

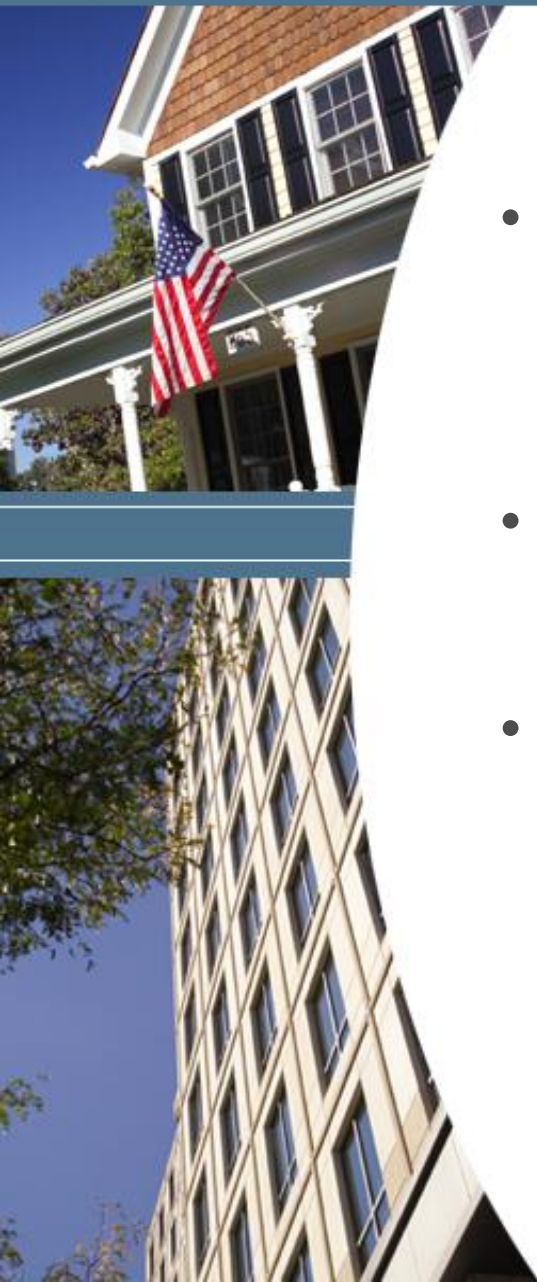


# Regulation AB Update

December 2008

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Washington DC**

**PRICEWATERHOUSECOOPERS** 

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- Describe risks mortgage servicing participants face regarding Regulation AB compliance in 2008
  - Summarize SEC comments related to Regulation AB for 2006 and 2007
  - Discuss Mortgage Modification programs and Regulation AB

## Disclosure and Reporting

- No new interpretations since 2/2/07
- General rule is the more disclosure and transparency
- SEC has recommended companies include further discussion of risk considerations for pools containing sub-prime mortgages or other high risk loans

## Reputation Risk

- Securitization activities and performance is currently front page news rather than back page blurb

## Legal Risk

- Lawsuits are becoming more common and vary widely (suits against issuers, servicers, trustees, etc.)

## Operational Risk

- Massive layoffs and closures in the banking and capital markets industry
- Fewer resources available to maintain internal controls, while some servicing activities have increased in volume, scope or frequency (in some cases, without appropriate consideration of controls). Including Loss Mitigation and Foreclosure and Collections
- Contractual compliance vs. SEC compliance

45 company filings were collected and examined from 2006-2008, resulting in 67 SEC comment letters issued

- Filing companies (Sponsors) included investment banks, auto lenders, and mortgage lenders
  - Asset class: Auto, Credit Cards, MBS, Student Loans

250 issues were raised by the SEC relating to Regulation AB requirements related to Disclosures and Reporting (registration issues were omitted)

