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LENDING

November 15, 2010

via email: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Standard of review of underlying assets by issuers of asset-backed securities.
File No. S7-26-10, Release Nos. 33-9150, 34-63091 (RIN 3235-AK76)

Ladies and Gentlemen:

The Center for Responsible Lending (CRL) appreciates the opportunity to comment on the SEC's proposed rules, pursuant to sections 932 and 945 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Act"), concerning the required standards of review by issuers of assets underlying the ABS they issue.

CRL is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, a nonprofit community development financial institution. For thirty years, Self-Help has focused on creating asset building opportunities for low-income and minority families, primarily through financing safe, affordable home loans. In total, Self-Help has provided over $5.6 billion of financing to 64,000 low-wealth families, small businesses and nonprofit organizations in North Carolina and across America.

Over the last decade, the private RMBS market poured billions of dollars into residential mortgage loans with unusually risky features that were aggressively marketed to families who should have been offered the less costly, more sustainable loans for which they were qualified. Many families have lost their homes as a result.

Some investors were no doubt unaware that they were supporting abusive practices by loan originators that stripped billions of dollars from low- and moderate-income families across the country. Issuers frequently failed to determine whether the assets they were securitizing were unlawful or predatory or contrary to their own guidelines. As a result, investors found themselves involved in abusive loans that many wanted no part of, and would have avoided had issuers properly reviewed and vetted the underlying assets.

Requiring issuers to inform themselves of the legality and legitimacy of the assets being securitized, pursuant to asset-reviews properly designed to ferret out abuses, would enable investors to avoid investments they deem irresponsible or undesirable. It also would improve investor choice by facilitating demand for more responsible investments.

The failure of due diligence reviews in the recent crisis demonstrates that issuers face market pressures that incent them not to conduct the best due diligence reviews available. Absent legally mandated standards, there is no reason to believe that issuers will voluntarily conduct reviews of sufficient scale and scope to fairly apprise investors of the problems in the inventory of the loans they are securitizing.

Indeed, by requiring that issuers disclose the results of their reviews, without prescribing standards for the conduct of the reviews, the proposed rule could perversely incent issuers to conduct the *weakest* reviews they can get away with. For this reason, we strongly urge the SEC to set basic standards for the kinds of reviews necessary to satisfy proposed new rule 193.

We have the following recommendations:

- Issuers should be required to conduct reviews that are both designed and effected with **sufficient scale and scope to discover assets in the ABS pool that violate applicable law or applicable standards set out in the prospectus**. This would go beyond providing "reasonable assurance that the disclosure in the prospectus is accurate in all material respects."
    - It would include: verifying the accuracy of the loan data and related information such as loan-to-value and debt-to-income ratios, and determining whether the assets meet underwriting criteria, reviewing borrowers' income levels to determine ability to repay the loan.
    - It would include a review of the accuracy of the property values reported by originators for the underlying collateral.
    - It also would include determining whether the loans have been originated in compliance with applicable laws, including predatory lending and Truth in Lending statutes.
- Issuers should be responsible for the sufficiency and accuracy of the reviews without regard to whether the review is conducted by a third party. One of the significant problems leading to the recent crisis was the effort by market participants to hide behind third parties (e.g., brokers, rating agencies, third party servicers, appraisers and due diligence firms) to maintain plausible deniability as to the abuses in which they were involved. It would be contrary to the Act's

purpose to permit issuers to hide behind third party "experts" to avoid responsibility for due diligence failures. At all events, issuers should not be permitted to rely on reviews conducted by loan originators, who face strong incentives not to discover or disclose problems with the loans they originated.

- The asset review requirement should apply to all offerings, both public and private. The recent crisis demonstrated the tendency of abuses to migrate to the part of the market where weaker regulation permitted them to flourish. Excluding private offerings from the requirement would incent issuers to avoid compliance by shifting their efforts from public offerings to private ones, thereby undermining the rule's effectiveness overall. Such a result would be inconsistent with the intent behind the Act's asset review requirements.

We appreciate the opportunity to comment and would be happy to provide any further information that would be helpful.

Sincerely,

Ellen Harnick
Senior Policy Counsel