

Commercial

Impact on CMBS Servicing Regulation, Disclosure and Reporting

*Memorandum from Mortgage Bankers Association and
Akin Gump Strauss Hauer & Feld LLP*

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MEMORANDUM

To: CMBS Industry

From: Mortgage Bankers Association
Akin Gump Strauss Hauer & Feld LLP

Re: Securities and Exchange Commission Asset-Backed Securities; Final Rule
Published in the Federal Register on January 7, 2005, Effective March 8, 2005.¹

The Securities and Exchange Commission (the “Commission”) has issued a final rule (“Final Rule”), relating to the disclosure of information involving a registered offering of asset-backed securities (“ABS”), and certain related items. This memorandum is limited to areas of the Final Rule, such as new Regulation AB² and the new reporting requirements that are likely to have significant impact on servicers of securitized commercial mortgage loans. This memorandum is not exhaustive and is not intended to provide or be a substitute for legal advice.

SUMMARY:

The Final Rule addresses four primary regulatory areas affecting asset-backed securities: (1) Securities Act of 1933 (“Securities Act”) registrations; (2) disclosure to potential investors; (3) communications during the offering process; and (4) on-going reporting under the Securities Exchange Act of 1934 (“Exchange Act”). Servicers are affected by all except the third regulatory area.

The areas of the Final Rule that affect servicers include:

- **Principles-based approach.** The Commission adopted a principles-based disclosure in Regulation AB, a sub-part of Regulation S-K that forms the basis for reporting for asset-backed securities transactions under the Securities Act and the Exchange Act.³ The new Regulation AB will capture certain categories of information relating to asset-backed securities transactions, such as the background, experience, performance and roles of various transaction parties, including the sponsor, depositor, issuing entity, the servicing entity, trustee, originators and the administrators that service the financial assets, and the trustee. In addition, the new approach is designed to establish a customized registration, disclosure and reporting system for asset-backed offerings. The SEC rejected bright line requirements in favor of “principles based”

¹ 70 Fed. Reg. 1506 *et seq.* (to be codified at 17 CFR Parts 210, 228, 229, 230, 232, 239, 242, 245, and 249) (proposed January 7, 2005). All remaining citations are to the proposed final regulations.

² 17 CFR 229.1100 through 229.1123.

³ 70 Fed. Reg. 1506, 1582.

guidelines that leave it **to the issuer** to determine what is required. The idea is that there are few “one size fits all” rules that fit all types of asset backed securities. In particular, the SEC qualified most disclosure requirements to what is “material” as defined in the securities laws.

- **More disclosure about servicers.** Under the Final Rule, Servicers will disclose information about their servicing function, experience, outsourcing, financial condition, and servicing agreement (which must be filed with the prospectus supplement as an exhibit).⁴ It is important to note that all disclosure is limited to information that is material. A definition of “material”, from a securities law perspective, is not a bright line test. Issuers will lead the way in modifying current industry standards or developing new standards to comply with requirements of the Final Rule.
- **More reporting required.** The Final Report requires the following reports under the Exchange Act, replacing the current ABS reporting⁵: Review each for materiality discussion.
 - ***Form 10-D report***⁶ (new) must be filed within 15 days of each distribution report. Form 10-D must be signed by either the depositor, or in the alternative, on behalf of the issuing entity by a duly authorized representative of the servicer (or master servicer if multiple servicers were involved). The obligations include reporting asset information already reported in the CMBS investor reporting package, and certain additional information. Form 10-D is allowed to incorporate by reference certain static pool information on an internet site if static pool data is deemed material. No form is provided, because the Commission’s approach is principles-based - the idea being that what is material for one transaction may not be material for another.⁷ Form 10-D can be signed by the depositor or the master

⁴ In an informal conference call with MBA members, Commission staff indicated that when the servicing agreement is not complete for filing with the prospectus supplement (requiring a draft servicing agreement to be filed), that the prospectus supplement may either be amended subsequently or a Form 8-K may be filed with the final version of the servicing agreement. As to any portions of the servicing agreement desired to remain confidential, the existing Commission procedure must be followed.

⁵ Current filing required: (1) monthly filing under the cover of Form 8-K for the distribution reports that detail the payments and performance of financial assets in the asset pool and payments under the securities backed by that pool; (2) filing under the cover of Form 8-K for certain extraordinary events; (3) filing under a Form 10-K a servicer’s statement of compliance with its servicing obligations and report by an independent public accountant regarding compliance with particular servicing criteria, i.e., USAP; and (4) filing a certification under Section 302 of the Sarbanes-Oxley Act.

⁶ 17 CFR 249-312; 70 Fed. Reg. 1506, 1626-1630.

⁷ Rule 12b—20 (17 CFR 240.12b—20) states: “In addition to the information expressly required to be included in a statement or report, there shall be added such further material information, if any, as may be necessary to make the required statements, in the light of the circumstances under which they are made not misleading.”

servicer. It is anticipated in most instances the depositor would sign the Form 10-D to assure ongoing compliance.

- **Form 10-K report**⁸ (new version for ABS) to be filed generally 90 days after the end of the fiscal year. It may be signed by either the depositor or the master servicer, but note that the Sarbanes-Oxley certification must be signed by the same person. As with the Form 10-D, it is anticipated that the depositor will sign Form 10K. Especially relevant to the servicer are required disclosures on legal proceedings related to the assets, and to Significant Obligor⁹ financial information that must be disclosed. The former is self-explanatory, while the latter deals with an asset or group of assets representing 10% or more of the pool assets, for which financial information must be provided with the Form 10-K.
- **Form 10-K Servicer Compliance Statement**¹⁰ (new) must be filed as Exhibit 35 to the Form 10-K report. It must be signed on behalf of each servicer that services 10% or more of pool assets, by that servicer's officer in charge of servicing. Among other things, the certification must state that to the best of such signing officer's knowledge and except as otherwise disclosed, the servicer has fulfilled its servicing obligations in all material aspects for the reporting period (fiscal year).
- **Sarbanes-Oxley certification (Section 302**¹¹) (modified) that must be signed by a natural person who is the senior officer in charge of securitization of either the **depositor** or in the alternative, on behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer (master servicer if there are multiple servicers); provided, however, the same person who signs the Form 10-K must sign this certification, which is then filed with the Form 10-K. The certifying party must collect from the other parties conducting servicing activities and meeting the SEC threshold test their Assessment of Compliance with Servicing Criteria and their registered Assessment of Compliance with Servicing Criteria and their registered public accounting firm's Attestations. Importantly, the signer of the Sarbanes-Oxley certification is responsible for certifying that reports prepared by all parties participating in the servicing function as specified have been included, except as otherwise disclosed and note any material instances

⁸ 17 CFR 249.220f; 70 Fed. Reg. 1570, 1625-1626.

⁹ A Significant Obligor means any of the following: (1) an obligor or a group of affiliated obligors on any pool asset or group of pool assets if such pool asset or group of pool assets represents 10% or more of the asset pool; (2) A single property or group of related properties securing a pool asset or a group of pool assets if such pool asset or group of pool assets represents 10% or more of the asset pool; (3) a lessee or group of affiliated lessees if the related lease or group of leases represents 10% or more of the asset pool. 17 CFR 229.1101(k).

¹⁰ 17 CFR 229.1123.

¹¹ 70 Fed. Reg. 1506, 1569-1570.

of noncompliance. In the event that a servicing party does not perform a specific servicing function listed for the Assessment of Compliance with Servicing Criteria and Accountant's Attestation, it may so indicate in writing and that fact must be disclosed in the Sarbanes-Oxley certification.