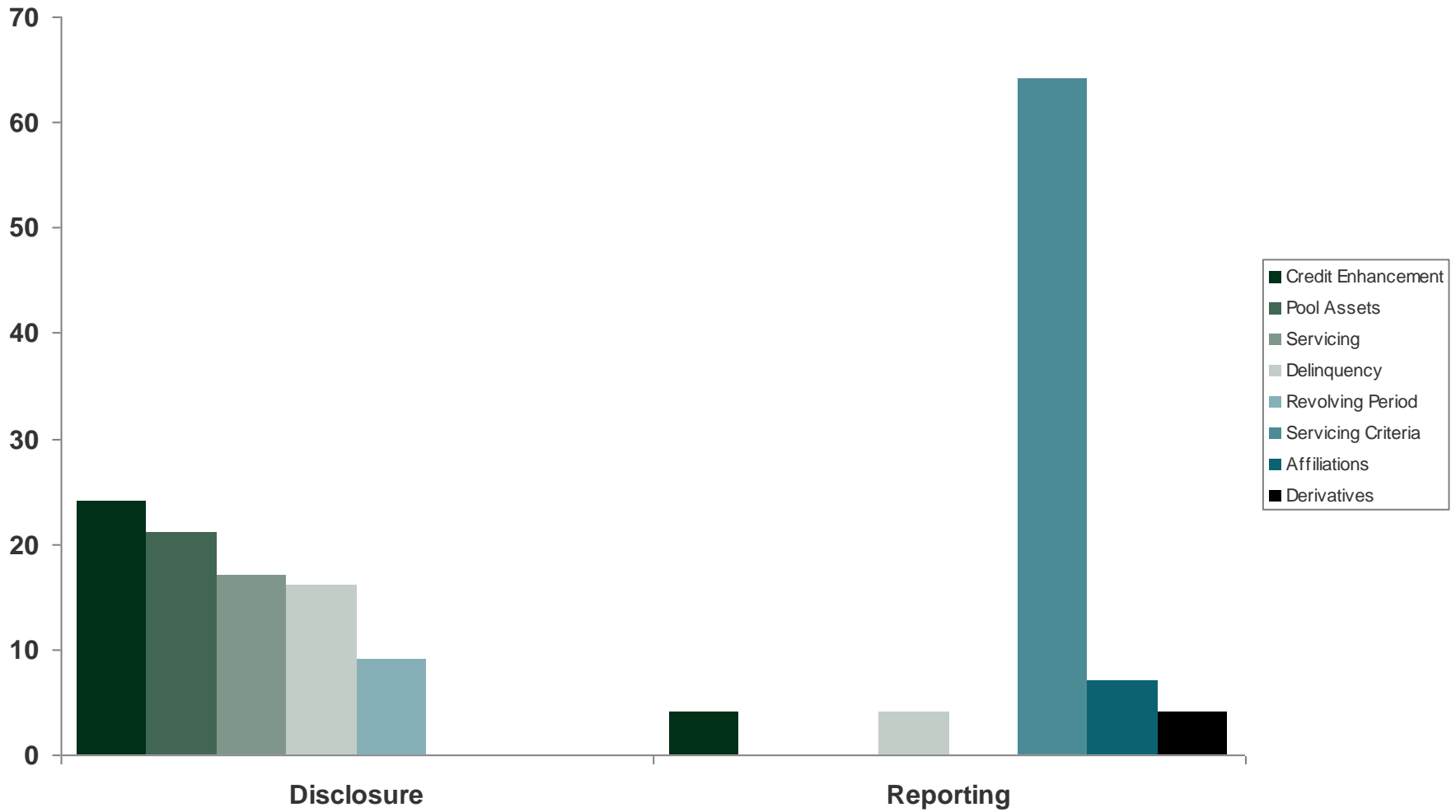
- Disclosure
  - Prospectus supplement and base prospectus
- Reporting
  - Monthly (10-D) and annual filings (10-K)

# Top SEC Issues by Type

Disclosure		Reporting	
Credit Enhancement	24	Servicing Criteria	64
Pool Assets	21	Affiliations	7
Servicing	17	Credit Enhancement	4
Delinquency	16	Delinquency	4
Revolving Period	9	Derivatives	4

# Regulation AB Comment Letter Issues

Number of Regulation AB Issues on SEC Comment Letters 2006-2008.



