

Consumers Union

Nonprofit Publisher
of Consumer Reports

August 2, 2010

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

Via Electronic Mail
rule-comments@sec.gov

Re: File Number S7-08-10 (RIN 3235-AK37)

Dear Secretary Murphy:

Consumers Union,¹ the nonprofit publisher of *Consumer Reports*, appreciates the opportunity to comment to the Securities and Exchange Commission (SEC) proposed regulations regarding Asset-Backed Securities (ABS). Our comments are limited to portions of the proposed regulations concerning the regulation of credit risk retention and the general and specific proposed disclosure requirements as they relate to residential mortgage backed securities (RMBS).² We are aware that the proposed regulations will impact other areas of the securitization marketplace. While our comments are limited to RMBS, as a general principal we believe risk retention at every stage, from the originator to the securitizer, creates incentives for sound underwriting practices and accurate representations regarding the nature and quality of assets in a securitization pool.

Summary

Requiring sponsors to retain a significant portion of the risk, such as 10 percent, creates stronger incentives for accurate underwriting. Risk retention policies will also help eliminate incentives to "keep the fee and pass the risk" to others, a practice which has been identified as a significant factor in the mortgage market crisis. A significant portion of the proposed regulations would require greater disclosure of information about each loan in an asset pool in order to better inform and protect investors. As detailed below, many of the proposed disclosures will help add much needed transparency to the securities marketplace. However, in considering which disclosures to ultimately mandate, the SEC should carefully balance the interests of both consumers and investors to ensure that consumer privacy is not compromised in the process. The SEC

¹ Consumers Union of United States, Inc., publisher of *Consumer Reports*[®], is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications and services have a combined paid circulation of approximately 8.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of *Consumer Reports*[®], its other publications and services, fees, noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support.

² Consumers Union's comments regarding RMBS are exclusive of the proposed provisions regarding manufactured homes.

should not require the disclosure of loan level information that could reveal, directly or indirectly, the identity of a borrower, or the location of the property that is the subject of the loan contained in the asset pool. Our comments below more fully discuss these items and offer alternatives for providing useful information for investors while not compromising the borrower's privacy.

I. Risk Retention

Requiring sponsors to retain a significant portion of the risk creates stronger incentives for accurate underwriting and will lead to a healthier ABS marketplace. Risk retention policies will also help eliminate incentives to "keep the fee and pass the risk" to others. We strongly support adding a risk retention requirement and will discuss more fully below our opinion regarding this proposal. Overall, however, we agree with the SEC that "securitizations that have sponsors with continuing risk exposure will likely be higher quality than those without."³

Appropriately, the SEC is now proposing to better align the incentives of the sponsors and originators of the pool assets with investor incentives by requiring that in ABS shelf eligibility a sponsor of any securitization retain risk in each tranche of the securitization on an ongoing basis. The SEC is proposing this new risk retention requirement for ABS shelf eligibility to replace the current investment grade rating requirements. Rather than replacing the current investment grade rating requirements, Consumers Union recommends strengthening the integrity of the investment grade rating system and continuing to require investment grade ratings along with new risk retention requirements for ABS shelf eligibility.

The SEC aptly notes that in the securities regulation arena the trend is towards instituting risk retention requirements in order to improve the quality of securities and minimize investor risk. A recent and significant example is the newly enacted Dodd-Frank Wall Street Reform and Consumer Protection Act which adds significant improvements to the asset-backed securitization process. This Act, signed into law by President Barack Obama on July 21, 2010, contains a requirement compelling the Federal banking agencies and the Commission within 270 days of enactment to jointly prescribe regulations to require any securitizer to retain an economic interest in a portion of the credit risk for any asset that the securitizer, through the issuance of an asset-backed security, transfers, sells, or conveys to a third party.⁴ This new provision requires banks and financial entities that package residential mortgage loans to keep 5 percent of the risk unless mortgages meet safety standards.

Taking a similar approach, the Federal Deposit Insurance Corporation (FDIC) recently solicited comments to an Advance Notice of Public Rulemaking (ANPR) in which Consumers Union supported an action by the FDIC to require mortgage originators to bear the risk of originating and holding risky loans for 12 months before securitizing the loans and passing the risk to investors and ultimately to the FDIC. In our comments, we

³ Securities and Exchange Commission, 75 Fed. Reg. 23328 (proposed May 3, 2010) (to be codified at 17 CFR Parts 200, 229, 230 et al.).

