



November 15, 2010

Ms. Elizabeth M. Murphy
Secretary
United States Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

RE: SEC Proposed Regulations S7-24-10

Dear Ms. Murphy:

The National Council of State Housing Agencies (NCSHA) thanks you for the opportunity to comment on the proposed rule requiring disclosure for asset-backed securities (ABS). NCSHA represents the nation's state Housing Finance Agencies (HFAs), which are state bond-issuing agencies and authorities that provide a public service by financing homeownership and rental housing loans. The federal government has increasingly recognized that HFAs are uniquely qualified partners who play a vital role in the nation's housing and economic recovery by recently supporting their efforts through such programs as the Tax Credit Assistance Program, New Issue Bond Program, Temporary Credit and Liquidity Program, and the Hardest-Hit Fund.

To provide affordable home loans and rental housing for low and moderate-income individuals, HFAs issue municipal bonds. HFAs also administer a wide range of affordable housing and community development programs, including the Low Income Housing Tax Credit, HOME, Section 8, down payment assistance, homebuyer education, loan servicing, homeless assistance programs, and state housing trust funds.

We appreciate that the SEC is seeking comments on the need for guidance on the application of the rule to municipal entities. In the proposed rule, the SEC says that it believes it cannot grant a general exemption for municipal securities, due to the broad definition of "asset-backed security" in Section 941 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

Despite the broad definition of "asset-backed security," we believe the SEC has the authority to exempt municipal securities from this rule, and doing so is necessary and appropriate in light of Section 3(a)(2) of the Securities Act and Section 3(a)(12) of the Exchange Act, which both treat municipal securities as exempted securities, and Section 15B(d)(1) of the Exchange Act (the "Tower Amendment"), which prohibits the Commission from collecting documents from municipal issuers prior to their bond sales. Further, we believe that the

proposed rule's application to HFA-issued securities would not further the purpose of the Dodd-Frank Act and could have an effect that would run counter to its stated goals. In addition, we feel that the proposed rule would impose on HFAs an undue administrative burden that could increase the cost of issuing HFA securities and reduce the benefits such securities provide homeowners and renters in bond-financed affordable housing. For these reasons, we urge the SEC to exempt securities issued by HFAs from the requirements of proposed rule 15Ga-1.

The SEC Should Exempt Municipal Securities from the Proposed Rule

While the definition of "asset-backed security" in Dodd-Frank is broad, the SEC, in interpreting Section 3(a)(77) of the Exchange Act to apply to municipal securities, must acknowledge the exemption given to municipal securities under Section 3(a)(2) of the Securities Act and Section 3(a)(12) of the Exchange Act or the Tower Amendment, which provides in part that the SEC is not authorized to require any issuer of municipal securities to file with the SEC prior to the sale of the securities by the issuer any application, report, or document in connection with the issuance, sale, or distribution of the securities. The proposed rule does just that.

The basis for the SEC's interpretation is the broad definition of "asset-backed security" and the failure of Congress in Section 943 of the Dodd-Frank Act to refer to Section 7 of the Securities Act or to registration statements filed under the Securities Act. But congressional omission on this point cannot be interpreted as a repeal of or license to ignore the Tower Amendment, which is part of the existing legislative and regulatory structure that reflects the balancing of interests of investors and the sovereign interests of state and local government issuers or the treatment of municipal securities as exempted securities. The SEC has itself recognized the legislative limits on its ability to regulate disclosure in the municipal securities market. Congressional silence in enacting Section 943 of Dodd-Frank is much too slender a reed upon which to overturn this long-standing legislative and regulatory structure. Federal statutory construction is clear that repeal by implication or inference is insufficient; congressional intent must be clear to override the Tower Amendment.

The Dodd-Frank Act explicitly recognizes the Tower Amendment's continuing relevance by directing the GAO to study it and determine whether to recommend changes to it. At a bare minimum, new rules governing asset-backed securities should continue to specifically exempt municipal bonds, consistent with current law, until these studies have been completed, their results fully vetted, and Congress determines whether to act.

HFA Housing Bonds Have Not Been the Target of Investor Concerns

In the proposed rule, the SEC states as background rationale that a "lack of responsiveness" on the part of sponsors to breaches of representations and warranties relating to a pool of assets has "been the subject of investor complaint." This is not accurate in the case of securities issued by HFAs. Pools of assets securitized by HFAs have never been the target of investor complaints with regard to breaches of representations and warranties. In fact, to date

no state housing finance agency has defaulted on bonds issued to finance any HFA-sponsored program.

