November 15, 2010

By E-Mail: rule-comments@sec.gov

Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090
Attn: Elizabeth M. Murphy, Secretary

Re: Release Nos. 33-9148; 34-63029; File No. S7-24-10
Comment Letter – Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Ladies and Gentlemen:

The Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Corporation ("Freddie Mac," and together with Fannie Mae, the "GSEs") are submitting this letter in response to the request of the Securities and Exchange Commission (the "Commission") for comments regarding Release Nos. 33-9148; 34-63029; File No. S7-24-10, dated October 4, 2010 (the "Proposing Release"), relating to representations and warranties in asset-backed securities ("ABS") offerings under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"). The GSEs appreciate the opportunity to comment on the Proposing Release.

As is described in greater detail below, we believe that the application of the requirements in the Proposing Release to the GSE's repurchase activities will lead to fragmented, incomplete or distorted disclosure that is potentially misleading to investors. Moreover, the burden of providing such disclosure would be substantially in excess of any value to investors. Accordingly, the GSEs recommend that the Commission modify the requirements of the Proposing Release as we describe below with respect to the GSEs.

I. Introduction

Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank") requires the Commission to implement rules relating to disclosure of representations and warranties and enforcement mechanisms as well as repurchase information relating to ABS offerings. Section 943(2) of Dodd-Frank requires any securitizer to disclose fulfilled and unfulfilled repurchase requests across all trusts aggregated by the securitizer, so that investors may identify asset originators with "clear underwriting deficiencies." Dodd-Frank establishes a definition for the term "securitizer," which is, generally, an issuer of ABS, as defined under the Exchange Act ("Exchange Act ABS"), or a person who organizes and initiates an Exchange Act ABS transaction by transferring assets to the issuer. In the Proposing Release, the Commission indicates its belief that the definition of securitizer would include the GSEs and that Section 943(2) would apply to registered and unregistered transactions.

Under Section 943(2), the Commission has proposed Rule 15Ga-1, which would require any securitizer to file new Form ABS-15G at the time the securitizer or an affiliate commences its first offering of Exchange Act ABS and to update disclosures on a monthly basis thereafter. Form ABS-15G would generally require a securitizer to disclose in a tabular format on a trust-by-trust basis covering the five-year period preceding the initial filing of the Form: (i) the assets that were the subject of a repurchase demand, (ii) the assets that were repurchased or replaced, (iii) the assets that were not repurchased or replaced, (iv) the assets that are pending repurchase or replacement (with a narrative of why it is pending) and (v) the originator relating to such assets.

The Commission is relying on the definition of "securitizer" and "asset-backed security," as added by Dodd-Frank to the Exchange Act, to apply the requirements in the Proposing Release to the GSEs. While we believe that it is unclear that Congress intended such definitions to include the GSEs and their mortgage-backed securities, we are addressing in this letter the concerns that we would have if such rule, in its current form, were applied to the GSEs.

The GSEs believe that as applied to their securitization activities and programs, the proposed Rule 15Ga-1 and Form ABS-15G would present a fragmented, incomplete or distorted view of GSE repurchase requests rather than further the stated purpose of Section 943(2) to enable investors to "identify asset originators with clear underwriting deficiencies."[1] We believe that the purpose of Section 943(2) would be better served if the Commission would implement the modifications to the proposal that we recommend below.

To the extent that the following discussion relates to the numbered questions on which the Commission requested comments in the Proposing Release, the GSEs have so indicated with a bracketed identification of the numbered question.

A. Securities Issued

The GSEs' primary securitization activity is effected through guarantor swaps, in which a seller (which is not necessarily the originator) of single-family or multifamily residential mortgage loans sells mortgage loans owned by it to a GSE in return for a single-class Mortgage-Backed Security ("MBS") issued by Fannie Mae or Mortgage Participation Certificate ("PC") issued by Freddie Mac, which are backed by those loans. The seller may retain the MBS/PC or sell it in the open market. Multiple sellers can also sell mortgage loans to the GSEs in return for an undivided interest in an MBS/PC backed by loans sold to the GSEs by multiple sellers. The GSEs may also purchase mortgage loans from sellers for cash and later form an MBS/PC. Monthly payments of principal and interest on MBS/PCs are funded by passing through to MBS/PC holders the cash flow provided by the underlying mortgage loans. Generally, the mortgage loans are pooled in a pass-through trust relating to each MBS/PC. The applicable GSE is the trustee of the trust.