⁴ Dodd-Frank Wall Street Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 941 (2010).

stated, "Requiring originators to keep the loan for a minimum period and retain a significant portion of the risk, such as 10 percent, creates stronger incentives for accurate underwriting."⁵

Consistent with the trend towards instituting risk retention requirements, the SEC is proposing that as a condition of shelf eligibility for asset-backed issuers, the sponsor or an affiliate of the sponsor must retain a net economic interest in each securitization in one of two manners,⁶ each of which require a retention of a minimum of 5 percent. The SEC noted, "we preliminarily believe that five percent is an appropriate amount of risk to require sponsors to retain."⁷ Consumers Union opposes setting the risk retention amount below five percent. We strongly encourage the SEC to study whether a higher risk retention amount, for example 10 percent, would be more appropriate to protect investors and consumers. Any such study, however, should not be a cause for delay in imposing a specific percentage of risk of at least 5 percent.

Although much of the contents of the SEC proposed regulations focuses on improving the experience of investors, it should be noted that the changes proposed regarding the retention of risk will also have a positive impact on protecting consumers from mortgage marketplace abuses. It is well documented that a primary driver of the mortgage meltdown was the huge number of risky subprime and non-traditional loans which were originated then securitized and sold on the secondary market, with absolutely no originator accountability for their subsequent failure.⁸ Lenders and brokers and others who benefited from this practice aggressively sold borrowers loans that were doomed to failure. In that process, millions of consumers were abused and today they and their communities are suffering the consequences of failed mortgages in record numbers. The new risk retention requirement proposed by the SEC and others, and now included in the mandate of the Dodd-Frank Wall Street Reform and Consumer Protection Act, will go a long way to ensure that consumers are not mistreated by lenders and others who benefit from making improvident loans that can sold to investors in the form of RMBS without any accountability or consequence.

Consumers Union agrees with the SEC's approach to measure the risk retention required at issuance and require that it be maintained on an ongoing basis. This

⁵ Comments of Consumers Union, February 12, 2010, Re: RIN # 3064-AD55-- Advance Notice of Proposed Rulemaking Regarding Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After March 31, 2010

⁶ The first option requires retention of a minimum of five percent of the nominal amount of each of the tranches sold or transferred to investors, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate. The second option states in the case of revolving asset master trusts, retention of the originator's interest of a minimum of five percent of the nominal amount of the securitized exposures, net of hedge positions directly related to the securities or exposures taken by such sponsor or affiliate, provided that the originator's interest and securities held by investors are collectively backed by the same pool of receivables, and payments of the originator's interest are not less than five percent of payments of the securities held by investors collectively.

⁷ 75 Fed. Reg. at 23339 (2010).

⁸ Eggert, Kurt, *The Great Collapse: How Securitization Caused the Subprime Meltdown* (May 2009). 41 CONN. L. REV. 1257 (2009); Bianco, Katalina, *The Subprime Lending Crisis, Causes and Effects of the Mortgage Meltdown* (2008), Available at http://business.cch.com/bankingfinance/focus/news/Subprime_WP_rev.pdf

approach ensures a consistent result and compliance with the intent of the proposed regulation. We oppose the proposed alternative to satisfy risk retention requirements by simply disclosing an amount of risk retention even if it falls below the minimum 5 percent amount proposed. Additionally, Consumers Union recommends adding a requirement that sponsors should retain that risk for a minimum of five years going forward.

Consumers Union recommends adding new requirements not included in these proposed regulations that sponsors should clearly and prominently disclose their fees and interest of and compensation paid or due to all parties to a transaction. In addition to increasing substantive enhancements for improving the quality of mortgages forming RMBS, Consumers Union recommends adding requirements obligating the sponsor, issuing entity, and/or servicer, as appropriate, to provide investors with information describing the financial assets, obligations, capital structure, compensation of relevant parties and relevant historical performance data. This approach will increase transparency and accountability surrounding RMBS obligations and shift incentives toward more responsible loans and away from quick and risky origination for the sake of earning substantial and immediate fees.

