July 30, 2010

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

Re: File Number S7-08-10

Dear Ms. Murphy:

The Community Mortgage Banking Project (CMBP) welcomes the opportunity to comment on the proposed regulations regarding the revisions to Regulation AB and other rules regarding the offering process, disclosure and reporting for asset-backed securities (ABS).

We represent community-based mortgage banking companies engaged in residential lending. Our membership includes independent, privately owned mortgage-banking companies, as well as subsidiaries or affiliates of community banks. All of our members sell most, if not all, the residential loans they originate. As an industry segment, independent mortgage banking companies originate approximately one-third of all residential mortgages and over half of all FHA-insured loans. As such our members, on behalf of the consumers they serve and themselves, have a keen interest in all federal regulatory proposals that have an effect on the residential mortgage backed securities (RMBS) market.

General Comments

As you are well aware, speed to market is absolutely critical for the issuance of ABS. Consequently, changes to Regulation AB will touch virtually every ABS issuance in the US. This is especially true for RMBS, with the additional factor that the RMBS market for new private issues has been moribund for the last several years in the wake of the mortgage market turmoil that has led to a loss of investor confidence in RMBS that lack a government guarantee. So with respect to RMBS, any changes to Regulation AB must be viewed through the prism of whether those changes will facilitate a return of investor confidence that is an absolute pre-condition to a revival of this market.

In addition, the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA) contains significant changes to the financial system, to issuers of ABS and RMBS, and to creditors that originate the assets. Specifically, Subtitle D of Title IX of the Act establishes a comprehensive new regulatory framework for

securitization addressing issues related to risk retention, disclosures, reps and warrants, and reporting requirements. The implementation of this new framework requires joint rule making between the Securities and Exchange Commission (SEC) and several other agencies, depending on the asset type.

DFA contains a specific provision that requires an expanded group of agencies (the Federal Banking Agencies, SEC, FHFA and HUD) to conduct joint rule making on risk retention for RMBS. Further DFA contains a specific exemption from risk retention for qualified residential mortgages (QRM). The definition of a QRM is to be determined in joint rulemaking by this same set of federal agencies.

Because risk retention is a major issue for the asset-backed securities (ABS) market in general, and for the RMBS market in particular, and because Regulation AB touches virtually every privately issued ABS, including privately issued RMBS, the proposed revisions to Regulation AB should be promulgated within the context the comprehensive securitization framework called for in the DFA. With private securitization markets craving a strong and stable new legal framework, we believe it would be very disruptive for the SEC to continue with the current rulemaking, only to change aspects of it based on the joint rulemaking required under the DFA. Since risk retention will be the subject of joint agency rule-making, we believe the SEC must put these proposed revisions to Regulation AB on hold, and move expeditiously with other agencies on the joint rule-making on risk retention called for under DFA. The additional changes to Regulation AB should be conducted simultaneously.

If SEC proceeds with the current rulemaking, it would effectively create two risk retention standards, one mandated by Congress and one created by the SEC from its authority to regulate expedited offerings utilizing shelf registrations. Since most ABS issuances require the speed-to-market afforded by shelf registrations, creation of an independent risk retention requirement applicable to issuances under Regulation AB would have the effect of potentially supplanting Congressionally enacted statutory provisions. We do not believe that would be a healthy development for the market, nor would it serve to enhance certainty in the market of investor confidence. Delaying further action on these revisions to Regulation AB, and proceeding expeditiously on the joint rulemaking called for by the DFA, appears to be the most effective alternative open to the SEC.

We make this assertion reluctantly because we believe that properly crafted revisions to Regulation AB are vital to establishing a foundation for the return of investor confidence to the privately issued RMBS market. And we believe that the private market must play an important role, in fact a substantial role, in meeting our country's mortgage finance needs once again. But the key is investor confidence. Without it, the capital markets will look for a federal guarantee before placing their funds at risk with securities backed by conventional mortgages.

Specific Comments

Risk Retention

As noted above DFA contains extensive provisions on risk retention in securitizations. Those provisions provide direct guidance addressing most of the questions that the Commission asks in the preface to the proposed regulations. If the Commission views risk retention as a substitute for the current rating requirement for issuance utilizing a shelf registration, then it would appear that there is no choice but to delay these regulations until they can be developed in parallel with the joint rulemaking on risk retention required by DFA.

Certifications

The proposed revisions to Regulation AB contain provisions for two certifications. One certification requires the 'obligated party' to furnish a third party opinion *"…relating to any asset for which the trustee has asserted a breach of any representation or warranty and for which the asset was not repurchased or replaced by the obligated party on the basis of an assertion that the asset met the representations and warranties contained in the pooling and servicing or other agreement."*

We believe that such a requirement would provide investors little or no benefit because such disputes are inevitably intensively fact-based, i.e. did Borrower A provide false information about his income that Lender X should have discovered in underwriting the loan? Was Appraiser B recklessly negligent about the comparable properties chosen to determine the security property's market value, and should Lender Y have detected this during the underwriting process?