- ***Form 10-K Report on Assessment of Compliance with Servicing Criteria and Accountant's Attestation***¹² (supplants the USAP¹³ on new transactions and the servicer's current compliance certificate) is required from all parties performing servicing functions, based on the SEC threshold test. These reports will be exhibits to the Form 10-K report. The Assessment of Compliance with Servicing Criteria is based on specific listed criteria regarding general servicing, cash collection and administration, investor remittances and reporting, and pool asset administration. The annual third party assessment should cover all the servicing functions being performed by the party; if the party is not performing a SEC stated function, then no review is required. Each party performing servicing functions must assess its compliance with listed servicing criteria and must disclose any material noncompliance. The Accountant's Attestation must also disclose any material noncompliance. Any material noncompliance with listed servicing criteria or the fact that a servicing party's Assessment of Compliance with Servicing Criteria or Accountant's Attestation is missing must be disclosed in the Form 10-K.
- ***Form 8-K report for ABS***¹⁴ (amended for ABS use) is required to be filed upon the occurrence of events in certain designated categories, in addition to other material events. Either the depositor, or in the alternative, the servicer may sign the Form 8-K. Examples of required Form 8-K reporting affecting servicers include modification of a servicing agreement, bankruptcy of a servicer, an event of default under a loan that would materially alter the amortization schedule or distribution of cash flows of the certificates, and appointment of a new servicer.
- **Platform approach to enforcement** regarding static information, Significant Obligors, and similar information have been added. The Commission anticipates that information about the registrant's prior securitized asset pools of the same or similar types of assets would be material information desired by investors. Thus, for future disclosure in a registrant's later ABS securitization, the current servicer may be asked to maintain and update, for future use as "static information," information about the pool concerning delinquency, cumulative loss, prepayment data over the life of the pool, and similar information.¹⁵ The Final Rule requires that such static pool

¹² 17 CFR 229.1122.

¹³ USAP refers to the Uniform Single Attestation Program.

¹⁴ 70 Fed. Reg. 1506, 1577-1578.

¹⁵ 17 CFR 229.1105.

information is to be kept on an internet site, free of charge, for not less than 5 years.¹⁶ Such record-keeping would expand a servicer's traditional obligations. Likewise, the registrant will be required to report information about Significant Obligors¹⁷, and update that information in the Form 10-D - a job that again, the issuer may ask the servicer to perform.

- **Platform approach to enforcement.** With the Final Rule, the Commission has continued the “platform level” assessment for purposes of assessing servicing compliance. According to the Final Rule commentary, “this means an assessment of compliance with respect to all asset-backed securities transactions involving the asserting party that are backed by assets of the type backing the asset-backed securities covered by the Form 10-K report.” This allows “a single assessment and assertion regarding compliance for entities involved in multiple ABS transactions, as compared to requiring separate assessments for each individual transaction, which might be more costly and administratively burdensome.”¹⁸
- **Transition of Final Rule.** The Final Rule became effective on March 8, 2005. Under the Final Rule, any registered offering of asset-backed securities commencing with an initial bona fide offer after December 31, 2005, and the asset-backed securities that are the subject of registered offering, must comply with the Final Rule. For registrations statements filed after August 31, 2005, those statements must be amended subsequently to make the prospectus compliant. For registration statements that are filed on or before August 31, 2005, the prospectus and the prospectus supplement, taken together, must comply with the Final Rule.¹⁹

IMPORTANT DEFINITIONS:

Asset-backed securities are securities that are backed by a discreet pool of self-liquidating financial assets.²⁰ The definition does not distinguish between pass-through and pay-through asset-backed securities; nor does it limit application to a list of eligible assets that can be securitized, so long as such assets meet the general principle that they are a discreet pool of financial assets that by their terms convert into cash within a finite period. So-called “synthetic

¹⁶ 17 CFR 232.312.

¹⁷ 17 CFR 229.1112.

¹⁸ 70 Fed. Reg. 1506, 1573.

¹⁹ 70 Fed. Reg. 1506, 1581.

²⁰ Asset-backed security means a security that is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights to other assets designed to assure the servicing or timely distributions of proceeds to the security holders; provided that in the case of financial assets that are leases, those assets may convert to cash partially by the cash proceeds from the disposition of the physical property underlying such leases. Securities and Exchange Commission – Asset-Backed Securities, regarding Regulation AB. 17 CFR 229.1101(c)(1). Additional conditions not relevant to this memo also apply.

securitizations” are not included in Regulation AB’s basic definition of asset-backed securities for purposes of determining whether the security qualifies for the particular registration, disclosure and reporting regimes under the Securities Act and the Exchange Act.²¹ The issuing entity must be limited to passively owning or holding the pool of assets, and issuing the asset-backed securities supported by those assets, and other activities reasonably incidental thereto. The issuing entity may not be an investment company under the Investment Company Act. For purposes of the Final Rule, the depositor is deemed the issuer.²² The legal nature of the issuing entity, whether a trust, a limited purpose subsidiary or other legal person, is not necessarily relevant, so long as its activities are limited to passively owning or holding the pool assets and other reasonably incidental activities.²³ No assets in the asset-backed securities pool may be non-performing as of the cut-off date.²⁴

The SEC definition of a *servicer* is any person responsible for the management or collection of the pool assets of a securitization, or for making allocations or distributions to holders of the asset-backed securities.²⁵ This does not include a trustee that makes allocations or

²¹ Synthetic securitizations do not meet the criterion of a discreet pool of financial assets that by their terms convert into cash. Payments on the securities in a synthetic securitization can primarily or entirely comprise payments based on the value of a reference asset which is unrelated to the value of or payments on any actual assets in the pool. Interest Rate and currency swaps covering either or both the principal or interest payments of assets in the pool held by the issuer are, on the other hand designed to reduce or alter risk resulting from those assets and do fall within the definition of asset-backed security. The return on the asset-backed securities is still primarily based on the performance of financial assets in the pool.

²² Regulation AB, 17 CFR 230.191.

²³ The issuing entity must not be an investment company under the Investment Company Act or become one as a result of the asset-backed securities transaction. The activities of the issuing entity must be limited to passively owning or holding the pool of assets, issuing the asset-backed securities supported by those assets, and other activities reasonably incidental thereto.

²⁴ Regulation AB clarifies that an asset pool having total delinquencies of up to 20% (as of the cutoff date, or for a master trust as of the date as of which delinquency and loss information is presented in the prospectus) may still be considered an asset-back security. Delinquent assets may not constitute 50% or more as measured by dollar value, of the asset pool. An asset is delinquent if any portion of a contract required payment on the asset is more than 30 or 31 days, or a single payment cycle, as applicable, past due from the contractual due date, all as determined in accordance with the transaction agreement, the delinquency recognition policies of the sponsor or its affiliate that originated the asset, of the servicer, or the delinquency recognition policies established by some sort of safety and soundness regulator of any of these entities, with the most restrictive definition controlling. However, no non-performing assets (assets that should be or were charged off in full or part) may be part of the asset pool as of the cut-off date. Non-performing and delinquent assets that are not funded or purchased by proceeds from the asset-backed securities and that are not considered in cash flow calculations for the asset-backed securities need not be considered as part of the asset pool for purposes of determining non-performing and delinquency thresholds—but clear disclosure of this is required. See 17 CFR 229.1101(c)(2), (d) and (g). None of the foregoing in this footnote takes into consideration any impact for a securitization of the REMIC rules under the Internal Revenue Code.

²⁵ Servicer means any person responsible for the management or collection of the pool assets or making allocations or distributions to holders of asset-backed securities. The term servicer does not include a trustee of the issuing entity of the asset-backed securities that makes allocations or distributions to holders of the asset-backed

distributions received from a servicer, but that does not otherwise perform the function of a servicer.²⁶ The definition of “servicer” was intended to capture the entire spectrum of activity to include both collection and asset maintenance and cash flow allocation and distribution. The SEC has made clear that the definition includes master servicers, special servicers and primary servicers (as well as trustees in the CMBS context). In keeping with its stance that the definition is “principle based”, the regulation does not specify what types of subcontractors or vendors may also be included. It would appear that at least some decision making authority for one of the covered servicing obligations would be required for a subcontractor to be a “servicer”. However, the industry, the issuers and each servicer will have to reach some consensus on what standards to apply.

