



**Testimony of Tom Deutsch
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Before the Federal Reserve Board**

**Public Hearing re The Home Mortgage Disclosure Act
Friday, September 24, 2010
Washington, DC**

On behalf of the American Securitization Forum, I appreciate the opportunity to testify before the Federal Reserve Board (the “Board”) on potential revisions to Regulation C, which implements the Home Mortgage Disclosure Act (“HMDA”).

The American Securitization Forum (“ASF”) is a broad-based professional forum through which participants in the U.S. securitization market advocate their common interests on important legal, regulatory and market practice issues. ASF members include over 330 firms, including mortgage and consumer credit lenders and securitization issuers, investors, financial intermediaries, legal and accounting firms, credit rating agencies and other professional organizations involved in the securitization markets. ASF also provides information, education and training on a range of securitization market issues and topics through industry conferences, seminars and similar initiatives.¹

My testimony today will address the following topics:

- 1) The need for standardization across regulators of loan-level disclosure requirements;
- 2) Implementation costs associated with increasing disclosure;
- 3) Privacy considerations surrounding mortgage disclosure; and

¹ For more information on ASF, please visit our website: <http://www.americansecuritization.com>.

4) The role of the ASF LINC™ in protecting borrower privacy.

Securitization generally refers to the process by which consumer and business assets are pooled and securities, the payment of which depends primarily on the performance of those underlying assets, are issued in the capital markets. Over the years, securitization has grown in large measure because of the benefits and value it delivers to transaction participants and to the financial system, including increased efficiency of funding, reduced cost of financing for businesses and credit for consumers, and incremental credit and liquidity creation. Over the past 25 years, securitization has grown from a relatively small and unknown segment of the financial markets to a mainstream source of credit and financing for individuals and businesses, representing a vital sector of today's financial markets.² Between 1990 and 2006, just before the downturn, issuance of residential mortgage-backed securities ("RMBS") grew at an annually compounded rate of 13%, from \$259 billion to \$2 trillion a year.³ It has been estimated that securitization has funded some 59% of outstanding home mortgages.⁴

ASF's diverse membership includes a substantial number of mortgage originators, who routinely collect and report HMDA data, as well as investors and credit rating agencies, who may utilize data in their regular analysis of the credit quality of RMBS. Because the bulk of housing finance takes place in the capital markets, via securitization through either the government sponsored entities or the private label market, ASFs offers our observations with respect to potential HMDA reforms as they stand to significantly impact our members.

² For more information on the role and importance of securitization to the financial system and US economy, see ASF Reg AB II Comment Letter, Attachment II, pg. 143-147 (August 2010).

<http://www.americansecuritization.com/uploadedFiles/ASFRegABIICommentLetter8.2.10.pdf>.

³ National Economic Research Associates, Inc. (NERA), "Study of the Impact of Securitization on Consumers, Investors, Financial Institutions and the Capital Markets," pg. 16 (June 2009),

www.americansecuritization.com/uploadedFiles/ASF_NERA_Report.pdf.

⁴ Citigroup, "Does the World Need Securitization?" pg. 10-11 (December 2008),

www.americansecuritization.com/uploadedFiles/Citi121208_restart_securitization.pdf.

I. THE NEED FOR STANDARDIZATION ACROSS REGULATORS OF LOAN-LEVEL DISCLOSURE REQUIREMENTS

The ASF has been and continues to be very supportive of transparency in mortgage lending. We agree with HMDA's original purposes of enabling officials to target public and private investment where needed, evaluate the role of institutions in meeting community housing needs, and enforce fair lending statutes. However, we are concerned over the potential impact of multiple layers of mortgage disclosure regulation without coordination among legislators and regulators. Given the recent market dislocation, mortgage lending disclosures and the securitization process more generally have been the subject of numerous reform efforts, both market-driven and legislative/regulatory in nature. A piecemeal approach to developing additional disclosure requirements, implemented without sufficient coordination among regulators, will likely result in multiple and possibly competing disclosure requirements.