What would be relevant to investors is disclosure of the number of repurchase requests and their ultimate disposition, together with a requirement for sponsors to include in their offering documents the information for the prior three years for issuances of ABS backed by similar assets, i.e. mortgage repurchase requests for RMBS issuances, auto loan repurchases for ABS backed by auto loans, etc. Investors could use that information in determining whether the sponsor's track record of dealing with repurchase requests met their investment criteria or not. In fact, Section 943 of the DFA requires specific disclosures regarding fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer. We would add, however, that the SEC should only require disclosure of repurchase requests that were not fulfilled because of an inability or refusal of the originator to perform and not require disclosure of all repurchase requests. There are a significant number of repurchase requests to originators that are eventually withdrawn, or are not pursued further, when the originator is able to substantiate that either the stated grounds for the repurchase was inaccurate, or the stated grounds for the repurchase had no bearing on the borrower's default. Including

these withdrawn/non-pursuit repurchase requests would not provide investors with any useful or relevant information.

The second certification provision, with which we also disagree, is the proposed CEO certification. Congress had the opportunity to insert a requirement for a CEO certification on the issuance of RMBS backed by mortgages that qualify for an exemption to risk retention. Instead Congress chose to insert a more general corporate certification that the mortgages backing an RMBS exempt from risk retention were all 'qualified mortgages' under the statute. We suggest the SEC follow Congressional guidance on that issue for other ABS as well.

RMBS Data Elements in Offering Prospectus

We support the requirement that investors, in the offering prospectus, be provided with asset level data on the residential mortgages in the asset pool backing the security. Asset level data is the type of information that rating agencies require and utilize in their determinations of the appropriate rating for the RMBS, because this information permits modeling and forecasting of anticipated performance of the assets under various economic scenarios. So if the revisions to Regulation AB are designed to be an effective substitute for the current ratings requirement, asset-level data is extremely important. Our comments will be confined to the data elements proposed for residential mortgages.

We have some general comments on the proposed data elements, as well as specific comments. In general we believe that the data elements in the proposed revisions are excessively granular, particularly with respect to adjustable rate mortgages (ARMs). Some of the data elements being sought from issuers, who in turn will require this data from originators, such as paid through date, delinquency paid through date and loan modification information, are data that should be obtained from mortgage servicers rather than originators. Finally there will need to be system revisions in order to accommodate a number of these data elements and we urge the SEC to provide an appropriate transition period for these revisions.

We do have some specific comments on the data elements listed in Schedule L for RMBS. We have listed the data elements below that we either have questions or comments about:

- Item 2(a)(8) – Cash out vs. Cash in Hand – This should be clarified to say that this is cash paid to the obligor or to third parties on behalf of the obligor.
- Item 2(a)(15) – This should be a loan servicer item, not an originator item.
- Item 2(a)(18(iii) – This should be clarified to specify the full indexed rate to which the borrower was underwritten.
- Item 2(b)(4) – "de minimus PUD" is no longer used within the

industry; "Townhouse" is an architectural style, not a legal property type.
- Item 2(b)(6) – "desk review" is not an appraisal type.
- Item 2(c)(7) – Level 5 – many self-employed individuals do not utilize a CPA to prepare their taxes – suggest you change this to verification with an independent third party or CPA certification.
- Item 2(c)(13) – Define "liquid assets", i.e. does that include 401(k)s?
- Item 2(c)(22) – Question the need for level of detail for borrower's length of employment – it should be enough to know if they have been employed with the current employer for 24 months or less or more than 24 months, which is the standard demarcation in industry underwriting standards.
- Items 2(c)(26)-(30) – We strongly question the need for having separate categories of each of these items for the obligor and co-obligor – these items should be aggregated. By disaggregating these items a potential situation is created for investors to discriminate against loans to stay-at-home spouses. What is important in the underwriting decision is the total obligor income to service the debt and the nature of that income, i.e. wage and salary, overtime and bonus and other income, not the income by obligor and co-obligor.

In addition we believe the following requested data elements fall into the category of requiring excessive detail that is not particularly relevant to an investor:

- Item 2(a)(18)(xv) ARM round indicator
- Item 2(a)(18)(xvi) ARM round percentage
- Item 2(b)(6) Original property valuation type
- Item 2(b)(7) Original property valuation date
- Item 2(b)(8) Original automated valuation model (AVM) name
- Item 2(b)(9) Original AVM confidence score
- Item 2(b)(10) Most recent property value
- Item 2(b)(11) Most recent property valuation type
- Item 2(b)(12) Most recent property valuation date
- Item 2(b)(13) Most recent AVM model name
- Item 2(b)(14) Most recent AVM confidence score

These items fall into the category of excessive detail that would not be particularly helpful or relevant to investors trying to make their own determinations on expected returns from these securities. Each property's appraised value should be disclosed to investors and the standard for how close in time the date of the appraisal is required to be to the date of origination of the loan should also be disclosed. But a loan by loan listing of the date of the appraisal would not be particularly useful to

investors, nor would the detail about the type of property valuation, the name of the AVM model or the confidence score. In addition lenders do not retain information on the original property valuation because what is relevant is the valuation that was used in the underwriting decision.