GENERAL DISCUSSION:

The Final Rule creates a whole new system for asset-backed securities registration and reporting. The Final Rule makes the following additional changes:

■ **Additional Securities Act registration changes:**

- All registered offerings of asset-backed securities must be registered either on Form S-1 or Form S-3. The types of investment grade asset-backed securities that qualify for shelf registration have been expanded.²⁷
 - Offerings of asset-backed securities eligible for a Form S-3 registration are excluded from the requirements of Exchange Act Rule 15(c)(2)-(8)(b) to deliver a preliminary prospectus prior to the delivery of a confirmation of sale. In addition, the Final Rule no longer requires registration or delivery of a so-called “evergreen” prospectus for market-making transactions for asset-backed securities.
 - Certain disclosures will be required relating to significant credit enhancement or other cash flow support for asset-backed securities.
 - Requirements are designated with respect to when financial information regarding third parties must be incorporated by reference or referred to in a registration.

■ **Additional Exchange Act reporting changes.** The Final Rule makes the following additional Exchange Act changes:

securities, if the trustee receives such allocations of distributions from a servicer and the trustee does not otherwise perform the functions of a servicer. 17 CFR 229.1101(j).

²⁶ 70 Fed. Reg. 1506, 1574.

²⁷ The Final Rule codifies a modified staff position that Exchange Act reporting obligations regarding other asset-backed securities of the same asset class established by the depositor or an affiliate of the depositor must have been satisfied to maintain Form S-3 eligibility for new registration statements.

- excludes quarterly reporting on Form 10-Q;²⁸ and
- exempts asset-backed securitizations from filing under Section 16 of the Exchange Act, 15 U.S.C. 78(p) (change of more than 10% direct or beneficial ownership, etc.).²⁹
- The Final Rule does not change the depositor's ability to suspend as to any fiscal year (other than the fiscal year within which the registration statement became effective) the depositor's Exchange Act Section 15(d) reporting obligations if, at the beginning such fiscal year the securities of each class to which the registration statement relates are held of record by less than 300 persons.³⁰

SPECIFIC CHANGES AFFECTING SERVICERS:

- **Servicer disclosure in the registration statement.** Under Regulation AB, using the SEC definition of servicer noted above, disclosure about each servicer meeting the threshold test must be given in the prospectus supplement. The issuer is responsible for compliance with respect to the information disclosed as is the case today. All disclosure is limited to material information. Accordingly, while the SEC has specified categories of information that are not typically described in disclosure today, in general, the "all material information standard" really has not changed. Accordingly, it should not be anticipated that significant additional information will need to be disclosed but, additional parties will participate in the disclosure process (primary servicers, special services and CMBS trustees). The disclosure must include information regarding the entire servicing function, including a clear introductory description of the roles, responsibilities and oversight requirements of the entire servicing process and the parties involved, including identifying:

- Each master servicer;
- Each affiliated servicer;
- Each unaffiliated servicer (such as primary servicers) that services 10% or more of the pool assets; and
- Any other material servicer responsible for calculating or making distributions to holders of the asset-backed securities, performing work-outs or foreclosures, or other aspect of the servicing of the pool assets or the asset-backed securities upon which the performance of the pool assets or the asset-backed securities is materially dependent.

²⁸ 70 Fed. Reg. 1506, 1579.

²⁹ 70 Fed. Reg. 1506, 1580.

³⁰ 17 CFR 240.15d-22.

■ **Each master servicer, affiliated servicer, and unaffiliated servicer that services 20% or more of the assets, may be asked by the issuer to report additional information to the extent material, fitting into three general categories³¹:**

● **Basic information and experience.**

- How long it has been servicing assets.
- A general discussion of the servicer's experience in servicing assets of any type.
- More detailed discussion of the servicer's experience in, and procedures for, servicing assets of the type included in the current transaction.
- Material changes to the servicer's policies or procedures in servicing assets of the same type during the past three (3) years.
- Information regarding the size, composition and growth of the servicer's portfolio of serviced assets of the type to be securitized.
- Information on factors related to the servicer that may be material to an analysis of the servicing of the assets or the asset-backed securities, as applicable.
- Whether any prior securitizations of the same asset type involving the servicer have defaulted or experienced an early amortization or other performance triggering event because of servicing.
- The extent of outsourcing that the servicer utilizes.
- If there has been previous disclosure of material noncompliance with servicing criteria with respect to other securitizations involving the servicer.
- The servicer's financial condition may be required to be discussed to the extent that there is a material risk that the effect on one or more aspects of servicing resulting from such financial condition could have a material impact on pool performance or performance of the asset-backed securities. General financial information is not required; rather, this refers to particular information when there is a material risk the financial condition could have a material impact.

³¹ 17 CFR 229.1108(b).

- ***The agreement with the servicer and servicing practices.***
 - Description of the material terms of the servicing agreement.
 - Description of the servicer's duties regarding the asset-backed securities transaction.
 - The servicing agreement will be required to be filed as an exhibit. (See existing procedures for confidential treatment information that otherwise would be required to be disclosed.)
 - The manner in which collections on the assets will be maintained, including the extent of the commingling of funds.
 - Terms or arrangements regarding advances of funds regarding cash flows, including interest or other fees charged and terms of recovery. Statistical information regarding past advance activity will be required, if material.
 - The servicer's process for handling delinquencies and losses.
 - Any material ability to waive or modify any terms, fees, penalties or payments on the assets.
 - Custodial requirements regarding the assets.
- **Originator disclosure in the registration statement.**³² Each originator that has originated or is expected to originate 10% or more of the pool assets must be identified. If the percentage contributed to, or is expected to be contributed to, the pool is 20% or more of the pool, additional information regarding the originator's origination program must be provided, including, if material, information regarding the size and composition of the originator's portfolio, as well as information material to an analysis of the performance of the pool assets, such as the originator's underwriting criteria and origination experience.
- **Static pool data.**³³ In a standard conduit transaction, the CMBS industry generally appears to be moving toward approaching static pool data as not material in CMBS deals. MBA strongly encourages the review of each transaction for a case by case decision on whether static pool data is necessary. However, even if determined to be material, issuers are responsible for gathering and offering the information in the Prospectus or on their website. Regulation AB provides that the sponsor will be required to furnish certain static pool information regarding prior securitized pools of the sponsor that do not include the currently

³² 17 CFR 229.1110.

³³ 17 CFR 229.1105.

offered pool.³⁴ Originators, pre-securitization servicers, and securitization servicers may be asked to track and provide to the sponsor certain asset level information for each commercial mortgage loan for the sponsor's use as static information to be disclosed in its future registrations. Such information to be tracked may be based on the current asset information required to be disclosed for each new securitization (see the next paragraph).

- ***The Final Rule specifies that while the material summary characteristics may vary, these characteristics of prior securitized pools or vintage origination years (for lesser-seasoned servicers) may be included in static pool information:*** the number of pool assets; original pool balance; weighted average initial pool balance; weighted average interest or note rate; weighted average original term; weighted average and minimum and maximum standardized credit scores or other applicable measures of obligor credit quality; product type; loan purpose; loan-to-value information; distribution of assets by loan or note rate; and geographic distribution information.
- ***Static pool information of each sponsor's past securitizations is to be furnished relating to the 5 previous years, or if the sponsor has less experience, for so long as the sponsor has been either securitizing assets of the same type or making originations or purchases of the same type.*** The most recent periodic increment for the furnished data must be as of a date no later than 135 days of the date of first use of the prospectus. Servicers may be asked to play a significant role in providing or maintaining this static pool information.
- **Depositor's required disclosure of financial information about Significant Obligor is likely to impact pre-securitization obligors and servicers.** For very large loans or large groups of affiliated obligors, the originator will need to obtain financial information from the Significant Obligor. A Significant Obligor is an obligor or group of obligors of pool assets that represent 10% or more of the asset pool. If the pool assets relating to a Significant Obligor represents 10% or more, but less than 20%, of the asset pool, selected financial data required by Item 301 of Regulation S-K must be provided.³⁵ If pool assets relating to the Significant Obligor represent 20% or more of the asset pool, audited financial statements

³⁴ Static information is allowed to vary, depending on certain circumstances and material. Static information in general should be reported for pools originated in the last 5 years, to include (among other things): present delinquency, cumulative loss and prepayment data for each prior securitized pool in period increments over the life of the pool, summary information including, if material, the number of pool assets, original pool balance, weighted average initial pool balance, weighted average interest or note rate, weighted average original term, weighted average remaining term, loan purpose, loan-to-value information and the like. See 17 CFR 229.1105.