The ASF has been a strong and vocal advocate for targeted securitization market reforms and we continue to work constructively with policymakers to identify and implement them. We believe that any such reforms need to be considered and implemented on an interagency basis to ensure that there is a level playing field for all market participants and to ensure the return of healthy securitization and housing markets in the U.S. The ASF is also actively identifying, designing and implementing numerous industry-driven market standards and practice improvements to rebuild and strengthen the securitization infrastructure. One such effort is ASF Project RESTART,⁵ which is a broad-based, industry-developed initiative to help rebuild investor

⁵ ASF Project RESTART has sought to identify areas of improvement in the process of securitization and to refashion, in a comprehensive and integrated format, the critical aspects of securitization with market-based solutions and expectations. It has been recognized by senior policymakers and market participants as a necessary industry initiative to improve the securitization process by developing commonly accepted and detailed standards

confidence in mortgage and asset-backed securities, restore capital flows to the securitization markets, enhance market lending discipline and, ultimately, increase the availability of affordable credit to all Americans.

Through RMBS Project RESTART, ASF has developed detailed sets of criteria for loan-level disclosures by issuers to be provided prior to the sale of private-label RMBS transactions (the “ASF RMBS Disclosure Package”) and for monthly reporting to be updated throughout the life of an RMBS transaction by RMBS servicers and master servicers (the “ASF RMBS Reporting Package”) and, together with the ASF RMBS Disclosure Package, the “ASF RMBS Packages”).⁶ The ASF RMBS Packages, released in final form in July 2009, were developed over a period of approximately 16 months by a working group comprised of issuers, servicers, master servicers, bond administrators, investors, dealers, rating agencies, ASF staff and outside counsel. In addition, a related technical committee comprised of members of the working group, their information systems colleagues and analytics firms, was established. That committee coordinated with the working group to create a set of data definitions, technical specifications and mutually acceptable coding conventions for the presentation of data in the ASF RMBS Packages. Both of these packages increase and standardize critical data at bond issuance and throughout the life of a transaction, which will enable investors to better perform deal and loan-level analysis on the basis of the credit quality of the underlying mortgage loans.

for transparency, disclosure and diligence that each appropriate market participant will be recommended to implement. To date, members of Project RESTART have worked to produce various market standards including loan-level RMBS Disclosure and Reporting Packages, a unique loan identifier called the ASF LINC™, Model RMBS Representations and Warranties, and a proposed RMBS Bond-Level Reporting Package. ASF also plans to produce Model Repurchase Provisions and Model Servicing Provisions as part of the market standards established under Project RESTART. For more information on Project RESTART, please see www.americansecuritization.com/restart.

⁶ For more information on the Disclosure and Reporting Packages, see www.americansecuritization.com/uploadedFiles/ASF_Project_RESTART_Final_Release_7_15_09.pdf.

The release of the Disclosure and Reporting Packages was timely given the Administration's proposals for regulating financial markets. On June 17, 2009, the Treasury Department released a proposal titled *Financial Regulatory Reform*, which states that the "SEC should continue its efforts to increase the transparency and standardization of securitization markets and be given clear authority to require robust reporting by issuers of asset backed securities (ABS)" and that "[i]nvestors and credit rating agencies should have access to the information necessary to assess the credit quality of the assets underlying a securitization transaction at inception and over the life of the transaction, as well as the information necessary to assess the credit, market, liquidity, and other risks of ABS."⁷ About a month later, the Administration followed its proposal with proposed legislation that sought to implement the recommendations contained in the broader proposal.⁸ In the year that followed, the U.S. House of Representatives and Senate considered various iterations of this legislation until, in July 2010, the Administration's proposals for data disclosure and reporting were ultimately codified into law in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Financial Reform Act"). The Financial Reform Act specifically calls for issuers of ABS to disclose "asset-level or loan-level data, if such data are necessary for investors to independently perform due diligence."⁹

Not long before the passage of the Financial Reform Act, the Securities and Exchange Commission (the "Commission") issued Release Nos. 33-9117; 34-61858; File No. S7-08-10, dated April 7, 2010 (the "Reg AB II Proposing Release"), relating to offering, disclosure and

⁷ "Financial Regulatory Reform, A New Foundation: Rebuilding Financial Regulation and Supervision," U.S. Department of the Treasury, pages 44-45. See www.financialstability.gov/docs/regs/FinalReport_web.pdf.