We urge the SEC to add a requirement that mortgages included in a RMBS should be seasoned at least 12 months before they can be securitized. Having to retain all of the risk for 12 months prior to securitization gives sponsors a strong incentive to originate only those loans that are prudent, lest they suffer the direct and immediate consequences of originating a bad loan. Requiring this minimum retention period also minimizes the risk that improper loans can contaminate others included in the RMBS. For these reasons we believe a 12 month retention requirement would better fulfill the goal of aligning the sponsor's interests towards sound underwriting.

Finally, Consumers Union supports an action by the SEC to create an additional requirement that compels all residential mortgage loans while qualifying for placement in a RMBS to comply with all statutory and regulatory standards and guidance in effect at the time of origination. Additionally, we urge the SEC to add a requirement that subsequent holders of a mortgage remain responsible for misrepresentations and defects in the loan occurring at origination. This will fuel investor demand for only sound, carefully underwritten mortgages and realign the originators' incentives to meet this demand.

II. Proposed Disclosure Requirements for Residential Mortgage Backed Securities Pool Assets

The SEC is proposing significant changes to its current disclosure requirements by requiring asset-level information regarding *each* asset in the pool backing the securities. This approach is one that is included and supported by the recent enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.⁹ Adding disclosure

⁹ Dodd-Frank Wallstreet Reform and Consumer Protection Act, H.R. 4173, 111th Cong. § 942 (2010). The Dodd-Frank Act amends the Securities Act of 1933 by adding disclosure requirements, requiring the Commission to adopt regulations under this subsection requiring each issuer of an AB security to disclose, for each tranche or class of security, information regarding the

requirements, while important, is not a sufficient substitute for risk retention requirements or careful regulation of the securities industry. However, many of the disclosures the SEC has proposed will add transparency to the securities marketplace and be beneficial to investors, consumers, and regulators.

The SEC has proposed that these new disclosures be required in the prospectus at the time of offering and in Exchange Act reports. The stated goal is to ensure that information concerning pool assets is available to help investors make informed and sound investment decisions regarding the purchase of asset backed securities. The SEC has proposed standardizing data points to assist investors in making comparisons of various AB products. The SEC notes that prior to these proposed regulations, it has not proposed standards for issuing data, but now proposes that all asset-level information be provided in a standardized format to be included in the prospectus and periodic reports and filed on EDGAR, the SEC's filing website where anyone can access and download the information for free.

Except with respect to pooled assets involving credit cards, charge cards and stranded costs, the SEC is proposing that every issuer must provide 28 items of general data under "Schedule L Item 1. General item requirements."¹⁰ Further, the SEC is proposing that additional specific data be reported for several other asset classes, including residential mortgages.¹¹

The guiding principle for Consumers Union's evaluation of any proposed data requirement is that the data requested should meet the goal of providing investors and other stakeholders with necessary and adequate information while not compromising consumer privacy rights, especially because the SEC is proposing that all of these data be filed on EDGAR. For purposes of responding to this request for comment, we have limited our responses to only those portions of the proposed regulations that concern the proposed general and specific disclosures regarding residential mortgages, excluding manufactured homes. Nonetheless, we respectfully urge the SEC to adopt the evaluation standards we have articulated above for evaluating each data disclosure proposed in this SEC file.

Accordingly, with respect to the general items proposed for disclosure as noted above, Consumers Union supports the inclusion of those items which provide valuable relevant information to investors and don't reveal, directly or indirectly, any personal identifying information of the borrower or the location of the asset.¹² Information that could be cross-referenced to public records has the capacity to reveal information identifying the borrower or the location of the asset and should not be included in the general item

assets backing that security. Required to at a minimum, disclose asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence, including data having unique identifiers relating to loan brokers or originators; the nature and extent of compensation of the broker or originator, and the amount of risk retention by the originator and the securitizer of such assets. *Id.* at 1418-1419.

¹⁰ 75 Fed. Reg. at 23453- 54 (2010), Table 1. Schedule L Item 1. General item requirements.