Pool Level Underwriting and Warranty Information

We support the proposed revisions to Item 1111 (Section 229.111) that would require the prospectus to contain information on the underwriting criteria used to originate or purchase the pool assets. We also agree that it is important for the prospectus to disclose to investors changes in such criteria and the extent to which the underwriting of assets deviated from the disclosed criteria. Further we support disclosing data on the amount and characteristics of those assets that did not meet the disclosed standards. We urge the Commission to require disclosure of the compensating or other factors that were used to determine that those assets should be included in the pool, despite the fact of not having met the disclosed underwriting standards, a description of those factors and data on the amount of assets in the pool that meet the underwriting standards and the amount that do not.

We also support disclosure of the steps taken by the originator to verify the information used in the solicitation, credit-granting or underwriting of the pool assets.

Finally we support the disclosure of representations and warranties made concerning the pool assets by the sponsor, transferor, originator or other party to the transaction, including a brief description of the remedies available if those representations and warranties are breached, such as repurchase obligations.

We believe that the information proposed for disclosure in the prospectus is important for investors to make an informed determination of the credit quality of the mortgage assets in the pool, which in turn has a direct impact on the forecast performance of the assets under varying economic scenarios. This will allow investors to make a decision on whether the offered RMBS meet their investment parameters for risk and return. We believe the disclosure of such information will engender a return in investor confidence in privately issued RMBS.

Disclosures related to Originators

We agree with the proposed revision to Items 1104 and that would require disclosure of all originators of the assets backing an ABS if the amount of originated assets by parties other than the sponsor (or its affiliates) comprises more than 10% of the total pool assets. Investors have a right to know the identity of the originators of the assets backing the security whose purchase they are considering.

Similarly we agree with the proposed repurchase request disclosure in Item 1110(b) for originators who have originated, or are expected to originate, more than 20% of the assets in the pool to the extent of requiring disclosure on a pool by pool basis of disclosure requests and the percentage of the amounts that were not repurchased or replaced by the obligated party. We think investors have a right to know this information in order to make a determination on the likely performance of the originator in the future to repurchase requests. We do not agree however with the third party opinion concept, as discussed earlier in this letter. We consider the idea to be a waste of money and a concept that would not provide investors with any useful information, save for the knowledge that the originator is competent enough to consult with a law firm to obtain legal advice prior to rejecting a repurchase request. As we stated earlier in the letter, we request that the SEC only require disclosure of repurchase requests that the originator fails to honor or declines to honor and excludes those repurchase requests where the party initiating the repurchase request either withdraws the request or declines to pursue the request following a response from the originator.

We also disagree with the proposed requirement in Items 1104 and 1110(b) to disclose the financial condition of a 20% originator if there is a material risk that the financial condition could have a material impact on the origination of the originator's assets in the pool or on its ability to comply with provisions relating to the repurchase obligations for those assets. Many mortgage originators are privately owned. As such disclosure of the originator's financial condition is entirely within the company's discretion and is only made to entities that maintain the confidentiality of that information. If the originator seeks to become an approved lender for the Federal Housing Administration (FHA) mortgage insurance program, financial disclosure is required, but FHA does not disseminate that information publicly. Similarly originators seeking to become an approved seller for both the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC) must also provide financial condition disclosure, but again both entities keep that information confidential.

However in the case of an originator that sells assets to an RMBS sponsor, the originator has no ability to keep its financial information confidential by limiting its asset sales to less than 20% of the pool total, because the size of the pool, and the number of participants, is determined solely by the sponsor. So any sale of assets to the sponsor of an RMBS subject to Regulation AB, if this provision is adopted, could subject an originator to public disclosure of their financial information.

We believe a better alternative would be to require sponsors to certify that all the originators that have sold assets to the pool backing the ABS meet the sponsor's standards of creditworthiness, that those creditworthiness standards employed by the sponsor are customary and commercially reasonable and that based on the credit underwriting of the originators performed by the sponsor that the sponsor has determined that each originator has the financial means to discharge their

obligations under the representations and warranties they have entered into with respect to the assets in the pool.

Thank you very much for this opportunity to comment on the proposed revisions to Regulation AB. Please contact us directly with any questions.

Sincerely,

Glen S. Corso
Managing Director