³⁵ Item 301 requires, among other things, for each of the last 5 fiscal years (or life of the registrant and predecessors, if less) and for such additional years necessary to keep the information from being misleading, selected financial data, including net sales or operating revenues; income (loss) from continuing operations per common share; total assets; and more.

meeting the requirements of Regulation S-X are required.³⁶ Fortunately, the issuer may include a reference to a Significant Obligor's Exchange Act reports in lieu of providing the required financial information in the filing, so long as certain detailed criteria are met.³⁷ Servicers should note that in the event that a tenant is identified by the issuer as a Significant Obligor, the servicer may be asked by the issuer to collect that tenant's financial statements. Issuers can (as now) structure their securities to provide that if an asset-backed securities issuer is unable or unwilling to provide the Significant Obligor's financial information, the transaction, or the portion of the transaction, will terminate, such as by distributing the pool assets to investors or selling the pool assets and liquidating the asset-backed securities.

REGULATION AB, FORM 10-D, FORM 10-K, AND FORM 8-K REPORTING AND UPDATING ASSET POOL INFORMATION WILL REQUIRE SIGNIFICANT EFFORT FROM SERVICERS:

DISCLOSURE FOR FORM 10-D REPORTS:

- Form 10-D is the report for periodic distribution and pool performance information.
- Form 10-D:
 - Must be filed within 15 days after each required distribution date on the asset-backed securities. May apply for a 5 calendar day extension.³⁸
 - **Must be signed by either the depositor or by a duly authorized representative of the servicer** (or master servicer if multiple servicers are involved) on behalf of the issuing entity.
 - Must disclose information about the distribution and pool performance that will be required by Item 1121 of Regulation AB. Any information required by Item 1121 that was included in the attached distribution report (and any other duplicated information) need not be repeated in Form 10-D.

³⁶ See for example, Rule 3-14 of Regulation S-X (17 CFR 210.3-14). Different requirements if the pool assets related to the Significant Obligor are asset-backed securities.

³⁷ See 17 CFR 290.1112.3(a).

³⁸ See Exchange Act Rule 12b-25 for Form 10-D filings.

Disclosure for Form 10-D

| <i>Form Items and Source of Disclosure Required</i> |
|---|
| Item 1. Distribution and Pool Performance Information (Item 1121 of Regulation AB). |
| Item 2. Legal Proceedings (Item 1117 of Regulation AB). |
| Item 3. Sales of Securities and Use of Proceeds (Item 2 of Part II of Form 10-Q). |
| Item 4. Defaults Upon Senior Securities (Item 3 of Part II of Form 10-Q). |
| Item 5. Submission of Matters to a Vote of Security Holders (Item 4 of Part II of Form 10-Q). |
| Item 6. Significant Obligors of Pool Assets (Item 1112(b) of Regulation AB). |
| Item 7. Significant Enhancement Provider Information (Items 1114(b)(2) and 1115(b) of Regulation AB). |
| Item 8. Other Information. |
| Item 9. Exhibits (Item 601 of Regulation S-K). |

- For Item 1 above, Distribution and Pool Performance Information, examples of illustrative characteristics as listed in Item 1121 of Regulation AB (not deemed an exhaustive list) are the following:
 - 1) Any applicable record dates, accrual dates, determination dates for calculating distributions and actual distribution dates for the distribution period.
 - 2) Cash flows received and the sources thereof for distributions, fees and expenses (including portfolio yield, if applicable).
 - 3) Calculated amounts and distribution of the flow of funds for the period itemized by type and priority of payment, including:
 - i) Fees or expenses accrued and paid, with an identification of the general purpose of such fees and the party receiving such fees or expenses.
 - ii) Payments accrued or paid with respect to enhancement or other support identified in Item 1114 of Regulation AB (such as insurance premiums or other enhancement maintenance fees), with an identification of the general purpose of such payments and the party receiving such payments.
 - iii) Principal, interest and other distributions accrued and paid on the asset-backed securities by type and by class or series and any principal or interest shortfalls or carryovers.
 - iv) The amount of excess cash flow or excess spread and the disposition of excess cash flow.
 - 4) Beginning and ending principal balances of the asset-backed securities.

- 5) Interest rates applicable to the pool assets and the asset-backed securities, as applicable. Consider providing interest rate information for pool assets in appropriate distributional groups or incremental ranges.
- 6) Beginning and ending balances of transaction accounts, such as reserve accounts, and material account activity during the period.
- 7) Any amounts drawn on any credit enhancement or other support identified in Item 1114 of Regulation AB, as applicable, and the amount of coverage remaining under any such enhancement, if known and applicable.
- 8) Number and amount of pool assets at the beginning and ending of each period, and updated pool composition information, such as weighted average coupon, weighted average life, weighted average remaining term, pool factors and prepayment amounts. For asset-backed securities backed by leases where a portion of the securitized pool balance is attributable to residual values of the physical property underlying the leases, this information also would include turn-in rates and residual value realization rates.
- 9) Delinquency and loss information for the period. In addition, describe any material changes to the information specified in Item 1100(b)(5) of Regulation AB regarding the pool assets.
- 10) Information on the amount, terms and general purpose of any advances made or reimbursed during the period, including the general use of funds advanced and the general source of funds for reimbursements.
- 11) Any material modifications, extensions or waivers to pool asset terms, fees, penalties or payments during the distribution period or that have cumulatively become material over time.
- 12) Material breaches of pool asset representations or warranties or transaction covenants.
- 13) Information on ratio, coverage or other tests used for determining any early amortization, liquidation or other performance trigger and whether the trigger was met.
- 14) Information regarding any new issuance of asset-backed securities backed by the same asset pool, any pool asset changes (other than in connection with a pool asset converting into cash in accordance with its terms), such as additions or removals in connection with a pre-funding or revolving period and pool asset substitutions and repurchases (and purchase rates, if applicable), and cash

flows available for future purchases, such as the balances of any pre-funding or revolving accounts, if applicable. Disclose any material changes in the solicitation, credit-granting, underwriting, origination, acquisition or pool selection criteria or procedures, as applicable, used to originate, acquire or select the new pool assets.

- For Item 2 above, Legal Proceedings, a proceeding only will need to be reported for the distribution period in which it first became a reportable event and in subsequent periods where there have been material developments.

DISCLOSURE FOR FORM 10-K REPORTS:

- **The Form 10-K report must be signed either on behalf by the senior officer in charge of securitization of the depositor, or on behalf of the issuing entity by the senior officer in charge of the servicing function of the servicer (the master servicer if there are multiple servicers).**

DISCLOSURE FOR FORM 10-K FOR ABS

| Existing form items | Required if applicable | May be omitted |
|---------------------------------|------------------------|----------------|
| Item 1. Business | | • |
| Item 2. Properties | | • |
| Item 3. Legal Proceedings | | • |

DISCLOSURE FOR FORM 10-K FOR ABS—Continued

| Existing form items | Required if applicable | May be omitted |
|---|------------------------|----------------|
| Item 4. Submission of Matters to a Vote of Security Holders | | • |
| Item 5. Market for Registrant's Common Equity and Related Stockholder Matters | | • |
| Item 6. Selected Financial Data | | • |
| Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations | | • |
| Item 7A. Quantitative and Qualitative Disclosure About Market Risk | | • |
| Item 8. Financial Statements and Supplementary Data | | • |
| Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure | | • |
| Item 9A. Controls and Procedures | | • |
| Item 9B. Other Information | • | |
| Item 10. Directors and Executive Officers of the Registrant | | • ¹ |
| Item 11. Executive Compensation | | • ¹ |
| Item 12. Security Ownership of Certain Beneficial Owners and Management | | • ¹ |
| Item 13. Certain Relationships and Related Transactions | | • ¹ |
| Item 14. Principal Accountant Fees and Services | | • |
| Item 15. Exhibits and Financial Statement Schedules | • | |
| Additional Disclosure Items from Regulation AB: | | |
| Item 1112(b) of Regulation AB, Significant Obligor Financial Information | • | |
| Items 1114(b)(2) and 1115(b) of Regulation AB, Significant Enhancement Provider Financial Information | • | |
| Item 1117 of Regulation AB, Legal Proceedings | • | |
| Item 1119 of Regulation AB, Affiliations and Certain Relationships and Related Transactions | • | |
| Item 1122 of Regulation AB, Compliance with Applicable Servicing Criteria | • | |
| Item 1123 of Regulation AB, Servicer Compliance Statement | • | |

¹ If the issuing entity does not have any executive officers or directors.