¹¹ *Id.* at 23457. The categories include residential mortgages, commercial mortgages, auto loans, auto leases, equipment loans, equipment leases, student loans, floor plan financing, corporate debt and securitizations.

¹² 75 Fed. Reg. at 23453 (2010) Proposed Items 1(a)(1) through 1(a)(3), Items 1(a)(7) through 1(a)(13), Items 1(a)(15) through 1(b)(8).

requirements. As proposed, the original asset amount,¹³ origination date,¹⁴ and identity of the originator¹⁵ together could be cross-referenced with public records to identify a particular underlying asset in the context of a RMBS. One way to limit this result is to require that the origination date be limited to a range of dates, for example, “1st Quarter, 2010” rather than the month/year proposed response. Also, rather than requiring the original asset amount, a range can be the proposed response, with reporting bands of \$15,000 each. For securities other than RMBS, other reporting bands may be appropriate, though Consumers Union makes no recommendation on ranges for assets other than those for RMBS.

The SEC is also proposing that sponsors be required to provide the “unique ID number of the asset.” We support creating a way in which an asset’s performance can be tracked over time, and designating a specific number to an asset within a pool is one way to accomplish this. Care should be taken, however, that the unique number not be one that can be tied back to a particular borrower or property. For example, in the RMBS context, the “unique identifier” should not be the same as the originator’s loan number, the property parcel number, the borrower’s Social Security Number, or a borrower’s account number.

The SEC is proposing 137 data points for ABS backed by residential mortgages to be reported on Schedule L Item. There are many proposed data point requirements that necessitate a simple “yes” or “no” answer. Consumers Union supports requiring the disclosure of this information in a way that could be publicly inspected as long as it doesn’t reveal personal identifying information of the borrower. We support requiring the disclosure of general information about the residential mortgage that reveal qualities of the loans in the pool, specifically those that taken together may be indicators of risky loans, e.g., indicators for negative amortization,¹⁶ mortgage insurance,¹⁷ balloon payment provisions,¹⁸ mortgage modifications,¹⁹ and broker involvement²⁰ in the origination. We also support “yes or no” data requests that call for reporting additional indicators (without personally identifying details regarding the borrower or the subject property) including option ARMs,²¹ convertible ARMs,²² HELOC related transactions,²³ and HUD code compliance.²⁴ Other items in the category of general information about the residential mortgage which will be valuable in the marketplace and pose no harm to consumers include requiring information regarding the loan channel,²⁵ NMLS loan

¹³ *Id.*, Proposed Item 1(a)(6).

¹⁴ *Id.*, Proposed Item 1(a)(5).

¹⁵ *Id.*, Proposed Item 1(a)(4).

¹⁶ *Id.*, Proposed Item 2(a)(4).

¹⁷ *Id.*, Proposed Item 2(a)(6).

¹⁸ *Id.*, Proposed Item 2(a)(7).

¹⁹ *Id.*, Proposed Item 2(a)(5).

²⁰ *Id.*, Proposed Item 2(a)(9).

²¹ *Id.* at 23457, Proposed Item 2(a)(18)(xvii).

²² *Id.*, Proposed Item 2(a)(18)(xx).

²³ *Id.*, Proposed Item 2(a)(18)(xxi).

²⁴ *Id.* at 23459, Proposed Item 2(b)(19)(iv).

²⁵ *Id.* at 23455, Proposed Item 2(a)(10).

originator number,²⁶ NMLS company number,²⁷ and the information regarding the loan delinquency advance days count.²⁸

However, the proposed self-employment flag indicator,²⁹ although requiring a ‘yes’ or ‘no’ response, is one that could be easily attributed to a specific individual who shares that characteristic. To avoid this result, we recommend that this item be removed from the proposal, and replaced and satisfied with an indicator specifying whether or not the borrower’s income was documented.

The SEC has proposed 22 data items to be disclosed related to adjustable rate mortgage (ARM) loans. These data will help to more fully inform investors about the quality of the ARM loans in the pool without revealing personal identifying information of the borrowers holding those loans. We believe the data required regarding ARM loans is significant, in that many of the riskier loans which failed involved abusive ARM lending to borrowers who were not able to make their required payments when the loans adjusted but were sold ARMs as affordable borrowing options. Some of the more abusive ARMs which failed contained minimum payment provisions which lead to severe negative amortization trapping borrowers in impossible debt.