[1] Section II.A. of the Proposing Release (p.7).

The GSEs also aggregate MBS/PCs into pools and issue securities backed by such MBS/PCs. Such securities may be either a mere aggregation of such securities ("Mega Securities" issued by Fannie Mae or "Giant Securities" issued by Freddie Mac) or a strip of such securities into interest-only and principal-only cash flows ("Stripped MBS"). The applicable GSE is the trustee of the trust related to the Mega/Giant Securities and Stripped MBS.

The GSEs also engage in other resecuritization transactions in which MBS/PCs back multiclass time-tranched securities ("REMIC Securities") issued through a trust that qualifies as a real estate mortgage investment conduit for federal income tax purposes. In turn, REMIC Securities can also back other "Re-REMIC Securities." The applicable GSE is the trustee of the trust related to the REMIC Securities and Re-REMIC Securities.

In addition, the GSEs sometimes purchase private-label ABS ("PLS") issued by unaffiliated third parties, resecuritize those ABS and issue new securities backed by those ABS ("GSE ABS"). The residential single-family and multifamily mortgage loans that back the PLS purchased by the GSEs may also back PLS that have not been purchased by the GSEs. (The same trust typically issues the PLS purchased by the GSEs as well as any PLS not purchased by the GSEs.) The PLS that are resecuritized by the GSEs are placed in a trust of which the trustee is either the applicable GSE or a third-party independent trustee.

The securities described above (the "GSE Securities") are unique in the asset-backed securitization market insofar as the applicable GSE guarantees payments of principal and interest thereon. Issuers of PLS generally do not guarantee their securities and investors in PLS rely solely on the cash flow generated from assets in the related trusts and their disposition. Moreover, the GSE Securities are statutorily exempt from registration under the Securities Act and from reporting under the Exchange Act. We note finally that the GSEs' conservator, the Federal Housing Finance Agency, has stated that it has no intention of repudiating this guaranty obligation as well as any other GSE obligation.[2]

B. Removal of Loans

A feature common to GSE securitizations and relevant to the following discussion is the ability of each GSE in its capacity as issuer or guarantor to decide whether to remove loans from its securitization trusts in a wide variety of circumstances. Generally each GSE may decide to remove loans from a trust in cases of a breach of a seller warranty, a defect in documentation, delinquency of a loan for a prescribed period of time, and certain other instances.

A determination with respect to loan removal is made based on a number of considerations, including GSE credit exposure under the applicable guaranty, cost of funds, the effect on GSE capital, market yields, costs related to holding the loan, mission and policy

[2] Statement of Hon. James B. Lockhart III, Director, Federal Housing Finance Agency, Before the House Committee on Financial Services on the Conservatorship of Fannie Mae and Freddie Mac, p.6 (September 25, 2008).

considerations, and general market conditions, among other things. In certain cases, the GSEs have announced broad policies regarding loan removal.[3] We note, however, that all such policies remain subject to change by the GSEs. The GSEs themselves are generally the sole parties with legal authority to remove, or to cause the removal of, loans from their securitization trusts. Upon any such removal, payment in full of the principal balance of the related loan is passed through to investors by the respective GSE.

II. Discussion

The Proposing Release covers all "asset-backed securities," as that term is defined in Section 3(a) (77) of the Exchange Act. For purposes of this letter, we have assumed that GSE Securities would fall under that definition.[4] We believe, however, that the Commission formulated the Proposing Release with a primary focus on PLS securitizations because its application to the GSEs would not fulfill the stated purpose of Section 943(2) of Dodd-Frank. Because the GSE securitization model is fundamentally different in important respects from that of PLS, the GSEs believe it is essential for the Commission to consider fully the implications of applying the Proposing Release in its present form to GSE Securities and whether it meets the intent of Section 943(2) of Dodd-Frank. Some of the most significant differences are described below.