- Item 1119, Affiliations and Certain Relationships and Related Transactions, may be left blank if substantially the same information had been reported previously in a Form 10-K report, in a registration for the asset pool, or in a prospectus under the same CIK code.

FORM 10-K SERVICER COMPLIANCE STATEMENT:

- **Item 1123, Servicer Compliance Statement must be filed as Exhibit 35 to the Form 10-K report.** This is a different compliance statement from the asset-backed assessment/attestation of compliance with servicing criteria and the Section 302 Sarbanes-Oxley certification. This statement must be signed by an authorized officer of the servicer, and certify to the effect that a review of the activities of the servicer and its performance under the servicing agreement was made under the officer's supervision and that to the best of the officer's knowledge based on such review, and except as otherwise disclosed, the servicer has fulfilled its obligations under the servicing agreement in all material respects throughout the reporting period. The Final Rule does not provide a form for the compliance statement.
 - If there had been a failure known to the officer, of the servicer to fulfill any obligation in any material respect under the servicing agreement, the nature and status of the failure must be specified.
 - If multiple servicers are involved in servicing the pool assets, separate compliance statements are required from the master servicer, each affiliated servicer, and each unaffiliated servicer that services 10% or more of the pool assets.³⁹

CERTIFICATIONS UNDER SECTION 302 OF THE SARBANES-OXLEY ACT:⁴⁰

- **The required form must be signed by a natural person who is either the senior officer in charge of securitization of the depositor or the senior officer in charge of servicing of the servicer (if there are multiple servicers and the servicer is to sign, the senior representative of the SEC master servicer must sign).** The person that signs the Form 10-K also signs the Section 302 certification.
 - *The person that signs the Section 302 certification must, as to the full fiscal period (not just a point in time):*

³⁹ 17 CFR 229.1123; 17 CFR 229.1108(a)(2)(i)-(iii).

⁴⁰ 70 Fed. Reg. 1506, 1569-1571.

- certify in paragraph 5 of that certification that assertions prepared by all parties participating in the servicing function as specified, and associate attestation reports from registered public accountants, have been included as exhibits to the report on Form 10-K, except as otherwise disclosed in the report; and
- certify that all material instances of noncompliance with the servicing criteria described in the report have been disclosed in the report on Form 10-K.
 - ◆ Therefore, the party certifying under Section 302 must:
 - accumulate assertions from all parties participating in the servicing function as specified, along with associated attestation reports from registered public accounting firms and file them as exhibits to the report on Form 10-K; and
 - conduct a good faith overview of the assertion to ensure there are no glaring omissions and accountants' attestations cover all of the servicing criteria.
- ***The signer of the Section 302 certification must disclose in Form 10-K if any of the reports to be accumulated are missing, and provide an associated explanation.*** The signer of the Section 302 certification must disclose material instances of noncompliance described in the reports accumulated.

- *The form of the Section 302 certification follows:*

CERTIFICATIONS

I, [identify the certifying individual], certify that:

1. I have reviewed this report on Form 10-K and all reports on Form 10-D required to be filed in respect of the period covered by this report on Form 10-K of [identify the issuing entity] (the "Exchange Act periodic reports");

2. Based on my knowledge, the Exchange Act periodic reports, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, all of the distribution, servicing and other information required to be provided under Form 10-D for the period covered by this report is included in the Exchange Act periodic reports;

4. [I am responsible for reviewing the activities performed by the servicer(s) and based on my knowledge and the compliance review(s) conducted in preparing the servicer compliance statement(s) required in this report under Item 1123 of Regulation AB, and except as disclosed in the Exchange Act periodic reports, the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s); and]

[Based on my knowledge and the servicer compliance statement(s) required in this report under Item 1123 of Regulation AB, and except as disclosed in the Exchange Act periodic reports, the servicer(s) [has/have] fulfilled [its/their] obligations under the servicing agreement(s); and]

5. All of the reports on assessment of compliance with servicing criteria for asset-backed securities and their related attestation reports on assessment of compliance with servicing criteria for asset-backed securities required to be included in this report in accordance with Item 1122 of Regulation AB and Exchange Act Rules 13a-18 and 15d-18 have been included as an exhibit to this report, except as otherwise disclosed in this report. Any material instances of noncompliance described in such reports have been disclosed in this report on Form 10-K.

[In giving the certifications above, I have reasonably relied on information provided to me by the following unaffiliated parties [name of servicer, sub-servicer, co-servicer, depositor or trustee].]

Date:

[Signature]
[Title]

FORM 10-K REPORT ON ASSESSMENT OF COMPLIANCE WITH SERVICING CRITERIA (ITEM 1122) AND ACCOUNTANT'S ATTESTATION:⁴¹

- **This modified reporting system replaces USAP.**⁴² A detailed comparison undertaken by the Mortgage Bankers Association is attached to this memorandum.
- *Reports on assessments of compliance with servicing criteria are required for each party participating in the servicing function (unless the party's servicing activities relate only to 5% or less of the pool assets and those servicing activities do not cover all assets), with associated attestation reports from registered public accountants, to be filed as exhibits to the Form 10-K report.*
 - *This report must include:*
 - A statement of the party's responsibility for assessing compliance with the servicing criteria applicable to it. Servicing criteria must consist of 4 broad categories: general servicing considerations; cash collection and administration; investor remittances, and reporting; and pool asset administration (if a servicer does not perform a specific servicing function it may so indicate in writing, and that fact must be disclosed in both the Section 302 certification and the accountant's attestation report).
 - A statement that the party used the servicing criteria to assess compliance with the applicable servicing criteria. The party's assessment of compliance with the applicable servicing criteria as of and for the period ending with the end of the fiscal year covered by the Form 10-K. The Form 10-K report must include disclosure of any material instance of noncompliance identified by the party (even if corrected).
 - A statement that a registered public accounting firm has issued an attestation report on the party's assessment of compliance with the applicable servicing criteria as of and for the period ending with the end of the fiscal year covered by the report on Form 10-K.

⁴¹ 17 CFR 229.1122.

⁴² Although USAP has been replaced as a reporting mechanism, the parties may still agree to use it as a private audit mechanism.

- ***The specific requirements of this servicing criteria, assessment requirements and attestation requirements under Item 1122 of Regulation AB are as follows:***
- (A) Reports on assessment of compliance with servicing criteria must be provided as a Form 10-K exhibit and must contain:
- 1) A statement of the serving party's responsibility for assessing compliance with the servicing criteria applicable to it;
 - 2) A statement that the servicing party used the criteria in paragraph (D) on the following page to assess compliance with the applicable servicing criteria;
 - 3) The servicing party's assessment of compliance with the applicable servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10-K report (see 17 CFR § 249.310). This discussion must include disclosure of any material instance of noncompliance identified by the party; and
 - 4) A statement that a registered public accounting firm has issued an attestation report on the servicing party's assessment of compliance with the applicable servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10-K report.
- (B) Registered public accounting firm attestation reports on the party's assessment of compliance with the applicable servicing criteria must be a Form 10-K exhibit.
- (C) Additional disclosure that is required for the Form 10-K report:
- 1) If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (B) of this section, identifies any material instance of noncompliance with the servicing criteria, identify the material instance of noncompliance in the report on Form 10-K.
 - 2) If any party's report on assessment of compliance with servicing criteria required by paragraph (A) of this section, or related registered public accounting firm attestation report required by paragraph (B) of this section, is not included as an exhibit to the Form 10-K report, disclosure that the report is not included and an associated explanation must be provided in the report on Form 10-K.
- (D) Servicing criteria:

General servicing considerations.