Consider the story of Gloria McAlpin and her now deceased husband Langdon McAlpin, from Loganville, Georgia. The McAlpins almost lost their home to foreclosure after they were sold an ARM in 2004 that was supposed to bring their payments down but ended up costing 88 percent of their monthly income. Mr. McAlpin said the lender told them they were qualified for the loan, but in fact that was not true. The ARM they received had a fixed initial interest rate for the first two years that continued to change every six months thereafter. His income, on the other hand, was limited and fixed and Mrs. McAlpin was unemployed. The only household income came from Mr. McAlpin’s pension disability check in the amount of \$2,039.62. After a deduction of \$250 for Mr. McAlpin’s medical insurance, the McAlpins had \$1,789.62 net monthly income available to pay the new mortgage payments and their other household expenses. After the loan was made, the McAlpin’s initial monthly principal and interest payments on the new mortgage were \$888.71. After the city and county property taxes and homeowners insurance were escrowed into the payment (\$221.91 per month), the total monthly housing payments for the McAlpins were \$1,110.62. The initial mortgage payment consumed a staggering 62.06% of the McAlpin’s net monthly income and the McAlpins struggled to make the payments. Two years later, the interest rate adjusted and the escrow payments increased inflating their monthly mortgage payments to \$1,378.52. Six months later their monthly mortgage payments rose again to \$1,487.92. Six months later, on July 1, 2007 the total mortgage payment effective on August 1, 2007 was \$1,576.46, or over 88% of the McAlpin’s net monthly income. After a long legal battle, with the assistance of the Atlanta Legal Aid Society, the McAlpins were able to reach a settlement to avoid foreclosure. To view a video of Mr. McAlpin describing their

²⁶ *Id.*, Proposed Item 2(a)(11).

²⁷ *Id.*, Proposed Item 2(a)(12).

²⁸ *Id.* at 23456, Proposed Item 2(a)(15).

²⁹ *Id.* at 23467, Proposed Item 2(c)(20).

foreclosure plight due to an adjustable rate mortgage, go to Consumers Union's "Faces of Foreclosure" video series.³⁰ We also recommend viewing Consumers Union's video interview of Mr. Carl Lee of Chicago describing his experience with an abusive ARM.

To help protect against the kind of ARM lending abuse the McAlpin's and Mr. Lee experienced, Consumers Union supports all of the data items proposed for ARM loans included in the SEC's proposed regulations. These include Items 2(a)(18)(i) through 2(a)(18)(xxi). In addition, we recommend including a data requirement in the proposed regulations to furnish the number of ARMs and negatively amortizing loans in the pool that have gone into default and/or are at risk of imminent default.

Prepayment penalties have been imposed upon borrowers as a way of keeping them locked into loans with unfavorable terms. In many instances, borrowers have found it difficult to refinance out of abusive loans because prepayment penalties make it financially unfeasible to do so. A story illustrating the heartache of a prepayment penalty trap includes that of the Tripodis family from Hobart, Indiana. The Tripodis family was dealing with the impact of an ARM that kept adjusting beyond their ability to make their payments. They tried to refinance their ARM to get a lower mortgage payment they could afford so that they can stay in their home. But because they would have to pay an \$11,000 prepayment penalty if they refinanced their mortgage before a certain date, refinancing was not an option. Instead, Mrs. Tripodis tried for over a year to convince her lender to reduce or eliminate the prepayment penalty on their mortgage so that they can afford to refinance, but the lender was unwilling to do so. In the hardship letter she sent to her lender, she told the lender that she and her husband were having difficulty making the monthly mortgage payments and meeting their other expenses, including medical bills, because her husband's pay, which is based mostly on tips, had declined. She had complained to the Illinois Attorney General about the lender's prepayment penalty policy but this has not had an impact. Ultimately, Mrs. Tripodis' lender agreed to a short sale of her home. This was her only option to avoid foreclosure after her lender refused to eliminate or reduce the prepayment penalty.³¹