⁸ The provisions of the proposed legislation can be found at www.treasury.gov/press/releases/reports/title%20ix%20subt%20e%20securitization%207222009%20fnl.pdf.

⁹ See Title IX, Subtitle D "Improvements to the Asset-Backed Securitization Process" at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf.

reporting requirements for asset-backed securities under the Securities Act of 1933 and the Securities Exchange Act of 1934.¹⁰ The Reg AB II Proposing Release includes loan-level RMBS disclosure and reporting proposals, which drew extensively from the ASF RMBS Packages and were in line with the evaluative requirements of the Financial Reform Act. The ASF submitted a comprehensive and detailed response to the Commission regarding its loan-level RMBS disclosure and reporting proposals on August 2, 2010.¹¹ The Commission will undertake a review of the more than 150 comment letters it has received and is expected to issue final rules [sometime in late fall or early winter].

Various other loan-level data collection efforts have been recently enacted or are currently proposed, including the Uniform Mortgage Data Program (“UMDP”) of the Federal Housing Finance Agency/GSE’s, Treasury’s Home Affordable Modification Program (“HAMP”), Conference of State Banking Supervisors/American Association of Residential Mortgage Regulators, and Office of the Comptroller of the Currency/Office of Thrift Supervision loan-level modifications. Additionally, the Federal Deposit Insurance Corporation has issued a “Notice of Proposed Rulemaking re Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010” (the “NPR”).¹² The NPR proposes, among other terms, to require loan-level disclosure as a precondition to its

¹⁰ The Commission’s Proposing Release can be found at <http://edocket.access.gpo.gov/2010/pdf/2010-8282.pdf>.

¹¹ See the broad ASF Reg AB II Comment Letter at <http://www.americansecuritization.com/uploadedFiles/ASFRegABIIComentLetter8.2.10.pdf>

¹² The NPR can be found at <http://edocket.access.gpo.gov/2010/pdf/2010-11680.pdf>. ASF submitted a response to the NPR in addition to a response to the Advance Notice of Proposed Rulemaking (“ANPR”) that preceded the NPR. ASF’s NPR Response Letter can be found at <http://www.americansecuritization.com/uploadedFiles/ASF-FDIC-NPR-Response-Letter-7.1.10.pdf>, and ASF’s ANPR Response Letter can be found at http://www.americansecuritization.com/uploadedFiles/ASF_FDIC_ANPRResponseLetter022210.pdf.

securitization legal isolation safe harbor for securitizations in which the financial assets include any residential mortgage loans. As the Board is also aware, § 1094 of Title X, Subtitle H of the Financial Reform Act requires lenders, effective immediately, to begin reporting a variety of additional information under HMDA that includes information on borrowers and property as well as on the terms of mortgage loans.¹³ Some of this newly required information overlaps in substance with disclosure fields as contained in the ASF RMBS Disclosure Package and existing regulatory proposals, and the Board may wish to consider whether additional data requirements are necessary.

Altogether, the proposed or recent data collection programs vary across several key aspects, namely who is required to report, which loans are covered by the requirements, who can access the information, what data points are required, how the information is technically presented, and how data points are defined. We caution strongly that any proposed or additional revisions should occur only in coordination with other regulatory agencies. The implementation of any new requirements should also look to incorporate existing market standards, such as those set forth in ASF Project RESTART, including both data definitions and reporting format. If reform occurs at several levels and over time, revitalization of the securitization and housing markets will inevitably be slowed. Issuers and originators may exit the securitization market with the enactment of the initial sets of rules and return only after all of the contemplated legislative and regulatory actions have been taken. If the aggregate burden for issuers is ultimately too great, their ability to lend to deserving homeowners may be significantly reduced. We strongly believe, therefore, that any additional disclosure requirements should be implemented only on an

¹³ See page 722 of the Financial Reform Act at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h4173enr.txt.pdf

interagency basis and request that the Board undertake a coordinated approach with other applicable regulators and agencies.