- (i) Policies and procedures are instituted to monitor any performance or other triggers and events of default in accordance with the transaction agreements.
- (ii) If any material servicing activities are outsourced to third parties, policies and procedures are instituted to monitor the third party's performance and compliance with such servicing activities.
- (iii) Any requirements in the transaction agreements to maintain a back-up servicer for the pool assets are maintained.
- (iv) A fidelity bond and errors and omissions policy is in effect on the party participating in the servicing function throughout the reporting period in the amount of coverage required by and otherwise in accordance with the terms of the transaction agreements.

2) Cash collection and administration.

- (i) Payments on pool assets are deposited into the appropriate custodial bank accounts and related bank clearing accounts no more than two business days of receipt, or such other number of days specified in the transaction agreements.
- (ii) Disbursements made via wire transfer on behalf of an obligor or to an investor are made only by authorized personnel.
- (iii) Advances of funds or guarantees regarding collections, cash flows or distributions, and any interest or other fees charged for such advances, are made, reviewed and approved as specified in the transaction agreements.
- (iv) The related accounts for the transaction, such as cash reserve accounts or accounts established as a form of over-collateralization, are separately maintained (e.g., with respect to commingling of cash) as set forth in the transaction agreements.

- (v) Each custodial account is maintained at a federally insured depository institution as set forth in the transaction agreements.⁴³
 - (vi) Unissued checks are safeguarded so as to prevent unauthorized access.
 - (vii) Reconciliations are prepared on a monthly basis for all asset-backed securities related bank accounts, including custodial accounts and related bank clearing accounts. These reconciliations:
 - a. are mathematically accurate;
 - b. are prepared within 30 calendar days after the bank statement cutoff date, or such other number of days specified in the transaction agreements;
 - c. are reviewed and approved by someone other than the person who prepared the reconciliation; and
 - d. contain explanations for reconciling items. These reconciling items are resolved within 90 calendar days of their original identification, or such other number of days specified in the transaction agreements.
- 3) Investor remittances and reporting.
- (i) Reports to investors, including those to be filed with the Commission, are maintained in accordance with the transaction agreements and applicable Commission requirements. Specifically, such reports:
 - a. are prepared in accordance with timeframes and other terms set forth in the transaction agreements;
 - b. provide information calculated in accordance with the terms specified in the transaction agreements;

⁴³ For purposes of this criterion, “federally insured depository institution” with respect to a foreign financial institution means a foreign financial institution that meets the requirements of 17 CFR 240.13k-1(b)(1).

- c. are filed with the Commission as required by its rules and regulations; and
 - d. agree with investors' or the trustee's records as to the total unpaid principal balance and number of pool assets serviced by the servicer.
 - (ii) Amounts due to investors are allocated and remitted in accordance with timeframes, distribution priority and other terms set forth in the transaction agreements.
 - (iii) Disbursements made to an investor are posted within two business days to the servicer's investor records, or such other number of days specified in the transaction agreements.
 - (iv) Amounts remitted to investors per the investor reports agree with cancelled checks, or other form of payment, or custodial bank statements.
- 4) Pool asset administration.
 - (i) Collateral or security on pool assets is maintained as required by the transaction agreements or related pool asset documents.
 - (ii) Pool assets and related documents are safeguarded as required by the transaction agreements.
 - (iii) Any additions, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements.
 - (iv) Payments on pool assets, including any payoffs, made in accordance with the related pool asset documents are posted to the applicable servicer's obligor records maintained no more than two business days after receipt, or such other number of days specified in the transaction agreements, and allocated to principal, interest or other items (e.g., escrow) in accordance with the related pool asset documents.
 - (v) The servicer's records regarding the pool assets agree with the servicer's records with respect to an obligor's unpaid principal balance.

- (vi) Changes with respect to the terms or status of an obligor's pool asset (e.g., loan modifications or re-agings) are made, reviewed and approved by authorized personnel in accordance with the transaction agreements and related pool asset documents.
- (vii) Loss mitigation or recovery actions (e.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and repossessions, as applicable) are initiated, conducted and concluded in accordance with the timeframes or other requirements established by the transaction agreements.
- (viii) Records documenting collection efforts are maintained during the period a pool asset is delinquent in accordance with the transaction agreements. Such records are maintained on at least a monthly basis, or such other period specified in the transaction agreements, and describe the entity's activities in monitoring delinquent pool assets including, for example, phone calls, letters and payment rescheduling plans in cases where delinquency is deemed temporary (e.g., illness or unemployment).
- (ix) Adjustments to interest rates or rates of return for pool assets with variable rates are computed based on the related pool asset documents.
- (x) Regarding any funds held in trust for an obligor (such as escrow accounts):
 - a. such funds are analyzed, in accordance with the obligor's pool asset documents, on at least an annual basis, or such other period specified in the transaction agreements;
 - b. interest on such funds is paid, or credited, to obligors in accordance with applicable pool asset documents and state laws; and
 - c. such funds are returned to the obligor within 30 calendar days of full repayment of the related pool asset, or such other number of days specified in the transaction agreements.

- (xi) Payments made on behalf of an obligor (such as tax or insurance payments) are made on or before the related penalty or expiration dates, as indicated on the appropriate bills or notices for such payments, provided that such support has been received by the servicer at least 30 calendar days prior to these dates, or such other number of days specified in the transaction agreements.
- (xii) Any late payment penalties in connection with any payment to be made on behalf of an obligor are paid from the servicer's funds and not charged to the obligor, unless the late payment was due to the obligor's error or omission.
- (xiii) Disbursements made on behalf of an obligor are posted within two business days to the obligor's records maintained by the servicer, or such other number of days specified in the transaction agreements.
- (xiv) Delinquencies, charge-offs and uncollectible accounts are recognized and recorded in accordance with the transaction agreements.
- (xv) Any external enhancement or other support, identified in Item 1114(a)(1) through (3) or Item 1115 of Regulation AB, is maintained as set forth in the transaction agreements.

REPORTING UNDER FORM 8-K:

- **As with Form 10-K, either the depositor or the servicer may sign Form 8-K reports. A listing of the items to be included follows on the next page.**

Disclosure for Form 8-K for ABS

| <i>Existing Form Items</i> | <i>Required if applicable</i> | <i>May be Omitted</i> |
|---|-------------------------------|-----------------------|
| Item 1.01. Entry into a Material Definitive Agreement. | • | |
| Item 1.02. Termination of a Material Definitive Agreement. | • | |
| Item 1.03. Bankruptcy or Receivership. | • | |
| Item 2.01. Completion of Acquisition or Disposition of Assets. | | • |
| Item 2.02. Results of Operations and Financial Condition | | • |
| Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant. | | • |
| Item 2.04. Triggering Events That Accelerate or Increase a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement. | • | |
| Item 2.05. Costs Associated with Exit or Disposal Activities. | | • |
| Item 2.06. Material Impairments. | | • |
| Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing. | | • |
| Item 3.02. Unregistered Sales of Equity Securities. | | • |
| Item 3.03. Material Modifications to Rights of Security Holders. | • | |
| Item 4.01. Changes in Registrant's Certifying Accountant. | | • |
| Item 4.02. Non-Reliance on Previously Issued Financial Statements or a Related Audit Report or Completed Interim Review. | | • |
| Item 5.01. Changes in Control of Registrant. | | • |
| Item 5.02. Departure of Directors or Principal Officers. Election of Directors. Appointment of Principal Officers. | | • |
| Item 5.03. Amendments to Articles of Incorporation or Bylaws. Change in Fiscal Year. | • | |
| Item 5.04. Temporary Suspension of Trading Under Registrant's Employee Benefit Plans. | | • |
| Item 5.05. Amendments to the Registrant's Code of Ethics, or Waiver of a Provision of the Code of Ethics. | | • |
| Item 7.01. Regulation FD Disclosure. | • | |
| Item 8.01. Other Events. | • | |
| Item 9.01. Financial Statements and Exhibits. | • | |
| <i>Additional Items added to Form 8-K for ABS</i> | | |
| Item 6.01. ABS Informational and Computational Material. | • | |
| Item 6.02. Change of Servicer or Trustee. | • | |
| Item 6.03. Change in Credit Enhancement or Other External Support. | • | |
| Item 6.04. Failure to Make a Required Distribution. | • | |
| Item 6.05. Securities Act Updating Disclosure. | • | |

