



November 12, 2010

Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: Disclosure for Asset-Backed Securities
File Number S7-24-10**

Dear Ms. Murphy:

The Mortgage Bankers Association¹ (MBA) welcomes the opportunity to comment on the Securities and Exchange Commission's (SEC) proposed regulations related to representations and warranties in asset-backed securities (ABS) offerings (Proposal).²

The Proposal implements certain provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act³ (Dodd-Frank Act) by requiring ABS securitizers to disclose fulfilled and unfulfilled repurchase requests across all transactions. The Proposal would also require nationally recognized statistical rating organizations (NRSROs) to include information regarding the representations, warranties and enforcement mechanisms available to investors in an ABS offering in any report accompanying a credit rating issued in connection with such offerings, including a preliminary credit rating.

MBA Position

MBA appreciates the SEC's efforts to implement the Dodd-Frank Act in a manner that increases market confidence in order to re-start the securitization markets. However, implementation of the Proposal should take into consideration the existing residential and commercial ABS structures and reporting procedures to avoid unintended consequences.

Repurchase Requests

MBA notes that repurchase requirements pursuant to the contractual terms of the securitization agreement are often subject to a materiality standard. Moreover, repurchase requests based on representation and warranty claims are frequently based on subjective assertions, which are

¹The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 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 2,200 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 75 Fed. Reg. 197, 62718-62737, (Oct. 13, 2010).

³ Public Law 111-203, (July 21, 2010).

often irrespective of the performance of the loans. This subjectivity causes legitimate disputes regarding the validity of claims. Additionally, other terms of the securitization agreement may provide for a cure of the breach rather than repurchase.

MBA notes that many claims under seller representations and warranties are ultimately found to be without sufficient evidence that a breach occurred or that a breach led to loss or potential for loss to the bondholder. MBA is concerned that the proposed requirement could increase the rate of repurchase claims, and possibly generate strategic or frivolous claims. Additionally, MBA notes that reporting of repurchase requests pursuant to the Proposal which are not valid repurchase requests pursuant to the securitization documents would not increase transparency.

MBA requests that the SEC clarify that the party to be disclosed in the reporting be the party responsible for the breach and provide for a mechanism to report repurchase requests not found to be valid.

MBA also urges the SEC to implement the Proposal prospectively and grandfather existing securities and their underlying assets. Because this is a new reporting requirement rather than a modification to an existing requirement, it is likely that the residential loan data needed to comply with the Proposal is not currently collected or maintained in a format that facilitates compliance with the Proposal. We also question the merits of applying the Proposal retrospectively given the volume of loans in existing securities that were originated by entities no longer in existence.

MBA further recommends that the SEC shorten the Proposal's disclosure requirement from five years to three, and require quarterly reporting instead of monthly reporting. We believe three years of quarterly data provides sufficient performance information for evaluating an originator's underwriting patterns.

Impact on Multifamily Real Estate Financing Issues

The SEC is also proposing that the disclosure requirements apply to ABS offerings both registered and unregistered under the Securities Act, which will have the consequence of requiring that both Freddie Mac and Fannie Mae disclose repurchase activity. While MBA recognizes that the disclosure requirements should also apply to the government sponsored enterprises (GSEs) as issuers, we believe that one of the unintended consequences of the Proposal will be to obligate originators of multifamily MBS as well as the GSEs to report on repurchase activity. Often GSE multifamily MBS are issued as single asset pools. Under the Proposal, originators must take on the responsibility of disclosure reporting as if they were the issuer if they originate more than 20 percent of the assets in a pool. The GSEs' multifamily MBS programs follow standard underwriting procedures, and, depending on whether the issuer is Fannie Mae or Freddie Mac, use risk sharing or prior approval procedures as an essential part of the rigors for approving loans. Therefore, MBA believes the Proposal's disclosure requirements can be met by the issuer, rendering identical reporting by the originator as redundant.

Allow Sufficient Implementation and Transition Time

MBA requests the SEC establish a workable time period for implementing the Proposal. It is likely that affected financial institutions and NRSROs will be required to implement new operational procedures and infrastructures to properly comply with the Proposal. In fact, this will

be the first time that NRSROs have been required to report information on representations and warranties for residential and commercial ABS.

In addition to the significant costs associated with establishing these operational procedures and infrastructures, sufficient time must be allocated to implement processes and systems for compliance. The SEC requests data that is either not currently available in the system or would require significant re-programming efforts to collect and extract on a loan-level basis. The SEC should consider the programming efforts required to extract data into the appropriate reporting systems when contemplating implementation timeframes. Issuers must coordinate efforts with their technology vendors to create new reports that consolidate repurchase requests across product types. Moreover, the technology vendors must beta test with their clients to ensure accuracy in reporting. Issuers will be responsible for the significant amounts of cumulative information.

Requirements for NRSROs

With respect to the proposed reporting requirements for NRSROs, MBA suggests that the SEC define the term "similar securities" in a manner that facilitates the meaningful comparisons of similar securities. Rating agencies carefully analyze representations and warranties as a component of their credit analysis to determine their impact on the credit worthiness of the transaction. Based upon this existing practice, we do not believe NRSRO reporting of representations and warranties should include a comparison to a prescribed reference set in the Proposal.

Conclusion

MBA appreciates the opportunity to comment and requests that you consider our concerns. Any questions about MBA's comments should be directed to Michael Carrier, Associate Vice President, Secondary and Capital Markets (202) 557-2870, mcarrier@mortgagebankers.org; or George Green, Associate Vice President, Commercial Real Estate, at (202) 557-2840 or ggreen@mortgagebankers.org.

Sincerely,



John A. Courson
President and Chief Executive Officer
Mortgage Bankers Association