The existence of prepayment penalties, such as the one contained in the Tripodis family loan, alongside other common abusive loan terms, taken in the aggregate can provide a potential investor with significant information about the quality of loans in a securitization pool. Therefore, the items proposed by the SEC regarding prepayment penalties are important additions to the data disclosures proposed for RMBS. The manner in which the data is being requested does not compromise consumer privacy. Consumers Union supports the inclusion of prepayment penalty calculation data,³² prepayment penalty type,³³ and the prepayment penalty total term.³⁴ In addition, we recommend including a data requirement to furnish information about the number and percentage of loans in

³⁰ <http://www.defendyourdollars.org/video.html>

³¹ To view a video of Mrs. Tripodis describing her foreclosure plight due to an adjustable rate mortgage and a prepayment penalty, go to Consumers Union's "Faces of Foreclosure" video series, <http://www.defendyourdollars.org/video.html>

³² 75 Fed. Reg. at 23459 (2010) Proposed Item 2(a)(19)(i).

³³ *Id.* at 23460, Proposed Item 2(a)(19)(ii).

³⁴ *Id.* at 23460, Proposed Item 2(a)(19)(iii).

the pool which are subject to prepayment penalty provisions and the number of loans in the pool subject to prepayment penalties that have gone into default or are at risk of imminent default. This information will serve investors well in evaluating the riskiness of a RMBS pool.

Likewise, the presence of negative amortization in loans is another loan feature that should give investors a reason to more carefully scrutinize a RMBS pool containing such loans. The SEC has proposed 10 data disclosure requirements concerning negative amortization.³⁵ We support these requirements. These data will furnish investors and others with valuable information about the potential riskiness of a RMBS pool. Additionally, Consumers Union recommends requiring more data regarding negatively amortizing loans, including the number of negatively amortizing loans in the pool that have gone into default or are at risk of imminent default.

The SEC has proposed 12 data disclosure requirements regarding loan modifications³⁶ that will provide basic information to investors regarding the presence and type of loan modifications contained in the pool. Consumers Union supports each of these disclosure requirements. Additionally, we urge the SEC to also require the inclusion of an additional data requirement to disclose the number and percentage of modified loans which have redefaulted. Likewise, the SEC should add a requirement for data that details the number of modification requests that are granted and denied and the average time that elapses between a borrower's request for a loan modification and a determination of that application. For each of those loans, greater explanation should be required regarding the type and terms of the modification relative to the loan terms before modification. This is also the place where the SEC can mandate the inclusion of data regarding the number of months in bankruptcy or foreclosure.³⁷ This is important because lenders who successfully modify loans in a timely manner can avoid unnecessary foreclosures and keep borrowers paying their mortgages. This can be more financially beneficial to the investor and all involved. Not all lenders and their loan servicers are successful in working with homeowners to achieve sustainable loan modifications. But those who are will be more evident to investors if the SEC requires this level of detail regarding modified loans.

Under the category, "General information about the property", the SEC has proposed 18 new data disclosure requirements. Again, applying the principle that the data that is required to be submitted should not reveal the identity of the homeowner or the address of the home that is the subject of the RMBS included in the pool, we support most of the new disclosures requirements. These include occupancy status,³⁸ property type,³⁹ original property valuation type,⁴⁰ original property valuation date,⁴¹ original automated

³⁵ *Id.*, Proposed Items 2(a)(20)(i) through 2(a)(20)(x).

³⁶ *Id.* at 23461, Proposed Items 2(a)(21)(i) through 2(a)(21)(iv) and Proposed Items 2(a)(20)(v) through 2(a)(20)(xii).

³⁷ *Id.* at 23468, Proposed Items 2(c)(24), 2(c)(25).

³⁸ 75 Fed. Reg. at 23461 (2010) Proposed Item 2(b)(2).

³⁹ *Id.* at 23462, Proposed Item 2(b)(4).

⁴⁰ *Id.*, Proposed Item 2(b)(6).