The unique structure of HFA bonds is substantially different from the corporate asset securitization model. HFA bonds are secured by a pledge of the mortgage loans and various sources of cash derived from the bond sale. However, unlike most corporate bond financings, the assets that ultimately will end up as security in typical HFA bond financings are not pre-identified or pre-purchased loans. Rather, the proceeds from the sale of HFA bonds are deposited into trust accounts from which the HFA can requisition funds to purchase preexisting loans from originating lenders. These loans must meet certain compliance standards established by federal tax laws and strict credit criteria established by each HFA. In addition, the bonds are generally issued under an open parity bond resolution, under which HFAs have substantial flexibility, subject to certain covenants, to sell loans or withdraw loans or other assets to protect investors and ensure they receive their entitled cash flows.

Mortgage loans financed with tax-exempt bonds issued by municipal issuers must comply with several requirements set forth in Section 143 of the Internal Revenue Code. Those requirements are technical and many, and do not relate to the security afforded by the loan. In the experience of NCSHA's membership, most of the repurchase obligations that have been triggered in HFA mortgage portfolios relate to a violation of the mortgage eligibility requirements, not a violation of general underwriting criteria. Because of this, the incidence of repurchase obligations in the municipal context is not directly relevant, and may be misleading, to investors in asset-backed securities in the taxable market. Dissemination of this potentially misleading information could adversely impact HFA issuance and reduce the liquidity of previously issued HFA securities.

Under the proposed rule, HFAs would be required to periodically report by pool for each originator how many loans they might potentially have to repurchase, how many loans they have repurchased over the past five years, and how many loans they are in the process of repurchasing. This additional work would impose an undue administrative burden on HFAs that would increase their costs, potentially reducing the benefits that could be passed on to homebuyers and tenants—a result that would seem to run counter to the stated goal of the Dodd-Frank Act.

Current Housing Bond Disclosure Requirements and Practices Are Reasonable and Sufficient

HFAs are already required to disclose any material information regarding bond issuances on the central information repository for municipal securities, the Electronic Municipal Market Access system ("EMMA"). Pursuant to SEC Rule 15c2-12, municipal issuers must file final official statements on EMMA, which must include, at a minimum, information on the terms of the securities, financial information or operating data concerning the issuer and other entities, enterprises, funds, accounts or other persons material to an evaluation of the offering, and a description of the continuing disclosure undertaking made in connection with the offering (including an indication of any failures to comply with such undertaking during the past five years). Official statements typically also include information regarding the

purposes of the issue, how the securities will be repaid, and the financial and economic characteristics of the issuer or obligor with respect to the offered securities. Investors may use this information to evaluate the credit quality of the securities. Thus, requiring HFAs to submit additional information regarding their bonds' representations and warranties is redundant and unnecessary.

Furthermore, the proposed rule would require that the disclosures be made on the SEC's Electronic Data Gathering, Analysis, and Retrieval system ("EDGAR"), as opposed to EMMA. This variation would be confusing to issuers and to investors. Any change in protocols for disclosure would increase costs to municipal issuers, in some instances significantly.

**The Dodd-Frank Act Directs the SEC to Exempt Municipal Securities
and Securitizations of Assets Issued or Guaranteed by Federal Agencies**

In addition, the Dodd-Frank Act's Conference report Joint Explanatory Language authorizes an exemption of securitizations issued or guaranteed by federal agencies. The Joint Explanatory Language states,

Regulators also are required to issue total or partial exemptions from risk retention and disclosure requirements for municipal securities and for securitizations of assets issued or guaranteed by federal agencies, as long as the exemption is in the public interest and for the protection of investors.

Thus, the Commission has the ability to provide an exemption to municipal securities generally, and in particular to HFA-issued revenue bonds and HFA-issued MBS securitizations, the assets of which are guaranteed by the federal government, as long as the exemptions are in the public interest and for the protection of investors.

The Commission, in the proposed rule, provides no exemptions for municipal securities or for securitizations of assets issued or guaranteed by federal agencies. NCSHA believes that these exemptions are indeed in the public interest and for the protection of investors for the reasons previously stated.

Thank you for your consideration of our comments. Please do not hesitate to contact me if we can provide additional information.

Sincerely,



Barbara J. Thompson
Executive Director