A. Each GSE May Determine Remedies to Pursue for Breaches

The GSE securitization model provides that GSEs with knowledge of a breach of a representation or warranty (a "breach") have the option (rather than the obligation) to pursue a remedy against the loan seller. By contrast, in a typical PLS transaction, designated transaction parties (e.g., servicer, depositor, trustee) with knowledge of a breach have an obligation (rather than an option) to demand repurchase (or in some cases, substitution) of a loan by the issuer or other specified party. In this respect, the position of the GSEs may be viewed as more closely analogous to that of PLS investors (who may decide whether to instruct the trustee to demand a repurchase), rather than to PLS issuers.

In practice, non-performing, modified or foreclosed mortgage loans backing GSE Securities in many instances may already have been removed from the related securitization trusts (because of delinquency or other permitted reasons) before the applicable GSE is able to confirm the existence of a breach. If a breach is identified, the GSE may determine whether to seek a remedy and, if so, which remedy to pursue. Under these circumstances, loss mitigation may be the primary objective for the GSE.

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[3] For example, see Fannie Mae's February 10, 2010 announcement of its intention to significantly increase its removal of seriously delinquent loans from its MBS trusts and Freddie Mac's February 10, 2010 announcement of its intention to remove substantially all seriously delinquent loans from its PC trusts.

[4] Section II.A.I. of the Proposing Release (p.8).

The decision whether to pursue a remedy with respect to the seller of the loan and, if so, which remedy to pursue, is based on a number of internal business and policy considerations. Among these considerations are the following:

- Financial condition of seller;
- Cost-benefit implications; and
- Loan performance characteristics.

In practice, the GSEs regularly may select the appropriate remedy for a breach of representations and warranties. Examples of the remedies available to each GSE in cases of a breach include:

- Demand for repurchase – The GSE requires a seller to repurchase the loan for cash consideration equal to the unpaid principal balance of the mortgage loan, accrued interest and costs, including casualty insurance coverage.
- Indemnification/Recourse – The GSE agrees not to demand or require repurchase of a loan in exchange for the loan seller's commitment to cover any future losses on the loan.
- Bulk Settlement – The GSE agrees not to demand or require repurchases of multiple loans in exchange for a negotiated consideration payable to the GSE.

Finally, as noted above, a non-performing, modified or foreclosed loan generally has already been removed from the securitization trust and its principal balance has been passed through in full to investors before the remedy (if any) is evaluated by the applicable GSE with respect to a breach. Accordingly, in most cases investors in GSE Securities are unaffected by a GSE's decision of whether to pursue a remedy and which remedy to pursue.

Because the applicable GSE decides how to address breaches of representations and warranties – whether to apply a remedy in response to a particular breach and, if so, which remedy to apply – the disclosure of instances where repurchase demands have been made within the framework of the Proposing Release would result in a fragmented, incomplete presentation of GSE actions concerning breaches affecting GSE Securities. Such disclosure would generally not be useful in identifying asset originators with clear underwriting deficiencies and could present a significant potential for misleading investors in GSE Securities.

B. Demands for Repurchase May or May Not Be Related to "Underwriting Deficiencies" Depending on How that Term is Applied

The GSEs may require repurchases from sellers for a variety of reasons. To fulfill the stated purpose behind Section 943(2) of Dodd-Frank, the GSEs believe that it would be helpful for the Commission to clarify the meaning of "underwriting deficiencies" because the disclosure of repurchase requests should involve breaches of representations and warranties that evince or result from such deficiencies.