- Item 1.01 and Item 1.02 include the entry into, modification or termination of a material transaction agreement, even if the issuing entity is not a party to the transaction, such as a servicing agreement involving a servicer.
- Item 1.03 requires disclosure if the depositor (or the servicer if the servicer signs the report on Form 10-K on behalf of the issuing entity) becomes aware of the entry of bankruptcy or receivership of the sponsor, depositor, servicer, trustee, Significant Obligor, significant enhancement provider or other material party involved in the asset-backed securities transaction.
- Item 2.04 clarifies that a reportable event also includes the occurrence of an early amortization, performance trigger or other event, including an event of default, which would materially alter the payment priority or distribution of cash flows regarding the asset-backed securities or the amortization schedule of the asset-backed securities.
- Under Item 5.03, any amendment to the governing documents of the issuing entity of the asset-backed securities will trigger disclosure.
- Item 6.01 refers to sponsor dissemination of materials to investors' pre-securitization closing.
- Item 6.02 relates to whether a servicer or a trustee had resigned or had been removed, replaced or substituted, or if a new servicer or trustee had been appointed. Disclosure will be required of the date the event occurred and the circumstances surrounding the change. Also, information relating to the transition and a description required by the applicable item of Regulation AB relating to the new party will be required.
- Accelerating disclosure through the filing of the Form 8-K regarding Item 6.03 does not replace the requirement to file a report on Form 10-D with respect to the related distribution period, e.g., to include pool performance information.
- Item 6.05 relates to instances where the composition of the actual asset pool at the time of issuance of the asset-backed securities differs from the composition of the pool described in the final prospectus for the offering.

Exhibit –
Comparison: Regulation AB and MBA USAP⁴⁴

⁴⁴ The comparison was completed by Heather Million, CPA, Assistant Vice President – Compliance, Saxon Mortgage Services, Inc.

| Sec. § | AB Section Description | Standard # | USAP Standard Description |
|---------|---|------------|--|
| (a) | Reports on assessment of compliance with servicing criteria for asset-backed securities. As required by paragraph (b) of Sec. 240.13a-18 or 240.15d-18 of this chapter, provide as an exhibit from each party participating in the servicing function a report on assessment of compliance with the servicing criteria set forth in paragraph B2 (d) of this section that contains the following: | Intro 1 | Concept of a Uniform Single Attestation Program - The concept of a uniform single attestation program involves the acceptance by different users of a single CPA report on management's written assertion about a servicing entity's compliance with the minimum servicing standards in the USAP... |
| (a) (1) | A statement of the party's responsibility for assessing compliance with the servicing criteria applicable to it; | Intro 2 | Management's Representations - SSAE No. 3 requires that the CPA obtain a written assertion and letter of representation from management. Management's written assertion about a servicing entity's compliance with the minimum servicing standards in the USAP is the basis for testing and, therefore, is integral to the performance of the engagement and the CPA's rendering of an opinion. |
| (a) (2) | A statement that the party used the criteria in paragraph (d) of this section to assess compliance with the applicable servicing criteria; | | |
| (a) (3) | The party's assessment of compliance with the applicable servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10-K report (Sec. 249.310 of this chapter. This discussion must include disclosure of any material instance of noncompliance identified by the party; and | Intro 6 | Reporting Exceptions - The CPA's report pursuant to an examination engagement under SSAE No. 3 includes an opinion on management's assertion regarding a servicing entity's compliance with the minimum servicing standards in the USAP. Consequently, unlike an agreed-upon procedures engagement under SSAE No. 3, specific findings (or "exceptions") are not reported under the USAP unless the CPA concludes that management's assertion is not fairly stated in all material respects. |
| (a) (4) | A statement that a registered public accounting firm has issued an attestation report on the party's assessment of compliance with the applicable servicing criteria as of and for the period ending the end of the fiscal year covered by the Form 10-K | Intro 5 | Report to Users - A servicing entity shall send to each user a copy of the USAP Report resulting from the performance of the USAP. The report shall be submitted to users within ninety (90) days of the end of the servicing entity's reporting period. |
| (b) | Registered public accounting firm attestation reports. Provide the registered public accounting firm's attestation report required by paragraph of Sec. 240.13a-18 or 240.15d-18 of this chapter on the party's assessment of compliance with the applicable servicing criteria as an exhibit. | | |
| (c) | Additional disclosure for the Form 10-K report. | | |

| Sec. § | AB Section Description | Standard # | USAP Standard Description |
|---|--|--------------|--|
| (c) (1) | If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, identifies any material instance of noncompliance with the servicing criteria, identify the material instance of noncompliance in the report on Form 10-K. | | |
| (c) (2) | If any party's report on assessment of compliance with servicing criteria required by paragraph (a) of this section, or related registered public accounting firm attestation report required by paragraph (b) of this section, is not included as an exhibit to the Form 10-K report, disclosure that the report is not included and an associated explanation must be provided in the report on Form 10-K. | | |
| (d) | Servicing Criteria | | |
| General Servicing Consideration | | | |
| (d) (1) (i) | Policies and procedures are instituted to monitor any performance or other triggers and events of default in accordance with the transaction agreements. | | |
| (d) (1) (ii) | If any material servicing activities are outsourced to third parties, policies and procedures are instituted to monitor the third party's performance and compliance with such servicing activities. | | |
| (d) (1) (iii) | Any requirements in the transaction agreements to maintain a back-up servicer for the pool assets are maintained. | | |
| (d) (1) (iv) | A fidelity bond and errors and omissions policy is in effect on the party participating in the servicing function throughout the reporting period in the amount of coverage required by and otherwise in accordance with the terms of the transaction agreements. | VII.1 | A fidelity bond and errors and omissions policy shall be in effect on the servicing entity throughout the reporting period in the amount of coverage represented to investors in management's assertion. |
| Cash Collection and Administration | | | |
| (d) (2) (i) | Payments on pool assets are deposited into the appropriate custodial bank accounts and related bank clearing accounts no more than two business days of receipt, or such other number of days specified in the transaction agreements. | II.1 | Mortgage payments shall be deposited into the custodial bank accounts and related bank clearing accounts within two business days of receipt. |
| (d) (2) (ii) | Disbursements made via wire transfer on behalf of an obligor or to an investor are made only by authorized personnel. | III.1 | Disbursements made via wire transfer on behalf of a mortgagor or investor shall be made only by authorized personnel. |

| Sec. § | AB Section Description | Standard # | USAP Standard Description |
|--|--|------------|--|
| (d) (2) (iii) | Advances of funds or guarantees regarding collections, cash flows or distributions, and any interest or other fees charged for such advances, are made, reviewed and approved as specified in the transaction agreements. | I.2 | Funds of the servicing entity shall be advanced in cases where there is an overdraft in an investor's or a mortgagor's account. |
| (d) (2) (iv) | The related accounts for the transaction, such as cash reserve accounts or accounts established as a form of overcollateralization, are separately maintained (e.g., with respect to commingling of cash) as set forth in the transaction agreements. | | |
| (d) (2) (v) | Each custodial account is maintained at a federally insured depository institution as set forth in the transaction agreements. For purposes of this criterion, "federally insured depository institution" with respect to a foreign financial institution means a foreign financial institution that meets the requirements of Sec. 240.13k-1(b)(1) of this chapter. | I.3 | Each custodial account shall be maintained at a federally insured depository institution in trust for the applicable investor. |
| (d) (2) (vi) | Unissued checks are safeguarded so as to prevent unauthorized access. | III.6 | Unissued checks shall be safeguarded so as to prevent unauthorized access. |
| (d) (2) (vii) | Reconciliations are prepared on a monthly basis for all asset-backed securities related bank accounts, including custodial accounts and related bank clearing accounts. These reconciliations: | I.1 | Reconciliations shall be prepared on a monthly basis for all custodial bank accounts and related bank clearing accounts. They shall: |
| | (A) Are mathematically accurate; | | be mathematically accurate |
| | (B) Are prepared within 30 calendar days after the bank statement cutoff date, or such other number of days specified in the transaction agreements; | | be prepared within forty-five (45) calendar days after the cutoff date |
| | (C) Are reviewed and approved by someone other than the person who prepared the reconciliation; and | | be reviewed and approved by someone other than the person who prepared the reconciliations |
| (D) Contain explanations for reconciling items. These reconciling items are resolved within 90 calendar days of their original identification, or such other number of days specified in the transaction agreements. | document explanations for reconciling items. These reconciling items shall be resolved within 90 calendar days of their original identification. | | |