⁴¹ *Id.* at 23462, Proposed Item 2(b)(7).

valuation model (AVM) name,⁴² original AVM confidence score,⁴³ most recent property valuation type,⁴⁴ most recent property valuation date,⁴⁵ most recent AVM model name,⁴⁶ most recent AVM confidence score,⁴⁷ Loan to Value (LTV) calculation date,⁴⁸ and value of original pledged assets if the borrower pledged financial assets in lieu of a down payment.⁴⁹ Additionally we support the required disclosures of the original combined loan-to-value (CLTV) ratio,⁵⁰ and the original loan-to-value (LTV) ratio⁵¹ as these items provide valuable information for investors without compromising borrower privacy because the information is expressed as a ratio, not as an absolute value that can be cross referenced with public records.

Several other proposed data disclosure requirements in the general information about the property category are not acceptable because they may be sufficiently unique to enable identification of a particular borrower based upon the sales price or property value or both, raising privacy concerns. A sales price is easily traceable to a specific property through public records. The SEC's proposed alternative to round the sales price to the nearest thousandth does little to obscure the identification of properties in a price range. A possible alternative so that investors can receive useful information and also address any privacy concerns may be to use a coded range of value amounts in \$15,000 bands, as long as this does not compromise borrower privacy. Without any alteration that adequately address privacy concerns, the objectionable items include the sales price,⁵² the original appraised property value,⁵³ and the most recent property value.⁵⁴

One item within the category of general information about the property merits further study to determine whether it enables identification of a particular borrower leading to privacy concerns. The SEC has proposed including a data disclosure requirement regarding the geographic location of the property.⁵⁵ It does not propose that data include the specific address of the subject property, but rather that the location be specified by providing the "Metropolitan Statistical Area, Micropolitan Statistical Area, or Metropolitan Division, as applicable." Consumers Union recommends not reducing the geographic location to an area smaller than any of those already proposed, for example to a census tract or zip code, because doing so would make it easier to identify the underlying obligor using other publicly available resources, particularly if there is no

⁴² *Id.* at 23463, Proposed Item 2(b)(8).

⁴³ *Id.*, Proposed Item 2(b)(9).

⁴⁴ *Id.*, Proposed Item 2(b)(11).

⁴⁵ *Id.*, Proposed Item 2(b)(12).

⁴⁶ *Id.*, Proposed Item 2(b)(13).

⁴⁷ *Id.* at 23464, Proposed Item 2(b)(14).

⁴⁸ *Id.*, Proposed Item 2(b)(17).

⁴⁹ *Id.*, Proposed Item 2(b)(18).

⁵⁰ *Id.* at 23464, Proposed Item 2(b)(15) This is the ratio obtained by dividing the amount of all known outstanding mortgage liens on a property at origination by the lesser of the original appraised property value or the sales price.

⁵¹ *Id.*, Proposed Item 2(b)(16). This is the ratio obtained by dividing the amount of the original mortgage loan at origination by the lesser of the original appraised property value or the sales price.

⁵² 75 Fed. Reg. at 23462 (2010) Proposed Item 2(b)(3).

⁵³ *Id.*, Proposed Item 2(b)(5).

⁵⁴ *Id.* at 23463, Proposed Item 2(b)(10).

⁵⁵ *Id.* at 23461, Proposed Item 2(b)(1).

alteration to requiring the reporting of sales data. At all levels of considering which data should be required, the SEC should not require the inclusion of any data in the list of new disclosures pursuant to these proposed regulations if alone, or in combination with other required data disclosures, this information leads to identifying individual properties and/or their owners.

The SEC has proposed the inclusion of 31 new disclosures regarding general information about the obligor.⁵⁶ Some of these include items that require information that will be informative to investors or potential investors without being specific to a particular borrower. The items we support and that are useful call for responses that are not specific to a particular borrower, but rather illustrate the process by which the originator underwrote the RMBS. The answers illustrate whether the originator observed careful underwriting practices in originating the loan, a key risk factor for investors and regulators to consider in evaluating a RMBS. The answers depend on the measures the originator used in underwriting the loans, including income and employment verification without revealing the borrower's income or employment data. In this category, Consumers Union supports the proposed data disclosures regarding the obligor credit score type,⁵⁷ the co-obligor credit score type,⁵⁸ the obligor income verification level,⁵⁹ verification of the co-obligor's income,⁶⁰ Obligor and co-obligor employment verification,⁶¹ and obligor and co-obligor asset verification.⁶²