Some participants in the mortgage industry may interpret "underwriting deficiencies" to include factors associated solely with the creditworthiness and capacity of the borrower and the adequacy of the mortgaged property to provide collateral for the mortgage loan. Other participants may take a broader view and interpret "underwriting deficiencies" to include any shortcomings associated with the processing of the mortgage loan application and the financial and legal assessment of the formal and substantive elements of that application, the mortgage loan agreement, promissory note, deed of trust and associated documents. For example, in the context of the GSEs' activities, some participants may view breaches associated with a failure to meet loan size limits or other criteria necessary to comply with GSE Charter requirements, misdelivery (e.g., an adjustable-rate mortgage loan in a fixed-rate pool), a failure to meet minimum formal documentary requirements prescribed by the GSE (e.g., a missing file), a failure on the part of the seller to satisfy a loss recourse arrangement negotiated with a GSE, or a breach of some other representation unrelated to the creditworthiness of the borrower or legal sufficiency of the loan (e.g., misrepresentation of occupancy status or misidentification of property type of the mortgaged property) to involve an "underwriting deficiency," while others may not.

In Section I of the Proposing Release, the Commission cites representations and warranties that each of the assets complies with applicable federal, state and local laws and that no fraud has occurred in connection with their origination. This would suggest that the Commission takes the broader view of what would constitute "underwriting deficiencies." The GSEs believe that a broader interpretation of the term "underwriting deficiencies" is appropriate in this context, but believe that it would be helpful if the Commission could provide guidance on the meaning of that term. This would enable both preparers and users of the disclosures to have a consistent understanding of their meaning and scope.

C. Guaranty Considerations

The GSEs guarantee the payment of principal and interest on GSE Securities.[5] Because of the guaranties, investors in GSE Securities do not absorb the losses on the loans arising from loan underwriting deficiencies (even if the loans remain in pools). By contrast, PLS securitizations frequently are structured to provide for internal credit enhancement (e.g., senior-subordinate interests, overcollateralization, excess interest spread), with resulting exposure to PLS investors from losses on loans with material breaches. Accordingly, identification of asset originators with clear underwriting deficiencies is of limited value to investors in GSE Securities.

D. Magnitude of Task

As of September 1, 2010, the GSEs currently had outstanding approximately 700,000 MBS/PCs in the aggregate, each issued from a separate trust. As a result, application of the proposed rule to the GSE securitizations would necessitate an enormous marshalling of resources related to (i) the compiling of historical pool information where available, (ii) the development of new and expanded systems capabilities, and (iii) a significant increase in qualified personnel assigned to tackle these steps and to administer the newly expanded system going forward.

1. *Limited Historical Information*. [Numbered Question 10 in Proposing Release] To date, the GSEs have not been required by statute or regulation to track or retain the historical data contemplated by the Proposing Release. While we currently are engaged in determining the existence and accessibility of such data, we are uncertain at present as to the existence of all applicable information in our current systems. In particular, information regarding loan originators – as opposed to sellers and servicers – is a concern. We note that it is the loan sellers and servicers, not the originators, who assume obligations to the GSEs with respect to loans backing GSE Securities, including an obligation to repurchase for breaches. To the extent the historical information can be identified, however, the GSEs believe it would not be feasible to provide the proposed information on a trust-by-trust or security-by-security basis, given the unique scale and magnitude of the GSE securitization programs. Finally, it is our belief that information dating back five years, which time period is not required under Section 943(2) of Dodd-Frank, would be of very limited utility to current or future GSE investors since, in response to the housing crisis, underwriting standards of the GSEs and sellers have changed significantly in recent years, particularly since 2008. Moreover, for GSE Securities issued before or during the five-year period but which were retired during the five-year period or by the time the initial filing of repurchase disclosures is required, disclosure of repurchase requests would be obsolete. Hence, any inference drawn from the historical data in question could well prove erroneous.

[5] Fannie Mae has issued a limited number of REMICs backed by whole loans in which one or more tranches was not guaranteed. Such unguaranteed issuances constitute a *de minimis* percentage of Fannie Mae's overall issuances (significantly less than 1% of its ABS) and in most cases were privately placed. Fannie Mae has not issued any such unguaranteed securities in 2010.

2. *Format Concerns*. [Numbered Question 5 in Proposing Release] As noted above, the GSEs have hundreds of thousands of individual GSE Securities outstanding, representing interests in as many individual trusts. A listing by individual issuing entity (trust) as contemplated in the Proposing Release, even if possible, would likely result in extremely unwieldy and disjointed disclosures.