II. IMPLEMENTATION COSTS ASSOCIATED WITH INCREASING DISCLOSURE

It is important that any reform of the mortgage and securitization markets impose mechanisms to encourage appropriate extension of credit to deserving borrowers while not going so far as to inhibit the many benefits of having well-functioning housing and securitization markets. While we endorse the provision of comprehensive loan-level data to investors and regulatory agents, we recognize that the process of capturing the necessary data will create new information systems challenges for market participants. This burden will fall equally on both small participants, who are less likely to have the internal resources to quickly build the needed systems, and on large participants who, despite having greater internal resources, have to cope with handling data on a much greater scale than their smaller counterparts.

In the absence of an active RMBS market since the publication of the ASF RMBS Packages in July 2009, industry participants have been understandably reluctant to undertake the considerable expense required to build the systems needed to capture the required data. This reluctance has been compounded by the expectation of market participants that the voluntary ASF RMBS Packages might be subsumed by a substantively similar, yet sufficiently distinct, legislative or regulatory mandates, necessitating the further expenditure to conform the systems developed to comply with the ASF standards to conform to superseding regulatory dictates.

During the development of the ASF RMBS Packages, many issuers and servicers expressed concern that they would not be able to meet recommended implementation dates and that the expense required to update the appropriate systems to accommodate the Disclosure and Reporting Packages would be too great to incur during such an uncertain market. They noted that this period of financial market turmoil has all but stopped new issuances of RMBS and the numerous regulatory and legislative proposals contribute to the uncertainty of the RMBS market. Some issuers and servicers also pointed out that, due to recent mergers and acquisitions within the industry, massive system integrations between the combined companies are taking top priority at this time. In sum, the benefit of any additional or revised disclosure requirements should be adequately weighed against increased costs of reporting such data, and of capturing added data in the case where it may not already be captured by lenders, given the current state of the housing market and the broader economy.

III. PRIVACY CONSIDERATIONS AROUND INCREASED DISCLOSURE

ASF strongly supports protecting borrower privacy as required under current privacy laws. The reporting of credit score information at an aggregate level is an added HMDA disclosure requirement under the Financial Reform Act. Pursuant to the Financial Reform Act, the exact form of credit score reporting is to be determined by the Consumer Financial Protection Bureau (the “Bureau”). The reporting of credit information, or “consumer reports,” is strictly governed by the Fair Credit Reporting Act (“FCRA”). Violations of FCRA can result in private causes of action in addition to actions brought by the Federal Trade Commission and our members have repeatedly stressed that compliance with FCRA is of the utmost importance. FCRA governs the actions of “consumer reporting agencies” which generally refer to persons that regularly engage

in assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties. A consumer reporting agency can only furnish a consumer report to another party if it has a permissible purpose to do so under of FCRA.

In light of individual borrower privacy concerns, the Board and/or the Bureau should consult with other regulators to the extent necessary to establish a view as to whether this disclosure scheme would be consistent with FCRA or other potentially applicable federal privacy laws.

IV. THE ROLE OF THE ASF LINC™ IN PROTECTING BORROWER PRIVACY

In increasing HMDA disclosure, the Financial Reform Act provides for the disclosure of a universal loan identifier as the Bureau may determine to be appropriate. As part of Project RESTART, ASF developed the ASF Loan Identification Number Code (“ASF LINC™”) to enable market participants to access the disclosed loan-level information without violating applicable privacy laws by removing personal non-public information and other protected information from the process.¹⁴ The ASF LINC™ also enables market participants to access information from other sources. For example, a market participant seeking a borrower’s updated debt-to-income ratio would submit the applicable ASF LINC™ to a credit bureau who would then be able to send the updated debt-to-income ratio for the borrower without protected information attached. A similar process occurs for market participants seeking junior lien