Several proposed items under the category "General information about the obligor" are of concern to Consumers Union if they require the filing in a public forum of highly sensitive, unique identifying information about a borrower that could enable identification. We note that these items are potentially valuable to reveal the quality of the underwriting and the integrity of the asset, but pose potential borrower privacy concerns without alteration. These items include the obligor and/or co-obligor credit or FICO score expressed in a coded range,⁶³ the amount of the borrower's liquid/cash reserves after the close of the mortgage,⁶⁴ additional data requirements concerning the income of the obligor and co-obligor,⁶⁵ the length of employment of the obligor and co-obligor,⁶⁶ total amount of all current monthly payments due on the subject property, exclusive of principal and interest,⁶⁷ the obligor's monthly debt owed on all obligations⁶⁸ and a self employment flag.⁶⁹

⁵⁶ 75 Fed. Reg. at 23465 (2010) Proposed Items 2(c)(1) through 2(c)(31).

⁵⁷ *Id.*, Proposed Item 2(c)(1).

⁵⁸ *Id.*, Proposed Item 2(c)(4).

⁵⁹ *Id.*, Proposed Item 2(c)(7).

⁶⁰ *Id.* at 23466, Proposed Item 2(c)(8).

⁶¹ *Id.*, Proposed Items 2(c)(9), 2(c)(10).

⁶² *Id.*, Proposed Items 2(c)(11), 2(c)(12).

⁶³ *Id.* at 23465, Proposed Items 2(c)(2), 2(c)(3), 2(c)(5), 2(c)(6).

⁶⁴ *Id.* at 23466, Proposed Item 2(c)(13).

⁶⁵ *Id.* at 23468, Proposed Items 2(c)(26) through 2(c)(31).

⁶⁶ *Id.* at 23467, Proposed Items 2(c)(22), 2(c)(23).

⁶⁷ 75 Fed. Reg. at 23467 (2010) Proposed Item 2(c)(21).

⁶⁸ *Id.*, Proposed Item 2(c)(15).

⁶⁹ *Id.*, Proposed Item 2(c)(20).

With respect to these items, Consumers Union proposes that the SEC adopt reasonable alternatives to guard consumer privacy and still provide useful information to an investor. We recommend that with respect to the items requesting income and obligation data, to protect borrower privacy, the SEC can require that this inquiry be satisfied by providing responses expressed as ratios, rather than dollar amounts. The amount of liquid cash reserves can also be expressed as a ratio relative to the borrower's debt. In place of the self employment flag, and length of employment, the SEC can require the sponsor to disclose stating whether the borrower's employment and income was verified.

Consumers Union concludes by discussing one final disclosure requirements proposed by the SEC in this file. We oppose requiring the disclosure of the number of mortgaged properties owned by the obligor⁷⁰ unless that borrower is obligated on a loan in a particular asset pool that has characteristics of a higher risk loan. These include loans with prepayment penalties, negative amortization payment schedules, and higher interest rates and fees, for example.

Conclusion

Consumers Union appreciates the SEC's careful consideration of the improvements it has proposed to protect consumers and investors in the mortgage marketplace. As the events of the last year and half demonstrate, the safety and soundness of the mortgage market is a critical and integral component of a sound national economy and the ability to carefully regulate RMBS is a significant component to prevent a future mortgage meltdown. Individuals, whole communities and local and state governments have likewise been severely impacted by the failure in the U.S. mortgage market. For this reason, we support the SEC proposed changes, as discussed above, with respect to new requirements for risk retention in the RMBS marketplace. We strongly urge the SEC to strengthen the retention requirement to require a 10 percent risk retention, add a requirement for a 12 month seasoning period before securitization and add the additional protections recommended by Consumers Union. With respect to the new proposed disclosures for each asset in a RMBS pool, we urge the Commission to exercise caution to carefully balance the privacy rights of consumers in determining what data is absolutely necessary to achieve the goal of greater transparency and quality of RMBS in the marketplace.

Please do not hesitate to contact me should you have any questions regarding Consumers Union's position.

Very truly yours,



Norma P. Garcia
Senior Attorney
Consumers Union

⁷⁰ *Id.* at 23466, Proposed Item 2(c)(14).