| Sec. § | AB Section Description | Standard # | USAP Standard Description |
|---|---|--------------|--|
| Investor Remittances and Reporting | | | |
| (d) (3) (i) | Reports to investors, including those to be filed with the Commission, are maintained in accordance with the transaction agreements and applicable Commission requirements. Specifically, such reports: | | |
| | (A) Are prepared in accordance with timeframes and other terms set forth in the transaction agreements; | | |
| | (B) Provide information calculated in accordance with the terms specified in the transaction agreements; | | |
| | (C) Are filed with the Commission as required by its rules and regulations; and | | |
| | (D) Agree with investors' or the trustee's records as to the total unpaid principal balance and number of pool assets serviced by the servicer. | IV.1 | The servicing entity's investor reports shall agree with, or reconcile to, investors' records on a monthly basis as to the total unpaid principal balance and number of loan serviced by the servicing entity. |
| (d) (3) (ii) | Amounts due to investors are allocated and remitted in accordance with timeframes, distribution priority and other terms set forth in the transaction agreements. | | |
| (d) (3) (iii) | Disbursements made to an investor are posted within two business days to the servicer's investor records, or such other number of days specified in the transaction agreements. | | |
| (d) (3) (iv) | Amounts remitted to investors per the investor reports agree with cancelled checks, or other form of payment, or custodial bank statements. | III.5 | Amounts remitted to investors per the servicer's investor reports shall agree with cancelled checks, or other forms of payment, or custodial bank statements. |

| Sec. § | AB Section Description | Standard # | USAP Standard Description |
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| Pool Asset Administration | | | |
| (d) (4) (i) | Collateral or security on pool assets is maintained as required by the transaction agreements or related pool asset documents. | | |
| (d) (4) (ii) | Pool assets and related documents are safeguarded as required by the transaction agreements. | | |
| (d) (4) (iii) | Any additions, removals or substitutions to the asset pool are made, reviewed and approved in accordance with any conditions or requirements in the transaction agreements. | | |
| (d) (4) (iv) | Payments on pool assets, including any payoffs, made in accordance with the related pool asset documents are posted to the applicable servicer's obligor records maintained no more than two business days after receipt, or such other number of days specified in the transaction agreements, and allocated to principal, interest or other items (e.g., escrow) in accordance with the related pool asset documents. | II.2 - II.4 | <p>II. 2 Mortgage payments made in accordance with the mortgagor's loan documents shall be posted to the applicable mortgagor records within two business days of receipt.</p> <p>II.3 Mortgage payments shall be allocated to principal, interest, insurance, taxes, or other escrow items in accordance with the mortgagor's loan documents.</p> <p>II.4 Mortgage payments identified as loan payoffs shall be allocated in accordance with the mortgagor's loan documents.</p> |
| (d) (4) (v) | The servicer's records regarding the pool assets agree with the servicer's records with respect to an obligor's unpaid principal balance. | V.1 | The servicing entity's mortgage loan records shall agree with, or reconcile to, the records of mortgagors with respect to the unpaid principal balance on a monthly basis. |
| (d) (4) (vi) | Changes with respect to the terms or status of an obligor's pool asset (e.g., loan modifications or re-agings) are made, reviewed and approved by authorized personnel in accordance with the transaction agreements and related pool asset documents. | | |

| Sec. § | AB Section Description | Standard # | USAP Standard Description |
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| (d) (4) (vii) | Loss mitigation or recovery actions (e.g., forbearance plans, modifications and deeds in lieu of foreclosure, foreclosures and repossessions, as applicable) are initiated, conducted and concluded in accordance with the timeframes or other requirements established by the transaction agreements. | | |
| (d) (4) (viii) | Records documenting collection efforts are maintained during the period a pool asset is delinquent in accordance with the transaction agreements. Such records are maintained on at least a monthly basis, or such other period specified in the transaction agreements, and describe the entity's activities in monitoring delinquent pool assets including, for example, phone calls, letters and payment rescheduling plans in cases where delinquency is deemed temporary (e.g., illness or unemployment). | VI.1 | Records documenting collection efforts shall be maintained during the period a loan is in default and shall be updated at least monthly. Such records shall describe the entity's activities in monitoring delinquent loans including, for example, phone calls, letters and mortgage payment rescheduling plans in cases where the delinquency is deemed temporary (e.g. illness or unemployment). |
| (d) (4) (ix) | Adjustments to interest rates or rates of return for pool assets with variable rates are computed based on the related pool asset documents. | V.2 | Adjustments on ARM loans shall be computed based on the related mortgage note and any ARM rider. |
| (d) (4) (x) | Regarding any funds held in trust for an obligor (such as escrow accounts) See followings: | V.3 | Escrow accounts shall be analyzed, in accordance with the mortgagor's loan documents, on at least an annual basis. |
| | (A) Such funds are analyzed, in accordance with the obligor's pool asset documents, on at least an annual basis, or such other period specified in the transaction agreements; | | |
| | (B) Interest on such funds is paid, or credited, to obligors in accordance with applicable pool asset documents and state laws; and | V.4 | Interest on escrow accounts shall be paid, or credited, to mortgagors' in accordance with the applicable state laws. |
| (C) Such funds are returned to the obligor within 30 calendar days of full repayment of the related pool asset, or such other number of days specified in the transaction agreements. | I.4 | Escrow funds held in trust for a mortgagor shall be returned to the mortgagor within thirty (30) calendar days of payoff of the mortgage loan. | |

| Sec. § | AB Section Description | Standard # | USAP Standard Description |
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| (d) (4) (xi) | Payments made on behalf of an obligor (such as tax or insurance payments) are made on or before the related penalty or expiration dates, as indicated on the appropriate bills or notices for such payments, provided that such support has been received by the servicer at least 30 calendar days prior to these dates, or such other number of days specified in the transaction agreements. | III.3 | Tax and insurance payments shall be made on or before the penalty or insurance policy expiration dates, as indicated on tax bills and insurance premium notices, respectively, provided that such support has been received by the servicing entity at least thirty (30) calendar days prior to these days. |
| (d) (4) (xii) | Any late payment penalties in connection with any payment to be made on behalf of an obligor are paid from the servicer's funds and not charged to the obligor, unless the late payment was due to the obligor's error or omission. | III.4 | Any late payment penalties paid in conjunction with the payment of any tax bill or insurance premium notice shall be paid from the servicing entity's funds and not charged to the mortgagor, unless the late payment was due to the mortgagor's error or omission. |
| (d) (4) (xiii) | Disbursements made on behalf of an obligor are posted within two business days to the obligor's records maintained by the servicer, or such other number of days specified in the transaction agreements. | III.2 | Disbursements made on behalf of a mortgagor or investor shall be posted within two business days to the mortgagor's or investor's records maintained by the servicing entity. |
| (d) (4) (xiv) | Delinquencies, charge-offs and uncollectible accounts are recognized and recorded in accordance with the transaction agreements. | | |
| (d) (4) (xv) | Any external enhancement or other support, identified in Item 1114(a)(1) through (3) or Item 1115 of this Regulation AB, is maintained as set forth in the transaction agreements. | | |