3. *Frequency of Filing*. [Numbered Question 17 in Proposing Release] A requirement that the information specified in the Proposing Release be updated and filed on a monthly basis with respect to GSE Securities is unlikely to reflect incremental changes in information sufficient to warrant the enormous cost and effort entailed in satisfying that monthly filing requirement. The process of reviewing loans, demanding repurchases, and reaching a final resolution with the related sellers concerning breaches often is measured in months. Therefore, a monthly report of as-yet-unfulfilled repurchase demands would give little indication of how and when the ultimate resolution of the related matter will be achieved.

4. *Potential Duplication*. [Numbered Question 3 in Proposing Release] It is possible that sellers of loans to GSEs may be deemed to be "securitizers" with respect to GSE Securities for securities law purposes. Section 15G(a)(3) of the Exchange Act provides that a "securitizer" is a "person who organizes and initiates an asset-backed securities transaction by selling or transferring assets, either directly or indirectly, including through an affiliate to the issuer." In typical GSE securitizations, the sellers of loans to the GSEs initiate transactions by selling loans to the GSEs in exchange for MBS/PCs backed by the particular loans sold. Those sellers typically determine the method in which loans will be pooled, subject to certain basic parameters. Were sellers of loans to GSEs to become subject to the filing requirements under the Proposing Release, many, particularly smaller sellers, likely would face significant compliance challenges that could affect their ability to continue using the GSE securitization channel. In addition, if the GSEs and their loan sellers were to become subject to the filing requirements with respect to GSE Securities, the result could well be confusing and duplicative data disclosures that are much less useful for investors.

III. Recommended Modifications to Disclosure Requirements if Rule is Applied to GSE Securities

The GSEs acknowledge that Section 943(2) of Dodd-Frank requires the Commission to prescribe regulations that require any securitizer to disclose fulfilled and unfulfilled repurchased requests across all trusts so that investors may identify asset originators with clear underwriting deficiencies. For the reasons discussed above, however, the GSEs believe that it is unlikely that Rule 15Ga-1, as proposed and applied to the GSEs, would produce disclosure that is meaningful and useful to investors in GSE Securities and may result in fragmentary information that may indeed be misleading. In addition, because of the GSEs' guarantee of principal and interest payments, investors in GSE Securities may not find such information to be useful in any event.

If the Commission continues to be of the view that disclosure requirements related to repurchase requests should apply to the GSEs, we recommend the following modifications to the proposed requirements as to the GSEs. We believe that the modifications described below would reduce the costs and burdens of compliance and would not compromise – indeed, would significantly enhance – the usefulness of the disclosure that would be provided.

A. Limit Filings to Prospective Information

[Numbered Questions 9 and 39 in Proposing Release] Given what we believe to be the limited utility of five years of historical data, and given the present uncertainty concerning the availability of historical data and the significant costs associated with compiling and evaluating that data to the extent it became available, the GSEs urge that any application of the filing requirement under the Proposing Release be applied to them solely with respect to repurchase demands made by the GSEs after the implementation date of the rule.

B. Information to Be Aggregated by Seller (Rather Than by Trust or Originator)

[Numbered Question 39 in Proposing Release] We believe that if information in respect of repurchase demands were to be aggregated on a seller-by-seller basis rather than on a security or trust basis, the resulting format would be significantly clearer and more accessible and the related information more readily comprehensible to investors. Also, since the GSEs disclose the sellers of loans to them – rather than loan originators – in MBS/PC disclosure documents, we believe that aggregation by seller would be preferable and more meaningful to investors than aggregation by originator. See Attachment A as an example of a recommended alternative format for the GSEs. By contrast, were the information to be aggregated by trust or by security, we believe the resulting format would be confusing and unwieldy.[6] In addition, we do not believe that disclosure of sellers related to *de minimis* repurchase requests would be useful. Accordingly, we would propose to disclose sellers related to repurchase requests that comprise at least 5% of either (i) the total repurchase requests for the period covered by the filing or (ii) the total dollar amount corresponding to such repurchase requests.

