but not limited to a draft or signed agreement with a new document custodian, a project plan to transfer the underlying pool asset documents from BNYM to the new document custodian, and commitment of both parties to adhere to the deadline.

1. Does the Issuer need to assess compliance and the practitioner test compliance related to the new document custodian if the new custodian takes Custodial Responsibility prior to December 31, 2020?

A: Yes. Similar to the above, since compliance is required for the fiscal year ended December 31, 2020, the Issuer and the practitioner need to perform procedures to assess and test compliance with the relevant compliance requirements.

The practitioner should follow the guidance in Chapter 6 of the HUD Audit Guide to perform such tests of compliance, which include suggested audit procedures involving testing a sample of pools and related pool asset documents. In addition, as per the HUD Audit Guide, the practitioner would need to test the design and implementation and operating effectiveness of internal control over compliance.

This could be accomplished by the use of a report from another practitioner under the single auditor approach or procedures can be performed directly by the practitioner of the Issuer. If the former approach is selected, the Issuer’s practitioner should inquire of the new document custodian and its auditor to ensure that the pool assets and related documents of the Issuer are part of the compliance audit or agreed upon procedures performed under the single auditor approach. At a minimum, such pool assets and related documents need to have been part of the population subject to testing and could have been selected as part of the sample tested. Given the late date of the Transfer of Custodial Responsibility, this may not be the case.

If the Issuer’s practitioner needs to test compliance at the new custodian, the practitioner should at a minimum gain an understanding of the GNMA compliance process at the new custodian and perform an assessment of the design and implementation of internal control over compliance. In addition, based on the assessment of the risk of material noncompliance, the practitioner should perform appropriate tests of compliance, including a sample of pools and related pool asset documents. Such tests would include the test of operating effectiveness of internal control over compliance. Auditor judgment is required related to the nature and extent of such compliance audit procedures given the period of time such pools and related pool asset documentation has been with the new custodian.

1. What if the files were transferred to the new custodian over a period of time (months) whereby both the BNYM and the new document custodian were responsible for the custody of the Issuer files related to pool assets at the same time during 2020?

A: In accordance with Chapter 6 of the HUD Audit Guide, section C.1, all document custodians with GNMA portfolios must have an onsite review at least once every 3 years. Thus, based on the facts and circumstances, the practitioner may conclude that the Issuer has used more than one custodian (multiple custodians) concurrently during 2020 and that only one of them needs to be reviewed in the current year. The practitioner may use judgment regarding whether to audit compliance over the custodial documents at BNYM or the new document custodian, although the audit of the custodial documents at the new document custodian may be the most relevant to GNMA.

1. If the effective date of the Transfer of Custodial Responsibility is in 2021 but prior to the issuance of the report on compliance, does the practitioner have any responsibility to perform tests of compliance related to the pools and related pool asset documents as part of its 2020 compliance audit?

A: No. It would seem reasonable to conclude that such transfer and the compliance with the MBS Program for the review of custodial documents at the new document custodian would be deemed a 2021 activity and, as such, would be addressed in the 2021 compliance audit.

See Question #3 above for those procedures to be performed related to the 2020 audit of compliance related to the new provisional compliance requirements related to the transfer of activities from BNYM to a new document custodian.

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