¹⁴ For more information on the ASF LINC™, see an informational slide at http://www.americansecuritization.com/uploadedFiles/ASF_LINC.pdf, or Attachment IV to the ASF Reg AB II Comment Letter on page 154 at <http://www.americansecuritization.com/uploadedFiles/ASFRegABIICommentLetter8.2.10.pdf>.

information on a property. If the unique loan identification number and the parcel numbers associated with second liens are reported directly to the credit bureaus, information regarding second liens may be available to credit rating agencies and investors without violating applicable privacy laws. These additional sources of information, which are made possible by the ASF LINC™, will enable market participants to perform a more accurate assessment of the collateral underlying their securities and thus, more accurately value those securities.

A uniform system for providing unique asset identification numbers will be helpful to participants in both the primary and secondary markets by creating a common language and protocol for identifying assets prior to, during and after securitization, and will ultimately aid transparency while protecting borrower privacy. For this reason, ASF has partnered with Standard & Poor's ("S&P") Valuation and Risk Strategies¹⁵ to develop the ASF LINC™ for use in connection with assets that may be pooled and sold in the capital markets. Unlike the MERS Mortgage Identification Number, ASF LINC™ is available to originators and securitizers, without charge, and is designed for use with all asset classes, not just mortgages. In addition, the ASF LINC™ is more useful to market participants than a numbering system internal to a securitization, such as a CIK number coupled with a sequential asset number, because it can be obtained at origination or at securitization and can continue to be used to identify and measure the performance of a loan even if it is removed from a securitization by, for example, repurchase for breach of a representation or warranty or in connection with a clean-up call. The ASF LINC™ was created specifically for use in a flexible disclosure and investor reporting scheme.

¹⁵ S&P Valuation and Risk Strategies is an analytics unit within S&P which is separate and distinct from S&P's credit ratings business.

The ASF LINC™ identification number is a semi-intelligent 16-digit code that is structured to capture, on its face, information such as asset type, origination date, and country of origin. S&P Valuation and Risk Strategies has demonstrated that it understands and is fully capable of addressing any privacy concerns associated with the ASF LINC™ and non-public personal information. The ASF LINC™ process, including using the ASF LINC™ to access credit bureau information, will be fully compliant with the Fair Credit Reporting Act and the Gramm-Leach-Bliley Act.

As an operational matter, ASF and S&P Valuation and Risk Strategies believe the best time to assign the ASF LINC™ is after origination but during the first month of servicing when information is normally transferred from originators to servicers. This process, called “on boarding,” would eliminate problems created by non-finalized loans. The ASF LINC™ assignment process will begin with ASF LINC™ receiving approximately 30 fields from the originator or servicer of the loan. These fields do not contain any borrower personal information. S&P Valuation and Risk Strategies will then assign an ASF LINC™ to the loan and send it back to the servicer, who will then link the ASF LINC™ to the borrower’s personal information and send it along to the credit bureau as part of the servicer’s normal Metro II Credit Reporting process. S&P Valuation and Risk Strategies has already assigned a loan identification number to millions of residential mortgage loans contained in outstanding RMBS deals.

V. CONCLUSION

The securitization market is an essential mechanism for supporting credit creation and capital formation throughout the housing market. Its role is even more important today, when other

sources of credit and financing are limited, due to balance sheet, capital and liquidity constraints facing financial institutions.

We appreciate the utility of HMDA as a valuable tool for increasing the ability of private institutions and public officials to serve community housing needs and prevent housing discrimination. However, we caution that any reforms to loan-level disclosure requirements should be undertaken only in close coordination with other regulatory agencies. The financial market crisis revealed weaknesses in several key areas of securitization market activity relating to mortgage disclosure availability and standardization. Targeted reforms are needed, and a number are being pursued through both public- and private-sector responses, however they should not be so burdensome as to stifle lending at a critical time for encouraging housing market recovery.

Thank you for the opportunity to share these views, and I look forward to answering any questions you might have.