C. Clarify Categories of Breaches Required to Be Disclosed

[Numbered Question 39 in Proposing Release] We recommend that it would be helpful for the Commission to provide guidance on the meaning of the term "underwriting deficiencies" and that the rule requires the filing of information only in respect of breaches related to "underwriting deficiencies."

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[6] It is noted that in the case of the Fannie Mae program alone, there currently exist approximately 2,200 sellers and approximately 400,000 outstanding MBS trusts.

D. Annual and Quarterly Filings

[Numbered Questions 17, 18 and 39 in Proposing Release] The GSEs believe that the filing of data on an annual and quarterly basis (rather than a monthly basis) would provide useful information to investors while substantially reducing the cost and administrative burden associated with each filing. Accordingly, we propose that any such data be filed contemporaneously with the filing deadlines for the GSEs' 10-Q and 10-K filings.

E. Avoid Duplicative Filings

[Numbered Questions 3 and 39 in Proposing Release] We recommend that with respect a particular mortgage loan, either the applicable GSE or the related loan seller, but not both, should have the duty to report such data. In addition, we recommend a clarification that in the case of resecuritizations, duplicative filings will not be required. Given the extremely large number of GSE resecuritizations outstanding, reports regarding those resecuritizations, when added to reports about the underlying MBS/PCs, could be confusing and potentially misleading for investors in GSE Securities.

F. Delay Effective Date

[Numbered Question 37 in Proposing Release] We recommend that none of the filings contemplated by the Proposing Release be applied as a requirement to the GSEs for a minimum period of at least two years after the rule is finalized in order to allow the GSEs sufficient time to develop the appropriate compliance infrastructure.

IV. Conclusion

As discussed above, the GSEs have fundamental concerns related to several elements included in the Proposing Release, and we believe that the proposed requirements, if applied to the GSEs, will result in fragmented, incomplete or distorted disclosure that is potentially misleading to investors. If the Commission is of the view that disclosure requirements related to repurchase requests should apply to the GSEs, we believe that the modifications that we suggest would both reduce the burden and enhance the usefulness of such disclosure. We urge the Commission to consider the views expressed in this letter before imposing any related changes to the existing regulatory framework.

The GSEs very much appreciate the opportunity to provide the foregoing comments to the Commission. Should you have any questions or wish to clarify any of the matters addressed in this letter, please do not hesitate to contact Paul R. VanHook, Vice President and Deputy General Counsel of Fannie Mae at (202) 752-1333 or paul_vanhook@fanniemae.com or Melinda L. Reingold, Vice President and Deputy General Counsel – Mortgage Securities of Freddie Mac at (703) 903-2519 or melinda_reingold@freddiemac.com.

Sincerely,

FANNIE MAE

Timothy J. Mayopoulos
Executive Vice President, Chief Administrative Officer, General Counsel and Corporate Secretary

FREDDIE MAC

Robert E. Bostrom
Executive Vice President, General Counsel and Corporate Secretary

ATTACHMENT A

REPURCHASE REQUESTS, FULFILLED AND UNFULFILLED

(As of [Year or Quarter End])

Name of Seller[1] [not "Originator"]	Mortgage Loans[2] that were Subject of Repurchase Request				Mortgage Loans that were Subject of Repurchase Request that were Repurchased by Seller During the Quarter[3]				Mortgage Loans that were Subject of Repurchase Request that were not Repurchased by Seller During the Quarter				Mortgage Loans that were Subject of Repurchase Request that were unfulfilled four months or more			
	Number	% by Total Number	($)	% by Total $	Number	% by Total Number	($)	% by Total $	Number	% by Total Number	($)	% by Total $	Number	% by Total Number	($)	% by Total $

[1] [Sellers are identified only if they relate to at least 5% of either total number of all repurchase requests or total dollar amount of all repurchase requests.]

[2] [Discloses mortgage loans regardless of whether they are still securitized or have been removed from the related securitization trust by the applicable GSE.]

[3] [Only GSE/Seller resolution of repurchase requests that result in an actual repurchase, as opposed to any alternative remedies, will be disclosed.]