This information presented here is illustrative only and does not represent a comprehensive list of issues and is not intended for reliance by any other person.

Reg AB reference number: 1122

## Common Issues

- “Clearly state applicable servicing criteria for which the assessing party is responsible, and explain why other criteria were deemed not applicable.”
- “Correct inconsistencies in describing servicer responsibilities between management’s assertion in the report of compliance with servicing criteria and the accountant’s attestation report.”
- “Include a correction for all material instances of noncompliance with servicing criteria.”
- “Include a separate assessment of compliance for each servicer and subsidiary.”
- “Verify that each vendor is not a servicer.”

1122	
(a)	8
(c)	4
(d)	33
Other	5
<b>Total</b>	<b>50</b>

1123	
(b)	4
Other	10
<b>Total</b>	<b>14</b>

<b>Grand Total:</b>	<b>64</b>
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Source: SEC EDGAR database

Reg AB reference number: 1122(d)

## Common Issues

- “Explain roles and responsibilities of each party with respect to applicable criteria.”
- “We note that [you] identify material instances of noncompliance with the servicing criteria in 1122(d)(3)(i) and 1122(d)(3)(ii). Please revise to identify the material instances of noncompliance in the body of the Form 10-K. Also, provide more detail regarding what information was omitted or provided in error, whether you have corrected, and whether the cause for noncompliance has been corrected.”
- “We note your disclosure that the errors and omissions were corrected, however, we note that you have not filed any amended Form 10-Ds”

1122	
(a)	8
(c)	4
(d)	33
Other	5
<b>Total</b>	<b>50</b>

1123	
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Other	10
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<b>Grand Total:</b>	<b>64</b>
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Source: SEC EDGAR database

# Servicer Compliance Statement

Reg AB reference number: 1123

## Common Issues

- “Clearly disclose in the compliance statements whether servicers have fulfilled all of their obligations under the relevant agreements.”
- “We note that in your report on assessment of compliance with servicing criteria, it identified two material instances of noncompliance. However, the servicer compliance statement indicates that you fulfilled all of the obligations under the servicing agreement in all material respects. Please explain why a clean servicing compliance statement was filed, given the two material instances of noncompliance identified, or revise your filing accordingly. .”

1122	
(a)	8
(c)	4
(d)	33
Other	5
<b>Total</b>	<b>50</b>

1123	
(b)	4
Other	10
<b>Total</b>	<b>14</b>

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Source: SEC EDGAR database

## ➤ Regulation AB

- Loss mitigation, collection, foreclosure, advances, and investor reporting processes should continue to adhere to investor and regulatory guidelines although the risk of non-compliance is likely to increase due to higher volumes, changes in practices and organizational changes (new counselors, regional counseling centers).
- The scope of vendors considered material for Reg AB purposes could potentially expand and should be reviewed.
  - Collections
  - Foreclosure Process
- Investor approvals are typically required for loan modifications and delays in foreclosures, but there is no one standard.

- Transaction agreements guidance for servicer action range from silent to explicit guidance with respect to specifics on loss mitigation, collection, foreclosure activities.
- Examples of transaction agreements language:
  - "[Servicer may modify any loan] ... which servicer may deem necessary or desirable." ( Complete Servicer discretion).
  - "Appropriate in its best judgment and is in accordance with Accepted Servicing Practices". (Defined term referencing Industry Standards and/or Fannie & Freddie guidelines).
  - "In accordance with applicable state and federal law." (Foreclosure completion timeline as per state laws is listed in Fannie Servicing Guide)
  - "Action is not materially adverse to the interests of the Certificateholders". (How is such decision measured and documented? Which Certificateholders?)
  - "Consistent with any related PMI Policy." (Must read related PMI policy to determine compliance).
  - "Servicer uses the same degree of care and skill in its exercise as it customarily employs with respect to mortgage loans Serviced for its own account."